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REPORT

CESR Half-Yearly Report 2009

1. Introduction

This interim report for 2009 complements CESR's Annual Report for 2008, published in July 2009 by providing a half-yearly update on the activities of the Committee of European Securities Regulators (CESR) to the European Commission (Commission), Parliament and the European Securities Committee (ESC). The report covers work conducted by CESR from January to June 2009; everything after this is referred to as 'next steps'.

In the first half of 2009, a lot of CESR's work streams linked to responding to the financial crisis. As much of the work identifying where the crisis originated and what lessons should be learnt were initiated, or already completed during 2008, much of CESR's work during the first six months of 2009 focused on the crisis follow-up, including in-depth analysis of the Lehman default (p. 19), the Madoff fraud (p. 27), short selling issues (p. 10), and the impact the crisis had on the use of reclassification of financial instruments by EU companies when preparing their financial statements (p. 21). CESR also started preparing to implement both the future European Regulation for Credit Rating Agencies (p. 9) and for the new EU regulatory architecture that has been put forward by the de Larosière group (p. 26).

The Committee, nevertheless, continued to act as an operational network of European securities regulators on a great variety of issues regarding securities legislation and its implementation throughout the European Union (EU), by playing its advisory role to the Commission both on Level 2 and 3 measures under the Lamfalussy process and by assessing the convergence of implementation amongst Members through the Review Panel and addressing differences, where possible, through the work of relevant expert groups. As such, in CESR's capacity as an advisory group, 2009 saw the provision of CESR Level 2 advice on implementing measures for the future UCITS IV directive (p. 18) and an analysis of the impact the Markets in Financial Markets Directive (MiFID) had on equity secondary market's functioning after its first year of practice (p. 11).

The technical work carried out by CESR groups, task forces, panels and networks, which draw together senior experts from CESR's Member authorities, is aimed at achieving CESR's overall objectives. The following report is therefore organised by objectives, showing which objectives the particular work stream carried out is attempting to serve. CESR's objectives include securing greater market transparency, efficiency and integrity (p. 9), assuring transparency of implementation (p. 13), delivering greater convergence in implementation (p. 17), adopting measures to increase investor protection (p. 27) and providing technical advice as well as reporting to EU institutions, and implementing EU roadmaps (p. 31). For the purposes of the half yearly report, however, work streams that CESR considers of high priority are reported in greater length, whilst those of medium or lower priority are reported in less detail.

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2. CESR's objectives and groups

2.1 CESR's objectives

Sound and effective regulation of securities markets is important for the growth, integrity and efficiency of Europe's securities markets. Effective regulation is a key factor in securing and maintaining confidence amongst market participants. In order to foster these conditions throughout Europe, CESR, in its role as a network of securities regulators across the EU, improves the co-ordination amongst its Members, provides technical advice to the Commission and seeks to ensure that EU securities legislation is implemented more consistently across EU Member States.

To achieve this, CESR defined five objectives to which its work can be said to contribute, namely, ensuring:

- Market integrity, transparency and efficiency;
- Convergence;
- Investor protection;
- Transparency of implementation; and
- Technical advice and reporting to EU institutions, implementation of EU roadmaps.

Some of the above objectives are interlinked, that is to say actions taken to achieve one objective will also serve in achieving one of the other objectives.

2.2 CESR groups, task forces, networks and panels

CESR acts on a great variety of issues regarding securities legislation and its implementations throughout the EU. CESR conducts its work through different working groups, task forces, panels and networks, which draw together senior experts from CESR's Member authorities. The different groups are established both permanently, or limited in time, depending on the issues handled and the mandate given. The technical work carried out by CESR groups is aimed at achieving CESR's overall objectives, and the work of one group might also deliver to different objectives of other groups. The following presentation of CESR's groups, task forces, panels and networks presents the division of work streams per expert group.

Review Panel

CESR established its peer pressure group, the Review Panel, in order to contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective co-operation between national supervisory authorities, carrying out peer reviews and promoting best practice. The key task of the Review Panel is to review the day-to-day implementation of EU legislation, CESR standards and guidelines into national rules by CESR Members in order to promote supervisory convergence. The panel reviews the overall process of implementation, provides common understanding and expresses views on specific problems in the implementation process encountered by individual Members and uses reviews, mapping exercises and self-assessments to develop its findings. It then exercises peer pressure by reviews which are carried out by fellow Members on the implementation by setting up benchmarks that help evaluating Members' compliance with Level 3 measures.

Division of the Review Panel's work

Review Panel's work streams	Chapter	Page
- Review of MiFID's administrative powers and sanctioning regimes	3.2	13
- Consultation on the Review Panel's 2009 work plan	3.2	15

CESR-Pol

Effective enforcement of securities laws is a key element in CESR's delivery of its market integrity objective and its ability to protect investors. The purpose of CESR-Pol is to provide a forum to bring together senior enforcement officials from each CESR Member to develop policy options relating to co-operation and enforcement issues. CESR-Pol is a permanent operational group with a strong focus on facilitating the effective, efficient and proactive sharing of information on specific cases, in order to enhance co-operation on, and the co-ordination of, surveillance and enforcement activities between CESR Members. CESR-Pol's key

objective is to make information flow across borders between CESR Members as rapidly as it would between departments within an authority and, by so doing, to enhance the integrity, the fairness and necessary protections to the Europe's markets as a whole. CESR-Pol is mandated to promote active co-operation and to ensure the consistent and effective application of key EU Directives, particularly of the Market Abuse Directive (MAD).

Division of the CESR-Pol's work

CESR-Fin

CESR-Fin is the one other permanent operational working group in CESR, alongside CESR-Pol. Its main purpose is to co-ordinate the work of CESR Members in the areas of endorsement and enforcement of international financial reporting standards (IFRS) in Europe allowing CESR to participate proactively in the dialogue between key policymakers and standard setting bodies throughout the European endorsement process. A further role of CESR-Fin is to advise the European Commission in the development and implementation of legislation in the area of accounting and auditing as well as to monitor developments in Europe in the field of auditing. The group consists of sub and project groups dealing with IFRS, accounting, auditing and equivalence and of the European Enforcers Coordination Sessions (EECS).

Division of the CESR-Fin's work

MiFID Level 3 expert group

The MiFID Level 3 expert group undertakes work to deliver supervisory convergence in the day-to-day application of the Markets in Financial Instruments Directive (MiFID) and conducts related policy work. Almost two years after MiFID's implementation, the group, made up of senior MiFID experts of CESR Members, focuses on developing mechanisms to ensure consistent implementation of Level 1 and 2 requirements of the Directive and to foster supervisory convergence among CESR Members.

Division of the MiFID Level 3 expert group's work

Investment management expert group

The investment management expert group was set up to work in the area of Undertakings for Collective Investments in Transferable Securities (UCITS) and asset management in order to provide a coherent regulatory framework across Europe in this area. The group, bringing together experts from CESR Members, focuses on UCITS-related issues, but also deals with issues arising in alternative investment management. Its work ranges from promoting convergence in CESR Members' approaches to the eligibility of assets to responding to specific requests from the Commission such as on the content of the Key Information Document (KID) for retail investors. The investment management expert group has also been closely involved in developing the framework to support the European management company passport.

Division of the investment management group's work

Investment management group's work streams	Chapter	Page
- CESR's guidelines on risk management principles for UCITS	3.3	17
- Consultation on implementing measures for future UCITS directive	3.3	18
- Consultation on risk measurement calculations for UCITS' global exposure	3.3	18
- CESR assesses Lehman Brothers default	3.3	19
- Consultation on KID disclosures for UCITS	3.4	28
- CESR-Pol-IMEG work on Madoff fraud	3.4	27
- Consultation on implementing measures regarding UCITS IV	3.5	32

Credit rating agencies expert group

CESR's credit agencies expert group was created in 2008 replacing a CESR task force that had been actively working in the area of credit rating agencies (CRAs) since 2004. The group is in charge of CESR's work emerging from the EU Regulation on CRAs which sets the framework for the registration and supervision of CRAs in Europe. The group is working on the implementation of the Regulation and aims to promote convergence in the application by CESR members of the Regulation as well as to enhance legal certainty for market participants. The group also provides technical advice to the European Commission on CRAs issues when requested. In performing its work, the group co-ordinates closely with fellow regulators both within the EU (such as CEBS and CEIOPS), and internationally (such as IOSCO) on issues relating to CRAs

In addition, the expert group has been responsible for reviewing the implementation of the voluntary framework which reviews how CRAs are implementing the IOSCO Code. This is the second year of the framework's operation.

Division of the CRA group's work

CRA group's work streams	Chapter	Page
- Implementing the new EU Regulation on CRAs	3.1	9
- Second report on the compliance of CRAS with the IOSCO Code	3.1	9

Transparency expert group

The Transparency Expert Group was created to publish comparative information on the Transparency Directive's implementation in all Member States, to reach common views on practical questions regarding the TD and to establish an EU network of national storage mechanisms. The mandate of CESR's transparency group covers the following topics: practical provisions for notifications of shareholdings, dissemination and storage of regulated information, some aspects of periodic financial reporting and the equivalence between third-country reporting regulations and the TD's requirements.

Division of the Transparency group's work

Transparency group's work streams	Chapter	Page
- CESR issues FAQ on TD	3.3	24
- Standard form for notification of major shareholdings	3.3	25

Post-trading expert group

The role of CESR's post-trading expert group (PTEG) is to co-ordinate the work of CESR Members in the area of post-trading. The PTEG was established in early 2007 to monitor and contribute to a number of public and private sector initiatives in the area of post-trading and to serve as a platform for the exchange of supervisory experiences amongst regulators. The objectives of these activities are: to foster a level playing field and to encourage the safety and soundness of post-trading activities within the EU and by doing so, to ensure the sound, efficient and transparent functioning of post-trading.

Division of the PTEG's work

PTEG's work streams	Chapter	Page
- CESR monitors ESCB's work on a single pan-EU platform for securities settlement	3.2	21
- CESR-ESCB issue recommendations on post-trading infrastructure in EU	3.3	20

CESR-Tech

CESR-Tech is an expert group in charge of the information technology (IT) governance of CESR. The expert group enables CESR to work on IT projects that CESR undertakes in

conjunction with its Members. The group is composed of senior CESR representatives who have experience, knowledge and expertise in IT project management, financial markets, and supervisory related issues. In the course of 2008, CESR-Tech renewed its mandate to better reflect the operational objectives of the group. CESR-Tech's main objectives are to lead pan-European IT projects of CESR to provide CESR and its Members with IT systems and services that help CESR Members to fulfil their obligations, prepare reporting on IT issues of relevance to EU institutions for the approval by CESR and to consult and advice CESR on IT related issues.

Division of CESR-Tech's work

CESR-Tech's work streams	Chapter	Page
- CESR launches IT system for instrument reference data	3.3	16
- CESR consults on OTC derivatives' transaction reporting	3.3	16
- CESR starts defining credit rating agencies' repository	3.3	16

ECONET

CESR created ECONET, its network of economists from Member authorities, in order to facilitate the ability of CESR to meet an increasing number of reporting requests to European bodies that require the input of financial economists. ECONET also evaluates and, as appropriate, develops CESR's approach to the use of impact analysis of securities legislation across Europe. Generally, the network enhances CESR's capability to undertake economic analysis of market trends and key risks in the securities markets that are, or may become, of particular significance for its Members

Division of ECONET's work

ECONET's 2008 work streams	Chapter	Page
- Reports on economic trends and risk to EU institutions	3.5	32

Takeover bids network

CESR has set up a network of authorities dealing with takeover bids (whether CESR Members or not) to discuss views, experiences and future developments in the implementation of the Takeover Bids Directive (TOD). The TOD aims to ensure equality of treatment in Europe for all companies launching bids and to ensure a transparent and fair treatment of investors in companies that find themselves the targets of takeover bids. The legislation covers two separate areas relating to takeovers: company law aspects and securities or market related issues. However, as the CESR Members composing the network do not, in general, have powers in relation to many company law issues, the mandate of the network is limited to securities or market related issues, with the goal of promoting an exchange of information and experience. The network aims to foster co-operation between all authorities supervision the takeover legislation, especially in the context of cross-border transactions.

Division of the network's work

The network's work streams	Chapter	Page
- Exchange of experiences on takeover bids	3.3	24

Prospectus contact group

CESR's prospectus contact group was originally created to develop Level 3 guidance on the disclosure requirements of the Prospectus Regulation. The Prospectuses Directive (PD) requires issuers to publish a prospectus when offering securities to the public or admitting securities to trading on a regulated market. The Regulation also defines the exact content requirements of such documents. The Prospectus contact group also periodically publishes updates to a Q&A on issues related to prospectuses, which provides market participants with commonly agreed answers by CESR Members.

Division of the Prospectus group's work

Prospectus group's work streams	Chapter	Page
- CESR contributes to Commission review of PD	3.2	15
- CESR publishes data on prospectuses approved and passported in the EU	3.2	15
- Eights update to Q&A regarding the Prospectus Directive	3.5	23

3. CESR delivering its objectives

3.1 Market transparency, efficiency and integrity

Securities regulators seek to secure the orderly functioning of financial markets. This is achieved by ensuring that markets function in a fair, efficient and transparent manner. Regulation looks into issues, such as the integrity of price formation; the clarity of information on the product being sold and its functioning; the prevention of manipulative behaviour; ensuring that appropriate laws for customer protection exist, are implemented and enforced effectively. As a network of securities supervisors, CESR fosters the integrity, transparency and efficiency of EU financial markets by improving the co-ordination amongst EU regulators through issuing guidance, Q&As and, where appropriate, through publishing market data and regulatory decisions taken by CESR Members.

Credit Rating Agencies

CESR starts implementing new EU Regulation on CRAs

Recent market events have demonstrated the role played by CRAs in market integrity which is why the European Parliament and Council approved an EU Regulation on Credit Rating Agencies (IP/09/629) the 23 April 2009, introducing an EU system for registering and supervising CRAs. The text is expected to be formally approved by mid-September and to enter into force by mid October. Then, the Regulation will directly apply in all Member States. The Regulation implies that:

- All CRAs established in the EU will have to apply for registration;
- Regulated entities in the EU may only use for regulatory purposes ratings that are issued by registered CRAs; and
- Registration is a precondition to be recognised as an External Credit Assessment Institution (ECAI) as laid out under the Capital Requirements Directive (CRD).

CESR's enhanced role in the CRA's area

CESR's new role in the registration process of CRAs in Europe will be as a single European point of entry for the submission of applications for registration.

In addition, CESR will be in charge of setting up a central repository containing data supplied by individual CRAs. This database will provide the market with historical performance statistics relating to registered CRAs (historical default rates and information on 'rating migration', i.e. movements between rating categories).

Next steps

In July 2009 CESR will publish a fact finding exercise on ratings used in the EU that have been issued by third country CRAs. CESR will also consult on a central CRA repository.

By mid-October 2009, CESR will propose more detailed guidance on issues such as the registration process, colleges and the content of applications.

In addition, CESR will start working closely with third country competent authorities to reach co-operation arrangements.

CESR's second report on CRA's compliance with the IOSCO Code

In May 2009, as part of CESR's commitment to provide market transparency and to ensure market integrity, CESR published its second report (Ref. CESR/09-417) on the compliance of CRAs with the IOSCO Code of Conduct. The publication of CESR's report came as a result of requests from both the Group of Twenty (G20) and the European Commission that CESR should report to both the Commission and to the Economic and Financial Committee of the European Union (EFC) on the progress made by EU-based CRAs towards compliance with the revised IOSCO Code published in May 2008.

In responding to the request, CESR built on work already performed in IOSCO and produced an initial interim report containing a preliminary review of the level of compliance of the three largest CRAs', Standard & Poor's

(S&P), Fitch Ratings (Fitch) and Moody's Investor Service (Moody's). The final report, which was sent to the Commission and to the EFC in March 2009, contained an analysis of the compliance of a wide range of EU-based CRA's codes of conduct with the updated IOSCO Code, including the three CRAs covered in the interim report.

CESR found CRAs broadly compliant

CESR's overall conclusion with respect to the codes of the larger and global CRAs (S&P, Moody's, Fitch, DBRS and AM Best) was that they are considered broadly compliant with the IOSCO Code. These CRAs had updated their codes of conduct to take into account most, but not all, of the revisions made to the Code by IOSCO in May 2008, in particular with respect to structured finance products. However, there were a number of provisions identified; detailed within the report, on which these CRAs deviated from the IOSCO Code. CESR therefore believes room for improvement exists.

The report published in May was exclusively based on the codes of CRA's. No other documents were taken into account. In addition, CESR did not opine on the practical application of a CRA's own code which means that CESR did not check whether a CRA complies in practice with what is stated in its code. Equally, where a CRA's code deviates from an IOSCO provision, CESR did not check whether the CRA complies with the IOSCO provision in practice.

CESR-Pol

CESR's 2009 activities in relation to short selling

Market events demonstrated the effects short selling can have on securities markets. This is why EU securities regulators are closely monitoring the functioning of the markets under the current circumstances and are considering together possible actions which might be taken to contribute to the orderly functioning of the markets from the angle of short selling. In order to keep market participants informed, CESR has updated several times its list of measures recently adopted by CESR Members on short selling (Ref. CESR/08-742). In addition, CESR Members have been communicating closely in order to keep each other informed of their intentions regarding the temporary measures that have been adopted and to achieve as much co-ordination as is practicable, given the nature of the existing measures and the different market conditions that prevail in different jurisdictions.

Task force to develop policy options

Following a CESR plenary meeting on 30 September 2008, Members agreed that a dedicated task force on short selling under the auspices of CESR-Pol, one of CESR's operational groups, should be formed immediately. This decision was taken in the aftermath of the series of regulatory interventions on short selling taken during the second half of September and the beginning of October 2008. The task force has since reported to the CESR plenary on its preliminary enquiries and, as a result, has been mandated to analyse the impact of the temporary measures introduced by CESR Members, and to conduct further work, taking into account contributions from the market, with a view to developing a range of options for achieving greater convergence between CESR Members in the short selling space.

Next steps

CESR will develop a pan-European disclosure regime to deal with short selling throughout the Community and will consult with market participants on a possible future legislation.

MiFID

CESR assesses impact of MiFID on the functioning of equity secondary markets

Since its entry into force in November 2007, MiFID has created a new dynamism and increased competition into equity secondary markets. CESR therefore decided to analyse in more detail the impact the Directive has so far had on the functioning of equity secondary markets.

CESR published on 10 June 2009 an assessment on the impact of MiFID on the functioning of equity secondary markets (Ref. CESR/09-355). The report focuses on the functioning of MiFID's provisions and those of its Implementing Regulation with regards to

market transparency and integrity, regulated markets, Multilateral Trading Facilities (MTF) and systematic internalisers. The publication of CESR's report follows a call for evidence issued in November 2008, which sought stakeholders' views on the workings of MiFID and its impact.

MiFID significantly changed markets

CESR's assessment shows that the introduction of MiFID significantly changed the secondary markets landscape across Europe, most importantly through the introduction of new MTF platforms. Whilst the market share of regulated markets has decreased since the implementation of MiFID, the vast majority of equity trading is transacted through the existing regulated markets rather than on the new entrants or OTC. Many factors have influenced the cost of trading since MiFID came into force: The increased competition between trading venues resulted in downward pressures on direct execution costs. At the same time, increase in technology spent to trade in a more fragmented environment and general widening of bid-offer spreads, as a result of volatile market conditions, have tended to offset the reduction in trading fees. CESR's findings also indicate concerns by some market participants that fee reductions by trading platforms have not been passed on entirely to investors by trading participants.

CESR addresses concerns about pre- and post-trade transparency

After the implementation of MiFID, market participants expressed concerns over a number of pre-trade transparency issues, ranging from interpretation issues to potentially undesirable impacts on innovation and an unlevel playing field between various trade execution venues.

As a result of the increased competition in trade publication services introduced by MiFID, trade data is now available from a number of different sources. Some market players were concerned that market data fragmentation was taking place; in particular that there would be a need for better quality of post-trade data and a consolidated set of market data. CESR is aware of these concerns and will conduct further work to better understand and assess issues surrounding the calibration of the deferred publication regime, the cost of accessing post-trade data and the quality and consolidation of data.

Competition vs. level playing field?

MiFID is aimed at developing competition and greater efficiency of equity trading while maintaining investor protection. Achieving greater competition is raising concerns about the level playing field among trading platforms, both by regulated markets vis-à-vis MTFs and by regulated markets and MTFs vis-à-vis investment firms' OTC activities. In its report, CESR notes the importance to recognise the challenges arising from this competition so that action can be taken or recommendations made to address issues identified.

Next steps

CESR will continue to work on the issues identified in the report, also in anticipation of a possible mandate from the Commission in relation to a future review of MiFID.

First pre-trade transparency waivers assessed at CESR level

On 20 May 2009, CESR published its first assessment (Ref. CESR/09-324) of the first four proposals for waivers from pre-trade transparency requirements for trading systems and order types intended to be offered by regulated markets and MTFs under MiFID. The MiFID compliance of these functionalities has been assessed at CESR level on the basis of the new joint process that CESR launched in February 2009.

Although the legal responsibility for granting the waivers lies with the national competent authorities, CESR Members have agreed that when an operator of a regulated market or an MTF seeks to rely on a MiFID pre-trade transparency waiver, the arrangements will be considered at CESR level at the initiative of the relevant CESR Member. This is consistent with CESR's role in providing a forum for supervisors to achieve greater supervisory convergence and contributes to ensuring an appropriate level of market transparency across Europe.

Successive publication of waivers

Waivers assessed at CESR level are made public on the CESR website under the section Expert Groups/ MiFID Level 3 Expert Group by updating the waiver document published in May (Ref. CESR/09-324). The table listing the waivers assessed does not include all waivers granted by competent authorities. Only waivers that have been considered at CESR level after the establishment of this process in February 2009 are included.

Next steps

To successfully promote supervisory convergence between CESR Members, CESR will continue to assess new pre-trade transparency waivers and update the information available in the document published as soon as these cases are agreed at CESR level. CESR will also map the waivers granted before February 2009 during the second half of this year and will then assess the usefulness of publishing also the results of that mapping.

Maintenance of the CESR MiFID database

Under the MiFID market transparency regime, CESR is responsible for publishing certain calculations made by its Members for shares admitted to trading on a regulated market as well as lists on systematic internalisers, multilateral trading facilities, regulated markets and central counterparties. CESR successively publishes the results of the calculations through its MiFID database which is publicly available on CESR's website. The annual calculations for 2009 were made public on the first trading day of March, being the 2 March 2009.

In order to ensure smooth and harmonised calculation and publication, CESR has considered it necessary to agree on a protocol on the operation of the MiFID database. This protocol describes the tasks and responsibilities of CESR Members and the CESR Secretariat respectively. An updated version of the protocol was published on 26 February 2009.

Next steps

CESR Members will continue to update the information of the MiFID database which will be published by CESR on a real-time basis.

Level 3 work on the use of derivatives and major shareholding notifications

In the first half of 2009, CESR has undertaken Level 3 work on major shareholding notifications. There have been a number of high profile cases in Europe and elsewhere, where derivatives have been used with the intention to acquire control of a listed company. Some Member States have already taken regulatory actions and extended the major shareholding notification regime to derivatives, both physically settled and cash settled.

CESR has agreed to take a proactive role in relation to derivatives and major shareholding notifications. The aim of the work is:

- To co-ordinate national efforts in this area in order to achieve a more uniform approach for possible regulatory initiatives at national level; and
- To give feedback to the Commission for the review of the Transparency Directive.

Next steps

CESR will discuss the issue at Level 3 and plans to consult with interested parties. A consultation paper is envisaged to be published in the last quarter of 2009.

Transparency Expert Group

Use of a standard reporting format in the financial reporting of listed issuers

In its Recommendation (2007/65/EC) relating to the network of officially appointed mechanisms for the central storage of regulated information (OAMs), the Commission requested CESR to report on the possible future development of the network of OAMs by 30 September 2010. CESR has therefore discussed this issue with the representatives of national OAMs as part of its work on the development of the OAM network.

The discussions between CESR and the OAM representatives also covered standard reporting formats for financial reporting, such as XBRL. Having considered the various regulatory initiatives taking place in different jurisdictions, CESR has decided to explore the issues related to the use of a standard reporting format for financial reporting of issuers having securities admitted to trading on a regulated market. At this stage, CESR has not taken any position on the issue.

Next steps

A call for evidence on the use of a standard reporting format for financial reporting will be launched by October. Depending on the responses to the call for evidence, CESR may address the issue in more detail in the drafting of its report to the Commission.

3.2 Transparency of implementation

CESR's objective of 'transparency of implementation' refers to the work done by CESR to either explain where differences in implementing EU Directives occur, through the mapping exercises carried out by its Review Panel or, for example, in assessing how CESR Members have implemented derogations where the Directive or Regulation have allowed differences to exist. In addition, CESR's work to harmonise views amongst CESR Members and market participants brings clarity on implementation, both of which is done through publishing Level 3 guidance and Q&As. By addressing the differences and areas of convergence that occur in the day-to-day implementation of EU law nationally, transparency of implementation also serves in achieving market efficiency, transparency and encourages greater convergence in the future, by highlighting the areas where further work should be done.

Review Panel

CESR reviews supervisory powers and sanctioning regimes of MiFID

On 16 February 2009, CESR published a review (Ref. CESR/08-220) of supervisory powers and practices, as well as administrative and criminal sanctioning regimes across Europe in relation to MiFID. The report published by CESR gives a factual overview of the implementation of MiFID by mapping the supervisory powers, practices and sanctioning regimes of CESR Members and by doing so, revealing the degree of transparency in implementation achieved.

The review should be seen in the context of a series of studies CESR undertakes to map the implementation in practice of the key pillars of the Financial Services Directives. As such, CESR's peer pressure group, the Review Panel, undertook a similar study (Ref. CESR/07-334b) of how the Prospectus Directive and the Market Abuse Directive (MAD) have been implemented. These results serve to help to identify those areas CESR might wish to prioritise for further convergence. For example, in relation to MiFID, lack of convergence on the procedures in approving platforms or regulated markets is perhaps a less significant issue, whilst differences on measures and procedures to authorise and supervise investment firms are more critical to the single market.

CESR mapped supervisory powers and practices throughout the EU

Looking at supervisory powers of CESR Members, the report shows that all supervisory powers concerning MiFID have been assigned throughout the CESR membership. However, certain powers have been left with national ministries, central banks or other competent authorities and have not been assigned directly to a CESR Member.

With regards to supervisory practices in authorising and supervising investment firms, some convergence can be noted on procedures and methods used by CESR Members to regularly monitor that investment firms comply with legal obligations. The MiFID review showed that a great majority of authorities do not impose additional authorisation requirements to the ones set out in MiFID on investment firms and credit institutions. The timeframe within which authorities check the documentation for granting authorisation is more or less convergent: 16 authorities check within a 6 month period, while 14 authorities indicated shorter timeframes, in most cases 3 months.

Nevertheless, no convergence can be seen with regard to the practices used by the competent authority to assess the application; e.g. whether on site-inspections or hearings are performed.

Supervisory powers and practices for regulated markets

CESR's findings suggest that harmonisation with regard to the supervisory framework for authorities and ongoing supervision of regulated markets and multilateral trading facilities is far greater than the convergence of supervision by competent authorities of other entities, such as investment firms and credit institutions. Nevertheless, the findings identified some differences in the information collected for authorising regulated markets. However, all CESR Members have similar requirements to ensure that those who direct a regulated market, are experienced and meet the requirements of being of sufficiently good repute, and also to ensure that the persons, who are in a position to directly exercise significant influence over the management, are suitable given the need to ensure the sound and prudent management of the regulated market. There is some level of convergence regarding the required documents used to verify the above requirements, such as questionnaires on qualifications and professional experience, fit and proper test, criminal records or sanctions, information on the financial conditions.

Mapping of administrative measures and criminal sanctions

Overall, the exercise undertaken by CESR's Review Panel shows that there are significant differences in respect to administrative measures and criminal sanctions among CESR Members that can be imposed in cases of infringements of MiFID. These differences are partly due to the fact that Members States' legal systems differ across Europe. Administrative measures are more common throughout the CESR Membership than criminal sanctions. All jurisdictions may impose administrative measures for violations of any of the provisions in MiFID. Nevertheless, the report shows a huge variance in range of administrative and criminal fines throughout the Membership which may be due to the fact that according to the provisions of MiFID, Member States have the discretion to decide on the amount of fines applicable in cases of infringement of MiFID.

The MiFID mapping also shows that 23 out of 28 jurisdictions may impose administrative fines for infringement of any of the provisions in MIFID, while four jurisdictions do not impose administrative fines for violation of all provisions of the Directive, but only impose administrative fines for violation of some provisions. Only one jurisdiction does not impose administrative fines at all.

In terms of the range of administrative fines that can be imposed, there is no convergence between the jurisdictions with fines on the administrative side varying from €12,500 to about €5 million and even up to unlimited fines. On the criminal side fines range from €5.000 to about €16 million and can extend to unlimited criminal fines.

Background

MiFID does not contain any definition with regard to an administrative measure and a criminal sanction as this depends on the national law of each Member State. In order to facilitate the understanding of the use of these terms in the report, CESR adopted a pragmatic approach by distinguishing between on the one hand administrative measures and administrative fines, and on the other hand criminal sanctions such as imprisonment and criminal fines in preparing the MiFID review. The power to impose administrative measures lies with the administrative competent bodies. Administrative measures can be restorative or punitive in nature. Only the punitive administrative fines will for the purpose of this report be referred to as administrative fines.

The Review Panel of CESR conducted the mapping of MiFID during the course of 2008. The results of the mapping are based on the contributions of 28 CESR Members representing those Members who, at the time of publication, have fully implemented MiFID and all its implementing measures.

This work follows a formal request by the ECOFIN Council in December 2007 to extend this work, and display the differences in the implementation of MiFID as well. The MiFID review covers powers, practices and

sanctioning regimes but not the actual use of sanctioning powers and the enforcement of measures and sanctions.

Next steps

The MiFID mapping report was sent to the Commission, the ECOFIN Council and the ECON Committee of the European Parliament, for them to consider the extent of coherence, equivalence and actual use of powers among Member States and to ascertain whether the sanctioning powers have sufficiently equivalent effect. The Council will also look at the variance of sanctioning regimes across the EU. CESR itself will use the findings to assess where next to focus efforts to increase convergence.

The results of a similar exercise will be published in the second half of 2009 regarding the sanctioning powers under the Transparency Directive as well as regarding a self-assessments of CESR's Standards on financial information.

CESR consults on the Review Panel's proposed work plan

By continuing in its efforts to prepare ground for convergent application of various EU legislation concerning securities markets, the Review Panel of CESR, on 10 March 2009 published a consultation paper (Ref. CESR/09-088) to seek proposals for its 2009 work plan in order to get feedback from market participants on practical issues related to divergences in securities regulation in different Member States.

Next steps

The contributions received from market participants will be assessed by CESR's Review Panel and, where appropriate, reflected in its work programme for 2009.

Prospectus Contact Group

CESR contributes to Commission's review of the Prospectus Directive

Since the entry into force of the Prospectus Directive, CESR has been actively contributed to the process of promoting a harmonised and common approach in the area of prospectuses amongst EU securities supervisors. To this end, on 10 April 2009, CESR published its response (Ref. CESR/09-240) to the Commission's work seeking to improve and simplify the Directive. CESR generally welcomed the Commission's proposal to review the PD.

In the absence of unanimity amongst its Members on all of the issues the EC raised, CESR decided to restrict itself in its response to only commenting on those issues where CESR Members were in common agreement.

Next steps

CESR has worked together with the Commission to provide data on prospectuses and responses from its Members aimed at facilitating the impact assessment that the Commission has to prepare for its review of the PD. CESR will continue to offer its expertise to the Commission and to provide input on any decision taken by it.

CESR publishes data on prospectuses approved and 'passported' in Europe

On 30 March 2009, as part of its remit to promote transparency to stakeholders, CESR published details of the number of prospectuses approved and 'passported' by CESR Members (Ref. CESR/09-315) from July 2006 to December 2008. CESR provided data on the number of prospectuses approved and 'passported' per Member State in that period broken down by quarter. In addition, the data is split into passports received and sent.

Next steps

This statistical information provided by CESR Members will assist the Commission in its review of the Prospectus Directive.

CESR will continue to update on a quarterly basis the statistical data on prospectuses approved and 'passported' provided by its Members.

CESR-Tech

CESR launches IT system for instrument reference data

On 1 June 2009, CESR-Tech, CESR's group for technical governance and IT, launched a central database containing reference data for all instruments admitted to trading on regulated markets in Europe, called the Instrument Reference Database System (IRDS). The system will be a key element for the transaction reporting and other supervisory tasks executed by CESR Members.

The implementation of the IRDS is a major achievement for CESR as the data contained within the system is unique since no one else is compiling the data for all regulated markets in Europe in one place. The IRDS includes more than half a million instruments admitted to trading on regulated markets across Europe.

Next steps

The implementation of the IRDS has demonstrated the ability of CESR of implementing a new pan-European IT system. By successively building up an IT infrastructure, CESR-Tech is setting ground for future IT projects.

CESR consults on OTC derivatives' transaction reporting

In order to allow CESR Members to exchange transaction reports on over-the-counter (OTC) derivatives, CESR is preparing the modification of its existing IT system, the Transaction Reporting Exchange Mechanism (TREM). Transaction reporting is a key element used in the detection and investigation of suspected market abuse.

On 2 February 2009, the work stream that CESR-Tech has established for this purpose, CESR's OTC task force launched a call for evidence to get market participants' views on the technical standards required to classify and identify OTC derivative instruments (Ref: 09-074).

Based on the responses received, the OTC task force issued in April 2009 its recommendations to CESR Chairs in order to facilitate the exchange of OTC securities derivative transaction reports among those CESR Members that are willing to participate in such an exchange. The recommendations – internal document - range around issues like:

- Types of OTC securities derivative instruments to be included in the reporting;
- The technical standards to be used to classify and identify the OTC derivatives; and
- How to interpret MiFID rules for OTC derivatives.

Next steps

CESR expects to launch a consultation on the classification and identification of OTC derivatives in July 2009. Then, the project to adapt TREM for the exchange of OTC transaction reports will follow the proposals from the OTC Task Force and the consultation process, by the third quarter of 2009. It is planned that the new mechanism would then be in place by Q3 2010. CESR notes that funding for this project has been discussed with the Commission.

CESR starts defining credit rating agencies' repository

Following the publication of the draft Regulation on Credit Rating Agencies CESR shall establish a central repository where CRAs would make available information on their past performance, including the ratings transition frequency, information about credit ratings issued in the past and on changes of ratings.

On this respect, CESR has created a joint Sub-group (SG3) with members of CRAs and CESR-Tech to prepare the set-up of an IT project to implement such a pan-European repository.

During the first half of 2009, the SG3 has started preparing for this project by drafting an initial document, a project definition and has prepared an initial budget estimate.

Next steps

CESR will allocate resources to launch the project on the CRAs repository immediately. The next steps will be the drafting of the business requirements document as well as the final budget estimation for the building of such a system. CESR notes that funding for this project has also been discussed with the European Commission.

3.3 Convergence

By seeking to converge day-to-day implementation of Community legislation, CESR ensures a more consistent implementation of securities legislation across the Member States. Efforts to achieve this also include improving co-ordination among securities regulators by developing effective operational network mechanisms to enhance day-to-day supervision and effective enforcement, enabling the EU Single Market for Financial Services to be fully established. The convergent application of EU legislation, which is one of CESR's main objectives, will in almost all cases, contribute to the achievement of the other CESR objectives identified, as the convergent application of EU legislation ensures that the principles of regulation, such as market integrity or consumer protection, are uniformly applied across Europe.

CESR-Pol

Third set of guidelines on the common operation of the MAD published

CESR continues in its efforts to prepare ground for convergent implementation and application of the market abuse regime by ensuring that a common approach to the operation of the MAD takes place throughout the EU amongst supervisors. On 15 May 2009, CESR published its third set of guidance (Ref. CESR/09-219) together with a feedback statement (Ref. CESR/09-220) on the common operation of the MAD.

This set of guidance had been subject to consultation in two steps: A first consultation paper covered the topics on insider lists and suspicious transaction reports and had been published for consultation until 30 September 2008, and a second consultation paper dealing with the topics on stabilisation and the notion of inside information had been published for consultation until 9 January 2009. Ultimately, all issues were integrated into the current third set of guidance. The feedback statement published alongside the guidance covers both consultation papers.

Next steps

CESR will feed its expertise on the operation of MAD into any possible review of the MAD to be initiated by the Commission and will respond to a possible mandate given.

Investment Management

CESR issues guidelines on risk management principles for UCITS

Ensuring that UCITS management companies put in place appropriate and robust risk management processes is key to protection of UCITS investors. Recent market turbulence has emphasised the need for high standards in risk management and for a harmonised, pan-European approach.

In this context, on 27 February 2009 CESR published guidelines on risk management principles for UCITS (Ref. CESR/09-178). These guidelines focus on appropriate management of the risks to which UCITS investors could be exposed in relation to the performance of the activity of collective portfolio management. The publication of CESR's guidelines follows an earlier consultation (Ref. CESR/08-816) in August 2008 and was accompanied by a feedback statement (Ref. CESR/09-100).

Guidelines to supplement legislation

CESR felt it appropriate to issue guidelines as the present European legislation on risk management in the field of collective portfolio management is rather limited. Article 5f(1)(a) of the UCITS Directive establishes the obligation for the home Member State to require asset management companies to have adequate procedures and internal control mechanisms in place. More detailed provisions are set out in Article 21 of the Directive, which focuses on principles for the

measurement and management of risks associated with the positions in derivatives.

In 2004 the Commission had issued a Recommendation to supplement the above provisions on the use of financial derivatives by UCITS. CESR carried out a survey on how the Recommendation had been implemented in the different EU jurisdictions. The survey was also aimed at assessing whether CESR Members require risk management systems for all UCITS, including those not investing in derivatives. 25 Members responded to the survey. The responses highlighted different approaches to risk management as well as to the implementation of the Recommendation.

On the basis of the priorities expressed by CESR Members, it was decided that CESR would embark on further work concerning:

- Specific technical and quantitative issues regarding UCITS portfolio parameters to measure global exposure, leverage and counterparty risk concerning financial derivative instruments; and
- The definition of guidelines for the industry as well as supervisory authorities in the risk management area.

Providing convergence to prevent regulatory arbitrage

Convergence work in the above areas would be helpful in preventing regulatory arbitrage, fostering mutual confidence and delivering investor protection. CESR's view is that sound risk management systems require organisational requirements and specific safeguards and diligences in order to ensure that all risks material to the UCITS are adequately managed. Such requirements and good practices would be set out through common principles in order to both foster convergence among competent authorities and provide useful guidance to market participants.

Guidance proposes standards and risk management framework

In particular, CESR's guidance proposes a framework for guidelines concerning risk management, providing principles and an outline of the key elements of the risk management process.

The principles proposed by CESR should apply to both designated asset management companies and investment companies that have not designated a management company (self-managed UCITS). They reflect the need to ensure that, on the one hand, investors are adequately protected and, on the other hand, the risk management process is appropriate and proportionate in view of the nature, scale and complexity of the asset management company's activities and of the UCITS it manages.

CESR consults on risk measurement for calculating the global exposure of UCITS

As explained in CESR's guidelines on risk management principles for UCITS, CESR decided to carry out further work on a number of technical and quantitative issues related to risk management. In preparing its proposals on these issues, CESR also took into account the relevant parts of the request for technical advice from the Commission received in February. CESR published its consultation paper on the advice to be submitted on the issue of risk measurement on 15 June 2009 (Ref. CESR/09-489). The consultation paper is limited to the use of risk models, such as Value-at-Risk (VaR), in the context of the calculation of global exposure. UCITS may use this or other models in its overall risk management process, which is dealt with in CESR's risk management principles for UCITS.

The consultation on risk measurement covers the following areas:

- The Commitment approach;
- The VaR approach;
- Counterparty risk; and
- Sophisticated/ Non-sophisticated UCITS.

CESR's consultation paper should be seen as an interim step aimed at providing stakeholders with an early opportunity to give feedback on CESR's approach.

Background

The amended Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for UCITS, widened the scope of financial instruments in which UCITS can invest, to

include financial derivative instruments. UCITS are permitted to use financial derivative instruments as part of their general investment policies as well as for hedging.

The Directive imposes a range of risk limitation measures in relation to the use of financial derivative instruments including counterparty and global exposure limits. UCITS must establish an extensive system of risk limitation in order to ensure that the risks involved in using financial derivative instruments are properly identified, measured, managed and monitored on an ongoing basis. This involves designing, implementing and documenting a comprehensive risk management process in order to meet the key requirement of investor protection.

The Commission Recommendation (2004/383/EC) of 27 April 2004 on the use of financial derivative instruments, which introduced basic principles for risk measurement to ensure equivalent and effective investor protection across all Member States, recommended possible approaches to assessing and measuring market risk, leverage, global exposure and counterparty risk. It provided for the use of the commitment approach and VaR methodologies as market risk measurement techniques.

Next steps

The outcome of the work on risk measurement will be divided between Level 2 and Level 3 measures; principles surrounding risk measurement techniques will form part of the package of Level 2 implementing measures to be submitted to the Commission by the end of October, while the detailed technical issues will be included in Level 3 CESR guidelines.

Lehman Brothers Task Force

CESR assesses impact of Lehman Brothers default

In September 2008, CESR set up a task force on the default of Lehman Brothers and its possible impact on European markets and investors. On 23 March 2009, CESR published a report (Ref. CESR/09-255) on the Lehman Brothers default, analysing the impact on European markets. CESR did not attempt to elaborate detailed policy proposals, given the wide remit covered in the report, but made every effort to provide a coherent picture of the challenges that exist on the securities field, regulatory and industry responses to these (both actual and potential), and the principles that should guide further work.

As the Lehman Brothers group comprised 2,985 entities globally, spanning numerous jurisdictions, with some regulated and others unregulated; CESR noted that global regulatory responses and effective global co-ordination between supervisors are essential when dealing with such cross-border groups. In its report, CESR stated that instruments with an equivalent risk/ reward profile should be subject to equivalent regulatory conditions in order to create a level playing field across product classes.

Task force also dealt with effective and convergent application of PD and MiFID

When analysing the failure of Lehman, the CESR task force focused on issues dealing with the effective application of the Prospectus Directive such as:

- The effective co-operation between home and host state authorities for passporting under the Prospectus Directive;
- Requirement to ensure that information on structured debt instruments is easy to analyse and comprehend;
- EU-wide accessibility of prospectuses by the public; and
- Possible acting in concert by issuers of bonds with the intermediary that repackages the bond into a structured product.

CESR's Lehman Brothers task force also looked into the convergence of the application of MiFIDlike:

- Complex/ non-complex financial instruments;
- The MiFID suitability regime; determining the dividing line between advised and non-advised sales;
- The sales process for structured products;
- Re-hypothecation;
- Documentation of investments;

- Complaints handling; and
- Clearing and settlement.

CESR will conduct further work on some of these areas. For example, CESR already published a consultation paper on complex/ non-complex financial instruments for the purposes of MiFID's appropriateness requirements with a view to produce a definitive Q&A document in the third quarter of 2009 (see page 30).

Background of the collapse

On 15 September 2008, Lehman Brothers Holding Inc filed for chapter 11 bankruptcy protections, thus becoming the largest bankruptcy in US history. Following Lehman's bankruptcy filing, the UK directors of Lehman Brothers International Europe Limited formed the view that the entity was no longer a going concern; it relied on daily cash provision from its US parent and it was clear that this would no longer happen. Accordingly, the directors appointed four partners from PriceWaterhouseCoopers as administrators and filed for administration in the early hours of Monday 15 September.

Lehman Brothers was historically a fixed income house, and therefore had very significant mortgage businesses in the US and the UK. When the credit crisis began, Lehman Brothers held significant mortgage and leveraged loan assets, and more assets continued to be originated because it took time to withdraw from the UK and US mortgage origination business. Until the final days of Lehman Brothers, its liquidity position had appeared relatively robust. There had been some signs of strain, with some counterparties being nervous and some indication that market sentiment was fragile.

The principal cause of its demise was market concerns about the capital adequacy of the firm rather than liquidity, which were focused on the group's ongoing exposure to illiquid assets. With its Q3 2008 results, which were much worse than expected, and an inability to raise new capital, market confidence dropped and counterparties ceased to process ordinary day-to-day business with the firm, e.g. failed to make inbound payments into Lehman Brothers. Counterparties also imposed collateral requirements for intraday credit that made it increasingly difficult for Lehman Brothers to operate. Ultimately, this massive loss of confidence led to the firm's insolvency.

Next steps

Following CESR's first analysis of the Lehman demise, a vast variety of issues arouse some of which are linked to other areas of CESR's work and will be dealt with by different CESR groups during the course of 2009.

Some of this might be fed into the forthcoming review of the Prospectus Directive, whilst others will be addressed by the future work of CESR's Review Panel. In addition, a task force established within CESR will further address some of these issues, in particular the ones related to ensuring that instruments with an equivalent risk/reward profile are subject to equivalent regulatory conditions.

Post-Trading

ESCB-CESR issue recommendations for securities settlement systems and CCPs

On 23 June 2009, the ESCB and CESR published recommendations (Ref. CESR/09-446) for securities settlement systems and central counterparties (CCPs) in the EU together with a feedback document (Ref. CESR/09-447) to the consultations held in this respect. The recommendations are addressed to regulators and overseers who will use them as a regulatory tool and who will strive to achieve their consistent implementation and a level playing field for securities settlement systems and CCPs in the EU.

The ESCB-CESR recommendations aim to increase the safety, soundness and efficiency of securities clearing and settlement systems and CCPs in the EU. They are based on and are at least as stringent as the draft recommendations for securities settlement systems that were proposed in November 2001 and the recommendations for CCPs of November 2004 issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS-IOSCO). A separate document showing in 'track changes' the differences between the two sets of recommendations was also published for information (Ref. CESR/09-622).

The Commission, CEBS and relevant market participants and associations were closely consulted in this work. All interested parties were invited to provide comments with respect to the two public consultations which were conducted during the process. Contributions were received from a wide range of national, European and international associations and market participants. The responses broadly welcomed the recommendations. A large number of comments were taken on board.

Next steps

After the adoption of the recommendations, CESR and the ESCB will monitor the implementation of the recommendations in the EU jurisdictions and elaborate on various issues identified for further study in the introduction of the recommendations.

CESR monitors ESCB's work on single EU platform for securities settlement

During 2009, CESR remained involved as an observer at various levels of the TARGET2 Securities (T2S) project of the European System of Central Banks (ESCB). CESR has also entered into a dialogue with representatives of Central Securities Depositories (CSDs), under the umbrella of the European Central Securities Depositories Association (ECSDA).

The TARGET2 Securities project will offer settlement services for securities transactions in central bank money on the basis of a single technical platform

Next steps

As part of this long-term project by the Euro-system, CESR will continue its dialogue with the ESCB and other stakeholders in 2009 in order to enable securities regulators to safeguard the objectives for the supervision of securities markets.

CESR-Fin

Reclassification of financial instruments and other related issues

As part of CESR's efforts to encourage convergence in the application of accounting standards, CESR issued on 7 January 2009 a statement on the reclassification of financial instruments and other related accounting issues (Ref. CESR/09-973). The statement aimed to provide information to both enforcers and issuers of financial statements regarding the use of the reclassification option in the light of the financial crisis and to highlight some of the potential accounting issues companies might face.

CESR examines effects and use of fair value accounting

CESR, through its expert group CESR-Fin, has been closely monitoring developments in relation to the ongoing discussions on financial instruments and fair value accounting. In October 2008, the International Accounting Standards Board (IASB) approved an amendment to IAS 39 and IFRS 7 permitting reclassification between some categories of financial instruments. At the same time the amendments were endorsed for use in the EU. CESR expressed its support for this initiative taken by the IASB and by the European Parliament avoiding a new European carve out.

The Commission requested the IASB and CESR, in a statement dated 15 October 2008, to start work immediately to find appropriate solutions to problems identified with the use of the fair value option and with the accounting for embedded derivatives. The Commission also asked that issues relating to accounting for insurance contracts and various other problematic areas of IAS 39 and IFRS 7 be resolved. These matters were and still are, in CESR's view, concerns in the public interest. As a result of CESR's statement and the endorsement of the amendments to IAS 39 and IFRS 7 regarding reclassification, the Commission has raised additional issues with the IASB regarding fair value accounting for financial instruments in the current financial crisis.

IAS 39's fair value option

The amendment to IAS 39 allows reclassification of some financial instruments from the category of financial instruments through 'profit and loss' in to other categories. This option however does not apply if the financial instruments have been classified in to this category as a result of using the 'fair

value option'. The Commission clearly stated that it is important that financial instruments currently classified under the fair value option can be reclassified into other categories that are not or no longer measured at fair value.

In its statement, CESR noted that some other parties believe that, in order to avoid earnings management, it should not be possible to reclassify financial instruments recognised under the fair value option, even if the conditions applying in the October 2008 amendment to IAS 39 are met. CESR therefore concluded that there was a need within a short time-frame to examine the effects of the use of the fair value option in more detail.

CESR analysed the use of reclassification

CESR conducted a review of the use of the reclassification amendment by financial companies within the EU when compiling the third quarter interim financial statements and interim management statements for 2008. CESR bore in mind that not all Member States oblige issuers to publish quarterly financial statements applying the disclosure requirements of IFRS 7.

CESR analysed 22 companies from eight Member States in the FTSE Eurotop 100. CESR also analysed 78 additional companies, in order to build as representative a picture as possible of financial companies in Europe for which information was available.

CESR's analysis showed that:

- More than half of the companies selected did not reclassify any financial instruments in their third quarter 2008 financial statements;
- For the companies in the FTSE Eurotop 100 index, almost two thirds did not reclassify any financial instruments in any of the categories;
- 20 % of all financial companies analysed reclassified financial instruments from one or more categories; and
- 18 % of the FTSE Eurotop 100 companies reclassified financial instruments from one or more categories.

Methodology of the analysis

The analysis conducted by CESR Members focused on reclassifications between the following categories:

1. Reclassification from fair value through 'profit and loss' to 'loans and receivables';
2. Reclassification from 'available for sale' to 'loans and receivables';
3. Reclassification from fair value through 'profit and loss' to 'available for sale'; and
4. Reclassification from fair value through 'profit and loss' to 'held to maturity'.

In addition, CESR Members also analysed whether the disclosures regarding reclassification required by the amendment to IFRS 7 were in accordance with those requirements. When reviewing the financial information CESR took into account that financial information compliant with IAS 39 in some Member States is only required at the half-year and that IFRS 7 does not apply for interim financial statements and interim management reports.

Most of the FTSE Eurotop 100 companies used reclassification

CESR's analysis showed that most of the financial companies concerned used the option to reclassify from the category of fair value through profit and loss to loans and receivables. This is the case both for all financial companies analysed and for the financial companies in the FTSE Eurotop 100:

- Only 31 % of all financial companies analysed that had used to option to reclassify in any of the categories had reclassified from the category of fair value through 'profit and loss' to the category of 'held to maturity'; and
- None of the companies analysed had reclassified from the category of fair value through 'profit and loss' to the category of 'held to maturity'.

As the analysis was based on the disclosures provided by the companies in the interim financial statements and interim management statements for the third quarter 2008, the disclosures where IFRS 7 would be applicable were limited.

Next steps

CESR will continue to monitor closely future developments in the area of financial instruments and on fair value accounting. CESR will follow up and review in particular the disclosures required by the amendments to IFRS 7 regarding reclassification in the annual financial statements for 2008 when these financial statements are published during the spring of 2009. CESR will also consider reviewing other aspects of IFRS 7.

CESR monitors developments in IFRS and contributes to EFRAG and the IASB

International Financial Reporting Standards (IFRS), as a common accounting language, have contributed much towards harmonising the presentation of financial information in European markets. CESR continues to monitor the developments in IFRS proposed by the IASB and IFRIC (the International Financial Reporting Interpretation Committee) and to respond to calls for market input from these bodies by putting forward the views of CESR Members – both as securities regulators and enforcers of accounting information.

With this objective in mind, CESR has over the past six months provided comment letters to the IASB and to the European Financial Reporting Advisory Group (EFRAG) in relation to the following projects:

- CESR's comment letter to the IASB on IFRS 7 ED Investments in Debt Instruments;
- CESR's comment letter on IFRS 7 ED Investments in Debt Instruments;
- CESR's comment letter on the IASB Exposure Draft of proposed amendments to IFRIC 9 and IAS 39 Embedded Derivatives;
- CESR's comment letter regarding the IASB Exposure Draft of proposed amendments to IAS 24 Relationships with the state;
- Comments regarding IASB's Exposure Draft ED 10 Consolidated Financial Statements;
- CESR's response to the consultation regarding International Accounting Standards Committee Foundation Review of the Constitution Part 2;
- CESR's response to EFRAGs consultation regarding IASB's Discussion Paper - Preliminary views on Financial Statements Presentation;
- CESR's comments to EFRAG on proposed FASB amendments; and
- CESR's response to IASB's Request for Views on Proposed FASB amendments on Fair Value Measurement and Proposed FASB Amendments to Impairment Requirements for Certain Investments in Debt and Equity Securities;
- CESR's response regarding Control Structures in Audit Firms and their Consequences for the Audit Market;
- CESR's response to EFRAG on IASB's Discussion Paper Preliminary Views on Revenue Recognition in Contracts with Customers; and
- CESR's comments regarding IFRIC tentative agenda decision on IAS 39 'significant or prolonged'.

With the further view of engaging in the standard setting process, CESR attended all the meetings of the IASB's Financial Crisis Advisory Group organised during the period (six in total) and will continue to be involved in this important initiative.

Next steps

CESR will continue to monitor the endorsement of standards and interpretations published by the IASB and IFRIC.

Prospectus Contact Group

Eights update of prospectus Q&As

The financial information contained in prospectuses play an important role in informing investors about companies that offer securities to European investors. On 10 February 2009, CESR published the eighth update (Ref. CESR/09-103) of its Q&A on common positions agreed by CESR Members on prospectuses. This consolidated Q&A publication is intended to provide market participants with responses in a quick and efficient manner to 'everyday' questions. As CESR's responses do not represent standards, guidelines or recommendations, no prior consultation process has been followed.

The Prospectus Directive and the accompanying Regulation establishes a harmonised format for prospectuses in Europe and allows companies to use a prospectus to list on all European markets without the need to re-apply for approval from the local regulator. This is intended to help companies avoid the inherent delays and cost that re-application would involve. The legislation also ensures investors receive consistent and standardised information which will enable them to compare more effectively the various securities offers available from a wider number of European companies.

Next steps

CESR will continue to update its Q&A for future queries and as soon as CESR Members have agreed common positions.

Takeover Bids Network

Exchange of experiences on takeover bids

The Takeover Bids Directive (TOD) aims to ensure equality of treatment in Europe for companies launching bids and a transparent and fair treatment of investors in companies that find themselves the targets of takeover bids. Some CESR Members do not regulate takeovers, so CESR has formed a network to ensure an interface exists which allows takeover regulators to exchange information and harmonise views.

CESR has continued to organise meetings with representatives from the EU authorities who regulate takeover bids to discuss their experiences in the application of the Directive. One such meeting was organised during the course of the first half of 2009. Presentations were also made during these meetings of actual EU takeover cases so that Members could exchange views and put questions to the authorities that handled the cases.

Next steps

The Takeover bids network will continue to meet regularly to exchange experiences on the application of the Directive.

Transparency Group

Transparency Directive: CESR issues FAQ with commonly agreed positions

On 19 May 2009, CESR published an FAQ and commonly agreed positions by CESR Members (Ref. CESR/09-168) on issues regarding the application of the TD. CESR's transparency group meets regularly to discuss the questions that have been raised by competent authorities and market participants regarding the TD.

Q&A answer everyday questions

The FAQ and commonly agreed positions is intended to provide market participants with responses in a quick and efficient manner, to 'everyday' questions which are commonly put to CESR or its Members. CESR responses do not represent standards, guidelines or recommendations, and therefore no prior consultation process has been followed.

Next steps

CESR updates the FAQ and commonly agreed positions document regularly and welcomes feedback from market participants on those issues already identified in the document as common positions among its Members. The frequency of future publications will depend on the number of new questions identified and the time available to analyse the issues raised and to find common positions.

CESR Members work on standard form for notification of major shareholdings

In March 2007, EU Commissioner McCreevy asked CESR to perform market research concerning the use of standard form TR-1 for notification of major shareholdings pursuant to the TD. CESR provided its experiences on the EU standard form in a letter to Commissioner McCreevy (Ref. CESR/09-007).

The results of CESR's mapping exercise on the implementation of the TD (Ref. CESR/08-514b) revealed that most Member States or competent authorities have either mandated or recommended the use of a standard form for notification of major shareholdings. Even though in most cases the national standard

forms are based on the EU standard form TR-1, they have often been adapted. Some CESR Members have also indicated that market participants have found the EU standard form, or a national standard form based on the EU standard form TR-1, complex and difficult to use, especially for more complex notifications.

With a view to improving transparency and clarity, CESR has discussed what possibilities there might be to improve the accessibility of national notification forms and the usefulness of the EU standard form. Any improvements suggested by CESR will aim to make the notification process easier and more user-friendly for shareholders and holders of financial instruments.

Firstly, CESR Members agreed to enhance the accessibility of the national notification forms by adding hyperlinks to the forms on CESR's website. These hyperlinks will enable investors needing to make notifications to access the national notification forms more easily.

Secondly, CESR is undertaking Level 3 work to explore ways to improve the EU standard form for major shareholding notifications. Through the Level 3 work CESR aims to improve the clarity of the standard form and to minimise the need for national adaptations to it.

Next steps

CESR will publish hyperlinks to the national standard forms and explore ways to improve the EU standard form.

3L3 – Cross-Sector Convergence

The so called 3L3 work – the common work of the 3 Level 3 Committees – is generally focused on achieving regulatory and supervisory convergence between three areas: securities markets, the banking sector and the insurance and pension's funds sector. These different segments of the financial markets are interlinked. The need for the three sector Committees, CESR, CEBS and CEIOPS, to work together is driven by the need to create an European level playing field, consistency in legislative implementation, cost effectiveness and proper assessment of cross-sector risks.

3L3's work on improving delegation of tasks and responsibilities

Delegation of tasks is legally based on provisions on co-operation and exchange of information between EU competent authorities and on confidentiality. These provisions exist in all the EU Directives of the financial sector. However, the wording of these provisions is not the same across the several Directives. The Commission therefore started consulting on how to improve the supervision of the EU financial services sector (Ref. CESR/09-356) to which the 3L3 Committees submitted their joint contribution on 2 June 2009.

3L3 propose to harmonise legal texts

In their joint contribution, the 3L3 Committees considered that delegation of tasks could be facilitated if the wording of these provisions were the same to the extent possible across the EU legal texts of the three sectors. The 3L3 Committees considered that there is an increasing need for the reinforcement of co-operation and co-ordination among competent authorities of the financial sector.

Special task force on delegation

Following the ECOFIN's requests and the need for enhancing co-operation among competent authorities, the 3L3 Committees have agreed on the creation of a specific task force on delegation which, according to its mandate, would examine and analyse the legal/ technical aspects of the delegation of tasks and of the delegation of competences, such as:

- The legal basis for delegation of those competences;
- The possible legal impediments to delegation of those competences that may exist at the EU and/ or national levels;
- The applicable law;
- The possible scope/ extent and content of the delegation of tasks/competences;
- The legal forms under which delegation may take place; and
- The possible EU or national law amendments that may be required.

Moreover, although the 3L3 Committees considered the legal basis for the delegation of tasks provided in the EU legislation to be sufficient, they also believe that delegation of tasks would be easier to achieve if there were a specific reference in the Directives laying down the possibility and the conditions of such delegation. All competent authorities should therefore have similar legal powers to enter into delegation agreements.

The 3L3 Committees consider that the EC Decisions creating the three L3 Committees and in their respective Charters should foresee the support of the delegation of tasks between competent authorities. The Committees consider that creating a common EU ground on the delegation of tasks on the basis of the key principles and their proposals could contribute to a more efficient supervision of the EU financial sector.

Work covers delegation among competent authorities only

The scope of the 3L3 paper is restricted to the delegation of tasks among competent authorities who are members of CESR, CEBS and CEIOPS; delegation of responsibilities, powers and decisions are not covered.

Committees define key principles

The Committees, in their contribution to the Commission, stress that delegation of tasks among competent authorities who are members of CESR, CEBS and CEIOPS should be based on the following principles, published in a separate document (Ref. CESR/09-744b):

1. Responsibility of the delegating authority;
2. Sufficient legal basis;
3. Compliance with the national law;
4. Efficiency and proportionality;
5. Delegation to the best placed authority; and
6. Co-operation agreement between the competent authorities.

Delegation agreements however could take several forms, such as multi-, or bilateral, per sector, or cross-sector, between home and host competent authority, on a case-by-case basis, or through joint and co-ordinated supervision.

The delegation arrangements will however not replace existing co-operation arrangements between the competent authorities such, but they could complement them.

3L3 co-operate with Commission on its review of EU supervisory architecture

On 23 April 2009, the 3L3 Committees published their joint response to the Commission's consultation on improving the supervision of EU financial markets. The joint response also included the three Committees' sector views on the proposals made by the high-level group on the structure of financial supervision in the EU, chaired by Jacques de Larosière, which were endorsed by the Commission's Communication of 4 March 2009.

The Commission's consultation, launched on 10 March 2009, and the 3L3 joint response to it should be viewed in the context of the current financial crisis and its impact on the global financial system.

3L3 support proposes new architecture

In their joint response to the Commission, the 3L3 Committees support the Group's proposal to introduce a two-tier institutional architecture for the supervision of the EU financial markets, with the 3L3 Committees providing the link at a European level between the envisaged macro and micro-supervisory arrangements, as suggested by the Group.
In addition, the 3L3 Committees express their support for the Group's call for a strengthened and harmonised legal framework for financial services at EU level. Furthermore, the 3L3 Committees:

- Welcome the proposal to enhance their current status and to transform them into independent authorities by providing them with adequate powers, tools and increased resources to discharge any duties and responsibilities allocated to them; and
- Agree that future proposals by Commission should accommodate the requirements of self-governance, independence and accountability needed for delivering advice within the Lamfalussy framework, while presenting the most appropriate and effective legal solution for implementing and

empowering the new independent EU supervisory authorities.

Key aspects of the new architecture

As regards the tools needed to fulfil the new tasks under a re-organised structure, the 3L3 Committees highlighted the following key aspects of the new EU supervisory architecture:

- The need for a harmonised set of core rules;
- The establishment of colleges as core structures for cross-border supervision;
- The efficient and effective coordinating role of CESR in the crisis response; and
- The need for increased and further formalised co-ordination among the sector regulators and supervisors.

In the context of significantly extended competences, the proposal to reinforce the resources available to the Committees was both seen needed and welcomed.

Next steps

The 3L3 Committees will continue to contribute in the second half of the year to the Commissions preparation of the proposal for the new European Supervisory Authorities, and in the following discussions in the EU institutions.
The 3L3 Committees agree with the findings and recommendations of the Group on the issue of resources available, but stress the need to maintain the clear institutional independence and accountability of the 3L3 Committees and nevertheless stand ready to implement and support any proposed structure by the Commission.

3.4 Investor protection

Work towards achieving this objective takes many forms and includes ensuring that retail investors are only sold products from licensed or authorised service providers permitted to offer investment services. Furthermore, seeking to ensure the effective disclosure of information to investors is key, as this helps investors to better assess the potential risks and rewards of their investments. Much of the work described to ensure market integrity and efficiency also seeks to protect investors by ensuring they are protected from misleading, manipulative or fraudulent practices, including insider trading, or the misuse of client assets and that best execution requirements are honoured. In addition to ensuring the interest of investors is effectively reflected in the legal frameworks, which CESR attempts to do through it technical advice to the Commission, CESR serves investor protection by disclosing cross-border information on national authorisation, complaint and compensation schemes as well as contact information on national competent authorities.

CESR-Pol and Investment Management

CESR provides information for investors affected by Madoff collapse

In order to assist European investors affected by the fraud of Bernard Madoff, CESR issued a public statement on 4 February 2009 (Ref. CESR/09-089), providing information on which steps to take. It seemed likely at that time that some European investors would experience financial losses, either directly or indirectly. CESR therefore wished to draw the attention of investors to the potential actions they could take, or that could possibly be taken on their behalf. CESR also took this opportunity to urge those acting on behalf of investors to proactively communicate the steps they are taking to recover funds and any information on next steps.

CESR Members established possible losses in the EU

CESR, at that time, was organising regular exchanges of information between its Members to establish the extent of potential losses of European investors and to co-ordinate the Members' actions. CESR was ensuring a co-ordinated dialogue with the US SEC in order to ensure regulatory resources were used as effectively as possible.

Concerns were raised in respect of custody and sub-custody arrangements for UCITS. For that reason, CESR also focused its efforts on establishing how the rules in the UCITS Directive on depositary's duties and responsibilities have been implemented in

Member States and will seek to establish if further clarity is needed on an EU-wide basis.

CESR provided guidance to investors affected

CESR was not able to help investors directly in dealing with their claims, but assisted investors in finding the appropriate channel through which to address their concerns or complaints. As such, CESR took this opportunity to provide information on practical steps investors directly investing with Bernard L. Madoff Investment Securities LLC should take and drew their attention to the relevant deadlines by which claims should be filed with the US trustee. CESR also provided some guidance to those indirectly affected on how they might proceed.

Investors indirectly affected by the Madoff collapse

CESR urged regulated firms to advise customers of developments and action taken on their behalf as losses may be incurred in a number of scenarios, for example:

- Investments in funds whose depositaries had a sub-custody arrangement with Bernard L. Madoff Investment Securities LLC; and
- Investments in feeder funds which had made investments in Bernard L. Madoff Investment Securities LLC.

CESR also advised retail investors who suspected they may have suffered losses indirectly: As a first step, CESR recommended that retail investors contact the firm with which they had been dealing to clarify whether losses might have been incurred as a result of the Madoff fraud and the steps that had been taken or would be taken to facilitate the recovery of as many of investor's assets as possible.

Should retail investors remain dissatisfied with the responses given, they were advised to request the relevant firm to provide them with information on its complaints process and file a formal complaint with it.

Next steps

CESR will continue its work on the duties and responsibilities of UCITS depositaries, with a view to establishing how the legislative framework could be clarified. For this purpose, CESR will prepare a response to the consultation on depositaries announced by the Commission in May 2009.

CESR consults on risk and rewards relating to KID disclosures for UCITS

Since the Commission requested CESR's assistance on developing Key Investor Information (KII) disclosures in April 2007, CESR has been working intensively to prepare its response, in parallel with the finalisation of the revised UCITS Directive at Level 1.

The first output of CESR's work was a set of advice that was submitted to the Commission in February 2008 (Ref. CESR/08-087). The Commission used CESR's advice as the basis for the investor testing exercise it carried out from March 2008 to May 2009. CESR was closely involved in both the design and roll-out of the testing process.

Work covers disclosure for risk and reward, past performance and charges

In the February 2008 advice, CESR had identified a number of technical issues arising from its work that merited further consideration. The issues fell under three of the broad disclosure headings which make up the KID:

1. Risk and reward;
2. Past performance; and
3. Charges.

The work was to cover a wide spectrum of issues, ranging from development of a harmonised calculation methodology for a Synthetic Risk-Reward Indicator (SRRI) to treatment of past performance information for years in which the fund did not exist. CESR established three separate working groups to analyse these issues in more detail. A selection of external stakeholders agreed to join the groups in order to provide additional expertise and a broader perspective. CESR's

proposals were published for consultation on 16 March 2009 (Ref. CESR/09-047).

Risk and reward disclosure

The consultation recalls the two options for risk and reward disclosure identified in the February 2008 advice – an improved version of the narrative approach versus a synthetic risk and reward indicator – while focusing on the development of a harmonised calculation methodology for the latter. It is important to note the valuable input provided by the industry experts that participated in the CESR work in this area.

The consultation was not primarily seeking views on the respective merits of an enhanced narrative approach or a synthetic indicator as such. Rather, CESR was seeking feedback on the different elements that might make up the methodology for the indicator. Key points for discussion included the use of volatility as the basis for the calculation; the length of the time series for the data used; and whether the methodology should be developed in such a way as to promote stability of the categorisation.

Past performance or performance scenarios, where relevant

As reflected in the structure of the paper, the discussion on past performance can be sub-divided into two categories: i) disclosures for funds that have actual past performance data and ii) disclosures for structured funds, for which by definition no meaningful past performance information can be displayed. For the first category, CESR made a number of proposals designed to underpin the recommendations in the February 2008 advice. These related to the calculation of the past performance data, treatment of situations in which there has been a material change, the handling of benchmarks and the circumstances in which a track record extension may be used.

The final text of the revised UCITS Directive refers to 'performance scenarios' taking the place of past performance information in the KID, where appropriate. This is the case for structured funds. The February 2008 advice had recommended three approaches for the testing exercise: scenarios, back-testing and probability tables. The technical consultation set out CESR's view that, in light of the results of the first phase of the testing exercise, back-testing poses too many risks of misinterpretation and should not be pursued. There was further consideration of the remaining two options and the pros and cons of each. In general, three criteria needed to be weighed against one another: the reliability /accuracy of the information displayed; the ability of investors to understand and interpret the disclosures; and the potential challenges faced by supervisory authorities in monitoring their application.

Charges disclosure

CESR's proposals on charges covered several points related to the overall presentation of the disclosures, in particular the so-called 'illustration of charges' approach which uses cash figures instead of percentages. CESR then set out detailed proposals on harmonising calculation of the ongoing charges disclosure; this would replace the Total Expense Ratio currently referred to in the Commission's Recommendation. Other issues covered included performance fees, portfolio transaction costs and the handling of charges information for new funds, or where there has been a material change in the charging structure.

Next steps

In light of responses to the consultation and the final results of the Commission's testing exercise, CESR will formulate its proposals on the full package of advice on KID disclosures. CESR plans to consult on the full package of its advice on the KID in summer 2009. That consultation will take into account, inter alia:

- *The work done to prepare the initial advice to the Commission submitted in February 2008;*
- *The final results of the Commission's testing exercise;*
- *The final text of the revised UCITS Directive and the Commission's mandate to CESR in relation to Level 2 measures; and*
- *The outcome of the technical consultation.*

An open hearing will also be organised to discuss the recommendations. Following the

consultation process, CESR will take final decisions before submitting its advice to the Commission by the end of October 2009.

MiFID

CESR's consultation on complex and non-complex financial instruments

CESR launched in May 2009 a consultation on complex and non-complex financial instruments for the purposes of the appropriateness requirements of MiFID (Ref. CESR/09-295). This work of CESR aims at increasing the protection of clients, particularly those of retail clients, who are contemplating transactions in financial instruments.

Consultation to further analyse types of financial instruments

The consultation paper sets out for consultation CESR's analysis of types of MiFID financial instruments and its proposed views on how specific types of MiFID products are likely to fit within the complex/ non-complex categories for the purposes of the appropriateness requirements. The paper is concerned with the way in which the appropriateness requirements apply to particular types of MiFID financial instruments. A so-called appropriateness test aims to increase the protection of clients (particularly retail clients) who are contemplating transactions in MiFID-scope financial instruments without receiving advice from the investment firm in question. It also aims to prevent complex products being sold on an 'execution-only'-basis to retail clients who do not have the experience and/ or knowledge to understand the risks of such products.

In summary, where this appropriateness test applies, a firm must ask its clients to provide information about their knowledge and experience relevant to the specific type of product in question, so that the firm can assess whether the product is appropriate for the client. A firm is required to determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product offered or demanded, and to warn the client if the firm determines that the product or service is not appropriate for the client.

Next steps

The Consultation on MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements will close on 17 July 2009. A Q&A paper, together with a feedback statement will be published later in the year.

CESR-Fin

Fifth extract from the EECS database of enforcement decisions

On 24 March 2009, CESR published the fifth extract (Ref. CESR/09-252) from the database of enforcement cases of the European Enforcement Co-ordination Sessions (EECS). Four meetings of the EECS took place during the first half of 2009 and a significant number of IFRS practical cases dealt with by a range of EU enforcers were discussed. The following issues formed part of the fifth extract of EECS database published during the period:

- The reclassification option;
- Share-based payment;
- Capital control;
- Control;
- Business combinations, reverse Acquisitions;
- Equity instruments; and
- Equity instruments, preference shares.

Next steps

CESR will continue to arrange meetings of EECS members, to publish packages of important decisions on its website and to raise issues related to the clarity of accounting standards that arise as a result of enforcement cases with IFRIC.

Market Participants Consultative Panel

Market Participants Panel met twice in 2008

CESR's Market Participants Consultative Panel (MPCP), the panel that is comprised of high-level industry, regulatory and government representatives, met twice in 2009, once in April

and once in June. On its April meeting, members of the MPCP continued their exchange of views on how to combat the crisis.

Crisis, future EU supervisory architecture and short selling discussed

In its two 2009 meetings, MPCP members continued to be concerned about the financial crisis and exit strategies from current policies which were discussed broadly. Despite some signs of improvement, on the general economic situation, members observed lower demand for loans, shorter maturities, and wider spreads in loans offered to large companies and the application of tougher risk parameters. One member noted that the development of spreads also depends on the specific sector and observed wide spreads for SME's. In general the primary market worked well, but the secondary market was not working well, according to these members. Members expect the crisis to continue for a longer time with the risk of rising interest rates in the future.

The discussion was mainly focused on the future framework for EU financial supervision as designed by the de Larosière report with proposals to establishment of a European Systemic Risk Council and a European System of Financial Supervision, majority voting for the 3L3 Committees, direct supervision of CRA's and post-trading infrastructures, legal mandatory mediation and full-time chairs and secretary generals of the new authorities. Members strongly argued in favor of binding powers, and the subsidiary principle which should be respected; they highlighted the danger of 'watering down' the process in case implementation is delayed.

Members message concerning short-selling was very clear: the decline in bank stocks was due to the general market perception not to short sellers; tightened regulation on market abuse should be sufficient to deal with many potential problems linked to short selling; the best way to deal with problems linked to naked short-selling is by heavily sanctioning settlement failures – though this might not be sufficient; short as well as long positions should be disclosed to regulators (but not to the market) on a frequent basis so that they are sufficiently informed in extreme situations – one member argued that, with respect to naked short sales, transparency should be market-wide; any measure with respect to short-selling needs to be carried out in an equivalent form across borders.

MPCP members also showed their concern about 'empty voting' and would like to see regulatory action in this area – though there was a recognition that a change in company law is very difficult to achieve.

The MPCP members were very critical towards the recent proposals for the regulation of alternative investment fund managers (AIFMs), which is mainly perceived as a hasty, ill-designed protectionist measure against U.S. market players.

Next steps

CESR will continue in its dialogue with key stakeholders during 2009 and above. The MPCP will meet on a regular basis and based on these meetings will be published on CESR's website.

3.5 Advice and reporting to EU institutions, implementing EU roadmaps

This objective refers to CESR's role to act as an advisory group to assist the Commission in particular, in its preparation of draft implementing measures of EU framework Directives in the field of securities. Furthermore, as requested by the ECOFIN conclusions of May 2008, CESR has committed to reporting to the European institutions on how it is undertaking its work and in particular on how it is implementing the various roadmaps established at a European level.

Investment Management

CESR's consults on implementing measures of future UCITS Directive

On 13 February 2009 the Commission requested CESR's assistance on the content of the implementing measures to be adopted pursuant to the revised UCITS Directive. On receipt of the request, CESR immediately published a call for evidence on possible implementing measures of the future UCITS Directive (Ref. CESR/09-179). As the Directive imposes a strict deadline of 1 July 2010 for adoption of certain Level 2 measures,

the Commission felt it was important that CESR start its work as soon as possible.

The request for assistance is split into three parts.

- Part I – Request for technical advice on the Level 2 measures related to the management company passport;
- Part II – Request for technical advice on the Level 2 measures related to key investor information – supplement to the Commission's April 2007 'request for assistance on key investor disclosures for UCITS'; and
- Part III – Request for technical advice on the Level 2 measures related to fund mergers, master-feeder structures and the notification procedure.

Management company passport

Part I of the request focuses on areas where the Commission is obliged to adopt implementing measures and, in some cases by a deadline of 1 July 2010. The issues covered are primarily related to the management company passport and include provisions on:

- Organisational requirements and conflicts of interest for management companies (Article 12(3));
- Rules of conduct and conflicts of interest for management companies (Article 14(2));
- Risk management (Article 51(4) - cef. CESR's advice on risk management under Part I of the request for assistance includes the Level 2 measures on risk measurement described at p. 18);
- Measures to be taken by depositaries (Articles 23 and 33);
- On-the-spot verification and investigation (Article 101); and
- Exchange of information between competent authorities (Article 105).

KII implementing measures

Part II of the request covers the implementing measures foreseen by the Directive in relation to KII disclosures. Regarding the detailed and exhaustive content of KII, CESR has been working on the basis of the initial request for assistance on KII sent by the Commission in April 2007; this resulted in the delivery of a set of advice to the Commission on the content and form of Key Information Document disclosures for UCITS on 18 February 2008.

The third part of the request for assistance covers the other chapters of the UCITS Directive for which the Commission also received implementing powers in the areas of mergers, master/ feeder structures and the notification procedure. The request highlights the issue of the fund notification procedure as being a particularly important complement to the Level 1 text.

CESR invited all interested parties to submit their views on what to consider in CESR's advice to the Commission by 31 March 2009 and published the feedback received (cf. CESR's work on KID disclosure for UCITS on p. 28 ff).

Next steps

As the provisions related to the management company passport are considered essential for effective supervision of UCITS managed on a cross-border basis, CESR has been asked to deliver its advice on these issues by 30 October 2009. The same deadline applies to the advice on KII.

In light of responses to the call for evidence and its own deliberations, CESR plans to consult on its draft advice on Parts I and II of the request for assistance in summer 2009.

ECONET

ECONET contributes to EU institutions

During the first six months of 2009, ECONET, CESR's network of economists form CESR member authorities, delivered reports on key risks and trends in securities markets to a range of EFC and FSC meetings. In 2009, the frequency of the requests for such reports has been significantly increased.

In its reports, ECONET highlighted risks in securities markets by the means of appropriate indicators of uncertainty, and the potential for contractions (like implied volatility, value-at-risk), in- and outflows into funds, settlement risks, and the potential negative effects of past mis-selling.

The reporting on trends included the analysis of the evolution of the fund industry, as well as mergers and acquisitions, the outlook for earnings, IPOs and the situation in CDS markets.

One report for the FSC was devoted specifically to risk and trends in the OTC derivatives market.

Next steps

ECONET will continue to regularly provide CESR and the EU institutions with expertise and the macro-economic development of European securities markets.

CESR Conference 2009

Preparing for the future: where to now for regulation in the field of securities?

CESR's 2009 conference came at a time of considerable market turmoil, following the financial crisis that began in the summer of 2007. By taking place the 23 February 2009, CESR's conference also directly followed significant efforts by European securities regulators, to implement a modernised regulatory framework and to converge practices. The CESR conference therefore provided a floor to discuss the next steps on this behalf.

The conference sought to explore what regulatory changes securities supervisors may need to consider in the light of the crisis. From a European perspective, it sought to evaluate:

- What more needed to be done to create an integrated Single Market which adequately addresses the needs of retail investors (for example through tailored prospectuses in the field of investment management);
- What ensures adequate market transparency in increasingly interdependent global financial markets (where comparative financial information provided through IFRS is key); and
- To address effective enforcement across an integrated market; being a critical element of successful financial markets.

CESR held its 2008 conference in Paris in the former French stock exchange, the Palais Brongniart. More than 400 high-level representatives from the EU and US administration, financial industry, consumer associations and the press attended the conference and participated in panel discussions which can be viewed on the conference website: https://cesr.phileog.com .