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CESR WORK PROGRAMME ON MiFID LEVEL 3 WORK
(REF. CESR/06-413)

COMMENTS OF EURONEXT

Euronext welcomes CESR's initiative to consult stakeholders on the details of its work programme for a new MiFID "Level 3" Expert Group. Preparing ground for convergent implementation of the Markets in Financial Instruments Directive is indeed an essential concern in order to achieve the harmonized legal framework for wholesale and retail financial markets, targeted by the Directive. It is of particular importance for Euronext, as a pan-European exchange operating in five different Member States, that the provisions of the Directive are applied consistently across Europe. Therefore, we are grateful for the opportunity given to comment on the areas identified by CESR where its guidance will be particularly helpful and where consistency amongst supervisors will be essential in the implementation. The comments provided hereafter consist both of general remarks and of a focus on the four issues identified by CESR in its work programme.

As a general matter, we agree that the issues identified by CESR are the right ones and have indeed to be considered by the regulators in view of the practical implementation of the MiFID in the various EU countries. We also agree with the level of priority settled to deal with such issues. Moreover, we would like to draw CESR's attention on two issues that, in our opinion, will have to be especially carefully considered in the Level 3 work at EU level. First, we see an important role for CESR in fostering actual implementation of MiFID and in particular in establishing mechanisms allowing implementation of the core principles of the directives in countries which will be late in transposing such directives. It is indeed key to ensure a high level of coherence in the transposition process. CESR should therefore be well aware of the state of transposition in the various countries at all stages, in order to monitor and assist in the consistent implementation of the Directive.

A second concern relates to the timetable for work at Level 3, which does not take sufficient account of the constraints faced in the practical implementation of the Directive by the industry. Indeed, given the technical/IT impacts of a number of MiFID's provisions, it is essential to give enough time to the industry to plan and implement the necessary technical developments for implementation. In that respect, we would like to highlight that some of the deadlines determined by CESR in its work programme do not allow the industry to prepare and be ready on time for the implementation of the Directive by November 2007 (please see details below in "4th stream of work").

1st category of Level 3 work identified by CESR: technical issues of operational importance where consistent implementation of the Level 1 and Level 2 legislative texts need to be achieved before their implementation to provide market participants with pan European strategies with greater certainty.

We believe that the issues identified by CESR in this first category for its Level 3 work are relevant and exhaustive. Calculations relating to market transparency, transaction reporting arrangements, aspects related to the functioning of the passport, as well as the publication and consolidation of market transparency information seem indeed to be the key subjects to be worked out to allow for a proper implementation of the Level 1 and Level 2 provisions of the MiFID.

Coordination at CESR's level will be essential in order to ensure a consistent functioning of the MiFID provisions relating to data, which are a cornerstone of the implementation of the Directive. In particular, an important point will be to ensure that the calculations are based on the same methods and encompass comparable parameters. This will especially be true for transparency data and for the period during which calculations will be based on Regulated Markets' (RM) existing data, since the notion of transaction may currently be approached in different ways - the various European RM indeed do not today necessarily use such data on a comparable basis.

2nd category of Level 3 work: other issues of a technical and operational nature, aimed at ensuring a convergent implementation of MiFID - not all necessarily to be tackled before the date of implementation of the new legislative framework.

In the "better regulation" context, we fully agree that it would be useful that CESR provides its assistance to the European Commission - upon request - in preparing the reports and reviews requested by the Directive and its implementing measures. In all cases, such requests for input by the Commission and the studies led by CESR in that context should follow a transparent process ensuring direct involvement of stakeholders. The industry should indeed always remain in a position to bring its expertise on these issues at all stages.

3rd stream of CESR's Level 3 work: foster greater cross-sector convergence, with CEBS and CEIOPS.

We concur to CESR's view that it is important to foster cross-sector convergence and to develop a coordinated work with CEBS and CEIOPS in that respect. In particular, it seems useful to work on avoiding duplication of constraints for firms with respect to reporting requirements. It will also be of interest to coordinate the work of CESR with the other committees on capital requirements for commodity firms.

4th stream identified for Level 3 work: other issues of a technical and operational nature.

We support CESR's intention to undertake further work that would appear necessary at Level 3 to ensure a convergent implementation of MiFID. Other substantial issues than the ones dealt with in the three precedent workstreams might indeed arise during the transposition process. Therefore, we encourage CESR to take into consideration, in those

circumstances, the views of market participants on the market failure, risks to investor protection or to the level playing field targeted by the MiFID.

To that end, we believe that the “implementation fora” that CESR foresees to create in parallel to the European Commission’s transposition workshops will represent a useful mean to discuss and identify the problems and obstacles to a smooth transposition and implementation of MiFID in all Member States. Such “implementation fora” should of course include industry stakeholders in order to tackle difficulties identified in practice.

Regarding the agenda settled in the Level 3 work programme of CESR, we consider that a number of deadlines set up are not appropriate nor realistic to allow for a proper practical implementation by the industry.

For instance, in relation to “best execution”, whereas the issues listed by CESR are relevant, we believe that the target date of Q3 2007 set up for this work is too late to allow the necessary industry action by 1 November 2007.

Similarly, as concerns “record keeping”, the deadline for the work on the minimum list of records to be maintained - i.e. Q1 2007 - does not allow to plan the required budgets.

Regarding transaction reporting, we believe that the deadline of Q3-4 2007 will also be too late. Indeed, to be able to offer such service, potential providers will need to know the rules/procedures and data requested much earlier than what is foreseen to be able to establish a business case, propose a budget, develop an offer and have their system agreed by the different market authorities by the implementation deadline.

As concerns “instruments reference data”, the target date of Q2 2007 is not realistic either, since it will not allow to establish and deal properly with IT and budget issues by November 2007.

Finally, it might be necessary for CESR to tackle a number of issues relating to the interpretation of MiFID’s provisions, with a view to ensuring that all national regulators approach such questions in the same way (e.g. what treatment for trades done off order-book and off the trading session, in terms of price/size control & delayed dissemination...).
