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**PRESS RELEASE**

**CESR releases 2<sup>nd</sup> set of Draft Guidance on the Operation of the Market Abuse Directive for public consultation**

CESR launches a 2<sup>nd</sup> set of draft guidance for public consultation on the operation of the Market Abuse Directive. Following the first two years of experience gained under the new market abuse regime, CESR is of the view that this is the right time to provide further guidance to market participants regarding common understandings developed amongst supervisors with the intention of achieving a convergent application of the legal requirements on a day-to-day basis.

This work is intended to compliment the 'Call for Evidence' on the evaluation of the supervisory functioning of the EU market abuse regime. The consultation period on the 'Call for Evidence' closed on 31 October 2006 and responses are available on CESR's website under past consultations. As part of the 'Call for Evidence' on the functioning of MAD, CESR organised a public hearing which took place on 17 October 2006, at CESR's premises in Paris. At the hearing, market participants indicated that they had not only found the first set of CESR guidance issued in March 2005 helpful, but also requested further guidance.

In this second draft guidance issued for consultation today, CESR has therefore developed in relation to Articles 1-6 of the Directive, a draft common understanding amongst CESR Members, regarding treatment of the following aspects of the Directive and associated issues concerning market abuse:

***I. What constitutes inside information?:***

The guidance in this context gives further clarification on: 'information of a precise nature' as a term set out in the Directive; further guidance on information on making information public; amplifies what is meant by the concept 'information likely to have a significant price effect'; a non exhaustive list of purely indicative types of event or information which may constitute inside information;

***II. When is it legitimate to delay the disclosure of inside information?:***

CESR provides a few indicative examples of the two circumstances mentioned in Article 3 (1) where it provides for the legitimate delay of disclosure of insider information. For example, the guidance provides indicative examples in relation to: confidentiality constraints relating to competitive situations; Product development; Selling of major holdings in another issuer; Impending developments that could be jeopardised by disclosure.

***III. When are client orders inside information?:***

This includes guidance regarding client's pending orders as inside information; guidance of a 'precise nature';

***IV. Insider lists in multiple jurisdictions:*** CESR proposes and would commit itself to a mutual recognition system to be put in place (i.e. a competent authority would accept an insider list maintained in accordance with the rules of another CESR member).

The development of this guidance by CESR's permanent working group, CESR-Pol, has been informed by the experience gained by CESR Members during the transposition period and gathered from the day-to-day application of the Directive. Where relevant, CESR-Pol has taken into account the advice provided by CESR to the European Commission in framing the implementing measures for



the Directive. The European Commission has also been consulted in development of the draft guidance and its comments taken into account.

CESR is inviting all interested parties to submit comments on the draft guidance by **2 February 2007** to Mr Fabrice Demarigny, CESR's Secretary General, by posting the response on line in the section Consultations on CESR's website ([www.cesr.eu](http://www.cesr.eu)).



#### 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.

2. CESR-Pol is a permanent operational group within CESR. It is made up of senior officials, from each CESR member, who are responsible for the surveillance of securities activities and the exchange of information. CESR-Pol's purpose is to facilitate effective, efficient and pro-active sharing of information, in order to enhance cooperation upon, and the co-ordination of, surveillance and enforcement activities between CESR members. CESR-Pol's key objective is to make information flow across borders between CESR members as rapidly as it would be internally and, by so doing, to enhance the transparency, the fairness and the integrity of European markets as a whole. The ability of CESR-Pol members to co-operate in the field of enforcement has been established by their signature of the CESR multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities (MoU) in January 1999.

Kurt Pribil, Chief Executive Officer of the Austrian Financial Market Authority (FMA) was appointed Chairman of CESR-Pol in September 2003. The group's work is supported by a member of the CESR secretariat, Angie Reeh-Schild.

3. 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. From 1st January 2006, the securities supervisors of Romania and Bulgaria attend CESR meetings as observers.

#### 4. **Background on the Market Abuse Directive and its development under the Lamfalussy Process:**

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

The MAD was the first European Directive to be adopted following the introduction of the Lamfalussy procedure which established a four level legislative procedure intended to speed 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.

5. For further information please contact:

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