



ASSOGESTIONI

associazione del risparmio gestito

Rome, 19 November 2007

Your Ref.: CESR/07-704
Our Ref.: 681/07

Re: CESR's MiFID Level 3 Expert Group - Public Consultation on the draft workplan for Q4/2007-2008

Assogestioni¹ wishes to thank CESR for the opportunity to comment on its draft work programme for Level 3 work under MiFID for Q4/2007-2008.

Overall, we find that the proposed definition and timing for future work on discretionary and non discretionary operational aspects of MIFID requirements are well identified and consistent with the industry's and regulatory need to achieve convergent implementation and application of the new regime across Europe. However, we seek further clarification of certain aspects of CESR's proposed work and stress the higher priority that ought to be given to certain areas of the thematic work.

1. Establishment of a CESR MiFID Q&As.

We agree in principle with CESR's announcement of the establishment of a MIFID Q&As mechanism provided that the Q&As will not be designed as an ongoing mechanism, constantly subject to revision and updating (similar to the European Commission's Q&As) and that they will be effectively restricted to providing market participants with responses for practical issues arising from the practical application of MiFID.

We recommend that CESR will not use the proposed Q&As to provide some general

¹ Assogestioni is the Italian national association for the investment fund and asset management industry and represents the interests of 148 members who currently manage assets valued over 1.000 billion euro. Our members are both directly and indirectly affected by the issues involved in the implementation of MiFID regulations.



and high level legal interpretation of MiFID provisions. In our opinion, Q&As provide an ideal tool for giving clarification on how MIFID rules apply to practical cases and should not address more general issues covered under the proposed areas of thematic work (best execution, conflicts of interests, soft commissions and unbundling, suitability and appropriateness, complex v non complex instruments, information for retail clients, outsourcing) which, we note, are also the proposed objects of future standards, recommendations and guidelines.

In particular, any issue arising in the context of MiFID /UCITS overlapping should be – according to the European Commission’s announcement made in November 2006 in the White Paper on enhancing the single market for investment funds published– the subject of a now long-awaited *vademecum* of the European Commission.

We further invite CESR to address in a public statement the problems created by the constantly updated and growing number of MIFID Q&As published by the European Commissions in order to clarify to market operators what are its views on their legal status and what is going to be their value in relation to CESR future MIFID Q&As.

2. Thematic work

We welcome CESR’s announcement of publication of guidelines, recommendations or standards in the areas of Intermediaries and Markets. Whilst we have no comments in relation to the proposed work schedule in Markets related areas (Q4/2007-Q1/2008), we ask CESR to upgrade the priority for the starting of its work on Intermediaries related areas from “medium” to very “**high**”.

Indeed, **best execution, conflict of interests, soft commission and unbundling, suitability and appropriateness, complex vs non complex instruments, information for retail clients and outsourcing to non-regulated entities** are all issues of extreme practical relevance for the industry which require urgent clarification at a time when MIFID has already been implemented. In particular, the European management industry needs guidance from CESR in those areas where no indication has been given before MIFID implementation.

We stress that CESR should not await too long before giving at least some sort of initial guidance to the industry in these fields, even though we recognise that any recommendation or guidance may have to be supplemented with responses in relation to practical issues arising from a consolidated (say at least 1 year-) period of implementation.

In addition, in consideration of the fact that all these areas of work relate to very relevant operational issues and affect important market practices, we hope that CESR will continue to undertake its constructive dialogue with the industry initiated this year through public consultations on inducements, best execution and records



keeping requirements. Accordingly we ask CESR that any future final recommendation, standards or guideline will be issued only after prior public consultations with all market participants.

Best execution. We believe that CESR ought not to limit (as stated in its May 2007 Q&A) any further work in this area to the issue of "demonstration of compliance" by starting evidence collection at least after one year of practical implementation of the MIFID rules (in November 2008). Further work in the form of an update of the already published Q&A is needed to solve some very relevant practical/operative issues that have not been clarified (by way of an example: best execution in cases of partial or total outsourcing of portfolio management; the role of research in the investment firm's policy; definition of non detailed list of execution venues).

Outsourcing of critical and important functions. We note that CESR has restricted its draft work programme only to the specific issue of outsourcing to non-regulated entities. We refer you to the remarks made on our behalf by Efama in its two letters addressed to CESR dated 5 March 2007 and 18 June 2007 and reiterate the need of our industry to be consulted in advance and to receive clarification on how CEBS guidelines for general outsourcing should be adapted to investment firms.

3. Cooperation with other committees of regulators.

We note that only the 3L3 programme for 2007 is available at the time when this consultation on future work on MIFID Level 3 measures takes place. In any event, we ask CESR to post on its website at least a notification of any public consultation undertaken by CEBS or CEIOPS relating to aspects covered by MIFID where it is CESR's final intention to adopt final guidance issued by those international bodies without further specific consultation with investment firms.

We have no observations regarding the issues and priorities set for the remaining main pillars of CESR work plan (i.e. supervisory work; on-going technical work for the application of the Level 2 regulation on markets).

We hope that our comments will be of help to CESR's continuing work on MIFID Level 3 measures and remain at your disposal for any question you may have.

The Director General