

ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

19. November 2007
Charlottenstraße 47
10117 Berlin
Tel.: +49-3020225-5350
Fax.: +49-3020225-5345
Az: 4673

Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

**Response of ZENTRALER KREDITAUSSCHUSS (ZKA) to CESR MiFID Level 3
Public Consultation on the draft workplan for Q4/2007 – 2008
Az.-ZKA: 413-EU-ISD**

Dear Sir or Madam,

the ZENTRALER KREDITAUSSCHUSS welcomes the opportunity to comment on the draft workplan for Q4/2007 – 2008 (Ref.: CESR/07-704) and it is our pleasure to enclose a document outlining our joint position. Should you have any queries regarding our comments, please do not hesitate to contact us.

Yours sincerely
on behalf of
the ZENTRALER KREDITAUSSCHUSS
Deutscher Sparkassen- und Giroverband



Dr. Thomas Schürmann



Dr. Arne Hertel

Enclosure

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VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Response of Zentraler Kreditausschuss (ZKA)¹ to CESR MiFID Level 3 PUBLIC CONSULTATION ON THE DRAFT WORKPLAN for Q4/2007 - 2008

Ref.: CESR/07-704

19 November 2007

¹ The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Pfandbriefbanken (VDP)*, for the mortgage banks. Collectively, they represent more than 2,500 banks.

I. General remarks

We welcome this opportunity to comment on the draft CESR MiFID 3 work programme for Q4/2007-2008. First of all we would like to point out that the European investment firms have made huge organisational and financial efforts in order to implement the Markets in Financial Instruments Directive (MiFID) in time. Having this in mind we ask CESR to avoid any kind of adjustments of existing provisions which are not absolutely necessary. While considering such adjustments, CESR should - in any case - take into account the possible costs associated with system changes as well as the time required to implement such changes.

II. Remarks on individual sections

We would like to comment on the working programme's individual sections as follows:

i) Mandates from the Commission/Work in connection with upcoming Commission's reports

We appreciate that CESR has placed high priority on the work that is related to the imminent EU Commission reports as provided for in the MiFID. As regards the MiFID report on the subject of telephone recordings, we would like to point out that this issue has been discussed in detail in the context of the MiFID's legislative process. In our opinion, the arguments which led to the waiver of such a duty are still valid and should be taken into consideration in CESR's work. In particular, we do not see a cost-benefit-ratio of such a duty.

As to CESR's recommendations to the Commission - especially according to transaction reporting and post-trade transparency - we additionally refer to our general remarks (see above under I.).

ii) Establishment of a CESR MiFID Q&A

The creation of a Q&A list along the lines of the Q&A for the Prospectus Directive could help to answer questions regarding MiFID's application. However, we disagree with CESR's deliberations with respect to two points. On the one hand, the preparation of the Q&A should involve a consultation process with the market participants. Appropriate involvement of market participants would help developing practice-orientated solutions. In contrast, as customers are not the intended addressees of MiFID, we believe that giving not only market participants but also consumers the possibility to submit queries to CESR would be a step in the wrong direction.

iii) Thematic work

In our opinion, the unspecific listing of various MiFID subjects requires further explanation. Under the title “Intermediaries”, it is not sufficiently clear which individual aspects should be further investigated as, for example, in the area of best execution and conflict of interest. Should CESR also consider amendments of existing standards, recommendations or guidelines regarding the areas mentioned therein, it should be kept in mind that the European investment firms have recently made huge efforts to implement the MiFID standards. An adjustment of existing provisions should therefore be avoided. In any case, while considering such adjustments, CESR should take into account the possible costs associated with system changes as well as the time required to implement such changes.

As regards the “Markets” section, we consider necessary an amendment of the work programme with respect to transaction reporting. CESR should prepare a list of all European investment firms subject to transaction reporting obligations. Investment firms highly depend on such a list to fully comply with their duties arising from MiFID. Field no. 20 (“counterparty”) in Table 1, Annex 1 of the Commission Regulation (EC) No. 1287/2006 requires the counterparty of the transaction to be identified. Where the counterparty is an investment firm, the description field no. 20 specifies that the unique code for that investment firm, to be determined by the competent authority to which the report is made shall be used. Therefore to fill in field no. 20 correctly, the reporting firm must be able to determine whether or not the counterparty is also an investment firm that is subject to MiFID. Pursuant to Art. 5 paragraph 3 of MiFID the Member States have to establish a register of all investment firms. This register shall be publicly accessible and is to be updated on a regular basis.

Since, in several Member States, such registers are at present not available to investment firms or not available in a suitable form, investment firms can not reliably ascertain whether or not the counterparty is also subject to transaction reporting duties. Hence, we would welcome CESR’s commitment towards making all registers that are required according to Art. 5 paragraph 3 MiFID accessible in the Member States. In order to allow efficient use of the data contained in the individual registers, it would be extremely important and helpful if CESR would draw up a machine-readable pan-European list of investment firms.

Such a register is also needed in order to fulfil the post-trade transparency obligations according to Art. 28 MiFID. Only with this register could an investment firm ascertain - in terms of Art. 27 paragraph 4 of the Commission Regulation (EC) No. 1287/2006 -, whether its counterparty is also

subject to the requirements of the MiFID. If this is not the case, the transparency obligations rest with the investment firm itself.

iv) Supervisory work

We welcome closer co-operation between CESR members in the performance of their supervisory functions.

v) On-going technical work in the implementation of the Level 2 Regulation on markets

We agree that CESR's further work towards the implementation of the MiFID Level 2 Regulation should be given high priority.
