



The Committee of European Securities Regulators
11-13 avenue de Friedland
F-75008 Paris
France

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Phone.: +45 3312 4811

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CESR Technical Advice to the European Commission in the context of the MiFID Review – Client Categorisation

Reply to Consultation Document No. 10-831 of 12 July 2010

The Association of Danish Mortgage Banks have considered the captioned consultation document. We thank you for the opportunity to submit the below remarks.

General remarks

From a general point of view amendments of the client categorisation regime are neither considered necessary nor practical for investment firms and clients alike. The suggested amendments do not provide additional protection to the established flexible regime that entitles clients, that should be able to assess whether they need further protection, to opt to be treated as retail clients.

Clients that do not want to be treated as retail clients and do not require this protection are likely to oppose to further information requirements etc. from investment firms. Hence, investment firms should also not apply knowledge and experience tests to these clients.

Answers to specific questions in the paper

Part 1: Technical criteria to further distinguish within the current broad categories of clients

Q1. Do you agree that the opening sentence of Annex II.I(1) sets the scope of this provision and that points (a) to (i) are just examples of “Entities which are required to be authorised or regulated to operate in financial markets.”?

Yes.

Q2. Do you think there is a case for narrowing the range of entities covered by points (c), (h) and (i) of Annex II.I(1)? Please give reasons for your response.

No.

Narrowing the range of entities covered by points (c), (h) and (i) would in our opinion not add any value to the client categorisation regime. Per se professional clients are already narrowed down to entities authorised or regulated to operate in financial markets. Per se professional clients are informed about their status, and these clients are able to opt to be treated as retail clients. This approach is also the most appropriate for this type of entities who often see it as disruptive to be tested or to be required to request for treatment as professional clients instead of being treated as such automatically.

Q3. If you believe there is a case for narrowing the range of entities covered by points (c), (h) and (i) of Annex II.I(1) what criteria do you think should be used to distinguish between those entities that are covered and those that are not?

See Q2.

Q4. Do you believe there is a need to clarify the language in points (c), (h) and (i) of Annex II.I(1) and, if you do, how do you think the language should be clarified?

We have not experienced practical problems with the definitions. Clarification is of course welcomed as long as it does not lead to any narrowing of the range of entities included in the category of per se professional clients, cf. Q2.

Part 2: Public debt bodies

Q5. Do you think that Annex II.I(3) should be clarified to make clear that public bodies that manage public debt do not include local authorities?

No.

Local authorities that concretely manage public debt should be treated as per se professional clients.

Part 3: Other client categorisation issues

Q6. Do you believe it is appropriate that investment firms should be required to assess the knowledge and experience of at least some entities who currently are considered to be per se professionals under MiFID?

No.

Such approach would dilute the client categorisation regime. An assessment of knowledge and experience would require investment firms to obtain further information from professional clients that would most likely find it inappropriate, unnecessary and cumbersome to deal with the investment firms.

Instead, according to Annex II.I it is the responsibility of a professional client to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved. This is the proper approach when dealing with this category of clients which are required to be authorized or regulated to operate in the financial markets.

Q7. Should a knowledge and experience test be applied to large undertakings before they can be considered to be per se professionals or to other categories of clients who are currently considered to be professionals?

No.

As Q6 above.

Q8. Do you believe that the client categorisation rules need to be changed in relation to OTC derivatives and other complex products?

No.

This approach seems wrong when dealing with professional clients and ECPs. There is no need for additional client categories that will cause investment firms to change the already implemented categories in systems and processes. New concepts of ECPs and highly complex products will only lead to legal uncertainty and defining these concepts meaningfully seems disproportionate.

Q9. If you believe the rules should be changed:
- for what products should they be changed; and
- which of the approaches to change set out in the paper would you favour?

See Q8.

Q10. Do you believe it is necessary to clarify the standards that apply when an investment firm undertakes a transaction with an ECP?

Clarification is always welcomed, but it is our opinion that the standards are clear as they are.

Q11. If you believe a clarification of these standards is necessary, do you agree with the suggestions made in the paper?

If clarification is nonetheless found necessary, we can agree to the suggestions in the paper.

* * *

Yours faithfully,



Jan Knøsgaard
Association of Danish Mortgage
Banks

About the Association of Danish Mortgage Banks

The Association of Danish Mortgage Banks is the trade association for Danish mortgage banks. We work to promote the points of view of the Danish mortgage banking sector and to influence circumstances of relevance to the sector. We therefore maintain a close and ongoing dialogue with authorities, politicians, professional associations and media in Denmark and abroad. Our members grant loans against security in the form of mortgages on real property. The mortgage loans are based on the issuance of mortgage bonds (ROs) and covered bonds (SDOs). Five Danish mortgage banks are members of The Association of Danish Mortgage Banks.