

Response to the Public Consultation
CESR's Work Programme on MiFID Level 3 Work
Ref: CESR/06-413

I. Introduction

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments, comprising the markets for not only securities, but also financial, energy and commodity derivatives. Established in 1974 as a small forum of stock exchanges in Europe, FESE today has 24 full members representing close to 40 securities exchanges from all the countries of the European Union (EU) and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.
2. FESE has been a strong supporter of the objectives of the Markets in Financial Instruments Directive (MiFID) from the start. FESE has been actively engaged in all the consultations launched by CESR during the preparation of the Level 2 measures for the Directive and welcomes the start of CESR's work on Level 3 measures. Based on past experience with other Directives, we strongly support CESR's practice of consulting the market **before** launching its Level 3 activities. On the other hand, given the complexity of MiFID when compared with past directives, the importance of **timing** of Level 3 work is paramount. We welcome the current consultation and see it as particularly useful in allowing the industry to indicate the areas of work that need to be started earlier than others.
3. In this context, and as an important general principle, we urge CESR to carefully consider the status of **national transposition** of the regime in its Level 3 work and take into account, where appropriate, the effect of national transposition on the convergence of practices.
4. After a summary of our **Key Points (II)**, we divide our comments into four parts, following the structure of CESR's Consultation Paper (CP):
 - III. **Technical issues** of operational importance needed to achieve consistent implementation of the Level 1 and Level 2 texts;
 - IV. **Level 3 "by cascade"** which covers work that CESR is mandated to conduct under Level 2 measures and/or input to the Commission in the preparation of reports and/or reviews requested by Level 1 and Level 2;
 - V. **"3Level3" work** to be conducted together with CEBS and CEIOPS to foster greater cross-sector convergence; and
 - VI. **Other issues** of a technical and operational nature.
5. Before we provide our comments on the CP, we would like to highlight a **transitional step** that is crucial for CESR to take: During the period of transposition, it is to be expected that several Member States could miss the transposition deadline of January 2007. In this period, market participants working on the basis of an authorization in a Member State which has implemented the Directive could encounter considerable difficulties when carrying out their activities in other Member States where the Directive has not yet been transposed. They would face legal uncertainty and may even not be allowed to exercise their passport. We understand that the European Commission is aware of this problem and is already deliberating ways of addressing it. We believe that CESR could play a very useful role during this period by minimizing the negative impact of the non-implementation of the

Directive on the industry and ensuring that passport rights are given effect in all countries, including those where the Directive is not yet transposed.

II. Key Points

6. In summary, our view on the questions raised by the CP are as follows:
- We welcome the current consultation particularly as useful in allowing the industry to indicate the areas of work that need to be started **earlier** than others;
 - CESR's Level 3 work should take **national transposition** into account;
 - We broadly agree with the issues included in each of the categories in the CP;
 - We also broadly agree with the **prioritization** included in the draft programme, with the exception of best execution and transaction reporting, where we believe work should start earlier in order to provide the necessary time for the industry to take Level 3 into account;
 - We welcome CESR's plans to coordinate its **cross-sectoral work** with the other Level 3 committees; and
 - Throughout the work planned, we expect CESR to involve the industry closely in its work. For this reason, whether the work originates from a mandate of the Commission or from CESR's own decisions, the industry should be informed of the emerging area of analysis **as early as possible** and in an **open** and **transparent** manner.

III. Comments on Technical issues of operational importance needed to achieve consistent implementation of the Level 1 and Level 2 texts

7. We broadly agree with the issues included in this category as listed on page 1 of the CP. FESE members are ready to help the members of CESR by providing data. We are already undertaking work in order to strengthen the consistency of the definitions used by our members in their statistics.

IV. Comments on Possible CESR Work on Reports and Reviews

8. We broadly agree that CESR can play an important role in providing input to the Commission, if requested, in the latter's preparations of the reports and reviews mentioned on page 2 of the CP. In preparation for this input, it may be necessary for CESR to launch studies and analysis, including the identification and tracking of benchmarks. Throughout this work the industry will need to be involved closely. For this reason we urge the Commission to send CESR its requests for input for any of these subjects as early as possible and in a manner that is open and transparent to the industry.

V. Comments on "3Level3" Work

9. As a general principle, we support CESR's intention to coordinate with the other Level 3 committees on cross-sectoral issues. We broadly agree with the range of issues that are included in this category. While many of the issues covered in this category are of direct relevance to investment firms only, there are some that concern our members closely, such as the question of capital requirements for commodity firms.

VI. Comments on Other Technical or Operational issues

10. We agree with CESR's intention to work on technical and operational issues which require a convergent supervisory approach and welcome the explicit principles CESR will apply in deciding whether to launch Level 3 work on any issue.
11. We recognize that CESR has identified on pages 7-9 a host of important issues related to the investment firm passport regime, which we support. From the perspective of our members, among the most important issues in this category are best execution and the publication and consolidation of market transparency information. We broadly agree with the issues raised in relation to best execution on page 7. However, we find the deadlines foreseen for this work too late; for non-binding best execution standards to be useful in terms of providing supervisory convergence, they need to be

in place already in November 2007 (if not earlier), which means that the work on this issue needs to be finalized well before the currently indicated date of Q3 2007. We would thus urge CESR to move this work forward in its programme. Similarly, the start of the work on certain elements of transaction reporting on page 9 is too late and needs to be moved forward. Finally, we are not clear on what work is envisaged in relation to the list of non-complex instruments in category III (with a proposed deadline of "Q2 2008").

12. With respect to market data, we would like to reiterate here our substantive view as expressed in the two previous CESR consultations on this issue: We encourage CESR to act as a forum allowing an exchange of views among interested parties, but urge it to refrain from making recommendations with regard to technical standardization, where we see no need for policy actions. Market forces should decide the outcome of any technical standardization process. By contrast, we see potential value in CESR guidelines at Level 3 to ensure supervisory convergence with regard to the quality of data or the public dissemination of data. We look forward to providing more input to CESR as it continues its work on this issue.

VII. Conclusion

13. In summary, we are broadly supportive of CESR's plans as laid out in the CP, with some exceptions regarding the timing of work, while we reserve our judgement on substantive matters until such time as CESR launches its specific work streams. We support the principles that the eventual work should be carefully focused on those areas where the risk of divergent practices is highest and should involve the industry closely. With these principles in mind, we look forward to contributing to CESR's substantive work.