



**POSITION PAPER ON
CESR's PUBLIC CONSULTATION
CONCERNING
THE PASSPORT UNDER MIFID**

Ref: CESR / 06 ~ 669

8 February 2007

ALFI welcomes CESR's consultation paper on the passport under MiFID published in December 2006. The document identifies key issues from the point of view of the notification procedures set out in the Directive and on the collaboration between the home and host authorities. ALFI welcomes the opportunity to participate in this consultation process by commenting on CESR's proposals.

ALFI is the representative body of the 1.8 trillion Euro Luxembourg fund industry. It counts among its members not only investment funds but a large variety of service providers of the financial sector. As such ALFI also represents next to the fund industry's direct participants key players in the distribution of fund products.

1.General comment

ALFI appreciates CESR's efforts to find practical solutions as to how to harmonise the day-to-day supervisory practice between the home and host Member States regulators. Such close cooperation and inter-reliance between authorities will indeed be necessary in order to guarantee an efficient and coherent supervision of cross-border activities in the context of MiFID.

2.Specific comments

2.1. Notification and date to start cross-border investment services provision (article 31(3))

ALFI agrees with CESR's proposals as regards the date of notification. We are of the opinion that the home State should inform the bank that it can begin to operate under the passport at the point at which it informs the host state supervisor.

2.2.Branch regulation

- ALFI recognizes that in some cases the establishment of a branch entails that specific domestic commercial provisions have to be satisfied. However one should avoid that Member States use the argument of the existence of domestic rules to set up artificial obstacles to the good functioning of the passport or to delay the notification procedure, as has been the case in the context of the UCITS Directive.
- The formulation of MiFID rules could result in the unintended consequence that two different sets of rules could eventually apply to a branch. This situation should be avoided in practice since it is certainly not in the spirit of the Directive and would not only represent a financial burden for concerned entities but could also prove extremely difficult to comply with for certain institutions. In our view the objective of the new provisions is actually to improve the operation of the European passport for branches.

- In paragraph 36 of the consultation paper CESR expresses the view that firms have to adopt coherent policies and procedures to ensure that their various cross-border activities are controlled properly and that the required MiFID protections are delivered to all clients as appropriate. We would like to underline that this will only be possible when supervisors have precisely decided how to divide the responsibilities and areas of competence between themselves.

2.3. Transition phase

ALFI fears that a number of countries will not be ready with the transposition of the MiFID in their national legislation by the 1st of November 2007. It is paramount that a pragmatic solution be found to ensure the continuity of the existing passports in this context. More broadly we are of the opinion that in order to make the MiFID passport work and as a matter of legal certainty transitory problems must be solved well in advance of the deadline of the 1st of November so as to leave enough time for the industry to prepare itself to the new MiFID environment.