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PRESS RELEASE

CESR and CEBS publish their advice on the European Commission's review of commodities business

The Committee of European Securities Regulators (CESR) and the Committee of European Banking Supervisors (CEBS) are publishing today their advice in response to the Joint Call for Technical Advice issued by the European Commission in December 2007 concerning the regulatory treatment of firms that provide investment services in relation to commodity and exotic derivatives.

Following up on previous work, as well as industry input provided during a public consultation and two public hearings which took place during May to September 2008, CESR and CEBS have analysed whether the MiFID and CRD treatments of specialist commodity derivatives firms continue to support the intended aims of market and prudential regulation.

CESR and CEBS have identified potential for market and regulatory failures with regard to commodity derivatives markets. Market failures may in particular result from asymmetric information and negative externalities. Potential regulatory failures may arise where regulation is not sufficiently adapted to the specificities of the commodity derivatives market or due to different regulatory treatments across the EEA.

The advice concludes with recommendations in particular with regard to the future scope of the exemptions which exist in MiFID and the prudential treatment of specialist commodity derivatives firms. In relation to MiFID, CESR and CEBS see a case for revising the exemptions in Article 2(1)(i) and (k) of MiFID and to provide a very narrow exemption for the incidental provision of investment services related to commodity derivatives and an exemption for primarily non-financial firms which trade on own account with sophisticated clients and to ensure a level playing field. Furthermore, CESR and CEBS recommend that the Commission should consider whether an additional Article could be included into MiFID which would clarify that firms covered by the exemptions relating to commodity derivatives in Article 2 shall not be prevented from being authorised as investment firms.

Regarding the prudential treatment of specialist commodity derivatives firms, CESR and CEBS offer two options in their advice. One option would be to require specialist commodity derivatives firms to meet a high-level requirement to have adequate financial resources and qualitative risk management requirements. The second option proposes the full application of CRD to specialist commodity derivatives firms with an exemption from any prudential requirements for firms where this would not impede the overall aims of prudential regulation.

Notes for Editors:

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

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