

PUBLIC CONSULTATION

CESR Work Programme on MiFID Level 3 Work (réf.: CESR/06-413)

Comments by the French Association of Investment Firms (AFEI)

The French Association of Investment Firms (AFEI) represents investment service providers which are active in France. Its members comprise more than 120 investment firms and credit institutions authorised to provide investment services. Approximately one-third of AFEI members are subsidiaries or branches of foreign institutions.

The Association is involved in all major public policy discussions impacting its members, at national, European or international level. MiFID has been our primary focus of attention for a number of years now. We are now heavily involved in the discussions concerning the transposition of the European legislation in France and busy helping our member firms getting ready for the implementation deadline. We therefore welcome CESR's initiative to consult on its work programme on MiFID Level 3 work and are grateful for the opportunity to provide comments.

General observations

Our general observations are the following:

☞ AFEI believes that the European Commission and CESR have a **crucial part** to play in the implementation of MiFID. As outlined in CESR's consultation paper, many areas remain unclear and subject to interpretation; in some cases, choices need to be made with practical consequences for our members. A convergent implementation and application will be key to ensuring that the Directive delivers the expected benefits of an **integrated** European financial marketplace and to prevent any distortion of the **level-playing field** for intermediaries in Europe. **Timing** will be deciding as it will be easier to achieve convergence before the various domestic proposed sets of rules are embedded in the 25 national legal and regulatory systems.

☞ However, there are significant **challenges** ahead, not least because of the lack of available time and resources within the Commission, CESR, and Member States, as well as within the firms and their associations. In some areas, time is also needed to fully appreciate the consequences of MiFID and not all questions can be resolved at the start. Given these constraints, the working programme proposed by CESR is extremely ambitious and would benefit from **greater prioritisation** of the tasks to be undertaken, some topics deserving **immediate** attention and greater focus of the limited available resources.

Detailed comments

Urgent outstanding questions for MiFID implementation

Investment firms have to undertake significant organisational and technological changes to be MiFID-compliant by November 2007. They also have to decide on strategic business orientations regarding systematic internalisation and, more generally, their execution policy.

Firms need to have as much **clarity** as possible and they need it as early as possible. Outstanding matters include detailed reporting obligations and issues relating to the competent reporting authority, detailed record-keeping obligations, requested calculations and estimates for the transparency regime, functioning of passport, home/host supervision. Implications of staggered implementation across EU Member States should also be taken into consideration.

Convergent implementation

AFEI welcomes the adaptation workshops and implementation fora planned by the Commission and CESR. Other tools, such as the ones developed for the implementation of the Capital Requirements Directive, might also be investigated. In particular, it would be very useful for our members to have available a **dashboard** (at least for the largest European countries) including progress reports on transposition work and summarising the main options chosen.

Discrepancies in interpretation must be avoided, first to reduce the adjustment costs for market participants operating cross-border and, second, to prevent any distortion of the level-playing-field in Europe. More **restrictive interpretations** in some countries than in others would create unacceptable competitive discrepancies between domestic and foreign firms.

Timing is critical as it will be easier to achieve convergence before the various proposed domestic sets of rules are embedded in the 25 national legal and regulatory systems.

Specific areas which would require attention include best execution, investment research, inducements. Although not mentioned in CESR consultation paper, the interpretation of the definition of systematic internalisers included the Level 2 Regulation (definition which is based on qualitative criteria) might differ between Member States. We believe that the publication of the lists of systematic internalisers will help to achieve converging views between the different regulators but CESR might have a role to play. Similarly, other areas where issues haven't been identified yet or which require greater hindsight might create additional need for level 3 work in the future; CESR should be able to address such future potential needs.

Reports and/or reviews requested by Level 1 and Level 2

CESR input here is sometimes requested by the Level 1 and 2 texts and often necessary. However, we believe it is important to prioritise and to ensure optimal coordination with the Commission.

✎ MiFID is a Big Bang for the organisation of the financial markets and financial intermediaries in Europe. First, the priority should be to ensure that the rules adopted in April 2004 and June 2006 deliver the expected benefits. With this objective in mind, CESR must assess the impact of MiFID on the organisation of the markets, especially on transparency and efficiency, and be able to suggest relevant measures in order to rectify any shortcomings that may be detected. **Table 4** of Annex II of the Regulation (Deferred publication of trades) will request particular attention, as well as **application of Article 27** (Systematic internalisation) and the chosen definition of transaction.

AFEI admits that the negotiations for the transparency regime have produced a balance, which should not be called into question. But under real-life market conditions, there is absolutely no guarantee that it will prove to be the right one. At one end of the scale, a miscalibration would affect the capacity of some intermediaries to provide liquidity through own-account dealing. At the other end, the overall price formation process would become less efficient since a substantial portion of the market's liquidity would be captured, leading to fragmentation and driving up transaction costs. In either case, the main objective pursued through MiFID would not be reached.

Second, looking at possible extensions of MiFID transparency rules to non-equity markets, AFEI has the following comments: first of all, the organisation and regulation of all markets, including non-equity markets, is going to be deeply changed by MiFID (conduct of business and organisational rules, reporting and record-keeping, etc.), with a significant increase in the level of obligations for intermediaries and greater investor protection; second, market structures differ fundamentally from product to product and the matter of transparency raises different and complex questions from one market to another. AFEI therefore urges the Commission and CESR to adopt a very **careful approach** and to work closely with market participants. Although we appreciate that the deadline for the Commission's report is set by the Directive, we believe that it will not allow hindsight on the application of the different rules established by MiFID; furthermore, as we detail in our answer to the very useful on-going Commission's consultation, at this stage, we see no clear benefits in terms of efficiency or investor protection from any regulatory requirement to provide further transparency in European non-equity markets, and therefore, no justification.

Publication and consolidation of market transparency information

As stated in our answer to CESR's earlier call for evidence related to data consolidation, AFEI does not believe CESR should play a leadership role. However, given the numerous challenges that have been identified, AFEI calls for close monitoring of future initiatives and arrangements in the area of market data transparency and market data consolidation. CESR should be able to take such a leadership role if those market-led initiatives are not sufficient or result in significant market failures.

Information concerning the quality of execution venues

A similar approach would make sense regarding the availability, comparability and consolidation of information concerning the quality of various execution venues.

Level 3 Committees Joint Work

AFEI has long supported the coordination efforts of CESR, CEBS and CEIOPS. The areas identified in CESR's consultation paper are relevant although, here again, it might be necessary to prioritise to focus on areas which will create the most complex issues for the industry. Our main concerns here are to facilitate implementation, ensure consistency of the rules and avoid duplication.

MiFID Consultative Working Group

AFEI welcomes this initiative which would help to identify the practical issues arising in the implementation of MiFID in the different countries. Work of the Group should start early. More generally, we urge CESR to work in close cooperation with the industry for all aspects of its Level 3 work.