



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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PRESS RELEASE

CESR Submits its technical advice to the European Commission on the first set of mandates under the Directive on Markets in Financial Instruments (MiFID)

CESR publishes today its final technical advice on implementing measures for the Directive on Markets in Financial Instruments (MiFID) as submitted to the European Commission on 31 January 2005 (Ref:CESR/05-024b). CESR also publishes the feedback statement (Ref: CESR/05-025) in which it provides answers to the main issues raised by market participants during the public consultations.

MiFID forms one of the cornerstones of the EU's securities regulatory regime, and is intended to deliver an effective 'single passport' allowing investment firms and regulated markets to operate across Europe, under a common set of rules which enhance the protection of European investors. CESR was asked by the European Commission to produce its advice on this first set of mandates by 31 January 2005. The final advice on the other mandates is due on 30 April 2005; an updated work plan of CESR work on the specific mandates received under the MiFID is given in the annex.

The advice covers all issues included in the formal mandate from the European Commission on 25 June 2004 with the exception of professional client agreements (Article 19(7)), investment research (Articles 13 (3) and 18), best execution (Article 21), order handling rules (article 22 (1) and admission of financial instruments to trading (Article 40). All these areas will be delivered by the end of April 2005, along with the areas on which CESR's was asked for advice under the second set of Commission mandates (see the notes to editors for further details).

In particular, the technical advice delivered covers:

- **Independence of compliance:** This includes principles related to the compliance function, compliance policies and procedures of investment firms, and personal transactions. Whilst CESR recognises that the principle of independence of compliance is key, CESR has been considering how to implement this in a flexible manner to take into account smaller investment firms to ensure these types of firm can effectively comply;
- **Obligations related to internal systems, resources and procedures:** CESR's advice provides a set of criteria for assessing the adequacy of the internal systems, resources and procedures of an investment firm in the light of a range of factors, including the nature, scale and complexity of its business;



- **Obligations to avoid undue additional operational risk in case of outsourcing:** CESR proposes principles to be applied by investment firms when outsourcing material operational functions;
- **Record keeping obligation:** CESR's advice establishes conditions with which an investment firm's arrangements have to comply, the types of records that are covered, and the period of time for keeping the records;
- **Safeguarding of clients assets:** The advice identifies the organisational, procedural and contractual requirements that have to be put in place by investment firms to safeguard clients' ownership rights, especially in the event of their insolvency or actions brought against them by their creditors or by creditors of one or more of their clients;
- **Conflicts of interest:** In its advice, CESR has been addressing the proper way to manage conflicts of interest; arising both internally within an organisation and from the angle of disclosure to investors;
- **Fair, clear and not misleading information:** Here, CESR specifies, in particular, the criteria for assessing the fairness, clearness and not misleading character of marketing and other promotional/publicity communication;
- **Information to clients:** This advice specifies the content of the appropriate minimum information that the investment firm should supply to its clients and potential clients under Article 19(3) of the Directive, and addresses also the timing and form of the provision of that information;
- **Retail client agreement:** CESR's advice deals with the minimum content of retail client agreements;
- **Reporting to clients:** CESR specifies the minimum requirements investment firms must comply with when providing adequate reports on the services provided to their clients;
- **Transaction reporting:** The advice of CESR provides criteria, in particular, as to the methods and arrangements for reporting financial transactions to competent authorities, the criteria for assessing liquidity in order to define a relevant market in terms of liquidity of financial instruments, as well as the minimum content of transaction reports;
- **Obligation to cooperate:** CESR proposes criteria under which the operations of a regulated market in a host Member State could be considered as of substantial importance for the functioning of the securities markets and the protection of investors in the host Member State; and
- **Exchange of information:** The purpose of this part of the technical advice is to establish a general framework for cooperation between the competent authorities, in order to facilitate the fulfilling of their duties under the Directive.

The advice seeks to propose proportionate solutions which take into account the varied complexity of the market participants involved and the varied nature of the products and services offered to their clients. At the same time the advice seeks to provide market participants with the necessary clarity and legal certainty to enable them to innovate with a large degree of confidence whilst ensuring that the advice is proportionate. The amount of detail included in each part of the advice was therefore carefully evaluated on a case by case



basis with a particular emphasis on the need to avoid over prescription and excessive detail wherever possible.

The work on the advice related to intermediaries was undertaken by the CESR Expert Group on Intermediaries under the Chairmanship of Mr Callum McCarthy, Chairman of the UK's Financial Services Authority, and by Mr Michel Prada, Chairman of the French Autorité des Marchés Financiers, who chaired the CESR Expert Group on Cooperation and Enforcement, dealing with the mandates on transaction reporting and exchange of information. CESR's Expert Groups were also assisted by a Consultative Working Group of market experts (a full list of the members is available on CESR's website).

In developing its advice, CESR undertook extensive consultation of interests across the EU, by publishing a Call for Evidence, a Consultative Concept Paper and two Consultation Papers, to which CESR received valuable feedback. These can be found on CESR's website under consultation/past consultations.

Notes for Editors:

1. When finalised, these implementing measures will complement and develop how the high level political objectives (known as level 1 measures of the Lamfalussy Directive) should be applied. This level 1 measure, in the form of the MiFID Directive was adopted by the European Council on 21 April 2004, following a second reading in the European Parliament in March 2004. At present, the entire legislative package of measures will apply in EU Member States from 21 April 2006 but this may be delayed by one year subject to approval by the European co-legislature, under a proposal from the European Commission.
2. CESR will therefore submit its advice in April on the remaining areas of the first set of mandates, namely: the professional client agreement (Article 19 (7); Investment research (Articles 13 and 18); Best execution (Article 21); Admission to trading (Article 40) and order handling rules (Article 22 (1)); along with the areas covered by the second set of mandates (described below).
3. The second set of mandates on which CESR will submit its advice will cover:
 - the list of financial instruments to be established by the future implementing measures, in accordance with the requirements in Article 4 of the MiFID Directive. In particular, this will include clarification and greater detail concerning which commodity derivatives should fall under the scope of the list of financial instruments and therefore the Directive generally;
 - the definition of investment advice as identified in Article 4 of the Directive;
 - the conduct of business rules in particular, this will cover 'know your customer' rules; what is considered to be the provision of advice and the rules of execution only (as identified in Article 19 of the Directive);
 - respect to eligible counterparties (as identified under Article 24): namely, which entities can be allowed to enter into transactions without being subject to the protections set out under the conduct of business rules;
 - how orders are made available to the market (as identified under Article 22);
 - pre-trade transparency requirements: in particular the extent to which trades agreed off market should be disclosed (known as internalisation and identified under Article 4 and 27 of the Directive).
3. As indicated CESR has formed three expert groups to prepare CESR's advice, however, the additional mandates fall to only two of these groups. The first four areas of the second set of mandates identified will be handled by the **Expert Group on intermediaries' issues**. This expert group is chaired by Mr Callum McCarthy (Chairman of the UK's Financial Regulator, The Financial Services Authority [FSA]). The last two issues will be covered by the **Expert Group on markets**. This expert group is chaired by Mr Karl Burkhard Caspari, Vice-President of the German Financial Services Authority (BaFin).
4. **The ISD Consultative Working Group:** A consultative group of 23 market participants has also been appointed to provide technical advice to the expert groups. The market participants are experts drawn from across the European Markets. They are not intended to represent national or a specific firm's interest and do not replace the important process of full consultation with all market participants. A full list of the participants can be found on the page of the MiFID Directive under Consultative Working Group.



5. 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.

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.

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CESR Work Plan for the mandates under the MiFiD

As at 27th January 2005

Ref.: CESR/05-019 Annex

Date	Activity
20 January 2004	Provisional mandates - 1 st set of mandates
19 February 2004	Deadline for comments to the "call for evidence" for the 1 st set of mandates
1 March 2004	Consultative Concept Paper on Transaction Reporting, Cooperation and Exchange of Information between Competent Authorities
12 April 2004	Deadline for responses to the Consultative Concept Paper on Transaction Reporting, Cooperation and Exchange of Information between Competent Authorities
17 June 2004	First consultation on the 1 st set of mandates
29 June 2004	Formal mandates - 2 nd set of mandates
29 July 2004	Deadline for comments to the "call for evidence" for the 2 nd set of mandates
17 September 2004	Deadline for comments on the 1 st set of mandates
4 October 2004	Deadline for comments on the 1 st set of mandates (best execution and market transparency)
21 October 2004	First consultation on the 2 nd set of mandates
Mid-November 2004	Second consultation on the 1 st set of mandates
Early December 2004	Second consultation on the Art. 40
Mid-December 2004	Deadline for the second consultation 1 st set of mandates
20 December 2005	Call for Opinions on Professional Client Agreement (Art. 19.7)
Early January 2005	Deadline for second consultation on the Art. 40
21 January 2005	Deadline for comments on the 2 nd set of mandates
31 January 2005	Final approval - 1 st set of mandates
Early February 2005	Second consultation on Best Execution (one month)
20 February 2005	Closure of Call for Opinions on Professional Client Agreement (Art. 19.7)
Early March 2005	Second consultation on the 2 nd set of mandates (one month) (where necessary)
30 April 2005	Final approval - 2 nd set of mandates



Completed



To be completed



Period of first consultations



Period of second consultations



CESR Work Plan for the mandates under the MiFiD

