The Association of Corporate Treasurers

Comments in response to
A paper: Implementing MiFID's Client Categorisation requirements
Financial Services Authority, August 2006

September 2006

The Association of Corporate Treasurers (ACT)

Established in the UK in 1979, The Association of Corporate Treasurers is a centre of excellence for professionals in treasury, including risk and corporate finance, operating in the international marketplace. It has over 3,600 members from both the corporate and financial sectors, mainly in the UK, its membership working in companies of all sizes.

The ACT has 1,500 students in more than 40 countries. Its examinations are recognised by both practitioners and bankers as the global standard setters for treasury education and it is the leading provider of professional treasury education. The ACT promotes study and best practice in finance and treasury management. It represents the interests of non-financial sector corporations in financial markets to governments, regulators, standards setters and trade bodies.

General

The ACT welcomes the opportunity to comment on this matter. Contact details are provided at the end of this document.

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Overview

We note that this paper is primarily directed at those firms that will be subject to MiFID and will carry the burden of implementing the new working practices. However the customers of those firms will feel the impact of MiFID's implementation so we believe it

is appropriate for the ACT to comment, in our capacity as representing the non financial services corporate customer.

By and large corporate treasurers will be working within companies that will fall within the professional category, but because this level has more investor protections built in (notably best execution) than does the current intermediate category we think many companies will want to opt up to eligible counterparty (ECP). We welcome the flexibility to do this under the MiFID and this should be preserved.

On the other hand, firms have indicated to us that a number of companies, for example those ultimately controlled by an individual, may only be able to qualify as retail clients without the opportunity to "opt up" even to professional. In so far as achievable under the MiFID provisions we believe this should be minimised. Firms dealing with such clients accepting the "opt-up" are expected to advise clients of the consequences of opting up (and, presumably on the possibility of retaining the lower category for some instruments). Clients will not be opting up from a position of ignorance. Accordingly we cannot see any public good in restricting the possibility of "opting-up".

Specific questions

On many of the questions we have no comment. We reproduce below just those few on which we do have comments.

Q1 Do you agree with our initial policy thinking to extend MiFID nomenclature to non-MiFID business, with measures to provide suitable flexibility?

Q2 Which aspect of the MiFID client classification provisions should we disapply to, or provide additional flexibility for, non-MiFID business?

We support your preference for option three whereby you re-use the MiFID categories for non MiFID business but with an added degree of flexibility in moving between categories. The simplification in terminology would be advantageous for the clients as well as the firms.

Q11 Do you agree that the IPC should be deleted from the FSA Handbook?

Q12 Which best practice topics merit inclusion in 'Marketwatch'?

Q13 Do you agree with retention of guidance on non-market price transactions to be included in COB or should it be included as information only in 'Marketwatch'?

We accept that many of the practices in the IPC (Inter-professional conduct) have become standard but nonetheless the deletion of the IPC from the FSA Handbook might, in time, be read as implying a more lax attitude to certain practices. However if the

essence of MAR 3 is retained through inclusion within Marketwatch then little will be lost.

In terms of day to day dealing practices we believe that MAR 3 Annex 3 Good market practice and conventions is worthy of inclusion in Marketwatch.

Non-market price transactions can be used for improper purposes by a firm, customer or counter-party (possibly also by a "fraudulent clerk" working for a customer or counter-party) and we believe that Guidance on this is indeed important. We would recommend that if the IPC guidance in MAR 3 is deleted then this section should be included within COB.

Miscellaneous points

MiFID client categorisations apply on a company by company basis, even where the company is part of a larger group. This creates various complications and additional work. For example a newly established finance company within a group may not satisfy the size criteria to qualify as a *per se* professional client even though it may be guaranteed by a much larger parent company. If this company then wants to opt up to professional status using the 'elective' route it must still satisfy the expertise, experience and knowledge assessment using the *quantitative* criteria (frequency of transactions, size of portfolio, or work experience). As a new operation it could find this impossible.

We wonder whether there is scope to allow a degree of flexibility in interpretation of these various quantitative criteria in a group context where the management of the small subsidiary comes under the control of an experienced corporate treasury department or perhaps where suitable financial support exists.

In your para 2.26 you explain that you intend to take full advantage of the discretions available to provide maximum flexibility to be treated as an ECP. We very much welcome this.

The introduction of MiFID will dramatically increase the volume of customer information that firms will need to retain and be able to check against prior to any dealing since the MiFID client categories will apply company by company within a group and can even differ between instruments. Prior to dealing the firms will have to check against this database and ensure that procedures appropriate to the client categorisation are followed.

The ACT has been participating in separate discussions on dealing mandates within the FX Joint Steering Committee organised by the Bank of England. Many banks tell us and tell our members that they are unable to check at the time of dealing whether the mandate provided from the corporate client allows contracts with the bank to transact in a particular type of instrument. This covers both non-investment products and some products which would be included as investment products under MiFID. We are

sceptical of the banks' comments, but if it is really the case, the FSA may want to emphasise to firms that they need to invest substantially in their client information systems to be able fully to comply with MiFID. We would see a spill-over benefit into non-investment products too.

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