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PRESS RELEASE

**CESR Level 3 Work Programme under MiFID:
CESR publishes its advice to the European Commission on non-equities transparency, as well as a report on commodity and exotic derivatives and announces the appointment of Jean-Paul Servais (CBFA) as Chair of the MiFID Level 3 Experts Group**

In October 2006, CESR adopted a Level 3 work programme on MiFID (Ref. CESR/07-550b). The work programme tackled issues on which convergence in the practices of European Supervisors should be achieved. The purpose of this being, to provide market participants with greater certainty in order to implement pan-European strategies on the technical operational issues which were the result of the requirements set out in the legislation. The sequence of work and issues set out in the work programme were established on the basis of the priorities indicated by market participants themselves.

CESR has almost completed its work programme; the remaining element on which CESR is now working, is the preparation of a Multilateral Memorandum of Understanding to facilitate supervision of branches.

After extensive consultations with market participants, CESR adopted several documents in the period from January to May 2007 (a brief description of these papers is given in a technical background note in the Notes for Editors in this press release):

- recommendations on the functioning of the passport of investment firms;
- recommendations on inducements;
- recommendations of the list of minimum records that investment firms have to keep;
- other issues where convergent implementation of MiFID would be useful, in particular "Questions and Answers" on 'best execution'.

In relation to markets in particular, CESR developed:

- guidelines and recommendations on publication and consolidation of market transparency information;
- guidelines on transaction reporting;
- and recently, CESR published a guidebook on the calculations relating to market transparency and a database containing all shares admitted to trading in EU regulated markets and those that are meant to be "liquid", according to MiFID.

To complete this package, CESR publishes today two documents in relation to two requests from the European Commission for:

- Technical advice on Non-equities transparency (CESR/07-284b); and
- A compilation of responses by CESR Members to the European Commission's request for initial assistance on commodity and exotic derivatives and related business (CESR/07-429).



Both of these requests for CESR's technical advice are intended to assist the European Commission in preparing two reports to the EU institutions on whether there is a need to extend the MiFID transparency requirements to non-equities (bonds) and how to include within MiFID an appropriate regulatory framework for commodity and exotic derivatives, as set out in Article 65 of MiFID

Non-Equities Transparency:

In terms of non-equities transparency, CESR concluded that it has not recognised evident market failure in relation to market transparency which would warrant mandatory transparency for bonds. However, some re-distribution of the existing transparency information could be useful to help retail participants. CESR also recognises that there are market-led initiatives planned in this direction. CESR proposes that the progress of these initiatives should be followed and their effect evaluated before considering any possible regulatory action. CESR's response was prepared in close co-operation with different markets participants including a public consultation and an open hearing. A feedback statement explaining the choices is also published today on CESR's website (Ref. CESR/07-538).

Commodities:

In relation to commodities, the document published today covers the first part of the Commission's request, and includes an initial fact-finding exercise on the regulation and operation of commodity and exotic derivatives in Member States. The document is based on responses from individual CESR members and as this part of the work to be undertaken by CESR has been a fact-finding exercise it has not been subject to public consultation. .

CESR will develop a follow up report for the Commission to address the remaining areas of their request for advice in October 2007. In particular, this will include the application of MiFID exemptions and Article 38 of the MiFID implementing Regulation which set out the requirements related to persons exercising significant influence over the management of the regulated market.

Jean-Paul Servais, Chair of the MiFID Level 3 Expert Group said:

“CESR has sought, in delivering its initial work programme, to respond to the issues on which market participants indicated to us that they wished a convergent approach to be developed amongst supervisors. We are confident that in delivering this guidance, market participants have greater certainty and the ability to develop pan-European approaches to respond to the obligations established in the MiFID. More importantly, we also hope this will enable market participants to identify and exploit the potential business opportunities created by this key legislative framework, which has been significantly modernized to help Europe advance the single market for financial services.

Our attention is now turning to some practical work which remains for us to do in relation to home-host issues in the supervision of branches. This work will seek for regulators to minimise the burden of firms. In addition to this, it is clear that market participants will have practical questions which emerge on a day-to-day basis and some of these will benefit from being tackled on a convergent basis by EU supervisors. To this end, CESR will develop a ‘Question and Answer’ (Q and A) tools to respond to similar issues which arise for previous Directives and we will seek to apply this approach to deliver a constructive response to market participants. Furthermore, CESR will complete its technical advice on Commodities, of which publication of today's fact-finding exercise was only the first part. Finally, CESR will now look ahead and publish a new work programme in November 2007 to address any remaining issues it identifies in the meantime.”



Appointments:

At the last meeting, CESR appointed Jean-Paul Servais, Chairman of the Managing Committee of the Belgian CBFA, as Chair of the MiFID Level 3 Expert Group, and Maria José Yubero, from the Spanish CNMV, as Chair of the Intermediaries Sub-Group.



Notes for Editors:

1. **Technical Background Note on MiFID Level 3 documents adopted by CESR:**

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

The Q&A aim at 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. This is achieved 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.

- **Recommendations on inducements (Ref: CESR/07-228b)**

CESR recommendations on inducements aim at 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 of 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.

- **Recommendations on Passporting and the Protocol on Notifications (Ref. CESR/07-337 and Ref. CESR/07-317)**



Recommendations on passporting and a protocol on notifications are meant to foster 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 the MiFID Article 31, regarding freedom to provide investment services and activities and MiFID Article 32, regarding the establishment of a branch, in order to guarantee efficient and consistent supervision of firms' 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.

- **Recommendations on the List of minimum records under Article 51(3) of the MiFID Implementing Directive**

The recommendation set out the content of the list of minimum records that competent authorities need to draw up in accordance with Article 51(3) of the MiFID Level 2 Implementing Directive (Ref. CESR/06-552c) and that investment firms have to keep.

- **Guidelines and recommendations on Publication and Consolidation of Market Data (Ref. CESR/07-043)**

The guidelines and recommendations are meant to facilitate the understanding of certain requirements of the MiFID and its Implementing Regulation on publication and consolidation of market information. These measures are intended to facilitate a consistent implementation of the provisions concerned, without imposing further obligations on investment firms, MTFs or regulated markets.

The guidelines and recommendations address several practical issues on how regulated markets, MTFs and investment firms act when publishing transparency information required under MiFID. In particular, requirements related to timing of publication, process for monitoring the data quality as well as the use of a website as a publication



channel. Another focus is on the consolidation of the information. Under the MIFID, consolidation of this information will be undertaken by market forces. In order to enhance that process CESR is issuing recommendations on how to facilitate the consolidation process including recommending the use of certain international standards.

The purpose of these guidelines and recommendations is to help investment firms, MTFs and regulated markets to assess the way in which these provisions are interpreted by competent authorities. They should also be understood as a ‘safe harbour’ to ensure that investment firms, MTFs and regulated markets fulfil their respective obligations when following the proposed guidelines and recommendations.

- **Guidelines on transaction reporting (Ref: CESR/07-301)**

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 by CESR 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.

- **Publication of the list of ‘Liquid Shares’ according to the MIFID**

The MiFID implementing Regulation (No 1287/2006, of 10 August 2006) requires the relevant competent authorities to calculate and publish a set of information regarding *all* shares which are admitted to trading on a regulated market. CESR has collected this information, and published it in the form of a database. The information included in this database allows market participants to recognise liquid shares (which trigger the obligations for systematic internalisers according to Article 27) and to determine the block sizes for waivers from pre-trade transparency requirements and delayed post-trade publication.

The database contains listings of 7206 shares, of which 894 are liquid. This information will be updated for the first time in mid-October 2007. After 1st November 2007, the information will be updated on a regular basis. To identify the ‘liquid shares’ only, users can sort the shares by the column entitled ‘Standard Market Size’ (SMS).

The database can be accessed via the MiFID page on CESR’s website, or via the following link: <http://mifiddatabase.cesr.eu>. A webservice which will allow automatic access to the data in XML format will be made available by mid October 2007 at the latest, to allow users to test. In order for users to be able to prepare their systems, CESR has published a document explaining how to implement the web service (Ref. CESR/07-370) alongside the database.

