



Rome, 17 gennaio 2007

Our ref: Prot. N. 20/07

Response to CESR public consultation on the use of reference data standard codes in transaction reporting (Ref: CESR/06-648b)

Assogestioni¹ thanks CESR for the invitation to express its comments on the use of reference data standard codes in transaction reporting. In relation to the consultation questions, we agree that CESR proposed list of chosen standard codes for the exchange of transaction reporting between Competent Authorities contains all relevant standards as they are already widely used within the EU industry (in Italy, for example, the standard is the ISIN code).

However we regret to acknowledge that on this occasion CESR has decided not to consult the public on the other very important issues in relation to transaction reporting obligation requirements which were identified as priorities in its MIFID Level 3 2006/2007 Work Programme, and specifically on which subjects are required to report details of transactions.

MIFID Transaction reporting requirements

In this response, we therefore wish to stress the importance for the industry that CESR provides clarification as soon as possible on the meaning of the term “execution” in relation to a transaction contained in art. 25 (3) of Directive 2004/39/EC (“MIFID Directive”) and, in particular, in relation to its application to investment managers.

On this point, we believe that the transaction reporting obligations imposed by art.25 of MIFID Directive should not apply to asset management companies when they use an intermediary or deal on own account utilising a sell side firm. In fact, art. 45 (1) of the implementing Directive states in the context of best execution that when an asset manager uses an intermediary for the execution of a client order, it is not performing the execution but it is “*placing orders with other entities for execution*”. It follows that the intermediary and not the asset manager is the subject that has the transaction reporting obligations. On the other hands, asset managers can be said to “execute a transaction” in the sense of performing it only when they: a) cross a transaction internally without utilising a broker; or b) trade directly with another asset manager.

¹ Assogestioni is the Italian national association for the investment fund and asset management industry and represents the interests of 148 members who currently manage assets valued over 1.000 billion euro. Our members are both directly and indirectly affected by the issues involved in the implementation of MiFID regulations.



This conclusion is further supported by the strong practical consideration that multiple reporting - although not expressly excluded by MIFID Directive - is not necessary to achieve its goals and that a duplication of transaction reporting obligations would impose unnecessary high costs on regulators, the industry and investors.

Furthermore, we would like CESR to consider the important issue of limitation of liability in case of delegation of transaction reporting according to art. 25 (5) of MIFID Directive: when an investment firm delegates transaction reporting to a third party, it is of utmost importance to define and limit their liability because it would be impossible for the firm to check all the transaction reports of the delegated subject. We therefore invite CESR to provide guidelines to clarify that when an investment firm takes reasonable steps to verify the compliance by the third party with whom it has a delegating agreement in place, the investment firm must be deemed to have fulfilled its transaction reporting obligations under MIFID.

Finally, in order to avoid the risk of double reporting in light of the rule contained in art. 32 (7) of MIFID Directive, we invite CESR to provide guidance also on transaction reporting obligations in cases of trading outsourced abroad to a specialised entity within a multi-national group.

We hope that our comments will be of assistance to CESR for the implementation of its MIFID Level 3 Expert Group - 2006/2007 Work Programme and remain at your disposal for any further comment or clarification.

The Director General