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**CESR MiFID Level 3 EXPERT GROUP**  
**WORKPLAN for Q4/2007 – 2008**



## **Introduction**

Following the implementation of MiFID, CESR publishes its work programme for future Level 3 work under MiFID (Q4 2007 – 2008). This work programme follows the one adopted by CESR (following a public consultation) in October 2006 (Ref. CESR/06-550b) which was completed in the course of 2007.

This work programme was subject to consultation until 19 November 2007. 17 responses representing 34 organisations were received, some of which were submitted on behalf of several trade bodies. The following provides a high-level summary of those responses, which can be found in full under the consultation section of the CESR website.

Respondents raised several points to ensure that the MiFID Q&A network is an effective tool. These included clarifying the legal status of responses, as well as ensuring that answers are consistent with and do not duplicate those published through the Commission's Q&A facility. Respondents also felt that industry consultation should be part of the response process.

Several respondents noted that a medium priority had been attached to intermediaries thematic work as a whole and that it might be useful to establish clearer priorities for individual areas of intermediaries thematic work, some of which should be given a higher priority. Conflicts of interest and best execution were the most frequently mentioned in the feedback as areas of greatest importance, followed by soft commissions & unbundling.

Respondents commended CESR's efforts to foster co-operation through its supervisory agenda, and encouraged CESR to give the market time to adjust to the recent regulatory changes before considering further rules and guidelines.

## **Overall proposition and structure in CESR**

Generally speaking the work programme is inspired by the need to focus on the operational aspects of MiFID requirements and facilitate supervisory convergence across Europe.

The work programme for the coming year is proposed to be structured on following main pillars:

- (i) mandates issued by the European Commission;
- (ii) establishment of a CESR MiFID Q&A;
- (iii) thematic work;
- (iv) supervisory work;
- (v) on-going technical work for the application of the Level 2 regulation on markets;
- (vi) cooperation with other committees of regulators.

High priority will be given to items under (i), (ii), (iv) and (v).

No changes in the current internal organization at CESR for the MiFID Level 3 Expert Group are envisaged, although a separate structure for the supervisory work may be created.

### **i) Mandates from the Commission/Work in connection with upcoming commission's reports**

This non-discretionary work corresponds to the advisory role of CESR to the Commission, in the context of Commission requests for assistance. A list of the mandates that CESR expects to receive from the Commission in the coming year is included in the table attached to this document. The elaboration of responses to the Commission mandates will be given a high priority.

### **ii) Establishment of a CESR MiFID Q&A**

As we move from the transposition phase into the implementation/application phase, market participants will turn to CESR members to find responses for issues arising from the practical application of the MiFID. That is the reason why CESR will create of a MiFID Q&A mechanism where market participants and consumers can pose questions (either via CESR members or directly to CESR) that will be answered in a reasonable deadline and will be published on the CESR website.



This Q&A system will follow the model that is currently used by CESR for the Prospectus Directive with support from market participants. This tool will seek to provide clarity to market participants on issues where there is need for common views of EU supervisors. The establishment of the MiFID Q&A will be given a high priority.

Regarding the legal status of the answers posted in the CESR's MiFID Q&A database, these will not constitute standards, guidelines or recommendations and are not legally binding. However, CESR's MiFID Q&A is a Lamfalussy Level 3 tool; hence the answers posted are capable of having legal effects such as:

- They may be used by Courts/Tribunal in assisting in the interpretation of level 1 and 2 material;
- They may have relevance in an enforcement action conducted by a competent authority;
- They may be seen as creating relevant considerations and legitimate expectations, particularly as regards the predictability of actions taken by competent authorities.

On the coexistence of CESR's and the EC's MiFID Q&As, CESR aims to ensure a high degree of coordination and integration between them.

Finally, regarding the request to establish a consultation process regarding the answers posted in the Q&A, CESR is of the opinion that consultation is an essential tool for any policy-making activity in the financial markets sector. However, the MiFID Q&A is not designed to be a policy-making tool. Its main purpose is to address issues of practical application, for which a consultation process would unnecessarily delay the adoption of answers. For this reason, CESR does not intend to conduct regular formal consultations for the MiFID Q&A. However, in some circumstances CESR might consider it necessary to check its proposals with market participants and representatives of retail investors before taking its final decisions; these needs might be satisfied by consulting the MiFID Consultative Working Group.

### **iii) Thematic work**

Work under this heading is similar to some of the documents that have been adopted under the MiFID Level 3 work programme November 2006-November 2007. It may take the form of standards, recommendations, or guidelines. Given that both market participants and regulators have gone through an extremely intense period of transposition/implementation, and taking into account the feedback received from the members of the MiFID Consultative Working Group, CESR is proposing to focus such activity on the key aspects relevant for supervisory convergence and to ensure a consistent implementation of MiFID across Europe. The key topics that respondents identified in the consultation process were (i) conflicts of interest, (ii) best execution, and (iii) inducements –softing and unbundling. CESR will decide in the May plenary on the final topics under this heading. The work will not start until late in Q2 2008 or early Q3 2008.

### **iv) Supervisory work**

During this year we have conducted significant work under the heading of passporting. This has resulted in four outputs: (i) the passporting recommendations, (ii) the protocol for MiFID notifications, (iii) the protocol for supervision of branches under MiFID, and (iv) a CESR statement on late transposition. The underlying objective of this work has been to smooth the functioning of the passport by enhancing the cooperation between CESR members and removing obstacles for business conducted on a cross-border basis.

It is only natural that one of the key objectives for CESR is to improve the cooperation of its members in the exercise of their core supervisory functions. It is therefore proposed that this stream of work shifts to the supervisory side, working on topics such as –for example- (i) monitoring usage on the protocols agreed during this year with a view to suggest improvements to them if necessary in Q4 2008, and (ii) organizing on-going sessions of supervisors on operational issues and to discuss supervisory practices and exchange views on issues of particular importance (such as supervision of systems and controls of investment firms, monitoring the interaction between best execution and changes to markets environment, ...).



The purpose of this stream of work it is not to conduct peer review or to enter into aspects that are currently being dealt with other supervisory arrangements. This work will be given a high priority.

**v) On-going technical work in the implementation of the Level 2 Regulation on markets**

This work has been initiated in 2007 and implies discharging the on-going obligations on CESR members (jointly at CESR level) arising from the Level 2 Regulation, such as the publication of market transparency data (liquid shares, delayed publication, list of systematic internalizers,) and support to transaction reporting and the functioning of TREM (Transaction Reporting Exchange Mechanism).

**vi) Cooperation with other committees of regulators**

CESR will continue to cooperate with the CEBS and CEIOPS on their common 3L3 work programme (see the 3L3 Work programme for details), that contains also areas of work related to MiFID (namely internal organisation of intermediaries).

## Annex

i) Work in connection with upcoming Commission's Reports	Priority	Start date	Process and finish date
Policy mandate regarding the review of the carve-out for certain commodity derivatives firms (including work with energy regulators in connection with the third energy package)	High	Q4 2007	Q2/3 2008
MiFID report – tied agents – request for the advice on factual issues	High	Q2 2008	Q2 2008
MiFID report – tied agents – further work	High	Q3 2008	Q1 2009
MiFID report – telephone recording	High	Q4 2008	Q1 2009
MiFID report – article 4	High	Q4 2008	Q1 2009
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.	High	Q1 2008 (advice on factual issues) Q1 2009 (further work)	Q3 2008 (factual issues) Q2 2009 (further work)
Application of article 27 of Level 1 (systematic internalisers).	High	Q1 2008 (advice on factual issues) Q1 2009 (further work)	Q3 2008 (factual issues) Q2 2009 (further work)

i) Work in connection with upcoming Commission's Reports	Priority	Start date	Process and finish date
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 Regulation. (Re-examination under Level 2 regulation)	High	Q1 2008 (advice on factual issues) Q1 2009 (further work)	Q3 2008 (factual issues) Q2 2009 (further work)
Re-examine table 4 of annex II of the Regulation	High	Q1 2008 (advice on factual issues) Q1 2009 (further work)	Q3 2008 (factual issues) Q2 2009 (further work)
MiFID art. 19.6 list of the equivalent 3 <sup>rd</sup> country markets	High	N.A	N.A

iii) Possible areas for thematic work	Priority	Start date	Process and finish date
<b>II- Others Areas of Work</b>			
<b>Intermediaries</b>			
<ul style="list-style-type: none"> <li>• Best execution,</li> </ul>	Medium	Q2/Q3 2008	Q4 2008
<ul style="list-style-type: none"> <li>• conflict of interests,</li> </ul>	Medium	Q2/Q3 2008	Q4 2008
<ul style="list-style-type: none"> <li>• soft commission and unbundling,</li> </ul>	Medium	Q2/Q3 2008	Q4 2008
<ul style="list-style-type: none"> <li>• suitability and appropriateness,</li> </ul>	Medium	N.A.	N.A.
<ul style="list-style-type: none"> <li>• complex <i>vs</i> non complex instruments,</li> </ul>	Medium	N.A.	N.A.
<ul style="list-style-type: none"> <li>• information for retail clients and</li> </ul>	Medium	N.A.	N.A.
<ul style="list-style-type: none"> <li>• outsourcing to non-regulated entities</li> </ul>	Medium	N.A.	N.A.
<b>Markets</b>			
<p>Follow up and analysis of the operation of MiFID markets regime. Evaluation of possible further needs for co-operation/ interpretations</p> <ul style="list-style-type: none"> <li>• Changes to market structure</li> <li>• Assessment of practical experience after one quarter of operation of the MiFID</li> <li>• Operation of MTFs (other than passporting etc. which is part of Intermediaries work)</li> <li>• Transaction reporting (including at least: Re-assessment of CESR guidance – execution of transaction. The guidance</li> </ul>	High	Q4/2007 – Q1/2008	In principle on-going, more detailed timing need to be set for specific work streams when such are identified. A first general assessment to be done Q1 – Q2/2008

iii) Possible areas for thematic work	Priority	Start date	Process and finish date
<p>includes a review clause after one year of operation / defining when a trade is executed by a branch)</p> <ul style="list-style-type: none"> <li>• Link between MiFID and Official Listing Directive</li> </ul>			
<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"> <li>• Level 2 sets obligation for CESR to publish certain data. The basic obligation for publication is on MS 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"> <li>○ Art 11 regulation: list of the relevant competent authority for one or more financial instruments;</li> <li>○ Art 21 Publication of SI</li> <li>○ Art 22 Determination and publication of liquid shares;</li> <li>○ Art 23 Determination and publication SMS</li> <li>○ Art 33, 34 Calculations and estimates for shares en publication</li> </ul> </li> <li>• Requirements for CESR's "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 internalisers needs to be updated at least annually, but in practice such updates would <u>not</u> be meaningful, if meant to be of use for markets it needs to be</li> </ul>	<p>High</p>	<p>started</p>	<p>Q1/2008</p> <p>Part of this area is going to be permanent in relation to annual calculations etc. (Q1 each year)</p>



iii) Possible areas for thematic work	Priority	Start date	Process and finish date
updated daily. The system is up and running. Need to clarify remaining open issues and agree on a protocol between CESR and CESR members			