

CESR/06-413: CESR WORK PROGRAMME ON MiFID LEVEL 3 WORK – ABI RESPONSE TO CESR CONSULTATION PAPER

1. Members of the Association of British Insurers are large institutional investors managing own funds worth some £1.2 trillion as well as third party funds. Our members have a strong interest in the integrity and efficiency of the financial markets and in promoting the confidence of the investing public. In addition, the Financial Services Authority in the UK is planning to apply some of the conduct of business rules in MiFID to life insurers. Matters relating to MiFID implementation are therefore of fundamental importance to the ABI.

General comments

2. We welcome the opportunity to respond to CESR's consultation on MiFID Level 3 work. The role of CESR at Level 3 in ensuring coordinated implementation and regulatory and supervisory convergence is, in our view, a fundamental aspect of successful MiFID implementation. CESR's focus should consequently shift away from providing advice to the Commission on new legislation to monitoring the degree of convergence.
3. We support many of the proposals outlined in the consultation paper and look forward to commenting on CESR's future work. However, we have some concerns about the scope and timing of the proposed work streams.
4. The timetable for MiFID transposition and implementation is very tight. Domestic regulators have until January 2007 to transpose the Directive into domestic law. Firms have until November 2007 to implement MiFID provisions, some of which are likely to have a significant impact on their resources and require extensive system changes. Regulators should avoid adding to the burden on MiFID firms during this critical period.
5. We would therefore suggest that CESR's immediate focus should be the technical issues of operational importance outlined in Section 1 and the non-discretionary work in Section 2. Other streams of work, principally the discretionary work proposed in Sections 3 and 4, should be delayed until 2008 and beyond.
6. This is because we believe that the timing of CESR's work should fit in with the firms' implementation timetable. It would be both costly and potentially confusing if firms had to respond to a new stream of CESR-

produced initiatives during 2007 in addition to the considerable task of implementing Level 1 and 2 provisions.

7. It is also likely that a number of pan-European issues will emerge during the implementation period that will fall to CESR to address. It is here that its role as a mediation mechanism is invaluable and we are concerned that its ability to fulfil it may be constrained by a timetable already full of what are, in some cases, policy issues.

Specific comments

Technical issues of operational importance

8. We agree with CESR that issues listed under Section 1 are the ones that need to be prioritised and that work on them should start as soon as possible. This is particularly true for 1(iii), as problems around the functioning of investment firms' passport have to be resolved prior to the implementation deadline. CESR's work should specifically address the possibility of uneven implementation by member states and the circumstances in which a firm's operations may be restricted as a result.
9. We also agree that the calculations relating to market transparency need to be agreed at EU level as soon as possible. Common definitions of liquid shares and block sizes are the key building blocks of cross-border trading. Inconsistent implementation and uneven playing field in this area would discourage such trading and undermine the main aims of MiFID.
10. We welcome the proposed clarification of transaction reporting requirements. Firms engaged in cross-border trading will need to know the scope of their obligation and the most cost-effective way of fulfilling it.
11. Because firms will need plenty of time to make changes to their systems and because they will not want to do so twice in order to comply first with domestic and then with EU provisions, an early indication of changes to both market transparency calculations and transaction reporting arrangements would be invaluable. We would therefore suggest that CESR considers bringing forward its timetable if at all practicable.
12. We would also welcome further details on the work proposed under 1(iv). In our view, any solution in this area needs to balance competition in trade publication provisions through private sector involvement with the need for consistent and timely information through regulatory prescription.

Level 3 “by cascade”

13. We welcome the clarification of the proposed Level 3 “by cascade” work. We appreciate that the nature of this work is non-discretionary but would urge CESR to attempt to limit its initial scope in its dialogue with the Commission. As already mentioned, firms should be given freedom to implement the Directive without having to simultaneously consider future changes. In addition, CESR needs to be given the space to pursue its role in monitoring convergence.

“3Level3” and 4 work

14. Sections “3Level3” and 4 are causing our members most concern at this stage. Although many of the issues outlined warrant consistent and coordinated implementation, we are concerned that the broad scope of what is proposed risks detracting from what we understand to be the role of CESR at Level 3 by re-introducing wider policy issues.
15. We welcome CESR’s proposal to establish informal implementation fora to exchange views on practical implementation issues. We suggest it should engage closely with the industry, which is well placed to advise on the issues that need to be addressed by CESR. We also support dialogue between CESR, CEIOPS and CEBS but suggest the joint work programme listed may be too broad in scope.
16. CESR will have an ongoing Level 3 responsibility to monitor regulatory and supervisory convergence beyond 2007. It is only after the implementation that the regulators will be in a position to fully assess the degree of harmonisation and the impact MiFID will have had on domestic and cross-border markets. This will also provide a basis for any cost-benefit analysis of future proposals. We fear that, unless CESR limits the number of items on its work programme, it may not be in a position to devote enough attention to this core task.