



Date: May 2007

Ref.: 07-339

PUBLIC STATEMENT

The 13th meeting of the Market Participants Consultative Panel

The Market Participants Consultative Panel held its 13th meeting on 22 March 2007 in Paris.

The discussion was facilitated by CESR Vice-Chairman Carlos Tavares, and included a policy discussion pertaining to the implementation of the take-over bids Directive, transparency of hedge funds and the evaluation of the Lamfalussy process. In his opening remarks the Vice-Chairman thanked the members for their active participation and contribution to the CESR activities.

1. Take-over bids

Following an introduction by Salvatore Bragantini, the members of the Panel had a policy discussion on the issues arising from the implementation of the Take-over bids Directive. This discussion helps CESR in identifying whether the Committee should play a role in this area and, if so, in which regard.

In the introductory remarks Salvatore Bragantini recalled that the Take-over bid Directive consists of:

- i) an equal price provision;
- ii) a part on derogations, i.e., situations that may lead to exceptions to the bid;
- iii) a part on how to deal with anti bid defensive measures that were put in effect as a precaution against a possible bid, and how the bid can “break through” such rules;
- iv) a part on post bid defence, i.e., rules imposing board neutrality after the bid.

He also noted that a reasonable and, most of all, realistic, way to start the takeover bids directive might be along the following lines:

- a) neutrality rules must be applied without exceptions;
- b) breakthrough rules, which are very much antagonised by the whole of the EU, must be shelved. Insisting on them, albeit desirable, would be unrealistic. It must be added that such rule, as it is now written, would not cover all kinds of pre-bid defences;
- c) reciprocity rule must be shelved, and no one should be allowed to stop a bid from getting to shareholders desks just claiming, with more or less legal ground, that the suitor is not applying the same rules.

Members of the panel expressed disappointment for the situation arising from the transposition and implementation of the Take-over bids directive, whereby too many options and derogations create obstacles and national protections to the efficient functioning of the markets for corporate control of and suggested to start addressing its potential revision ahead of the foreseen deadline of 2011. Members also discussed the practical difficulties of the principle “one-share-one-vote” and its



impact on the breakthrough rules; even though this topic was considered to be one of the most sensitive where progress are realistically difficult to be achieved.

The US experience was also recalled as possible model for Europe, whereby securities laws are harmonized at federal level and commercial laws are left to national State jurisdictions.

2. Transparency and disclosure of hedge funds

Following a brief introduction by the Secretary General of CESR on the state of play of the discussions on hedge funds in Europe, the members of the Panel discussed the issue of transparency of hedge funds and possible solution to enhance their disclosure.

Generally speaking members found that too many objectives are currently discussed under the same heading of “hedge funds” and this makes it difficult to achieve solutions and good results.

The representatives of issuers in the MPCP expressed concern about the shareholder hyper-activism of some hedge funds and more generally institutional investors (code of conduct elaborated by institutional investors to disclose the attitude in shareholders’ meetings should be applicable also to hedge funds). It was also noted that there is lack of clarity about who is the ultimate beneficial owners and the decision makers; this is related to the transparency of transactions that allow separation of ownership and control, such as equity swaps and others.

As regards transparency of position of hedge funds in the market, this was perceived as not realistic in terms of timing to collect the positions and eventually disrupting the smooth functioning of the markets.

As regards investor protection and particularly the participation of retail investors, it was suggested that this should happen via funds of hedge funds as it is already the case in some European countries.

Andrea Corcoran updated on the current developments in the US on hedge funds and the recent case of Amaranth.

3. Evaluation of the Lamfalussy process

Members of the Panel were also invited to discuss how CESR could best contribute to the evaluation of the Lamfalussy procedure that will take place in the second half of 2007. Members considered the procedure too complex and suggested that it should be simplified in particular by giving a more direct role to CESR. Allocations of roles between different participants to the process should also be better clarified. The consultation process was praised but additional efforts should be made to take into account the consumer view point. Finally it was stressed that the collection of evidence and impact analysis should be more systematic before deciding.

4. Oral report by the Vice-Chairman of CESR

The Vice-Chairman of CESR reported on the recent developments in CESR and the decisions taken at the last CESR meeting.

5. Next meetings of the Market Participants Consultative Panel

- Paris, 21 June 2007
- Lisbon, 16 October 2007 jointly with the CESR members

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).

