

CESR

19 November 2007

EAPB comment on the Consultation on CESR's MiFID work programme for 2007/2008

The European Association of Public Banks (EAPB) represents the interests of 27 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

We thank CESR for the opportunity to comment on its work programme for future Level 3 work under MiFID. We highly appreciate CESR's past efforts to achieve more convergence in the day-to-day application of the MiFID. CESR's focus for Q4/2007 – 2008 on the operational aspects of MiFID requirements and their convergent implementation across Europe is therefore very much welcome.

However, we ask CESR to bear in mind that investment firms throughout Europe have been very busy implementing the MiFID provisions in the last months and have undertaken substantial organisational and financial efforts in this regard. Any changes to the existing rules and guidelines should therefore be avoided at the moment and restricted to those adjustments which are absolutely necessary. System changes due to amended provisions obviously require investment in terms of working hours and costs. We kindly ask CESR to take these considerations into account when proposing any changes to the current provisions.

Eventually, we would welcome CESR involving the industry in CESR's future work as much as possible. We would be happy to contribute, as in the past, to a fruitful dialog.

In the following, please find our detailed comments on the different sections of the consultation document.

i) Mandates from the Commission/Work in connection with upcoming Commission's reports

It is obvious that CESR attaches high priority to the elaboration of responses to the Commission mandates and we recognise that the issues to be treated are not in CESR's discretion. However, we would like to make the following comments on the probable mandates to be received:

- MiFID report – telephone recording: We would like to stress that this issue has been discussed in detail during the legislative process of the MiFID. Finally, it has not been taken up in the MiFID provisions. The arguments which led to the waiver of such a requirement are still valid and should be taken into consideration in CESR's work. In particular, the costs are not in relation to the benefits.
- CESR's reports on transaction reporting and post-trade transparency: We ask CESR to take account of the costs and time involved for investment firms to make any changes in this regard to their systems (c.f. also our introductory remarks).

ii) Establishment of a CESR MiFID Q&A

In general, we welcome the creation of a Q&A mechanism similar to the one for the Prospectus Directive and fully support this tool. We would, however, suggest to consult market participants on the intended answers to be given in the Q&A document in order to come up with practical solutions. Furthermore, we understand that Q&A mechanism aims at providing a convergent view of the dialogue between securities regulators and investment firms on MiFID application issues. Therefore, we do not understand the consumer's involvement in such a mechanism. In our opinion, involving consumers would not be sensible as it would complicate the mechanism and would eventually not serve the aim of such a mechanism.

iii) Thematic work

As set out in our initial remarks, we welcome CESR focusing on key aspects relevant for supervisory convergence and ask CESR to restrict itself to absolutely necessary adjustments against the background of costs and time involved for investment firms in such changes.

Furthermore, we would like to point out the following:

- *“Intermediaries”*: It is not sufficiently clear which individual aspects should be further investigated within the seven areas listed, such as best execution and conflict of interests.
- *“Markets”*: We strongly suggest taking up the following points in the work programme with respect to financial reporting.

The provisions of the MiFID implementing regulation (Regulation No. 1287/2006, field no. 20, table 1, Annex 1) require counterparties to a transaction to be identified in the reporting. In those cases where the counterparty is an investment firm, the unitary code for this firm (determined by the responsible authority to which the reporting is submitted) shall be stated according to the description in field 20. In order to correctly complete field 20, those subject to the reporting duty must be in a position to determine whether the counterparty is also an investment firm that is subject to the MiFID reporting requirements.

Art 5 (3) MiFID requires the Member States to prepare a register of all investment firms. This register shall be accessible to the public and shall be regularly updated. However, in several Member States such registers are either not easily accessible or not available at all.

Hence, we would welcome CESR improving the accessibility of the national registers required under Art 5 (3) MiFID. Furthermore, in order to facilitate the efficient use of the data contained in the individual registers, it would be extremely helpful if CESR could also prepare a Europe-wide list of the companies subject to the reporting duty that allows for automatic data processing. Such a register is also needed in order to fulfil the provisions of the post-trade-transparency according to Art 28 MiFID. Only with this register an investment firm could ascertain (according to Art 27 (4) the MiFID implementing regulation) whether the transaction partner is also subject to the MiFID requirements. If this is not the case, the transparency obligations remain with the investment firm itself.

iv) Supervisory work and vi) cooperation with other committees of regulators

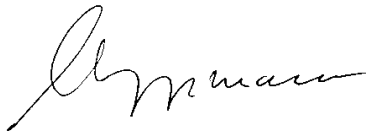
The EAPB very much welcomes CESR's plans to improve the co-operation between CESR members in the performance of their supervisory functions as well as the enhancement of cooperation between the 3L3 committees.

v) On-going technical work in the implementation of the Level 2 Regulation on markets

We fully agree that CESR's technical work regarding the implementation of the Level 2 regulation should be given high priority.

If you have any questions please do not hesitate to contact us.

With best regards,

A handwritten signature in black ink, appearing to read 'Schoppmann', written in a cursive style.

Henning Schoppmann
EAPB

A handwritten signature in black ink, appearing to read 'Hemetsberger', written in a cursive style.

Walburga Hemetsberger
EAPB