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The Committee of European Securities Regulators ("CESR")
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FRANCE

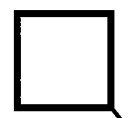
Ladies and Gentlemen

**CESR'S DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING
MEASURES OF MiFID - SECOND SET OF MANDATES - SECOND
CONSULTATION PAPER MARCH 2005**

The British Venture Capital Association ("BVCA") is responding to the invitation to submit views on the above. The BVCA has around 165 members. This represents the vast majority of UK based private equity and venture capital firms. Those 165 firms are invested in over 11,000 companies, who between them employ nearly 3 million people. This response follows on from and is intended to be considered in the context of, the BVCA's responses dated 17 September 2004, 16 December 2004 and 21 January 2005 to the CESR consultation paper on the first and second sets of mandates.

Best Execution

The BVCA has made significant comments on previous versions of the advice, attended the open meeting in December and has written separately to Carlo Comporti. We have repeatedly expressed serious concerns that the Directive appears to be capable of covering transactions in securities which are not marketable, yet the CESR advice does not recognise this. The proposals in the second consultation paper are of significant concern to us because they are focused exclusively on securities for which there is a market of some kind. When a transaction is executed in an unmarketable security it is likely to be a unique transaction. The concept of an execution venue is simply inapplicable. For example, if a private equity firm has a management strategy which involves investing in unlisted high technology companies, then it will be looking for such companies in which to invest. There is no venue through which it can make such an investment. It will have to do so by direct negotiation with the management/the company and the terms of any investment will be unique to that particular transaction. The concept of a trading strategy, execution venue and the related rules concerning selecting and reviewing execution venues make no sense whatsoever in a private equity context. It does not seem appropriate for us to comment on each and every paragraph in the CESR advice on best execution, because it is all subject to this overriding comment -



that there is nothing in the advice which could be usefully applied to the activities of a private equity firm. Take, for example, the statement in paragraph 103:

“CESR believes that clients and potential clients will benefit from information about the execution venues that investment firms access directly. This should help clients and potential clients to evaluate and compare the nature of the services offered by investment firms.”

This reasoning is simply inapplicable to private equity activity - as explained above, and in previous correspondence, there are no execution venues. There is an investment policy - about the types of investment and sectors with which the firm expects to be concerned - but each transaction is dealt with separately and not dealt with through any means that bears any resemblance to the concept of “execution venue” in the CESR advice.

We suggest that if CESR continues with this approach, the advice needs to recognise that there may be cases where the concept of execution venue is not applicable and that in such cases the rules about the same simply do not apply. We are concerned, in particular, at the statement that CESR intends Level 2 criteria to provide a common framework “therefore CESR does not wish to give firms freedom to invent criteria themselves”. In circumstances such as those which arise for private equity, where the criteria developed by CESR are simply not appropriate, it would seem wrong to exclude the inability of a firm to develop criteria that are suitable and proportionate to its own activities. Otherwise, if the proposals are implemented by Regulations, private equity firms will have to go through procedures and incur costs in connection with making statements in relation to requirements that are irrelevant. This will not be in the interests of investors, nor will it encourage private equity investment management activity to take place within the boundaries of Europe. This is not in Europe’s long-term interests.

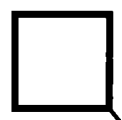
Other Comments

Lending to Retail Clients

It appears to us that loans and credits are not the subject of MiFID and we do not believe that there is any necessity to make further specific elaboration in relation to loans or credits. We suggest that there is at least a distinction drawn in the draft Level 2 advice between a retail client who is an individual and a retail client who is a corporate. In the case of loans to a corporate, we do not believe that the draft Level 2 Advice is appropriate as it is too detailed.

Receipt and Transmission of Orders

We do not believe that the best execution obligation under Article 21 applies to firms that provide the service of reception and transmission of orders. The scope and nature of this activity is not clear, but it is clear that it is distinct from the service of execution of orders - otherwise there would be no need for the separate activity, and that it attracts a different nature and level of obligation - hence, for example, the different capital treatment permitted to a firm under the current Directive, when its only ISD service is the receipt and transmission of orders. We do not believe that best execution obligations are appropriate for firms that receive and transmit orders - but if they are, they are only appropriate for a sub-set of such firms. Accordingly, any CESR advice would need to apply only to firms whose



receipt and transmission service is held out as one under which they accept obligations in relation to execution.

As far as paragraph 11 is concerned, we do not see the problem if an entity is used in a third country to execute client orders, if the executing entity is not subject to MiFID requirements. The important point is that, in such a case, clients are on notice that this is the case and that orders may be transmitted to such an entity. Otherwise, an unnecessary and potentially dangerous obligation is put on the firm based in the EU. It is in a position where it has a liability for the acts of a third party - when it may well be that the reason for the use of that third party is that the client wishes a transaction to be executed on a third country market. This places an inappropriate level of responsibility on the order transmitter and a more proportionate response is by disclosure to clients where third country execution services are used. This is particularly so in the case of professional clients, who may be expected to understand the implications of this.

We are available to discuss our comments in more detail at your convenience.

Yours sincerely



 John Mackie
Chief Executive