



Date: 3 November 2008

Ref: CESR/08-878

**PRESS RELEASE**

**CESR restates its resolve to ensure the protections of MiFID are applied convergently across Europe and announces new efforts to assess the impact and functioning of MiFID**

One year after implementation, CESR has started to assess the impact and functioning of the Markets in Financial Instruments Directive (MiFID). Given that the first anniversary of MiFID coincides with a global financial crisis, CESR has also reinforced its ongoing work on market transparency. As part of the assessment of MiFID, CESR published today two Calls for Evidence - one on the impact that MiFID has had on secondary markets functioning and a further Call for Evidence on the scope of MiFID's transaction reporting obligations. CESR also announces it has updated its transaction reporting exchange mechanism (TREM) improving further the exchange of information amongst supervisors.

Jean-Paul Servais, Chair of CESR's MiFID Level 3 Expert Group, stated:

*"The first anniversary of the implementation of MiFID coincides with a particularly challenging period for both market participants and regulators. It has highlighted that the co-operation and focus placed by CESR and its Members on creating convergence amongst EU supervisors, through concrete measures, is the right approach and we will continue it. For example, steps taken to enable supervisors to exchange five million transaction reports on each day of trading, through the system launched this year, is critical in times of such extreme volatility and enables supervisors to identify suspicious trades far more quickly.*

*Equally, CESR has undertaken important work to develop guidance on inducements for example, and supervisory briefings on issues such as best execution and the practical guide for retail investors to explain to them the protections and expectations they should have when buying investment services. Implementing 'know your customer rules' and ensuring that both the service provider and the retail investor have clarified the risk he or she is willing to take and that they understand why this process is critical, is key to increasing investor protection. We will continue to do all we can to see this objective achieved in day-to-day practices.*

*The recent re-hauling of our securities legislation has created new protections for investors and provided new opportunities for firms within Europe but we cannot be complacent. Apart from assisting our Members to ensure these safeguards are effectively implemented across Europe, CESR will be reviewing the impact that MiFID has had on secondary markets and evaluating the functioning of some of its key provisions. Indeed this work becomes all the more critical in times of crisis, where market transparency and effective transaction reporting are key to maintaining confidence in financial markets. The new initiatives also launched today should help us achieve this objective."*

**Launch of a new version of TREM**

One year after the implementation of TREM, CESR has put in place a new version of the system. Since November 2007, TREM has facilitated the exchange of information on transactions between CESR Members. Approximately one billion transaction reports have been exchanged during the first year of its functioning.

The new version of TREM allows CESR Members to exchange reports on transactions executed on major derivatives markets. It had not been possible to include these transactions in the exchange of information during the first year of the system's functioning due to the need to cater for specific difficulties faced by some derivatives markets in adopting the widely used international standard for the



identification of securities, known as the ISIN code. To achieve a solution, CESR has worked closely with industry, in particular FESE and this cooperation enabled CESR to introduce an alternative identifier commonly called the *Alternative Instrument Identifier*, or AII for short. In addition to AII, the new version of TREM incorporates new functionalities to better control the quality of data exchanged, aiming to enhance market supervision by CESR Members.

#### **A review of CESR's conclusions on transparency of non-equity markets**

As part of the work streams directly related to the financial crisis (see press release Ref. CESR/08-303), CESR is currently reviewing its conclusions on non-equity markets transparency (Ref. CESR/07-284b), sent to the European Commission as technical advice in August 2007. This review covers corporate bond markets as well as structured finance products and OTC derivatives, focusing on aspects of post-trade transparency for both retail and wholesale markets. A public consultation will be launched in December to seek stakeholders' views on the review.

For further information on concrete measures taken by CESR during the implementation of MiFID please see the Notes for Editors.

A number of further new initiatives are launched today to help CESR assess the impact and effectiveness of MiFID:

#### **A 'Call for Evidence' on the impact of MiFID on secondary markets functioning**

In its first Call for Evidence published today (Ref. CESR/08-872), CESR asks stakeholders' views on the impact of MiFID on secondary markets functioning. The results of this Call for Evidence will assist CESR to evaluate the workings of MiFID and the impact the Directive has had on market structures and the functioning of equity secondary markets. In particular, the impact of MiFID will be assessed in relation to market transparency and integrity, regulated markets, Multilateral Trading Facilities and systematic internalisers. This work will be completed by May 2009.

#### **A 'Call for Evidence' on the review of the scope of the MiFID transaction reporting obligation**

In its second Call for Evidence published today (Ref. CESR/08-873), CESR asks stakeholders' views on the scope of MiFID's transaction reporting obligation. CESR will in a second step review the CESR Level 3 Guidelines on MiFID transaction reporting (Ref. CESR/07-301). The review will focus on the scope of the transaction reporting obligation (i.e. what constitutes 'execution of a transaction' for transaction reporting purposes).

The aim of this review is to produce definitive guidance aiming at converging current practices between CESR Members. CESR committed itself to conduct such a review after one year of full operation of the MiFID transaction reporting regime. This work is expected to be completed by the end of 2009.

#### **A reassessment of CESR's methodology for the MiFID market transparency calculations**

The MiFID enables trades to be conducted on regulated markets and Multilateral Trading Facilities, as well as by systemic internalisers and OTC. In order to maintain a high level of transparency for shares, the MiFID introduced a market transparency regime. This regime depends on the calculations that are currently being made on the basis of the trading data of the most liquid national market for each share. These calculations determine the thresholds for waivers from pre-trade transparency obligations and for delayed post-trade publication and identify the liquid shares where systematic internalisers are subject to the quoting obligations of Article 27 of MiFID.

To make these calculations, CESR Members originally planned to start using data exchanged through TREM from March 2009. CESR will however reassess in the course of the next few months whether there is a need to postpone this deadline and, if needed, will update its Protocol on the operation of the CESR MiFID Database (Ref. CESR/08-144) accordingly. Any additional interim period before transferring to the use of TREM data would have a maximum length of one year.



**Notes for editors:**

1. CESR has used a number of tools in the work undertaken by it to ensure convergence in the implementation of MiFID across the EEA and to provide firms and retail investors with clarity and certainty regarding the legislation. In particular, CESR has:
  - ensured certainty for firms in late implementing countries by agreeing practical arrangements for the passport under MiFID (Ref. CESR/07-337b);
  - provided clarity on how Member States have implemented the national discretions and options allowed under MiFID (Ref. CESR/07-703);
  - prepared a protocol on the supervision of branches; and a protocol on MiFID passport notifications (Ref: CESR/07-672/07-317b respectively);
  - published Questions and Answers on best execution (Ref. CESR/07-320) and common positions agreed by CESR Members (Ref. CESR/08-266); and recommendations on inducements (Ref: CESR/07-228b);
  - provided clarity on transaction reporting and the functioning of the CESR MiFID database (Ref. CESR/07-301/08-144 respectively);
  - developed a guide for retail investors on MiFID (Ref. CESR/08-003); and
  - developed supervisory briefings on conflicts of interest, inducements and best execution (Ref. CESR/08-733; 08-734; 08-735 respectively)
2. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
  - Improve co-ordination among securities regulators;
  - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
  - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States.
3. The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
4. Each Member State of the European Union has one member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated as its representative the Director General of the DG Market. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.
5. CESR has established a MiFID Level 3 Expert Group that undertakes work to deliver supervisory convergence in the day-to-day application of the legislation (i.e. Level 3). This group is chaired by Jean-Paul Servais, Chairman of the Management Committee of the Belgian CBFA. The rapporteur for this group at the CESR Secretariat is Eija Holtfinen, Director of Markets and Intermediaries.

**Further information:**

CESR Carlo Comporti                      or                      Victoria Powell  
Secretary General of CESR                      Director of Communications  
Tel: +33 (0) 1.58 36 43 21  
Fax: +33 (0) 1.58 36 43 30  
Email: [secretariat@cesr.eu](mailto:secretariat@cesr.eu)  
Web site: [www.cesr.eu](http://www.cesr.eu)