

Please find response below to call for evidence Ref CESR/04 -021.

At a high level, disproportionate or discriminatory individual EU member state protections should be removed so as to allow fair competition to exist. Specifically, any individual member state requirements that restrict or prohibit intra-EU cross border participation or competition in individual market segments should be discouraged or prohibited.

3.1. Establishment/organisational requirements

These should take account of the risks relating to business models, investment in compliance systems etc.

3.1.1. Compliance Obligations and treatment of personal transactions

(4) Consideration should be given to include the following personal transactions in equities, futures contracts, options, warrants; contracts for difference or spread betting on securities; participation in any IPOs; any private placements, any investment in a private company; participation in investment clubs; mutual funds deals.

3.1.2. Obligations related to internal systems, resources & procedures

Obligations should be high level and should allow for firms' differing, robust approaches and developments

3.1.3. Obligation to avoid undue additional operational risk in case of outsourcing

- (1) Operational Functions should encompass all departments/sections of a firm.
- (2) When outsourcing its operational functions, firms should have due care in selecting and monitoring the delegate.
- (3) For the purposes of this rule, outsourcing should be considered to include "delegating the services which the firm have been contracted to provide but should not include services providers that the firm may retain such as brokers, IT, advisors etc.

3.1.4. Record keeping obligation

- (2) Money Laundering records; client contracts; transaction history; client tax information; correspondence
- (3) The period of time for which records should be kept should mirror such requirements as contained in the Data Protection Directives.

3.1.5. Protection of client's financial instruments and funds when a firm holds financial instruments and funds belonging to clients

- (1) Client's financial instruments should not be considered to be assets of the firm by virtue of the fact that the firms exercises control over those instruments

3.2. Conflicts of Interest

- (2) Investment firms should only be expected to take proportionate and reasonable steps to identify, prevent, manage and/or disclose conflicts of interest when providing services.

3.3. Conduct of Business Obligations when providing investment services to clients

Emphasise views on services etc, and whether client has advisors/lawyers/consultants etc.

3.3.1. Publicity and marketing communications

(1) Firms should be allowed to use performance data in publicity/marketing communications once the firm is satisfied that the data is accurate, fair and not misleading. Differentiation should be made between client communications (eg, presentations to clients, business letters, etc) and advertisements.

3.3.2. Appropriate information to be provided to clients or potential clients

(1) The content of the minimum information to be provided to clients or potential clients should depend on each service especially where execution only services are being provided. See 3.3 above

(2) The content should be proportionate to the service being provided.

3.3.3. Client Records

Client records should not detail the capacity/right of clients/firm to negotiate. The content should not be prescriptive. It should be based on outcome.

3.3.4. Reports from the firm to its clients

Reports should be relevant, reasonable, fair and proportionate to the service being provided.

3.4. Best Execution obligation

Best Execution should not be a standard of perfection and should take into account market conditions, order size, liquidity etc and should be based on ongoing effort more so than on one individual transaction.

3.4.1. Criteria for determining the relative importance of the different factors to be taken into account for best execution

See 3.4

3.4.3. Information to clients on the execution policy of the firm

Should be flexible, relevant, proportionate

3.4.4 Obligation to monitor and update the order execution policy

Should take into account availability of systems, service providers, accepted best practice, etc.

3.5. Client order handling rules

Requirement should be proportionate and tailored where "order" deemed to derive from discretionary mandate

3.7.2. Post-trade Transparency requirements for Regulated Markets and MTFs

There should only be an obligation to make public details of transactions executed on regulated markets where it is proportionate and in the public interest to do so and furthermore, any trade executed on regulated markets should not have any further disclosure requirements.

3.7.3 Post-trade Transparency requirements for Investment Firms

Firms should only be obliged to report to clients if requested by clients to do so.

Enda Mc Mahon
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