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PRESS RELEASE

CESR completes its review of MiFID by issuing advice on OTC derivatives trading, post-trade transparency standards and client categorisation

CESR publishes today its second set of technical advice to the European Commission (Commission) in the context of reviewing MiFID, the Markets in Financial Instruments Directive, which entered into force in November 2007. This covers CESR's advice on standardisation and organised platform trading of over-the-counter (OTC) derivatives (Ref. CESR/10-1096), post-trade transparency standards (Ref. CESR/10-882) and client categorisation (Ref. CESR/10-1040) as well as the remaining responses by CESR (Ref. CESR/10-1254) to the Commission's request for additional information in relation to the review of MiFID presented in March 2010.

Following a first set of technical advice published on 29 July, this second set completes CESR's technical advice on MiFID. The advice provides a significant contribution to the European discussion on delivering the objectives set out by the G20 in its meeting of 25 September 2009 by setting out a series of measures to foster an efficient and sound EU derivatives market. This includes providing better tools to securities' regulators to monitor transactions and positions on those markets.

CESR's advice on post-trade transparency standards and client categorisation will assist the Commission in improving the functioning of the MiFID framework in these two important areas.

Carlos Tavares, Chair of CESR and of the Portuguese Comissão do Mercado de Valores Mobiliários (CMVM), noted:

“CESR's second set of advice on how to overhaul MiFID addresses important issues that have been at the core of discussions by regulators internationally and at the European level, since the wake of the financial crisis. Our advice represents the culmination of CESR's work to modernise the MiFID framework and has at its centre the objective of strengthening market resilience. It is also forward-looking in proposing a significant role for ESMA in fostering the standardisation and organised platform trading of OTC derivatives in line with wider global developments. This new role will be conducted in articulation with the national competent authorities, which must have improved tools at their disposal to monitor activities in the OTC markets.”

The technical advice published by CESR today includes policy proposals on standardisation and organised platform trading of OTC derivatives (I.), post-trade transparency standards on equity markets (II.) and client categorisation (IV.). CESR also provides its responses to the questions presented by the Commission in its request for additional information (III.) that were not included in the earlier set of responses published in July 2010 (Ref. CESR/10-860).

I. Technical advice on standardisation and organised platform trading of OTC derivatives

The policy measures proposed in this advice (Ref. CESR/10-1096) aim firstly at increasing the level of standardisation of OTC derivatives and secondly, at encouraging trading of eligible standardised derivatives on organised trading venues. CESR does not yet have a definitive view on the exact levels that should be reached with regards to standardisation and trading on organised trading venues of derivatives currently traded OTC. However, CESR considers that a sufficiently ambitious approach should be adopted to increase both levels.



Increasing the level of standardised OTC derivatives

CESR considers that market participants should develop a higher level of legal, operational and product standardisation (including increased use of electronic confirmation systems) as this is considered beneficial for operational efficiency and the reduction of systemic risk in the OTC derivatives market. To that end, while CESR does not recommend the mandatory use of electronic confirmation systems, it is proposed that ESMA should develop and set appropriate targets, deadlines and deliveries for legal, process and product standardisation per asset class, in consultation with the industry, and monitor their achievement.

CESR proposes that the core elements mentioned above should be set out in regulatory measures. In addition, the advice states that European regulators, with appropriate involvement by ESMA, need to be strongly involved in international fora where such issues are discussed, to ensure consistency of approaches and a level playing field.

Should the targets not be met, ESMA (in conjunction with EEA national regulators) should take appropriate action to lead to their achievement by the industry.

Fostering trading on organised platforms

CESR is of the view that, through target setting, regulators should encourage increased trading of standardised derivatives on organised trading venues.

At this stage, CESR proposes that ESMA should be mandated to design, implement and oversee a system of targets in order to encourage increased trading of eligible derivatives on organised trading venues. ESMA should therefore:

- determine the eligible derivatives to be covered by the targets according to specified eligibility criteria;
- define the proportion of business in eligible derivatives that should take place on organised trading venues over a specified period of time (expressed as a percentage of total business by relevant participants in eligible derivatives over that period of time); and
- publish the targets and general statements regarding the compliance or non-compliance of the industry with the targets.

As in the case of standardisation, CESR proposes that the core objectives pursued, and the role to be played by ESMA should be set out in regulatory measures. Where the targets are not met, ESMA (in conjunction with the EEA national regulators) should take action to ensure their achievement by the industry.

In order for a trading venue to qualify as an 'organised trading venue' in this context, CESR is of the view that it has to comply with the minimum characteristics of market transparency and operational efficiency. In addition, it may be necessary to incorporate further functional characteristics into the definition of an organised trading venue, based on a fuller assessment of their role in furthering the G20 objectives. Such characteristics may include some or all of the features of Regulated Markets (RM) and Multilateral Trading Facilities (MTF) set out in MiFID.

As an initial conclusion, RMs and MTFs already meet the full range of required functional characteristics and therefore meet the objectives set out by the G20. The key objective of CESR's further work will be to determine whether other trading platforms, meeting all or part of the criteria defined in the Advice, may also qualify as organised trading venues. CESR is proposing that this further work should take into account the developments in the US, with a view to aligning the regulatory outcomes.

II. Technical advice on post-trade transparency standards on equity markets



One of the cornerstones of CESR's technical advice to the Commission on reviewing the equity markets provisions of MiFID (Ref. CESR/10-802) was improving the quality of post-trade transparency, aiming to reduce the impact of market fragmentation. In that document, CESR proposed a co-ordinated regulatory and industry effort in the development of a set of standards to improve the clarity, comparability and reliability of post-trade information. To that end, a joint CESR/industry working group was set up to assist with refining proposals with a view to minimising the extent of duplicative trade publications.

Based on the discussions held at the working group, the main recommendations put forward in the advice on post-trade transparency standards (Ref. CESR/10-882) include proposals regarding:

- *Reference data:* CESR recommends amending MiFID to make the use of ISO standards and other harmonised formats mandatory for the following transparency publication fields: day, time, instrument identification, price notation, unit price, quantity and venue identification.
- *Transaction type standards and other trade flags:* CESR recommends defining trade flags for specific cases, such as benchmark trades, agency crosses, give-up/give-in trades, dark trades and negotiated trades. The use of a unique transaction identifier along with a unique code identifying the publication arrangement should also be required to help identify cancellations and amendments and facilitate the consolidation of data.
- *Clarifications of post-trade transparency obligations to avoid duplicative publication:* CESR recommends clarifying in MiFID which investment firm should make public a transaction not executed on an RM or MTF. It also suggests amendments to the reporting obligations for transactions made on behalf of a client and chain transactions.

III. Commission's request for additional information in relation to the MiFID review

The third document published by CESR today (Ref. CESR/10-1254) provides the factual information requested by the Commission and complements the information included in CESR's technical advice to the Commission on equity markets (Ref. CESR/10-802) and on non-equity markets transparency (Ref. CESR/10-799) published in July 2010.

CESR also provides its views on the organisation of transaction and position reporting on OTC derivatives and the scope of the transaction reporting obligations on the basis of the public consultation launched in July 2010 (Ref. CESR/10-809). In addition, the responses cover factual information and views on position reporting requirements and position limits in commodity markets.

Using trade repositories for transaction and position reporting of OTC derivatives

CESR suggests defining a new position reporting regime through trade repositories, as foreseen in the Commission proposal for a regulation on OTC derivatives, central counterparties and trade repositories (COM(2010) 484/5); and recommends recognising trade repositories in the MiFID review as reporting mechanisms through which investment firms will be able to fulfil their transaction reporting obligations.

Extending the scope of transaction reporting obligations

CESR suggests extending the scope of transaction reporting obligations to financial instruments admitted to trading only on MTFs and to certain OTC derivatives.

The key purpose behind this advice is to align the transaction reporting obligations in MiFID with the recently announced intention by the Commission to extend the scope of the Market Abuse Directive to financial instruments admitted to trading and/or traded on an MTF but not on an RM. By putting forward the proposal to include certain OTC derivatives into the scope of transaction reporting obligations, CESR aims at enhancing competent authorities' ability to detect suspicious activity and to maintain the integrity of their markets.

Further assessing the need for position limits



CESR recommends that the Commission should focus on analysing whether exchanges/regulators have a sufficiently extensive set of powers to manage positions across the entire life of commodity derivatives market contracts and on setting up a harmonised set of powers for them in European legislation.

In CESR's view, it remains to be further assessed whether or not position limits are suited to achieving the objectives of reducing volatility or limiting the impact that large positions may have on market prices.

Extending the reporting obligations to commodity markets firms

CESR notes that significant alternative reporting methods already exist through which regulators can obtain information on the transactions and positions of commodity markets firms currently exempted under Articles 2(1)(i) and (k) of MiFID through methods such as reporting by market operators. Accordingly, arrangements are in place to mitigate the potential gaps arising from the current exemption of certain firms from MiFID reporting requirements. In addition, in the future, regulators may also receive relevant data on commodities markets positions of firms exempted from MiFID through trade repositories, depending on the application of the future EU regulation on OTC derivatives, central counterparties and trade repositories to non-financial firms and the determination of the related information thresholds.

While extending a general transaction and position reporting obligation to commodity markets firms exempted under MiFID would have the benefits of standardising reports and affording regulators a "whole market" view, the extent of such benefit would depend on the significance of any gaps left by the alternative reporting arrangements described above, taken as a whole. CESR notes that such an extension would also involve a cost to firms and to regulators.

IV. Technical advice on client categorisation

CESR believes that the current MiFID rules on the categories of clients, and the obligations attaching to each, are generally appropriate and do not need significant change. While supporting the Commission's initiative to review MiFID generally, in order to adapt its current provisions to recent developments of the financial markets, CESR believes that MiFID's client categorisation regime, specifically, is largely working well; so, in the context of the wider MiFID review, the client categorisation regime does not need radical review.

Nevertheless, CESR believes that there is scope for some clarification of relevant definitions and terms where there may be some ambiguity; and CESR does not rule out future work on clarifying what some terms mean in the context of the professional client and eligible counterparty categories in particular. CESR also believes that it would be helpful to clarify which standards apply to business done with eligible counterparties.

V. Feedback statements

CESR also publishes today the feedback statements (Ref. CESR/10-975 and 10-851) on the public consultations conducted on equity markets (Ref. CESR/10-394) and non-equity markets transparency (Ref. CESR/10-510).

VI. Next steps

CESR will publish shortly the feedback statements relating to the consultation papers on standardisation and exchange trading of OTC derivatives (Ref. CESR/10-610), transaction reporting on OTC derivatives and extension of the scope of transaction reporting obligations (Ref. CESR/10-809) and client categorisation (Ref. CESR/10-831).

The Commission is expected to launch its own public consultation on the MiFID review soon.



Notes for editors:

1. The technical advice on standardisation and organised platform trading of OTC derivatives follows the consultation paper (Ref. CESR/10-610) published in July 2010, to which 58 responses were received, and an open hearing organised on 11 August.
2. In March 2010, the Commission asked CESR to provide it with some additional information in relation to the MiFID review. The responses published today (Ref. CESR/10-1254) add to CESR's response to the Commission's request for additional information published on 29 July 2010 (Ref. CESR/10-860). The response to question 11 has benefited from the responses received to the consultation paper (Ref. CESR/10-809) published in July 2010, to which 41 responses were received.
3. The technical advice on client categorisation follows the consultation paper (Ref. CESR/10-831) published in July 2010. CESR received 43 responses to the consultation.
4. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to improve co-ordination among securities regulators and act as an advisory group to assist the European Commission, in particular in its preparation of:
 - Draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States.
 - The Committee was initially established under the terms of the European Commission's decision of 6 June 2001 (2001/527/EC) which was repealed and replaced by the Commission Decision of 23 January 2009 (2009/77/EC). CESR was one of the two Committees first envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
5. Each Member State of the European Union has one Member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated as its representative the Director General of the DG MARKT. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level as observers.

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