

<p style="text-align: center;">Points of discussion with stakeholders on conduct of business issues in MiFID on 22 January 2010</p>
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a) Client categorisation

- Do you consider the client categorisations under MiFID to be adequate? Are there some types of clients that should be classified differently? If yes, which ones? Please justify your answer.
- Is the mechanism provided by MiFID to seek reclassification as a professional client or retail client sufficient to allow clients to receive a higher level of protection if needed?
- Are the different categories of clients sufficiently protected? If increased protection is needed in your view, in which area do you think this is necessary (information requirements, reporting obligations, appropriateness/ suitability assessment)? And for which category of clients?
- Are the criteria applied by MiFID for classifying investors between retail, professional and eligible counterparties appropriate for more complex categories of products? Please specify.
- Should more differentiated and possibly more demanding criteria be applied for categorising clients who are dealing in more complex categories of products in order to protect the less sophisticated professional investors?

b) Information to clients

- Is the information per specific type of instrument sufficient, or should Article 31 (1) and (2) of Directive 2006/73/EC be supplemented to always include information on the precise product that is being sold?

- Do some categories of more complex products, demand a specific level of information to clients such additional risk warning and/or increased transparency on the underlying or its pricing determinants for derivatives?
- Do you see any other issue that may deserve further attention in the area of conduct of business obligations and client categorisation?

c) Complex and non complex financial instruments for the purpose of the appropriateness requirement

The Committee of European Securities Regulators (CESR) has undertaken important work in this area in order to clarify the categorisation of financial instruments as complex or non-complex for the purposes of MiFID's appropriateness test¹. As a result of this work CESR has proposed a table which specifies for different types of financial instruments whether a) they should qualify automatically as non-complex according to Article 19 (6) MiFID or b) whether they should be assessed against the criteria in Article 38 of the MiFID L2D or c) whether they should always be considered as complex under Article 38 of MiFID L2D. While CESR's classification guidelines are based on the current MiFID Articles, CESR also raises the question, whether MiFID in its current form deals adequately with certain categories of financial instruments, e.g. fixed income products², and proposes that this could be considered in the MiFID review.

¹ See CESR Feedback Statement of 3 November 2009 (Ref: CESR/09-558) to the consultation paper "MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements" (Ref. CESR/09-295) of 14 May 2009. CESR also published its policy approach on this topic in a set of Q&A (Ref. CESR/09-559) on 3 November 2009.

² In this respect CESR has stated in its consultations paper (paragraph 65) that '...the development of fixed income markets in the last decade on both volumes and complexity has been very significant, and it is doubtful that Art 19(6) as it currently stands is a helpful starting point to achieve an appropriate degree of investor protection. Particularly given recent developments in the financial markets, CESR believes that the risks associated with these instruments, and therefore the risks faced by retail clients considering a transaction without taking advice, are likely to warrant a more differentiated approach than Art. 19(6)'s listing of money market instruments, bonds and other forms of securitised debt'.

- Do you believe that the list of non complex financial instruments in Art 19 (6) MiFID is adequate? If not, why not?
- Do you think that the qualification of all UCITS as non complex instruments is appropriate? Or should the requirement better reflect the nature of the underlying investments?

Do you consider the “Art 38 L2C criteria” for non complex instruments which are not explicitly listed in Art 19 (6) as satisfactory in terms of legal certainty?

- Should products which are not traded on regulated market or MTF be excluded from the list of instruments eligible to execution only?

d) Telephone and electronic recording Art 54 (3) MiFID L2D

- What is the approximate distribution of client orders on the different means of communication (telephone - electronic- others)?
- Do you think that recording of telephone conversations or electronic communications which involve clients orders should be mandatory according to MiFID or is the current optional regime in MiFID sufficient? Please explain.
- According to Article 51 (1) MiFID L2D firms in general have to retain the records for at least 5 years. Would this retention period be appropriate for recording telephone or electronic communications? If not, what would be the appropriate retention period or periods?
