

7th February 2005

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By email to CESR at www.cesr-eu.org

Your ref: CESR/04-689

Dear Sirs

Response to CESR on Possible Implementing Measures of the Directive on Markets in Financial Instruments (MiFID) – Call for advice on professional client agreements

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is the organisation that represents those firms who act for the private investor and who offer them services that range from no advice or ‘execution only’ trading through to portfolio management for the high net worth individual. Our 211 member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands and following the merger of EASD into APCIMS, increasingly in other European countries as well. APCIMS members have under management Euros 450 billion for the private investor and undertake some 13 million trades for them annually.

We are grateful for the opportunity to respond to your call for opinions on professional client agreements.

As CESR rightly notes, these issues relate to professional clients. In the UK it is standard practice to have a written agreement with a client. This is driven by local jurisprudence and how contracts are evidenced, commercial considerations of ensuring there is agreement about the services to be provided and certain regulatory requirements.

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

1. We consider there is no need for CESR to provide any advice on the client agreement.

Level 1 requires a record and we envisage that invariably there would be a written agreement. The reason for our resistance to CESR advice is that we consider it will either effectively add nothing or unnecessarily restrict the choice open to firms and their professional clients in defining what the content of any agreement would be. We think the CESR advice would add nothing if it just imposed a need for there to be a written agreement without saying more, as we expect in the UK that is how Article 19.7 will be implemented. If CESR goes beyond this, then we think it would be over-prescriptive.

2. **In particular we strongly oppose the suggestion that an investment firm must enter into an agreement in writing in good time prior to providing any such services.**

Having a written agreement prior to commencement of services may be a statement of common or good practice but to prescribe this as a requirement would be disproportionate to the needs of the professional client. For example, should the best interests of a professional client require some action before an agreement was entered into, then the firm should be free to so act – given that the firm perhaps will ensure the client understands in outline the rights and obligations arising from that initial step.

Accordingly if CESR were to give advice we would strongly support a view that any agreement is only needed within a reasonable time after the first provision of the service. You mention a possible derogation in the third option. We are unsure when you expect it to operate; particularly as we are unsure in what sense an agreement could not be provided in writing since we assume writing must include electronically transmitted documents.

3. **CESR should not seek to prescribe in what form consent should be given.**

As CESR mentions, a consideration of the forms of acceptance would involve CESR in opining on notions of contract law that differ greatly across the Member States. We do not consider that it should be a requirement that a professional client countersigns any document setting out the terms on which services are supplied by the firm.

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?

Although we do not see the need for CESR to advise in this area, we also do not see any real distinction between the different services you mention, though we accept some might wish to draw a distinction between longer-term and shorter-term or one-off services.

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.

A requirement to have a client's countersignature would add considerably to the costs since invariably UK experience has shown that a significant number will not respond and there will need to be considerable investment of time chasing responses.

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

We trust our answers above have explained this.

We hope these comments are helpful in the development of CESR's advice and should you have any further questions in this regard please do not hesitate to contact me at guys@apcims.co.uk.

Yours faithfully



Guy Sears
Head of Implementation and Policy