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PRESS RELEASE

CESR LAUNCHES A CALL FOR EVIDENCE ON THE SECOND SET OF MANDATES FROM THE EUROPEAN COMMISSION ON THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE (MiFID)

CESR publishes today a second set of mandates from the European Commission on the legislative measures to implement the Markets in Financial Instruments Directive. CESR's advice on this second set of mandates must be submitted to the European Commission by the end of April 2005. To prepare this advice CESR welcomes interested parties to respond to the 'Call for Evidence' (**Ref. CESR/04- 323**) by **29 July 2004**.

When completed, CESR's advice on both this set of mandates and the first set of mandates received in January 2004 (which must be submitted by the end of January 2005), will assist the European Commission in developing a legal text which will take the form of either a Regulation or a Directive.

This legislation will set out what is known under the Lamfalussy legislative process as Level 2 technical implementing measures.

When finalised, these implementing measures will complement and develop how the high level political objectives (known as level 1 measures of the Lamfalussy Directive) should be applied. This level 1 measure, in the form of the MiFID Directive was adopted by the European Council on 21 April 2004, following a second reading in the European Parliament in March 2004. The entire legislative package of measures will apply in EU Member States from 21 April 2006.

The second set of mandates requests CESR's advice, in particular, on what should be included in:

- the list of financial instruments to be established by the future implementing measures, in accordance with the requirements in Article 4 of the MiFID Directive. In particular, this will include clarification and greater detail concerning which commodity derivatives should fall under the scope of the list of financial instruments and therefore the Directive generally;
- the definition of investment advice as identified in Article 4 of the Directive;
- the conduct of business rules in particular, this will cover 'know your customer' rules; what is considered to be the provision of advice and the rules of execution only (as identified in Article 19 of the Directive);
- respect to eligible counterparties (as identified under Article 24): namely, which entities can be allowed to enter into transactions without being subject to the protections set out under the conduct of business rules;
- how orders are made available to the market (as identified under Article 22);
- pre-trade transparency requirements: in particular the extent to which trades agreed off market should be disclosed (known as internalisation and identified under Article 4 and 27 of the Directive).

CESR has formed three expert groups to prepare CESR's advice, however, the additional mandates will fall to only two of these groups. The first four areas identified will be handled by the **Expert Group on intermediaries' issues**. This expert group is chaired by Mr Callum McCarthy (Chairman of the UK's Financial Regulator, The Financial Services Authority [FSA]).

The last two issues will be covered by the **Expert Group on markets**. This expert group is chaired by Mr Jacob Kaptein (Commissioner at the Dutch securities regulator, the Netherlands Authority for Financial Markets [Autoriteit Financiële Markten]).

A timetable for CESR's work in this area is attached in the note to editors (and can also be found in the Call for Evidence (**Ref: CESR/04-323**)).



Background:

The decision to revise the ISD, originally adopted in 1993, reflects common agreement that structural changes in EU financial markets requires legislation to be adapted in order to advance integration of the single market in financial services. MiFID will form one of the cornerstones of the EU's securities regulatory regime, and is intended to deliver an effective 'single passport' allowing investment firms and regulated markets to operate across Europe.

The new MiFID Directive, combined with the implementing measures on which CESR is providing technical advice will, for example, broaden the range of investment services for which authorisation is required under the existing ISD Directive, clarify and expand the list of financial instruments that may be traded on regulated markets and between investment firms, as well as introducing rules on the provision of investment advice and conflicts of interest. Standards for regulated markets and multilateral trading facilities, as well as new rules on handling client orders, will be included.

CESR received its first set of provisional mandates from the European Commission on 22 January 2004, which requested CESR to submit its advice on the appropriate measures to implement the Directive by 31 January, 2005. CESR published with this first set of mandates, the key milestones in CESR's work programme for this Directive (see document on CESR website Ref. CESR/04-021) which includes an indicative consultative timetable. This timetable has now been complemented with the timetable for the work on the second set of mandates.

CESR published its draft advice on the first set of mandates for consultation on 17 June 2004 and has requested comments by 17 September 2004. This follows a call for evidence on 20 January (Ref. CESR/04-021). In addition, CESR published a concept paper on co-operation and enforcement on 1 March (Ref. CESR/04-073b). The responses received to both of these consultations can be found on CESR's website under the section consultations and past consultations.

Responses to the call for evidence can be submitted online by **29 July** 2004 through CESR's website (www.cesr-eu.org) under the section 'Consultations'.



Notes for Editors:

1. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States;
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR's website.

Each Member State of the European Union has one member on the Committee. The members are nominated by the Member States and are the Heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

2. **The ISD Consultative Working Group:** A consultative group of 23 market participants has also been appointed to provide technical advice to the expert groups. The market participants are experts drawn from across the European Markets. They are not intended to represent national or a specific firm's interest and do not replace the important process of full consultation with all market participants. A full list of the participants can be found on the page of the MiFID Directive under Consultative Working Group.
3. **Progress to date of the proposal to revise the Investment Services Directive is as follows:** The Council adopted a common position on 8 December 2003. The European Parliament's first reading was concluded on 25 September 2003. The Parliament completed its second reading of the text in March 2004. The Directive was adopted on 21 April 2004 and published in the official journal on 30 April 2004.
4. The European Commission's proposals in the MiFID Directive can be summarised broadly as seeking to:
 - clarify and expand the list of financial instruments that may be traded on regulated markets and between investment firms;
 - broaden the range of investment services for which authorisation is required under the Directive, notably to include the provision of investment advice, clarification of ancillary services investment firms can provide;
 - reinforce the requirement that investment firms execute orders in a way that provides best results for the client (often referred to as 'best execution obligations');
 - set in place new rules for handling clients orders;
 - set requirements for managing conflicts of interest;
 - clarify standards for regulated markets and MTFs;
 - enhance the principles for co-operation between competent authorities.
5. The provisional mandates sent to CESR assist the Commission in preparing its Implementing Measures which form part of the four level approach to European legislation for financial services. The four level approach was proposed in the report by the working group chaired by Baron Lamfalussy (available on the CESR website as described in para. 5). The approach can be summarised very briefly as follows: Level one measures set out the high level objectives that the legislation must achieve. Level two measures set out some of the technical requirements necessary to achieve these objectives. Level three measures are intended to ensure common and uniform implementation by the use (amongst others) of common interpretative guidance and standards agreed amongst regulators in CESR. Level four measures relate to the enforcement of the legislation.



Page 8 of the Lamfalussy report illustrates diagrammatically how these four levels of legislation fit together and the procedure to adopt these measures. The Level 2 ‘implementing measures’ including the conditions for their adoption are described in more detail on page 31 of the report.

6. For further information please contact:

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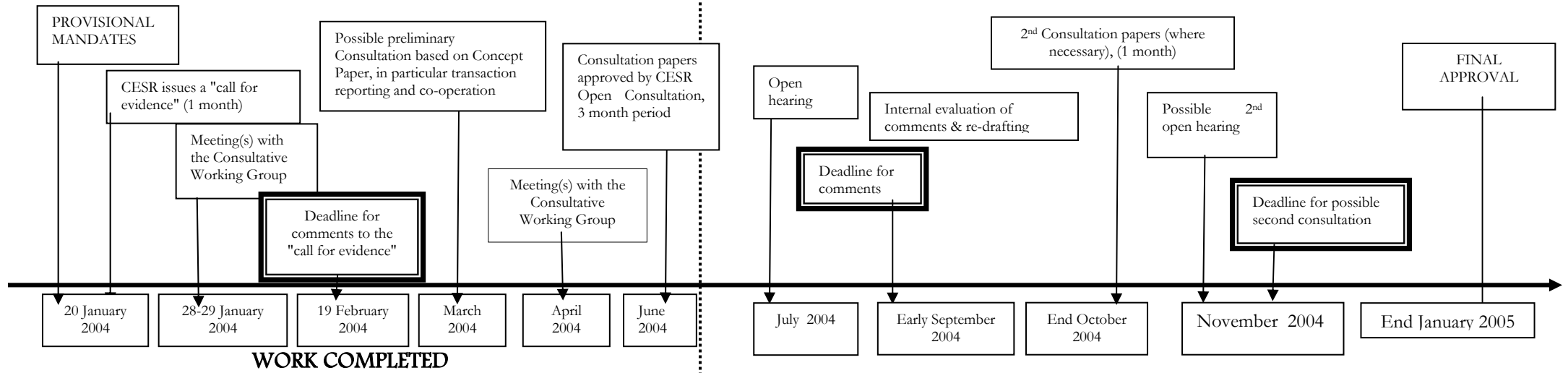
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Indicative CESR Work Plan for the first set of provisional mandates under the MiFiD



Indicative CESR Work Plan for the second set of mandates under the MiFiD

