



## **ALFI response to the consultation on common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees**

**(CESR/08-247, CEBS/2008/39, CEIOPS-3L3-06-08)**

ALFI welcomes the initiative by CESR, CEBS and CEIOPS to consult the financial sector on a possible common understanding of the obligations pertaining to the information on the payer accompanying funds transfers to payment service providers of payees. We are pleased to participate in this consultation process by commenting on the solutions proposed and explaining our position on the options suggested in this document.

ALFI is the representative body of the 1.9 trillion Euro Luxembourg fund industry. It counts among its members not only investment funds but a large variety of service providers of the financial sector. As such ALFI also represents next to the fund industry's direct participants key players in the distribution of fund products.

### **1. Introduction**

ALFI would like to underline the importance for the Payment Service Providers of investment funds not to be obliged to proceed to an immediate blocking of incoming payments in case of incomplete information on the payer. It is indeed industry practice for most fund managers to invest monies from subscriptions immediately for the sake of matching, as best as possible, incoming cash with the settlement of targeted investments and maintaining the desired market exposure.

The rejection of incoming payments by PSPs acting on behalf of a fund would hence trigger serious consequences for the efficiency of funds. Not blocking incoming payments would not only protect the fund but also the interest of the end investor by applying the expected dealing price and not exposing him to delays and market fluctuations that would depend on the PSP's delays of clarifying their issues.

Therefore we would suggest the option for investment funds to accept monies for subscription by potentially blocking the shares in the clients' account until full information on the payer is available to the PSP for transmission to the fund. The

prime responsibility will of course stay with the PSP, and the handling procedure will need to be agreed between the PSP and the fund.

## **2. Specific comments:**

### **Section 4.3. (Transmission to authorities)**

The consultation paper (point 43) refers to the reporting of failing PSPs to the AML authorities and competent supervisors. We would encourage CESR to specify whether they refer to the supervisor of the PSP of the payee and/or to the supervisor of the PSP of the payer.

Point 44 refers to a "common understanding" on a failing PSP; this common understanding is too vague in our view and needs to be clarified by the European regulators.

## **3. Response to the questions raised**

### **Question 1**

We feel that a mix between option A and B is preferable which would leave the PSP to define its own policies, procedures and processes, however, we recognise the added value of a maximum pre-agreed deadline imposed by the European regulators.

### **Question 2**

We prefer a combination of option A and B where the PSP can determine its own approach; however, we recognise the added value of a maximum pre-agreed deadline imposed by the European regulators.

### **Question 3**

The proposed criteria look reasonable, but we suggest that a threshold based on an absolute number of incomplete transfer is less relevant than a percentage of incomplete transfers compared to the total number of transfers received within a defined timeframe.

### **Question 4**

While we understand the commercial difficulty for one PSP to act alone against a failing PSP, we are concerned that the proposed mechanism of coordination is another administrative layer for the professional in the reporting duties which may not have a commensurate improvement in the consistency and quality of transfers. In our view, such consistency and quality can only be improved by way of an enforcement by the supervisor of the PSP of the payer, probably after discussion with the supervisor of the PSP of the payee. We are of the opinion that it cannot be left to the PSP of the payee alone to initiate the termination process of a business relationship, as a result of the payer's PSP's failure to comply with this regulation.

The regulator of the payer's PSP, while having complete information on the PSP's general failure for all payments sent (not only failure to deliver payer information to a specific other PSP) under its supervision, will have adequate means of enforcing compliance with this regulation.

**Question 5**

This question is not applicable to us.