



COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Mr. Jörgen Holmquist
Director General
European Commission
rue de la Loi, 200
1040 Brussels
Belgium

Date: 19 March 2010
Ref.: CESR/10-359

Re: Your letter dated 2 March 2010 on the MiFID review

Dear Mr. Holmquist,

Thank you for your letter on the Commission's request for additional information from CESR in relation to the review of MiFID. As you know, we have already started much of our planned work for the MiFID review, but remain available to assist the Commission in developing its policy proposals in this important area and will use our best efforts to respond to your request. At the same time, you will understand our concerns about the very tight timing for the whole process and the subsequent risks to the quality of the outcome of the MiFID review.

Your request includes some questions that will require CESR to initiate new policy work that will necessitate public consultation in line with the Lamfalussy principles, better regulation agenda and CESR's normal consultation practices. The deadline set for CESR's responses to these questions (10 July 2010) is therefore very difficult for CESR to meet. Nevertheless, CESR will endeavour to deliver responses to these questions somewhat later, i.e. by the end of July 2010 by shortening the relevant consultation periods. In so doing, CESR will keep the same deadline as for the rest of its advice, in line with the CESR MiFID review work plan approved in our December Plenary, for which the workload is already highly demanding for CESR and its members. If some of the work would already have been finalised before the end of July, we could naturally provide it to you already before the deadline.

In terms of the individual questions, although we feel confident that we will be able to assist the Commission by providing our advice on the majority of them, we would like to raise your attention to the following questions that we find particularly challenging and to which we might not be in a position to contribute in the requested manner.

Technical information/Requests for data

The data requested in question 23 is not available through TREM or any other means at the disposal of CESR members. Collecting it would require an extensive fact finding exercise directed to all supervised firms (or a substantial sample thereof). Given the efforts required and the ensuing costs, we would like to know whether the Commission considers this information as essential.

Although we do not question the usefulness of gathering further information on the trading activity of systematic internalisers, it seems to us that the information we presently have is not enough to



provide satisfactory answers to the second part of question 7, taking also into account the fact that this would require estimating the impact of the proposed measures on investment firms' behaviour. Collecting the data requested in question 25(b) will also require an extensive fact finding exercise, unless the Commission would be content in receiving the information that is already available to CESR members through their normal supervisory activities. In any case, CESR will assess in more detail later whether collecting additional data will be possible within the given timeframe and would help to answer these questions.

New policy questions

With regards to questions 11, 12(a)-(c) and 13, please note that CESR has already been conducting significant work on transaction reporting of OTC derivatives and had already decided to request the Commission to propose an amendment to MiFID to make reporting of OTC derivatives transactions mandatory. However, CESR has not yet analysed and compared the alternative/complementary ways to get regulatory information on transactions and positions, either via trade repositories, exchanges or direct reporting to regulators. At the same time, significant international work is being conducted in this area, in particular by IOSCO (for commodities) and the OTC Derivatives Regulators' Forum (for trade repositories). The functionalities of trade repositories are also under discussion in the Derivatives and Market Infrastructures Member States Working Group. Even though CESR naturally has its own views on the subject, it is important for CESR to take the work ongoing in other fora into account when developing its advice in this field, inasmuch as we are aware that a globally consistent solution should be reached for what is a global market. These coordination needs might make it difficult for CESR to deliver its advice by the deadline, considering that CESR also sees a need for appropriate stakeholder consultations in this area.

CESR delivered its Report on the Transparency of Corporate Bond, Structured Finance Product and Credit Derivatives Markets (Ref. CESR/09-348) to the European Institutions in July 2009. In that report, CESR expressed its view on the criteria referred to in question 8(a) regarding the post-trade transparency regime for corporate bonds and CDS. In the case of ABCPs, CESR did not see a need for a post-trade transparency regime. For ABS and CDO markets, CESR did not yet complete its advice on the exact criteria to be used. When it comes to your question 8(b), CESR's position was also included in the July 2009 report. We therefore refer to these completed positions that still remain valid today. The remaining open issues will be covered in our responses to the Commission.

The approach taken in question 15 on the treatment of UCITS as complex or non-complex financial instruments seems not to be in line with the draft policy proposal on which CESR has been working for several months. It would therefore be useful if the Commission clarified whether its current position in this area is sufficiently addressed by the work already undertaken by CESR. If the Commission were to confirm its request for CESR to develop technical criteria to distinguish complex and non-complex UCITS, CESR might face difficulties in delivering this advice on time.

In relation to the conduct of business requirements, the Commission is asking CESR to share its supervisory experience and data in relation to the working of the MiFID client classification regime (question 19(a)), but also to develop new policy in this area (question 19(b)). CESR would be happy to share its findings on this topic on an informal basis when the work progresses. However, the need to consult on the policy question might have an impact on CESR's possibility to provide a complete response to these questions by the end of July 2010.

Finally, CESR would like to have the opportunity to receive some additional information on whether and what kind of work is expected from CESR in relation to question 16(b) beyond the elements already covered in the CESR Q&A on MiFID complex and non-complex financial instruments.

Given this heavy work load and the short time frame available to finalise it, we stand ready to discuss with you as to how workable solutions can be found.



Should you need any clarifications on the above, please do not hesitate to contact me or Carlo Comporti, Secretary General of CESR.

Yours sincerely,

A handwritten signature in blue ink, which appears to be 'Eddy Wymeersch', is centered below the closing. The signature is fluid and cursive, with a prominent loop at the end.

Eddy Wymeersch