

22 December 2004

By email to CESR at www.cesr-eu.org

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Dear Sirs,

Response to CESR on Draft Technical Advice on Possible Implementing Measures of the Directive on Markets in Financial Instruments (MiFID) - 2nd set of mandates – Intermediaries section

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is the organisation that represents those firms who act for the private investor and who offer them services that range from no advice or 'execution only' trading through to portfolio management for the high net worth individual. Our 217 member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands and following the merger of EASD into APCIMS, increasingly in other European countries as well. APCIMS members have under management €400 billion for the private investor and undertake some 13 million trades for them annually.

We are grateful for the opportunity to respond to consultation paper ref **CESR/04-562**. It is likely that we represent the biggest grouping of non-bank investment firms that will need to apply suitability and appropriateness tests for retail clients being provided with portfolio management services, investment advice or execution only business in the EU.

SECTION II – Intermediaries; and our overall support for your advice

This letter responds solely to the intermediaries section. We shall respond separately on the markets section. We would like to record our support for much of what is proposed. We consider the paper reflects the significant effort that has been made to consult and be informed by the industry. We trust that our comments will be seen in the light of that overall support and as a genuine engagement in the process of implementing MiFID. We would like to record our thanks for the open hearing in Paris and the willingness of CESR staff to understand where we presently differ in our views over the terms of any draft advice. We have some comments and disagreements with the way in which your draft is expressed; many were raised at the open hearing and all of which are set out below. We intend that our proposals are consistent with your aims and will lead to improved implementation.

We have answered the questions the paper posed. Where we have other comments on the text we have also identified them.

Portfolio managers

We consider the advice does not yet sufficiently recognise and relevantly deal with portfolio managers. For that reason we have provided a re-draft of the advice relating to Article 19.4 (Box 8). The thinking behind the re-draft is set out in this letter in the discussions from Question 4.1 onwards.

Some clients who use the professional services of a portfolio manager are highly experienced in the investment field; others are not. There are many reasons for using a portfolio manager, even if the client is very experienced:

- Lack of time
- Need to avoid conflicts – several clients in Government, the Judiciary or Senior Finance positions are required to have a discretionary or even blind portfolios to prevent conflict of interest issues
- Respect for the manager's expertise
- Spreading risks – the client may earn a living from taking high stock market risks but want the investment firm to provide a low risk back up

Many clients use a portfolio manager because they do not have the knowledge and experience to manage a portfolio but do have the objectives and the wealth (without that perhaps making them professional clients) that justifies such a portfolio.

A portfolio manager takes professional responsibility for managing a portfolio of investments. It is not the knowledge and experience of the client that is highly relevant but that of the portfolio manager.

LAYOUT

We would encourage CESR to consider how it presents its advice. In some places the text outside the Boxes provides helpful recitals that give texture to the more legislatively drafted Boxes themselves. At other times, the Box text appears only to include some of the particular examples given in the preceding text; and it is then unclear whether certain examples or factors are more important than others. This is particularly the case in relation to the investment advice scope and we comment on that in relation to Box 1 below.

Question 1.1. - *Do you agree that advice on services, such as recommendation to use a particular broker, fund manager or custodian, should not be covered?*

Answer: Yes. We agree with your conclusion and for the reasons you state.

Question 1.2 – *Do you agree with the approach that a personal recommendation has to be held out as being suited to, or based on a consideration of, the client's personal situation or do you consider this criterion to be unnecessary or ambiguous and would like to refer to the bilateral nature of the relationships and bilateral contacts between the firm and its clients? In the latter case which criteria would you use to differentiate between a "personal recommendation" and a "general recommendation" or a "marketing communication"?*

Answer: We agree with the approach, "suited to, based upon, etc". We think the criterion captures best what actually goes on when someone gives advice. It is a workable model that is consistent with the approach of Level 1. In part, this is for the reasons your advice identifies. We also consider as a matter of legal interpretation that Annex I of MiFID, and the categorization of certain recommendations in section B, paras 3 and 5 as ancillary services, does not fit easily with a test based upon mere bilateral contact (which would likely be present in those cases as well).

Question 1.3 - Page 13; *Do you think it is reasonable to restrict "investment advice" to recommendations of specific financial instruments or is it necessary to cover generic information including financial planning and asset allocation services for financial instruments?*

Answer: We think it is reasonable to restrict the definition.

Other comments on the advice in BOX 1 (page 16)

- Para 1 – the English text would read less ambiguously if it stated:

“Personal recommendation” means any information given to a **particular** person **which includes** a value judgment or opinion.....

- Para 1 – we would prefer if “personal circumstances” was clearly the same set of issues referred to Article 19(4). If it is not then we consider there may be a risk of an unharmonized approach. Some clients are trustees, for example of a pension fund, or have some other representative or fiduciary role. It is important that “personal circumstances” will be wide enough to ensure the investment firm must consider the circumstances of the pension fund or other trust concerned.
- Para 3 states “Marketing communication” is generally not issued on a client’s request but at the initiative of the investment firm. We think this formula adds nothing to the test, especially given para 6 (“... *necessary to determine whether, based upon a consideration of all the relevant circumstances, the test...is satisfied*”). Some communications issued at a client’s request may be marketing communications, and some issued at the initiative of the investment firm, may be personal recommendations. There is more helpful text in the pages before Box 1 and if this sentence is to be kept it should be demoted to that section. Important text in the preamble to the draft advice includes the discussion at page 10 of the CP under the heading Personal or the discussions and lists in the latter half of page 14.
- It would be unhelpful if the advice in paras 2 to 5 somehow slipped into the definition of investment advice. For example most marketing communications are not issued to the public at large but to a target audience. A requirement to address the public at large would be unnecessarily restrictive. Target audiences themselves can vary in size, they might be individuals whose details are held on a marketing database or they might be readers of a large-circulation newspaper such as the Financial Times on a particular day.
- We strongly support your comment in para 6; it may be better positioned straight after para 1 to ensure the following paragraphs of your advice are placed into proper context.

Question 2 – we question the extent to which the word “derivative”, being an option, future or contract for difference, bears the same meaning within jurisdictions outside England and Wales. It appears to us that the definition is heavily influenced by English jurisprudence and appears to conflict with the definition of transferable securities in Art 4.1 18)(c) of MiFID, some of which would appear to be contracts for differences in English law. This is important because it has an effect on CESR’s advice concerning complex and non-complex instruments.

We revert to this point below under question 5.1 and Box 10.

Question 3.1: *Do you agree with the proposals on portfolio management? Should any other issues be addressed under Article 19(1)?*

Answer: Yes. Arguably some of the advice in Boxes 8 and 9 might technically be better placed under 19.1 but as that is merely structural we shall leave that to the legislators.

Question 4.1: *Do market participants think that adequate investment advice or portfolio management service is still possible on the basis of the assumption that the client has no knowledge and experience, the assets provided by the client are his only liquid assets and/or the financial instruments envisaged have the lowest level of risk if the client is not able to or refuses to provide any information either on his knowledge and experience, his financial situation or its investment objectives? Or would this assumption give a reasonable observer of the type of the client or potential client the impression that the recommendation is not suited to, or based on a consideration of his personal circumstances?*

Adequate investment advice or a portfolio management service is entirely possible in the circumstances you identify. The client with cash to invest but no experience is particularly vulnerable and will be better served by management than by receiving advice he may or may not follow. We believe this possibility is a fundamental aspect of the services caught by the suitability regime and is distinguishable from the appropriateness regime; the professional firm takes on a specific duty to use its own experience and knowledge to safeguard the client against his own limited knowledge.

It is rare for a client to refuse to explain his objectives, but if they do they are treated as being in the lowest risk category. Where a client answers by stating that he has no experience and knowledge of any financial instruments, it is still entirely possible to provide advice tailored to that person's situation. Indeed, public policy should recognise that all non-professionals have to start somewhere and **MiFID should not operate to deny ordinary members of the public from access to advice** when they first have access to the capital markets. A recommendation following necessary disclosure about the client's financial situation and objectives alone is in our view based upon a **consideration** of the client's personal circumstances.

There is in our view no policy reason why a person saying nothing about their experience and knowledge should be treated differently from one having no experience and knowledge, in relation to suitability – so long as their financial situation and objectives are sufficiently understood. For good commercial reasons we would envisage that firms may provide a warning to clients about the failure to answer questions about their experience and knowledge.

In order to assist you in understanding our response and reservations about suitability, particularly as set out below, we have also provided (at page 6) a copy of Box 8 as amended by us. The annex shows the revisions made by us.

Box 8, Paragraph 2

Under Article 19.4, Box 8, para 2 states that knowledge and experience is relevant to a consideration of the type and characteristics of the product only, and that the envisaged service is something that requires the financial situation to be considered (and not knowledge and experience). However in the draft advice on appropriateness in Box 9, paragraph 2 it states that knowledge and experience is relevant to a determination of the appropriateness of both the type of product and the envisaged service. This is confusing and will not aid the design of question sheets or systems for implementation. We understand that Articles 19.4 and 19.5 do have different formulations but nothing in Art 19.4 restricts the relevance of any factors (knowledge, experience, financial situation) to only one or other of the matters to be determined (instrument or service).

We consider that the test of suitability should be applied “in the round”, as the MiFID sets it out. The advice on Art 19.4 would be clearer if there were no differentiation between the types of financial instrument and service in paragraph 2)a)(i) and 2)a)(ii). We have accordingly offered a re-draft of this section which uses your own phrasing.

In addition, the use of terms such as “**will be** [relevant]” are perhaps misplaced, since they do not naturally allow for any exceptions. The broad thrust of the draft advice is sensible and workable; but it must recognise that at times, for example, the type of financial instrument, will not be relevant in determining the nature and extent of information that is required. The advice appears to be directed predominantly to the situation of an investment adviser advising on a single occasion. A portfolio manager offers a valuable service precisely because his knowledge and experience can supplant that of the client and allow the client access to a wider range of

instruments suitable for the client's agreed objectives than might be the case were the client to manage the portfolio himself, with or without access to advice. It would be far clearer if the advice used terms such as "may be" or "due regard".

Box 8, Paragraph 5

We welcome the recognition that a professional client ought to bear a responsibility for informing the firm of relevant changes.

Box 8, Paragraphs 6 and 8

We would welcome some clarification of the text, particularly as this shall apply to portfolio managers:

Para 6)a) It is stated that transactions should be in line with **the investment objectives of the client**. We consider the transactions should be in line with **the investment objectives that the firm has agreed to follow**. These may be (rather than will be) reflective of the overall investment objectives that the client himself may have as it is not unusual in our markets for a client to obtain packaged products and full financial planning from one investment firm but be referred to a portfolio manager for management of a portion of his entire invested wealth, as for example Article 20 recognises. The advice should be consonant with that article.

Para 6)b) We do not understand why a firm **must** take this into account. What is critical is the portfolio required not the experience of the client. A typical portfolio manager may have a highly experienced client who for his personal reasons chooses not to manage his own funds and has asked for a "low risk" portfolio. The same manager may have a client, say an elderly widow, with equally large funds and by definition a need for a "low risk" portfolio. The investments chosen will be those appropriate for a low risk portfolio and indeed the two portfolios may be substantially similar. This is what a portfolio manager is paid to do. He takes professional responsibility for managing a portfolio of investments. It is not the knowledge and experience of the client that is highly relevant but that of the portfolio manager.

Box 8, Paragraph 8

Churning

Where the text refers to frequency of trading and series of transactions, would CESR consider clarifying this as referring to churning? We agree that this should be discouraged. At present however the text may appear to suggest that a firm would need to be aware of what trades a client may be carrying out at another firm. It is impracticable to expect a firm to have this knowledge or impose a duty to monitor it.

Box 8, paragraph 8

Test

We have changed the word "test" to "assessment" as it appears to us to make it clear that it is the assessment that must be carried out each time; in contrast the information gathering does not need to occur each time.

Box8, paragraph 9

We have moved this paragraph into paragraph 8 as it is otherwise unclear how the 2 tests sit together. It seems to us this better ensures the standard you are seeking is met.

APCIMS proposed redraft of BOX 8

Criteria for assessing the minimum level of information from the client

1) For the purposes of Article 19(4):

- a) Information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service may include information on the types of services, transactions and products the client is familiar with and his trading history, i.e. the nature, volume, frequency and timeframe of his transactions. It may also include information on the client's or potential client's profession and education.
- b) Information regarding the client's or potential client's financial situation may include information on the financial capacity, the nature of the source and extent of his regular income and on his liquid net assets.
- c) Information regarding the client's or potential client's investment objectives may include information on the temporal horizon of the client or potential client's future investments, as well as his preferences regarding risk-taking (risk profile), and may also include information about the purposes of the envisaged investment such as recurrent income general or specific growth targets and/or tax efficiency.

2) With respect to the extent to which the information has to be obtained by the investment firm, it must take into account the following factors:

- a) Whether the information is necessary and sufficient to enable the investment firm to provide the service to the client or potential client.
 - i) The information to be requested from the client or potential client on his knowledge and experience, depends on the type of product envisaged and service to be provided (for example, limited information may be sufficient if the client or potential client has retained the investment firm to provide advice to a client on the basis that it will keep that client's portfolio under review or to act as a portfolio manager on a continuous basis).
 - ii) The nature and extent of the service provided to the client, and the risks involved in the envisaged transactions will be relevant in determining the nature and extent of information that is necessary regarding the client's financial situation (for example, limited information may be sufficient if the client or potential client has restricted the investment advice or the portfolio management service to a certain amount of his liquid assets and confirmed that the risk of partial or total loss does not exceed his financial capacity). In this respect, the investment firm may need to take into account, depending on the nature of the service, other relevant circumstances, such as whether the intended transactions will be paid from the client's own funds or will be financed with loans, to which extent these transactions are exposed to loss, margin or other risks such as the leverage effect of financial instruments which can affect the ability of the client to bear the risks of the envisaged transactions.
- b) Since a professional client is deemed to have sufficient knowledge and experience, the firm should not be required to obtain information on the professional client's knowledge and experience other than the information obtained to determine the client's professional status according to the procedure under Annex II of the Directive, unless and to the extent that the professional client has agreed with the investment firm to receive a higher level of protection as regards the conduct of business rules and not to be treated as a professional client.

3) The investment firm must not invite the client to not provide information.

4) An investment firm shall be entitled to rely on the information provided by the client or potential client, unless it is manifestly inaccurate or incomplete.

5) Where an investment firm provides investment advice, or acts as a portfolio manager, for a retail client on a continuing basis, it must take reasonable care to keep the client profile under review, also taking into consideration any development of the relationship between the investment firm and the client. Where an investment firm provides investment advice to a retail client on an occasional basis, it must undertake a review of the client profile whenever the retail client seeks advice.

The retail client must be advised that he should inform the investment firm of any major changes affecting his knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives. Should the investment advisor or portfolio manager who is in charge of the service for the client become aware of a major change in the situation previously described by the retail client, he must request additional information to update the information on the client's knowledge and experience, his financial situation and his investment objectives.

A professional client is responsible for informing the investment firm of major changes affecting his financial situation and his investment objectives. The investment firm shall update the client profile in accordance with the information received.

Criteria for assessing the suitability

6) For assessing the suitability the investment firm shall take into account the following factors in light of the information disclosed to it by the client or potential client:

a) The envisaged transactions must be in line with the investment objectives of the client or potential client as agreed with the investment firm.

b) Regarding the envisaged transactions, especially their complexity, the investment firm must take into account the knowledge and experience of the client or potential client.

c) The greater the level of risk involved in the envisaged transaction, commonly the more important the financial situation of the client or potential client will be in determining suitability. This may include the careful assessment whether the specific type of financial instrument or service is in the line with the financial capacity of the client or potential client and does not endanger the economic existence of the client or potential client.

7) The envisaged transaction may be considered as unsuitable for the client or potential client, inter alia, because of the risks of the financial investments involved (e.g. certain derivatives), the type of transaction (e.g. sale of options), the characteristics of the order (e.g. size or price specifications) or the costs associated with frequency of the trading (churning).

8) Where an investment firm provides investment advice to a client on the basis that it will keep that client's portfolio under review or acts as a portfolio manager, it must take reasonable steps to ensure that the portfolio in relation to which it has been appointed remains suitable. Otherwise, the suitability assessment must be conducted for each personal recommendation or decision to trade. It must be conducted in the light of any previous transactions known or disclosed to the investment firm. Recommendations or decisions to trade made with a frequency that is not the best interests of the client will not meet the requirements of the suitability assessment.

END OF BOX 8

At Annex A is the same version of Box 8 but showing the changes to CESR's original text.

Question 5.1.: *In determining criteria, should CESR pay more attention to the legal categorization or the economic effect of the financial instrument?*

Answer: Where there is harmonized legal categorization across the EU that will on occasion permit a determination as to whether an instrument is non-complex. An example from the Level 1 text is UCITS. Where there is no or little harmonization, then the economic effect rather than the legal classification should be seen as the more important criterion.

As an example, the economic characteristics of covered warrants are independent of the identity of the member state from which they derive. However their legal classification differs across the EU; we understand they are classified as derivatives in the UK by the FSA and securities in Italy. Such differentiated legal classification will reduce the effective harmonisation of investor protection across the EU, particularly if it allows the use of Article 19.6 for some instruments only in some countries. As we explained to the Chairman at the open hearing, the issue for our members is that the word “derivative” in the Level 1 text bears a different meaning in different national jurisprudences and if CESR does not provide advice about an issue because it has taken a legal view on the meaning on a contentious Level 1 word, then the Commission may lack the benefit of a wider consideration of the notions of complexity (especially if it is persuaded that, for example, a covered warrant is a transferable security that is not complex per se or that the special German retail derivatives need not be seen as complex). It is essential that CESR's advice is not rendered ambiguous by country-specific interpretation.

As we comment under Box 10 below, we are not persuaded by your legal analysis of derivatives which appears heavily influenced by UK jurisprudence and appears to place little weight on the word “other” in “other non-complex instruments”.

Question 5.2.- *Do you think that it is reasonable to assume that a service is not provided “at the initiative of the client” if undue influence by or on behalf of the investment firm impairs the client's or the potential client's freedom of choice or is likely to significantly limit the client's or potential client's ability to make an informed decision? Alternatively, do you think that the consideration of this overarching principle is not necessary because the use of undue influence could be subject to the general regulation under the UCPD and that CESR should base its advice more strictly on Recital 30 or refer entirely to this Recital advising the Commission that it is not necessary to adopt Level 2 measures in this area?*

Answer: The inclusion simply of the words “undue influence” will not lead to better protection for investors, is not harmonizing and will need to be removed when the UCPD is brought into force. Aggressive market practices need to be stopped; but it is important to be clear as to what they are and how disputes as to whether a practice was aggressive or not are to be resolved.

Undue influence itself is not prohibited under the UCPD, aggressive market practices are. As Article 8 of the UCPD states, a commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise. Article 9 then provides for how undue influence is to be determined.

If there is to be any harmonised approach to aggressive commercial practices, then that should be debated at Level 1 by a specific directive rather than just inserting the phrase “undue

influence” into MiFID at Level 2. The requirements for certain standards of behaviour under Articles 19.1 and 19.2 should be enough in the meantime to allow appropriate Level 3 implementation.

Should CESR persist it will create the unusual situation of permitting an appropriateness test under Article 19.5 when undue influence has been used on a client and not prohibiting anything! Recital 30 should be referred to without modification.

BOX 10

Definition of “non-complex instrument”

We have considered your definition in light of CESR’s position on derivatives being complex “per se”. We think CESR should provide advice regarding derivatives and leave it to the Commission to determine whether under Level 1, all derivatives are complex per se. The Commission may not ultimately agree with CESR’s legal position.

As matters stand (by excluding all derivatives), by comparing the list of instruments in Section C of annex 1 and the first tiret of Art 19.6, essentially the principal instruments that might have the test applied to them are:

- i. Shares not listed on a regulated or 3rd country market, e.g. in a private company or a hedge fund (even one invested principally in derivatives)
- ii. Transferable securities within the definition of Art 4.1 18)(c) [unless derivatives]
- iii. Non-UCITS units in collective investment undertakings (even if the undertaking invests in derivatives)

Of the tests presently put forward in Box 10, it is unlikely (b), about risk of loss exceeding investment, will exclude any of the above; and only (a) will have any real relevance. We consider (c) raises real issues of risk in terms of inconsistent implementation owing to the difficulty of assessing across the EU what is an average retail investor.

It does appear to us that the current text on complexity does not assist greatly in ensuring there will be a mature understanding of risk under MiFID. Just as we commented about initial access to the financial markets, it is important to ensure the complexity test does not effectively bar retail clients from moving on to trade more complex products at their own initiative. The test of complexity should not be set at the lowest common denominator.

BOX 10

Content of risk warnings

We have no doubt that national regulators will be vigilant in ensuring risk warnings meet the purpose envisaged for them in the Level 1 text and so we support the CESR opinion that no Level 2 measures should be implemented.

If we can assist CESR further in any way, please do not hesitate to contact us,

Yours faithfully



Guy Sears
Head of Implementation and Policy

Annex A _APCIMS proposed redraft of BOX 8 showing changes to original text

Criteria for assessing the minimum level of information from the client

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- b) Information regarding the client's or potential client's financial situation may include information on the financial capacity, the nature of the source and extent of his regular income and on his liquid net assets.
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2) With respect to the extent to which the information has to be obtained by the investment firm, it must take into account the following factors:

a) Whether the information is necessary and sufficient to enable the investment firm to provide the service to the client or potential client.

i) ~~The type and characteristics of the financial instrument that will be subject to the investment advice or the portfolio management service will be relevant in determining the nature and extent of the information to be requested from that is necessary regarding the client's or potential client's on his knowledge and experience in the investment field. depends on the type of product envisaged and service to be provided (for example, limited information may be sufficient if the client or potential client has retained the investment firm to provide advice to a client on the basis that it will keep that client's portfolio under review or to act as a portfolio manager on a continuous basis).~~

ii) The nature and extent of the service provided to the client, and the risks involved in the envisaged transactions will be relevant in determining the nature and extent of information that is necessary regarding the client's financial situation (for example, limited information may be sufficient if the client or potential client has restricted the investment advice or the portfolio management service to a certain amount of his liquid assets and confirmed that the risk of partial or total loss does not exceed his financial capacity). In this respect, the investment firm may need to should also take into account, depending on the nature of the service, other relevant circumstances, such as whether the intended transactions will be paid from the client's own funds or will be financed with loans, to which extent these transactions are exposed to loss, margin or other risks such as the leverage effect of financial instruments which can affect the ability of the client to bear the risks of the envisaged transactions.

b) Since a professional client is deemed to have sufficient knowledge and experience, the firm should not be required to obtain information on the professional client's knowledge and experience other than the information obtained to determine the client's professional status according to the procedure under Annex II of the Directive, unless and to the extent that the professional client has agreed with the investment firm to receive a higher level of protection as regards the conduct of business rules and not to be ~~readed-treated~~ as a professional client.

3) The investment firm must not invite the client to not provide information.

4) An investment firm shall be entitled to rely on the information provided by the client or potential client, unless it is manifestly inaccurate or incomplete.

5) Where an investment firm provides investment advice, or acts as a portfolio manager, for a retail client on a continuing basis, it must take reasonable care to keep the client profile under review, also taking into consideration any development of the relationship between the investment firm and the client. Where an investment firm provides investment advice to a retail ~~or~~ client on an occasional basis, it must undertake a review of the client profile whenever the retail client seeks advice.

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c) The greater the level of risk involved in the envisaged transaction, commonly the more important the financial situation of the client or potential client will be in determining suitability. This may include the careful assessment whether the specific type of financial instrument or service is in the line with the financial capacity of the client or potential client and does not endanger the economic existence of the client or potential client.

7) The envisaged transaction may be considered as unsuitable for the client or potential client, inter alia, because of the risks of the financial investments involved (e.g. certain derivatives), the type of transaction (e.g. sale of options), the characteristics of the order (e.g. size or price specifications) or the costs associated with the frequency of the trading (churning).

8) Where an investment firm provides investment advice to a client on the basis that it will keep that client's portfolio under review or acts as a portfolio manager, it must take reasonable steps to ensure that the portfolio in relation to which it has been appointed remains suitable. Otherwise, t~~The suitability-test~~ assessment must be conducted for each personal recommendation or decision to trade. It must be conducted in the light of any previous transactions known or disclosed to the investment firm. ~~A series of transactions that are each suitable when view in isolation may be unsuitable if the R~~ecommendations or decisions to trade made with a frequency that is not the best interests of the client will not meet the requirements of the suitability assessment.

9) ~~Where an investment firm provides investment advice to a client on the basis that it will keep that client's portfolio under review or acts as a portfolio manager, it must take reasonable steps to ensure that the portfolio in relation to which it has been appointed remains suitable.~~