



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR/06-552

**The list of minimum records in Article 51(3) of
the MiFID implementing Directive**

Public consultation

October 2006



INTRODUCTION

Article 13 (6) of the Directive 2004/39/EC (hereinafter 'Level 1') establishes that investment firms shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under the Directive, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients.

Article 51(3) of the Directive 2006/73/EC (hereinafter 'Level 2') establishes that competent authorities shall draw up and maintain a list of the minimum records investment firms are required to keep under MiFID and its implementing measures.

CESR is considering issuing a recommendation to its members with the content of the list of minimum records that competent authorities need to draw up.

CESR is of the opinion that both investors and industry would benefit from a common approach to the list that the different competent authorities have to draw up. This is in line with our objectives of (i) promoting common implementation of MiFID, (ii) foster supervisory convergence, (iii) facilitating the provision of cross-border provision of investment services and activities, and (iv) ensuring a common minimum basis for investor protection.

In this context, the consultation responses to CESR's MiFID Level 3 work program have asked CESR to prioritise work that will have an impact in firm's processes and systems, and in general to promote work that has a direct impact on facilitating the cross-border provision of investment services and activities.

The list of minimum records in Level 2 should not be understood as a limitation of the scope of Level 1. CESR understands that compliance with the list does not provide investment firms with a safe-harbour from the record-keeping provisions in Level 1. For example, the list does not contain an express reference to records relating to investment advice, but this omission does not exempt firms from complying with the Level 1 requirements, which apply to all services; including the provision of investment advice.

It is also important to note that CESR is not proposing to harmonise at this stage the content of the different records in the list. National competent authorities may add to this list other record keeping obligations. CESR is at this stage trying to reach progressive convergence on the basis of the proposed list of minimum records.

Question 1: *Do you agree that a common list of minimum records in all CESR members will benefit investors and industry?*

Question 2: *Do you agree with the content of the list elaborated by CESR? If not, which records should be added or deleted and for which reasons?*

Question 3: *Do you consider that a specific requirement for keeping records of the provision of investment advice should be introduced?*



Consultation Period

Readers are asked to consider the questions set out in this consultation document and send their responses via CESR's website (www.cesr.eu) under the section "Consultations". The consultation closes on **27th November 2006**.

Respondents are also welcome to make any relevant points which they do not think are covered directly by the questions.

List of minimum records of article 51(3) of the MiFID implementing Directive ¹		
Type of record	Contents of record must include	Time at which record must be created
Categorisation and identity of each client	The identity of each client and sufficient information to support categorisation as a retail client, professional client and/or eligible counterparty	When the client relationship begins or upon re-categorisation, including as a result of any review
Retail client agreements	Records provided for under Article 19(7) of the directive and Article 39 of the Directive 2006/73/EC	Before providing services to a new client for the first time
Client details (Article 19(4))	The information about the client's or potential client's knowledge and experience, financial situation and investment objectives obtained by the investment firm in complying with its obligation under Article 19(4) of the Directive	On giving advice or being appointed as a portfolio manager
Client details (Article 19(5))	The information about the client's or potential client's knowledge and experience obtained by the firm in complying with its obligation under Article 19(5) of the Directive	Upon providing the relevant service
Records required under Article 25(2)	The information required under Article 25(2) of the Directive	Such records should be kept for the period required by Article 25(2)
Aggregated transaction that includes a client order	Identity of each client; whether transaction is in whole or in part for discretionary managed investment portfolio and any relevant proportions	On executing an aggregated transaction
Aggregation of one or more client orders and an own account order	The intended basis of allocation	Before the transaction is executed
Allocation of an aggregated transaction that includes the execution of a client order	The date and time of allocation; relevant financial instrument; identity of each client and the amount allocated to each client	Date on which the order is allocated
Re-allocation	The basis and reason for any re-allocation	At the time of the re-allocation
Order received or arising or decision to deal taken in providing the service of portfolio management	The records provided for under Art. 7 of the Regulation (EC) 1287/2006	Immediately after receipt of the order or after the decision taken
Orders executed on behalf of clients	Records provided for under Art. 47(1)a of the of the Directive 2006/73/EC	At the time of the execution of the order

¹ This list is not exhaustive of the Level 1 obligation on record-keeping.

Order carried out (other than those falling under the following row) and transactions effected for own account	The records provided for under Art. 8(1) of the Regulation (EC) 1287/2006	Immediately after the order or transaction is carried out
Transmission of order received by the investment firm	The records provided for under Article 7 and Article 8(2) of the Regulation (EC) 1287/2006	Immediately after receipt of the order and immediately after receiving the confirmation that an order has been executed
Periodic statements to clients	Any periodic statement issued to a client by the investment firm in respect of services provided	On date on which it is provided
Client financial instruments held by an investment firm	The records required under Articles 13(7) and (8) of MiFID and under Articles 16.1 (a) and (b) of Directive 2006/73/EC	On commencement of the holding
Client financial instruments available for, and subject to, stock lending activities	The identity of client financial instruments that are available to be lent, and those which have been lent (note also the requirements under Articles 13(7) and (8) of MiFID and Article 19 (2) last paragraph of Directive 2006/73/EC, where applicable)	On such assets being made available for lending and on such assets being lent
Client funds	Sufficient records to show and explain investment firm's transactions and commitments under Article 8 of Regulation 1287/2006 (note also the requirements under Articles 13(7) and (8) of MiFID and under Articles 16.1 (a) and (b) of Directive 2006/73/EC	As soon as monies received and paid out
Marketing communications	Each marketing communication addressed by the investment firm to clients or potential clients	At the time the investment firm first issues the marketing communication
Investment research	Each item of investment research, in accordance with Article 24(1) of Directive 2006/73/EC issued by the investment firm in writing	At the time the investment firm first issues the item of investment research
The firm's business and internal organisation	Records provided for under Art. 5 (1)f of Directive 2006/73/EC	On the business and organisation being established or amended
Compliance policies and procedures	The investment firm's compliance policies and procedures, under Article 6 of Directive 2006/73/EC	On the policies and procedures being established or amended (in respect of each version the period in Article 51(1) of Directive 2006/73/EC under Article 13(6) of MiFID shall commence is the date on which the relevant version is amended)
Services or activities giving rise to detrimental conflict of interest	The services or activities under Art. 23 of Directive 2006/73/EC	At the time the conflict of interest is identified
Compliance reports	Each compliance report to senior management, under Articles 6(3)b and 9(2)	At time of the relevant report

	of Directive 2006/73/EC.	
Risk management reports	Each Risk management report to senior management under Art. 7(2)b and 9(2) of Directive 2006/73/EC	At time of the relevant report
Internal audit reports	Each internal audit report to senior management, under Articles 8(d) and 9(2) of Directive 2006/73/EC	At the time of the relevant report
Complaints records	Each complaint referred to in Article 10 of Directive 2006/73/EC received	On receipt of complaint
Complaints handling	The measures taken for the resolution of each such complaint, according to Art. 10 of Directive 2006/73/EC	As measures are taken
Records of prices quoted by systematic internalisers	The quoted prices under Art. Art. 24 para 1b of the Regulation (EC) 1287/2006	As prices are quoted
Records of personal transactions	The information required under Art 12 of Directive 2006/73/EC	As notifications of personal transactions are received by the firm or when the firm identifies them
Record of the information to be disclosed to clients regarding inducements	The information to be disclosed to clients under Art 26 of Directive 2006/73/EC	As the information is disclosed

