



ABI RESPONSE TO CESR'S CONSULTATION PAPER: CESR'S DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE DIRECTIVE 2004/39/EC ON MARKETS IN FINANCIAL INSTRUMENTS: PROFESSIONAL CLIENT AGREEMENTS CESR/04-689 DECEMBER 2004

1 INTRODUCTION

- 1.1 The Association of British Insurers (ABI) welcomes the opportunity to respond to the CESR Consultation Paper of December 2004.
- 1.2 The ABI is the trade association for the UK's authorised insurance companies. Its membership, some 400 companies, provides over 94% of the insurance business undertaken by such companies.
- 1.3 In the course of their business ABI members manage assets of the order of £1,100bn (€1,600bn) across all asset classes of which equities and fixed interest are the largest.
- 1.4 For ABI members, as institutional investors, professional client agreements and other forms of documentation are an important part of operational procedures. However, it should be noted that the comments below are written from the viewpoint of the fund management arms of ABI members i.e. as agents for the insurance funds and other clients

2 GENERAL COMMENTS

- 2.1 We note CESR's comment that it is considering advice outside of the holding of client assets and that Article 19.7 might be subject to differing interpretations by Member States
- 2.2 We would support the interpretation of Article 19.7 which lays the stress on record keeping.
- 2.3 We support CESR's view that its advice should be limited to portfolio management services. We do not believe that it should be extended to investment advice. In considering portfolio management we would not support any prescription as to content or mode of acceptance of agreements those agreements whether are on a mandatory or voluntary basis.

- 2.4 In general ABI fund managers find current UK practice acceptable and value its flexibility. Feedback from this group indicates that best practice for portfolio management is two way written agreements, normally entered into prior to providing such service, as the means of establishing the parameters and liabilities of both parties.
- 2.5 Consequently ABI fund managers would endorse the first option set out by CESR in its paper, that it should not provide any advice on the client agreement, recognising this as an area for Member State discretion or for commercial practice.

3 SPECIFIC QUESTIONS

- Q1 *Should a written client agreement be necessary for professional clients of an investment firm?*

We would regard this as best practice, not a mandatory requirement.

- 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?*

If a voluntary approach is adopted then, at the choice of the parties concerned, there could be a written agreement. There should be no prescription as to its contents or mode of acceptance. Two way written agreements would to be restricted to portfolio management.

- 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.*

Such a requirement would create additional costs, through extra administration and legal support. Given best practice it is difficult to envisage what net benefit to investor protection the extra costs would bring, particularly if existing voluntary agreements had to be renegotiated.

- Q4 *If you consider that no such requirements should be introduced, please specify the reasons why?*

For ABI fund managers current best practice, works well.