

PUBLIC CONSULTATION

CESR MIFID Level 3 Expert Group Draft Work Plan for Q4/2007 – 2008 (réf.: CESR/07- 704)

Comments by the French Association of Investment Firms (AFEI)

The French Association of Investment Firms (AFEI) represents investment service providers which are active in France. Its members comprise more than 120 investment firms and credit institutions authorised to provide investment services. Approximately one-third of AFEI members are subsidiaries or branches of foreign institutions.

The Association is involved in all major public policy discussions impacting its members, at national, European or international level. MiFID has been our primary focus of attention for a number of years now. We have been heavily involved in the discussions concerning the transposition of the European legislation in France and busy helping our member firms getting ready for the implementation deadline. For the future, we will follow with great attention all the developments linked to the MIFID entry into force. We therefore welcome CESR's initiative to consult on its next work programme on MIFID Level 3 work and are grateful for the opportunity to provide comments.

General Observations

We note that the areas chosen by CESR for its work programme are all relevant and that most of them are high priority issues. That said, we think that an effort to organise those priorities issues by order of importance would make the workplan clearer and easier to understand.

Thematic Work

- As already mentioned, almost all the areas have been ranked as high priority, with the exception of "Intermediaries", considered as a medium priority. We believe a distinction should be made between the various sub-areas of this work area. Admittedly, the issues of complex or non-complex instruments and retail client information could be considered as a medium-level priority because they concern market segments in which there are no real problems of competitive distortion for the time being. But this is not the case for issues relating to best execution, conflicts of interest, soft commissions and unbundling, suitability and appropriateness, and outsourcing to non-regulated entities, which must be given high priority.
- AFEI points out that CESR should pay special attention to the question of defining investment advice, which it not mentioned in the consultation paper. Important issues such as the circumstances in which this service is provided and the definition of the investment's objectives of the client need to be addressed.

Establishment of a CESR MIFID Q&A

- AFEI supports the comments made by LIBA and others joint Associations on the questions that may arise from the establishing of a questionnaire and which are the following: a) How would the Q&A relate to the Commission's Q&A ? b) What would be the status of the Q&A? and, c) How would CESR determine the answers to the questions that markets participants pose?
- The questionnaire mechanism seems to be confined simply to markets. This is not clear from the table in the annex to the workplan. For AFEI, it should cover a broader scope that includes intermediaries in particular.
- Introducing a Q&A system is useful because it will contribute to harmonising regulators' policies across a range of issues. However, AFEI points out that it is vital to set up a comprehensive and systematic process of consultation with the industry in order to identify all the questions that are likely to arise. Further, when CESR launches these consultations, participants should be given sufficient time to respond, which is not the case at present.

Final observation

With a view to harmonisation, AFEI suggests that CESR should publish a document identifying the countries that have incorporated its recommendations and guidelines into their legal environment.

