



## SISTEMA DE INDEMNIZAÇÃO AOS INVESTIDORES

### DIRECTIVE 1997/9/EC ON INVESTOR-COMPENSATION SCHEMES

#### CALL FOR EVIDENCE

1) Should the operation of multilateral trading facilities be excluded from the scope of the ICSD?

**Answer:** Yes.

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

**Answer:** No. Compensation schemes should focus on compensation for physical losses of investor's assets, in all cases whenever the defaulting institution holds money and financial instruments on behalf of investors.

3) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although they provide their services only to non-retail clients?

**Answer:** No. The compensation schemes shall seek only to protect individual retail investors, being the ones requiring additional investor protection.

4a) Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

**Answer:** No, except for UCITS unit holders. Compensation schemes should focus on the institutions with which the investors have contractual relationship. Hence, compensation for losses arising from a third party default shall only be provided in case the third party default triggers the default of the investment firm with which the investor has a contractual relationship.

4b) Should investors (such as UCITS or a UCITS unit holder) be able to claim compensation for loss of assets under the ICSD in those cases where the UCITS depositary or the institution which has been mandated to safe keep the assets, fail to perform its duty?

**Answer:** Yes. UCITS unit holders should not be responsible for situations where the depositary fails to perform its duties.

5) Should loss events include also any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules?



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**Answer:** Yes. The violation of conduct of business rules should be considered in situations having any relation with the eligible claims. This is to say that it is important to develop those situations where the ICSD should apply because breach of conduct of business rules could have exactly the same effects on the retail investor's assets.

**6)** Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

**Answer:** Yes. The amount of coverage should be in line with the amount of coverage for deposits, so as to avoid regulatory arbitrage among competing products.

**7)** The ICSD does not harmonize the funding systems of the schemes. Should the ICSD provide for some general principles concerning the funding of the schemes?

**Answer:** Yes, to the extent that general principles are foreseen for ex ante and ex post models.

**8a)** Does the legislation of the Member State you know the best provide mechanisms aimed at limiting compensation schemes' obligations over time? If yes, how many clients saw their compensation unpaid as a result of such mechanisms?

**Answer:** No.

**8b)** Should this kind of mechanisms be prohibited?

**Answer:** No. Even if the answer to question 8.a) is negative we consider that the decision on those mechanism must be dealt at the national level.

**9a)** Should the process of recognizing the eligibility of the claim be regulated for the purposes of the ICSD?

**Answer:** Yes.

**9b)** Should, at least, a mechanism be introduced providing for provisional partial compensation based on a summary assessment of clients' positions?

**Answer:** Yes.

**9c)** Irrespective of the harmonisation of their funding systems, should compensation schemes ensure that they have minimum reserve funds in order to comply rapidly with any immediate needs?

**Answer:** Yes, regardless of ex ante or ex post models.



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10) Do you think special attention should be given to money market funds?

**Answer:** The situation and definition of money market funds must be analyzed before taking any decision. On the other side it is important to avoid arbitrage between investment funds.

11) Based on the concrete application of the ICSD do you see further issues other than the ones mentioned in the present document that might be of relevance to this analysis?

**Answer:** Yes. We consider that special attention should be paid to those situations where devaluations on the investors' assets are due to investment firms' fraud.