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## **PUBLIC STATEMENT**

### **The eleventh meeting of the Market Participants Consultative Panel**

The Market Participants Consultative Panel held its eleventh meeting on 14<sup>th</sup> of June 2006 in Paris.

The discussion was facilitated by CESR-Chairman Arthur Docters van Leeuwen and included a policy discussion pertaining to the role of CESR in protecting individual retail investors and consistency across financial sectors.

#### **1. Opening remarks**

In his opening remarks the Chairman updated the members of the Panel on the developments in the Transatlantic Dialogue with particular regard to the work programme with the SEC. With regard to the SEC, two issues were flagged: the self-contained discussion about IFRS and the proposal on de-registration. On the postponement of the US GAAP/IFRS convergence timetable, a formal decision is expected by the EU Commission this summer. CESR will prepare a preliminary report for the EU Commission on the progress in the implementation of the IFRS before the end of 2006. A final report is envisaged for 2007.

On de-registration, it was noted that the SEC-proposal of December 2005 would - in CESR's view - not enlighten the reporting burden for companies which want to de-register, as much as hoped for.

Furthermore, the Chairman of CESR informed members of the Panel about the implications of a possible (Transatlantic) consolidation of stock exchanges. Whatever the parties involved would be, the benchmark would remain: the impact of such a consolidation on fair and orderly organised markets. The most involved regulators currently identify and analyze the relevant issues (i.e. scope of activities, cascade effects and application of other legislation). The importance of the competition-issue was underlined.

Finally, the Chairman underlined the major milestone achieved in the dossier of supervisory convergence and the future of supervision of EU financial markets by referring to the conclusions of the ECOFIN Council on these matters in early May.

#### **2. The role of CESR in protecting individual retail investors**

Based on experience in the UK, and in particular the FSA-work on financial capability, John Howard presented the most relevant issues retail consumers are dealing with when shopping for financial services. While congratulating CESR on its continuous efforts to improve consumer representation



(i.e. the consumer day conference in Valencia, Spain), it was also noted that consumer organisations clearly have a lack of resources to contribute to the process. Efforts should be done to enhance the level of representation of consumers' voice in Europe. To overcome some of these difficulties, John Howard suggested that consultations should be conducted in the various languages and in a clear format.

According to John Howard, the relevant issues for retail investors vary from: qualification of products, status of advisors, execution-only, pre-contract documentation, suitability, and the handling of complaints. Particular attention should be paid to the phase of financial promotion, and particularly that taking place via electronic means and cross-border. On the latter issue John Howard argued for a role of CESR to streamline national systems, as current ombudsman schemes and compensation schemes vary enormously across member-states. The more integrated are financial markets and harmonized rules across Europe, the less risk for consumers would remain. With regard to the issue of suitability, risk ratings of financial products would help and a plea was made for a strong role for CESR in this area.

Additionally, reference was made to the fact that recently - for the first time in the UK - traditional financial advertising was outstripped by Internet-advertising which may also provide challenges for regulators.

It was concluded that boosting consumer confidence in the area of protecting retail investors, could be achieved by creating an understandable, consistent approach which is easy to use. Criteria for adequate qualification of investors and correlation to categories of products should be developed; self regulatory initiatives may be pursued. Furthermore, information given to retail investors should be targeted, simple and timely.

In the subsequent discussion, some members of the Panel do expect positive impacts on the position of consumers by the entering into force of the MiFID at the end of 2007; others considered that it is too early to assess the impact of MiFID. Other MPCP-members mentioned the importance of consumer education, even though it was considered to be only a partial solution. Members called for a mapping by CESR on the various national educational efforts. National education systems should address problems of education on key economic principles.

It was also pointed out that a "one size fits all approach" would be impossible to be achieved and that it could possibly drive out risky products and innovation. The CESR-Chairman noted that education can only be a partial solution and will not solve everything. The Chairman concluded this session with the suggestion to table the issue of consumer education for policy discussion at the next Away Day of the CESR-members, particularly in the light of the new countries' experiences and cross-border evolutions. This point will be re-discussed by the Panel in one year to monitor developments.

### **3. Consistency across financial sectors**

Dominique Hoenn introduced the discussion starting from the issues listed on the joint working programme of CESR-CEBS-CEIOPS. In particular, he mentioned the following issues which are deemed relevant across the various financial sectors:

- Financial Conglomerates: in banking/insurance: securitization and the operational risk not taken into account in the insurance sector;
- Substitute products: same rules should be introduced on eligibility of products. A concrete case was made where a re-structured product was admitted to trading in one jurisdiction after being barred in another jurisdiction for sale to retail investors;
- Reporting requirements: provision of statistical data by financial firms without knowing for what specific usage/purpose;
- Internal Governance: key is here what kind of decisions should be taken at what level (managing board level or supervisory board level ?);
- Crisis management: two types of crises can be distinguished; crisis at a specific institution and a market crisis.



The highest priority however, should be given to (different) capital requirements for substitute products. Distortion of competition should be avoided. He called for the creation of a group of wise men to advise on a general prudential supervisory framework.

In the following discussion, members of the Panel strongly supported the cooperation between the 3L3 Committee. Level playing field and consistency across sectors were considered important objectives to be achieved, also for the protection of consumers. Compliance and monitoring requirements and hedge funds were identified as issues for further work. Lars-Erik Forsgardh suggested the issue of taxation of shareholders to create awareness among member states about the negative effects of taxation.

In summarizing this session, the Chairman of CESR acknowledged the issue of capital requirements, but noted that CESR lacks of authority in this regard. Concerns will be conveyed to the competent authorities and the Commission. On substitute products, the Chairman underlined the stepped-up awareness by the EU-institutions about cross-sectoral effects of rules and regulations. On reporting requirements, it was emphasized that not everything is known to CESR with regard to statistical output. For this reason, CESR needs to conduct surveys and gather evidence of problems signalled by market participants. He nevertheless noted a need for more pressure by the industry and called upon the industry to identify (and report) any idiosyncratic requirements. Finally, the Chairman proposed to table the issue of hedge funds for the joint meeting of MPCP and CESR, mid-October 2006.

#### **4. CESR Work Programme**

The Chairman introduced the work programme of CESR by explaining the shift in emphasis from rules-making (as an advisory body to the Commission) to operational matters. In this context he also mentioned the criteria developed by CESR's Priority Task Force for the prioritization of work. Members were invited to suggest any additional areas of supervisory work which are not covered in the current work programme. As regards the future level 3 work under MiFID, members of the Panel mentioned the need to avoid gold-plating and the fact that level 3 measures should not represent another layer of regulation. In response to this suggestion, the Chairman of CESR underlined the implicit role of avoidance of gold-plating in the current and future MiFID-work and the extension of the role of the Review Panel. Some members also underlined that a flexible approach to best execution should be envisaged for inter-professional business. Some members of the Panel invited CESR to organize training on MiFID regulation.

#### **5. Oral report by the Chairman of CESR**

The Chairman of CESR reported orally on the major decisions adopted by the Committee during its last meetings. In particular, he mentioned the developments on the establishment of a mechanism to share transaction reporting under article 25 of MiFID among competent authorities. He also mentioned the discussions held on possible developments in the areas of storage of financial information under the Transparency Directive and connections between the different Official appointed mechanisms across Europe.

#### **6. Partial renewal of the Panel**

Five members of the Panel were chosen to be renewed: Salvatore Bragantini, Ignace Combes, Peter Paul F. de Vries, Lars-Erik Forsgardh, Sonja Lohse. The Chairman of CESR thanked these members for their effective contributions to CESR activities. Appointment of new members will take place before the next meeting of the Panel.

#### **Next meetings**

It was agreed to hold the next meeting of the MPCP in the afternoon of 18 October 2006 in Paris, in a joint meeting with the CESR-members.

Members of the panel indicated themes for in-depth discussion during the next meetings: transatlantic supervision; evaluation of implementation of the Market abuse directive; transparency and disclosure of hedge funds.