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European Association of Securities Dealers
Associazione Italiana Intermediari Mobiliari
British Bankers' Association
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Icelandic Financial Services Association
International Capital Market Association
International Swaps and Derivatives Association
London Investment Banking Association
Norwegian Securities Dealers Association
Securities Industry and Financial Market Association
Swedish Securities Dealers Association

CESR's Public Consultation on the CESR MIFID Level 3 Expert Group Draft Work Plan for Q4/2007 – 2008

20th November 2007

The Associations listed above welcome the opportunity to comment on the CESR MIFID Level 3 Expert Group's draft work plan for Q4 2007 – 2008.

As a general point, we note that quite a high number of the items on the work plan are marked as high priority. We understand that CESR is expected to follow requests from the Commission, which in turn affect the timetable and priorities that CESR will follow. However it is important to bear in mind that some items that CESR has not marked as high priority may have a high priority for market participants for operational reasons, as explained in our detailed comments below. The work programme should reflect a balance between mandated work and market participants' operational concerns. Given the high number of high priority items, it is important to ensure that items in the work plan are scheduled in a way that enables effective project management and to consider whether some of the items, for example in section (iii), may merit a lower priority than CESR gives them (see our detailed comments on section (iii) below).

We also assume that all work that CESR undertakes will follow the general principles set out in the proposed Impact Assessment Guidelines.

We have the following comments on the specific items in the draft work plan:

- (i) Mandates from the Commission / Work in connection with upcoming Commission reports.

We agree with the high priority that CESR gives to work in connection with upcoming Commission reports that are mandated by MIFID.

We welcome CESR's identification of the need in some cases for separately scheduled advice to the Commission on factual issues. In all cases, we think that CESR's work should be based on Review Panel comparisons of how measures have been implemented in different Member States.

We note that in general CESR allocates six months for advice on factual issues and six months for further work. We think that this timing is broadly appropriate, and should enable thorough consultation.

(ii) Establishment of a CESR MIFID Q&A.

We are uncertain whether CESR is considering whether to create a MIFID Q&A, or has already decided to do so: paragraph (ii) is ambiguous on this point. There are a number of important issues which we think would need to be discussed and resolved, in consultation with market participants, before CESR embarks on a MIFID Q&A, including:

- a. How would the Q&A relate to the Commission's Q&A, and how would the interaction between them be managed? It would be essential to avoid overlap and contradiction. Would the Commission's Q&A be incorporated in CESR's Q&A in a similar way to CESR's Prospectus Q&A? How would the demarcation between them be defined, and how would any divergences that might emerge be treated?
- b. What would be the status of the Q&A? Would it be directed at competent authorities, aimed at promoting consistent interpretations and applications of MIFID provisions between them, or would it aim to provide interpretations that regulated entities could rely on? Would it be aimed at setting a standard, giving guidance, or providing information? It is essential that it be clear to CESR members and firms how any Q&A answers fit into the existing structure of CESR outputs. How would the Q&A relate to the interpretative material that national competent authorities have already put in place, and avoid overlapping with or contradicting it?
- c. How would CESR determine the answers to the questions that market participants and consumers pose? How would CESR obtain input to the answers from competent authorities and market participants across the EU? Would the Review Panel be involved? Would there be a consultation process? How would CESR ensure that the answers, while promoting coordination and consistency of outcome and preventing wrong interpretations, did not undermine the high-level principles approach on which MIFID is based, or inappropriately limit legitimate means by which regulated entities could implement MIFID requirements?

(iii) Thematic work.

We welcome CESR's recognition that market participants and regulators have gone through an extremely intensive period of transposition and implementation of MIFID provisions. It is therefore essential to limit any new standards, recommendations, or guidelines only to any key aspects where their absence causes serious disruption to the single market. It is also important, in considering any change to existing standards, recommendations, or guidelines, to take account of the cost of any system or repapering changes needed to accommodate them (and also the cost implications of the timing of change). Nevertheless, there needs to be a continuing effort to reduce divergences in the content and format of reporting to different competent authorities, a matter of high priority for firms.

Regarding the possible areas for thematic work under the headings "Intermediaries" and "Markets" on page 6, it is particularly important to bear in mind that MIFID has only just been implemented, and that in some Member States its implementation remains incomplete. In many cases it is therefore too early to make an accurate assessment of which may or may not be the priority areas for any further work. We therefore suggest that CESR should

(a) consider how much of this work should be done, at least in the first instance, under heading (iv) - supervisory work consisting of 'organising ongoing sessions of supervisors on operational issues and to discuss supervisory practices and exchange views on issues of particular importance' – rather than focusing on formal standards, recommendations or guidelines;

(b) recognise that firms have already adapted their IT systems, procedures and policies to the listed areas of work. Any further changes could have high cost implications for market participants.

(c) not allocate medium or high priorities, but instead incorporate a review process, taking into account also the work that CESR does on (iv) below, to assess at a later stage whether any of the items in the "Intermediaries" or "Markets" sections merit more specific work under this category.

We agree that CESR should give high priority to continuing work on open issues relating to CESR's publication of data.

In relation to any thematic work, CESR should liaise closely with international counterparts, particularly in the US, with a view to promoting international consistency.

(iv) Supervisory work.

We strongly agree with the high priority that CESR proposes for continuing cooperation on supervisory work. This is a core aspect of

CESR's function as a Level 3 Committee, where it can add immense value.

- (v) Ongoing technical work in the implementation of the Level 2 Regulation on markets.

The ongoing technical work for the implementation of the obligations that the Level 2 Regulation imposes on CESR and its members in a timely and consistent fashion is vital to assist the continuing compliance of market participants with MIFID requirements. As such we think that CESR should give it a particularly high priority.

- (vi) Cooperation with other committees of regulators.

Continuing cooperation of the 3L3 Committees under the 3L3 Work programme should remain a high priority.

CESR's cooperation with the Agency for the Cooperation of Energy Regulators on the Third Energy Package should also be a high priority, to ensure an appropriate treatment of energy derivatives in the Package.