Answer to the CESR (06-413) consultation paper

"Work programme on MiFID level 3 Work"

September 2006

ABI Position Paper

ABI - the Italian Banking Association that, with over 800 banks, represents the Italian banking system - welcomes the opportunity afforded by CESR to comment on its work programme for the adoption of level 3 measures in the MiFID Directive (ref. CESR/06-413).

In fact, the relevance of the contribution that may be made by such measures - as anticipated by the so-called "Lamfalussy procedure" - for a convergent transposition of the Community regulations may be appreciated all the more in case of the MiFID directive considering that, even further to the adoption of the level 2 measures, its implementation arrangements in respect of a number of topics still feature margins of operational uncertainty.

With specific reference to the work programme laid down by CESR, we consider the identification of the topics to be dealt with at level 3 to be correct and exhaustive. Besides, we share the proposed work categorization (non-discretionary work, discretionary work and other discretionary work) as it highlights the priority of the subjects than the Authorities – just as the market participants – need to cope with in implementing the MiFID directive.

Notwithstanding the above, if on the one hand we share the identification of the technical issues that CESR believes should be handled with the utmost priority as required by the levels 1 and 2 MiFID (non-discretionary work – 1st category of measures) or deems essential for a proper implementation of those measures (discretionary work - 2nd category of measures), on the other hand we have a few misgivings as to the expediency that issues of considerable relevance that determine the proper implementation of the levels 1 and 2 MiFID measures – such as best execution, execution only, inducements, appropriateness test, information to clients, conflicts of interest policy, investment research - be defined by CESR as "other discretionary issues", to be dealt with only further to the request of the market or if application-related problems should arise.

Therefore, we hope that CESR will modify the proposed general lines and will cause the aforementioned issues to converge within the second category of measures that have an anticipated adoption timing that seems to be more in keeping with the juridical and operational certainty requirement.

Such a requirement appears all the more urgent if one considers that the issues at hand are governed at level 2 by a Directive that is known to offer each Member State, in its transposition activity, the possibility of introducing adjustments to the specific characteristics of its own market.

By way of example, reference is made to the best execution requirement issue, which represents a remarkable change in the way banks conduct business with their clients. Besides, there are still different views among market participants in respect of its application arrangements, as witnessed by the negotiations carried out within the European Banking Federation[1]. In our opinion, CESR should deal with the utmost urgency with the organization of the level 3 measures related to the applicatory aspects of the best execution requirement, which nonetheless have been correctly identified in

[1] The European Banking Federation represents 25 national Banking Associations from as many European countries.

the table attached to the consultation paper.

While hoping that CESR might accept the above proposal, we would like to stress once again our appreciation for the start-up of the consultation procedure under consideration, as well as our definite willingness to provide CESR with any feedback deemed necessary in the future.