



Date: 19 June 2006  
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## CALL FOR EVIDENCE

### EVALUATION OF THE SUPERVISORY FUNCTIONING OF THE EU MARKET ABUSE REGIME

#### Background:

The Market Abuse Directive (2003/6/EC) "MAD", a key directive of the Financial Services Action Plan (FSAP) which was set up to achieve a harmonized legal environment for all financial markets within the European Economic Area, came into effect on 12 October 2004. The implementation of the MAD results in an EU-wide market abuse regime.

While there are still some delays in the transposition of this legislation into national law, CESR is continuing in its efforts to prepare ground for convergent implementation and application of the new regime by ensuring a common approach to the operation of the Directive takes place throughout the EU amongst supervisors. One major step in this process was the publication of the "First set of CESR guidance and information on the common operation of the Directive" (Ref. CESR/04-505b) in May 2005.

CESR considers the first one and a half year existence of the MAD as an excellent opportunity to consult with the public to hear views and experiences, benefits and eventually problems, with the new market abuse regime in Europe. Any recommendations on what issues further guidance would be needed and proposals to overcome any obstacles to efficient functioning of the markets in accordance with the legal environment are highly welcomed. To this end, CESR-Pol, the permanent operational group of CESR, comprising of experts in market surveillance and exchange of information, chaired by Dr. Kurt Pribil, Executive Director of the Financial Market Authority of Austria, is tasked with maintaining a general overview of the operation of the Directive and, if necessary, alerting CESR to the need to suggest changes to the level 2 implementing measures or existing CESR standards or even supervisory practices.

#### Call for evidence and timetable:

In releasing this call for evidence, CESR is inviting all interested parties to submit views as to what CESR should consider in its further work in the area of the MAD. This document has been released on 19 June 2006 for a five months comment period. CESR is therefore inviting all interested parties to submit their views by 31 October 2006 to Mr Fabrice Demarigny, Secretary General, by posting it on line in the section Consultations on CESR's website ([www.cesr-eu.org](http://www.cesr-eu.org)). A hearing will also take place, and as soon as a date is scheduled it will be announced on CESR's website under the section 'hearings'.

For further information, please contact Fabrice Demarigny or Angie Reeh-Schild, Secretary of CESR-Pol.



### Achievements according to the Lamfalussy Procedure:

The MAD was the first European directive following the Lamfalussy procedure which contains a four level legislative procedure to efficiently and effectively speeding up the law setting and application process within Europe.

**Level 1:** The Market Abuse Directive (2003/6/EC) defines what behaviour is considered as market abuse, namely insider dealing and market manipulation. There is a separate description of inside information for the commodity derivative markets. The MAD applies to any financial instrument admitted to trading on a regulated market, or those where a request for admission to trading has been made.

The Directive stipulates several preventative measures aimed at reducing the incidence of market abuse. The preventative measures cover the disclosure and handling of inside information by issuers and also oblige issuers and their advisers to maintain insiders' lists. It requires directors and senior management to disclose dealings in their own company's shares to the market and obliges firms to report suspicious transactions to the competent authority. The MAD also includes a requirement for those producing or disseminating research reports to disclose conflicts of interest. MAD provides two so called safe harbours which permit market activities that might otherwise be considered as market abuse – these are for share buy-backs and stabilisation of financial instruments.

**Level 2:** CESR provided the European Commission with a Level 2 Advice for technical measures in August 2003 which the Commission adopted by releasing the following three Commission Directives and one regulation:

- Commission Directive 2003/124/EC implementing MAD as regards the definition and public disclosure of inside information and the definition of market manipulation.
- Commission Directive 2003/125/EC implementing MAD as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.
- Commission Directive 2004/72/EC implementing MAD as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.
- Commission Regulation (EC) No 2273/2003 implementing MAD as regards exemptions for buy-back programmes and stabilisation of financial instruments.

**At Level 3,** the level of the Lamfalussy procedure where competent authorities set up guidelines for a convergent treatment of the provisions of financial service directives, CESR released in May 2005 the publicly consulted “First set of CESR guidance and information on the common operation of the Directive” (Ref. CESR/04-505b) providing guidance on the application of MAD as regards “Accepted Market Practices”, short AMPs, including formats for the publication of AMPs and the notification of suspicious transactions.

Currently CESR-Pol is seeking to identify further market-facing work that may merit further guidance to achieve a harmonized application of the Directive. In relation to Articles 1-6 of the Directive, CESR-Pol is in particular investigating whether guidance for CESR members and/or to the market would be appropriate for the assessment of what constitutes “inside information” under the Directive and when does information become “inside information”; when large client orders are considered “inside information” and when there are legitimate reasons to delay the publication of inside information as well as on the application of insider lists.

Any guidance that may be released to the market will be published in draft form to allow interested parties to comment on it. Moreover, CESR would be eager to receive any recommendations on what issues relating to MAD would need further guidance and proposals on how to tackle any obstacles to efficient functioning of the markets in accordance with the legal environment.