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Dear Sir/Madam

CESR Technical Advice to the European Commission in the Context of the MiFID Review – Client Categorisation

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) represents firms acting on behalf of investors¹. Member firms deal primarily in stocks and shares as well as other financial instruments for individuals, trusts and charities and offer a range of services from execution only trading (no advice) through to full portfolio management. Our member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, employing 30,000 staff. Around £335 billion of the country's wealth is under the management of our members.

In conjunction with The Futures and Options Association, APCIMS has submitted a joint response to the CESR consultation, providing detailed comments on the specific questions posed in Annex I. In this covering letter, we would like to make a number of more general points reflecting our members' concerns about the possibility of the client categorisation regime being subject to amendment.

Relevance of CESR consultation to APCIMS firms

While the business of APCIMS members is primarily focussed on providing bespoke investment services to private individuals and to other entities (such as trusts and charities) that are standardly categorised as retail customers, it is the case that a reasonable number of APCIMS firms provide investment services to institutional clients (e.g. companies and funds) as well as corporate finance advice and brokerage services to small and medium sized companies seeking financing. For firms with a range of different customer types, the client categorisation exercise undertaken pursuant to MiFID implementation was a major task involving significant systems amendments and widespread re-papering of clients. The possibility that firms might have to repeat this exercise with a view to actively seeking out those *regulated entities who do not have the knowledge and expertise to make their own investment decisions* or those *clients considered to be professional clients or eligible counterparties who do not in fact have the knowledge and experience implied by their categorisation* is most unwelcome, especially given (a) that the vast majority of those currently classified as professional clients or eligible counterparties would undoubtedly have no wish to

¹ APCIMS has around 190 members, over 125 are private client investment managers and stockbrokers and the rest are associate members providing related services to our firms

change their status and (b) that Annex II specifically states that professional clients must not only *be allowed to request non-professional treatment* but actually have a responsibility *to ask for a higher level of protection* if they are unable to assess or manage the risks involved in their proposed business.

Background to the consultation

It appears that CESR's work in this area has been prompted primarily by *a number of cases of alleged mis-selling of complex derivative products to local authorities in Europe*. APCIMS believes that any attempt to address this problem (the size and significance of which have not been identified with any clarity) by means of potentially major alterations to the current client categorisation regime would not only be an over-reaction in terms of its likely cost impact upon firms (e.g. as a result of changes to client take-on procedures, business practices and record-keeping systems) but would also send a completely inappropriate message to the sorts of entities that naturally fall within the professional client category about the level of care that they should apply to their investment activities. Local authorities and other professional investors should have in place governance structures and operational systems and controls which enable them to determine not only their investment needs and strategies but also the necessary practical limits of their investment competence. Requiring firms to assess the knowledge and experience of professional clients on an individual basis is no substitute for such entities instituting their own controls and ensuring that such controls are rigorously applied, monitored and adapted for changing circumstances.

A tiered approach to “complexity”

We are concerned that the consultation paper employs a range of terms – “very complex”, “highly complex” and “potentially complex” – in a bid to elaborate the relative complexity of different investment instruments and products without ever acknowledging that complexity is almost impossible to define in a way that is appropriate to the circumstances of all clients, or even all clients within a particular category. If a non-standardly constructed OTC derivative (or, indeed, any other investment, complex or otherwise) is both necessary and integral to the way in which an organisation operates its business, there should be no question of that organisation deciding that that investment is too complex for it to trade without a third party assessing whether it has the knowledge and experience to do so. It has been both difficult enough and costly enough for a reasonably common understanding to be reached upon the divide between complex and non-complex products for the purposes of the retail client-driven appropriateness test – seeking to define further gradations of complexity that interact dynamically with different client categories would not only be an enormously complicated and costly exercise but would also result in basic regulatory protections being applied in an altogether inconsistent way to clients which in many respects are fundamentally alike.

We hope that these further comments are of assistance to CESR in shaping its *suggested policy approach* to client categorisation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S. J. McGuffick', with a long horizontal flourish extending to the right.

Sarah McGuffick
Policy Consultant