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To: Committee of European Securities Regulators
by e-mail at www.cesr-eu.org

Re: CESR's Draft Technical Advice on Possible Implementing Measures of the MiFID 2004/39/EC, 2nd Set of Mandates (CESR/04-562)

Dear Sirs,

The Chamber of Brokerage Houses is an organization representing brokerage houses operating on Polish capital market. It was established in 1996 and currently represents 20 brokerage houses - all brokerage houses playing major role on the Polish capital market.
The Chamber of Brokerage Houses represents its members' economic interests with regard of their activity, in particular towards state authority bodies, participates in drafting bills and makes notes on such bills and their amendments, cooperates with other capital market institutions pursuing a jointly work out of detailed solutions concerning market's activity.
Among other Chamber's tasks is in particular that of defining and codifying fair trade rules and adopted market practices concerning the public trade of securities. These rules and practices are put into The Code of Good Practice of Brokerage Houses passed by the General Meeting of the Chamber Members in 2004.

This is the first time our Chamber takes part in CESR consultation. We appreciate the opportunity of expressing in this way our view and having an influence on UE regulations.
We would like to address some questions stated in the consultation paper.

It is obvious for us that an advice on services such as recommendation to use a particular broker, fund manager or custodian should not be considered as an “investment advice”. An “advice on the provision of investment services” is not understood as the investment advice in Poland. Moreover, as it is mentioned in the consultation paper, a recommendation to use a particular broker is not covered by the definition in Article 4(1)(4). Thus, in our opinion, it is justified not to include this issue at all.

Concerning the question (1.2) we note that there are three main features of personal recommendation. First of all, it is given on the basis of a bilateral agreement between a customer and an investment firm. It is an agreement that decides what activity of the investment firm is understood as an investment advice (e.g. a telephone call with a suggestion to buy, SMS etc.) and sets the conditions for transmitting the recommendation. Secondly, the personal recommendation is held out in bilateral contact between the firm and its client. Different ways can be used and they are stated in the agreement. This is the difference between a general recommendation which is sent to the public and personal one.
We note that usually the adjustment of the recommendation to the client’s personal situation is based on a client’s subjective assessment of his situation and experience. The client is the only source of the information that can be used. Moreover, the information from the client is often very limited or lacking at all. These circumstances limit the possibility of a broker to suit the recommendation to the client’s personal situation. On the other hand, in our opinion, a broker should not desist from the provision of the service to clients who do not want to disclose us information on their situation and experience.
The third feature of the personal recommendation is that it is usually a suggestion concerning a specific transaction.
The main difference between “personal recommendation” from “general recommendation” and “marketing communication” is that the former one is held out on the basis of a the bilateral agreement - according to this agreement, while the latter not.

We believe that the recommendation to buy, sell, subscribe etc. a specific financial instrument should be supplemented by providing some generic information which may include a discussion concerning financial planning and asset allocation issues. However, the definition of “investment advice” does not cover, in our opinion, financial planning and asset allocation services.

Concerning the proposal on portfolio management (3.1) we agree that there should be defined an investment strategy for the service and we stress that the investment firm should be required apply clear and unambiguous principles of rendering this service. Moreover, it should provide, unless a portfolio management agreement provides otherwise, on a customer’s request information concerning the balance of its portfolio and the operations performed under the management thereof.
The point stating that the transactions must be exclusively motivated by the interests of retail clients can be supplemented by adding that it is impermissible to make investment decisions in portfolio management on the basis of, or in connection with information concerning own

investments of an investment firm, accounts and orders of other customers or information of a confidential nature.

(4.1) As we mentioned above an investment firm should not desist from the provision of the service to clients who do not want to disclose complete information on their situation and experience. The rendering of the service should be ruled by the provisions of the bilateral agreement concerning this service. Obviously, signing the agreement should be preceded by collecting necessary information regarding the client's knowledge and experience, and recommending him investment services and potential instruments that are suitable to him (art. 19.4 MiFID). Hence , when providing investment advice or portfolio management service for the client who does not provide any information, the investment firm should not make any implicit assumptions that the client has no knowledge or experience, or the assets provided by the client are his only liquid assets. Any assumptions and the description of the range of information disclosed by the client should be explicitly stipulated by the agreement . In a case of lack of complete information about the client an adequate investment advice should usually include consideration of different investment options and a discussion of the risk involved with each of them.

In determining criteria for what is to be considered as a non-complex instrument (5.1) in our opinion CESR should concentrate on economic effects and the risk involved. When "initiative of the client" is concerned only Recital 30 of the MiFID shall should be referred to. At this moment it is not necessary to adopt Level 2 measures concerning "undue influence". This point seems for us to be more general and should be regulated in the other level.

In our opinion there is no need to complicate the rules by introducing the threshold for undertakings to request treatment as eligible counterparties different from the threshold for professional clients. We note here the similarity of the set of entities considered as professionals listed in Annex II of the MiFID and the set of entities listed in art. 24.2.

(7.1) In our view transmitting the client limit order to RM or MTF is assumed in art. 22.2 of the MiFID to be the two possibilities from the set of possibilities of making public the order in a way which is easily accessible to other market participants. In our opinion arrangements which comply with art. 22.2 are 1) publishing an order through a third party system that is used for advertising information concerning the investment firm and 2) publishing the order through a venue that makes the order easily accessible to market participants. Publishing the order on investment firm's website should not be neglected.
When we consider the possibility stated in art. 22.2 literally, we note that the directive allows Member State to decide that the obligation of making public is fulfilled by transmitting the order to RM/MTF independently of whether RM/MTF provide an opportunity to display it or not. Thus, it is not necessary to consider the need of additional arrangements with RM/MTF. Nevertheless, Level 2 measures may assume that Member state may decide that the obligation is complied by transmitting the order to RM/MTF only when it provides the opportunity to

display and make accessible non-executed orders, otherwise some additional arrangements concerning making orders public should be made.

(8.1) The features of systematic internalisers stated in the MiFID are: “organized”, “frequent” and “systematic”. Avoiding of setting a numerical thresholds to describe these features seems to have some advantages but it also seems that definition of systematic internalisers set in Box 14 of the consultation paper is to broad comparing with the definition set in the directive. It should be noted that there can exist a firm which meet the criteria stated in Box 14 but does not deal on its own account by executing client’s orders outside RM/MTF frequently. Thus CESR should set the criteria for the term “frequent” (8.3). The definition of the term “frequent” should refer to other activities of the investment firm considered and can be related to the frequency of these activities (e.g. number of transactions executed on regulated markets in a given period).
In our opinion the criteria should be fulfilled collectively (8.2).

(8.4) We believe that it would be beneficial for the clients to disclose the intention to cease systematic internalization by the investment firm and in our opinion the period of two weeks seems to be appropriate.

We agree with the analysis of the criteria on what is to be considered a liquid market and see their disadvantages. Because of this we suggest to use some of the pre-determined criteria and some proxies collectively. Taking into account the drawbacks of using indices we suggest not to include them in setting the criteria but considering existence of a derivative instead.

(9.1) We do not see reasons to propose a different block regimes for art. 27 and art. 29, 30, 44 and 45 of the MiFID. (9.2) We believe that for systematic internalisers the merits of introduction of a large number of SMS classes will surpass the arising drawbacks.
(9.3) In our opinion it would be appropriate, as being more convenient for internalisers, to convert the SMS into number of shares.
(9.4) The time of the revision of the grouping of shares should be fixed at Level 2. It should not be fixed as the end of the calendar year. Half a year revisions of the grouping could be considered.
(9.5) Grouping the share into class should be done after some time of trading. 3 months period seems to be a reasonable one.
(9.6) One month period should be assumed for systematic internalisers to adapt to new SMS.
(9.7) The classification of shares should be published. However this requirement should not exclude the possibility of the establishment of a single contact point what seems to be desirable.

(10.2) The availability of quotes during 100% of normal trading hours of the systematic internaliser is the strongest possible requirement. It should be noted that the directive states that systematic internaliser has to make public his quotes “on a regular and continuous basis”. The words “continuous basis” are accompanied here by “regular”. In our opinion it can be

assumed that publishing quotes periodically, but regularly and on continuous basis e.g. each first quarter of an hour during the firm's normal trading hours meets the condition set out in art. 27.3.
The availability of quotes during 100% of normal trading hours of the firm may sometimes be difficult to achieve e.g. from the technical point of view.
(10.3) Publication of quotes on the firm's own website meets the requirement of easy accessibility.
(10.4) A statement "close to comparable quotes on other relevant markets" for determining when a price reflects market conditions seems to be too general.
(10.5) The criteria of exceptional market conditions for withdrawal of quotes should not be given as a closed list (a suspension, RM trading hours) but the possibility of some unforeseen circumstances should be included.
(10.7) In our opinion there is no need to regulate updating of quotes by Level 2 measures as art. 27.3 of the MiFID states that they can be updated at any time and no other description is given to discuss.

(11.1) We agree that it is unnecessary to provide additional advice in respect of the handling of client orders where a systematic internaliser publishes multiple quotes.
(11.5-7) Having taken into account considerable differences between markets we suggest consideration of national thresholds at first. Otherwise, there will appear the situation where there will be no negotiation freedom for professional investors for some markets at all.

We hope this response is helpful. We stay at your disposal for any clarifications.

Yours sincerely

Maria Dobrowolska
President of the Chamber