

CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments, 1st Set of Mandates, Second Consultation Paper November 2004: ABI Comments

- 1 The Association of British Insurers (ABI) is the trade association for the UK's authorised insurance companies
- 2 In the course of their business ABI members provide protection, pension and savings products to millions of policyholders and savers at the retail level or through institutional frameworks and, as a result of these business streams, manage assets of the order of €1,600bn through internal departments, fund management subsidiaries or third parties.
- 3 The implementation of the Directive and its impact on the production and distribution of financial instruments is therefore of key interest to our members. They welcome the opportunity to comment on selected parts of this consultation.

Compliance and independence

- 4 ABI members endorse the principle that the compliance function must be independent but recognise the practical difficulties that the "four eyes" approach presents to smaller firms. In these instances we favour CESR's option ii), i.e. giving firms some flexibility as to how they achieve independence of compliance. This ties in with the principle that the senior management of a firm should decide on and keep under review the processes and structure of the compliance function appropriate to their business activities. Criteria to clearly define small firms may not be particularly helpful when the issue at hand is compliance of specific business activities.

Record keeping and the burden of proof

- 5 We welcome CESR's clarification.

Tape recording

- 6 Currently there is no regulatory requirement for tape recording in the UK. It is used by firms for the purposes of dispute resolution and quality control but there is no standard approach as between firms or different types of business activity. At this stage we do not believe that a regulatory case has been made for tape recording. Any further investigation of this matter should be on the basis of a cost-benefit analysis which balances the cost of measures taken against the anticipated benefits for individual business

activities, in the light of a clear understanding as to why existing process are considered incomplete or inadequate.

Outsourcing of investment service

- 7 Many members of ABI are also members of the Investment Management Association (IMA) and we endorse their response on this particular topic in respect of UCITS and other forms of asset management. We agree that the rules on outsourcing should not be extended to other services than those currently covered i.e. individual portfolio management.

Methods and arrangements for reporting financial transactions

- 8 We welcome CESR's reiteration of its intention not to introduce unnecessary arrangements on top of existing procedures and the leeway given to Member States.

17 December 2004