



**VERBAND DER AUSLANDSBANKEN IN DEUTSCHLAND E. V.**  
**ASSOCIATION OF FOREIGN BANKS IN GERMANY**

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INTERESSENVERTRETUNG AUSLÄNDISCHER BANKEN, KAPITALANLAGEGESELLSCHAFTEN, FINANZDIENSTLEISTUNGSINSTITUTE UND REPRÄSENTANZEN  
REPRESENTATION OF INTERESTS OF FOREIGN BANKS, INVESTMENT MANAGEMENT COMPANIES, FINANCIAL SERVICES INSTITUTIONS AND REPRESENTATIVE OFFICES

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European Commission  
DG Markt

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September 14, 2006\SN

**Call for Evidence – Pre- and post-trade transparency provisions of the MiFID in relation to transactions in classes of financial instruments other than shares**

Dear Madam, dear Sir,

The Association of Foreign Banks in Germany very much appreciates the possibility to participate in the consultation on your Call for Evidence and would hereby like to take the opportunity to comment on the questions and issues raised in it.

Our Association represents more than 140 foreign banks, investment management companies, financial services institutions and representative offices in Germany, among them several entities belonging to the leading institutions world-wide. The activities of our members involve to a large extent the provision of banking and financial services in Germany, but due to their international structure they are also facing the typical cross-border problems that arise when being integrated in the actions of a globally positioned group.

We welcome the fact that the Commission intends to be acting - amongst others - on the basis of public consultation in this matter. Indeed, we hope that the insights and input of the stakeholders affected might find their reflection in the further consultation and, ultimately, in the Commission's final report. In the following, we would like to restrict ourselves to general comments on the extension of MiFID transparency provisions. With regard to the individual questions raised in the Call for Evidence, we would like to refer to the well-founded and detailed position paper submitted by the German "Zentraler Kreditausschuss (ZKA)", the contents of which we fully agree with.

## **I. General Remarks**

The present call for evidence, especially the proposed scope of the report, gives proof of the open-mindedness of the Commission and its willingness to consider a differentiated approach to the application of MiFID transparency provisions to transactions in other financial instruments than shares. However, we feel that the Commission should not restrict itself to examining how and to which extent transparency provisions could be imposed on non-equity markets. The primary question should



rather be if there actually is a need to impose any kind of mandatory transparency on the markets referred to at all.

According to the Commission's Better Regulation approach, any regulatory involvement has to be necessary, i.e. there should be a justifiable need for regulatory intervention. This approach should also be applied to the present case.

We feel that for the time being neither the question whether there is a necessity for intervention nor the question whether such intervention would result in a net benefit can be satisfactorily answered.

We have no proof of any market failure with regard to the markets in question. There is a high degree of competition in these markets and in the course of this competition, they are evolving rapidly and well. As a consequence, a constant increase of transparency can be observed. In fact, there is no evidence that the markets affected are not able to achieve and maintain an adequate level of transparency themselves, without external involvement of the legislator. Should the present or future level of transparency prove to be insufficient, we are confident that the markets will by themselves establish an optimal degree of transparency, be it either in the course of the on-going market development or through more formal self-regulation. In any case, a market-induced solution would fit the market needs in a more practicable and better way than any external imposition of transparency provisions.

The net benefits of regulatory intervention would probably be very limited. Any regulatory intervention imposing transparency would contravene the above-mentioned developments of the markets affected, since markets do necessitate a high degree of flexibility in order to function effectively and competitively. There are cases in which a higher degree of transparency could even have negative consequences on the liquidity of markets. Furthermore, it is doubtful whether the aim of increasing retail investor protection justifies such strong intervention as mandatory transparency would constitute. As studies show, direct retail participation in non-equity markets is very limited. In fact, it should be restricted to those cases where execution-only is possible. In all other cases, we feel that investor protection is already sufficiently achieved through the best-execution provisions of MiFID.

## **II. Conclusions**

In our opinion, the Commission should refrain from imposing mandatory transparency on non-equity markets for the time being. Instead, it should observe the effects and benefits of the new MiFID transparency provisions on transactions in shares. It is not yet sure whether the expected and intended positive effects will in fact be achieved. The result of these observations should be an important factor in deciding whether the extension of transparency provisions to transactions in other markets should be examined.

Furthermore, the Commission should observe the development of transparency in other non-equity markets. A lack of mandatory transparency does not mean that there is no transparency at all. Only if the Commission feels that the level of transparency in these markets is insufficient and that a suitable level of transparency cannot be achieved through other means than regulatory intervention, the Commission should carefully consider whether mandatory transparency is adequate. It would, however, have to give evidence of the fact that the net benefits of such intervention outweigh the general disadvantages of external regulation for competitive markets.

Should you have any further queries or wish a personal discussion, please do not hesitate to contact us.

Best regards,

Wolfgang Vahldiek

Sabine Nachtsheim