



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS
Acting Director-General

Brussels, 27.11.06 5438
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Mr. Arthur Docters van Leeuwen
Chairman
Committee of European Securities
Regulators
11-13 Avenue de Friedland
75008 - Paris, FRANCE

Subject: Request for advice on non-equities markets transparency

Dear Mr. Docters van Leeuwen,

Many thanks for the very helpful initial assistance provided by CESR with regards to the Commission's work under Article 65(1) of the MiFID. Further to this assistance, I enclose a mandate for advice on a range of further topics.

You will note that we now anticipate receiving advice from CESR by the end of June.

Yours sincerely,

[signed] Thierry STOLL

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Mandate to CESR for technical advice

Possible extension of the scope of the provisions of Directive 2004/39/EC concerning pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares

This mandate requests further CESR advice on certain issues concerning the possible extension of the scope of the provisions of Directive 2004/39/EC (MiFID) concerning pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares.

This mandate is given in order to ensure that the Commission has adequate technical background to be able to complete its report under Article 65(1) of the Directive (the Report).

The present mandate takes into full consideration the agreement on implementing the Lamfalussy recommendations reached with the European Parliament on 5 February 2002. In this agreement, the Commission committed itself to a number of important points, including full transparency. For this reason, this request for technical advice will be published on DG Internal Market's web site and the European Parliament duly informed.

1. BACKGROUND AND LEGAL FRAMEWORK

The European Commission is to report to the European Parliament and the Council as to the possible extension of scope of the pre- and post-trade transparency provisions of MiFID to transactions in classes of financial instrument other than shares. The Report is required by Article 65(1), which provides that:

By 31 October 2007, the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and to the Council on the possible extension of the scope of the provisions of the Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instrument other than shares.

The purpose of this mandate is to seek technical advice in order to provide foundations for Commission's work on the Report.

2. CONSULTATION AND SOURCES OF ADVICE

Article 65(1) quoted above mentions the Commission acting 'on the basis of public consultation and in the light of discussions with competent authorities'.

The Commission's White Paper on Financial Services Policy 2005-2010 set out our commitment to open and transparent consultation:¹

¹ *Op. cit.* at paragraph 2.1.

Open consultations (including with stakeholder groups) will continue to play a central role and will be required before any legislation is deemed necessary. The Commission will continue to publish responses received to its consultations, practical summaries and feedback statements.

In fulfilment of this commitment, we published a Call for Evidence on 12 June 2006, which was open until 15 September 2006. A feedback statement summarising the feedback received is available on our website.²

We have in parallel to this request sought advice from the European Securities Markets Expert Group (ESME). A copy of our mandate to ESME for advice will be made available on our website.

CESR should also note that organisations such as the International Capital Markets Association and a number of trade associations³ are understood to be working on proposals for self-regulatory changes to enhance bond market transparency, particularly for retail customers. We would ask CESR to inform itself of what is being planned.

We do not request CESR to develop draft legislative measures on this subject.

3. THE PRINCIPLES TO WHICH CESR SHOULD HAVE REGARD

As regards its working approach, CESR is invited to take account of following principles:

- The principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001;
- CESR should provide comprehensive advice on the matters described below
- CESR should address to the Commission any questions which arise in the course of its work.

4. QUESTIONS IN RELATION TO WHICH TECHNICAL ADVICE IS SOUGHT

Please consult **Annex I** for a list of questions in relation to which advice is sought. For further background to some of the questions raised, please consult **Annex II**.

5. DUE DATE

CESR's advice is sought by the end of June, 2007.

² http://ec.europa.eu/internal_market/securities/isd/mifid_reports_en.htm

³ Those 13 trade associations that jointly submitted a response to the Call for Evidence.

Annex I

Questions on which technical advice is sought

General approach

CESR is asked to react to the feedback statement and the responses to the Call for Evidence and to provide its comment thereon.

CESR is asked to address the markets for the following instruments ('cash bond markets') in particular:

- Cash government and supranational bonds
- Cash investment-grade⁴ corporate bonds
- Cash high-yield⁵ corporate bonds

However, CESR is asked to consider other markets to the extent it is necessary to do so in order to:

- answer aspects of the questions below that relate specifically to other markets; or
- fully address the questions below in relation to the cash bond markets.

Specific questions

In particular, CESR is requested to consider the following specific questions:

1. Does CESR consider there to be convincing evidence of a market failure with respect to market transparency in any of the instrument markets under review?
2. What evidence is there that mandatory pre- or post-trade transparency would mitigate such a market failure?
3. To what extent can the implementation of MiFID be expected to change this picture?
4. Can CESR indicate and describe a significant case or category of cases where investor protection has been significantly compromised as a result of a lack of mandatory transparency?
5. Could it be feasible and/or desirable to consider extending mandatory transparency only to certain segments of the market or certain types of investors?
6. What criteria does CESR recommend should be applied by the Commission in determining whether self-regulatory solutions are adequate to address any of the issues above?

⁴ i.e., bonds having one of the top four ratings of each of the major credit ratings agencies

⁵ i.e., corporate bonds other than investment-grade bonds

Annex II

Additional background to questions on which advice is sought

Additional background on self-regulatory solutions

From the 13 Trade Associations' joint response to the Call for Evidence:

Nevertheless, both the FSA and the CEPR suggest that there might be some merit in considering whether or not a benefit might arise from further 'formal' post-trade transparency in corporate debt markets. However the paucity of evidence of 'problems' taken together with a lack of evidence that benefits will arise, and some evidence that, mis-handled, more formal post-trade transparency could lead to a decline in liquidity, leads to a conclusion that an investigation of more formal post-trade transparency needs to be carefully handled, and ideally industry-led rather than imposed by regulators. We support this conclusion, note the related views of some institutional investors and plan to work with our members and other associations on this matter. A key element of our work will be to consider the extent to which the availability of pre-trade price information, when considered together with infrequent trading demand for most bonds means that benefits from further 'formal' post-trade transparency are unlikely. We will keep the Commission informed of our progress. (p. 8)

From ICMA's response to the Call for Evidence:

These reservations notwithstanding, as an SRO, ICMA, in consultation with its members, is constantly examining its own rules, recommendations, procedures and the services it offers to its members and market users and participants more generally. In the last two years, for example, ICMA introduced icma.org which provides easy access for subscribers to the over 20 year of data on Europe's bond markets including secondary market data and prospectuses of over 200,000 issues. This year it has rolled out substantial improvements to TRAX, designed in particular to respond to the clear market need for more efficient clearing, settlement and post-trade management in the rapidly expanding repurchase agreement market, daily volume in which substantially exceed volumes in the cash market for bonds.

We have also been discussing the issues concerning bond market transparency for some time with our liquidity providers and have now extended that process to our buy-side members to establish whether, in their view, there is more that can and should be done at the self-regulatory level to further enhance the levels of post-trade transparency in international debt securities. We will also hold discussions with other representative associations from the fund management community. ICMA is committed to pursuing this work with an open mind as to the eventual outcome. We seek to make a positive contribution to the debate and to do so, on the basis of securing as great a degree of consensus as possible among the diversity of interests reflected in ICMA's membership.

We will return to the Commission early in 2007, with our conclusions which we believe will have the support of a critical mass of buy side and sell side participants in Europe's bond markets. We will then be anxious to engage in substantive dialogue concerning the self-regulatory option. In particular, assuming we proceed with phased or experimental introduction of enhanced transparency, we would welcome close cooperation with and advice from the Commission and CESR, and indeed the academic community, on the details of our plans, their relevance to the appropriate regime for best execution in dealer markets and on how to assess whether there are any adverse effects on liquidity. (p. 11-12)