



Date: May 2009
Ref: CESR/09-399

PUBLIC STATEMENT

Of: Markets Participants Consultative Panel (MPCP)
Date: 21 April 2009
Location: CESR premises, Paris

Agenda item 1 | Update on the market crisis

Members of the MPCP exchanged further measures considered in their jurisdictions by governments and regulators to combat the crisis. In the US, all investment banks obtained a banking license, publication of stress tests by banks was in the planning, several proposals to combat short-selling were under consideration and further thoughts were given how to improve the role of rating agencies. Regarding CRA's, the Chair of the MPCP noted that a suggestion by the European Parliament to allow CESR to act as a ratings issuing institute, was not accepted. Central banks could play a role for SME ratings. One member underlined the higher exposure of central banks to Lehman collateral, due to relaxation of criteria for accepting collateral and feared a widening gap between the ECB and the three rating agencies.

On the general economic situation, members observed lower demand for loans, shorter maturities, 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.

With regard to the market for credit default swaps (CDS), members considered this as a scale business and an index market with less emphasis on single names. As shown in the current crisis, the refusal to provide collateral by a single or more parties, active in the CDS market, could lead to mismatches and further risks. In this respect the role of the general clearing member was underlined, taking care of the credit risks run by indirect members. One member underlined that the Lehman case illustrated that the usage of different documentation for identical products may lead to (additional) legal risks and supported recent ECB efforts for the creation of a global master agreement.

The final issue discussed in this context is the current (national) measures to combat short selling. MPCP members agree that further disclosure would be helpful. The Chair of the MPCP underlines existing differences in settlement cycles across jurisdictions and products and notes that failed trades are lightly penalized. One member states that reduction in the length of settlement periods comes at a cost and - in response to the issue of failed trades - underlines that it is difficult to track the relevant counterparty. Members considered that the MPCP could make a statement and call upon CESR to develop a position in this area. One member claims that failed trades as such are not a problem in an environment of positive interest rates. Members note that the issue is not about

banning or not banning short selling, although some claim that the end of the bans would be a positive sign. Another aspect to be taken into account in the area of short selling measures is the fact that the introduction or removal of a ban has an impact on the balance between the on- and off-exchange trading flows. The Chair ends this part of the discussion stating that in most jurisdictions, measures were taken under political pressure and regrets - despite its coordination efforts – that CESR thus far has not been able to achieve more convergence in this area.

Agenda item 2 | Update on developments by the MPCP Chair

The MPCP Chair recalls the consultation on post-trade transparency which took place earlier this year with results expected to come available in May-July. In the context of transaction reporting, expansion of MiFID for OTC products may be considered. Other relevant issues which emerged from the (confidential) analysis of the Lehman case are: standardization and product disclosure.

MPCP members were also informed about the on-going review of the waivers regime in MiFID with the aim to harmonize the interpretations of the regime across jurisdictions. This work may assist EU Institutions to identify where improvements in the regulatory framework need to be made. In this context, the Chair clarified the work of the Review Panel in areas such as Financial Standards, UCITS, a peer review on prospectus and (upon request of the Commission) options and discretions in MiFID/MAD. He underlined that CESR conducts this work without having any binding powers thus far. The update was completed with a reference to the publication of MiFID review in January and a forthcoming publication on the Transparency Directive.

In the area of post trading, the approval of the CESR-ESCB Recommendations is envisaged for May and reference was made to the gap-analysis for OTC-instruments in the Recommendations for CCP's.

In the area of UCITS CESR has been put under pressure due to various mandates from the Commission to come forward with implementing measures in areas such as the management company passport and the key investor information in the context of the adopted UCITS IV Directive.

One member took the opportunity to underline the importance of regulators offering clarity in the areas of OTC markets and UCITS in the interest of investor protection. In conclusion, members emphasized the key relation between regulation and enforcement.

Agenda item 3 | Remuneration

The MPCP Chair introduces the topic in stating that remuneration until recently was mainly dealt with as a prudential issue and less so as an issue of corporate governance. The role of supervisors so far has also been limited. Even in case of private codes there remains a role for authorities in monitoring and enforcement, according to this view. In extreme cases, the industry did not comply and just explained their position on this matter.

One member of the MPCP, introducing the topic, held the view that the regulatory picture is fragmented with various elements covered in measures such as: the Transparency Directive, Shareholder Rights Directive and in IFRS. MPCP members have a high expectation about the forthcoming EU Recommendation on Remuneration Policies which will update an EU position formulated in 2004. This member also deems it important that remuneration will move away from short term objectives to long-term goals, linked to performance for several years and spread over the business cycles, taking into account the risks incurred and future prospects of the relevant company. The fixed amount of the remuneration should be substantial in order to allow flexibility in the remuneration policy. The scope of application of future rules should not only apply to board members of the relevant companies, but also to senior management and special risk takers. Involvement of shareholders, supervisory board and independent advisors is essential here. Independent review of the actual policy and (internal and external) transparency about the policy of the company is also important. The introduction on this topic was concluded with a statement that no single solution can be applied, but size and nature of the company should be taken into account as well.

Another member reminded the Panel that remuneration, as such, was no cause for the crisis, and underlined that some CEO's were among the biggest losers in the crisis due to their pay packages in stocks. This member opposed the idea of a cap on the total amount of remuneration, but favoured linkage to long-term performance and payment in restricted stock. Another member agreed with this view and took the position that a restriction on remuneration for private companies which did not receive any governmental financial aid would be misplaced. Other members referred to the need to align the policies of banks with the public interest, warned for the impact on the ability to attract talent in the future, the impact on other industries and the need to re-establish the authority of internal staff engaged in compliance and risk-management.

Agenda item 4 | Prospectus issues

Before starting the discussion on the need where and how to improve the prospectus regime, the Chair reminded the Panel that the Prospectus Directive (PD) was originally meant as a regulatory measure of maximum harmonization. Nevertheless, many different practices remained (e.g. with regard to insufficient cooperation among regulators, approaches for publication and the chain relationship) and additional issues in this area have been identified by the Review Panel in its mapping exercises across all jurisdictions, such as passport-practices, availability of the prospectus and the content of the prospectus information. Finally, the Chair observed that some regulators prove to be very productive in approving prospectuses.

In his introductory remarks, one Panel member referred to the proposals by the Commission as necessary steps to amend the PD, but also outlined the open issues which emerged from the Lehman default and discrepancies between the qualified investor regime in the PD and the regime for professional investors in the MiFID. The proposals of the Commission entail among others the introduction of: an employee scheme, the right of withdrawal, the choice of a home state by an issuer and further ideas for small and medium enterprises (increasing the threshold or the introduction of a mini-prospectus). Some other (governmental) issues identified for further elaboration in this area relate to: information about guarantees, costs of a prospectus, the definition of a public offer, responsibility versus liability for a prospectus and the link with shareholders.

Other Panel members flagged the differences between securities and corporate law, the different roles for regulators and the need for common standards. One Panel member promoted the idea of a central website for pan-European issuances. The Chair noted that in the balance of powers between home and host supervisors for prospectuses the approval of advertisements is the only weapon host authorities have within the current regime and called for more flexibility at level 4.

Agenda item 5 | Future framework for EU financial supervision

Focal point in the introduction of a future framework for EU financial supervision is the Larosiere report with proposals for: the establishment of a European Systemic Risk Council and a European System of Financial Supervision, majority voting, direct supervision of CRA's and post trading infrastructures, legal mandatory mediation and full-time chairs and director generals.

In his introductory remarks, this member identified crisis management as a key issue and echoed the bottlenecks identified in the Turner review that crisis management and deposit guarantee schemes are still organized on a national basis. In respect of the two bodies proposed in the Larosiere report, members agreed that a better balance was needed between financial stability and supervision and underlined the need to make a choice between 'more or less Europe'. Members noted however that the Turner review lacked a clear, global perspective. One member emphasized that both reports were well received and highlighted that the crisis started as a banking crisis and not as a crisis of financial markets. A separation between investment and commercial banks was not a real issue, but banks acting as hedge funds were problematic, in this view. Another member underlined the need for things cooling down before to decide on what the real issues are. Another observation anticipated a huge clash with the US if restrictions on alternative investments would be imposed. In response to the future legal status of the authorities, one member underlined the importance of adequate institutional links with EU Institutions. The discussion was concluded by the Chair with the



observation that further strengthening in the independence of authorities can only be achieved by changes in the Treaty.

Agenda item 6 | Any other business

The Panel agreed to discuss the topics of ‘empty voting’ and ‘harmonization of sanction regimes’ at its next meeting in June.