ABI position on CESR consultation paper on “The Passport under MiFID” (rif. 06-669)

9 February 2007

1. ABI appreciates the opportunity to provide its observations on CESR consultation concerning possible types of coordination between the various competent national authorities in order to ensure that investment firms carrying out *cross-border* activities are complying with the MiFID.

1. The timetable in the notification procedures (Arts. 31, par. 3, and 32, par. 6, of the MiFID Directive).

Question 1: As regards article 31 (3) do you agree with the above regarding what should be the date from which a firm can start to provide cross-border investment services in to the host Member State under a passport? If not, for which reasons?

ABI agrees with CESR's proposals as regards the date of notification.

Question 2: Concerning article 32(6) do you agree with the referral of the firm by the home regulator to the host regulator's or CESR's website when applying for a branch passport, when necessary?
Question 3: Do you agree with the proposal set out in paragraph 24?

ABI opposes the proposal set out in paragraph 24 since the requirement to meet "certain specific domestic commercial provisions" is superequivalent to Article 32 (6) and could be considered as a barrier to entry. We believe that the provision set out in Article 32 (6) for a firm to establish a branch and commence business within two months of submitting an application is pro-efficiency and realistic. Such proposal from CESR could potentially undermine this aim and endanger the smooth operation of the MiFID passport as a whole.

2. The division of responsibilities between the home Member State and the host Member State

Please see EBF (European Banking Federation) position.

3. Cross-border activity carried out by establishing branches and tied agents

Question 10: In the absence of a single public registry of tied agents, how might Member states enhance co-operation for the benefit of clients?

It would be helpful to easen the information accessibility to the public registries for instance through their insertion in the Authorities' web sites.

Question 11: Do you agree that there is a need for co-operation between competent authorities to help ensure that the requirements for good repute and possession of knowledge for tied agents can be met in practice? Do you agree that prior to registration the home Member State should be able to exchange information with the competent authority of the Member State where a tied agent is located to help establish that he has the required good repute and knowledge? Would any specific guidelines be helpful; if so, what are your suggestions?

ABI agrees with CESR approaches.

Question 12: To help resolve the practical questions on the supervision of tied agents, good co-operation between regulators will be necessary. CESR is minded to conduct further work in this area. Do you have any practical suggestions or comments that could help CESR fine-tune its approach for tied agents?

ABI agree with CESR intention to conduct further work in this area.

4. Multilateral cross-border trading

Question 13: Do you agree that a common approach on deciding what constitutes passporting for an MTF, as referred to in Article 31 (5) and (6) MiFID, by all CESR members will benefit investors and industry?
Question 14: Do you agree with the suggested criterion ("connectivity test") for deciding whether an MITF is passporting its services/activities? If not, should the criterion be adjusted or replaced or elaborated on more and for which reasons?

ABI agree with the CESR approach.

5. Cross-border activity carried out through the establishment of a representative office

Question 15: Do you agree with the arguments set out in this chapter?

ABI agree with CESR approach set out in this chapter even if we feel an indication of how this will work in practice between 30 EEA competent authorities, and importantly the degree of commonality between the practices, is necessary.

6. Transitional arrangements

Question 16: Do you agree with the proposal of mapping ISD to MiFID proposed in Annex 1? What changes or possible alternatives would you suggest?

ABI agree with CESR approach.