Warsaw, 21st February 2005

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IDM/WE/068/05

To: Committee of European Securities Regulators
by e-mail at www.cesr-eu.org

Re: CESR's Draft Technical Advice on Possible Implementing Measures of the MiFID 2004/39/EC, Professional Client Agreements (CESR/04-689)

Dear Sirs,

The Chamber of Brokerage Houses is an organization representing brokerage houses operating on Polish capital market, responsible for 99% of turnover on Warsaw Stock Exchange. It represents its members' economic interests with regard of their activity, in particular towards state authority bodies, participates in drafting bills and makes notes on such bills and their amendments, cooperates with other capital market institutions pursuing a jointly work out of detailed solutions concerning market's activity. Among other Chamber's tasks is in particular that of defining and codifying fair trade rules and market practices accepted and adopted by its members. These rules and practices are put into The Code of Good Practice of Brokerage Houses passed by the General Meeting of the Chamber Members in 2004.

Q.1: Should a written client agreement be necessary for professional clients of an investment firm?
Q.2. 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?

In our opinion a written agreement which states the rights and obligations of the parties is necessary for retail client as well as for professional ones.
Although *The law on the public trading of securities* in Poland decides only that “*in the contract for brokerage services brokerage houses agree to execute the assignment contracts (orders) to buy and sell securities on the regulated market*” and these assignment contracts shall be drawn up in writing, otherwise they are null and void, the usual way of making all agreements concerning the services provided by investment firms in Poland is in writing. This approach encompasses not only the framework agreements but usually the detailed agreements/annexes concerning the particular services, too.
The main reason to use this approach is that the agreement in writing stands as an evidence in the case of disputes. They may arise in the case of agreements with retail client as well as with professional ones.
Thus, the agreement in writing should be requested for all investment services for professional clients, too. However, in the case of ancillary services we would suggest to use more flexible approach and to waive this requirement – to allow the investment firm to decide whether it provides the service without the written agreement. The requirement should be, however, that the firm has established sufficient internal regulations concerning the service and the rights and obligations of the parties.

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.

Because of the above, the requirement of making the agreements in writing for professional clients will not introduce any additional costs for our members - costs of negotiations and legal advice will be still the same.

We suggest CESR to use the following option from the set listed in the consultation paper:
„An investment firm that provides a portfolio management service or an investment advisory service to a professional client must enter into an agreement in writing setting out the rights and obligations of the parties in good time prior to providing any such services. By derogation from the previous paragraph, the investment firm may provide the terms of the agreement in writing immediately after starting to provide the relevant service to the client if that service has been provided at the client's request using a means of communication which does not enable the provision of the agreement in writing.”

Yours sincerely

Maria Dobrowolska
President of the Chamber