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PUBLIC STATEMENT

THE NINTH MEETING OF THE MARKET PARTICIPANTS CONSULTATIVE PANEL

The Market Participants Consultative Panel held its ninth meeting on 14th June 2005 in Paris.

The discussion during the meeting was facilitated by the Chairman of CESR. The discussion was primarily focused on two different subjects: problems of listing of EU companies in US exchanges and the exercise of corporate rights in investment management.

In his opening remarks the Chairman of CESR thanked the members of the Panel for their time devoted to contribute to the CESR activities. He thanked in particular the members of the Panel that will be renewed in the course of 2005.

He also informed the Panel that CESR members appreciated their joint meeting in Oslo with the Panel and considered it extremely helpful to conduct such joint meetings with the Panel once a year.

1. Discussion on problems of listing of EU companies in US exchanges

Following a presentation by Rudiger von Rosen, the members of the Panel discussed the issues arising from the listing of EU issuers on US Exchanges; this included the problems of delisting and deregistration and the costs of the Sarbanes Oxley Act (SOA). This discussion serves the work that EU Institutions are conducting with the US counterparties and will help CESR in identifying aspects of the overall transatlantic competition.

The discussion focused on three aspects: the problem of delisting and deregistration, the impact of the SOA and the EU and US accounting regimes. Notwithstanding obvious interactions, each of this issue should be seen and analysed in isolation from the others.

On the first aspects, it was noted that since the adoption of the SOA very few non-US companies have sought listing on US exchanges. Experience has shown that dual listing for EU companies is becoming less attractive for a range of different factors, including tax reasons, the less prominent role of exchanges as "brands" and the impact of the SOA. An in depth analysis to assess pros and cons of dual listing will be conducted by some associations. The data will help EU Authorities in their dialogue with the US Counterparties. New solutions should be discussed and agreed with the US Authorities to allow European companies to deregister, once they had de-listed their shares: these might include raising the number of US investors that own the shares of EU companies or to adopt the criteria of trading volume. The latter criterion would be preferable as it is very difficult to demonstrate that the number of US shareholders is below a certain threshold.

On the second aspects, associations will conduct a survey of consequences on EU listed companies to evaluate costs incurred for compliance with the SOA (particularly the Section 404) by EU companies. This data will be supported by statistics on the decreasing number of new companies listed in the US Exchanges, to show that US markets are becoming less attractive for EU companies. It was also noted that the main problem of the Sarbanes Oxley Act lies in the cultural gap between Europe and the US in the approach to management of companies.

It was agreed to try to collect additional evidence on the cost of the SOA using the experience of the Deutsches Aktienistitut.

On accounting system, it was recalled that CESR is finalising its advice to the EU Commission on the evaluation of the equivalence of IFRS with, *inter alia*, US GAAPs. This exercise has been conducted from the perspective of what really matters for investors.

As conclusion of the discussion on all these three aspects, it was agreed to adopt the same approach: i.e. to enhance the equivalence of management and accounting systems based on agreed principles in order then to facilitate equivalence or mutual recognition, rather than to promote their convergence.

2. Discussion on investment management and exercise of corporate rights

Following a presentation by Peter Paul De Vries, the members of the Panel had a policy discussion on the issues arising from the activity of investment funds with particular regard to the use of their corporate rights.

Members of the Panel supported the recent Commission's consultation document on "Fostering an appropriate regime for shareholders' rights". They noted that it is the duty of the companies to facilitate the exercise of voting rights by, as example, allowing the electronic voting and the use of proxies and to make it more attractive. Some members of the panel considered that there should be incentives for institutional investors to vote and for their activism; this will benefit both issuers and the unit-holders vis-à-vis to whom they have fiduciary duties.

It was also noted that there should be clarity about who owns the right to vote in a chain of intermediaries, as well as about the rights attached to each class of share.

Regarding collective investment schemes it was felt that they should have clear policies on vote and that they should be fully transparent to clients or unit holders about the use of their voting rights, including the reasons for the vote. However, they should not be obliged to exercise these rights.

Conflicts of interest were signalled as a major problem, particularly in continental Europe where management companies are mostly owned by banks. Corporate governance codes might bring benefits in this regard, to strengthen the independence of asset managers. Robustness of the board is another area where clear steps should be done to enhance independence, particularly as regards its composition: the majority of their members should be represented by independent and highly qualified persons.

Finally, the members of the Panel considered that the principle contained in the UCITS Directive, according to which UCITS should be prevented to exercise significant influence on the management of companies, remains valid.

3. Discussion on the Post-FSAP

Based on the Green Paper adopted by the European Commission, members of the Panel discussed the priorities after the Financial Services Action Plan. Whilst evidencing that the document does not contain a clear message, they noted that it reflects the main conclusions of the works of the four Forum Groups established by the Commission. One member of the Panel considered it disappointing that the Green paper does not mention the reform of the structure of financial supervision and asked CESR to react since this might give the false impression that it is not an issue.

The Chairman of CESR reported on the debate and the discussions following the "Himalaya Report". In particular he mentioned three issues: it is essential that all regulators share equivalent powers for the proper functioning of the home/host relationships and to ensure good cooperation on cross-border inquiries and investigation; there is still strong support to the development of level 3, even

though this is not legally binding; concerning the adoption of pan-European decisions some support has been expressed only in the field of IFRS, whilst delegation of powers and tasks has been positively accepted. He also mentioned that regulators are developing tools to enhance the cooperation to conduct market abuse investigations in case of financial instruments traded in more than one market and that crisis management tests are planned in cooperation with CEBS and CEIOPS.

Members of the Panel invited CESR to evaluate in details the experiences of the integration of some markets (Euronext and OMX) to further explore means of enhanced coordination between regulators. They also invited CESR to conduct a pilot exercise on conflicts of interest to address consistency across the different financial sectors.

4. Oral report by the Chairman of CESR

The Chairman of CESR reported orally on the major decisions adopted by the Committee during its last meetings. In particular, he mentioned the adoption of the level 2 advice to the Commission on possible implementing measures under the MiFID and the discussion on possible developments of IT projects for the establishment of databases. The members of the Panel were also informed of the cooperation established with the other level 3 Committees, operating in the banking (CEBS) and the insurance (CEIOPS) sectors. The report on recent CESR activity did not raise any objections from the members of the Panel. One member recalled that the measurement of liquidity for the purpose of article 27 of MiFID creates problems for small markets.

Next meetings

It was agreed to hold the next meetings of the Panel in Paris on 9th November 2005 and 5th April 2006.

Members of the panel indicated themes for in-depth discussion during the next meetings: launch of databases and IT projects; public oversight of auditors and needs and costs of public company's oversight board; investor education; evaluation of the Market Abuse Directive; transparency and disclosure of hedge funds; horizontal regulation across sectors; a policy discussion on financial analysts; and development of the role of the Market Participant Consultative Panel as an alert system for CESR on general malfunctioning of the Single Market.