



DANISH BANKERS ASSOCIATION

CESR

Ref.: CESR/04-689 CESR's call for opinions on professional client agreement

Introduction

The Danish Bankers Association appreciates this opportunity to provide comments on CESR's call for opinions regarding professional client agreement. We have previously responded to the two consultations regarding the 1st set of mandates and the consultations regarding the 2nd set of mandates.

The Danish Bankers Association - Finansrådet - is the trade organisation for Danish banks, covering the entire banking sector. Members include banks, savings banks and Danish branches of foreign banks. We would like to express the following general remarks to the call for opinions.

General remarks

We believe that there is no need to regulate how investment firms contract with their professional clients or to prescribe detailed rules as to the contents of their contracts. Professional clients are presumed to be capable of making their own investment decisions and understanding the risks involved. It would be over-prescriptive and unjustified for regulators to seek to regulate this area.

In the call for opinions, CESR gives three options as to whether to provide any advice on the professional client agreements. Of these three options, we support Option 1, namely:

"Not to provide any advice on the client agreement, recognizing that this should entirely be a matter for Member State discretion or for commercial practice."

For the reasons described above, we believe that the professional client agreement should be a matter for commercial practice. It should be a question of practice and commercial assessment, rather than Level 2 legislation, whether or not investment firms wish to enter into formal client agreements with professional clients. Furthermore, it is our opinion that this is a matter that should be left for commercial practice and not for member states discretion.

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ANSWERS TO CESR'S QUESTIONS:

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Q.1: Should a written client agreement be necessary for professional clients of an investment firm?

Question 1: As argued above, we believe that a written client agreement should not be necessary for professional clients of an investment firm.

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Q2. If so, should the agreement be limited to certain investment services (portfolio management and investment advice) or should it be requested for other investment and ancillary services?

Question 2: Not applicable.

Q.3: If such a requirement is introduced, do you think that this would create additional costs? Please provide details of the nature and likely amount of these costs.

Question 3: Yes, we believe that such a requirement would create additional costs.

Q.4: If you consider that no such requirements should be introduced, please specify the reasons why.

Question 4: As argued above, we believe that professional clients are capable of making their own risk assessments and understanding the legal and contractual basis for the products and services they are using.

Yours sincerely

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