



EUROPEAN COMMISSION
Internal Market and Services DG
Financial services policy and financial markets

Director

Brussels,
G3 D(2006) 8626

Subject: Request for initial assistance on non-equities markets transparency

Dear Arthur,

I write to request the assistance of CESR with regards to the Commission's work under Article 65(1) of the MiFID. As you know, the Commission is required to report under this Article by the end of October 2007 with regards to transparency in non-equities markets, on the basis of discussions with competent authorities and public consultation.

The Commission intends to hold two public consultations: one, already commenced, on the basis of the Call for Evidence which was published on 12 June 2006. The other will be held over the Summer of 2007, and will include a public hearing.

As for discussions with regulators, we seek CESR's assistance in two distinct tranches: preliminary assistance in the form of a limited fact-finding exercise in relation to certain cash bond markets only; and a more substantial tranche subsequently, providing CESR's views on a broader range of questions and markets. For planning purposes, we would like at this stage for the first tranche, requested by this letter, to be provided by the end of October, with the second tranche, covering a broader range of markets and topics, to be requested around the start of October, to be provided by the end of March next year.

Please find enclosed a list of questions with respect to this request for preliminary assistance, together with a series of factors and observations that CESR is asked to bear in mind.

We would very much appreciate collaboration by CESR in order to ensure good functioning of the Lamfalussy arrangements in this very important exercise for the markets.

Yours sincerely,

David WRIGHT
Director

Contact: Laurence White, +32 229 80369, Jiri Krol, +32 229 84802

Mr. Arthur Docters van Leeuwen
Chairman
Committee of European Securities Regulators
11-13 Avenue de Friedland – 75008
PARIS FRANCE

1. BACKGROUND AND LEGAL FRAMEWORK

The European Commission is to report to the European Parliament and the Council as to pre- and post-trade transparency applicable to transactions in classes of financial instrument other than shares. The Report is required by Article 65(1) of the MiFID (as amended), which provides that:

By 31 October 2007, the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and to the Council on the possible extension of the scope of the provisions of the Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instrument other than shares.

The purpose of this request for assistance is to seek initial assistance in order to provide foundations for Commission's early work on the report. The mandate therefore focuses mostly on technical aspects concerning data on some of the non-equity markets, their structures as well as the regulatory context in which they operate.

2. CONSULTATION AND SOURCES OF ASSISTANCE

Article 65(1) quoted above mentions the Commission acting 'on the basis of public consultation and in the light of discussions with competent authorities'.

The Commission's White Paper on Financial Services Policy 2005-2010 set out our commitment to open and transparent consultation.¹

Open consultations (including with stakeholder groups) will continue to play a central role and will be required before any legislation is deemed necessary. The Commission will continue to publish responses received to its consultations, practical summaries and feedback statements.

The Commission services will consult publicly twice during the preparation of the Report: firstly, by way of a call for evidence (released 12 June 2006); and secondly, by way of a public consultation on a draft of the Report. We will seek, wherever possible, to include consumer and investor input in this public consultation.

We will also ask the CESR to provide expert and focused assistance on factual and regulatory questions. The involvement of CESR is intended to fulfil our obligation to hold discussions with competent authorities.

At this stage, we seek CESR's assistance mostly in order to gain better understanding of the structure and regulatory context of some of the markets to which the extension of transparency obligations is to be considered. As well as seeking CESR's assistance at this initial phase, we propose to seek CESR assistance again during the later stage of the analysis. We do not however, as part of preparing the Report, propose to ask CESR to develop draft legislative measures on this subject. This will come, if at all, after the Report has been presented to the Parliament and the Council.

We will also use our recently-formed European Securities Markets Expert Group (ESME) to provide input into the report at an appropriate stage. Further, we might

¹ *Op. cit.* at paragraph 2.1.

consider engaging specialist consultants if there is significant quantitative or qualitative work to be done requiring specialist expertise.

3. THE PRINCIPLES TO WHICH CESR SHOULD HAVE REGARD

As regards its working approach, CESR is invited to take account of following principles:

- The principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001;
- CESR should provide comprehensive assistance on the matters described below;
- CESR should address to the Commission any questions which arise in the course of its work pursuant to this mandate.

In formulating that assistance, CESR is invited to consider in particular the following matters:

- CESR members should respond to the questions posed below in respect of their own markets wherever possible;
- CESR should also aggregate that data across markets to provide an EU-wide and a national picture;
- CESR members should agree on a common methodology so that the data gathered on the individual markets may be compared and aggregated and double-counting may be avoided;
- Quantitative estimates should be as accurate as reasonably attainable given data and system constraints.

4. REQUEST FOR INITIAL ASSISTANCE

4.1. Markets in respect of which initial assistance is sought

CESR's initial assistance is sought with regards to the questions below for each of the following markets:

- the cash market for government bonds;
- the cash market for investment-grade corporate bonds;²
- the cash market for high-yield corporate bonds.³

² Normally, those corporate bonds rated in the top four categories by commercial credit rating companies.

³ (ie, sub-investment grade). This category is also intended to include distressed debt securities.

4.2. Questions on which initial assistance is sought

CESR's initial assistance is sought on the following questions with respect to the markets identified above:

1. Specify the absolute size in terms of turnover and issuance of the market.
2. Describe the main end-users of the market and their needs. What is the estimated level of retail involvement in the market as a percentage of turnover? And as a percentage of holdings? (CESR may need to stipulate a definition of retail involvement for these purposes)
3. What are the main characteristics of the markets for the relevant instruments in terms of market structure? For example, to what extent is liquidity concentrated on trading venues such as regulated markets, MTFs, voice brokers, systematic internalisers or bilateral OTC?
4. Indicate what pre- and post-trade information is available, and how it is disseminated and with what delays to the public, to subscribers, and to those with trading privileges.
5. Indicate the current mandatory pre- and post-trade transparency requirements applicable to bond trading as a result of national law.

4.3. Due date

CESR's initial assistance is sought by the end of October 2006.

To the extent that CESR identifies that some data items are not available or could only be collected with significant external data-gathering (such as by questionnaires and the like), CESR is requested to contact the Commission to discuss timing of the deliverables.