

# **ZENTRALER KREDITAUSSCHUSS**

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E. V. BERLIN  
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E. V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E. V. BERLIN-BONN ·  
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

**Comments of the  
Zentraler Kreditausschuss  
on the CESR consultation paper on  
improving the functioning of the MiFID database**

**Ref.: CESR/07-832**

21 January 2008

## **I. General observations**

We are grateful for the opportunity to comment on the Committee of European Securities Regulators (CESR) consultation paper of 17 December 2007 on improving the functioning of the MiFID database. The Markets in Financial Instruments Directive (MiFID), for whose implementation the database is an indispensable instrument in some areas, has been in force for only just under three months. This means that the experience gathered so far for assessing the functioning of the database is merely of a preliminary nature. For this reason, we suggest that CESR carries out another assessment at a later date, e.g. at the beginning of 2009. The reference in paragraph 13 of the consultation paper to the fact that further proposals or requests for amendment are unlikely to be taken into account in the short and medium term is consequently a matter of concern to us. The common aim of supervisors and market participants should be to maintain a database that meets the needs of both sides.

A central issue for market participants is therefore expanding the database to include a list of all investment firms subject to the transaction reporting obligations under Article 25 (3) of MiFID. At present, it is not always possible for investment firms required to report transactions to reliably ascertain whether the counterparty to a transaction also has to comply with the reporting obligations under Article 25 (3) of MiFID. As already proposed by us in our comments on CESR consultation paper 07-704 (Draft workplan) of 19 November 2007<sup>1</sup>, we believe that CESR should compile a list of all European investment firms required to report transactions and make it available via the database. This would enable these investment firms to provide the information called for in field no. 20, Table 1, Annex I of the MiFID Implementing Regulation (No. 1287/2006/EC). At the same time, the database would allow investment firms that have to comply with the post-trade transparency obligations under Article 28 of MiFID to ascertain whether the counterparty is also subject to the provisions of MiFID.

Under Article 5 (3) of MiFID, Member States are required to establish a register of all investment firms. This register must be publicly accessible and contain information on the services and/or activities for which the investment firm is authorised. The register must also be updated on a regular basis. Consolidation of these registers within the database would allow investment firms required to report transactions to process reliable data automatically. This is a condition for the smooth functioning of the highly automated reporting process. Besides indication of the investment firms required to report transactions, it would therefore be extremely helpful if their identification number, e.g. a Bank Identifier Code (BIC), could also be shown.

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<sup>1</sup> For the sake of convenience we enclose a copy of these comments; cf page 3, item iii), paragraph 2.

In addition, we suggest examining whether other types of financial instruments could be added to the database. Specifically, consideration could be given to incorporating details of the bonds and derivatives admitted to trading, including their product codes. Such a list must be established under Article 11 of the MiFID Implementing Regulation. The consolidated presentation in the database could, in particular, make compliance with the transaction reporting obligations under Article 25 (3) of MiFID much easier.

## **II. Individual remarks**

### **Question 1: Do you agree with the proposed amendments?**

Yes, we agree with proposed amendments 1 and 2.

### **Question 2: Is it necessary to add other information or other search functions? If so, please explain what you would like to add and the reasons for your proposal.**

We suggest including an additional data field for the shares contained in the database to show the relevant threshold amount referred to in Table 4 of Annex II of the MiFID Implementing Regulation. This would facilitate processing in cases where different minimum qualifying sizes are generally possible. The actual threshold amount should preferably be indicated in the respective currency.

### **Question 3: Do you agree with the proposal to identify investment firms acting as systematic internalisers?**

It is not clear enough what criteria CESR would apply for inclusion of systematic internalisers in the database. Therefore, we believe that clear-cut, understandable criteria should first be defined in this respect.

Enclosure

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**Response of  
Zentraler Kreditausschuss (ZKA)<sup>1</sup>  
to CESR MiFID Level 3  
PUBLIC CONSULTATION ON THE DRAFT WORKPLAN for  
Q4/2007 - 2008**

**Ref.: CESR/07-704**

19 November 2007

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<sup>1</sup> The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Pfandbriefbanken (VDP)*, for the mortgage banks. Collectively, they represent more than 2,500 banks.

## **I. General remarks**

We welcome this opportunity to comment on the draft CESR MiFID 3 work programme for Q4/2007-2008. First of all we would like to point out that the European investment firms have made huge organisational and financial efforts in order to implement the Markets in Financial Instruments Directive (MiFID) in time. Having this in mind we ask CESR to avoid any kind of adjustments of existing provisions which are not absolutely necessary. While considering such adjustments, CESR should - in any case - take into account the possible costs associated with system changes as well as the time required to implement such changes.

## **II. Remarks on individual sections**

We would like to comment on the working programme's individual sections as follows:

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

We appreciate that CESR has placed high priority on the work that is related to the imminent EU Commission reports as provided for in the MiFID. As regards the MiFID report on the subject of telephone recordings, we would like to point out that this issue has been discussed in detail in the context of the MiFID's legislative process. In our opinion, the arguments which led to the waiver of such a duty are still valid and should be taken into consideration in CESR's work. In particular, we do not see a cost-benefit-ratio of such a duty.

As to CESR's recommendations to the Commission - especially according to transaction reporting and post-trade transparency - we additionally refer to our general remarks (see above under I).

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

The creation of a Q&A list along the lines of the Q&A for the Prospectus Directive could help to answer questions regarding MiFID's application. However, we disagree with CESR's deliberations with respect to two points. On the one hand, the preparation of the Q&A should involve a consultation process with the market participants. Appropriate involvement of market participants would help developing practice-orientated solutions. In contrast, as customers are not the intended addressees of MiFID, we believe that giving not only market participants but also consumers the possibility to submit queries to CESR would be a step in the wrong direction.

### iii) Thematic work

In our opinion, the unspecific listing of various MiFID subjects requires further explanation. Under the title “Intermediaries”, it is not sufficiently clear which individual aspects should be further investigated as, for example, in the area of best execution and conflict of interest. Should CESR also consider amendments of existing standards, recommendations or guidelines regarding the areas mentioned therein, it should be kept in mind that the European investment firms have recently made huge efforts to implement the MiFID standards. An adjustment of existing provisions should therefore be avoided. In any case, while considering such adjustments, CESR should take into account the possible costs associated with system changes as well as the time required to implement such changes.

As regards the “Markets” section, we consider necessary an amendment of the work programme with respect to transaction reporting. CESR should prepare a list of all European investment firms subject to transaction reporting obligations. Investment firms highly depend on such a list to fully comply with their duties arising from MiFID. Field no. 20 (“counterparty”) in Table 1, Annex 1 of the Commission Regulation (EC) No. 1287/2006 requires the counterparty of the transaction to be identified. Where the counterparty is an investment firm, the description field no. 20 specifies that the unique code for that investment firm, to be determined by the competent authority to which the report is made shall be used. Therefore to fill in field no. 20 correctly, the reporting firm must be able to determine whether or not the counterparty is also an investment firm that is subject to MiFID. Pursuant to Art. 5 paragraph 3 of MiFID the Member States have to establish a register of all investment firms. This register shall be publicly accessible and is to be updated on a regular basis.

Since, in several Member States, such registers are at present not available to investment firms or not available in a suitable form, investment firms can not reliably ascertain whether or not the counterparty is also subject to transaction reporting duties. Hence, we would welcome CESR’s commitment towards making all registers that are required according to Art. 5 paragraph 3 MiFID accessible in the Member States. In order to allow efficient use of the data contained in the individual registers, it would be extremely important and helpful if CESR would draw up a machine-readable pan-European list of investment firms.

Such a register is also needed in order to fulfil the post-trade transparency obligations according to Art. 28 MiFID. Only with this register could an investment firm ascertain - in terms of Art. 27 paragraph 4 of the Commission Regulation (EC) No. 1287/2006 -, whether its counterparty is also

subject to the requirements of the MiFID. If this is not the case, the transparency obligations rest with the investment firm itself.

**iv) Supervisory work**

We welcome closer co-operation between CESR members in the performance of their supervisory functions.

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

We agree that CESR's further work towards the implementation of the MiFID Level 2 Regulation should be given high priority.

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