



Association Luxembourgeoise des Fonds d'Investissement – Association of the Luxembourg Fund Industry

Response to CESR Call for Opinions regarding CESR's draft advice on possible Implementing Measures of the Directive 2004/39/EC on Markets and Financial Instruments – issue of professional agreements (CESR/04/689)

Luxembourg, February 20, 2005

As representative body of the Luxembourg fund and asset management industry we are grateful for the opportunity to comment on the CESR's call for opinions on professional agreements under the MiFID.

As a general remark we would like to stress the need to maintain reasonable requirements for professionals subject to the Directive. In our view CESR's mission in the context of the implementation of the MiFID should not result in the prescription of additional rules which could involuntarily hinder the development of a true internal market.

More specifically, we think that Article 19.7 of the MiFID providing that each investment firm must establish a record that includes the document(s) agreed between the firm and the client and setting out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client does not need any further development in terms of implementation measures with regard to agreements with professional clients. In our view the level of protection between a retail and a professional client should vary and lighter rules should apply in cases of relations with the latter.

Addressing the issue of the professional client agreement in the technical advice would inevitably imply the drafting of more detailed rules with regard to related topics (scope of the requirement with respect to the various types of services concerned, timing, client consent or contents of the contract). This would prove to be a difficult exercise and unnecessary in the context of such a professional relationship. Such matters would in our view be best dealt at Member State discretion or be left to normal commercial practice.

The same remarks can be made with regard to the idea of a client agreement being imposed prior to the provision of services to a new client. Parties to a professional client relationship are by nature qualified enough to negotiate the terms of their relation, and to understand the scope and characteristics of the services to be provided. No further regulation is therefore needed in our view in this field.

For the reasons mentioned above, ALFI would recommend not to provide any advice on the professional client agreement and to leave this matter entirely up to the Member States' discretion or to commercial practice.

