



EUROPEAN SAVINGS BANKS GROUP  
GROUPEMENT EUROPEEN DES CAISSES D'EPARGNE  
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EUROPEAN ASSOCIATION OF COOPERATIVE BANKS  
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EUROPÄISCHE VEREINIGUNG DER GENOSSENSCHAFTSBANKEN



EUROPEAN ASSOCIATION OF PUBLIC BANKS  
ASSOCIATION DES BANQUES PUBLIQUES EUROPEENNES  
EUROPÄISCHER VERBAND ÖFFENTLICHER BANKEN

CESR  
Mr Carlo Comporti  
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cc: European Commission  
Ms Maria Velentza  
Head of Unit MARKT G3  
[maria.velentza@ec.europa.eu](mailto:maria.velentza@ec.europa.eu)

Brussels, 16 May 2008

### **Industry concerns on MiFID Q&A**

Dear Mr Comporti,

Following the publication of CESR's MiFID Q&A paper on 11 April 2008 we would like to present and to some extent also reiterate concerns we have already expressed in our respective position papers of November 2007 in response to the consultation on CESR's MiFID work programme for 2007/2008.

We would like to highlight the uncertainty and confusion created by the fact that CESR uses several forms of documents to achieve its objectives at Level 3. This comment especially applies to the Q&A published by CESR. As far as the Q&A for MiFID is concerned, CESR itself points out that its responses, although they do not have any legally binding effect, have quasi-legislative effects. In particular CESR notes that they might be used in courts in the interpretation of MiFID provisions, may have relevance in enforcement actions, may be seen as creating legitimate expectations etc.

Against this background, we would generally prefer that CESR sticks to the process in place for Level 3 recommendations which involves a public consultation prior to drafting a document. We are therefore disappointed that CESR does not intend to involve the industry on a regular basis in the drafting of the responses in its Q&A, as we are convinced that the industry could deliver a valuable input. In addition, given the practical, long-term and potentially far-reaching implications these answers have for the industry, we feel that the industry should be consulted with regard to the effects of the proposed answers. As such, we do not regard as a satisfactory approach CESR's proposal to conduct ad hoc consultation of market participants if considered necessary. From the wording of CESR's press release it is also not clear whether CESR intends to consult on a broad basis all interested parties in these ad hoc cases or whether the intention is to only contact some market participants. Should CESR plan to pursue this ad hoc approach despite our concerns, we would strongly recommend to at least publicly consult the whole industry in order to get a broad view on the respective question(s).

Finally, we would like to recall our concerns in relation to the parallelism of the Commission's and CESR's Q&A tools for MiFID. From our point of view, it would be preferable to only have one such tool. However, if both tools continue to be used, we would suggest providing clarity on which questions are treated by whom. Furthermore, in both cases, market participants should be consulted to the same extent.

With best regards,

A handwritten signature in blue ink, appearing to read 'Chris de Noose'.

Chris de NOOSE

A handwritten signature in blue ink, appearing to read 'Hervé Guider'.

Hervé GUIDER

A handwritten signature in blue ink, appearing to read 'Henning Schoppmann'.

Henning SCHOPPMANN