

11 September 2006

Mr Fabrice Demarigny
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Dear Fabrice

**RESPONSE TO CESR'S CONSULTATION PAPER: "CESR WORK PROGRAMME
ON MIFID LEVEL 3 WORK"**

The IMA¹ would like first of all thank you for the opportunity to comment on CESR's draft work programme. It is a vast programme and will indeed be a challenge for CESR to meet all the planned deadlines. Therefore clear prioritization of issues is necessary. In IMA's view the key priority is to get the single market working, i.e. issues related to clarifying the functioning of the passport of investment firms should be dealt with as high priority.

General comments

Reaching consensus on MiFID Level 1 and Level 2 has been a long and challenging process for both the European lawmakers, regulators and the industry. IMA therefore urges CESR members not to open up issues that have been previously agreed.

We also want to stress that CESR should avoid causing uncertainty for markets by publishing new guidance during the implementation period reserved for the industry between finalising of the national rules in January 2007 and the coming into force of those rules in November 2007. Also the national regulators are under extreme pressure to deliver on the 2007 dates. Therefore, any discretionary work prior to November 2007 should only be a matter for CESR if a very clear need has been identified. At the moment we are not at all convinced that all the areas covered under section III (*Other areas of work*) would warrant further work by CESR.

¹ The Investment Management Association (IMA) represents the UK-based investment management industry. IMA members include independent fund managers, the asset management arms of retail banks, life insurers, investment banks and occupational pension scheme managers. They are responsible for the management of about £3 trillion of funds based in the UK, Europe and elsewhere, including authorized investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles.

Any CESR decisions produced after January 2007 will be increasingly difficult to incorporate. It is therefore more important that CESR's process is not rushed. CESR should allow good time for consultation (taking into account that all the investment firms are very busy with MiFID implementation), and the date of implementation of any changes should be far enough ahead to allow firms to implement MiFID properly, to allow that to bed in, before making any further change. On that basis we think that there are too many issues with a deadline in 2007, a number of which fall into the "other discretionary" category, and which therefore are not regarded as "necessary for the entry into force of the new measures".

We have to say that we do not find the structure of the document very clear and easy to understand. The four work streams identified in the introduction do not seem to coincide with the categorisation of the actual work programme into three categories. Not fully understanding the drivers for each category makes it more difficult to comment. In most cases little or no detail is provided so it is difficult to take a view on whether such work is needed and if so by when.

It is extremely difficult to know at this stage whether it is more important for CESR to do something for example on conflicts of interest as opposed to contingent liability transactions for retail clients. Therefore we believe that the work programme should not be 'carved in stone'. CESR should rather continuously monitor where divergences occur in national implementation which effectively hinder the proper functioning of the single market and therefore require coordinated action by CESR. In our view CESR should re-visit its priorities in 2007, giving market participants again the possibility to comment and raise possible issues.

We want to stress the major importance of the issues concerning the so-called substitute products as referred in the draft work programme. IMA strongly supports CESR working together with CEIOPS and CEBS towards a level playing field in the distribution of different financial products. This is a crucial issue which should be prioritized and not delayed until 2008. While there are often reasons for a differentiated approach at the level of product regulation, we believe that it is important to ensure that competitive distortions do not arise particularly in relation to the disclosure of costs and the description of the risks of the product.

IMA's detailed comments (in the order the issues appear in CESR's draft)

Outsourcing/ Internal governance

We are not convinced that there is a need for these issues to be completed by the indicated deadlines (Q3/Q4 2006 and Q1 2007 respectively). Both areas would improve from a more leisurely review with the benefit of hindsight, to wait to be able to identify the actual conflicts, to see if they are real or semantic - rather than trying to issue guidance immediately before firms are implementing on the existing information.

Functioning of the passport of investment firms

This topic should be addressed as soon as possible, and should cover the determination of which competent authority (i.e. home or host State) is responsible for supervision of which MiFID obligations in the cases of cross border provision of services via a branch.

Best execution

IMA strongly opposes CESR providing guidance on best execution in the middle of the time reserved for the industry to implement the national requirements (Q2/Q3 2007 as planned). This could in theory be done by January 2007, but since it is hardly possible to meet this deadline, CESR should postpone this work until 2008 and at that point consider whether there is still a need to do it.

Inducements

In IMA's opinion CESR's work on practices of 'softing and bundling' should wait till after November 2007, as only by then will firms have established and finalised their execution policies.

Publication and consolidation of market transparency information

IMA strongly supports including this issue in the work programme and agrees with the suggested timing.

Common procedures and formats for the calculation and publication of data

IMA strongly supports including this issue in the work programme and agrees with the suggested timing.

Transaction reporting

The transaction reporting issues should either be concluded by January 2007, or be delayed post implementation to see how they bed down. Doing work during implementation is the worst of both worlds as this area is likely to require high systems spend, on the part of firms, which could be wasted. We would suggest that CESR works on items (3) and (4) for Q1 2007 (rather than Q2 and Q4) and the rest be handled in Q3/Q4 2008, reflecting our assessment of the relative priorities for these issues.

We would be happy to discuss any aspect of our response with you if this would be helpful.

With my best regards

Jarkko Syyrilä
Head of European Affairs