

19 November 2007

Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Dear Fabrice

CESR MIFID LEVEL 3 WORK PLAN FOR Q4/2007-2008

The IMA¹ would like to thank you for the opportunity to comment on CESR's draft workplan on MiFID.

Generally the workplan seems well considered. What is not clear for us is how all this work will be resourced. We make this comment because the programme has many items of high priority bunched in to quite narrow time slots. The suggestions we make below are therefore made in the context of ensuring that the work that is done does not have to be rushed or skated over because of a too heavy a work programme.

According to the draft CESR's focus would move away from removing obstacles for business conducted on a cross-border basis to supervisory functions and supervisory practices. We understand that CESR wants to improve the cooperation of its members in the exercise of their core supervisory functions. However, in our view a key priority for CESR still in 2008 will need to be getting the single market working. CESR should therefore focus on key aspects relevant for supervisory convergence and on ensuring a consistent implementation of MiFID across Europe. Divergent practices and interpretations of national regulators will, as always, be an additional cost for cross-border businesses and not beneficial to consumers either.

¹ The Investment Management Association (IMA) represents the UK-based investment management industry. IMA members include independent fund managers, the asset management arms of retail banks, life insurers, investment banks and occupational pension scheme managers. They are responsible for the management of about £3 trillion of funds based in the UK, Europe and elsewhere, including authorized investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. IMA members undertake no proprietary trading: their entire business is conducted on behalf of clients.

Establishment of a CESR MiFID Q&A

IMA supports the need for CESR, as necessary, to give clear guidance to the industry on the MiFID obligations as a part of its Level 3 work. However, CESR needs to be aware of the problems the industry has had with the Commission's Q&A. These have, at times, caused some confusion in the markets due to the lack of coordination with previous statements made by the Commission/ CESR and due to the rather random nature of some of the questions posed. The industry has not overall found the Commission Q&A very helpful in assisting them with implementing MiFID. Therefore the IMA encourages CESR and the Commission to work closely together to ensure the clarity of the guidance given by the Q&As.

CESR would do well to sound out the market, as well as its membership, before deciding on which topics to produce Q&A. The responses should be clear and leave no room for ambiguity even if there are divergent interests involved amongst CESR's members. In view of the experience of the Commission Q&As, CESR should ensure that the questions which they propose to answer make sense and are relevant before answering them. To put it another way, CESR should edit the questions as well as providing the answers.

Work in connection with upcoming Commission's reports

Clearly CESR have no option other than to do the work in this section and therefore we agree with the programme set. Regarding telephone taping the FSA is proposing to bring in a regime in the UK ahead of the CESR regime. We would therefore encourage CESR to deal speedily with this mandate. It is important that these two pieces of work are coordinated to avoid UK firms having to implement things twice. We are concerned that firms will have to implement one regime, and then change it soon afterwards.

The MiFID Art. 19(6) list of the equivalent 3rd country markets does not have a date indicated. Early publication of this information would assist firms greatly.

Possible areas for thematic work

The Intermediaries area of work seems to us to be starting much too soon. It requires local regulators to see what is happening on the ground and report back on this before CESR can really get going. Some countries will not even have implemented by the time that CESR is supposedly starting work. We would suggest this work to be made with High priority, but not commence until Q1 2009.

The exception is on the area of conflicts of interest. The requirement to deal with conflicts of interest is an absolutely critical part of the changes brought in by MiFID, and this should be separated out from the rest of the Intermediaries work, given High priority and commenced Q2 2008, that is, on the current programme. There is no need to wait to deal with this work - either firms will have got on with it or not, so any regulator should have no difficulty in visiting its firms to do a review in Q1 2008, with the intention of inputting to the CESR work in Q2. It is critical to the quality of service received by investors in the markets that these provisions have been comprehensively and qualitatively dealt with, otherwise the other MiFID conduct of business changes will be undermined.

Of the other issues raised we believe that the areas of suitability and complex versus non-complex instruments are of higher importance as compared to the other topics.

Moreover, we would like to recommend that the best execution work should be attached also to the Markets stream of work, as market structure in the end dictates quality of execution and the ability to demonstrate quality of execution. Otherwise, the valuable work that could occur on best execution could be lost in a morass of checking consents, policies and terms of business, which whilst interesting is of less significance.

Lastly, on the Markets area, we believe the timetable should be put back 6 months. Otherwise, CESR members will effectively be looking at what they have now, and will have allowed no time to see shifts and changes in markets that might be of interest to them. A point we would also make is that if this work commences Q3 2008, CESR members will have been receiving transaction reports for some time and might be expected to have a more comprehensive view of what has changed than they are likely to have immediately after MiFID implementation.

List of reportable instruments

We understand the reasons for CESR deciding not to provide a list of reportable instruments. However, we want to draw CESR's attention to the fact that this is causing significant problems for asset managers. The list would have tangible benefits as the only way asset managers can currently manage the risk of dual-listed instruments reporting is by over-reporting to their regulators and in some countries also paying for this. We would therefore ask CESR to consider whether providing this list could be added to CESR's work programme.

We would be happy to discuss any aspect of our response with you if this would be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jarkko Syyrilä', with a stylized flourish at the end.

Jarkko Syyrilä
Head of International Affairs