



Date: 20 October 2006
Ref.: CESR/550b

MiFID Level 3 Expert Group – 2006/2007 Work Programme

This work-plan covers the period of time that goes from the establishment of the MiFID Level 3 Expert Group until the implementation of the Level 1 and Level 2 Directives and Regulation (November 2007). Therefore it does not address, at this stage, other areas of work contained in the CESR Work Programme on MiFID level 3 work (Ref. CESR/06-413) that was submitted to public consultation. The current work programme has been adopted taking into account the results of the public consultation and having heard the MiFID Consultative Working Group.

The work programme is divided in two sections: 1) Intermediaries and 2) Markets.

1. Intermediaries

Issue	Start date	Process and Finish date
<p>Practical and operational aspects related to the functioning of the passport of investment firms</p> <ul style="list-style-type: none">• transitional provisions around the passport;• home/host relationships in the phase of authorization;• home/host relationships regarding supervision and monitoring in the provision of services/ activities from branches:• issues regarding the provision of cross border business by tied agents. <p>The objective of this work is to achieve a common understanding by regulators on how to collaborate on issues that relate to the passport, hence facilitating the</p>	Q3 2006	<p>Consultation: planned for December for a period of six weeks.</p> <p>Approval planned by March 2007</p> <p>Bullet points three and four of the left column should be prioritised over bullet points one and two.</p>

<p>cross-border provision of services by investment firms. In essence, this work is directed at creating an optimum environment so that the Directive can meet its objectives.</p> <p>[Articles 23, 31 and 32 of MIFID]</p>		
Issue	Start date	Process and Finish date
<p>Best execution</p> <ul style="list-style-type: none"> • Development of convergent views regarding application of the best execution requirements to non-equity markets, order receivers and transmitters, and investment managers; • Clarification on firms not executing client orders; • Execution venues: need to consider those outside the EU. <p>The main outcome of this work is to reach a convergent view as to how the best execution requirements contained in the Level 1 and Level 2 Directives apply to quote driven markets. This work also comprehends practical points such as the ones raised in the bullet point 3.</p> <p>[Article 21 of MiFID and articles 44 to 46 of Level 2 Directive]</p>	<p>Q3 2006</p>	<p>Q1 2007</p> <p>Consultation/s will be performed as soon as practicable, but not earlier than December for the first and second bullet points.</p>
Issue	Start date	Process and Finish date
<p>Record keeping</p> <p>Minimum list of records to be maintained.</p>	<p>Q3 2006</p>	<p>Q1 2007</p> <p>A consultation has been launched on 20 October 2006 with a view to have the minimum list of</p>

<p>The objective of this work is to achieve consistency in the minimum list of records that competent authorities need to establish.</p> <p>[Article 51(3) of Level 2 Directive]</p>		<p>records ready in January 2007</p>
Issue	Start date	Process and Finish date
<p>Outsourcing (3L3)</p> <p>To ensure consistency to the maximum extent permitted by the EU legal framework between the Level 2 provisions and the respective Level 3 guidance stemming from MIFID and the Level 3 guidance developed in relation to the Capital Requirements Directive (CRD).</p> <p>The aim of this work is to create consistency between standards of CEBS, the Level 2 and 3 work in the MIFID area and the future work on UCITS and Solvency II.</p> <p>To avoid inconsistencies with these developments, CEIOPS is participating in this alignment in view of its work in the framework of the Solvency II project.</p> <p>[Article 13(5) of MiFID and articles 13 to 15 of Level 2 Directive]</p>	<p>Q3 2006</p>	<p>Q4 2006</p> <p>The finish date of this work will be the date of publication of the CEBS standards (Q1/Q2 2007)</p> <p>No consultation different from the one undertaken by CEBS will be conducted at CESR, with the objective of not duplicating issues.</p>
Issue	Start date	Process and Finish date
<p>Internal governance (3L3)</p> <p>Interactions between the CRD and MiFID.</p> <p>The work within the context of the CRD and the MIFID on internal governance of banks and investment firms will be discussed. An analytical report will be prepared and shared with the market on any overlaps and areas of possible further work. This will take into account the current thinking on Solvency II.</p>	<p>Q3 2006</p>	<p>Q1 2007</p> <p>The deliverable for this date is an analytical report that maps the different initiatives and serves as a reference to determine if further work is needed.</p> <p>No consultation is needed for the mapping as it is a</p>

<p>CEBS' guidelines on internal governance within e.g. the supervisory review process and model validation work, and Level 2 measures under MIFID (based on CESR's work on internal governance in the MIFID area), will be discussed in order to assess whether there is a need to do future work in this area.</p> <p>UCITS will also be taken into account. CEIOPS is participating in this alignment of work in view of avoiding inconsistencies relating to its work on Solvency II, as well as any input following from the pension funds side and current insurance directives.</p> <p>[Article 13 of MiFID and Chapter II of Level 2 Directive]</p>		<p>purely factual exercise.</p>
Issue	Start date	Process and Finish date
<p>Inducements</p> <ul style="list-style-type: none"> • Clarification on certain remuneration structures, scope, and distribution channels. • Practices of “softing and bundling”. <p>Clarification of practical implementation of provisions on inducements.</p> <p>[Article 26 of the draft Level 2 Directive]</p>	<p>Q3 2006</p>	<p>Q1 2007</p> <p>Consultation/s will be performed as soon as practicable, but no earlier than December 2006.</p> <p>Bullet point one of the left column should be prioritised over bullet point two.</p>

2. Markets

Issue	Start date	Process and finish date
I- Work in connection with upcoming Commission's Reports		
<p>State of the removal of the obstacles which may prevent the consolidation at the European level of the information that trading venues are required to publish. The Commission's report is due by April 2008.</p> <ul style="list-style-type: none"> • Wait for a request from the Commission. Timing: April 2008 is however tight because consolidation should only begin in November 2007. 	Depending on the request from the Commission	Q2 2008
<p>Possible extension of the pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares. The Commission's report is due by October 2007.</p>	Q3 2006 Q4 2006	Request in two phases. First step in progress. Q4 2006 Q2 2007
<p>Application of article 27 of MiFID on systematic internalizers (SI). The Commission's report is due by October 2008.</p> <ul style="list-style-type: none"> • Wait for a request from the Commission and experience on the operation of MiFID SI regime. 	Depending on the request by the Commission	Q2 2008
<p>Appropriateness of the definition of transaction, the tables included in Annex II of the Regulation and the criteria for determination of liquid shares contained in article 21 of the Level 2 Regulation. (Re-examination under Level 2 regulation)</p> <ul style="list-style-type: none"> • Wait for experience on MiFID, possibly discuss the methodology and 	Depending on the request by the Commission	Q3 2009

Issue	Start date	Process and finish date
national experience well before the deadline.		
Re-examine table 4 of annex II of the Level 2 Regulation <ul style="list-style-type: none"> • Wait for experience on MiFID, possibly discuss the methodology and national experience well before the deadline. 	Depending on the request by the Commission	Q3 2008
II- Others Areas of Work		
<p>Aspects related to the functioning of the <i>passport</i> of investment firms and regulated markets (where relevant), including home/host relationships in the phases of authorization, free provision of services/activities, establishment of branches, crisis management; it also covers transitional provisions around the passport, and issues regarding the provision of cross border business by tied agents.</p> <p>At this stage, CESR has not identified issues which require immediate actions. Potential questions may arise around MTFs. However their cross-border activities are likely to be similar to the ones like RMs (where no major problems are recognized) they should only be addressed on the basis of practical experience.</p>	<p>According to current status there is no work anticipated.</p> <p>If such a work would become necessary, it should have priority (i.e. starting Q4/2006)</p>	Q1 2007 (if the work would be needed)
<p><i>Publication and consolidation of market transparency information</i></p> <ul style="list-style-type: none"> - Publication of transparency information (accuracy of the information, avoiding double publication, requirements for proprietary arrangements etc.) - Consolidating the transparency information <ul style="list-style-type: none"> • Issues discussed during the previous "consolidation work", like: <ul style="list-style-type: none"> ○ how to ensure publication only once; 	Already started	Q1 2007 (Consultation Paper published on 20 October 2006)

Issue	Start date	Process and finish date
<ul style="list-style-type: none"> ○ necessary technical standards in order to enhance consolidation; ○ publication on non-discriminatory way and guaranteeing the availability of data to all interested parties; ○ synchronization of trading clocks; ○ the issues of websites – minimum requirements for "cheap" publication channels; ○ requirements for data quality monitoring systems (art 32 regulation: reliable, monitoring continuously for errors and correct as soon as errors are detected); ○ publication of cancellations/corrections; ● Interpretation issues: <ul style="list-style-type: none"> ○ When information is published; ○ Whose obligation is it to publish; ○ How to define shares; ○ Definition of transaction – chain of transactions; ○ Trading by non-EU branches; ○ How to interpretate end of trading day (which trading day) and non trading days; 		
<p>Common procedures and formats for the calculation and publication of data (liquid shares, block sizes and the list of systematic internalizers).</p> <ul style="list-style-type: none"> ● Level 2 sets obligation for CESR to publish certain data. The basic obligation for publication is on competent authorities, but their publication obligation is considered to be fulfilled when the data has been submitted to CESR and published. CESR should establish an internal guidebook on the methods and procedures (including deadlines) how members should submit the data. <ul style="list-style-type: none"> ○ Art 11 Level 2 Regulation: list of the relevant competent authority for one or more financial instruments; ○ Art 21 Publication of systematic internalizers; 	Q4 2006	Internal CESR work – no need for consultation Q1/Q2 2007

Issue	Start date	Process and finish date
<ul style="list-style-type: none"> ○ Art 22 Determination and publication of liquid shares; ○ Art 23 Determination and publication Standard Market Size; ○ Art 33, 34 Calculations and estimates for shares en publication. ● Requirements for CESRs "publication mechanisms": The content as such is "simple" compared for example to transaction reporting, but it should first be noted that it is not static once a year exercise. Depending on the market activity, the list may need to be updated even daily. Another thing is the level of service CESR wants to provide: In terms of timing, for example the list of internalizers needs to be updated at least annually, but in practice such updates would be meaningful, if meant to be of use for markets it needs to be updated daily. Secondly, as has been discussed in relation to market data consolidation, a "static website" would not achieve the wanted result. Similarly it can be argued that if CESR's list were to be useful it should meet the requirement of being "machine readable". 		
<p><i>Required calculations and estimates concerning liquid shares and delayed publication</i></p> <ul style="list-style-type: none"> - Free float: identification of holdings held by a collective investment undertaking or a pension fund and cooperation between competent authorities to share the information; <ul style="list-style-type: none"> - Average daily turnover; - Average daily number of transactions; - Average value of orders executed; - Estimates in relation to "new listings"; - Block trade thresholds. <p>Apart from the technical manual referred to in the previous box, there is a need to clarify the exact calculation procedures and necessary interpretations in order to reach figures which are comparable (earlier stock taking exercises have the importance of such common understanding). Therefore a more content oriented manual on conducting the calculations is needed.</p>	<p>Q4 2006</p>	<p>There should be general agreement on these issues well before the first calculations</p> <p>Q2 2007</p>

Issue	Start date	Process and finish date
<p><i>Transaction reporting</i></p> <p>1) Interpretation of a transaction: According to the Level 2 Directive a transaction is a reference only to the purchase and sale of financial instrument. However, more work seems to be needed, eg on the interpretation of the term "execution" in relation to a transaction and in particular its application to investment managers and investment advisers. The work should be done in co-operation with CESR-Tech/TREM (Transactions Reporting Exchange Mechanism) project.</p> <p>2) Reporting channel: Transactions reports shall be made either by the investment firm itself, a third party acting on its behalf or by a trade-matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed. Reports shall be in electronic format unless a competent authority grants a waiver. Additional work may be needed in the following aspects: Exemptions from being in electronic format and/or approval of the reporting system.</p> <p>CESR will first analyse whether any immediate action in this field is needed for the operation of MiFID or whether actions should be taken on long term (if at all).</p> <p>3) List of financial instruments and list of "markets": Relevant competent authority shall ensure that there is established and maintained an updated list of those instruments. – Each Regulated Market shall submit identifying reference data on each instrument in an electronic and standardised format to its home competent authority. Similarly competent authorities shall maintain a list of markets.</p> <p>CESR-Tech/TREM project is already working on the subject. The issue of list of</p>	<p>Q4/2006</p> <p>Q4/2006 (preliminary analysis)</p> <p>2008 long term</p> <p>Q4/2006</p>	<p>Q1/2007</p> <p>Q4/2006</p> <p>Q2/2007</p>



Issue	Start date	Process and finish date
Proposal for a standard service level agreement between an investment firm and the reporting channel.	2008 (if needed)	