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CESR-Pol's Work Programme concerning Level 3 of the Market Abuse Directive

CESR is continuing in its efforts to prepare ground for convergent implementation and application of the Market Abuse regime by ensuring that a common approach to the operation of the Directive takes place throughout the EU amongst supervisors. In July 2007, CESR confirmed that CESR-Pol will undertake another stream of Level 3 work on market abuse on the basis of the mandate given by CESR to CESR-Pol concerning Level 3 of the Market Abuse Directive (MAD) (Ref. CESR/04-10c) which should be read in conjunction with the Terms of Reference of CESR-Pol (Ref. CESR/06-114 replacing CESR/02-070b) and in the light of the responses to the Call for Evidence (Ref. CESR/06-664).

Two major steps in this process were the publication of the first and the second set of CESR guidance and information on the common operation of the Directive (Ref. CESR/04-505b) in May 2005 and (Ref. CESR/06-562b) in July 2007 respectively.

Scope of the work

CESR-Pol will seek to develop a common understanding amongst its members regarding treatment of the following aspects of the MAD and associated issues related to market abuse, as it has identified further market-facing work that may merit further guidance to achieve a harmonized application of the Directive. The aim will be to establish, if possible, guidance for CESR members and/or the market which will add value to the provisions of Level 1 and 2 Directives/ Regulation and accompanying recitals. CESR-Pol will also provide technical assistance to the European Commission, when specifically mandated, on the functioning of the market abuse legal framework. The technical advice of CESR will be used in preparation of the Commission's report on the operation of the MAD, which is due for the end of 2008.

Work topics	Priority for CESR-Pol	Expected Delivery Points
Assistance to the Commission in drawing the list of sanctions and measures applicable under the MAD in order to accommodate concerns about the diversity of measures and sanctions applied in Member States.	High	October 2007
Harmonisation of requirements for insiders lists.	High	July 2008
Suspicious Transactions Reporting (not only to which authority the reports are submitted but also whether CESR can produce further guidance on expectations as regards reporting).	High	January 2008
Stabilisation Regime as Level 3 (the strict objectives and limits of the Regulation and the diverging application by supervisors of the Regulation in relation to Accepted Market Practices (AMPs) do not	High	September 2008

provide sufficient legal certainty).		
The twofold notion of inside information to be analysed as a Level 3 topic (Definition of insider information/delay of public disclosure; concerns about the problems arising from having of one definition of inside information for both the insider trading prohibition and the issuer disclosure obligations; and also the question of the requirement not to mislead the public in case of delay of public disclosure).	High	July 2008
Mapping of the existing thresholds in Member States and other practices (such as stock options programmes, who is entitled to publish directors' dealings) of CESR Members as regards notifications of transactions by persons discharging managerial responsibilities and consideration of whether there is a case for recommending adjustment of the threshold.	Medium	December 2008
Develop guidance on the definition of inside information with regard to commodity derivatives to the extent possible.	Medium	June 2009

Methodology

A survey will be undertaken based on a questionnaire sent out to all CESR members to get laws, regulations, guidelines and examples on the different topics. The work already conducted by CESR on Level 2 implementing measures for the MAD will be taken into consideration, where appropriate.

On the basis of the responses received during this survey, CESR-Pol will develop guidelines for CESR members and/or the market and consider whether in any cases it is appropriate to propose that the European Commission examines an issue in its forthcoming review of the operations of the Directive. If it is proposed to issue specific guidance to the market, this will be properly communicated in draft form to allow appropriate consultation with interested parties.