CESR and CEBS publish a joint consultation paper on commodities

The Committee of European Securities Regulators (CESR) and the Committee of European Banking Supervisors (CEBS) are publishing today a consultation paper (Ref. CP 3L3 08 02/CESR/08-370) regarding the Joint Call for Technical Advice related to the review under Articles 65(3)(a), (b) and (d) of MiFID and Article 48(2) of the Capital Adequacy Directive (CAD III) issued by the European Commission in December 2007.

Following up on previous work, CESR and CEBS have been asked to give advice to the European Commission on certain issues concerning the regulatory treatment of firms that provide investment services in relation to commodity and exotic derivatives. In particular, the views of the Committees are sought on whether the MiFID and CAD treatment of this type of firm continues to support the intended aims of market and prudential regulation.

The consultation paper begins with an overview over the EU commodity derivatives markets and a look at products, trading venues and participants.

It is followed by analyses of possible market and regulatory failures in commodity derivatives markets which provide a framework for the subsequent discussion of policy issues.

The market failure analysis focuses on potential market failures linked to asymmetric information and negative externalities. Like in other financial markets, informational asymmetries can lead to abusive market conduct. In addition, e.g. the low levels of transparency in OTC commodity derivatives markets may give rise to concerns.

Potential regulatory failures may arise where regulation is not sufficiently adapted to the specificities of the commodity derivatives market or due to different regulatory treatment across the EEA.

The two final sections of the consultation paper examine whether the current regulatory framework as set out in the MiFID and the CRD adequately address the issues raised in the market and regulatory failure analyses or whether there is a need for amendments. A number of possible options are discussed.

The public consultation aims to gather industry feedback on the conclusions drawn from the market and regulatory failure analyses, and on the options presented for a possible future regime for commodities derivatives markets, in particular, the impact the application of any of these options would have as well as further input on certain issues. For this purpose specific questions have been inserted throughout the consultation paper. All interested parties are invited to send their comments to commodities@c-ebs.org by 1 August 2008. Unless explicitly requested otherwise, all responses received will be published on the CEBS (http://www.c-ebs.org/Consultation_papers/consultationpapers.htm) and CESR (www.cesr.eu) websites.
Following analysis of the responses received, CESR and CEBS will deliver their final advice to the European Commission during autumn 2008.

During the consultation period a public hearing will be organised on 7 July 2008 at CEBS’s premises in London. The details of the public hearing and the registration form will be published closer to the date, on CEBS’ website http://www.c-ebs.org/keydates.htm and on CESR’s website in the section Hearings.

CESR (the Committee of European Securities Regulators) and CEBS (the Committee of European Banking Supervisors) are independent committees. Comprehensive information on the role and objectives, and the relevant founding documents are available on the respective web-sites of the Committees.

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For further information please contact:

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<th>CEBS:</th>
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| Ms Victoria Powell  
Tel: +33 1 58 36 43 21  
powell@cesr.eu  
www.cesr.eu | Ms Andrea Deak  
Tel: +44 20 7382 1780  
andrea.deak@c-ebs.org  
www.c-ebs.org |