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Review of the Markets in Financial Instruments Directive (MiFID)

Danish Shareholders Association is the organisation representing private investors, consumers, in Denmark.

The situation

The expectations to the Markets in Financial Instruments Directive were high. The directive should abolish the monopolies of the old stock exchanges and improve the protection of investors.

But the financial crisis developed at the same as MiFID really started working. Most of the problems we have seen with badly advised consumers was a result of the pre-MiFID workings of the banks and investment firms.

Banks and investment firms have been working hard, setting up their internal systems and interviewing customers in order to classify them. It is difficult to get a clear picture, but it is our impression that up to now has a lot of the resources been spent at filling in questionnaires and tuning the registration of customers.

Customers are waiting to see the positive results of these efforts.

Private investors find it increasingly difficult to find their way round in the financial markets. Genuine personal investment advice is difficult to obtain in the banks and it has become more difficult and more expensive to get information without delay from the financial markets.

Ordinary customers are classified as retail clients and a level of risk is registered. Then the adviser asks the investment department at HQ which

recommendations should be given to such a client. The recommendation will normally be a basket of UCITS. Some of the advisors have big problems explaining about the different UCITS.

Consumers will normally not be advised to buy shares or bonds directly. Before the crisis would a recommendation very often include the shares issued by the bank. As a consequence of the losses during the crisis has that recommendation disappeared. That is an improvement, but other shares could be recommended.

Information from the financial markets has become difficult to get, because shares can be traded at different trading places and some trade might be going on outside the reported trade.

Another side of this problem is that trade in some securities has been divided between trading places with different sizes of trading lots. Private investors see some markets divided in a professional market and a retail market. That makes price information difficult to compare.

Answers to some of the questions

Q 1. We find it useful to improve the definition of admission to trading.

Q 2. We support the idea that all trading facilities that reach a certain level of activity or number of participants should be covered MiFID in order to avoid regulatory arbitrage.

The number of different categories of trading venues should not grow. Keep it simple!

Q 15 and 16. We are concerned about the increasing volume in high frequency trades. We think that risk control is very important in this area. But we are not convinced that an authorisation regime would help.

Q 21. The criteria for defining if a firm is a systematic internaliser should be clarified.

Q 22. The rights and duties of a systematic internaliser should be reconsidered.

Q 24. We support the idea that the different types of trading places should cooperate on market surveillance etc. to develop and protect the markets.

Q 25. A new definition of SME market based in the experiences of the existing SME markets is a good proposal. Is it possible by comparing the successful SME markets and the not so successful SME markets to find if the rules could be changed to foster the development of SME markets.

Q 27. Only when it is to the good of the market should orders benefit from the waivers. Order stubs in Q 29 does not seem to fit this condition.

Q 30. The embedding of fees in prices should never be accepted. It is impossible to get decent information about market prices if some of them have fees embedded.

Q 32. Delays in publication of trade data serves to the benefit of those close to the trade and those with an efficient intelligence system. The private investor will always be the one who has to pay the bill for such advantages.

Q 33 The trade in all financial products sold to the public should be the object of transparency. In Denmark are UCITS quoted on a special stock exchange list and subject to transparency requirements. For years the main activity at the Copenhagen Stock Exchange was trade in mortgage bonds. Transparency follows the same principles as the trade in shares.

Q 42. OTC trade and black holes are by definition not fully transparent. The private investors and we suppose the entire market need more transparency. It is difficult with the present level of transparency to have detailed and well-founded ideas about the importance of what is going on in the dark.

Q 43 – 46. The improvement of the quality of the present reporting through approved publication arrangements and the application of these principles to non-equity markets has our support.

Q 47 – 50. Reduction of cost of trade data has our support. We would like to see this applied to non-equity markets as well.

Q 51 – 59. We support the introduction of a European Consolidated Tape for post-trade transparency for shares and for non-equity trade. The choice between the different options proposed depends on the economics.

Q 84 – 86. We find that all investment or savings products including pensions and insurance products should be covered by the same type of obligations as MiFID products. And we described by information like the KII for UCITS. We find that that should be done by changes in the scope of the MiFID, by changes in other directives or through the PRIPs initiative.

Q 87 – 90. The abolition of execution only would not be supported by the active private investors.

Q 91 – 100. Private investors who realise that the investments they made differed from their expectations have difficulties in proving that the advisor gave false, misleading or inaccurate information because they do not have the advice and the underlying reasons in writing. We support these proposals.

Q 100 -104. We support full disclosure of inducements and banning of inducements in relation to portfolio management.

Q 107 - 108. We find that breach of the MiFID rules and principles should lead to civil liability. MiFID should not only be a relation between the supervisor and the supervised, but also a relation between the consumer and the bank or investment firm.

Kind regards

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