



Fédération des Associations Indépendantes de Défense des Epargnants pour la Retraite  
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## **CESR Technical Advice to the European Commission in the Context of the MiFID Review – Investor Protection and Intermediaries**

### **Response from FAIDER – May 2010**

*FAIDER (Fédération des Associations Indépendantes de Défense des Epargnants pour la Retraite) is a French organisation which federates several associations of life policyholders, savers and small investors, representing 1 million of members. FAIDER is an active member of the AMF Commission des Epargnants and participate actively to the retail investor consultations organized by CESR. In the summer of 2009 FAIDER created EuroInvestors (the European Federation of Investors or EFI) with Euroshareholders and other European associations.*

Before answering to the consultation questions, FAIDER would like to point out that several very important issues remain to be discussed and solved like:

1. The use of the word “advice” and “advisors” for intermediaries that are selling investment products. They are not necessarily providing investment advice at the same time and worst, if they are providing advice it should not be considered as “independent advice”, because they are in most cases remunerated through sales commission by the investment product provider. These should not be allowed to call themselves “advisors”.
2. The imperious necessity of an independent unbiased advice provided by competent persons.
3. The disclosure of the inducements and sales-based remuneration for investment advisors and salesmen.
4. The necessity to cover all “substitute investment products and not only PRIIP’s as proposed by the EU commission.

On the issues raised by CESR consultation paper:

**Part 1. Requirements relating to the recording:** the rules regarding recording of Telephone and electronic Communications, including emails, should be harmonised among member states, and we support CESR position that all such records should be kept for 5 years.

We also consider that there should be no exemption for small firms or small orders because the risk of fraud or bad execution is not linked to the size of the firm or the size of the order.

**Part 2. Execution Quality Data:** In order to make effective and good decisions about venue selection it is certainly essential that the intermediaries get all the information referred to in the consultation paper. But it may not be sufficient. Therefore we are very much in favour of the implementation of a consolidated tape. In fact one of our main concerns is the fragmentation introduced by the MIFID through the development of MTF under the very fallacious argument that this would help to reduced costs and therefore facilitate best execution. At the contrary we believe that best execution is not systematically linked to reduced transactions costs but depend also on the price level of the transaction and the speed of execution.



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**Part 3. Complex / non complex financial instruments:** This is in our eyes a very important point because of the worrying impressive development of complex products even through UCITS funds. The scope of so-called “non complex” products should be restricted to very simple products to better protect investors from the risk of misselling.

We support CESR proposals in this chapter but would like to draw attention to the fact that a non complex product could become complex with reference to the appropriateness test when traded on a non transparent, unregulated and not liquid market. (for example bank’s EMTN, see the answer of EuroInvestors to the Consultation). Therefore in defining the complexity of a product or better said its eligibility to the appropriateness test, others aspects than the pure legal definition of the product should be taken into account. Even UCITS funds can be quite complex; for example structured funds or guaranteed funds where the seller himself often does not understand how the product works.

**Part 4. Definition of “personal recommendation”:** FAIDER agree with CESR’s proposal to amend article 52 of the Level 2 Directive.

**Part 5. Supervision of tied agents:** FAIDER has no comments on these subjects.