



The Secretary
General

Ref.: CESR/08-483

European Forum of Securities Associations
European Savings Banks Group
European Association of Cooperative Banks
European Association of Public Banks

Paris, 3 September 2008

Subject: CESR MiFID Q&A

Dear Sir/Madam,

Thank you for your letters on the CESR MiFID Q&A. In our answer below, we aim at covering all the issues raised in the two letters sent to CESR by the above European associations. The headings mirror the headings of the letter of the European Forum of Securities Associations dated 24 April 2008.

Status of the Q&A

As stated in the CESR MiFID Level 3 Work Programme for 2008 (Ref. CESR/07-704c) and in the document where the first questions and answers on MiFID were published (Ref. CESR/08-266), the MiFID Q&A follows the model that has been used by CESR for the Prospectus Directive. Both Q&As have the same aim: to provide in a quick and efficient manner the market participants, CESR members and the general public with responses to their 'everyday questions'. Naturally the responses are meant to be addressed to CESR members to ensure that in their supervisory activities their actions are converging along the lines of the common responses adopted within CESR. However, we cannot neglect the fact that these responses are also meant to give market participants indications of good implementation of MiFID rules.

The answers to the questions received via the Q&A mechanism are developed by the Sub-groups of the MiFID Level 3 Expert Group and endorsed by the Expert Group and CESR Chairs. Thus the process for preparing the answers ensures that they are in line with the national requirements and the competent authorities' interpretation of them.

The reference to the legal effects that the answers may have reflects the general nature of the CESR Level 3 tools which are not legally binding. The answers are intended to help the firms by providing clarity to the content of the MiFID requirements rather than creating an extra layer of requirements on the firms. One of the aims of the Q&A is also to improve the predictability of actions taken by competent authorities which seems to be in line with your aim of converging the supervisory practices of national competent authorities.

Editorial control

As stated above, the MiFID Q&A mechanism follows the same model as the Prospectus Q&A. This applies also to the process of clarifying the content of the questions and editing the questions to the extent necessary. The intention of CESR has not been to imply that all questions would be answered without subjecting them to appropriate screening. The email address currently used for receiving the questions is only a temporary solution before the Q&A database functionality will be introduced on the new CESR website. In that connection, more guidance will be given to the users of the



database on how the questions will be processed, including how new answers and changes to the existing ones can be identified.

So far CESR has received only very few questions via the mifid@cesr.eu email address so the content of the database will naturally change over time mitigating the appearance of randomness that you refer to. CESR has also provided assistance to the Commission in developing answers to some of the questions received via the Commission's Q&A. In some cases, CESR has concluded that the Q&A is not the best mechanism to respond to a particular query.

Process for generating answers

As explained in both the MiFID work programme and in the document where the first set of questions and answers were published, the main purpose of the MiFID Q&A is to address issues of practical application, for which a formal consultation process is considered to be unnecessary. Before generating an answer, CESR will check the potential impact and relevance of the issue concerned. CESR guidance on issues that are essential for the industry will always be subject to a regular consultation process no matter whether it is issued as an ordinary Level 3 measure or as Q&A.

However, that does not naturally change the fact that, when appropriate, CESR will check also the draft answers that are not formally consulted on with relevant market participants and representatives of retail investors before taking its final decisions. As you are aware, CESR is in contact with both of these stakeholders groups in various ways on a continuous basis. Thus an appropriate way of consulting external parties will certainly be found also in the cases where the members of the Consultative Working Group may not possess the relevant expertise in a particular matter. We are grateful for the assistance that the trade associations have provided to CESR in finding the best experts to be consulted in various matters.

CESR's Q&A and the Commission's Q&A

As informed earlier, CESR and the Commission are in the process of developing a highly integrated solution to their MiFID Q&As that covers not only the technical solution but also the cooperation in the development of answers to the questions posed via either Q&A. This would be a continuation of the current practice where a representative of the Commission participates as an observer to the meetings of the relevant CESR groups where the draft answers to the questions posed to CESR are discussed. Vice versa, the Commission already now regularly consults CESR when the questions received via its website include elements of practical application. This cooperation will be deepened in the future.

We hope that the above provides the necessary clarifications and alleviates your concerns about the CESR MiFID Q&A. Please do not hesitate to contact me if you have any further queries.

Yours sincerely,



Carlo Comporti

Cc: Jean-Paul Servais
Maria Velentza