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The Committee of European Securities Regulators ("CESR")
11-13 avenue de Friedland
75008 PARIS
FRANCE

Via CESR's website: www.cesr-eu.org

18 February 2005

Dear Sirs

CESR'S DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF MiFID - PROFESSIONAL CLIENT AGREEMENTS - CALL FOR OPINIONS, DECEMBER 2004

The City of London Law Society Regulatory Committee is pleased to have the opportunity to respond to CESR's call for opinions on professional client agreements. The members of the Committee are all lawyers who advise on law and compliance matters for clients who operate in the financial markets, both in Member States and in third countries (please refer to our submission 17 September 2004 for further details).

Q1: Should a written agreement be necessary for professional clients of an investment firm?

No. CESR's summarised Option 1 should be favoured: not to provide any advice on the client agreement, recognising that this should entirely be a matter for Member State discretion or for commercial practice.

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?

A client agreement should not be required for any type of investment service or ancillary service. (However, we do note that CESR has already advised the Commission that an agreement in a durable medium should be required in relation to safeguarding of client assets

under articles 13(7) and 13(8) of the Directive and we understand the reasoning behind this advice (see paragraph 13 of CESR's January advice, Ref. CESR/05-024c).

We urge CESR to reject Option 3 (written agreement required in relation to all types of service), since it does not reflect the ability of professional clients to take care of their own interests. In certain circumstances, it may well be that firms and professional clients choose, for sound commercial reasons, to enter into written agreements. However, there would be unnecessary costs (see below) without corresponding benefit should flexibility be removed by regulation.

Option 2

Should CESR choose Option 2 (written agreement required only in relation to portfolio management services), then the agreement in writing should only be required within a reasonable time after the first provision of the service (as opposed to in good time prior to providing services).

In the case that CESR chooses Option 2, it is important that CESR's advice should expressly state that there is no need for the consent of a professional client to the terms of the agreement to be evidenced by signature or an equivalent alternative mechanism. Terms sent to a client and accepted by conduct would be sufficient and would eliminate unnecessary delay in the conclusion of the relevant agreement, which must often be concluded quickly. In this context, we welcome CESR's decision not to include in its advice to the Commission on the definition of the term "in writing", the additional requirement that an agreement should be "in a durable medium" (paragraph 24 in Box 1 of CESR's January advice, Ref. CESR/05-024c).

Investment advice

We support market participants' calls for CESR's advice on the definition of investment advice to recognise that a professional client is better placed than a retail client to recognise that, in certain circumstances, market views and other communications given by an investment firm should not be seen as a personal recommendation, even if they involve some consideration of the client's circumstances. We welcome CESR's decision to harmonise the timing of its advice in these two areas.

Q3: 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.

The most obvious source of costs would be in repapering existing relationships, since there appears to be considerable resistance from CESR and the Commission to the introduction of grandfathering or transitional periods.

Q4: If you consider that no such requirements should be introduced, please specify the reasons why.

Please refer to comments above. We agree with the argument recognised by CESR that it would be over-prescriptive and unjustified to require a written agreement in a professional client relationship.

We hope that you find these comments helpful; we would be happy to discuss them with you.

Yours faithfully



Margaret Chamberlain

Chair

City of London Law Society Regulatory Committee