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The 12th meeting of the Market Participants Consultative Panel

The Market Participants Consultative Panel held its 12th meeting on 18 October 2006 in Paris jointly with all CESR members.

The discussion was facilitated by CESR Chairman Arthur Docters van Leeuwen, and included a policy discussion pertaining to the future regulation of investment funds in Europe, the evaluation of implementation of the Market Abuse Directive and developments in Clearing and Settlement. In his opening remarks the Chairman welcomed the members of the Panel that were renewed (Salvatore Bragantini, Peter Paul F. de Vries) or newly appointed (Jarmo Leppiniemi, Jeffrey Tessler, Michael Buhl, and Tom Healy); Andrea Corcoran has been appointed as observer. He also thanked the previous members that have been replaced for their important contribution.

1. The future regulation of investment management in Europe

Following a presentation by Jonas Romlin, the members of the Panel had a policy discussion on the issues arising from the Expert Groups' reports on investment management with particular regard to hedge funds activity. This discussion will help CESR in giving input to the European Commission for the forthcoming White Paper.

In his introductory remarks Jonas Romlin noted that the asset management industry is affected by a high sophistication of products. There is an increasing focus on absolute return and particularly the use of instruments tracking benchmarks, including products that are accessible to retail investors, such as ETFs; this widens the gap between alpha and beta. There is also an increasing importance of risk management and alternative investments. From the perspective of end investors we can perceive an increasing attention to costs. As regards hedge funds, he mentioned that classification of these instruments is still unclear: ranging from new classes of instruments, new strategies or new business models. There is an extended use of derivatives either to take risks or to hedge risks. Finally Jonas Romlin mentioned that it is difficult to build index tracking funds.

In the following discussions members of the Panel noted that hedge funds do not give rise to investor protection concerns provided that they are targeted to professional and sophisticated investors (including pension funds and other institutional investors). The proposal to establish a common European private placement regime was supported. Competitive arbitrage between hedge funds and mutual funds was also mentioned.

More information about their activities (such as the degree of leverage) should be given to the market to assess potential market impact and systemic risks. As regards current level of leverage in the market, it was not felt to be excessive. Members of the Panel also considered that categorisation



of hedge funds would be a useful exercise for CESR. Risks of potential market abuses by hedge funds should be monitored particularly when hedge funds are very closely related to issuers. It was also mentioned that the lack of standardisation of certain aspects of process of settlement (in the absence of depositories and clearing houses) might pose risks.

As regards the debate on the possible modernisation of the UCITS Directive, it was considered that mergers between funds do not fall under the regulatory questions; a basic framework for information concerning mergers should be established, to which add national specific requirements. Key priorities have been identified in measures to enhance industry's efficiency (such as cross-border mergers, portfolio of management companies and pooling) and harmonization of a private placement regime.

As regards supervision of cross-border asset management some members of the Panel favoured the passport of the management company, whilst for depository it was felt to be more difficult.

2. Evaluation of implementation of the Market Abuse Directive

Following a presentation by Rudiger von Rosen, the members of the Panel had a discussion on aspects of implementation of the Market Abuse Directive. This discussion will provide input to the evaluation of the supervisory functioning of the MAD that CESR is currently conducting.

In his introduction Rudiger van Rosen supported the CESR initiative to evaluate the functioning of MAD. He mentioned in particular three critical aspects: a) directors' dealings, b) insiders' list and c) costs. As regards the first point he noted that the threshold to notify directors' dealings is too low and it generates too many information that might become unnecessary. As regards the second point he mentioned that the requirements should be less bureaucratic and follow the normal behaviours of companies; in particular he mentioned that too many persons in the list make the list unhelpful. He also claimed for equivalent implementation across Europe.

In the following discussion members of the Panel identified the following additional critical issues: the fact that the market abuse regime under MAD does not apply to unregulated markets, the treatment of contracts for difference and that on commodities. Members of the Panel considered that this regime is essential for the confidence in the market and that enforcement actions and publicity of these actions are important aspects of the regime. On directors' dealing some members of the Panel considered that the rule works effectively in many jurisdictions and it appears to be useful source for journalists. Others raised the point that the scope of the obligation is too wide covering also related parties. There was no call to change the legislation but rather to find practical solutions to avoid excessive burden; guidance may be developed when necessary.

3. Clearing and Settlement

Following a presentation by Jeffrey Tessler, the members of the Panel was invited to comment on the recent way forward announced by Commissioner McCreevy and have a policy discussion on the role that CESR could play.

In his introduction Jeffrey Tessler started by comparing the costs of cross border equities transactions in Europe and in the US. He also mentioned how the project launched by the European Central Bank on Target 2 Securities might affect the system. Finally he noted the difference between the activities of CSDs and ICSDs and the impact of the initiative of the Commission on the industry code of conduct.

In the following discussion members of the Panel supported the clarifications about the different activities performed by CSDs and banks. As regards the various initiatives currently undertaken by the Commission and the ECB it was felt that there is not yet a clear picture about possible evolutions. Supervision of Target 2 securities raised some questions. The approach of the code of conduct was supported, with particular regard to the transparency of prices.



4. Next meetings of the Market Participants Consultative Panel

- Paris, 22 March 2007
- Paris, 21 June 2007

Members of the panel may indicate themes for in-depth discussion during the next meeting (possible suggestions include: public oversight of auditors and needs and costs of public company's oversight board; transparency and disclosure of hedge funds).