BARCLAYS

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BARCLAYS

Mr Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 avenue de Friedland
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France

24th September 2004

Dear Fabrice,

CESR's Advice on possible implementing measures of the Directive 2004/39/EC on Markets in Financial Instruments – Barclays Response

Barclays PLC is a UK-based financial services group engaged primarily in banking, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the United Kingdom.

The Group also operates in many other countries around the EU and the world. Barclays has been involved in banking for over 300 years and operates in over 60 countries, including Ireland, Spain, Portugal, France, Italy and Germany.

We welcome the opportunity to comment on CESR's draft advice on possible implementing measures and questions on the Markets in Financial Instruments Directive and are pleased with CESR's continued transparent consultation process.

Our remarks follow the order of the CESR consultation paper. Where an issue is not addressed, Barclays PLC has no particular view on it. Depending on our position, we have provided general comments in some areas and specifically addressed the questions posed by CESR in others.

Art 13(2) Compliance and Personal Transactions

Independence of the Compliance department
We agree that staff in Compliance should be sufficiently independent to fulfil their responsibilities objectively. However, the Compliance department needs to be closely aligned to the business to ensure that it works with the business in building a compliant culture. The critical consideration is that the Compliance department should have ultimate recourse to the firm's governing body.

Whilst it is wholly appropriate for Compliance staff to be rewarded in accordance with their own objectives, their remuneration and budget naturally has to be linked to the financial performance of the business because they are part of the business.

Personal Transactions
We do not believe CESR's proposals in respect of personal transactions will have an impact on our current policy/procedures and therefore would not wish to comment.

Art 13(5) Obligation to avoid undue additional operational risk in case of outsourcing

It is vital that CESR's proposals on outsourcing are consistent with those already published by CEBS. This will be of particular importance to firms that will need to comply with the requirements of both bodies, such as banks.

In respect of the scope of the outsourcing rules, point 2 states that only material outsourcing arrangements will be caught by the legislation. However, point 3 sets out a number of activities that will be caught regardless of materiality - this has the potential for confusion. In order to eliminate this confusion, we would suggest that there should be a single definition for the type of outsourcing that is in scope.

Turning to the Principles, we support the fact that firms cannot outsource their regulatory obligations. CESR also states: "*outsourcing cannot be undertaken in such a way as to render the investment firm a substantially empty box*". If the senior management of the outsourcing firm accepts its responsibilities and regulatory obligations, there is no reason why it cannot outsource the firm's main activities.

Art 13(6) Record-keeping Obligation

We welcome CESR's intention to take into account cost-benefit considerations, as stated at the beginning of its advice on record retention. It is fair to say that a tightening of record-keeping requirements would result in a substantial increase in both one-off and ongoing costs and we agree that "*operating a recording system should not outweigh the benefits of recording data in this way*".

However, we do not view reversal of the burden of the proof by making it a requirement for "*the firm to be able to demonstrate that it has not acted in breach of the conduct of business rules*" as the "*necessary precondition for the principle-based approach*". While we welcome the principle-based approach to the extent that it allows different businesses to use appropriate methods in order to meet regulatory objectives, we believe that the record-retention principles can be met at a lesser cost. With that in mind, reversing the burden of the proof is not a necessary downside to the choice of a flexible approach.

Currently, firms have to report failures to keep appropriate records, which is less onerous and more practical than CESR's proposed policy. Moreover, one could point out that the current regulatory policy and CESR's proposed approach are not strictly speaking principle-based. A truly principle-based approach would consist of saying that firms have the obligation to keep records as appropriate and as it deems necessary depending on the sensitivity of each of its business activities.

Furthermore, we do not understand why the records required by the Directive should have to be kept for five years, which is longer than the current retention periods in the majority of EU countries and for the majority of records listed in the proposed annex. Similarly, we do not see any reason to require telephone orders on a voice recording system to be kept for at least one year as nothing indicates that current arrangements are unsuitable.

Art 13(7) & 13(8) Safeguarding of clients' assets

Paragraph 8a requires an annual review of the continuing appropriateness of a depository. Whilst this may be appropriate in a number of cases, it may be preferable to use a more general wording such as "*as frequently as required in the circumstances*".

Art 13(3) & 18 Conflicts of Interest

Please read our response to this section in conjunction with the description in Annex 1 of Barclays investment banking business, Barclays Capital.

In addition to what has already been said by various UK trade associations, we would like to make the following comments:

In several instances, CESR's proposed advice reverses the burden of the proof and puts the onus on firms to demonstrate that they have not acted in breach of the regulatory requirements. We believe that this would impose additional costs on all firms while bringing no benefits at all. It is impractical to have to demonstrate that all appropriate measures have been taken to avoid conflict of interest and relatively easy to spot a failure or potential failure. Traditionally, the latter has been one of the main functions of regulatory authorities. Asking firms to do the former in addition to the regulator continuing to do the latter will not provide any observable benefits.

In that context, the answer to question 6.1 is that we would view it as more sensible for the measures in paragraph 8 to be listed as examples rather than binding arrangements that firms have to implement "unless they can demonstrate that alternative arrangements are more effective". This solution would be more in keeping with CESR's stated objective to provide a flexible framework.

No additional examples of methods for managing conflicts of interest are needed but we suggest that a further bullet point (g) should make it clear that firms are free to implement <u>alternative</u> arrangements as and when such arrangements might be appropriate in the context of a firm's particular business operations. In order to achieve this, the mention of "any alternative arrangements relevant to the business" in a further bullet point should suffice.

CESR providing a list of binding arrangements would be the worst-case scenario for a firm. A firm would then have to follow requirements that might not be appropriate to its business. On the other hand, it would bring no advantages from a firm's perspective as there would still be a risk that while providing for all the items of the list, the firm could still be deemed non-compliant. In short, such a provision would present both the disadvantages attached to a principle-based approach and those that normally come with inflexibility.

In paragraph 16, we object to CESR preventing analysts from attending pitches and participating in roadshows without any limits to the scope of this prohibition. We believe that research analysts should not be <u>active</u> participants in deal-specific road shows, e.g. sitting on the stage with the investment banker and the company. However, we do not see that there would be any apparent conflict if the analyst were merely present, e.g. sitting in the audience. To prohibit a research analyst from passively attending a pitch would actually hinder him/her in actively performing his specified role which is to keep informed and research what is going on with companies that are contained in his coverage universe. This hindrance would be even more pronounced if the analyst were banned from attending non deal-specific road shows. We request that you modify your guidance and state that passive attendance would be acceptable.

In respect of question 6.3, we believe that it would be more appropriate to segregate analysts from certain areas of the firm as opposed to segregating them from the rest of the firm as a whole. In fact, we believe that some form of separation should be put in place as and when conflicts arise. As it is CESR's intention to provide a flexible and principle-based framework, it should be left to firms to make appropriate arrangements for themselves, according to their business activities. While there has been appropriate segregation between research and investment banking business in order to maintain high standards, we feel that there is no need for a similar segregation to exist between research on the one hand and sales and trading on the other hand. Overly segregating analysts from the business side makes the job of being an analyst less attractive. This is currently the case in the UK, as, following recent regulatory changes by the FSA, 13 of Barclays Capital's best analysts have chosen to leave research and move to another career within finance. We believe market mechanisms to be the best way to correct anomalies in most cases. Over time, firms producing truly independent research will retain their clients and attract new clients from competitors. If further segregation were needed to make research more independent, surely firms would provide for it of their own initiative for fear that it should lose all its clients to its competitors.

As far as paragraph 17 is concerned, we prefer the second option: rather than making derogations to 16(f) prescriptive, it is better to state that a paper is not investment research. We disagree that we should have a list of items within the conflict management policy with which the firm does not comply. More generally, requirements for further information to be provided to the client and to keep an intra-day record of all conflicts that might arise during the period are far too prescriptive and not asked for by our clients whose interests CESR proposes to serve. This is particularly true in our case, as we have professional clients, who are experienced users aware of the workings of investment banking. In its advice, CESR should allow for less stringent requirements to apply according to the nature of the counterparty.

Whilst it is not the case within investment banking, in certain industry segments, "inducements" are an accepted part of business practice, as is recognised by CESR in its requirement that firms make their inducements policy known to clients. We are concerned about CESR's requirement in respect of Inducements detailed in 11(b), namely to inform clients in writing "*at least once a year, of the relevant details of such inducements*". This is wholly inappropriate and unnecessary where the client has already been informed of the firm's policy on conflicts of interest and on inducements. There is no benefit to the client in receiving a list of inducements that the firm has received. Whilst it may be appropriate for a firm to keep such a record internally in order that it can prove it has complied with its inducement policy (and so that evidence is available for inspection by auditors and regulators), clients would not be in a position to make a judgement as to whether the inducements received by the firm are appropriate. We propose, therefore, that 11(b) should be deleted.

Art 19(2) Fair, clear & not misleading information

We have no comment as what CESR proposes is similar to the UK regime with which we already comply.

Art 19(3) Information to clients

We have no comment as what CESR proposes is similar to the UK regime with which we already comply.

Art 19(7) Client Agreements

CESR has set out requirements for the content of a retail client agreement for portfolio management. This covers investment management undertaken on both a discretionary and advisory basis. Under paragraph 10c), CESR requires a firm to select "*an appropriate benchmark…against which performance will be compared*". CESR needs to recognise that it is not appropriate to measure portfolio performance against a benchmark where the firm does not have full discretion. Where the firm is able to act under the terms of the agreement on an advisory or execution basis for *any* transaction, performance comparison against a benchmark will not be a fair comparison as some of the decision-making process has been outside of the firm's control. Whilst CESR recognises a benchmark may not always be feasible, it states that "*an alternative measure of performance must be indicated*". Whilst performance can be measured purely on the growth/loss in the portfolio itself, to compare performance to any other benchmark will not provide an accurate comparison.

We are concerned about clients' perception of benchmark comparison data. Clients are likely to feel they have grounds for complaint whenever their portfolio under-performs the benchmark, whilst also failing to recognise that over-performance may have been achieved by taking bigger risks.

Under paragraph 11), CESR requires the firm to "*define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio stated in the most recent periodic report…The contract must set a percentage threshold and a time period to warn the client accordingly*".

A client with an investment management agreement will receive valuations on at least a six-monthly basis that will provide details of the current value of the portfolio. This allows the client to track the performance of his portfolio.

This additional requirement has not taken account of the cost to implement. Firms will need to introduce systems to track the performance of its portfolios on a constant basis. This will be costly and resource-intensive to implement and the cost will inevitably be passed on to the client.

Art 19(8) Reporting to clients

Contract notes
Under paragraph 3), CESR is proposing the following:

"*If an order from a retail client is not executed within one business day of its receipt, an investment firm must send a written confirmation of the order to the retail client. The order confirmation notice must include client order details, date and time of reception and, where applicable, date and time of transmission.*"

We assume that CESR is referring to orders that the client places for immediate execution that cannot be dealt for the firm within one business day of receipt (e.g. because the order is outside of normal market size and has to be placed with the market in tranches over a longer period). We would not expect such a requirement to be in place for limit or stop-loss orders. Typically, our execution-only stockbroking firm receives 200 to 300 such orders a day. It would be a great cost to the business to track such orders to execution and to send confirmation to clients whose deals have not been executed within one business day. In addition, this information is not something that has been requested by our clients who are fully aware that they will receive a contract note as and when their order has been dealt or that their order will expire if not dealt within 30 business days. We request that CESR clarify their requirement and suggest inserting the following text: "*If an order from a retail client **for immediate execution** is not executed…*"

Statements of clients' assets
We agree with CESR's advice under paragraph 8) that a statement of all clients' assets held must be sent to the client. However, we also recommend that CESR stipulates those circumstances in which an annual statement is not required, namely if:
1. The account of a client, for whom a custody asset has been held at any time during the firm's financial year, has been closed and
2. The firm has sent the client a closing statement that shows that the firm no longer holds any custody asset for the client.

Art 21 Best Execution

Criteria for determining the relative importance of the different factors to be taken into account for best execution
Q1: Are the criteria described above relevant in determining the relative importance of the factors in Article 21(1)? How do you think the advice should determine the relative importance of the factors included under Article 21(1)?

Yes, we believe the criteria outlined by CESR are all relevant and need to be considered by firms when achieving best execution.

The relative importance of the factors will vary depending on the type of client and type of order. It would be inappropriate for CESR to provide advice on the relative importance of the factors, over and above the criteria it has already proposed. For private client firms, it is the best net result that it is imperative for clients.

Q2: Are there other criteria that firms might wish to consider in determining the relative importance of the factors? Do you think that the explanatory text clearly explains the meaning of all the different factors in respect of the different financial instruments?

No. We believe the criteria proposed by CESR are sufficient for firms to determine the relative importance of the factors. We believe the explanatory text is sufficiently clear.

Q3: How might appropriate criteria for determining the relative importance of the factors in Article 21(1) differ depending on the services, clients, instruments and markets in question? Please provide specific examples.

An example would be an order placed by an institutional client compared to a retail client.
Often an institutional client will be more concerned about the impact of an order on the market and may therefore be prepared to pay higher costs if the order can be appropriately managed.
For retail clients dealing in significantly smaller sizes, their prime concern is the best net result – price is therefore likely to be the prime factor. For a retail client dealing in an overseas market, costs may be the prime factor as the divergence of charges may mean the firm offering the "best price" does not give the best net result because of higher charges.

Q4: Please provide specific examples of how firms apply the factors in Article 21(1) to determine the best possible result for their clients.

Barclays Stockbrokers is a UK retail services firm dealing primarily in the UK market. Currently there is minimal venue competition in the UK. We do not pay a commission to execute deals and settlement and trade reporting charges are consistent. Order flow is therefore directed to the retail service provider offering the best price.

For overseas deals, it may be that cheaper costs will determine the best overall result for the client and this factor will therefore be relatively more important than deals placed in the UK.

<u>Trading Venues to be included in the order execution policy</u>
<u>Obligation to monitor and update the order execution policy</u>
Q.1: What investment services does your firm provide?

Execution-only, discretionary and advisory dealing.

Q.2: How many venues does your firm access now? Does your firm expect to access more venues after the Directive becomes effective?

London Stock Exchange (LSE)
Alternative Investment Market (AIM)
OFEX

We do not expect to access more venues after the Directive becomes effective, unless other venues join the UK market and competition grows.

Q.3: What factors does your firm consider in selecting and reviewing venues?

Price, ease of dealing, electronic links, ease of settlement and number of participants.

Q.4: Please provide specific examples of costs you consider in evaluating venues.

For retail brokers, costs are constant and therefore do not effect venue selection. As stated above, this may change as venue competition increases in the UK.

Q5: How do costs affect your decisions about venue selection?

See Q4 above.

Q6: Do you take account of implicit costs such as market impact? Is the question of implicit costs only relevant to firms that act as portfolio managers?

As a retail broking firm, Barclays Stockbrokers do not take account of implicit costs. We agree this is only likely to be relevant to firms acting as portfolio managers.

Q7: What specific events have led your firm to re-evaluate venues in the past? Please provide examples of how your firm has changed the venues that it accesses as the firm, its clients, or markets have changed.

As stated above, for UK trading we have not needed to re-evaluate venues and this will only be required as and when venue competition increases.

Q8: Have we identified the key criteria?

Yes, we believe CESR has identified the key criteria.

Q9: What data is available to carry out these reviews? If no data is available, are market solutions likely to provide it?

Data are published by each local market that enables firms to review venues.

<u>Monitoring Requirements</u>
Q1: What kinds of monitoring arrangements do firms use now?

A large majority of our deals is completed via electronic links with Retail Service Providers. Systems are in place that constantly monitor the prices received to ensure we are receiving the best price. As stated above, for this type of dealing, costs are consistent and price is therefore the key differential. Manual deals are subject to checking against prices published on Reuters to ensure the best price has been obtained.

In addition to the system and business checks, periodic audits of best execution are undertaken by Internal Audit and by Compliance.

Q2: How frequently do firms monitor execution quality?

This is monitored daily for UK deals. Periodic checks are undertaken for manual dealing, including overseas trading.

Q3: What data are available to aid firms in their monitoring obligations? What does the data cost?

The London Stock Exchange produces data that include all trades on the firm's broker code. It records where the firm has obtained price improvement relative to the touch price and provides analysis of performance against peers. The cost of such data is approximately £8,000 a year.

Q4: In what respects does the frequency with which firms monitor execution quality depend on the types of instruments, clients, markets and investment services in question? Please provide specific examples.

Whilst orders placed electronically are monitored constantly by the system, manual orders are also subject to a high degree of checking because of the increased likelihood of not receiving the best price.

Q5: What, if any, market data do firms consult in order to monitor execution quality?

We generally use market data produced by Reuters.

Q6: What additional data do firms expect to use after the Directive's transparency requirements become effective?

We do not expect to use any additional data as a result of the Directive.

Timing of venue assessments

Q1: How frequently do firms review the venues to which they direct orders on behalf of clients?

As stated above, for UK orders there is currently no real competition outside of the London Stock Exchange, therefore there is no viable choice of venue. For overseas deals there is little competition outside of local markets, so again the requirement to review venues is minimal.

Q2: Do firms re-evaluate their trading venues:
whenever there is a material change at any of the trading venues?
whenever there is a material change at the firm that affects its execution arrangements?
whenever the firm's monitoring indicates that it is not obtaining the best possible result for clients on a consistent basis?

As stated above, there is currently no need to re-evaluate trading venues because of the lack of choice of venue. Within its consultation, CESR suggests an annual review which would appear sensible.

Q3: What difficulties would firms face in reviewing their execution arrangements in response to each of the foregoing events?

The actual review of the trading venues would not cause too much difficulty. However if the review resulted in a change of execution venue being required, this would give rise to considerable costs and require time for IT development.

Q4: Do venues make firms aware of material changes in their business?

Yes, where we are a member.

Q5: Please provide examples of instances in which firms have changed the venues that they use.

We have never changed any execution venues.

Circumstances in which changes are required

Q1: At present, how many venues do firms access directly? 3
Indirectly? 1

Q2: Should an investment firm be required to provide clients and potential clients with information on the percentage of a firm's orders that have been directed to each venue?

We do not believe that the client would obtain any benefit in firms disclosing this information. Retail clients are primarily concerned about the best net result for their trade and not the method of trading.

Q3: For example, should an investment firm be required to disclose to clients and potential clients what percentage of its client orders were executed in the trading venues to which the firm directed most of its client orders (to cover, at least 75% of the transactions executed)?

Whilst we do not have an objection to making this type of disclosure, we do not believe this would provide any benefit to the client and the disclosure appears unnecessary.

Q4: How frequently should investment firms make this information available to clients? On a quarterly basis, for example?

As stated above, we do not believe providing this information to clients will be of any benefit to them. If CESR insists on such a requirement, it would be appropriate to disclose at the outset of the relationship only.

Q5: Should firms be required to update the information to reflect recent usage? How frequently?

If CESR insists on this disclosure, we believe an annual up date would be sufficient.

Q6: Are there any other categories of information that a client or potential client needs to be adequately informed about the execution services provided by firms?

We do not believe there is any additional information that a client or potential client requires.

Q7: Should the information provided by portfolio managers and firms that receive and transmit orders be different from that provided by brokers? What are the key differences?

We do not believe there should be a difference in information provided.

Q8: Have all of the key conflicts of interest been identified?

We believe there are instances where a firm will agree to route an agreed percentage of orders through a particular counterparty when that counterparty is part of the same Group. This conflict of interest should be disclosed.

Similarly, some firms have changed execution venue as trade reporting costs are cheaper, but there are fewer counterparties available through the new venue and a better price may be obtained elsewhere. Their reason for changing execution venue should therefore be disclosed.

Q9: When should firms be required to provide required disclosure to clients and potential clients?

Prior to undertaking investment business, i.e. at client take-on.

Q10: Is there any reason to impose different timing requirements for disclosure under Article 21 than are required in the Level 2 measures under Article 19(3)?

We do not see any reason for different timing requirements.

Art 22 (1) Client order handling

Q1: Do you agree with the definition of prompt, fair and expeditious execution of an order from a client? Do you think that it is exhaustive? If not, can you suggest any elements to complete this concept?

We agree that CESR's proposed definition seems sensible.

Q2: Do you think that the details of the orders included under paragraph 2 of the draft technical advice should apply also to professional clients?

Yes. We do not see any reason why this detail should be omitted for professional clients.

Q3: Which arrangements should be in place to ensure the sequential execution of clients' orders?

We believe CESR's current proposals are sufficient to ensure the sequential execution of clients' orders and that whilst firms will need to ensure they have arrangements in place, it is not appropriate for CESR to dictate those arrangements.

Under FSA rules in the UK we are currently required to deal "fairly and in due turn" and we do not foresee the need to make any changes in our internal arrangements as a result of CESR's advice.

Q4: Do you agree with the reference in paragraph 7 of the draft technical advice to prevailing market conditions that make it impossible to carry out orders promptly and sequentially?

Yes.

Q5: Do you think that the possibility that the aggregation of client orders could work to the disadvantage of the client is in accordance with the obligation for the investment firm to act in the best interest of its clients?

Yes, in most cases the net effect to clients would be the same and aggregation works in the best interest of the market.

Q6: Do you think that the advice should include the conditions with which the intended basis of allocation of executed client orders in case of aggregation should comply or should this be left to the decision of each investment firm?

We believe this should be left with the investment firm

Q7: Do you consider that CESR should allow the aggregation of client and own account orders? Do you think that other elements (i.e. in respect of the arrangements in order to avoid a detrimental allocation of trades to clients) should be included?

We have no comments.

Q.8: *Do you think that paragraphs 15 and 16 of the draft technical advice should only apply to retail clients?*

We have no comments.

Art. 28, 29, 44, & 45 – Pre- and Post-trade Transparency; Art. 40 Admission to Trading of Financial Instruments on Regulated Markets

CESR's intention is for pre- and post- transparency requirements to apply to equity markets only. We think it entirely appropriate to exclude other markets from the transparency requirements.

Article 65 says that the scope of application of transparency requirements should be reviewed after a certain period of time so they could be made applicable to all financial markets rather than just to equity markets. That is why we would like to endorse explicitly several points that have already been put forward by trade associations.

It is clear that heavy disclosure requirements would be counter-productive as they would make the market illiquid. It is important to focus on disclosing what is strictly necessary for the markets to function efficiently – on a "need to know" basis – and without forcing any information on to customers for whom this information would not be useful, e.g. those who do not access the market directly but, rather access it via a broker. This would also help reduce the huge costs that systems changes always entail. Details on these costs have been sent to CESR via responses from trade associations, to which we have contributed. We will not repeat them in the present response.

Should you have any questions pertaining to any of the comments made in this response, please do not hesitate to contact me or my colleague Laura Mowbray (laura.mowbray@barclays.co.uk).

Yours sincerely,

Bill Eldridge
EU Public Affairs Director
Barclays PLC

24th September 2004

Annex 1: Barclays Investment Banking Business – BARCLAYS CAPITAL

Barclays Capital does not produce equity research nor have a private client base for equities. Our sole focus in the production of research is the provision of credit, convertible, economic and commodities-related research to the wholesale market. Although our firm is not very active in managing or arranging equity issuances (other than convertible and exchangeable bonds), we are one of the market leaders in managing and arranging debt issuances. This is illustrated by the fact that in 2002 we were ranked the number one manager of Sterling Bond issuances, number two manager of Eurobond issuances, number three manager of European Corporate Bonds and number five on the Global All Debt League table by market share.

In December last year, we responded to the UK Financial Services Authority's Consultation Paper ("the CP") on Conflicts of Interest. In summary, we supported a number of the proposals in the CP. However, we had significant concerns with certain aspects of the proposals, insofar as they had been tailored following the "one size fits all" model. The FSA decided to apply its prescriptive conflict of interest regulations across the financial services industry as a whole notwithstanding their being targeted to equity businesses.

We firmly believe that the conflicts of interest present in the equity markets are not equally applicable in all assets classes. The differing structure of the markets in the other (i.e. non-equity) asset classes, such as bonds, are so fundamentally different that certain conflicts which might exist in the equity market simply do not exist elsewhere.

In that respect, we welcome CESR's stated intention to provide advice "capable of application to investment firms of different size and type"; to "avoid setting rules that could not be of universal application"; and to seek to "set out flexible principles of general application across the whole range of business models". As you say, this approach is "consistent with encouraging innovation in financial products and business models". We do hope that this view will prevail in practice as a result of the present consultation, as well as in the forthcoming stages that MiFID has yet to go through (e.g. Level 3). Given that CESR's purpose is harmonisation between member states, it is to be hoped that the final version of its advice will be reasonable and that member states will choose not to remain super-equivalent to the future requirements when they come into force.