



Association of Members of the Athens Stock Exchange

Athens, 21 January 2005
Ref. No.: 16122

To
Fabrice Demarigny
Secretary General
CESR
11-13, Avenue de Friedland
75008 Paris
France

Dear Sirs,

The "Association of Members of the Athens Stock Exchange" is a non-profit trade organization, members of which are all brokerage firms and banks that are members of the Athens Exchange. Presently, our Association represents 80 ATHEX members.

Our Association would like to submit in this response comments and observations on the consultation paper concerning CESR's draft technical advice on possible implementing measures of the Directive 2004/39/EC on Markets in Financial Instruments (MiFID) – 2nd set of mandates, 1st consultation.

Yours sincerely,

ALEXANDER MORAITAKIS
PRESIDENT

MICHAEL KARAMANOF
SECRETARY GENERAL



Comments of the Association of Members of the Athens Stock Exchange

On CESR's Consultation on Possible Implementing Measures of the Directive on Markets in Financial Instruments (MiFID) – 2nd set of mandates, 1st consultation

Definition of "investment advice" (Article 4(1) No. 4)

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

We agree: A recommendation as such, does not entail either i) a specific transaction or ii) a particular financial instrument and may be viewed as 'a provision of information of a general nature' (MiFID) which is beyond the scope of the relationship between the advising person and the client.

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 believe that the criterion is ambiguous: Although a personal recommendation (either specific or generic) should take into account the client's specific characteristics (age, financial situation, risk profile), we believe that the issue should be addressed on the basis of the channel through which this recommendation is provided. Assuming that 'recommendation' follows the broad definition, for generic recommendations we would differentiate between general circulars or analyst reports issued by the investment company and personal advice provided by the client's advisor during the



normal course of business. This is in accordance with the definitions of 'personal recommendation' and 'generic/marketing advice/communication' provided by Draft Level 2 advice of CESR. The first case does not assume the specific characteristics of each and every investor/client and should not, therefore, be viewed as a specific advice. Furthermore, a disclaimer clearly stating that the information provided might not be suitable for the clients should follow such recommendations. The latter case requires the first criterion, namely the full knowledge of the client's personal characteristics since the recommendation is provided on a bilateral basis.

Question 1.3:

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.

Answer:

We believe that it is reasonable to restrict the definition of 'investment advice' to recommendations of specific financial instruments. We approach the issue in conjunction with the previous ones (Q1.1 and Q1.2) indicating that it would be unnecessary to include a wide range of services in the above definitions since they do not refer to specific transactions and are not provided on a bilateral basis. In addition, we feel that our thesis is compatible to the fact that various legislations have different provisions on the services covered. Further consultation may be required on a case-by-case basis.

General Obligation to act fairly, honestly and professionally and in accordance with the best interests of the client (article 19.1)

Question 3.1:

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

Answer:

We agree with the 2nd draft proposal based on the 137 standard for investor protection.

For the 1st draft proposal based on the 136 standard for investor protection we think that is not necessary, because this matter is absolutely covered by the article 19(3) of the MiFID. This proposal may be misunderstood, because it looks like providing the including of the investment strategies in the terms of the retail client agreement, which is sometimes opposed with the



independence of portfolio management function (standard 135 for investor protection).

We think that under article 19(1) should be addressed only the 2nd draft proposal based on the 137 standard for investor protection, which in combination with article 19(3) is enough to prevent the transactions carried out by an investment firm with unnecessary frequency.

Suitability test (Article 19(4))

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?

Answer:

We 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 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. The investment firm in that case should make a notification to the client that the service is provided under this assumption.

Execution only (Article 19(6))

Question 5.1:

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

Answer:

CESR should pay more attention to the economic effect of the financial instrument.



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? 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:

We think that it is unreasonable 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.

Transactions executed with eligible counterparties (Article 24)

Question 6.1:

Do Market Participants agree that the quantitative thresholds for undertakings to request treatment as eligible counterparties should be the same as the thresholds for professional clients? Please provide the reasons for your position.

Answer:

We agree, though we approach the issue on a dual basis: i) we attach a major significance on the client’s **own** request to be treated as a market counterparty and ii) on the fact that it is **openly disclosed** to the client and he is aware of the rights and protections waived as a result of the ‘market counterparty’ status.

Accordingly, we suggest the following quantitative criteria, which, if satisfied (two out of three), will serve to characterize the client as ‘market counterparty’. We



note that our main objective is to address criteria that are **suited** to the domestic economic environment:

- Balance sheet total of EUR 5mil.
- Net turnover of EUR 10 mil.
- Own funds of EUR 1 mil.

Pre-trade transparency – Systematic Internalisers (article 4 and 27)

Question 8.1:

Do consultees agree with criteria for determining systematic internaliser? Should additional/other criteria be used and if so, what should these be?

Answer:

We agree with criteria for determining systematic internaliser.

Question 8.2:

Should the criteria be fulfilled collectively or used separately?

Answer:

The criteria should be fulfilled collectively.

Question 8.3:

Should CESR set criteria for the term “frequent”? If so, do consultees support the setting of numeric criteria or do they believe that a more flexible approach would be useful? What should these criteria be?

Answer

CESR should set criteria for the term frequent. We think that even once is enough to be organized as a systematic internaliser.

Question 8.4:

Do you agree with the proposed obligation to disclose the intention to cease systematic internalization? Should CESR propose more detailed proposals on this and if so, what should be the appropriate notice period?

Answer:



We agree with the proposed obligation to disclose the intention to cease systematic internalization.

The appropriate notice period should be 3 days.

Question 8.5:

Should liquidity be measured on an EU-wide or national basis?

Answer:

Liquidity should be measured on a national basis.

Question 8.6:

Do consultees have a preference in favor of setting pre-determined criteria or using a proxy approach?

Answer:

According that the liquidity should be measured on a national basis we prefer pre-determined criteria.

Question 8.7:

Regarding the different criteria described above, do consultees agree with the analysis of each of them, and are there other methods which should be evaluated?

Answer:

We agree with the analysis.

Question 8.8:

Is it possible and/or appropriate to use for the purposes of article 27 a combination of absolute and relative criteria to define shares as liquid?

Answer:

Yes, it's possible and appropriate to use us for the purposes of article 27 a combination of absolute and relative criteria to define shares as liquid.

Question 8.9:



Do consultees consider the proposed figures (i.e. 480 trades per day and 95% of total trading) as appropriate? If not, and where no figures are suggested what are the appropriate figures in your opinion?

Answer:

We think that the proposed figures are not appropriate. Because of the large number of the small sized markets in Europe we suggest that the appropriate figure should be the average of trades per day for a national market, which should be reviewed every year.

Question 8.10:

Do consultees agree with the analysis of the relative merits and drawbacks of using proxies such as indices?

Answer:

We agree with the analysis.

Question 8.11:

Which criteria would best accommodate the needs of different markets within the EU?

Answer:

The criteria which best accommodate the needs of different markets within the E.U. are the trading methodology, the size of the spread and the market impact .

Question 9.1:

Do you agree with CESR's approach of proposing a unified block regime for the relevant provisions in the Directive or do you see reasons why a differentiation between Art.27 MiFID on the one hand and Art.29, 30, 44, 45 MiFID on the other hand would be advisable?

Answer:

We agree with CESR's approach of proposing a unified block regime for the provisions of the directive.

Question 9.2:



Would you consider a large number of SMS classes, each comprising a relatively small bandwidth of arithmetic average value of orders executed, as problematic for systematic internalisers?

Answer:

Our view is that such an approach is not only non-problematic but also more objective in nature. First, the approach is favourable for non-liquid assets, allowing them to be qualified based on their particular characteristics. In addition, the above approach provides a more straightforward and accurate means to measure the bandwidth of various asset classes.

Question 9.3:

In your opinion, would it be more appropriate to fix the SMS as monetary value or convert it into number of shares?

Answer:

We find the number of shares to be a more appropriate measure.

Question 9.4:

Do you consider subsequent annual revisions of the grouping of shares as sufficient or would you prefer them to be more frequent? Should CESR make more concrete proposals on revision? In particular, should the time of revisions be fixed at level 2?

Answer:

We consider the annual revisions sufficient and agree that the time of revisions should be fixed at level 2.

Question 9.5:

Do you support the determination of an initial SMS by grouping the share into a class, once a newly issued share is traded for three months, or do you consider it reasonable to fix an initial SMS from the first day of trading of a share by using a proxy based on peer stocks?

Answer:

We think its reasonable to fix an initial SMS from the first day of trading of a share by using a proxy based on peer stocks.



Question 9.6:

Do you consider a two-week period from publication as sufficient for systematic internalisers to adapt to new SMSs?

Answer:

Two-week period is enough.

Question 10.1:

Do Consultees consider that there might be specific regulatory issues and specific provisions needed where a systematic internaliser is the trading venue with the largest turnover in a particular share falling within the scope of Article 27?

Answer:

We consider in that case that specific regulatory issues and specific provisions are necessary.

Question 10.2:

Do consultees agree that the availability of quotes during 100 % of normal trading hours of the firm is reasonable and workable requirement for "on a continuous basis"?

Answer:

We agree.

Question 10.3:

Do consultees think that publication of quotes solely on the firm's own website meets the "easily accessible"-test?

Answer:

We think that the publication of quotes in the electronic trading system of the regulated markets is the only way to pass the 'easily accessible'-test. The firm's own website is not enough.

Question 10.4:



Do you agree with the proposed general criteria for determining when a price or prices reflect market conditions or do you think that more specific criteria should be added? In the latter case; which criteria do you think should be added?

Answer:

We agree with the proposed general criteria for determining when a price or prices reflect market conditions.

Question 10.6:

Are there exceptional market circumstances where a systematic internaliser should be able to withdraw its quotes even though a trading suspension has not been called by the regulated market? In the latter case, which market conditions should be added to an open list?

Answer:

A systematic internaliser should never be able in that case to withdraw its quotes, unless a trading suspension has been called by regulated market.

Question 10.7:

Do you agree that the proposed approach to the updating of quotes is acceptable or would you prefer more specific criteria? In the latter case, which criteria could be added?

Answer:

More specific criteria should be implemented in order to regulate the updating of quotes of a systematic internalizer.