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Dear Sirs

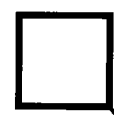
**RESPONSE TO CESR'S SECOND CONSULTATION PAPER -
INDUCEMENTS UNDER MiFID**

This response is made by the Regulatory Committee of the British Venture Capital and Private Equity Association. The BVCA represents the overwhelming majority of UK-based private equity and venture capital firms. The UK private equity and venture capital industry is by far the largest in Europe and second only in size in the world to that of the United States.

We have the following comments on the second consultation paper:

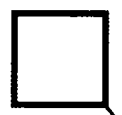
1. We note that the Commission agrees with the legal interpretation given by CESR. It would be more helpful if the Commission's reasoning could be explained and, in particular the view that should be taken of headings to provisions in Directives. The outcome of CESR's paper seems to be part contradictory. CESR takes the view that the provision in the Directive applies to all payments. It does not explore the implications of this approach, but instead focuses on those situations which give rise to client detriment. It still seems to us that the purpose of the provision was to address situations of potential client detriment and not to have a wider impact.
2. We have already noted in a number of contexts that many of the MiFID provisions are ill-suited to the way in which private equity business is conducted, as they are principally based on the retail markets and on activities in the liquid equity markets. To some extent this can be overcome by an appropriate regulatory approach which takes into account the nature of the market and the nature of the clients. This can be particularly relevant to the question of what a client would understand from a particular disclosure, as we refer to below.

In light of the point made above, it is important that the recommendations are not phrased so that they appear to be additional rules which are binding on firms. The recommendations can only ever operate as a high level direction to



regulators, the regulatory supervision still needs to take into account particular facts and circumstances. These issues are too detailed to appear in a recommendation, which is why the wording of the recommendation must be flexible enough to allow for appropriate regulatory discretion.

3. Recommendation 1 – We are aware that others are making comment on the references to standard commissions and fees. If this reference is retained in paragraph (a) it is important that it states that “such fees, commissions and non-monetary benefits may include...”. It is not every commission or fee that is relevant, it is those that are paid or received in relation to the provision of an investment or ancillary service to the client.
4. Recommendation 2 – Article 26(a) does not contain the word “acting”. The insertion of this word affects the construction of the provision. We think this entire recommendation needs re-visiting in the light of this, and in particular the last sentence. If the client has agreed to the firm making certain payments on behalf of the client then it may not be practicable for the client to have the ability to intervene to prevent such a payment. The real question is whether the client understands the implication of his instruction at the time it is given.
5. Recommendation 3 – We suggest that the final sentence should reflect that it is of particular importance whether an item by its nature, or given all the circumstances of the case, cannot give rise to conflicts with the firm’s duties, taking into account the firm’s policies for dealing with conflicts and the nature of the service provided by it to its clients.
6. Recommendation 4 – Apart from the fact that this should be directed at regulators, we think that there should also be taken into account any specific contractual agreement with the client that addresses any particular matter, and that in that regard the nature of the client as retail or professional may also be relevant. The duties that a firm owes a client may be defined by the contract (although obviously the contract cannot affect an unconditional legal obligation) and when having regard to the specific duties that a firm owes a client the terms of that contract are relevant.
7. Recommendation 5 – It is not always the case that where a firm is paid by an issuer for distribution that it is providing a service to those who become investors. In the case of a corporate finance service, the service is provided to the issuer. Recommendation 5 needs to be worded to reflect this.
8. Recommendation 6 – In the context of venture capital and private equity business the disclosure that is possible is a combination of disclosure of type of fee (but not the amount since any arrangement within the scope of Article 26 will be negotiated on a case by case basis at the relevant time) together with full disclosure of the actual amount fully after the event, and this is in practice what happens. In very many cases fees are in any event shared with the client or



used to reduce the fees payable by the client. These arrangements operate in an environment of some sophistication, where only professional investors are involved.

Therefore certain types of general disclosure may be sufficient and the question as to whether a disclosure is sufficient to enable a client to make an informed decision will depend upon the nature of the service, the practices of the relevant market, the agreement with the client, the client's awareness of those practices and the client's status. These balancing factors need to be built in to paragraph (b).

We also wish CESR to make it clear that an arrangement which reduces the cost of service to the client may itself enhance the service being provided to the client.

We would be happy to discuss these comments with you if that would be helpful. In the first instance, please contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'p.p. Phil Sch', written in a cursive style.

PETER LINTHWAITE

CHIEF EXECUTIVE

BRITISH VENTURE CAPITAL AND PRIVATE EQUITY ASSOCIATION

