

The Committee of European Securities Regulators



Ref. CESR/07-671

Half-yearly report on the activities of  
the Committee of European Securities Regulators  
to  
the European Commission  
the European Parliament  
the European Securities Committee

31<sup>ST</sup> JANUARY 2007 TO 31<sup>ST</sup> AUGUST 2007



## 1. Introduction

The present interim report complements CESR's Annual Report for 2006, published in September 2007, and provides a half yearly update on the activities of the Committee of European Securities Regulators (CESR) to the European Commission, the European Parliament and the European Securities Committee. This Report covers the period from 31 January 2007 until 31 August 2007.

On 31 January, CESR Chairs elected Eddy Wymeersch, Chairman of the Belgian Banking, Finance and Insurance Commission (CBFA) as Chairman of CESR and Carlos Tavares, Chairman of the Comissão do Mercado de Valores Mobiliários (the CMVM), as Vice Chair of CESR to lead them for the next two years from 1 February 2007. The election of CESR's Chair and Vice Chair marks an important phase in the life of CESR as the Members of CESR refocus their attention on bringing about operational convergence amongst supervisors and delivering an ambitious work programme for 2007 (Ref. CESR/06-627).

CESR takes this opportunity to thank its former Chair and Vice-chair, Arthur Docters Van Leeuwen (Chairman of the Netherlands Authority for financial markets) and Vice Chairman, Kaarlo Jännäri (Director General of the Finnish Financial Supervision Authority) who have secured CESR's solid progress from CESR's creation in June 2001.



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### 3. Market Participants Consultative Panel (MPCP)

#### The Market Participants Consultative Panel 13<sup>th</sup> Meeting

The Market Participants Consultative Panel held its 13<sup>th</sup> 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.

#### **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 had created 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 and where realistic progress will be difficult to achieve.

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

#### **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 solutions 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, the 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 positions of hedge funds in the market, was perceived as not realistic in terms of timing, to collect the positions and could potentially disrupt 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.

#### **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.

#### **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.

#### **The Market Participants Consultative Panel 14<sup>th</sup> Meeting**

The Markets Participants Consultative Panel held its 14<sup>th</sup> meeting on 21 June 2007 in Paris. The discussion was facilitated by the Vice-Chair of CESR, Carlos Tavares and covered the following issues: (1) public oversight of auditors and the needs and costs of a public

company's oversight board, (2) corporate governance in the European context and (3) the future role of CESR in the context of the forthcoming evaluation of the Lamfalussy procedure.

#### **Public oversight of auditors and the needs and costs of a public company's oversight board**

Theodoros Philippou gave a presentation on the objectives, needs, cost/funding of public oversight of auditors in the context of the Statutory Audit Directive and with a view to the system in the US. The presentation served as a start for a policy discussion among the Members of the Panel about possible ways forward in Europe in this area.

In his introductory remarks Theodoros Philippou emphasised that the objective of public oversight is to improve public confidence and the credibility of high quality financial reporting. The Statutory Audit Directive requires Member States to establish an effective system of public oversight of statutory auditors and audit firms but leaving to member states the manner to configure this body according to transparency and fairness principles established by the Directive (for example, system of inspection by staff of a public oversight body or as a system of delegated inspection by a professional body of 'peers').

In the context of cost of public oversight Theodoros Philippou underlined that the Directive does not make a distinction between monitoring and monitored peer review, whereas the latter system can be significantly less costly. From a funding point of view, it was noted that few Member States fund the system of oversight in total. In the majority of the Member States the auditors and the audit firms are funding the cost of public oversight.

Theodoros Philippou compared the EU system of public oversight in the making with the US oversight system by the Public Company Accounting Oversight Board (PCAOB), created by the Sarbanes-Oxley Act 2002, and which sets its own budget and levies fees on US public companies. Based on the first years of its existence, it is stated that the standards introduced by the PCAOB have imposed substantial compliance costs on registered accounting firms and their public company clients. Additionally, the high cost of



compliance disproportionately affects smaller public companies and will have long-term negative implications for the US economy. Given the fact that this system is still in its infancy, it was concluded by the MPCP that the EU should not converge to this US quality assurance system. In general, it was suggested that a combination of self-regulation and public oversight, i.e. a mechanism which combines the benefits of significant auditing expertise with the benefits of public confidence of independent non-practitioners will deliver the best results.

In the following discussion, one member underlined the need to have outsiders on the board in case oversight is being conducted by a professional body of peers. Other members noted that the auditing-industry is a strong oligopoly where public authorities must be able to influence the outcome if the first line of supervision is carried out by peers. The German system of oversight, organized under private law and under the umbrella of the Bafin, was presented as a balanced solution between self-regulation and public oversight.

#### **Corporate Governance in the European context**

Dr Rolf Breuer introduced the subject of Corporate Governance by stating the reasons for the enhanced interest over the last few years mainly had to do with (1) an attempt to restore loss of public confidence after various corporate incidents and (2) as a way to deal with present day shareholders' activism. With regard to the first reason, Dr. Breuer holds the view that there is no reason for EU Commission to deal with Corporate Governance. The present EU framework for corporate governance with a mixture of principles and rules avoids the US box ticking approach. Current convergence between 1-tier and 2-tier corporate governance systems (with more emphasis on independent directors and a changing role of the supervisory board respectively) and enhanced transparency improve the present approach in the EU.

Dr Breuer noted that shareholders activism follows in most cases a similar model; a voting stake is being build up, discussion with management follows, views are being made public, the voting stake is being accumulated and supporters are being solicited. According to Dr Breuer, there is nothing wrong with this pattern, but from a corporate governance point

of view, management should not be taken by surprise, be aware about corporate strengths and weaknesses and communicate these with its shareholders. In this context it would be advisable to improve the quality of shareholders registers. Other types of shareholders' activism (abuse of stock lending) require enhanced awareness among lenders or ('acting in concert') is difficult to prove. It was concluded that some improvements in the area of corporate governance might be helpful, but members emphasized the risk of overregulation and the need to create a European consensus on the matter.

In the discussion that followed, members broadly agreed with the presentation, but underlined the importance of 'knowing your shareholder' and the need to disclose the ownership of derivatives positions, in case these are used for voting. It was concluded that the collection of voting power around an Annual General Meeting AGM is difficult to counteract. The creation of a double record date could possibly be helpful in this respect. Dr Breuer also suggested introducing a system of declaration of "non-concert" by certain shareholders. Finally, further guidance given about the independence of outside-directors could also improve the system.

#### **The future role of CESR in the context of the forthcoming evaluation of the Lamfalussy procedure**

On the basis of an introduction by CESR Vice-Chair Carlos Tavares, the members of the Panel were invited to give their views on the way forward for CESR. One member noted that - although the Lamfalussy-concept is clearly a success - there is still too much detail at Levels 1 and 2 and issues are sometimes addressed too late in an on-going process. Other members noted that too many options for Member States in EU-Directives will not assist harmonisation. The members of the panel felt there was a clear need to have a balanced debate about the pro's and cons of CESR's current legal status.



### **Partial renewal of the Panel**

Members took note of the end of the current mandate of five members; Rolf E. Breuer, Theodoros Philippou, Rüdiger von Rosen, Zoltan Speder and Tom Healy (resignation). The members of CESR were asked to suggest candidates by September 2007 (including possible renewals).

#### ***Next steps***

The next meeting of the Market Participants Consultative Panel is scheduled for 16 October 2007, jointly with CESR Members.

The subsequent meeting is scheduled for Paris, in April 2008.

A list of members of the Market Participants Consultative Panel is set out on CESR's website, in the section Market Participants Consultative Panel.





## 4. Supervisory Convergence (Level 3)

### 4.1 Policy

#### Developing supervisory convergence through movement of staff and joint training

CESR is working together with CEBS and CEIOPS on the development of a common training platform for supervisors, covering cross-sectoral issues.

This initiative forms part of CESR's work to improve supervisory convergence, and CESR Members have agreed that increased use of staff exchange and joint training would be useful in developing a common CESR culture, and increase regulatory harmonisation in Europe.

#### *Next steps*

A Report will be prepared by the 3L3 Training Steering Group, to be approved by the Chairs. This Report will explore and set out a number of options and information regarding a number of elements including:

- financing and legal structure
- governance structure
- future budget of the platform

This report will review the extent to which the Training Platform could function within the existing legal frameworks of the three secretariats, and will explore alternative legal structures. Furthermore, it will develop a potential governance structure for the training platform in the future.

#### Increasing active dialogue and assisting the cross border retail investor

CESR organised a two day Retail Investor Workshop on 12-13 February 2007 in Paris, chaired by Carlos Tavares. The decision to host the workshop on an annual basis reflects the Chairs' commitment to intensify the participation of retail investors in the work of CESR and to ensure CESR is better placed to hear and take into account the views of retail investors. 26 representatives from Retail Investor Associations (RIA's) attended the

meeting, with a large number of countries represented.

The two day meeting was focused on the following issues:

- MiFID, specifically the guidance CESR was developing on 'Inducements'. In relation to this issue, retail investors were very pleased with the balance CESR had sought to strike between the interest of service providers and that of retail investors. 'Best Execution' and 'Passporting' was also discussed at length.
- The work on a simplified prospectus for UCITS.
- The distribution and marketing of products, with particular emphasis on competing products and compatibility of selling restrictions and a national level with MiFID.

The meeting also provided CESR with an opportunity to illustrate how it had actively listened and responded to the issues raised at the last meeting with RIA's which had been held in Valencia in November 2005. In particular, concerns were raised in Valencia by RIA's that regulators were not enforcing legislation vigorously enough. CESR-Pol took the opportunity to respond to these concerns with a very thorough presentation on enforcement approaches and the various systems developed by CESR-Pol to ensure supervisory co-operation on cross border cases and provided statistics on the number of cases enforced. RIA's welcomed the presentation but stressed that they would like CESR members to consider making more information available on the number of cases investigated which did not lead to enforcement, along with those where enforcement was successful. The reasons why CESR members have not provided more transparency at this stage were explained.

Retail Investor Associations had clearly indicated that CESR did not have a role in undertaking investor education but noted that some retail investor friendly information regarding compensations schemes, the regulatory landscape and common terms would be useful. The Consumer Taskforce presented the work it had therefore undertaken to develop content for a new 'Investor Corner' page on the new CESR





website's which would respond to this. Retail Investor Associations will be asked to provide their views on a 'test' version of this to ensure the content meets their needs effectively before the new website goes 'live'.

RIA's welcomed the tangible improvements since Valencia and the more active engagement that they had experienced with CESR since this. They encouraged CESR to continue on this path.

The greater efforts that CESR has put into gaining greater RIA involvement in CESR's work is beginning to bear some fruit, as can be witnessed from the positive remarks made about CESR to the IIMG on CESR willingness to engage RIA's and the following statistics which show a small but gradual upward trend in 'formal' responses to CESR consultations since 2005.

#### ***Next steps***

A Portal for retail investors investing cross-border will be launched. The goal of this website is to provide a useful point of information for retail investors investing cross-border.. Members will be asked to translate the pages if they feel this information is useful.

The Investment Management Expert Group is working on a Key Investor Information document. The next steps are to be the following:

- Public consultation on the draft advice
- To obtain further input from external stakeholders;
- Open-hearing at CESR's premises on 23 November 2007;
- Subject to approval by CESR Chairs at the meeting of February 2008,
- submission of the final advice for testing by the European Commission;
- Testing by the European Commission, through an external research agency (the tender offer for the contractor selection has been launched by the European Commission recently).

## **4.2 Monitoring**

### **Review Panel:**

## **I. Institutional texts regarding the operation of the Review Panel**

### ***I- A. Protocol of the Review Panel***

On 1 April 2007 CESR published its protocol on the Review Panel. The Review Panel is established by CESR to monitor the consistent and timely implementation of supervisory provisions set out in Community Legislation and CESR measures with the purpose of fostering a common and uniform day to day application of all the above and of enhancing supervisory convergence within the European Economic Area.

To achieve the objectives set out in the Protocol, the Review Panel uses a number of different tools such as self assessments and Peer Reviews, mapping exercises, surveys and upon a specific mandate from CESR, selective reviews involving one or more CESR authorities. CESR may ask the Review Panel to develop and use other specific tools when needed.

### ***I- B. Methodology for Self- assessment and Peer Review Tool***

On 26 June 2007, CESR published its updated methodology for self-assessment and peer review tool, which aims to determine whether the objective of each supervisory provision assessed is sufficiently met in accordance with Article 2 of the Protocol. The aim is also to determine the overall assessment of each CESR Member regarding the whole exercise.

The Methodology does not aim to extend or change the scope or nature of supervisory provisions, but, where relevant, to lead to their consistent implementation in each CESR' authority's jurisdiction.

## **II. Extent of equivalence of supervisory powers across Europe under the Market Abuse and Prospectus Directives**

In mid-2006, CESR launched a mapping exercise, through its Review Panel, which assessed the supervisory powers that had been given to CESR Members following the entry into force of the Market Abuse and the Prospectus Directives. The purpose of the study was to assess whether the competent



authorities benefit from equivalent supervisory powers. The capacity to act on an equal footing when performing cross-border investigatory, supervisory and sanctioning activities is considered by CESR as a precondition to a credible EU supervisory system and fundamental to delivering supervisory convergence. The findings of these reports have been submitted by CESR to the Financial Services Committee (FSC), which was requested by the ECOFIN (in its Conclusions of 16 May), to monitor the convergence of supervisory powers and ensure that they are at an adequate level. As a complement to this exercise, CESR published a report on the supervisory functioning of the Prospectus Directive and Regulation (Ref. CESR/07-225) on 12 June, which was prepared by the CESR prospectus expert group and has also been submitted as part of CESR's contribution to the Lamfalussy Review.

CESR's assessment, however, not only mapped the powers themselves, but also examined how these powers are exercised in practice by the competent authorities (i.e. in their day-to-day application). CESR considers that the mapping of national supervisory practices will contribute to a better understanding between the EU supervisors, will ultimately enhance supervisory convergence as CESR members will compare supervisory practices and try to benefit from each others' best experiences. It will also provide valuable insight as to where further work can be undertaken by CESR to develop common standards (for example, supplementing the Prospectus Q and A already available or developing a second set of guidelines on the Market Abuse Directive) and where this may face limits due to national implementation.

To summarise, the key findings include an assessment of:

- *the attribution of the powers to CESR members;*
- *the ability to issue practical rules;*
- *general powers provided to CESR Members apply the Directives;*
- *co-operation powers;*

- *the assessment of supervisory practices.*

The findings of CESR are set out in more detail in the following documents:

- A report submitted to the Financial Services' Committee (FSC) (Ref. CESR/07-334): The report provides an overview of all the finding set out in the reports below.
- Two correspondence tables: one for the Market Abuse Directive (Ref. CESR/07-382) and one for the Prospectus Directive (Ref. CESR/07-385). These illustrate through a tick box approach what supervisory powers CESR Members hold and how they are exercised;
- Two full reports including executive summaries: one describing its members' supervisory powers under the Market Abuse Directive and relevant implementing measures (Ref. CESR/07-380) and one describing its members' supervisory powers under the Prospectus Directive and relevant implementing measures (Ref. CESR/07-383).

#### ***Next steps***

In the second half of 2007 the Review Panel will focus its activity on:

- Reviewing its methodology for the mapping exercises;
- Conducting a peer review for the implementation of CESR Standards regarding the notification procedure for UCITS;
- Mapping the existing CESR standards against the FSAP measures that either have already, or will in the coming year be implemented ("deregulation" exercise);
- Updating the Review Panel IT tool.

#### **Credit Rating Agencies:**

**Report to the European Commission on the compliance of the credit rating agencies with the IOSCO Code of Conduct**



On 4 January 2007 CESR published its first report to the European Commission on the compliance of the credit rating agencies with the IOSCO Code (Ref. CESR/06-545) following the Commission's request. This draws to a culmination the outworking of a year's work under the voluntary framework of co-operation between CESR and the Credit Rating Agencies (CRAs) outlined in CESR's website (Ref. CESR/05-751).

The report provides a clear analysis of the codes of the four CRAs that have chosen to adhere to the voluntary framework (Moody's, Standard and Poors', Fitch Ratings and Dominion Bond Rating Service Limited) in relation to the IOSCO Code.

CESR's conclusions are explained in the last section of the report. CESR considers that the CRAs codes comply to a large extent with the IOSCO Code. There are however some areas or provisions where the CRAs codes do not comply. Some of these are of minor importance, because the CRAs achieve the desired outcome that the IOSCO Code aims at, without formally having provisions in their codes that mirror the IOSCO Code (these minor deviations can be found in the analysis provided in section II).

There are however some areas, highlighted in the last section of the report and mostly coincident with those pointed out by market participants, where the deviations are of greater importance. Some of them are common to all four CRAs, and some of them are specific to individual CRAs. In particular, the area where all the CRAs seem to have difficulties in complying with the IOSCO Code relates to the separation between the rating service and the ancillary services provided by the CRAs and the disclosure of unsolicited ratings.

While preparing its report, CESR has closely coordinated with fellow regulators, especially with IOSCO.

#### **Questionnaire regarding the rating of structured finance instruments**

On 7 May 2007, CESR received a letter from the European Commission acknowledging the usefulness of CESR's 2006 report on CRAs'

compliance with the IOSCO Code and formally requesting CESR prepare a second report by the end of this year.

As part of the preparation for CESR's second report to the European Commission, CESR sent a letter to the four CRAs that have chosen to adhere to the voluntary framework requesting them to provide information on the changes introduced in their codes since the publication of CESR's first annual report. In their responses to CESR the CRAs informed that for the time being no changes have been made in their internal codes. However, some CRAs informed that they intended to revisit their codes in the following months taking into account not only CESR's December 2006 report but also the new SEC NRSRO rules and the outcome of IOSCO's consultation report on CRAs (that discusses potential areas for clarification of the IOSCO code).

Considering this information, the European Commission agreed to CESR's suggestion to set 30 April 2008 (instead of 31 December 2007) as a new deadline for the preparation of CESR's second annual report on CRAs, to allow CESR to assess the changes in the CRAs codes when they took place.

In the meantime, CESR has been working on other relevant sections of the report, and in particular on the analysis of rating process as regards structured finance instruments (e.g. quality of the rating process, conflicts of interests) as specifically requested by the European Commission in its letter to CESR.

To this effect, CESR published a questionnaire regarding the rating of structured finance instruments. The purpose of the questionnaire was to enable CESR to gather information from interested parties on the functioning of this specific segment of the rating business.

To facilitate the participation in this consultation, CESR divided the questionnaire in two sections; the first part addressed to the credit rating agencies and the second part to all market participants.

In order to allow a maximum number of market participants to provide their input, and in order to take into account the events of the



2007 summer, the deadline for comments was extended to 10 September 2007.

it has been determined equivalent to IFRS by the European Commission.

#### ***Next steps***

Following the turmoil in the US sub-prime market this summer, CESR intends to include in this year's report to the commission a more in-depth analysis of the role of the CRAs in the structured finance market particularly in relation to the following areas:

- Transparency of the CRAs rating methodologies;
- Human resources allocated to the rating and monitoring;
- Periodic monitoring of the ratings and timeliness of rating actions;
- Potential conflicts of interest (i.e. remuneration structures of CRAs).

#### **CESR-Fin work on the first phase: transitional period**

In April 2007, CESR-Fin published guidance (CESR/07-022b) on how individual competent authorities might decide during the transitional period, on a consistent basis, which third country GAAPs might satisfy the transitional requirements published by the Commission in December 2006. This guidance sets out a list of criteria that competent authorities would follow to determine whether third countries' convergence programs fulfill the conditions stipulated in the Commission's Regulation on prospectuses and its Decision on Transparency. It also establishes a procedure for CESR members to exchange information concerning their actual decisions to accept (or reject) third countries GAAP during the transitional period.

### **4.3. Operational Groups**

#### **4.3.1 CESR-Fin**

##### **Use of third countries' Generally Accepted Accounting Principles (GAAP) in the EU**

The European Commission's measures on the use by third country issuers of information prepared under local or internationally accepted accounting standards envisage a different treatment of such issuers before and after January 2009:

First phase: transitional period until January 2009. During this phase, accounting frameworks other than International Financial Reporting Standards (IFRS), Canadian, Japanese or US GAAP may be used subject to certain conditions (these three GAAP may be used without having to comply with any conditions). The decision to accept other accounting frameworks is the responsibility of the competent authority, although recitals in the two measures state that *"To ensure consistency within the Community, CESR should co-ordinate the competent authorities' assessment as to whether those conditions are satisfied in respect of individual third country GAAPs"*

Second phase: after the transitional period, a third country's GAAP will be acceptable only if

##### **CESR-Fin work on the second phase: equivalence of third country GAAP**

On 22 February 2007, CESR received a request from the European Commission on third country GAAP.

##### ***CESR's First Advice***

The Commission had to report to the European Securities Committee and the European Parliament before 1 April 2007 on the timetable envisaged by national accounting authorities of Canada, Japan and the United States for the convergence. To this end, the Commission requested updates on the convergence programmes in US, Japan and Canada as well as a list of the GAAP currently being used on EU markets and a definition of equivalence.

In March 2007, CESR provided its Advice (CESR/07-138), including a factual description of the work timetable of the Canadian, Japanese and US standard setters on the convergence between IFRS and the GAAPs of these countries and a definition of equivalence. Regarding the latter aspect, *"third country GAAP would be equivalent to IFRS if investors should be able to make a similar decision irrespective of whether they are provided with financial statements based*





on IFRS or on such third country GAAP". CESR also indicated that a determination that third country GAAP are equivalent to IFRS must be based on the presumption that filters at country levels, audit assurance and enforcement on entity levels are sufficient for investors to rely on.

#### ***CESR's Second Advice***

At least six months before 1 January 2009, the Commission should decide on the equivalence of the GAAP of third countries, pursuant to a definition of equivalence and a mechanism that will have been established before 1 January 2008. In May 2007, after consultation, CESR provided its "*technical advice on a mechanism for determining equivalence of the GAAP of third countries*" (Ref. CESR/ 07-289). This document advises only on the procedure for determining equivalence, not on any individual GAAP.

#### **CESR statement concerning retrospective adjustments in the 2006 IFRS accounts**

On 5 April 2007, CESR published a statement (Ref. CESR/07-121b) stressing that members should remain watchful, and noting the need for companies to deliver as true, fair and complete information as possible.

IFRS principles-based standards rely on the experience and judgement of those preparing them, including auditors and users alike, applying them to the particular circumstances. Stakeholders must be aware that this is a new body of accounting standards for many preparers. Applying IFRS to particular circumstances, therefore, must be a smooth learning curve.

For this reason, CESR informed the market of the possibility of retrospective adjustments to financial information already presented and covering 2004 and 2005 financial years appearing in the 2006 consolidated financial statements.

These retrospective adjustments may arise following different circumstances, namely:

- A change in accounting policy made on a voluntary basis in order to align the policy used by the issuer to the one selected by a majority of its

competitors so that comparability is achieved;

- A retrospective adjustment following the publication of an IFRIC rejection;
- A correction of an error following an oversight by the issuer, though the selection of previously applied accounting policies had been made in good faith.

#### **CESR's discussions of enforcement decisions taken by EU National Enforcers of financial information (IFRS)**

Operating under CESR-Fin, the European Enforcers Co-ordination Sessions (EECS) is a forum in which all EU National Enforcers of financial information, whether CESR members or not, meet to exchange views and discuss experiences of enforcement on IFRS accounts.

During the period covered by this report, the EECS have continued discussing enforcement decisions and emerging issues which are previously submitted to a confidential database of enforcement decisions taken by individual EECS members as a source of information to foster appropriate application of IFRS.

In particular, EECS members had 5 meetings in which they discussed 18 decisions and 14 emerging issues.

As a further contribution to the promotion of market confidence and supervisory convergence in the European Union, on 16 April 2007, CESR published 16 extracts from its database of enforcement decisions taken by EU National Enforcers participating in EECS.

Publication of enforcement decisions will inform market participants about which accounting treatments EU National Enforcers may consider as complying with IFRS; that is, whether the treatments are considered as being within the accepted range of those permitted by the standards or IFRIC interpretations. Such publication, together with the rationale behind these decisions, will contribute to a consistent application of IFRS in the European Union.

Decisions that deal with simple or obvious accounting matters, or oversight of IFRS requirements, will not normally be published,



even if they were material breaches leading to sanctions. Published decisions will generally include a description of the accounting treatment or presentation at issue, the decision taken by the National Enforcer and a summary of the Enforcer's underlying rationale. In response to concerns about confidentiality and privacy laws, which vary between EU jurisdictions, extracts will not usually include the name of the issuer or the enforcer or any other details that would enable the issuer or its jurisdiction to be identified.

CESR anticipates publishing further extracts from the database on a regular basis.

### **Survey on the Direct Communication of Auditors with the Public on the Statutory Audit of the Annual or Consolidated Accounts of Listed Companies**

On 11 June 2007, CESR published a report providing the conclusions of a survey to its members on the direct communication of auditors with the public on the statutory audit of annual or consolidated accounts of listed companies.

An element of the audit process which has not been explored in the recent past, is the nature and amount of communication of the auditor with the public and in particular with shareholders or potential investors on the fairness of the annual or consolidated accounts and on matters that received specific attention during the conduct of an audit. Traditionally the auditor communicates with the (potential) investors via the auditor's report. The standard auditor's report as prescribed by the IAASB (International Auditing and Assurance Standards Board, a standards setting board of the International Federation of Accountants) is intended to report in a summary manner on the auditor's opinion in respect to the fairness of the annual accounts, in relation to the reporting framework. According to CESR Members, this auditor's report is not very informative in respect of the scope, conduct and outcomes of the audit itself, except in those relatively rare circumstances where the report is modified according to ISA 701 (Modifications to the Independent Auditor's Report) to draw the readers' attention to a specific matter that may affect the auditor's opinion.

In order to explore this issue further, CESR surveyed its Members with two purposes. The first one dealt with fact finding on direct communication of the auditor with the public in CESR Member States. The second purpose dealt with identifying the desirability of potential enhancement of direct auditor communication as perceived by CESR Members.

The main conclusion of the survey is that the majority of CESR Members agree that extra information (in general) from the auditor to the public on the statutory audit could contribute to the decision-making ability of the public, although confidentiality regulations restrict the extra information the auditor could provide. Auditor communication is a subject of public interest. However, in order to make more precise recommendations, the subject should be analysed further.

### **Contribution to the endorsement process of IFRS in the European Union**

As a contribution to the endorsement process of IFRS in the European Union, CESR-Fin considered closely:

- The European Financial Reporting Advisory Group (EFRAG)'s draft letter on the discussion paper published by the IASB, *Fair Value Measurements*.
- EFRAG's draft comment letter on the IASB's Exposure Draft of Proposed Amendments to IAS 24 "*State - controlled Entities and the Definition of a Related Party*".
- EFRAG's draft letter on the IASB's Exposure Draft of Proposed Amendments to IFRS 1 "*First-Time Adoption of International Financial Reporting Standards: Cost of an Investment in a Subsidiary*".
- The Commission's consultation on IFRS 8: "*Endorsement of IFRS 8 Operating Segments – Analysis of Potential Impacts*".

#### ***Next steps***

After having provided its advice on the definition of equivalence and on the mechanism of determining it, CESR-Fin will work on the individual assessments of the equivalence of third countries' GAAP, in order to allow the



Commission to reaching a conclusion by the end of 2008.

Through EECS, CESR-Fin will continue its main work of promoting convergence on the application of IFRS by discussing enforcement decisions and emerging issues. It will also provide further updates of its publication of extracts of its database of enforcement decisions.

Finally, CESR-Fin will continue its regular dialogue with the SEC and other third countries' authorities.

### 4.3.2 CESR-Pol

#### **Guidance on the Operation of the Market Abuse Directive**

In December 2005, CESR Chairs mandated CESR-Pol to carry out an evaluation of the supervisory functioning of the Market Abuse Directive and a second phase of market-facing Level 3 work in respect of the Market Abuse Directive. A draft second set of guidance was published for European-wide consultation on 2 November 2006 (Ref. CESR/06-562). The draft guidance has been revised to take account of comments made in the consultation exercise

Where relevant, CESR took into account the advice provided by CESR to the European Commission in framing the implementing measures for the Directive. The European Commission has also been consulted in development of the guidance and its comments taken into account.

On 12 July 2007, CESR published the final version of its second set of guidance on the implementation of the Market Abuse Directive (Ref. CESR/06-562b). A feedback Statement on the consultation exercise (Ref. CESR/07-402) was also published. In this guidance, CESR developed a common understanding amongst its Members regarding treatment of the following aspects of the Directive and associated issues concerning market abuse:

#### ***What constitutes inside information?***

The guidance in this context gives: further clarification on 'information of a precise nature'; further guidance on making information public; amplifies what is meant by

the concept 'information likely to have a significant price effect'; and provides a non-exhaustive list of indicative types of events or information which may constitute inside information;

#### ***When is it legitimate to delay the disclosure of inside information?***

The guidance provides illustrative examples of the two circumstances where the Directive generally recognises a potential legitimate delay of disclosure of insider information (for example 'negotiations in course' and 'decisions taken which need the approval of another body'). Depending on the circumstances of the specific case in question, a delay can be legitimate where there are confidentiality constraints relating to competitive situations; or product development or selling of major holdings in another issuer that could be jeopardised by disclosure;

#### ***When does information relating to a client's pending orders constitute inside information?***

This section of the guidance covers what can be defined as a client's pending order and includes factors to be used in an assessment of when inside information would be involved; in particular it provides further specification of the terms 'price sensitivity' and 'precise nature';

#### ***Insider lists in multiple jurisdictions.***

To reduce the burdens on issuers that are subject to the jurisdiction of more than one EEA Member State with respect to insider list requirements, CESR is recommending that the relevant competent authorities recognise insider lists prepared according to the requirements of the Member State where the issuer in question has its registered office, thus leading to a mutual recognition system.

#### **Further Issues for Work in the Area of the Market Abuse Directive**

On 26 July 2007 CESR published its work programme for further work in the area of the Market Abuse Directive (Ref. CESR/07-416). The work programme encompasses issues where CESR identifies a need for further consideration and, therefore, further guidance may be provided to CESR Members and/or to the market, to the extent possible.





The purpose of the work programme reflects CESR's continuing efforts to prepare ground for convergent implementation and application of the Market Abuse regime. This will be done by ensuring that a common approach to the operation of the Directive takes place throughout the EU amongst supervisors. Two major steps in this process have been 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.

Many of the issues included in the work programme have been flagged by market participants during the Call for Evidence, which CESR had launched in 2006 following two years of experience gained with the new market abuse regime in operation in Europe (Ref. CESR/06-078). Further subjects were raised during the consultation for the 2nd set of guidance on the Operation of the Market Abuse Directive (Ref. CESR/06-562b) but were outside the scope of the proposed guidance. Others have been identified in the mapping exercise of the implementation of the Market Abuse Directive that was conducted by the Review Panel of CESR.

Issues identified for further work include:

- Assistance to the European Commission in developing the list of administrative measures and sanctions applicable under the MAD.
- Harmonisation of requirements for insiders' lists.
- Suspicious Transactions Reporting.
- Stabilisation Regime as Level 3.
- The two-fold notion of inside information will be considered further.
- A mapping of the existing thresholds in Member States and other practices of CESR Members concerning directors' dealings will be undertaken.
- Develop guidance on the definition of inside information with regard to

commodity derivatives to the extent possible.

As indicated in these areas, CESR will seek to develop guidelines for CESR Members and/or the markets, however, where appropriate, CESR will 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 a decision proposed for CESR to issue specific guidance to the market, this will be developed following CESR's consultation process.

The work will be undertaken by CESR-Pol, through the Market Abuse Level 3 Drafting Group.

### **Operational co-operation**

Aiming at efficient and successful investigations and enforcement of market abuse cases, the experts of CESR-Pol and in its subgroup on Surveillance & Intelligence co-operate closely. Intelligence and expertise is shared in in-depth discussion of concrete cases and investigatory methods always with the view to achieve a convergent approach. The members of CESR-Pol conduct joint investigations in Urgent Issues Groups which are set up when cases of cross-border relevance involving at least three Member States require urgent consideration and mutual collaboration.

CESR-Pol members in particular inform each other of experiences – positive as well as negative – and developments when requesting assistance from other regulators, within the EEA or worldwide, and try to commonly achieve satisfying solutions. To this end, CESR-Pol keeps bilateral contacts with other institutions that tackle co-operation issues, such as IOSCO, as well as with regulators that are non-CESR members. For example, in March 2007 a delegation of the Swiss Federal Banking Commission gave presentations on the SFBC's powers concerning enforcement against unauthorised financial institutions and the exchange of information with foreign securities supervisors to CESR-Pol. Further contact was agreed.



### *Next steps*

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 harmonised application of the Directive. The aim will be to establish, if possible, further 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.

CESR-Pol will respond to the request of the European Commission to assist in setting up, for information purposes, a list of administrative sanctions and measures under the MAD of March 2007, to facilitate effective implementation and application of the MAD. In 2005, CESR-Pol had conducted a mapping exercise on powers and sanctions in the area of market abuse. It was decided that there was a broad range of sanctions within Europe, i.e. administrative fines, imprisonment, withdrawal of licenses, disgorgement of profits, settlements etc, and that this would be likely to be the case even after the full implementation of the Market Abuse Directive, 2004/72/EC (MAD), in all Member States, since the sanctioning systems lay at the national discretion of Member States. CESR highlighted this in a letter to the European Commission and recommended to set up such a list for transparency purposes.

Furthermore, CESR-Pol will proceed in its ongoing efforts to jointly tackle enforcement cases in the area of market abuse with cross-border relevance. Thus it will also continue its dialogue and collaboration as to uncooperative jurisdictions with other bodies that are affected by co-operation difficulties in a similar sense in order to exchange views and experiences. It will also go on to undertake bi-lateral and multilateral efforts towards jurisdictions that are problematic in that respect with the goal to foster common understanding of the need to closely co-operate and to improve the respective legal abilities and willingness of such jurisdictions.

## **4.4 Level 3 Expert Groups**

### **4.1 Clearing and Settlement**

After the establishment of the Post Trading Expert Group (PTEG), consisting of experts from the CESR Members, the group has met once in the reporting period. The establishment of this group underlined the supervisory responsibilities securities regulators have for clearing houses and other providers of post-trading services, operating in their jurisdictions.

With regard to the European Code of Conduct for Clearing and Settlement and the role of CESR in the Monitoring Group established by the European Commission, the discussion in the PTEG centered around the role of national regulators in the monitoring process. In the context of TARGET 2 Securities, the ESCB-project to create a single EU-platform for the settlement of euro denominated securities settled in central bank money, the focus of the PTEG was aimed at the possible consequences of a future transfer of the settlement function from central securities depositories in each of the jurisdictions to the central platform, should the project be implemented.

### *Next steps*

CESR will remain available for dialogue with EU-institutions in order to explain the joint regulatory efforts, conducted so far by CESR and the ESCB, on how to improve the safety, soundness and efficiency and to create a level-playing-field for post-trading arrangements, operated in the EU-area. A second meeting is scheduled for 7 - September 2007.

### **4.4.2 MiFID**

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 has been working on in the relevant period, is the preparation of a Multilateral Memorandum of Understanding to facilitate supervision of branches.

After extensive consultations with market participants and consumer representatives, CESR adopted several documents in the period from January 2007 to August 2007.

### **Best Execution**

CESR adopted a Question and Answer (Q&A) document on best execution (Ref. CESR/07-320), with a feedback statement (Ref. CESR/07-321) published on 29 May 2007 and after a consultation paper, published on 2 February 2007 (Ref. CESR 07-050b). The Q&A aimed 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 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 the 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.

### **Inducements**

CESR's Recommendations on Inducements (Ref. CESR/07-228b), published on 29 May 2007, were aimed 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 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 content of this recommendation reflects comments received from industry and consumer groups during the course of two consultations (Ref. CESR/06-687) and (Ref. CESR/07-228). CESR 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 held 2 February 2007 and 24 April 2007.

### **Passporting and the Protocol on Notifications**

CESR's recommendations on passporting (Ref. CESR/07-337), a feedback statement (Ref. CESR/07-318) and a protocol on notifications (Ref. CESR/07-317), were published on 29 May 2007. The recommendations on passporting were meant to foster supervisory convergence and consistent 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 protocol on notifications provides a framework for co-operation 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 MiFID.



### **List of Minimum Records under Article 51(3) of the MiFID Implementing Directive**

The recommendations 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. CESR's Recommendations (Ref. CESR/06-552c) and a Feedback Statement (Ref. CESR/07-085) on the List of Minimum Records under Article 51(3) of the MiFID Implementing Directive, were published on 9 February 2007.

### **Publication and Consolidation of Market Data**

Guidelines and recommendations on Publication and Consolidation of Market Data (Ref. CESR/07-043) are meant to facilitate the understanding of certain requirements of the MiFID and its Implementing Regulation on publication and consolidation of market information. These guidelines and recommendations were accompanied by a feedback statement (Ref. CESR/07-086) on the Publication and Consolidation of Markets Data, which was published on 9 February 2007. These measures are intended to facilitate a consistent implementation of the provisions concerned, without imposing further obligations on investment firms, MTFs or regulated markets.

### **Transaction Reporting**

Guidelines on transaction reporting (Ref. CESR/07-301) and a Feedback Statement (CESR/07-319) on MiFID Transaction Reporting were published on 29 May 2007. 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. The process involved a consultation paper which was published on 2 February 2007 (Ref. CESR/07-047), and an open hearing which was held on 1 March 2007.

### **Publication of the results of MiFID market transparency calculations**

The results of the MiFID market transparency calculations (Ref. CESR/07-450) were first published on 3 July 2007 and subject to further updates. 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 collected this information and published it in the form of a database. The information included in the 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 information can be accessed through CESR's website on the following address <http://mifiddatabase.cesr.eu>.

### **Non-Equities Transparency**

On 17 November 2006 CESR published its response to the Commission's request for initial assistance on non-equities markets transparency (Ref. CESR/06-599). On 9 August 2007 CESR published its technical advice to the Commission on the potential extension of the market transparency obligations to financial instruments other than shares (Ref. CESR/07-284b). This work is conducted under Article 65 of MiFID under which the Commission is asked to report to the European Parliament and to the Council on the possible extension of the scope of the provisions of the Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares.





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 call for evidence – non-equities markets transparency, which was issued on 6 February 2007 (Ref. CESR/07-108). A consultation paper – Non-Equity Transparency, was published on 10 May 2007, (Ref. CESR/07-284), and a Feedback Statement – Technical Advice on Non-equities transparency, finally published on 9 August 2007 (Ref. CESR/07-538).

### **Commodities**

In relation to commodities, CESR published a compilation of responses by CESR Members to the European Commission's request for initial assistance on commodities and exotic derivatives and related business was also published on 9 August 2007 (Ref. CESR/07-429).

CESR's Report 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 has been developing 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.

### ***Next Steps***

In preparation for the implementation of MiFID on 1 November 2007, CESR has published:

- the protocols for supervision of branches and for passport notifications;
- the statement for the continuity of the passport;

Further work also includes the:

- transmission to the European Commission of the second advice on commodities derivatives;
- publication of the draft work programme;
- establishing a CESR Q&A on MiFID along the lines of the mechanism already working under the prospectus directive;
- elaborate a brochure to raise awareness of retail investors on MiFID.

### **4.4.3 Prospectus**

#### **Frequently asked questions regarding Prospectuses: Common positions agreed by CESR Members**

In February 2007 CESR published an updated and consolidated Question and Answer guide (Ref. CESR/07-110). After this update the number of questions included in the document amounted to 33. Some of the questions discuss several issues, whereas others provide a more in-depth analysis of complex issues.

This 'Q&A' guide that CESR Members developed, establishes a convergent response from all EU securities supervisors to commonly asked questions on the day-to-day application of the EU legislation regarding the preparation of prospectuses. It focuses on responses to queries that are likely to have an EU-wide impact on market participants or end users, and therefore on the smooth functioning of the Single Market. Some of the agreements aim at facilitating the correct functioning of cross-border offers (for example, information from the issuers to host competent authorities or passport of the supplements). The rest are responses to questions on the application of the legislation that have been arising frequently in most Member States (for example, how to treat employee share option schemes, free offers or interpretation of the historical financial information to include in the prospectus). CESR does not intend to issue new standards, guidelines or recommendations on prospectuses. Rather, the



purpose of this publication is to provide quick answers to the questions market participants channel to the relevant CESR Members and/or to the CESR secretariat. The common approaches reached are not set in stone. The Group operates in a way that will enable it to react efficiently if any aspects of the published 'common positions' needs to be modified or adapted for greater clarity. The European Commission Services have provided very useful input on some of the questions discussed in the paper. However, these views do not bind the European Commission as an institution.

### **Report on the supervisory functioning of the Prospectus Directive and Regulation**

On 13 June 2007 CESR published a report on the supervisory functioning of the Prospectus Directive and Regulation (Ref. CESR/07-225). The objective of this report is to assess whether the new prospectus regime is achieving its objectives of protecting investors and lowering the cost of capital, and, in particular, whether it is contributing to the development of the single market for securities. The findings of the report will also contribute to the evaluation of the Lamfalussy process. In addition to the input provided by market participants, the report also includes some statistical data provided by CESR members on the number of prospectus passported and on the transfer of the approval of prospectuses.

In general, most market participants seem to be satisfied with the new European legislation. They consider the Prospectus Directive and Regulation to be a step in the right direction in achieving a single market. Among the positive aspects of the new legislative framework, and despite the existence of a few obstacles in its practical functioning, respondents have highlighted the value of the passport mechanism as a useful tool in the development of a single market. Nevertheless, they have also identified certain provisions in the Prospectus Directive and Regulation that are causing some practical difficulties and have asked CESR to advise the European Commission to work on the necessary amendments.

In particular, respondents identified a number of areas where divergent practices of the different competent authorities posed some difficulties, for example, in relation to the use of certain definitions (i.e. that of a public offer, transferable securities and qualified investors), or the use of exemptions which determine whether the obligation to produce a prospectus exists. All the issues identified by market participants are set out in section IV of the report.

As a result, market participants strongly commended CESR's Q&A on prospectuses as a means of reducing the divergent practices in Member States and strongly encouraged CESR to keep working on the development of common practices at EU level.

The findings of the report were developed following a public call for evidence in November 2006 and an open hearing which was held in January 2007.

#### ***Next steps***

The CESR Prospectus Contact Group will continue to meet regularly to provide future updates of the Q and A guide. The group will focus efforts on convergence on the issues identified by market participants.

The Commission found the data published by CESR in its report (Ref. CESR/07-225) in relation to the number of prospectuses approved and passported by Competent Authorities, very useful. In light of the forthcoming review of the Prospectus Directive, due by the end of 2008, and in order to be able to track market behaviour, the Commission sent a letter on 31 July 2007, asking CESR to provide this data on a regular basis. CESR members intend to start collecting and publishing this information as soon as practicable.

#### **4.4.4 Investment Management**

##### **CESR Members adopt common supervisory approaches for the new regime of eligible assets for UCITS**

On 19 March 2007 CESR published its final Level 3 guidelines on eligible assets of UCITS (Ref. CESR/07-044). The publication of CESR's



Guidelines coincided with the adoption by the Commission of a Level 2 implementing Directive (Directive 2007/16/EC, the “Eligible Assets Directive” or EAD). These measures will help remove uncertainty as to whether UCITS can properly invest in categories of financial instruments, including transferable securities, money market instruments, derivative instruments and financial indices.

The Level 3 CESR Guidelines are part of CESR’s advice to the European Commission adopted in January 2006 (Ref. CESR/06-005, together with a feedback statement Ref. CESR/06-013) regarding the clarification of definitions concerning eligible assets for investments of UCITS. The advice was submitted to two rounds of consultation. CESR did not consider it necessary to consult again on the Level 3 Guidelines as the changes made were not substantial and were necessary in order to align the Guidelines with EAD.

The CESR Guidelines are meant to foster supervisory convergence in the day-to-day application by national authorities of the criteria set out in the EAD and to ensure their consistent implementation.

#### **CESR undertakes further work on eligibility of hedge fund indices for UCITS**

When publishing CESR’s advice to the European Commission on clarification of the definition concerning eligible assets for investments by UCITS, CESR concluded that it needed to consider further, whether or not hedge fund indices could be deemed as eligible investments for UCITS. The reason was that the impact of such instruments raised questions about the risk profile of the UCITS, and the ability of retail investors to assess this impact.

#### **CESR adopts common supervisory approaches concerning the classification of hedge fund indices as financial indices for the purposes of the UCITS Directive**

On 17 July 2007 CESR published its final Level 3 Guidelines on the classification of hedge fund indices as financial indices (Ref. CESR/07-434), with a feedback statement (Ref. CESR/07-433). The advice involves the adoption of common supervisory approaches concerning the classification of hedge fund

indices as financial indices for the purpose of the UCITS Directive.

The classification of hedge fund indices was tackled by CESR in two preliminary public consultations on the Guidelines concerning eligible assets for investment by UCITS, but due to the complexity of the topic and the relatively new nature of such indices, CESR decided that further, in-depth consultation was needed to reach a conclusion.

In order to obtain additional input into the debate on eligible assets under the UCITS Directive in relation to the inclusion of hedge fund indices, CESR published two papers: an issues paper – “Can hedge fund indices be classified as financial indices for the purpose of UCITS?” (Ref. CESR/06-530, October 2006), and a consultation paper – “Clarification of the definitions concerning eligible assets for investment by UCITS: can hedge fund indices be classified as financial indices for the purpose of UCITS?” (Ref. CESR/07-045, February 2007). An open hearing was also held in Paris in April 2007.

CESR considers that in order to fall under the classification of a “financial index” as referred to by the UCITS Directive, hedge fund indices must comply with the criteria applicable to common financial indices provided by Article 9 of the EAD as regards the degree of diversification, the market to which they refer and the way they are published, but also have to fulfill additional requirements as regards methodology and information disclosure. The selection has to be made on the basis of predetermined rules and objective criteria, it must not be influenced by any payments made to the provider, and the methodology has to ban any “backfilling” practice. Furthermore, the Guidelines set out additional checks to be completed by UCITS which consider gaining exposure to them, as regards the comprehensiveness of the methodology, the availability of information and the treatment of index components.

#### **CESR begins work on response to Commission request for assistance on key investor disclosures for UCITS**

The UCITS Directive (85/611/EEC) requires the use of the simplified prospectus (SP) for





the purpose of informing clients before they invest in a UCITS. The current content and format of the SP is considered not to have achieved its initial objectives, since they are often overly long and technical, and difficult for the average investor to understand and use.

On 11 April 2007, CESR received from the Commission a letter requesting CESR's assistance on the detailed content and form of key investor disclosures for UCITS. The letter clarifies the purpose and objective of the request, the focus of the work to be undertaken by CESR, the proposed organisation of the work and the timetable. CESR invited all interested parties to submit their views regarding the request for assistance received from the Commission, via the following calls for evidence: Call for evidence on UCITS distribution (Ref. CESR/07-205); a further Call for evidence on Key investor disclosures for UCITS (Ref. CESR/07-241); and a Questionnaire on simplified prospectus for retail investors (Ref. CESR/07-214). All three documents were published on 13 April 2007. CESR will take the results of the calls for evidence into account in its further work in this area.

#### ***Next Steps***

Over the coming months, the CESR Investment Management Expert Group and its sub-groups will focus on the following:

- Providing assistance to the Commission on the proposed changes to the Level 1 Directive, in particular by delivering a set of advice on key investor information disclosures for UCITS.
- Promoting supervisory co-operation and mutual understanding via the Operational Task Force, on the basis of surveys on effective supervision and risk measurement systems.
- Carrying out further work on the interaction between MiFID and UCITS, in parallel with the Commission's work.

#### **4.4.5 ECONET**

**Reporting to the April 2007 Financial Stability Table (FST)/European Financial Committee (EFC)**

In March 2007 ECONET submitted to the April's 2007 Financial Stability Table of the European Financial Committee an update on major trends, developments and risks in EU Securities markets and a review on hedge funds classification systems according to investment strategies (CESR/07-151).

#### **Impact Assessment Guidelines**

In March 2007, CEBS and CEIOPS adopted ECONET's Impact Assessment Guidelines (IA Guidelines) in full without amendments.

On the 2 April 2007, the 3L3 Chairs approved the IA Guidelines as a 3L3 document and agreed to put it to a three month consultation with the industry (24 May-24 August 2007).

#### **Impact Assessment Pilot Study on Simplified Prospectus**

The ECONET-IA subgroup met on 27 February 2007 to discuss steps regarding the pilot study on Simplified Prospectus and to receive background information on the topic from Investment Management key representatives. The nominated ECONET-IA experts had a first meeting with the Simplified Prospectus Group on Monday 2 April 2007 in which they presented, gave guidance and discussed the application of the IA methodology. A second meeting with the full Investment Management group took place on the 11 May 2007.

#### **Research in the area of hedge funds' risk classification**

ECONET met on the 4 April 2007 to discuss, among other things, further research in the area of hedge funds classification methodology. Without interfering with the policy decisions about the eligibility of indices of Hedge Funds which is carried out by the Investment Management Expert Group, ECONET primarily worked on the volatility aspect of the hedge funds' investment strategies as they are represented by the relevant market indices.

**Fact-book on Market Structure and on the Type and Nature of the Financial Supervision within CESR (CESR/07-306)**



In the January 2007 CESR Plenary, it was proposed that CESR should, as part of its June 2007 Lamfalussy Review, create a fact-book on CESR Members' market structures. The compilation of this fact-book was assigned to ECONET.

ECONET produced a review of the responses received by the CESR membership (CESR/07-306) to a questionnaire sent by the CESR Secretariat to all members. The objective of the review was to be factual and informative. It aimed to present, in a compact way, certain aspects of the market structure of the 29 CESR Members and to ascertain the regulatory structure of the membership as well as the type of supervisor that they are. The review is due for publication on CESR's website in fall 2007.

#### **Reporting to September 2007 FST/EFC**

In August 2007, ECONET submitted to September's 2007 Financial Stability Table of the European Financial Committee an update on major trends, developments and risks in the securities markets during the first half of 2007 and a report on the structural developments in the securities markets (Ref. CESR/07-516).

A week before the EFC meeting and in the middle of the turmoil of the financial markets around the globe, ECONET's Chair conducted a conference call with ECONET members in an attempt to assess the situation and map the actions taken across the CESR membership as a result of the recent market turbulences. The aim of this discussion was to provide the CESR Chair with last-minute information regarding market developments and risks, to map the actions taken by CESR members, to enable CESR Secretariat to respond in a coherent manner to questions from media and institutions and to keep each other informed within CESR of current developments in the markets.

#### **Consultation results on 3L3 Impact Assessment (IA) Guidelines**

The consultation period of the 3L3 draft IA Guidelines finished on the 24 August 2007 and thirteen responses (13) were received.

The comments received by the relevant market participants were very encouraging. All respondents welcomed the 3L3 Committees' initiative to draft a set of guidelines for financial regulators IA use.

The ECONET-IA subgroup is to meet in September to review and discuss the responses received and to start preparation of the relevant Feedback statement.

The 3L3 IA Guidelines will be finalised once the pilot studies conducted are at completion stage and feedback from the relevant expert groups on their practicality has been received and analysed by ECONET. A preliminary completion date has been set for end of 2007.

#### **Impact Assessment Pilot Study on Simplified Prospectus**

The Key Investors' Information (KII) expert group has embraced the IA Guidelines and has been carrying out its impact assessment work on the simplified prospectus in a fully compliant manner.

#### **Market/Regulatory Failure Analysis:**

The nominated ECONET-IA experts and ECONET's Rapporteur had an informal meeting with the Commission on the 23 July 2007 in order to discuss and collect any evidence the Commission may have regarding the market/regulatory failure that prompted the reconsideration of the Simplified Prospectus. The discussion highlighted that no market failure analysis had been conducted by the Commission and thus no concrete evidence existed.

To fill the gap in the IA process, the Key Investors' Information (KII) expert group took the initiative to produce a short market and regulatory failure analysis with the assistance of the ECONET-IA experts.

#### **Qualitative & Quantitative Assessment of the policy options:**

One more meeting of the ECONET-IA experts with the KII expert group took place on the 5 July 2007. The focus of the IA exercise has



very much been on the qualitative evaluation of different options with joint co-operation with the Commission relating to the quantitative testing of options. A consultation paper that contains the IA is expected to be made public in October 2007.

#### ***Next steps***

Consultation on 3L3 IA Guidelines - Feedback statement: The Feedback statement, once finalised by ECONET, will be submitted for Chairs' consideration and approval.

Finalisation of IA Guidelines: The 3L3 IA Guidelines will be finalised once the pilot studies conducted are at completion stage and feedback from the relevant expert groups on the IA Guidelines' practicality has been received and analysed by ECONET. A preliminary completion date has been set for the end of 2007.

ECONET's pilot study on IA: A consultation paper that contains the pilot IA is expected to be made public in October 2007.

ECONET's internal seminar on IA: ECONET aims to organise a two-day seminar, exclusively for those members with no previous extensive practical experience on IA, in order to enhance its IA experts' basis and facilitate the future work of the IA experts in CESR's (and possibly the other L3 Committees) policy making groups.

Finalisation of the 3L3 IA Guidelines: ECONET aims to finalise the 3L3 IA Guidelines end of 2007 or, the early months of 2008 at the latest.

Promotion of the 3L3 IA Guidelines to non-EU members: Following publication of the IA consultative paper in May 2007, the 3L3 Commissions were invited by the World Bank Office in Rome to present the 3L3 Impact Assessment Guidelines at a World-Bank administered program called "Convergence". "Convergence's" aim is to contribute to the financial sector modernisation of South East European (SEE) countries through the acceleration and scaling-up of micro-regulatory reforms.

CESR will be represented by ECONET's Rapporteur (Ms Alexandra Berketi) who will present the 3L3 IA Guidelines. She will be assisted by Ms Sandra Wesseling (CEIOPS). The major event will take place in Ljubljana in Mid September 2007 at the Centre of Excellence in Finance and it will consist of a 3-day long course addressed to officials of

central banks and governmental authorities from SEE countries.

ECONET's regular reporting to EU financial institutions: ECONET will submit written contributions as part of CESR's bi-annual regular reporting to the FST/EFC.

ECONET'S overview of major economic trends and risks in 2007: ECONET will submit a retrospective overview of market trends, developments and risks as part of its regular contribution to CESR's annual report.

#### **4.4.6 CESR-Tech - TREM**

CESR-Tech deals mainly with a pan-European IT project called TREM "Transaction Reporting Exchange Mechanism". The objective of the TREM system is to exchange transaction reports among all CESR members in accordance with Article 25 of MiFID.

As regards to practical issues, CESR-Tech continued to work on those related to ISIN codes for derivatives and reporting regimes for commodities markets. After having conducted a public consultation, CESR-Tech co-operated with representatives from the industry and the Federation of European Securities Exchanges.

As regards the project, CESR-Tech signed a common specification document for TREM in April 2007. The TREM team dedicated to the project conducted two seminars to discuss the specifications and the corresponding implementation issues. Both seminars had more than 60 attendees from all CESR members. The first seminar was conducted on the CESR premises in Paris, and the second in Bucharest, kindly hosted by the CNVM (Comisia Nationala a Valorilor Mobiliare).

The central file server, called the HUB, has been installed and tested by the 29 members to facilitate the exchange of data.

A testing phase was embarked upon. In order to ensure the quality and homogeneity of the 29 systems, the test phase of TREM contained three stages:

- a unit test stage where members used samples to test the files alone;



- group test stages, which consisted of testing the system with small groups of authorities;
- acceptance tests, which will be conducted by the end of the year to test a system with all members.

Despite the tight timeframe (the system must be up and running on the 1 November 2007), the project made good progress and CESR is confident that the system, will be setup on time.

Meanwhile, the work on a sourcing method for instrument reference data has been undertaken by a specific task force which studied at the same time the “default solution” of the Article 11 in MiFID Level 2 Regulation and an interim solution.

#### *Next steps*

The TREM system will be launched on 1 November 2007. CESR members will finish the implementation of their system and the test phase will end in October 2007. Before the go-live-date, CESR-Tech will also conclude its work on the practical issues related to commodities and the use of the ISIN Code for derivatives.

The next steps that will be conducted in 2008 through two new projects are :

- the adaptation of TREM to exchange transaction reports using the Alternative Instrument Identifier used by some derivatives markets,;
- the implementation of a system to exchange instruments reference data on all instruments admitted to trading on regulated markets.

#### **4.4.7 Transparency**

##### **Call for evidence on the possible CESR Level 3 work on the Transparency Directive**

On 13 July 2007, CESR issued a call for evidence (Ref. CESR/07-487) on the possible CESR Level 3 work on the Transparency Directive.

The EU legal framework regarding transparency in relation to issuers having securities admitted to trading on a regulated

market (basically periodic financial information, information about major holdings and the way such information is disseminated and stored) is included in two legal measures:

- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (hereafter TD or Directive).
- Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (hereafter Level 2 Directive). This Level 2 Directive supplements the TD with regard to half-yearly reports, major holdings, pan-European dissemination of regulated information and equivalence of third country regulations in respect of some elements of the Directive.

In addition, the European Commission is considering a possible way forward to facilitate the implementation of the TD as regards the storage of regulated information (the minimum quality standards to be respected by the national storage mechanisms and the conditions for the functioning of a pan-European network of such national storage mechanisms).

Member States were due to transpose the TD into their national laws by 20 January 2007 and the Level 2 Directive by 8 March 2008 (12 months after its date of adoption).

Once most Member States have implemented the Directive and national practices are developing, market participants and competent authorities are raising questions about whether some provisions of the TD are being applied in a consistent manner in the different jurisdictions. An obvious consequence of its minimum harmonisation nature is that national legislation might vary regarding some aspects of the Directive.





Furthermore, Member States also have to choose between different options provided in the legal EU text. Whilst these different approaches are obviously legitimate as resulting from the choices made by EU legislators, issuers and market participants in general would expect that the minimum areas that the TD does harmonise are applied by the different competent authorities in a consistent way.

CESR considered it appropriate to determine whether it should work with the provisions of the EU transparency framework that might give rise to different practices in the Member States that are not a result of different legitimate national discretions, but rather a result of inconsistent application of the Directive by CESR members. Before initiating any work on areas of the TD which fall into this category, CESR intends to assess whether the areas considered fulfil three conditions: Is there a supervisory or regulatory failure? Has the issue an EU dimension? Can CESR do something?

Additionally, CESR is currently considering what role it could play in order to facilitate the creation of the EU network of national storage mechanisms.

#### *Next steps*

CESR will analyse the outcome of the call for evidence and will, on that basis, decide whether it should start working in its level three capacity in this area. . CESR's approach to the market participants' comments will be explained through its website.

In addition, CESR will also follow up the Commission's proposals on storage in order to determine the role it could play to facilitate the establishment of an EU network of national storage mechanisms.

#### **4.4.8 Takeover Bids**

##### **Meetings to discuss practical issues on the application of the Directive 2004/25 on Takeover bids**

On 15 March CESR organised a first meeting with representatives from the EU authorities

on takeover bids (whether CESR members or not) to discuss practical issues on the application of the Directive 2004/25 on Takeover bids (TOD).

The participants at the meeting considered that a network between competent authorities on takeover bids set up by CESR with a view to discussing experiences would be the right forum to ease co-operation between them especially in the context of cross-border transactions. To this end, it was agreed that the CESR secretariat would produce a list with the contact details of the participants in the network, to be circulated to the members for internal use and that ad hoc meetings of the network would be convened when the members provide sufficient issues to discuss.

During this first meeting, the participants exchanged views on a number of substantive issues such as the equitable price, persons acting in concert, squeeze-out and sell-out provisions, the speak up or shut up principle or cross-border co-operation between competent authorities.

On 4 July 2007, a second meeting of the Takeover bid network was organised at the CESR premises to discuss further substantive issues, such as indirect control, empty voting techniques, and partial offers.

#### *Next steps*

The Takeover bid network will continue meeting regularly when the members provide sufficient issues to discuss. The next meeting is expected to take place at the end of 2007 or beginning of 2008.

#### **4.5 Supervisory convergence beyond CESR**

##### **4.5.1 Contacts with other Level 3 Committees**



### Meeting of the Chairs of the 3 Level 3 Committees (3L3)

The Chairs of the 3L3 Committees met on 2 April 2007 in London. The meeting was devoted largely to a discussion regarding the planned 3L3 Strategic Policy Task Force and aspects affecting the 3L3 Committees due to the Lamfalussy review. It was agreed that 3L3 work should be given much more importance in each committee so as to focus attention and elaborate concrete progress. Potential areas to be included in future work programmes for the medium term were thought to be: internal governance (in particular MiFID/CRD consistency), home/host co-operation, delegation of tasks, substitute products, reporting obligations and the reduction of burdens for cross-sector firms.

The 3L3 Chairs agreed also to stay in close contact regarding the various steps of the Lamfalussy review. They agreed on a “cross-fertilisation agreement” regarding the supervisory tools developed to implement the Thierry Francq report recommendations. This has been the case for Mediation, Review Panel, Impact Assessment and Exchange of staff.

### 3L3 Medium Term Task Force

Following an initiative from the 3L3 Chairs in autumn 2006, a 3L3 Strategic Policy Task force was set up and met for the first time on 22 June 2007 in Paris. The Strategic Policy Task Force spent one day discussing 3L3 issues and defining the medium term priorities. The latter part of the day was devoted to Lamfalussy review aspects.

The Strategic Policy Task Force is composed of the following:

Eddy Wymeersch, CESR chair,  
Daniele Nouy, CEBS chair,  
Thomas Steffen, CEIOPS chair,  
Michel Prada, AMF, France,  
Callum McCarthy, FSA UK,  
Carlos Tavares, CMVM, Portugal,  
Arnold Schilder, Nederlandsche Bank,  
Jukka Vesala, Rahoitustarkastus, Finland,  
Andrzej Reich, National Bank of Poland,  
Fernando Vargas, Bank d’España,  
Csaba Varga PSZAF, Hungary,  
Antoine Mantel, ACAM France,

Michel Flamée, CBFA, Belgium

A draft 3L3 Medium Term Work Programme has since been produced based upon the outcome of the meeting. The draft Medium Term Work Programme includes items for common 3L3 work with timelines and priorities for the coming three years.

#### *Next Steps*

Following approval by all three committees the draft 3L3 Medium Term Work Programme will be published for public consultation with the market and interested parties.

The 3L3 Committees will produce a work programme for 2008 based on the draft medium term programme.

### **The Three Level 3 Committees: comments on proposed Impact Assessment Guidelines**

On 24 May 2007 CESR, CEBS and CEIOPS announced the publication of a joint consultation paper on draft Impact Assessment Guidelines to be used by the EU Level 3 Committees (Ref. CESR/07-089). The guidelines are designed to provide the Committees’ Expert Groups with a practical tool to assist them when using IA as part of their policy analysis and in the course of formulating recommendations.

The three Level 3 Committees’ commitment to develop an IA methodology for their own use reflects agreement taken by the European Institutions in December 2003 to implement the principles of better regulation for their legislative practice. In addition, the White Paper on Financial Services published at the beginning of 2006 (in Annex 2 COM (2005)629 of 05/12/2005), mentions explicitly that IA will accompany any new Commission proposal. As such, the adoption by the three Level 3 Committees of their own IA Guidelines keeps the 3L3 Committees in step with approved EU practice.

#### *Key features of the IA methodology:*

The proposed IA methodology set out in the Guidelines is consistent with the European Commission's own IA guidelines. This means



that it involves identifying problems relating to institutional objectives, identifying possible solutions (including leaving it to the market to solve), analysing their potential impacts, consulting with stakeholders on preferred policy options, and considering their feedback.

CESR's guidelines draw an important distinction between 'Screening IAs' (implemented at the first stages of policy development) and 'Full IAs' (used only when a screening IA is deemed insufficient for assessing the problem and identifying and evaluating policy options). This has been done in order to ensure that a proportionate and flexible approach to IA is adopted, which takes into account the distinct working practices of the 3L3 Committees.

The IA guidelines published for consultation consists of three parts: In the first part, the steps of the IA methodology are presented and each of these steps is briefly explained. In the second, the main text, each step of the IA process is explained in more detail, in the third part, Annexes with further explanations are provided in the third part.

***Scope:***

The expectation is that IA will apply to the work of the 3L3 Committees where the policy issues under consideration are likely to have significant structural and cost implications to consumers/investors and/or market participants. The scope of the Committees' IA work will take account of IA work to be conducted by the Commission or others. This is so as to avoid unnecessary duplication of effort and to ensure that the exercise adds value.

***Procedure:***

The proposed IA methodology does not represent a complete break with existing 3L3 Committee practices. Each Committee, in developing its advice and proposals, already considers the consequences of adopting a range of different policy options and consults extensively. Nevertheless, by adopting the proposed IA guidelines we will be putting these procedures on a more structured footing.

***Testing via pilot studies***

The proposed IA guidelines are currently being tested via three pilot studies conducted by all

3L3 Committees. CESR will test the guidelines in relation to the existing simplified prospectus work stream and CEBS in relation to the large exposures work stream. CEIOPS will test the guidelines by giving its input to the European Commission in the framework of future Solvency II implementing measures. In the light of the experience gained through the three pilot studies and the responses to the consultation, the 3L3 Committees, will, if necessary, revise the final IA methodology to ensure it functions effectively.

***Call for comments***

Comments on the proposed IA guidelines were welcomed by 24 August 2007.

**4.5.2 EU/US Dialogue**

**Meeting between CESR Chairman Eddy Wymeersch, Vice Chairman Carlos Tavares and US SEC Chairman Christopher Cox**

CESR Chairman Eddy Wymeersch and CESR Vice Chairman Carlos Tavares met on 27 April 2007 with US Securities and Exchange Commission (SEC) Chairman Christopher Cox as part of the ongoing CESR-SEC dialogue.

The discussion aimed at identifying the key issues that should be addressed in the ongoing dialogue in the future, and included:

- The progress to date that has been made in relation to the joint work plan that was agreed between the two organisations in August 2006 in order to facilitate the CESR- SEC dialogue,
- Current positive developments in relation to accounting standards and the possible elimination by the SEC of the reconciliation requirement, as well as the current CESR work that is being done on assessing the equivalence of US GAAP.
- The imminent agreement on the framework protocols covering the confidential exchange of information regarding dual listed issuers to be executed between the SEC and each individual CESR member in order to further enable close co-operation





between the staff of CESR members and the staff of the SEC on the application of US GAAP and IFRS in the European Union and the United States.

- The mutual recognition of securities regulatory regimes.

CESR has during the summer been in contact with the SEC in order to follow their work on mutual recognition.

#### ***Next Steps***

CESR, represented by the CESR-Fin Chair, will visit the SEC regarding the issue of IFRS/USGAAP in early October.

CESR and the SEC will meet in early December/January 08 in order to discuss the current work programme as well as potential areas of work.

## **5. Accountability**

### **5.1 Financial Stability Table of the European Financial Committee (EFC/FST)**

#### **Financial Stability Table of the Economic and Financial Committee 4 April 2007**

Following discussion on the macro-economic and financial sectors conditions (to which CESR contributed with the work prepared by ECONET), the FST/EFC had a long discussion on the opportunity to regulate Hedge Funds, (see also following ECOFIN conclusions). There was agreement that Banking Supervisors Committee/European Central Bank and the Level 3 Committees should continue to monitor risks related to Hedge Funds and that the Commission and CESR should pursue further work to better understand the type and portfolio strategy composition of Hedge Funds.

As regards the Lamfalussy review the EFC/FST suggested that a first preliminary discussion should take place at the May ECOFIN where Johnny Åkerholm, the Chair of the IIMG, presented his report. The work of the EFC/FST in the second part of the year will be to

prepare a key political discussion at the December ECOFIN. The chair of the ECOFIN in the second half of 2007, Mr Fernando Teixeira Dos Santos, has indicated that the Lamfalussy Review will be a high priority for the Portuguese Presidency.

#### ***Next steps***

The next Financial Stability Table will take place on 4/5 September 2007.

The EFC/FST will also meet in an extra session on 22/23 November 2007 for discussions on the Lamfalussy review

The FSC will meet on a number of occasions during the autumn.

CESR will take part in, and report to, these groups.

## **5.2 ECOFIN/European Parliament**

As part of the regular updates that CESR gives, on 5 June 2007 the CESR Chairman Eddy Wymeersch gave an update on CESR's activities to the ECON Committee of the European Parliament.

Eddy Wymeersch expressed his intention to build on and continue the good relationship that his predecessor Arthur Docters van Leeuwen had always enjoyed with the Chair of ECON, its members and the European Parliament in general, before giving an update of the current work in relation to supervisory convergence. He emphasised that CESR has during its five years of existence done a great deal and that during this time it has been able to mark its place on the European map and has now become recognised both within and outside of Europe, in particular in the US.

He gave a number of examples of what CESR's contribution has been:

- the extensive breadth of its activities in many different fields within the securities sector covering the full spectrum of the FSAP;
- the contribution that CESR has made in making the regulatory process in



Europe significantly more transparent and visible; and

- actively pursuing the better regulation agenda in line with EU institutional policy

Eddy Wymeersch further explained that CESR has now entered into a new phase where the emphasis is the Level 3 work, by Standards, Recommendations and Guidelines and by facilitating supervisory convergence across the EU in the day-to-day application by CESR Members of the new legal and regulatory framework.

He explained that CESR has already put many of the Thierry Francq recommendations into place, (Review Panel, mediation, operational databases for IFRS and Market abuse to facilitate CESR members work in these areas).

Following the initial address, Eddy Wymeersch took several questions from the ECON members.

#### *Next steps*

The above mentioned meetings that have taken place and will take place in the EFC/FST and the FSC will lead up to the Ministers discussion during the 4 December 2007 ECOFIN Meeting.

### **5.3. European Commission**

#### Meeting with EU Commissioner Charlie McCreevy

CESR's Chairman Eddy Wymeersch, Vice Chairman Carlos Tavares and former Chairman Arthur Docters van Leeuwen, met Commissioner Charlie McCreevy on the 8 May 2007 as part of the regular half yearly meetings to report activities and discuss forthcoming matters of interest.

The exchange of views concentrated on the following issues:

- the evaluation and the future of the Lamfalussy approach: the CESR delegation informed the Commissioner on the launching of an internal strategic thinking within CESR in the "Beyond 2007" Task Force chaired by Michel Prada and the intention of CESR to contribute with ideas on the way forward in the second part of the year.
- EU/US: there was general satisfaction after the recent announcements by the US SEC regarding IFRS recognition and mutual recognition of regulatory and supervisory regimes; and
- MiFID: CESR informed the Commissioner on the real progress achieved in delivering common supervisory approaches to markets participants so as to facilitate a smooth transition to the new environment created by MiFID. The Commissioner was also informed of progress so far in establishing national transaction reporting systems and TREM.