

ZENTRALER KREDITAUSSCHUSS

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BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
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**Comments
of the Zentraler Kreditausschuss (ZKA)¹
concerning the
CESR consultation paper
“Use of reference data standard codes in transaction reporting”**

Ref: CESR/06-648b

15 January 2007

¹ The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Pfandbriefbanken (VDP)*, for the mortgage banks. Collectively, they represent more than 2,500 banks.

I. General remarks

We would like to thank you for the opportunity to comment on the consultation paper presented by the Committee of European Securities Regulators (CESR) on 15 December 2006: “MiFID – Use of reference data standard codes in transaction reporting”. We also welcome that, on 8 January 2007, CESR held a hearing which offered an opportunity for dialogue between the regulators and market participants.

In general, we would like to remark that the present consultation paper covers only part of the unresolved issues with regard to transaction reporting. We would therefore find it highly constructive if the Expert Group in charge of examining the broader issues were to present its thoughts to market participants as soon as possible. It is of particular relevance for banks subject to the reporting obligation to know what supervisory authority the transactions are to be reported to. There are different views on this question with regard to cross-border transactions. Clarification is absolutely necessary so that investment firms can set up the required reporting channels.

The following example illustrates the problem: the London branch of a German bank purchases shares on the London Stock Exchange for an Italian customer. Taking into account Art. 32 (7) of MiFID, which establishes an exception regarding the application of the conduct of business rules, the question arises as to whether the transaction is to be reported to the British or the German supervisory authority. We expressly support the idea of this decision being made on the basis of the location of the branch. The idea of a distinction being made on the basis of the customer for whom the service is provided should, for practical reasons, be strictly rejected, as it involves a high potential for error. The same applies in the case of a branch of a German bank in London concluding an over-the-counter transaction with a counterparty outside its host Member State, for instance with a Spanish bank. In the examples presented above, it would therefore be useful and reasonable in all cases for the transaction to be reported to the British supervisory authority, which would then transmit the information to the German authority.

But it is not only the question to which supervisory authority the investment firm has to report that needs clarification: the firms also absolutely need to know the content of the report in order to be able to adjust their systems. Particularly for a Member State like Germany, which already has a complex reporting system in place, it should be noted that changes can be made only on an absolutely reliable basis. Because they affect many facets of the systems that generate the necessary data for the reports, such changes are complicated and expensive. The institutions subject to the reporting obligations can therefore not adapt their systems until all questions have

been answered. It should also be noted that adjustments need time, so that we expressly ask CESR to work towards a definitive clarification of open points without delay.

II. Individual remarks

Question A: Do you think that the standards chosen by CESR are the relevant ones?

Generally speaking it can be said that, from our point of view, CESR has identified the relevant standards. As already explained in the hearing on 8 January 2007, we assume that the country code (ISO 3166-1) will be used only for the exchange of data between authorities, as neither Table 1 nor Table 2 of Annex 1 of Commission Regulation (EC) 1287/2006 includes this field. We also assume that in Member States with one time zone only the competent supervisory authority will set up the additional field, which will show deviation from “UTC”.

Question B: What would be the benefits if these standards were also widely used in reporting by the investment firms to the local CESR Member?

Please refer to our answer to question C.

Question C: What are the practical implications of the use of these standards for the financial industry?

Because of the highly complex reporting system in place in Germany, we basically see no advantage in these standards being used by the reporting investment firms themselves. Replacing the standards used until now by the intended codes would cause a considerable degree of complication from the point of view of both the costs involved and the time required for implementation. In Germany such a change would affect some 2,400 banks, and because of this we believe a central conversion process by Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) would be a more reasonable and appropriate option.

Instead, the proposed standards should be used to complement the standards used until now. The reporting banks would then be free to opt for one system or the other. This option would suit banks who, because of their cross-border operations, might prefer to use a pan-European reporting system. On the other hand, smaller institutions operating in their domestic markets only would not be faced with unnecessary complications.

Question D: Do you have comments on individual standards?

We would like to make the following comments on individual standards:

- Bank Identifier Code (BIC): It must be clear from the outset whether only one BIC is defined for each investment firm or whether all possible BICS can be used. It must also be assured that every investment firm subject to the reporting obligation has its own BIC.

We note that maintenance of the BICs by SWIFT would play a higher role than is currently the case. For the investment firms it is essential to have a reliable inventory of all relevant BICs in order to be able to generate correct reports. Otherwise there is a high risk of reports containing incorrect data. The inventory should include the BIC as well as the name and address of the firms.

- ISIN: It must be assured that every financial instrument subject to reporting has an assigned ISIN, which is currently not the case, particularly with regard to derivatives. In addition, the reporting institutions need a reliable source that allows machine recognition of what instrument triggers a reporting obligation.
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