

**RESPONSE TO CESR'S PUBLIC CONSULTATION ON THE
MIFID LEVEL 3 EXPERT GROUP DRAFT WORKPLAN
FOR Q4/2007 – 2008 (CESR/07-704)**

The European investment management industry, represented by EFAMA¹, is grateful for the opportunity to respond to CESR's consultation paper on the MiFID Level 3 Expert Group Draft Workplan.

Establishment of a CESR MiFID Q&A

While EFAMA is in favor of clarification and interpretation of MiFID for the industry, we are not sure whether a MiFID Q&A by CESR could be helpful, and whether CESR's limited resources should not be more usefully applied to other projects.

In particular, we are very concerned by the lack of clarity regarding the interaction between the CESR Q&A and the Commission Q&A or the Commission vademecum. The Commission Q&A has already caused much confusion, as it has a broad scope and is highly detailed, but has no binding legal value and does not take into account national implementation differences. In its Consultation, CESR does not state whether its MiFID Q&A would be coordinated with the Commission (the same as for CRD through the Transposition Group), or whether it would supersede it, and we believe that two separate Q&As with diverging interpretations would only add to the confusion. **CESR's MiFID Q&A should therefore be created only in close cooperation with the Commission.**

Also unclear is the legal value of a future CESR MiFID Q&A. In the introduction to the Q&A regarding Prospectuses, CESR states that its "responses do not contain standards, guidelines or recommendations, ...". To be helpful, however, the MiFID Q&A should have at least value equivalent to Level 3 guidance, or at least firms should be able to rely on it to a reasonable extent vis-à-vis their regulator. To avoid the problems incurred by the Commission's Q&A, EFAMA believes that the Q&A should not provide high level legal interpretation, but only clarification of practical issues arising from the practical implementation of MiFID, and we would also

¹ EFAMA is EFAMA is the representative association for the European investment management industry. Through its member associations from 20 EU Member States, Liechtenstein, Norway, Switzerland and Turkey, as well as its corporate members, EFAMA represented at end June 2007 over €14 trillion in assets under management, of which €8.2 trillion through over 48,000 investment funds. For more information, please visit www.efama.org.

recommend that the questions be carefully selected and also edited whenever necessary, to avoid ambiguities.

Work in connection with upcoming Commission's reports

Regarding telephone recording, we are aware of the fact that the FSA is planning to implement a UK regime ahead of CESR's conclusions. This might force UK firms to implement a regime which has to be changed shortly thereafter. Any regulatory action by the FSA and by CESR should therefore be coordinated to avoid a double burden on the industry.

We also believe that the list of equivalent third-country markets as per MiFID Art. 19(6) would be very helpful, but note that no start or finish date are given.

Possible areas for thematic work

Intermediaries

Some EFAMA members believe that the priority assigned to all the Intermediaries work should be high and not medium, while others believe that only some of the items (suitability, conflicts of interest, complex vs. non-complex products) should have high priority. With regard to the start date for the work, some believe that work on conflicts of interest should start as early as Q2 2008, while the other items should be delayed until Q1 2009.

EFAMA recommends that CESR consult with market participants before issuing any further recommendations or guidelines for all the Intermediaries items.

Markets

EFAMA believes that the starting date for this work should be postponed to the second half of 2008, to allow for sufficient time to resolve operational issues and to accumulate more experience and data regarding MiFID implementation.

Cooperation with other committees of regulators

EFAMA fully supports the convergence work of the 3L3 regulators, but would like to encourage CESR to post on its website notifications regarding public consultations related to MiFID to be carried out by CEBS, when any resulting guidance might be adopted (or considered) by CESR members without specific consultation of investment firms.

Items missing from the Workplan

In our reply to CESR's Consultation on Level 3 Guidelines on MiFID Transaction Reporting we had already requested the publication by CESR of an official list of

instruments for which trades are reportable. In the meantime, CESR has recently announced the availability of a database of 'Shares admitted to trading on EU regulated markets' to assist market participants in identifying liquid shares. Unfortunately, this is not a complete list, as it includes only shares, and even for shares it only helps in cases of companies with main listing outside the EU and secondary listing in the EU, while the opposite situation (main listing in the EU and secondary listing outside) is not covered. We therefore reiterate our request for the provision by CESR of a complete official list of instruments, to give investment firms legal certainty and avoid over-reporting.

We remain at your disposal for any further clarification.

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