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PRESS RELEASE

Facilitating the implementation of the Market Abuse Directive

CESR's publishes today Level 3 guidance on the implementation of the Market Abuse Directive (entitled "Market Abuse Directive: level 3 – CESR guidance and information on the common operation of the directive" (Ref: CESR/04-505b) and a feedback statement (Ref: CESR/05-274) following a request for written comments launched on 28 October, 2004.

The Market Abuse Directive came into effect on 12 October 2004, and while some delays in the transposition of this legislation into national law has been anticipated, CESR has nevertheless taken steps to prepare the ground for the implementation of the new regime by ensuring a common approach to the operation of the Directive by supervisors throughout the EU.

The provision of a European single market in financial services necessitates the promotion of market integrity and thus a common approach to the prevention and enforcement of market abuse.

CESR's operational group, CESR-Pol, which draws together enforcement officers from all the EU Member States (including those of the EEA), has been given responsibility for ensuring the effective implementation of the Directive and has prepared the guidance which covers the following:

- guidance on accepted market practices in relation to market manipulation;
- guidance on what CESR members consider constitutes market manipulation;
- guidance and a common format for reporting suspicious transactions.

In the event of a person manipulating a market, the Directive provides a defence if the transaction was legitimate and in accordance with market practices accepted by the competent authority – these are often referred to as "*Accepted Market Practices*" (AMPs). The guidance re-emphasises that the decision to accept a practice as an AMP applies only to the practice in question in relation to a specific national market. This reflects the fact that the characteristics of each market may differ and as such, it may well be appropriate for one market but inappropriate for another where the conditions (such as the market size etc.) differ. To increase transparency and in accordance with its Directive obligations, CESR will publish on the CESR website those AMPs which have been accepted by a national jurisdiction.

In the second part of the paper, CESR identifies types of market manipulation which have occurred in recent years and which, in the view of CESR members, would breach the prohibitions on market manipulation contained in the Directive. The examples of types of practice set out in the paper are deliberately described in non-legal technical terms and it is emphasised that the descriptions are not intended to affect the scope of interpretation of the Directive.

An innovation of the new European Market Abuse regime is that the Directive places an obligation on market participants to report suspicious transactions. This paper offers guidance as to what might be the indications of suspicious transactions which may involve insider dealing or market manipulation.

Furthermore, the implementing measures of the Market Abuse Directive (2004/72/EC under Article 8) places a duty on firms 'to notify without delay' if they have reasonable doubts regarding a transaction executed or arranged by the firm itself. For this purpose, CESR's guidance sets out a standard reporting format which should be used by market players to report suspicious transactions to the relevant competent authority. The common notification form was generally felt to be useful.



Nevertheless, a number of respondents suggested that CESR should ensure that the use of a form does not result in a delay in notification, particularly, in circumstances where the firm lacks information to complete the form in its entirety. In addition, some respondents asked CESR to set a specific timeframe within which they would be considered to have complied with the requirement that they had notified 'without delay'.

CESR agreed that it would be beneficial to report a suspicious transaction even if the reporting form was initially incomplete due to a lack of information and has amended the guidance to reflect this. However, CESR has decided against setting a timeframe within which the firm could be considered to have 'notified without delay'. The reason for this being that situations may differ considerably, making it impossible to be too prescriptive in this regard. For example, a transaction which takes place on 20 June might only become suspicious (without retroactive monitoring) on 20 July. A notification on 20 July therefore, would still, in this case, constitute timely notification.

Some doubts were expressed by market participants as to whether this duty to notify suspicious transactions applied on a retroactive basis and whether this required them to develop sophisticated surveillance systems to detect cases of market abuse. CESR therefore clarifies in its final guidance published today that firms are not required to retroactively review transactions and notes that it does not provide guidance prescribing how they discharge the obligation, except in relation to the process of reporting the transaction itself (which takes the shape of a standardised form to be used across Europe).

Finally, at the same time as issuing this guidance, CESR-Pol continues to work on developing the framework on supervisory and enforcement co-operation which will be equally important in ensuring that the Market Abuse Directive successfully produces its objectives.

