



SJ - n° 2003/Div.

Mr Fabrice Demarigny
Secretary General
Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, March 7th 2005

AFG RESPONSE TO CESR'S CALL FOR OPINIONS ON PROFESSIONAL CLIENT AGREEMENTS (POSSIBLE IMPLEMENTING MEASURES OF DIRECTIVE 2004/39/EC)

Dear Mr Demarigny,

We welcome CESR's decision to assess the appropriateness of any future advice on the professional client agreement in the context of possible implementing measures under Article 19.7 of the MiFID on the client agreement, including the public call for opinions.

The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include management companies and investment companies – either independent or belonging to banking or insurance groups. In the field of collective management, AFG members are responsible for the management of over 1800 billion euros, making the French industry the leader in Europe (with more than 20% of EU investment funds assets under management) and one of the top ones at global level. We are also a member of the Fédération Européenne des Fonds et Sociétés d'Investissement (FEFSI/EFAMA).

Therefore, we hope that AFG (through the size and diversity of its membership) can provide for a helpful contribution to CESR, based on our members' experience in Europe.

We agree with CESR on the risk that silence at level 2 under Article 19.7 regarding professional clients could potentially lead to inconsistent implementation of this provision of

the level 1 Directive, as some Member States might read this provision as requiring a written agreement with all clients while others might draw the opposite conclusion.

Regarding the possible specific contents of CESR's advice, we wish to concentrate our answer on the provision of portfolio management services.

First, we do share CESR's opinion that it is necessary to provide in a level 2 measure that investment firms must enter into a written agreement with their professional clients. Written agreements are a legally safe way to set clearly the rights and obligations for each party. If there is no level 2 measures on this issue, discrepancies between national legislations will harm the conditions for competition within Europe between portfolio management services providers. Moreover, the lack of level 2 measures would create major difficulties for developing harmonised activities at the level of the Single Market for cross-border services providers.

However, for practical reasons, there is a need for flexibility on the timing of getting this written agreement: in principle it would be better (for a higher degree of legal certainty) to get such an agreement prior to the provision of investment services or ancillary services to a new client; but it seems more realistic to require the agreement within a reasonable time after the first provision of the service. Nevertheless, an explicit commitment for CESR in its final advice should be added in order to put time limits at level 3 on this notion of "*reasonable time*", to avoid uneven implementation of this notion among Member States.

Regarding the possible derogation with respect to the timing requirement where the service has been provided at the client's request, we think that CESR should provide for a requirement for written agreement within a reasonable time after the first provision of the service (as stated above), whichever means of communication used.

On the different options and sub-options proposed by CESR, the worst option would be no level 2 advice at all on client agreements, as it might increase the heterogeneity of situations between Member States. The best option would be a requirement for written agreement for portfolio management services, as it would help making converge situations among Member States. In addition, we would prefer the second sub-option, for the practical reason explained above.

At last, our answers to CESR's questions are the following:

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

A. 1: Yes, for contracts between investment management firms and their professional clients.

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?*"

A. 2: The written agreement should be provided for portfolio management services.

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.*"

A. 3: Such a requirement would not create any additional cost, as written client agreements are already commonly used today between investment management firms and professional

clients, in particular for portfolio management – depending of course on the contents which would be required as compared to the contents of existing required written agreements.

A contrario, no requirement at level 2 would lead to discrepancies between national regimes, which would finally create costs on cross-border activities of portfolio management services providers – because of the lack of harmonisation across Europe. These costs related to the lack of harmonisation might also create prejudice to clients – because they might finally have to bear a part of the cost of non-harmonisation initially prejudicial to services providers. At last, it would harm the development of the Single Market in the field of portfolio management.

Q. 4: *“If you consider that no such requirements should be introduced, please specify the reasons why.”*

A. 4: Not applicable.

If you would like to discuss the contents of this letter with us, please contact myself on 00 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), or Stéphane Janin on 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely.

Pierre Bollon