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PRESS RELEASE

CESR submits its second technical advice to the European Commission under the Directive on Markets in Financial Instruments (MiFID)

CESR publishes today its final technical advice on implementing measures for the Markets in Financial Instruments Directive (MiFID) submitted to the European Commission on 29 April 2005 (Ref: CESR/05-290b). CESR also publishes the feedback statement (Ref: CESR/05-291b) in which it provides answers to the main issues raised by market participants during the public consultations.

The advice covers issues on which advice was requested in the formal mandate from the European Commission on 25 June 2004 and includes, amongst other things, clarifications on the scope of the Directive (definition of investment advice and commodities derivatives), some aspects of regulation on intermediaries (including investment research, the suitability test, execution only service, best execution and eligible counterparties) and all areas on market transparency and requirements for admission to trading of financial instruments.

MiFID forms 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, under a common set of rules which enhance the protection of European investors. CESR was asked by the European Commission to produce its advice by 30 April 2005. This advice complements the first technical advice sent to the European Commission on 31 January 2005, on different mandates received under the MiFID.

CESR's advice seeks to propose proportionate solutions which take into account the varied complexity of the market participants involved and the varied nature of the products and services offered to their clients. At the same time, the advice seeks to provide market participants with the necessary clarity and legal certainty to enable them to innovate with a large degree of confidence whilst ensuring that the advice is proportionate. The amount of detail included in each part of the advice was therefore carefully evaluated on a case by case basis with a particular emphasis on the need to avoid over prescription and excessive detail wherever possible.

In particular, the technical advice delivered covers:

- **Investment research:** This advice addresses the management of conflicts of interest arising from the provision of investment research, providing a number of minimum organisational measures to be considered by investment firms when setting out their conflicts policy. These particular provisions, which are based on IOSCO's standards on analysts, have been developed to interact effectively with the provisions of both the level 1 and level 2 Market Abuse Directives. In addition, they have been developed to ensure they compliment the fair presentation of investment recommendations and the disclosure of conflicts of interest, and the proposals for the management of conflicts included in the first set of CESR's Advice under MiFID;
- **Best execution:** The best execution regime is an important component of the package of investor protection and market integrity measures in the MiFID. CESR provides advice on the three key requirements in relation to this obligation: a) the criteria to determine the relative importance of factors that investment firms must take into account to obtain the best possible result for their clients; b) the



criteria for establishing and implementing effective arrangements to comply with the above requirement, including the creation of an order execution policy and monitoring the effectiveness of its order execution arrangements and policy; c) the content and procedure of appropriate information regarding the policy towards clients and how to obtain their consent to it. CESR also clarifies the application of best execution obligations by investment firms that provide the service of portfolio management or order reception and transmission services;

- **Suitability test:** CESR provides criteria for assessing the minimum level of information from the client (“Know your customer” rules) and for assessing the suitability of the envisaged transactions;
- **Execution only:** CESR provides advice on the definition of “non-complex” financial instruments to ensure that consumers receive the appropriate levels of protection whilst ensuring that professional investors can also operate within an appropriate regime which takes due account of their level of expertise;
- **Eligible counterparties:** CESR advises the European Commission on the criteria that would allow certain undertakings to be considered as ‘eligible counterparties’ (as identified by the Directive). CESR also advises the Commission on the introduction of some transitional measures to ensure the smooth application of this regime across Europe. In addition, the advice sets out a procedures that would enable eligible counterparties, under certain circumstances, to request a more protective treatment for certain types of transactions;
- **Market Transparency:** CESR provides advice on the pre-trade information for Regulated Markets, MTFs and systematic internalisers as well as the so called limit orders display for investment firms. In particular in relation to :

Pre-trade transparency:

- For regulated markets and multi-lateral trading facilities the basic (minimum) level of information for different trading methodologies is specified as the ‘five best price levels’ (to the extent permitted by the trading method in question). The information should be available for all market participants and the public alike on a reasonable non-discriminatory commercial basis;
- As recognised by the Level 1 Directive, a need to balance different interests exists between full transparency and liquidity. To achieve this balance, some exemptions to the main rule of transparency are therefore needed. CESR’s advice specifies several exemptions relating to the type and size of orders and to trading methodologies, such as block trades and negotiated trades, where the trades are not subject to mandatory pre-trade transparency;
- In addition to trading on regulated markets and multi-lateral trading facilities, the MiFID regulates in particular, the operation of systematic internalisers. CESR advice therefore complements several provisions of the ‘Level 1’ Directive in this respect. This relates firstly to the definitions of systematic internalisers. In particular, CESR proposes several criteria which relate to the organisation of the activity within a firm. Secondly, indicative criterions are proposed to determine when the activity is carried out on a frequent basis. The criterion proposed include, using either the portion of internalised orders of the whole order flow or “the market share” of the firm’s internalisation activity. Furthermore, as the Directive links the obligations for systematic internalisers to the existence of shares with a liquid market, CESR’s proposal include a set of criteria to identify which shares would fall into this category. In this respect, CESR has tried to address the liquidity from a point of view where it is possible for an internaliser to ‘wind up’ its risk positions. As reflected by the responses to the consultations, there is no single correct solution to this issue. CESR’s proposal therefore tries to find a reasonable balance by using a combination of measures including the free float, average number of daily trades and average daily turnover. CESR recognises that this proposed approach may in practice mean that in certain Member States or markets, no shares would be subject to internalisation provisions. Despite different views expressed in the consultation, CESR opinion is that the proposed approach best reflects the purpose of Article 27. Additionally, the advice covers different provisions regarding systematic



internalisation, for example, classification of the shares into different classes and standard market sizes as well as obligations for systematic internalisers for example to publish quotes and managing client orders,

- **Post-trade transparency:** CESR specifies the content of information to be disclosed for each trade as close to real time as possible after the execution. As in the case of pre-trade transparency, CESR also specifies a necessary exemption for large scale transactions compared to transactions of a normal market size which in the case of post-trade transparency mean delayed publication of the information. While the exact content of delayed publication mechanisms should be determined by the relevant markets, CESR proposes the minimum thresholds for different classes of shares, based on the trading activity of a share.
- **Admission to trading:** CESR proposes requirements for different classes of instruments which should be fulfilled in order to qualify for admission. The advice recognises that there are already several other Directives which also regulate the information to be provided by the issuer. CESR's advice therefore concentrates on issues which relate to the tradability of the instruments. In certain cases, where there is no previous community law e.g. in case of derivatives, CESR advice is more detailed. Additionally, CESR advice specifies the role of regulated market's in verifying compliance by issuers with their disclosure requirements.

The work on the advice was undertaken by the CESR Expert Group on Intermediaries under the Chairmanship of Mr Callum McCarthy, Chairman of the UK's Financial Services Authority, and by Mr Karl-Burkhard Caspari, Vice-President of the German BaFin, who chaired the CESR Expert on Markets. CESR's Expert Groups were also assisted by a Consultative Working Group of market experts (a full list of the members is available on CESR's website).

In developing its advice, CESR undertook extensive consultation of interested parties across the EU and to this end published a number of Calls for Evidence, Consultative Concept Papers and Consultation Papers, to which CESR received valuable feedback. Both these papers and the responses can be found on CESR's website under consultation/past consultations.



Notes for Editors:

1. 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. At present, the entire legislative package of measures will apply in EU Member States from 21 April 2006 but this may be delayed by one year subject to approval by the European co-legislature, under a proposal from the European Commission.
2. CESR submitted its first advice under MiFID in January 2005 on mandates covering aspects of regulation of intermediaries and cooperation between competent authorities and enforcement.
3. As indicated, CESR has formed three expert groups to prepare CESR's advice under MiFID: the **Expert Group on intermediaries' issues**, chaired by Mr Callum McCarthy (Chairman of the UK's Financial Regulator, The Financial Services Authority [FSA]); the **Expert Group on markets**, chaired by Mr Karl Burkhard Caspari, Vice-President of the German Financial Services Authority (BaFin) and **Expert Group on cooperation and enforcement**, chaired by Michel Prada, Chairman of the French AMF.
4. **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.
5. 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.

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CESR Work Plan for the mandates under the MiFiD

As of 30th April 2005

Date	Activity
20 January 2004	Provisional mandates - 1 st set of mandates
19 February 2004	Deadline for comments to the “call for evidence” for the 1 st set of mandates
1 March 2004	Consultative Concept Paper on Transaction Reporting, Cooperation and Exchange of Information between Competent Authorities
12 April 2004	Deadline for responses to the Consultative Concept Paper on Transaction Reporting, Cooperation and Exchange of Information between Competent Authorities
17 June 2004	First consultation on the 1 st set of mandates
29 June 2004	Formal mandates – 2 nd set of mandates
29 July 2004	Deadline for comments to the “call for evidence” for the 2 nd set of mandates
17 September 2004	Deadline for comments on the 1 st set of mandates
4 October 2004	Deadline for comments on the 1 st set of mandates (best execution and market transparency)
21 October 2004	First consultation on the 2 nd set of mandates
17 November 2004	Second consultation on the 1 st set of mandates
17 December 2004	Deadline for the second consultation 1 st set of mandates
20 December 2005	Call for Opinions on Professional Client Agreement
21 January 2005	Deadline for comments on the 2 nd set of mandates
31 January 2005	Final approval – 1 st set of mandates
3 February 2005	Call for Opinions on Admission of Financial Instruments to Trading on Regulated Markets
20 February 2005	Closure of Call for Opinions on Professional Client Agreement
3 March 2005	Closure of Call for Opinions on Admission of Financial Instruments to Trading on Regulated Markets
4 March 2005	Second consultation on the 2 nd set of mandates (investment advice, general obligation to act fairly, honestly and professionally and in the best interest of the client, best execution, market transparency)
4 April 2005	Deadline for the second consultation on the 2 nd set of mandates (investment advice, general obligation to act fairly, honestly and professionally and in the best interest of the client, best execution, market transparency)
30 April 2005	Final approval - 2 nd set of mandates and some aspects of the 1 st set of mandates



Completed



Period of first consultations



Period of second consultations



Consultative Concept Paper or Call of Opinions



CESR Work Plan for the mandates under the MiFiD

