



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR/06-552c

**CESR Level 3 Recommendations on the List of
minimum records in article 51 (3) of the MiFID
implementing Directive**

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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 hereby issuing a recommendation to its members with the content of the list of minimum records that competent authorities need to draw up according to article 51(3) of Level 2. This list is without prejudice of other record keeping obligations arising from other legislation.

The list of minimum records in Level 2 is non-exhaustive and should not be understood as a limitation of the scope of Level 1 and Level 2. CESR understands that compliance with the list does not provide investment firms with a safe-harbour from the record-keeping provisions in Level 1 and Level 2.

It is important to note that CESR is not proposing to harmonise at this stage the content, timing, or form of the different records in the list.

The list does not refer to any of the policies that firms need to maintain pursuant to MiFID. CESR is of the opinion that all such policies need to be kept in writing.

Competent authorities may add to this list other record keeping obligations that they deem fit. CESR is at this stage trying to reach progressive convergence on the basis of the proposed list of minimum records. During 2008, CESR will conduct a review of competent authorities approach to the list of minimum records of article 51(3) of Level 2 with a view to harmonise further in this area.

CESR has consulted on the recommendations to its members. The vast majority of CESR stakeholders is of the opinion that both investors and industry will 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) fostering supervisory convergence, (iii) facilitating the cross-border provision of investment services and activities, and (iv) ensuring a common minimum basis for investor protection. A feedback statement explains the reasons for the final CESR decisions.



List of minimum records of article 51(3) of the MiFID implementing Directive ¹		
Type of record	Indicative contents of record	Indicative time at which record be created
Identity and categorisation 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
Client agreement	Records provided for under Article 19(7) of the directive.	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, relevant to the specific product or service, 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, relevant to the specific product or service, 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 two or more client orders, or one or more client orders and an own account order	Identity of each client; whether transaction is in whole or in part for discretionary managed investment portfolio and any relevant proportions as well as the intended basis of allocation	On executing an aggregated transaction and before the transaction is executed when the intended basis of allocation is contemplated.
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 transaction is allocated
Re-allocation	The basis and reason for any re-allocation	At the time of the re-allocation

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



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. Firms may wish to consider the date and hour that the order was sent by the investment firm for execution	Immediately after receipt of the order or after taking the decision
Orders executed on behalf of clients	Records provided for under Art. 8(1) of the Regulation 1287/2006	At the time of the execution of the order
Transactions effected for own account	The records provided for under Art. 8(1) of the Regulation (EC) 1287/2006	Immediately after the 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 and] transmission of the order and immediately after receiving the confirmation that an order has been executed
Periodic statements to clients	Information to evidence the content and the sending of the periodic statement to the client in respect of services provided, either as a copy, or in a manner that would enable reconstruction	On date on which it is sent
Client financial instruments held by an investment firm	The records required under Articles 13(7) 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 as well as information to evidence client consent (note also the requirements under Articles 13(7) 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(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(except in oral forms)	Sample of each marketing communication addressed by the investment firm to retail clients or potential retail 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	Records provided for under Art. 5 (1) f of	On the business and organisation

internal organisation	Directive 2006/73/EC	being established or amended
Compliance procedures	The investment firm's essential compliance procedures, under Article 6(1) of Directive 2006/73/EC	On the procedures being established or amended (in respect of each version the period in Article 51(1) of Directive 2006/73/EC 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) of Directive 2006/73/EC.	At time of the relevant report
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. 24 para 1b of the Regulation (EC) 1287/2006	As prices are quoted
Records of personal transactions	The information required under Art 12(2)(c) 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 disclosed to clients regarding inducements	The information disclosed to clients under Art 26 of Directive 2006/73/EC	As the information is disclosed
Investment advice to retail clients	(i) The fact that investment advice was rendered and (ii) the financial instrument that was recommended.	Upon providing investment advice