

CESR

6 March 2007

EAPB position on CESR's call for evidence on non-equities markets transparency

The European Association of Public Banks (EAPB) represents the interests of 25 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%.

The EAPB would like to thank CESR for the opportunity to comment on its call for evidence on non-equities markets transparency. The EAPB would very much appreciate CESR considering these comments and taking them into account.

Before answering the six specific questions CESR poses, the EAPB would like to make some general remarks.

1. Initial remarks

The market for cash bonds is of great importance due to the substantial volume it represents. The EAPB therefore welcomes that the initial limited fact-finding exercise in relation to cash bond markets has been extended through this second tranche of technical advice requested from CESR. However, the result to be achieved should remain open. No regulation should remain an option even though an in-depth assessment is carried out.

It is generally accepted that the European bond market is working efficiently and is, already today, integrated to a large extent. The latter is one of the reasons for which no direct comparison can be drawn from the MiFID provisions applicable to shares for the bond markets.

Furthermore, we take the view that it should be up to the legislator to found regulatory interventions through well-established market failure. In any way, it is not the task of market participants to prove the functioning of markets by providing market specific and detailed indications.

Incidentally, we refer to the position paper submitted on 15 September 2006 to the European Commission. We did not repeat the arguments in this paper in order not to re-submit responses already given to the Commission, as requested by CESR. However, the responses submitted in September last year remain valid.

2. Specific Questions

1) Does CESR consider there to be convincing evidence of market failure with respect to market transparency in any of the instrument markets under review?

The EAPB does not see a market failure in any of these markets. Yet, in compliance with the exigencies of investors, transparency in the markets for cash bonds is at a very high level.

The level of transparency to some extent differs in different market segments, e.g. between government bonds, corporate bonds as well as high yield bonds. This mainly depends on factors such as liquidity. However, there is no general lack of transparency in these markets. The degree of price information in all of these segments, retail as well as wholesale markets, is sufficient.

If at all, inefficiencies through fragmented markets could only be established in the case of listed securities. In the area of OTC traded bonds a variety of information tools is in place to inform investors about current prices of cash bonds.

Eventually, banks are committed by legal obligations regarding fair prices in their trade business.

2) What evidence is there that mandatory pre- and post-trade transparency would mitigate such a market failure?

Given, that no market failure has been detected, we are unable to answer this question.

3) To what extent can the implementation of MiFID be expected to change this picture?

First of all, the obligation for banks to offer fair prices will be enhanced by the MiFID best execution provisions.

Furthermore, MiFID might provide incentives to come up with self-regulating measures where needed: If the pre- and post transparency provisions provided for in the MiFID for shares prove to be positive, the market will react and extend these provisions to other asset classes as well. Also the provisions with regard to “best execution” could form an incentive to extend transparency to other asset classes. Individual trading platforms could offer additional transparency to attract more business.

However, in all these cases it should be clear, that the absence of market driven measures for additional transparency does not automatically imply a market failure, but might indicate that no supplementary transparency is needed.

4) Can CESR indicate and describe a significant case or category of cases where investor protection has been significantly compromised as a result of a lack of mandatory transparency?

The EAPB is not aware of any cases where investor protection has been significantly compromised as a result of a lack of mandatory transparency.

5) Could it be feasible and/or desirable to consider extending mandatory transparency only to certain segments of the market or certain types of investors?

Even if the Commission would substantiate market failure for some specific market segments, a regulation of these market segments should not follow automatically. The interdependence of the different market segments is very tight and complex. The regulation of a single market segment could have a negative influence on the total market, even if the regulation of the market segment in question would seem sensible.

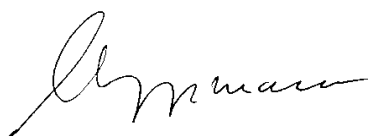
6) What criteria does CESR recommend should be applied by the Commission in determining whether self-regulatory solutions are adequate to address any of the issues above?

If at all the Commission comes to the conclusion that market failure prevails in the cash bond market and counteractive measures have to be taken, self-regulatory solutions should be favoured. We believe that self-regulation would strike the right balance of costs and benefits and would have a more positive impact on market efficiency than legislative measures would have.

Attention should also be paid to the rapid technical developments. Continuous changes e.g. in the support of electronic market information regarding timelines and scope of information will make legislative provisions obsolete shortly after their adoption. Self-regulatory measures are far more flexible in this regard.

The market participants, together with the Commission, could develop and agree upon certain basic principles which have to be observed. The final form of the self-regulatory measures could be elaborated by the industry on its own, leaving it to the Commission to monitor the compliance with the basic principles.

With best regards,

A handwritten signature in black ink, appearing to read 'Schoppmann'.

Henning Schoppmann
EAPB

A handwritten signature in black ink, appearing to read 'Hemetsberger'.

Walburga Hemetsberger
EAPB