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DG Internal Market Services
European Commission
Brussels

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Dear Sir,

2005/11174 rev1: WORKING DOCUMENT ESC/23/2005
DRAFT COMMISSION WORKING DOCUMENT ON CONDUCT OF
BUSINESS RULES, BEST EXECUTION, CLIENT ORDER HANDLING
RULES, ELIGIBLE COUNTERPARTIES, CLARIFICATION OF THE
DEFINITION OF INVESTMENT ADVICE AND FINANCIAL INSTRUMENTS

Comment on behalf of The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT)

Established in the UK in 1979, The Association of Corporate Treasurers (ACT) is a centre of excellence for professionals in treasury, risk and corporate finance operating in the international marketplace. It has over 3,300 members from both the corporate and financial sectors, and its membership, working in companies of all sizes, includes representatives from 95 of the FTSE 100 companies.

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.

Comment

Implementation of MIFID is a matter of concern for users of financial markets.

In this case we would like to confine our comments to the matter of the classification of clients.

The companies for which our members work have generally had long experience of dealing in wholesale markets in the UK and elsewhere. We see a very clear distinction between the requirements of such companies and those of retail clients.

Accordingly, we consider it very important the availability of the three-tier classification framework (and particularly of the eligible counter-party status) to non-financial-sector companies is preserved.

In general, non-financial-sector companies should be able to choose to deal in instruments in the most liquid and administratively simple and lowest cost manner. We do not regard dealing in financial markets as inherently more risky for non-financial sector companies than launching a new product or entering a new market. Non-financial-sector companies can be expected to equip themselves to deal in such markets as the directors find necessary or convenient in the context of their overall business.

Large companies in the sector in the UK and in other Member States tend to have professionally staffed treasuries which are appropriately equipped to take advantage of the efficiencies speed of dealing and cost reductions available from Eligible Counter-Party status. Such status should be available to as wide a range of companies as possible.

Smaller companies are commonly equipped not to need the protections provided by retail status for transactions in respect of a range of financial instruments and the availability of professional status with minimal protections only is important for them. They should, however, be able to opt for eligible counter-party status in respect of such instruments as they feel competent to handle and to avoid the extra costs and delays (associated with best execution) of professional status.

The very smallest companies may wish to incur the additional costs and administrative costs and delays associated with retail status and should be able to opt for this, but should generally be able to opt for professional status.

We recognise that in some Member States companies may be less accustomed to dealing in financial markets and we would not deny the protections of professional status or retail status to any company. However, to restrict the activities of companies beyond the limits which the directors of the company believe appropriate would be regulatory over-reach, an unnecessary and potentially costly restriction on enterprises.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'J. Grout', is positioned above the typed name and title.

John Grout
Technical Director