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PRESS RELEASE

CESR develops its approach to review implementation of CESR Standards

Today CESR publishes the first interim report by the Review Panel which provides a global overview of the state of implementation of two sets of CESR Standards, one which establishes a common set of rules to protect investors across Europe and the other which establishes a common approach to the regulatory framework of Alternative Trading Systems (ATSs). The effective implementation of the Standards reviewed by CESR will ensure investors can enjoy an equivalent level of protection throughout Europe and that investment firms are assured a level playing field. This will therefore contribute to greater public confidence in the single market for financial services.

Initial findings suggest that implementation of the Standards is satisfactory. It is evident that the final adoption of the proposed Financial Instruments Markets Directive (commonly referred to as ISD2) will considerably accelerate the implementation process. The 'trailing' of this new approach to review implementation (in this case, of CESR Standards) is also of particular significance as this procedure will be applied next to the European legislative measures developed under the new Lamfalussy procedure. The ultimate objective of this process is to ensure more consistent and timely implementation of Community legislation in EU Member States.

The Standards now being reviewed were agreed amongst CESR Members before the formal establishment of CESR in 2001. Most of the provisions in these Standards are now included in the draft Financial Instruments Markets Directive, which is currently under discussion in the European Parliament and Council. Despite some uncertainty created by this, the Members of CESR were willing to start the process of checking their own implementation of the Standards in order to show their commitment to do so and even anticipate, as far as possible, the transposition of the proposed Financial Instruments Markets Directive. The Review Panel, chaired by CESR's Vice Chairman, Kaarlo Jännäri (Director General of the Finnish Financial Supervision Authority), has therefore started its work with the scrutiny of the harmonised CESR 'Standards on Alternative Trading Systems' (ATSs) (Ref CESR/02-086b) and the CESR 'Standards and Rules of Investor Protection' (Ref CESR/01-014d).

The development of the CESR 'Standards and Rules on Investor Protection' reflected a desire to respond to concerns amongst CESR members that the diversity of conduct of business regimes could hinder not only the freedom of investment firms to provide services throughout Europe, but also put at risk the appropriate level of protection afforded to European investors. It was therefore felt that convergence in this field would ensure both a level playing field for investment firms and foster public confidence on the part of investors in the single market for financial services. The Investor Protection Standards are detailed and establish for example, the information that should be provided to clients; 'know your customer' obligations on the part of the firm including what should be set out in customer agreements.

In contrast, the development of CESR's Standards on Alternative Trading Systems, adopted in July 2002, indicated recognition amongst EU securities regulators that they needed to adapt their existing regulatory approach. The approach traditionally adopted by regulators had been constructed on the basis of a clear distinction between the respective roles of exchanges and that of regulated investment firms. The growth of electronic trading blurred these two functions and suggested the need for a new regulatory approach to be found which reflected this new reality. In addition, it was clear that this merited a common EU wide approach to mirror the adaptability of



these trading systems to function on a cross-border basis. The implementation of an EU wide approach has proven significant in that it established a regulatory approach to handling of conflicts of interest and best execution, the management of risks raised by ATs in relation to overall market integrity (such as transparency and fragmentation) and the risks to the regulatory objective of reducing systemic risk (through systems and settlement). A list of the new ATs approved by regulators, following the adoption of the Standards, has also been published today (see Ref/CESR 03-497b).

The report reflects CESR's intention to start giving substance to a key part of its mission, commonly described as 'Level 3' work. 'Level 3' work was foreseen by the Lamfalussy Report and explicitly provided for in the European Council Resolution of March 2001, which states that CESR "[...] should also play an important role in the transposition process (level 3) by [...] carrying out peer reviews and promoting best practice, so as to ensure more consistent and timely implementation of Community legislation in the Member States".

Process and next steps:

The content of the correspondence tables and the synthesis tables for each Member State and Accession country is based on the responses by the respective member, therefore, content and accuracy are strictly the responsibility of each CESR Member. The Review Panel and the CESR Secretariat in this first stage considered the compliance with the methodology agreed amongst members and the consistency of all responses in this respect, without going into the detailed substance of the responses and without conducting at this juncture a cross-review of all responses.

The next step in the process of monitoring the status of implementation will involve a collective peer review by the Review Panel, which could be targeted on a list of prioritised areas (within both sets of Standards) as identified by the Panel and on which CESR welcomes views from all interested parties. This second step is likely to be completed in 2004.

CESR therefore welcomes views from all interested parties on which aspects of these Standards should be considered in more detail by April 30th 2004. Responses can be directly submitted to CESR through our new web site under the section 'consultations'. Please see 'ongoing consultations' and click on the button entitled 'to respond' which will provide you with a response form for completion and will enable you to attach a file or files for electronic submission. Files in PDF format are preferred.

All the relevant documents can be found on the new website under 'Review Panel'.

Notes for Editors:

1. The work that CERS intends to carry out forms part of the four level approach to European legislation for financial services. The four level approach was proposed in the report by the working group chaired by Baron Lamfalussy (available on the CESR website as described in para. 5). The approach can be summarised very briefly as follows: Level one measures set out the high level objectives that the legislation must achieve. Level two measures set out some of the technical requirements necessary to achieve these objectives. Level three measures are intended to ensure common and uniform implementation by the use (amongst others) of common interpretative guidance and Standards agreed amongst regulators in CESR. Level four measures relate to the enforcement of the legislation.

Page 6 of the Lamfalussy report illustrates diagrammatically how these four levels of legislation fit together and the procedure to adopt these measures. The Level 3 'strengthened cooperation between regulators to improve implementation' including the conditions for their adoption are described in more detail on page 37 of the report.

2. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States;
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR's website.
3. Each Member State of the European Union has one member on 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 the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level. The following nine Authorities of the Accession Countries have joined CESR with observer status: the Cyprus Securities and Exchange Commission, the Czech Securities Commission, the Estonian Financial Supervision Authority, the Hungarian Financial Supervisory Authority, the Latvian Financial and Capital Market Commission, the Lithuanian Securities Commission, the Malta Financial Services Authority, the Slovakian Financial Market Authority and the Slovenian Securities Market Agency.
4. An overview of the methodology for completing and reviewing the correspondence tables is included as an annex on the report of the Review Panel (CESR Ref 03-414b). However, in summary, the following general principles were applied: Members were asked to indicate who had responsibility for implementing aspects of the Standards or rules if it did not directly fall to the CESR member. A broad interpretation was used to define what an implementing measure may consist of. This included the use of laws and rules by a decree from the responsible Ministry, the regulators rule book; guidelines and circulars by regulators and those of self-regulating associations. Soft law initiatives such as guidelines and circulars for example, would be considered as an intermediate step towards full implementation of the CESR standard or Rule. The level of detail was also taken into account and should be equivalent if the Standards if the standard or rule was to be considered as having been implemented. Any derogations from the full application of an implementing measure or any possibility for issuing a waiver from the requirement were also to be stated explicitly and a rationale for the exemption requested. If a



Standard or Rule had not been implemented, the reasons for this were requested and an indication for the timing of implementation indicated. If a measure implementing the Standard or Rule is not in force but has already been formally adopted and a concrete date of its coming into force stated in the response, Members would consider the measure implemented.

Standards on Investor Protection:

CESR Standards on Investor Protection do not have the effect of maximum harmonization and consequently, more stringent requirements can be adopted. The mandate of the Review Panel covers the factual assessment of the implementation of the CESR Standards/Rules with respect to the question of harmonisation, however, it does not cover the assessment of the level of investor protection in the Member States concerned. Nevertheless, where stricter restrictions exist that prohibit cold calling for example, Members were asked to indicate this in the comments section.

Regarding conduct of business rules, Members were asked to clarify in their comments whether these Standards and Rules were specifically addressed to professional investors or were also to be applied to retail investors. This approach was also applied to the Counterparty regime.

5. For further information please contact:

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