



**Ministerstvo financí České republiky  
Ministry of Finance of the Czech Republic**

Prague, 31 May 2010

Dears,

please find below our responses to questions included in the Consultation paper on the Technical Advice to the European Commission in the Context of the MiFID Review - Investor Protection and Intermediaries. These comments are only an indication of the possible approach by the Ministry of Finance of the Czech Republic and they are not meant as our final official policy position.

**Part 1: Requirements relating to the recording of telephone conversations and electronic communications**

*1. Do you agree with CESR that the EEA should have a recording requirement? If not, please explain your reasoning.*

*2. If the EEA is to have a recording requirement do you agree with CESR that it should be minimum harmonising? If not, please explain your reasoning.*

We agree with the CESR's proposal to have a recording requirement in a minimum harmonisation regime.

*3. Do you agree that a recording requirement should apply to conversations and communications which involve:*

- *the receipt of client orders;*
- *the transmission of orders to entities not subject to the MiFID recording requirement;*
- *the conclusion of a transaction when executing a client order;*
- *the conclusion of a transaction when dealing on own account?*

*4. If you do not believe that a recording requirement should apply to any of these categories of conversation/communication please explain your reasoning.*

We agree with the recording requirement for conversations regarding the receipt of client orders. We believe that this kind of client conversation is vital for investment firms to fulfil their best execution duty and the duty to act in their clients' best interest.

However, we do not agree with the importance of the recording obligation of the other proposed types of conversations, especially if it considers conversations between investment firm and eligible counterparty (as in second indent).

As for the record of the conclusion of transaction when executing a client order (on investment firm's own account or other ways), we believe that content of such conversation is recorded in and kept sufficiently under the provisions regarding the "reporting to client" obligation without the need of recording the conversation.

*5. Do you agree that firms should be restricted to engaging in conversations and communications that fall to be recorded on equipment provided to employees by the firm?*

We agree with proposed restriction on investment firm's own equipment only.

*6. Do you agree that firms providing portfolio management services should be required to record their conversations/communications when passing orders to other entities for execution based on their decisions to deal for their clients? If not, please explain your reasoning.*

We don't see the need for recording the conversations between investment firms and eligible counterparties, as content of such information and the impact of the order execution on the beneficiary of such order is sufficiently recorded in the sheets kept under the "reporting to clients" obligation.

*7. Do you think that there should be an exemption from a recording requirement for:  
firms with fewer than 5 employees and/or which receive orders of a total of €10 million or under per year; and  
all orders received by investment firms with a value of €10,000 or under.*

We do not support the idea of such an exemption, as in our opinion this exemption could be easily exploited and abused. We are in favour of equal treatment for all investment firms.

*8. Do you agree that records made under a recording requirement should be kept for at least 5 years. If not, please explain why and what retention period you think would be more appropriate.*

We support the length of 5 years as sufficient period for keeping the records of the communication with clients.

*9. Are there any elements of CESR's proposals which you believe require further clarification? If so, please specify which element requires further clarification and why.*

We do not need any further clarification for the time being.

*10. In your view, what are the benefits of a recording requirement?*

Records of the communication between the investment firm and its client are crucial when qualifying the conduct of investment firm.

*11. In your view, what are the additional costs of the proposed minimum harmonising recording requirement (for fixed-line, mobile and electronic communications)? Please specify and where possible please provide quantitative estimates of one-off and ongoing costs*

There wouldn't be any significant additional costs of the proposal, as Czech republic has already comparable recording regime enacted.

*12. What impact does the length of the retention period have on costs? Please provide quantitative estimates where possible.*

Although we don't think that a period longer than 5 years would have significant impact on costs of proposed amendment of recording obligation, we do not see the need for longer period.

## **Part 2: Execution quality data (Art 44(5) of the MiFID Level 2 Directive)**

*13. Do you agree that to enable firms to make effective decisions about venue selection it is necessary, as a minimum, to have available data about prices, costs, volumes, likelihood of execution and speed across all trading venues?*

We support the idea of enabling investment firms a better access to available data for evaluating the trading venues.

*14. How frequently do investment firms need data on execution quality: monthly, quarterly, annually?*

We are of the opinion that such data should be available at least on yearly basis.

*15. Do you believe that investment firms have adequate information on the basis of which to make decisions about venue selection for shares?*

We are of the opinion that there are plenty data regarding shares on execution venues available at the moment.

*16. Do you believe investment firms have adequate information on the basis of which to make decisions about venue selection for classes of financial instruments other than shares?*

We are of the opinion that there is not sufficient data about financial instruments other than shares available at the moment.

*17. Do you agree with CESR's proposal that execution venues should produce regular information on their performance against definitions of various aspects of execution quality in relation to shares? If not, then why not?*

*18. Do you have any comments on the following specifics of CESR's proposal:  
imposing the obligation to produce reports on regulated markets, MTFs and systematic internalisers;  
restricting the coverage of the obligation to liquid shares;  
the execution quality metrics;  
the requirement to produce the reports on a quarterly basis?*

We believe that additional information would help investment firms to even better and accurate assessment of execution venues. We agree with the CESR's approach outlined in the proposal.

19. Do you have any information on the likely costs of an obligation on execution venues to provide regular information on execution quality relating to shares? Where possible please provide quantitative information on one-off and ongoing costs.

We don't have any available data on impact of proposal on execution venues.

20. Do you agree with CESR that now is not the time to make a proposal for execution venues to produce data on execution quality for classes of financial instruments other than shares? If not, why not?

We agree that CESR should return to this topic as soon as possible, because there is less information on financial instruments other than shares.

**Part 3: MiFID complex vs non complex financial instruments for the purposes of the Directive's appropriateness requirements:**

21. Do you have any comments about CESR's analysis and proposals as set out in this Chapter?

We basically agree with the CESR's proposal.

We would like to see further analysis in the regard to proposal of Article 19(6)c MiFID, as mentioned in the point 167 of the consultation paper. Based on our own experience we do not see a practical need to this particular amendment, as no problems were noticed in regard to the "conjunction with ancillary service (2) as specified in Section B of Annex 1"

There also seems to be omitted a definition of "third country market" and reference to the "list of those markets that are to be considered as equivalent" as provided under current Article 19(6) MiFID. If this was intentional, it is necessary to explain why the current provision shall be changed in this way.

22. Do you have any comments on the proposal from some members that ESMA should work towards the production of binding Level 3 material to distinguish which UCITS should be complex for the purpose of the appropriateness test?

As for now we do not see any substantial added value of this proposal. Should some UCITS instruments be excluded from the non-complex list, comprehensive paper and discussion on this is absolutely needed.

23. What impact do you think CESR's proposals for change would have on your firm and its activities? Can you indicate the scale of, or quantify, any impact you identify?

The impacts are not easy to verify at this moment. However, it is likely that the perceived impact would be low.

**Part 4: Definition of personal recommendation:**

*24. Do you agree with the deletion of the words 'through distribution channels or' from Article 52 of the MiFID Level 2 Directive?*

We agree with the deletion.

**Part 5: Supervision of tied agents and related issues:**

*25. Do you agree with CESR that the MiFID regime for tied agents has generally worked well, or do you have any specific concerns about the operation of the regime?*

We agree that the MiFID regime for tied agents has generally worked well.

*26. Do you agree with the proposed amendments to Articles 23, 31 and 32 of MiFID?*

We agree with the proposed amendments.

*27. Could you provide information on the likely impacts of the deletion of the ability of tied agents to handle client money and financial instruments?*

There would be no impact on the current status of Czech tied agents, as they are not allowed to handle any client assets already.

**Part 6: MiFID Options and Discretions:**

*28. Do you agree with the suggested deletions and amendments to the MiFID texts proposed in this chapter?*

We do agree in general with these deletions and amendments, subject to the conditions mentioned above.