



Bundesverband Investment  
und Asset Management e.V.

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**CESR's Draft Technical Advice on Possible Implementing Measures of  
the Directive 2004/39/EC on Markets in Financial Instruments – Pro-  
fessional Client Agreements (Call for Opinions)**

Dear Mr. Demarigny,

BVI<sup>1</sup> welcomes the opportunity to respond to CESR's Call for Evidence on Professional Client Agreements. On behalf of our member companies, we would like to comment on the following issues:

**Q1 & Q4: Necessity of a written agreement**

We strongly prefer the option not to provide any advice on professional client agreements and to leave the matter to commercial practice. In relation to professional clients, a requirement of a written agreement would result in an unnecessary constraint of contractual freedom. As accurately pointed out by CESR, there is basically no need for regulation on investor protection in relation to professional contract parties. In the business world, investment decisions are often prompted by short-term market developments. Professional clients expect from the investment firm to conduct their instructions without delay and to react immediately to any relevant information. Therefore, a requirement to enter into a written agreement prior to the provision of investment services would very much impair the effectiveness of investment decisions and the ability of the investment firm to respond to their client's needs.

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<sup>1</sup> BVI Bundesverband Investment und Asset Management e.V. represents the interests of the German investment fund and asset management industry. Its 76 members currently manage more than 7,600 investment funds with assets under management in excess of € 1,000 bn. The units of these funds are held by some 15 million unit holders.

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## **Q2: Scope of application**

In case CESR deems a requirement of a written agreement indispensable, it should be confined to the provision of portfolio management services. Pure advisory services do not generally involve a transfer of control over the client's assets before being able to provide a service and their conditions are therefore not that essential to the client's financial situation.

Furthermore, an agreement in writing should be required only within a reasonable time **after** the first provision of the service. This would enable the investment firms to carry out the client's orders without delay and thus on a basis of effective market conditions.

We hope CESR will find our comments helpful and remain at your disposal for any further discussion.

Yours sincerely

**BVI Bundesverband Investment und Asset Management e.V.**

A handwritten signature in blue ink, appearing to read "Stefan Seip".

Stefan Seip

A handwritten signature in blue ink, appearing to read "Marcus Mecklenburg".

Marcus Mecklenburg