



BRITISH BANKERS' ASSOCIATION

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Dear M. Demarigny

RESPONSE TO CESR'S CONSULTATION ON ITS DRAFT WORK PROGRAMME FOR MIFID LEVEL 3

Introduction

Thank you for the opportunity to respond to your consultation paper on CESR's draft work programme for MiFID Level 3 work, aiming to ensure convergence amongst supervisors.

The British Bankers' Association represents more than 260 banks carrying on business in the United Kingdom. The majority of these banks come from outside the United Kingdom and our members cover the whole range of investment services. The BBA is the principal banking association in the UK and speaks for banks representing 95% of the banking assets held in the UK.

Scope of the Work Programme and Overview of Response

As you will be aware, the BBA has had a significant involvement in lobbying both the EU and UK institutions regarding the development of both the Level 1 and Level 2 MiFID legislation. Our involvement has been both as the BBA individually, and also working jointly with trade associations from other EU member states through the FBE.

In general terms, we are concerned that there is a risk that the Work Programme may be overambitious in scope. It is clearly essential that day-to-day application of MiFID must take place in a convergent manner across all EU member states, in order to fulfil the purpose of the Directive, but in view of the fact that member states must implement MiFID by the end of January 2007, and the industry by 1 November 2007, we consider that CESR needs to focus on a reasonably small number of genuinely pan-European issues.

If the scope of Level 3 work is excessive, then the benefits of MiFID – especially in the short and medium terms, will be greatly diminished, given the resource that industry will have to commit in order to implement detailed measures. This is especially pertinent given the tight timescales that are in place (as discussed further below).

We would therefore urge CESR to re-examine its proposed Work Programme, and to take into account the views of industry, in order to reduce the proposed Level 3 work.

We consider that CESR's immediate priority over the next six months should be to focus on the four issues noted in paragraph 1 of the CESR paper.

We consider that issues (i) to (iii) are particularly important. Issue (iv) is important, but the solution sought should be an industry solution involving data distributors and firms, rather than a system built by regulators.

Our view is that the chief initial priorities for CESR should be:

- Seeking to ensure the minimisation of transaction reporting duplication, together with clarity for banks in to whom they should report and by which means; and
- Seeking to ensure clarity regarding the supervisory arrangements that will be put in place in order to manage home/host supervision of banks operating cross-border, especially in regard to branch operations.

Specific proposed work categories that are significant to our members are discussed in more detail below.

Timescales

Given the tight timescales for implementation of MiFID across the member states, the overarching view of our members is that CESR should focus on a smaller number of issues than are set out in the draft work programme.

Otherwise, there is a risk of creating a potentially unmanageable workload, that would be a considerable drain on the resources not only of CESR itself but also of the industry.

In particular, our view is that CESR should avoid significant fresh policy initiatives during 2007, which was the time set aside for industry implementation. Otherwise, there is a significant risk that individual firms as well as member states will fail to implement MiFID in accordance with the timescales that have been agreed.

This would clearly cause considerable uncertainties in relation to the operation of the pan-European passport for both investment firms and regulated markets, therefore essentially defeating MiFID's primary function.

Work categories

In relation to the categories of work that you set out in your draft programme, we are in agreement that the most important area of Level 3 work should be technical areas of operational importance that need to be finalised before MiFID implementation.

Home/host passporting issues

We consider that it is important for CESR to work on this issue and to give it a high priority. The focus should be on how this will work operationally between regulators – particularly if different member states implement at different times.

Market transparency calculations

There are certainly other areas that would benefit from input from CESR. These include calculations relating to market transparency, specifically the definition of “liquid shares” and that of “block sizes”. These have yet to be defined at either Level 1 or Level 2, and further clarity would be beneficial, especially to encourage cross-border transactions.

Objective, pan-European definitions of these terms would help to encourage the development of a pan-European securities market.

Transaction reporting arrangements

There is a need for clarity about what the reporting obligations are, who should report to whom, and in particular for these obligations all to be turned on simultaneously. Ideally, so far as possible, existing reporting systems should be used and work should be done to avoid duplicative reporting.

Co-operation with other bodies

You refer in the consultation paper to “Level 3 by cascade” work, that refers to work that CESR is mandated to conduct under Level 2 measures and/or input to the Commission in the preparation of reports and/or reviews requested by Level 1 and Level 2.

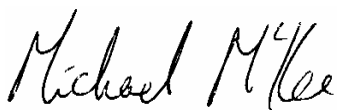
We agree with your viewpoint that CESR should not carry out work in these areas unless there is an express and specific request from the Commission, and that the areas of work are considered by CESR members to satisfy the criteria contained in the report of the Priorities Task Force.

In addition, we are supportive of your intention to liaise on a regular basis with CEBS, and to correlate your work with theirs where possible and appropriate.

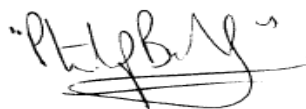
Finally, we strongly believe that CESR should maintain an ongoing dialogue with trade associations and individual firms in each member state, in order to ensure that your work programme is practicable and will not potentially damage the efforts of industry to implement MiFID to the tight timescales that have been put in place.

If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely



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