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Press Release

EU Securities Supervisors publish the last set of guidance to implement the new trading regime in Europe (MiFID)

Today's announcement marks the culmination of CESR's Level 3 work programme in relation to MiFID (the full level 3 work programme can be accessed via the following link: <http://www.cesr.eu/index.php?docid=3884>). A key element in the successful application of MiFID will depend upon an intensification of supervisory convergence between its Members. CESR is publishing today its final MiFID Level 3 guidance and recommendation in relation to inducements, best execution, passporting and transaction reporting. These documents focus on the operational aspects that arise as a consequence of the provisions of the Directive and its implementing measures, and on identifying practical solutions to address the regulatory challenges to ensure certainty amongst market participants.

CESR adopts recommendations on Passporting and a Protocol on Notifications (Ref. CESR/07-337 and Ref. CESR/07-317)

CESR is today issuing to its Members, recommendations on passporting and a protocol on notifications, with the aim of fostering supervisory convergence and consistent implementation in the day-to-day application of the Passporting provisions under MiFID.

Passporting of intermediaries was identified as one of the key priorities in CESR's MiFID Level 3 work programme. The passporting recommendations set out a number of practical proposals with the aim of promoting a common supervisory approach to Article 31 and Article 32 of the MiFID in order to guarantee efficient and consistent supervision of firm's cross-border activities. The paper contains 20 recommendations which set out:

- A harmonised approach and a common interpretation to the notification procedures set out in Article 31(3) and Article 32(6) of MiFID;
- A commitment to further work to develop a common model of practical cooperation regarding the supervision of branches;
- Clarifications on aspects regarding the supervision of tied agents, MTFs and representative offices;
- Transitional arrangements for the transition from the ISD to the MiFID passport.

The Protocol on notifications provides a framework for cooperation between Competent Authorities with regard to the passport notification process for investment firms and market operators operating an MTF in the EEA under Article 31 and Article 32 of the MiFID. The substance of the Protocol details, both in relation to the 'freedom to provide services and activities' (Art 31) and the 'establishment of a branch' (Art 32):

- The content and nature of the information to be provided by the Home to the Host Competent Authority in the initial notification;
- The means of transmitting the notification;
- The timelines for transmission ;
- The addressee of the notification;
- The determination of who is responsible for guaranteeing its safe receipt; and
- The practicalities of dealing with notifications of changes to the information provided in the initial notification.



During the course of consultation, CESR has considered the views of market participants and consumer representatives and has taken them into account both in developing and finalising the passporting recommendations. CESR also publishes a Feedback Statement (Ref: CESR/ 07-318) which sets out how the issues raised during consultation have been considered and reflected in the final recommendations.

CESR adopts Q&A on best execution (Ref: CESR/07-320)

CESR is today issuing a Q&A with the aim of fostering supervisory convergence and consistent implementation in the day-to-day application of the MiFID Level 1 and the MiFID Level 2 Directive requirements on Best Execution.

MiFID's best execution requirements establish a new overarching standard that requires firms to implement a process that will enable them to obtain the best possible result for their clients orders on a consistent basis. This process-driven approach aims to promote two of CESR's most important objectives, namely market efficiency and investor protection by fostering competition between trading venues whilst at the same time promoting investor confidence by ensuring that investment firms will take all reasonable steps to execute their orders for the best possible result, by choosing the execution venue that appears most likely to do so.

The best execution Q&A sets out to achieve a common supervisory approach in relation to the best execution requirements. It covers in a practical manner the content of execution arrangements, the content and degree of differentiation of the best execution policy, the possibility of using single execution venues, the assessment of the relative importance of the best execution factors, the notion of total consideration and fees and commissions, disclosure of information, consent, and the requirements of monitoring and review.

During the course of consultation, CESR has considered the views of market participants and consumer representatives and has taken them into account both in developing and finalising the Q&A. CESR is publishing a Feedback Statement (Ref: CESR/07-321), which sets out how the issues raised by stakeholders during consultation have been considered and reflected within the answers contained in this Q&A.

CESR adopts recommendations on inducements (Ref: CESR/07-228b)

CESR is today issuing recommendations with the aim of fostering supervisory convergence and consistent implementation in the day-to-day application of Article 26 of the MiFID Level 2 Directive.

Article 26 of the MiFID Level 2 Directive, entitled "Inducements", sets out requirements in relation to the receipt or payment by an investment firm of a fee, commission or non-monetary benefit that could place the firm in a situation where it would not be acting in compliance with the principle in MiFID Article 19(1) that the firm act honestly, fairly and professionally in accordance with the best interest of its clients.

The document contains six recommendations and a number of supporting examples which illustrate some of the variety of situations in which Article 26 of the MiFID Level 2 Directive is relevant. The recommendations themselves clarify the range of application of the regime, specifying a common approach to the understanding of the different categories of payments within Article 26. The paper also introduces some indicative factors aimed at helping supervisors establish whether specific third-party payments are likely to meet the regulatory tests within Article 26(b). The paper further clarifies the effect of Recital 39 in interpreting the operative provisions Article 26. Finally, some direction is provided with regard to the possibility for firms to have recourse to summary disclosure in connection with third party payments.

The content of these recommendations reflect comments received from industry and consumer groups during the course of two consultations. CESR has adjusted some of its views in response to significant issues raised by stakeholders both as a result of the two public consultations on inducements and the two open hearings. CESR also publishes a Feedback Statement (Ref: CESR/07-



316) which sets out how the issues raised during consultation have been considered and reflected in the final recommendations.

CESR adopts guidelines on transaction reporting (Ref: CESR/07-301)

Finally, CESR is also issuing today guidelines on MiFID transaction reporting. The transaction reporting regime established by MiFID is key for CESR members to monitor the activities of investment firms and to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market. The reports can be made either by the investment firm itself; a third party acting on its behalf; by a trade matching or reporting system approved by the competent authority; by the regulated market; or, MTF through whose systems the transaction was completed. CESR members shall further exchange the reports between themselves through the Transaction Reporting Exchange Mechanism (TREM). This system for exchanging the data between CESR members is currently being developed by CESR.

In addition to the technical work, some issues have been identified where there is a need for a harmonised approach by CESR members. The document published today provides guidance to three aspects of transaction reporting:

- practical solutions for the reporting obligations for branches;
- clarification as to what constitutes “execution of a transaction” for transaction reporting purposes;
- operational solutions for some aspects of reporting channels.

During the course of the consultation process, CESR has considered the views of market participants and has taken into account the views expressed in finalising these guidelines. CESR also publishes a Feedback Statement (Ref. CESR/07-319) which sets out how issues raised during the consultation process have been considered and reflected in the final guidelines.



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 has established a 'MiFID Level 3 Expert Group' that will undertake work to deliver supervisory convergence in the day-to-day application of the legislation (i.e. Level 3). This group was chaired by Manuel Conthe, Chairman at the Comision Nacional del Mercado de Valores (CNMV), Spain's securities supervisor. The secretariats' rapporteur of this group is Carlo Comporti, Deputy to the Secretary General at CESR and Director of Markets and Intermediaries.

There are two working sub-groups reporting to the MiFID Level 3 Expert Group:

- the 'Intermediaries sub-group', was chaired by Antonio Carrascosa, Director General at the Comision Nacional del Mercado de Valores (CNMV), Spain's securities supervisor. The rapporteur of the 'intermediaries sub-group' is Diego Escanero, Senior Officer at CESR Secretariat;
- the 'Markets sub-group', chaired by Hans Wolters, Head of Policy at the Autoriteit Financiële Markten, Holland's securities supervisor. The rapporteur of the 'markets sub-group' is Jari Virta, Senior Officer at CESR Secretariat.

CESR has formed a MiFID Consultative Working Group which draws together technical experts from the markets and types of firms affected to provide advice on the technical practicalities of the guidance developed under the work programme. A list of its members is available on CESR's web site.

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.
4. For further information please contact:

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