

To the EUROPEAN COMMISSION
FINANCIAL SERVICES POLICY AND
FINANCIAL MARKETS

By e-mail:
markt-consultations-mifid@ec.europa.eu

26 January 2011

Dear Sirs,

**REVIEW OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE
(MIFID)**

This is the response of the UK Shareholders' Association ("UKSA") to the public consultation on the above. UKSA is the leading independent organisation in the UK representing the interests of private shareholders. In that context, we request that, for the future, we be placed on the register of bodies to be consulted in any matter of saving and investment affecting individuals directly or indirectly.

The consultative paper is both long and highly complex, demanding close familiarity with previous directives and regulations. We have neither the resources nor the knowledge to respond to the whole document and have therefore concentrated on Section 7. In several cases we believe that the UK regulatory authorities are ahead of the Commission in the investor protection field and we can safely leave such bodies as the FSA to negotiate for consistency between their practices and those which the Commission wishes to introduce. There are, however, two particular sections which would have a direct impact on individual investors on which we comment as follows:

Questions (87) to (90) "Execution only" services The only reason the Commission gives for change in this area is the element of uncertainty in defining a non-complex product. It is in fact wrong for the Commission to prevent individuals who wish to do so from managing their own financial affairs without the involvement of any intermediary. For the Commission to attempt to do so is an unjustified interference with the rights of private persons. In the United Kingdom there is a substantial body of private individuals who buy and sell securities in great variety without taking outside advice, sometimes using credit for the purpose. Equally, there is a considerable number of intermediaries offering execution-only services. Anyone prepared to take the trouble to understand markets, even specialised and complex ones, and then deal on his or her own account should be allowed to do so.

It follows that Option B will be totally unacceptable to a vast body of savers and investors, certainly in the UK even if not elsewhere in the EU. Furthermore, Option

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A should be modified in the direction of increasing rather than restricting permitted forms of execution-only trading, provided only that adequate warning of the risks involved is given to the client in the ordinary course of business. We also note that at least in the English version of the document there appears to be some element of contradiction between the reference in a) of 7.2.1 which says "excluding shares in collective investment undertakings" and d) which says that currently all UCITS are treated as non-complex.

It is our firm opinion that execution-only transactions must be permitted for all collective investment schemes whether or not they qualify as UCITS. They should not be treated any differently from direct investment in equities and this is especially true for investment trusts, which in the UK at least are listed companies run by accountable boards of directors.

Overall the Commission's proposals on these points, by making savers and investors more dependent on intermediaries than they already are, would seriously inhibit and frustrate the desire of many educated individuals from taking responsibility for their own financial futures and, in consequence, lead to a reduction in saving and a reduction in funds available for investment.

Questions (91) to (94) Investment advice Questions (91) and (92) are among those referred to at the start of this response where the UK has already anticipated these proposed requirements and it is simply a matter of making sure that the Commission's proposals are consistent with the UK situation. Questions (93) and (94) are attempts to regulate the continuing relationship between client and intermediary which we consider unnecessary. Intermediaries and clients should be free to negotiate between themselves as to whether or not there is to be a continuing relationship and, if there is, what services should be included in that relationship.

Questions (95) to (100) Informing clients on complex products Question (95) appears to be proposing an unrealistic requirement to say what might happen to complex products in the unpredictable future. Clients purchasing risky products must be aware, or made aware, of the danger of substantial loss but to expect intermediaries to put figures to these in various situations is just not practicable. Our answers to questions (96) to (98) are the same as for (93) and (94) are above. As regards question (99) we agree that the client should be made aware of the relationship with counterparties, and, particularly, the effect of any possibility of default. Turning to question (100), clearly any ethical or other restrictions on their investments should be explained to the client.

Yours faithfully,

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