



Deutsche Börse Group

Deutsche Börse's Response
to
CESR's
Public Consultation

on the draft MiFID workplan for Q4 2007/2008

Frankfurt / Main, 19th November 2007

Deutsche Börse Group welcomes the opportunity to respond to CESR's consultation on the MiFID work programme for Q4 2007/2008. We are convinced that CESR's work on MiFID after the entry into force and harmonised supervision in the European Union and selected EEA Member States is a crucial determinant for ensuring an appropriate application of MiFID provisions throughout the Single Market. Therefore, the success and benefits of MiFID for the European financial market are interdependent with the future work of CESR as a European wide body of supervisory coordination.

The CESR work programme presented in this consultation generally reflects the necessary reviews as required by MiFID Level 3 and MiFID implementation during the next year. The expected Commission's mandates for CESR's advisory role are comprehensive and the related work to be performed by CESR is broad.

We take the opportunity to point out the approach used by CESR in Level 3 consultations so far, consisting of open and transparent consultations and public hearings. This approach has proven of value for gathering information on the subject of analysis right at the source of the market and has turned out to be an important instrument of communication for CESR in demonstrating to the market which direction CESR intends to take. We understand that CESR will continue to apply this approach and the topics listed in the pillars of the work programme will each be subject to the same transparent consultation procedure.

With regard to the content of the upcoming work plan of CESR, we have the following suggestions for issues which may need further clarification and reconsideration when finalising the work programme:

- In general, the quantitative criteria laid down in MiFID should be revised and adjusted to account for possible market structure changes. Exemplified by the table 4 of Annex II of the Implementing Regulation, re-examination is important and necessary to account for appropriateness of the thresholds for delayed reporting which might change in the course of time. Since sophisticated IT for Trade Reporting services is built on this table and trade reporting channels have been working on its development for several months, any changes in threshold values for delayed publication of trade data requires a sufficient amount of time for adjustments of the IT structure employed. Therefore any changes in these threshold values should be discussed between CESR and the market participants and notified early enough to give the industry time for adjusting their systems.
- We appreciate CESR's aims to conduct further work in the area of MiFID implementation by markets and intermediaries and support CESR's opinion of the high importance of the MiFID markets regime. However we are surprised by CESR's decision to attach only a medium priority to the thematic work related to intermediaries. On the one hand, it is exactly those provisions of MiFID that are intended to provide benefits to the end clients directly and ensure that they receive greater choice and stronger protection. A proper

enforcement of these provisions would result in end investors having confidence in and providing more funds to the market. On the other hand, several provisions which affect intermediaries are either consciously left ambiguous or are subject to discretion exercised by Member States, which implies that an uneven implementation and application of these provisions might cause disadvantages to end investors. We recommend CESR to evaluate the intermediaries field of work as equally high in priority as the markets field, since it relates directly to investor protection and therefore represents a cornerstone of the MiFID framework. Exemplified by best execution, there is a trend that some intermediaries neglect the importance of the best execution factors speed and likelihood of execution and settlement and hence neglect the liquidity aspects as well as the implicit costs of execution, while attaching importance only to explicit costs of execution for retail orders. This cannot be in the interest of the end client relying on its chosen intermediary to provide her with best execution. There is a duty for the Competent Authorities to act as Standard Setting Bodies and react to future changes in the market participants' behaviour vis-à-vis the end client. We do not believe this can be achieved if CESR views the intermediaries area of work of lower than high priority. In addition, we recommend CESR to review intermediaries work on an ongoing basis as well, since these provisions will require time to get established and developed accordingly.

- Acc. to Art. 65 (2) MiFID the Commission is required to present a report to the Parliament and to the Council on the application of Article 27, which will be one of several mandates given to CESR and is assigned, as correctly recognized by CESR, a high priority status. We understand that by the time of now CESR is unable to give detailed preview of how this work will be done as the mandate to CESR has not been submitted yet. Nevertheless, we would welcome if CESR would include in the work programme an explanation of what factual issues CESR has in mind that are associated with systematic internalisation.
- Finally, in the context of further work we would like to add that we support an on-going assessment of MiFID markets regime, since market structure will change over time and should be assessed accordingly in order to identify whether the changes are attributable to MiFID. However, we think CESR should take into account that the experience with markets in Q4/2007 is limited, in Q1 2008 it is presumably not better as several Member States have transposed MiFID either by the very entry into force, absorbing the entire time intended for the industry to prepare, while some Member States have not even indicated the date of transposition into the respective national law. It could be challenged whether conclusions drawn from this analysis by CESR at the proposed time are representative or indicative for the operation of the MiFID markets regime. Beyond that, we see a need for clarification of the specific underlying goals CESR has in mind when analysing the operation of MiFID markets regime and what consequences this assessment will entail.

We would be thankful to CESR for taking into consideration the recommendations above before finalising its work programme and remain at disposal for further discussions.