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**CESR Technical Advice to the European Commission in the context of
the MiFID Review – Client Categorisation (Ref.: CESR/10-831)**

Dear Mr. Comporti,

BVI¹ appreciates the opportunity to contribute to CESR's consultation on client categorisation issues in the context of the European Commission's review of the Markets in Financial Instruments Directive (MiFID).

While supporting the Commission's initiative to review the MiFID in order to adapt current provisions to recent developments of the financial and capital markets, we would like to point out that the MiFID's client categorisation regime seems by and large functional. The only issue we wish to have clarified refers to a clear classification of local authorities as "public bodies".

With regard to the consultation questions, we would like to make the following comments:

Q1. Do you agree that the opening sentence of Annex II.I (1) sets the scope of this provision and that points (a) to (i) are just examples of "Entities which are required to be authorised or regulated to operate in financial markets?"

We agree.

¹ BVI Bundesverband Investment und Asset Management e.V. represents the interests of the German investment fund and asset management industry. Its 85 members currently manage assets of nearly € 1.7 trillion, both in mutual funds and mandates. BVI's ID number in the EU register of interest representatives is 1575282143-01. For more information, please visit www.bvi.de.

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Q2. Do you think there is a case for narrowing the range of entities covered by points (c), (h) and (i) of Annex II.I (1)? Please give reasons for your response.

BVI members have not encountered any situations which would call for narrowing the range of entities as described above.

Q3. If you believe there is a case for narrowing the range of entities covered by points (c), (h) and (i) of Annex II.I(1) what criteria do you think should be used to distinguish between those entities that are covered and those that are not?

Please see Q2.

Q4. Do you believe there is a need to clarify the language in points (c), (h) and (i) of Annex II.I (1) and, if you do, how do you think the language should be clarified?

We do not see any need for more clarification in the language of points (c), (h) and (i) of Annex II.I (1). The current wording provides sufficient guidance of the classification of customers.

Q5. Do you think that Annex II.I (3) should be clarified to make clear that public bodies that manage public debt do not include local authorities?

We prefer a clarifying definition in Annex II.I (3) that local authorities are indeed covered by the term "public bodies". Local authorities in their capacity as genuine professional investors are sufficiently protected by the regulatory regime: Annex II.1 (4) provides local authorities several options enabling them to request a higher level of protection, even treatment as non-professional. Also, local authorities and the investment firm may agree upon a reclassification according to which the local authority is to be treated as a non-professional investor.

Q6. Do you believe it is appropriate that investment firms should be required to assess the knowledge and experience of at least some entities who currently are considered to be per se professionals under MiFID?

We do not share this opinion. According to BVI members, the current regime of differentiation natural and designated professional investors has proved itself satisfactory, particularly with regard to the rationale of Annex II.I. to assume knowledge and experience as may be expected with professional investors. Like in the context of Q5, also here we do not see any need for additional protection tools.



Q7. Should a knowledge and experience test be applied to large undertakings before they can be considered to be per se professionals or to other categories of clients who are currently considered to be professionals?

Please see Q6.

Q8. Do you believe that the client categorisation rules need to be changed in relation to OTC derivatives and other complex products?

No, the current client categorisation rules require under Annex II.I (4) sufficient duties which investment firms have to carry out towards their customers in order to obtain comprehensive information relevant to “particular services or transactions, or to one or more types of product or transaction.”

Also, according to article 19 (4) and (5) of MiFID investment firms are obliged to obtain information about investor’s knowledge and experience needed for the specific type of product relevant for the potential investment anyway.

*Q9. If you believe the rules should be changed:
- for what products should they be changed; and
- which of the approaches to change set out in the paper would you favour?*

Please see Q8.

Q10. Do you believe it is necessary to clarify the standards that apply when an investment firm undertakes a transaction with an ECP?

Neither the categorisation rules need to be clarified in terms of a transaction with ECP. Under the current ECP regime the legal requirements for ECP are defined fairly narrowly. Therefore, it appears appropriate that investors request proactively either more information or re-classification in one of the other two client groups in order to be provided with a higher level of protection.

Q11. If you believe a clarification of these standards is necessary, do you agree with the suggestions made in the paper?

Please see Q10.



We hope our comments prove to be useful in CESR's further work on the revision of the MiFID and remain at your disposal for further information.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Signed:
Marcus Mecklenburg

Signed:
Heike Fricke