

Milan, 6 August 2010
Prot. 48/10
DN/sg

CESR
11-13 avenue de Friedland
75008 – Paris
France

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

ASSOSIM¹ is grateful for the opportunity to express its view on the consultation hereof.

As a general remark, we believe that the current client categorisation system under MiFID offers an adequate level of investor protection and it has shown to work well. We are therefore of the opinion that a restriction of the range of the entities who are considered “per se professional clients” it is not needed.

In fact, Annex I of MiFID allows clients, considered to be a professional client, to ask for a higher level of protection when they are not in the position of properly assess or manage the risks involved.

The categories of client who are considered “per se professional client” are legal entities managed by corporate bodies and directors that must act with diligence and professionalism in any circumstances including when they enter into transactions on financial instruments on the account of the legal entity they belong to. Such responsibility includes the duty to ask for a higher level of protection when they are not in the position of properly assessing or managing the risks involved.

In addition, the intermediary, who should be aware that the client does not have the experience and the knowledge implied by his categorisation or is unable to understand the risks, can advise the client to request a non professional treatment. In any case, they cannot discharge the client from its responsibility.

¹ ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.

ASSOSIM

On the contrary we believe desirable the harmonization of MIFID client categorization regime with Prospectus client categorization regime.

In the light of the above, our responses to the questions on client categorisation are as follows:

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

Q.1: 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, we agree with CESR’s point of view.

Q.2: 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.

As anticipated in the introduction, we believe that the range of entities who can be qualified as “per se professional clients” should not be restricted.

With reference to the criteria for distinguishing between entities covered by points (c), (h) and (i) of Annex II.I(1) set out on paragraph 18 of the consultation document, we highlight that intermediaries are not in the position of properly evaluating if a certain regulatory regime of a non-EU jurisdiction is equivalent to an UE regulatory regime.

Furthermore, if an entity, who conducts business on behalf of an underlying client, wants to be treated as a retail client, this is already possible according to the current client categorization regime. No amendments are needed on this matter nor in respect to the size criterion.

Q.3: 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?

Please see our answer to question 2.

Q.4: 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?

With reference to point (c), we support making a link to the CRD definition of “financial institution”.

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We agree to introduce in point (i) the clarification that “other institutional investors” covers entities whose main activity is investing in financial instruments.

Moreover, we believe useful that each national Authority provides a list (even though not exhaustive) of entities who are considered as “other institutional investors” in its national jurisdiction. We believe that this category should include, for example non regulated/authorized entities such as: Special Purpose Vehicle (SPV), Family Offices, Social Security funds, Special Purposes Acquisition Companies (SPAC).

Part 2: Public debt bodies

Q.5: 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?

We believe that each Member State should define “public bodies” and specify if the definition includes or not local authorities. Actually in Italy we are waiting for a regulation of the Minister of the Economy and Finance for the identification of public professional customers (see Legislative Decree no. 58 of February 1998, article 6, paragraph 2-sexies).

Part 3: Other client categorisation issues

Q.6: 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?

As we stated above, we do not agree with such proposal.

Q.7: 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?

See our answer to question 6. Also, we believe that the experience should be considered as an alternative requirement (in respect to the knowledge) because, especially with regard to innovative products, necessarily the clients can have the knowledge but not the experience; conversely it should be convened that for innovative products, resulting from the combination of more “standard” instruments, the experience (requirement) is ascertained with reference to the different components of the product. In those cases the client would also be provided with a clear explanation of the products’ functioning and of the relevant risks.

Q.8: Do you believe that the client categorisation rules need to be changed in relation to OTC derivatives and other complex products?

ASSOSIM

For the reasons stated above, we do not agree with the proposal to restrict the range of client to be considered ECP in relation to complex products.

Q.9: 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?**

Please see our answer to question 8.

Q.10: Do you believe it is necessary to clarify the standards that apply when an investment firm undertakes a transaction with an ECP?

We believe that a clarification of the standards applying to ECP clients is not necessary, nevertheless we agree with the standards proposed.

Q.11: If you believe a clarification of these standards is necessary, do you agree with the suggestions made in the paper?

Please see our answer to question 10.

* * *

We remain at your disposal for any further information and clarification.

Yours sincerely,


Gianluigi Gugliotta
Secretary General

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