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PRESS RELEASE

Facilitating the implementation of the Market Abuse Directive

The Market Abuse Directive came into effect on 12 October 2004 and while some delays in the transposition of this legislation into national law has been anticipated, CESR is moving forward to prepare the ground for the implementation of the new regime by ensuring a common approach to the operation of the Directive takes place throughout the EU amongst supervisors.

One of the steps in this process is the consultation paper issued today by CESR entitled "Market Abuse Directive: level 3 – preliminary CESR guidance and information on the common operation of the directive" (Ref: CESR/04-505).

The provision of a European single market in financial services necessitates the promotion of market integrity and thus a common approach to the prevention and punishment of market abuse.

Supervisors must now ensure that the operation of the Market Abuse Directive is consistent and effective across Europe. As part of this, CESR has recognised that it is necessary to provide market participants with guidance in certain areas to ensure that this is indeed the case.

CESR's operational group, CESR-Pol, which groups together enforcement officers from all the EU Member States (including those of the EEA), has been given responsibility for ensuring the effective implementation of the Directive. It has identified three priority areas where practical assistance should be provided to market participants and the paper seeks to address these.

The areas are:

- guidance on accepted market practices in relation to market manipulation
- guidance on what CESR members consider constitute market manipulation
- guidance and a common format for reporting suspicious transactions.

In the event of a person manipulating a market, the Directive provides a defence if the transaction was legitimate and in accordance with market practices accepted by the competent authority – the so called "*Accepted Market Practices*" (AMPs). This paper includes the four AMPs that are currently being considered in three EU jurisdictions: These tangible examples of practices to be assessed include: bond valuation transactions both in Germany and Austria; the first price of an IPO when issuing on more than one German exchange; and, the obligations on long position holders on the London Metal Exchange. The paper also sets out a standard format that will be used by the regulators when assessing AMPs.

In the second part of the paper, CESR members identify types of market manipulation which have occurred in recent years and which, in the view of CESR members would breach the prohibitions on market manipulation contained in the Directive. The examples of types of practice set out in the paper are deliberately described in non-legal technical terms and it is emphasised that the descriptions are not intended to affect the scope of interpretation of the Directives.

Finally, an innovation of the Directive is that it places an obligation on market participants to report suspicious transactions. This paper offers guidance as to what might be the indications of suspicious transactions which may involve insider dealing or market manipulation. Furthermore, the paper sets out a standard reporting format which should be used by market players to report suspicious transactions to the relevant competent authority.



Kurt Pribil, the Chairman of CESR's group of senior enforcement officials, CESR-Pol, commented:

"CESR is determined to achieve the common day to day operation of the legal framework provided by the Market Abuse Directive. This paper will help to achieve this by giving further clarity to market participants regarding the operational requirements of certain significant areas of the Directive."

At the same time as issuing this paper, CESR-Pol continues to work on developing the framework on supervisory and enforcement co-operation which will be equally important in ensuring that the Market Abuse Directive successfully produces its objectives.

Comments on the proposed guidance are welcomed by 31 January 2005 and can be submitted online via CESR's website under the heading "consultations".



Notes to 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. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.

2. 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.
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