





2008

CESR ANNUAL REPORT

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Foreword by the Chairman



The financial crisis has dominated supervisors' attention during the past year. In the field of securities, some deficiencies have appeared, and the effective application of existing regulations remains an important focus of our attention. CESR has been strongly of the view that the success of the EU Single Market for Financial Services depends on the confidence of investors, effective investor protection and transparency for all market participants. As such, beyond the key advisory role played in some innovative legislative decisions (such as the revision of the UCITS Directive), CESR has focused particularly, during 2007 and in 2008, on ensuring effective and convergent implementation of securities legislation by encouraging greater discussion of day-to-day practices in expert groups before regulatory decisions are taken, and in mapping and undertaking peer reviews through the work of the Review Panel. These objectives and tools have not changed, even if our resolve has intensified.

That said, whilst the securities markets in general have continued throughout the crisis to function effectively,

some segments of the markets, especially the more opaque parts, have come under severe strain, which has called for closer follow-up to be undertaken, and if needed, for new regulatory initiatives to be considered. Co-ordination has continued to be intensified amongst the 3L3 Committees, and CESR has had the opportunity to greatly strengthen its work and close co-operation with the banking and insurance supervisors. In particular, the CESR work programme has been adapted to take into account urgent initiatives developed by the European institutions, but also taking into account the numerous wider international initiatives that have been launched. This year's annual report therefore helps to set out the multiplicity of domains covered within the CESR system of co-operation, and the actions taken in this context.

New work streams relating to the crisis have been started and some have even been completed (such as a review of the impact of Lehman's default), but less visible, the mandates of existing working groups have been adapted to take account of questions that came to CESR's attention as

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The success of the EU Single Market for Financial Services depends on the confidence of investors, effective investor protection and transparency for all market participants. As especially some of the opaque segments of the markets have come under severe strain during 2008, CESR will reflect on follow-up regulatory initiatives in these areas.

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part of crisis related developments. This has included renewed focus on fair value accounting, work on Madoff and short-selling to name a few.

The crisis has also triggered noteworthy institutional developments which will shape the future of CESR and its capacity to work significantly in the future. During 2008, efforts were already underway to see what could be done to increase the efficiency of the Committee within the Lamfalussy process. As such, 2008 saw a review of CESR's Charter and particularly the adoption of qualified majority voting to facilitate its decision making process. The crisis, however, has accelerated the need to review more radically the role of CESR and the other 3L3 Committees and to establish further how they fit within the institutional framework and the tools at the Committees' disposal. This important work will be continued in 2009. We are now discussing with the EU institutions the proposals contained in what is commonly referred to as the 'de Larosière Report' and we move to implement their decisions to ensure a more robust and coherent framework for European supervision that will serve to rebuild market confidence further. The latter will hopefully lead to a significant upgrading of CESR's functioning and allow it to develop more effective instruments to contribute to the creation of the integrated European securities market.

This year's annual report has been considerably remodelled, allowing for more clarity about the objectives and the instruments of CESR. The new presentation is aimed at giving better insight into the many work streams advanced by the Committee, their relationship to the objectives described and the progress made in each of the respective work streams. You will notice the breadth of work covered by the Committee's technical working

groups, composed of the representatives of the national supervisors. It is in these groups that the co-operation and co-ordination of regulatory activities of the 29 national supervisors is effectively achieved, through almost daily contacts amongst the Members' experts. The report also illustrates the open and continuous dialogue with the markets and their participants through CESR's consultation procedures and our desire to increase this dialogue with the representatives of retail investor associations whose resources are more limited, but whose interest and voice must be heard in our work. The CESR Charter rightly considers this active dialogue, with market participants of all types, one of the essential guarantees for contributing to the objective of 'better regulation', and CESR remains committed to its effective implementation.

I would like to express my thanks to the Chairs and members of the working groups and to the CESR Secretariat who have enabled CESR to pursue its activities in a balanced way, but also with great strength and speed. Following now seven years of CESR's existence, their work is the basis of CESR's image today. Finally, I would like to make a particular mention to the significant contribution of three Chairs who have now left CESR, Ingrid Bonde, Callum McCarthy and Michel Prada. These three Members contributed tirelessly to the work of CESR over the past years, both by leading expert groups, and by providing very wise counsel, which has ensured CESR has become and continues to be effective in its work.

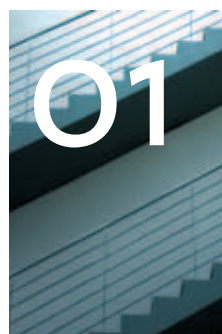
Eddy Wymeersch,
Chairman of CESR.



List of commonly used acronyms

A	All	Alternative Instrument Identifier	I	IA	Impact Assessment
	AMLTF	Anti-Money Laundering Task Force		IAASB	International Auditing and Assurance Standards Board
	AUM	Assets under Management		IAS	International Accounting Standards
	ARC	Accounting Regulatory Committee		IASB	International Accounting Standards Board
	AuRC	Auditing Regulatory Committee		IASCF	International Accounting Standards Foundation
B	BSC	Banking Supervisory Committee		IFRIC	International Financial Reporting Interpretations Committee
C	CAD	Capital Adequacy Directive		IFRS	International Financial Reporting Standards
	CCP	Central Counterparty Clearing		IOSCO	International Organization of Securities Commissions
	CEBS	Committee of European Banking Supervisors		IPO	Initial Public Offering
	CESAME	European Commission's Clearing and Settlement Advisory and Monitoring Expert Group		IRD	Instrument Reference Data
	CESR	Committee of European Securities Regulators		IT	Information Technology
	CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors		IWCFC	Interim Working Committee on Financial Conglomerates
	CDD	Customer Due Diligence	J	JCFC	Joint Committee on Financial Conglomerates
	CDS	Credit Default Swaps	K	KII/ KID	Key Investor Information/ Key Information Document
	CDO	Collateralised Debt Obligations	M	MAD	Market Abuse Directive
	CFTC	Commodity Futures Trading Commission		MPCP	Market Participants Consultative Panel
	Commission	European Commission		M&A	Mergers and Acquisitions
	CPSS	Committee on Payment and Settlement Systems		MiFID	Markets in Financial Instruments Directive
	CRA's	Credit Rating Agencies		MSCI-indices	Indices maintained by Morgan Stanley Capital International
	CRD	Capital Requirements Directive		MoU	Memorandum of Understanding
	CSD	Central Securities Depositories		MTF	Multilateral Trading Facility
E	ECB	European Central Bank	O	OAM	Officially Appointed National Mechanism
	ECOFIN	Economic and Financial Affairs Council		OFC	Non-cooperative Jurisdictions
	ECON	Economic and Monetary Affairs Committee of the European Parliament		OTC	Over-The-Counter
	EEA	European Economic Area	Q	Q&A	Questions and Answers
	EECS	European Enforcers' Co-ordination Sessions		QMV	Qualified Majority Voting
	EFC	Economic and Financial Committee	S	S&I Group	Surveillance & Intelligence Group
	EFCC	European Financial Conglomerates Committee		SEC	Securities and Exchange Commission
	EFRAG	European Financial Reporting Advisory Group		SRRI	Synthetic Risk-Reward Indicator
	ERGEG	European Regulators' Group for Energy and Gas	T	TD	Transparency Directive
	EU	European Union		TOD	Takeover Bids Directive
	ESC	European Securities Committee		TREM	Transaction Reporting Exchange Mechanism
	ESCB	European System of Central Banks	U	UCITS	Undertakings for Collective Investment in Transferable Securities (Directive)
	ECSDA	European Central Securities Depositories Association		UIG	Urgent Issues Group
	ESME	European Commission's European Securities Markets Expert Group		US	United States
F	FCD	Financial Conglomerates Directive	V	VAT	Value Added Tax
	FESE	Federation of European Stock Exchanges	X	XBRL	Extensible Business Reporting Language
	FASB	Financial Accounting Standards Board		3L3	Three Level 3 Committees
	FSC	Financial Services Committee			
	FSF	Financial Stability Forum			
	FST	Financial Stability Table			
G	GAAP	Generally Accepted Accounting Principles			

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01

Securities markets in 2008: trends & risk

01 Securities markets in 2008: trends and risks

The developments in financial markets in Europe and around the world reflected serious concerns of market participants about the evolution of the financial crisis and its impacts on the real economy. The Eurostoxx 50 index declined by 29% until mid-September 2008 and then, after the default of Lehman Brothers, declined by a further 15% until the end of the year. The fall in equity markets, coupled with an increase in investors' risk aversion, led to a transfer of funds in an amount previously unseen, away from asset classes that were perceived as risky, towards cash and money market funds. In conjunction with remarkable stock market losses, this has resulted in a dramatic 22% decline in the value of assets under management (AUM) in the European fund industry⁽¹⁾.

As Lehman Brothers was a key player in the market of prime brokerage, its collapse forced many hedge funds to deleverage. This contributed to financial difficulties in the hedge fund industry, which, in 2008, experienced its worst performance ever. The default of Lehman Brothers also adversely affected other markets in Europe, especially the corporate bond markets and the credit default swap market, where spreads had already been widening since the collapse of Bear Stearns in March 2008.

The lack of liquidity in capital markets led to a strong decline in the number and the total offering values of the initial public offerings (IPOs) in Europe. In contrast, for the private equity industry, 2008 was the second best fundraising year to date with only 2007 seeing more capital raised by the industry. One reason being that strategies such as venture and mezzanine capital gained considerable ground. Credit derivatives markets witnessed an increase in the number of unconfirmed trades and settlement problems.

Finally, following the implementation of the Markets in Financial Instruments Directive (MiFID) by EU Member States in 2007, a significant trend observed in the European equity markets in 2008 was a significant increase in the number of pan-European electronic trading platforms and a sharp increase in market share of some of these new electronic trading platforms. This development presented challenges for the European exchanges as it created considerable competitive pressure among them.

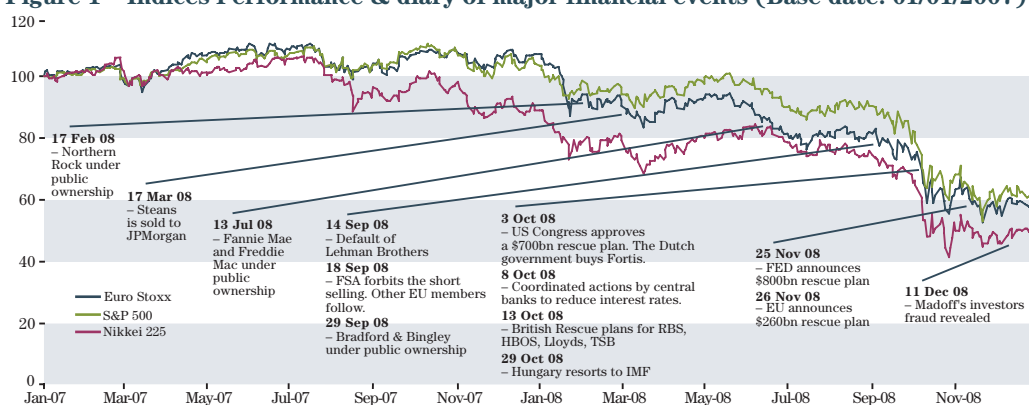
Developments in financial markets

Equity markets around the world experienced dramatic drops in prices and unprecedented volatility levels as a consequence of the aggravation of the financial crisis and fears about a deep recession. It is estimated that, in terms of market capitalisation, about US \$14 trillion was lost worldwide in 2008.

The sharp drop in equity prices, which materialised particularly in the last quarter of 2008, was accompanied by unusually high price volatility. During this period, market participants had to cope with several waves of dense news, e.g. failures of financial institutions, public rescue plans for firms in the financial sector, company profit warnings, industry restructuring plans and adverse macroeconomic data.

Equity markets around the world experienced dramatic drops in prices and unprecedented volatility levels.

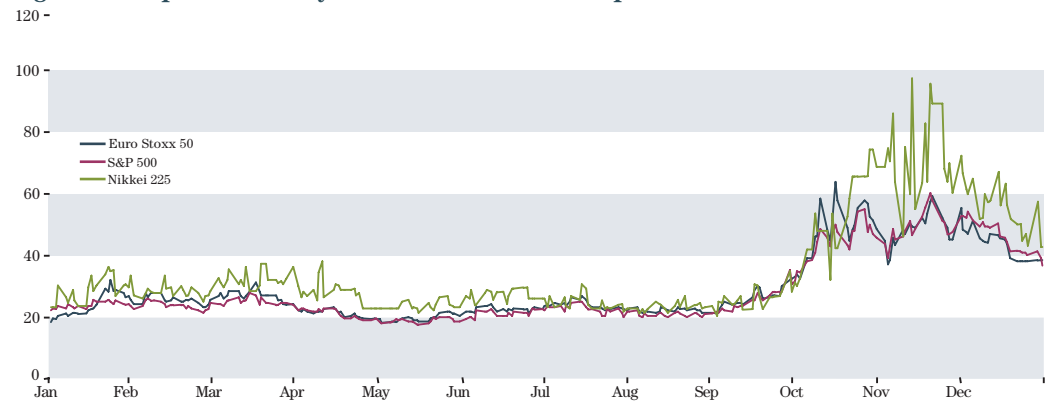
Figure 1 – Indices Performance & diary of major financial events (Base date: 01/01/2007)



Source: Transaction Auditing Group.

(1) Source: <http://www.efama.org>, Quarterly statistical release Feb 09, No 36.

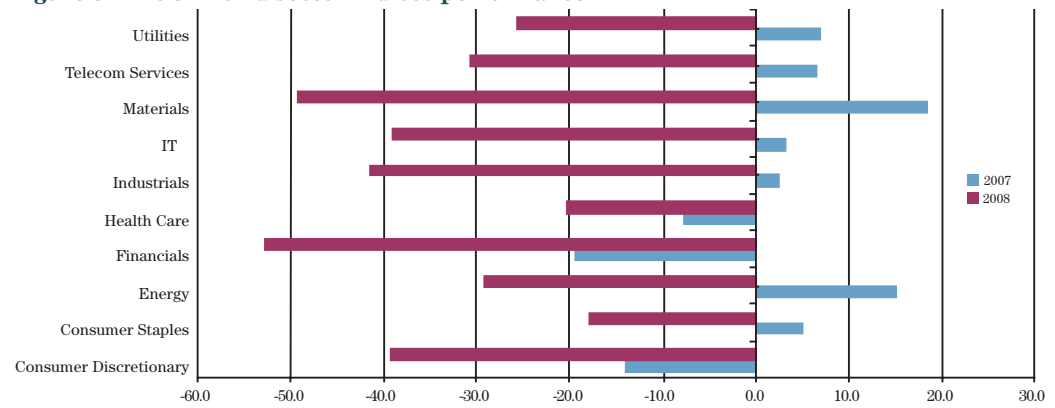
Figure 2 – Implied Volatility of 3 Month Index Call Options in 2008



Source: Bloomberg.

Substantial price drops took place in all sectors. Price decreases were particularly important in the financial sector, which lost more than half of its value between the end of 2007 and November 2008. Pro-cyclical sectors, like materials, industrials, IT or consumer discretionary, experienced very high losses too, of around 40% with the bulk of these price losses accumulated between September and the end of November 2008.

Figure 3 – MSCI world sector indices performance



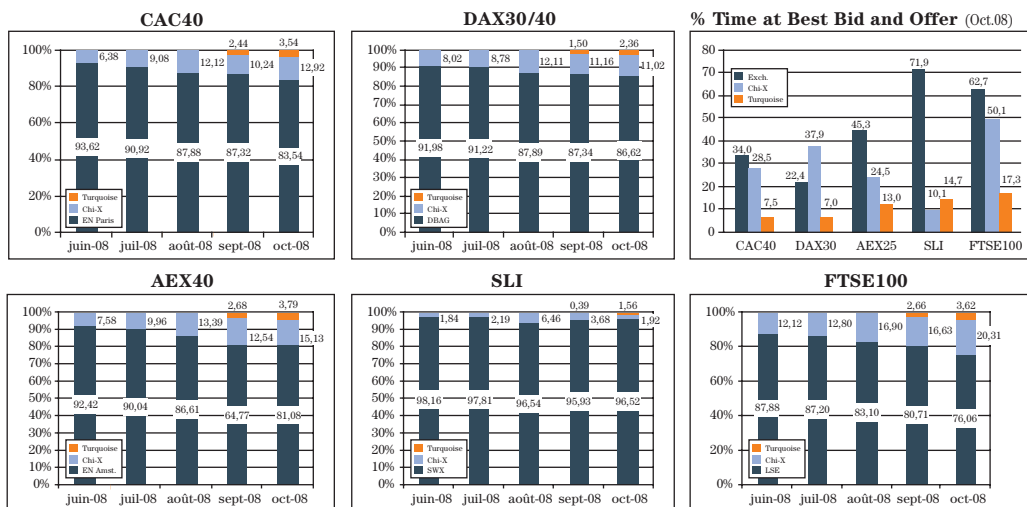
Source: Datastream.

Following the implementation of the MiFID by Member States of the European Union (EU) last year, an important trend observed in the European equity markets in 2008 was the launch of five new pan-European electronic trading platforms, which increased the total number of such platforms to nine⁽²⁾, with a sharp increase in market shares of some of these new platforms, particularly those of Chi-X and Turquoise. This evolution reflects the strong competitive pressure on the main European exchanges created by the Directive. Another challenge to the European stock exchanges was the increase of ‘dark pools’ of liquidity, i.e. electronic crossing networks that provide liquidity that is not displayed on order books, and which is based on the pre-trade transparency waivers provided by MiFID. This liquidity is mainly provided to institutional investors like hedge funds and pension funds who want to trade large orders anonymously and electronically. Official statistical data for the activity of these electronic trading facilities does not exist. Estimations indicate that 10 to 20% of U.S. equity trades could have taken place in dark pools during 2008⁽³⁾.

(2) The new pan-European electronic trading platforms are: Chi-X Europe, Euro-Millennium, Turquoise, Nasdaq OMX and Bats Europe. The existing ones are: Project SmartPool, Liquidnet Europe, SWX Europe and ITG Posit Europe.

(3) Source: <http://www.reuters.com/article/rbssInvestmentServices/idUSHKGC32138320090302>; For Europe, see: Financial Times of 21 April 2009.

Figure 4 – Market share for the electronic trading of European blue-chip index stocks

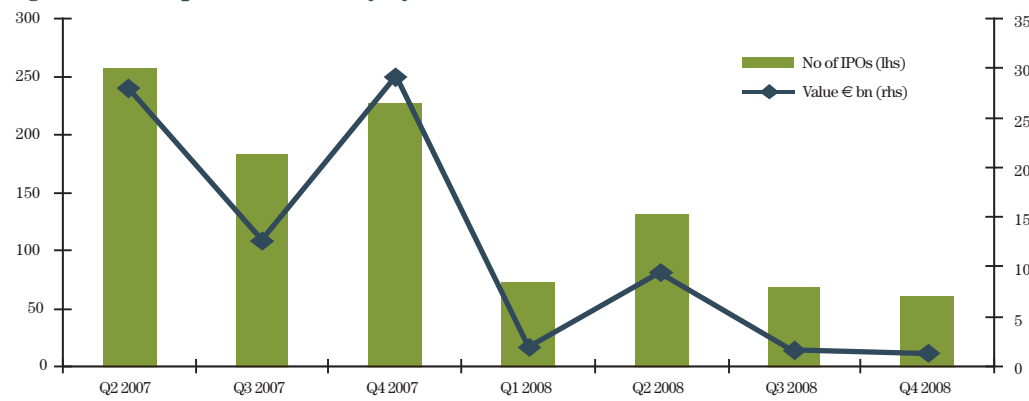


Source: Transaction Auditing Group.

Initial Public Offerings: 2008 was a highly disappointing year for new listings

The bearish stock market has seen a sharp reduction in IPO activity in Europe. 2008 was a highly disappointing year for new listings, reflecting the worldwide liquidity shortage in capital markets. In 2008, Europe for the first time ranked third, behind the US and China. There were 334 IPOs on European exchanges during the year, which represents a decrease of 59% compared with 813 IPOs in 2007. The total offering value of IPOs on European markets in 2008 summed up to €14.2 billion, which, compared to the €80.4 billion raised in 2007, shows a huge reduction in money raised. The fall in total offering value in 2008 was due to the dramatic fall in the number of IPOs and in particular in the number of large transactions.

Figure 5 – European IPO activity by Number and Value



Source: PWC.

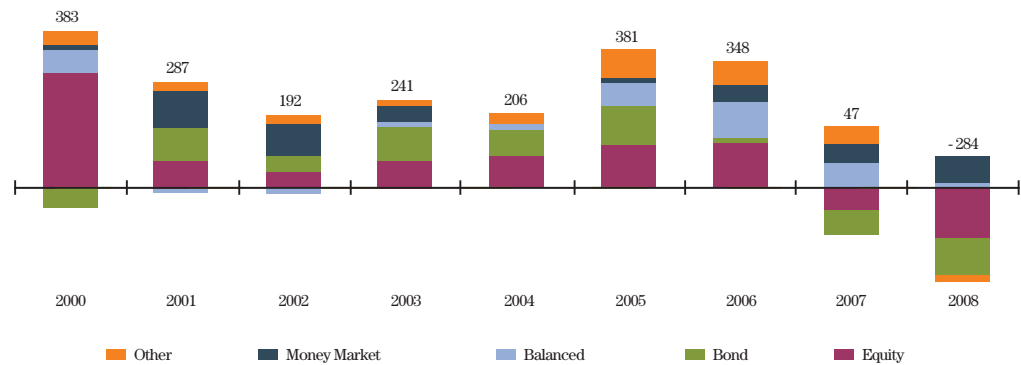
In 2008, the asset management industry was affected by three key factors: first, uncertainty about the future evolution of the financial crisis, which led investors to re-allocate their asset portfolios. Secondly, the strong competition from banks in search for liquidity continued to exert its adverse effect on the asset management industry, spurring a substitution from investment funds to bank deposits and, finally the ‘Madoff case’ diminished the confidence of investors in the industry, particularly once the extent of the fraud became known, e.g. as the liabilities of Bernard Madoff Investment Securities LLC appear to correspond to at least €38 billion⁽⁴⁾. During 2008, Undertakings for Collective Investments in Transferable Securities (UCITS) recorded total net outflows of €284 billion⁽⁵⁾, almost half of which in the fourth quarter of 2008 – Europe’s worst sell-off experience on record.

With a total of €174 billion of net outflows, bond funds suffered the most, followed by equity and balanced funds. Money market funds were the only fund category that recorded net inflows of €69 billion, despite the bailouts undertaken by European governments’ in the banking sector through guarantees on deposit accounts, which increased redemptions in the money market funds in the second and last quarter of 2008.

(4) That is the equivalent to US \$50 billion; i.e. the alleged amount of liabilities of Madoff’s ponzi scheme including alleged profits of 65 billion.
 (5) This amount corresponds to €335 billion if the net inflows in special funds reserved to institutional investors (€51 billion) are not taken into account.

The asset management industry experienced a dramatic 22% decline in the value of its assets under management.

Figure 6 – Recent Trends in Net Inflows by Fund Type (EUR billions)



Source: EFAMA.

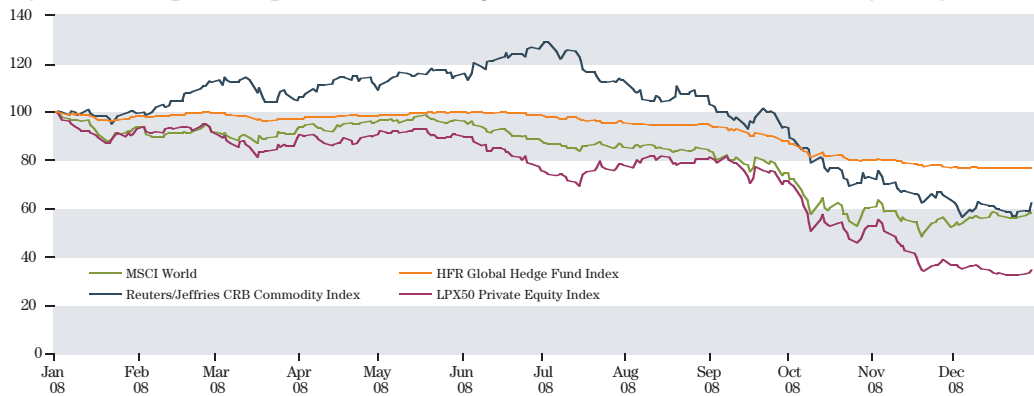
With the exception of Norway, Romania and Sweden which recorded positive inflows, in all other Member States the value of AUM continued to shrink. More specifically, Luxembourg-domiciled bond funds were the most severely hit by the financial crisis and the revelation of Madoff's fraud, followed by funds in Italy and Spain.

The hedge fund industry experienced its worst performance ever in 2008

The hedge fund industry lost more money in 2008 than in any year on record. Lehman Brothers was a prime broker for many hedge funds, and its collapse in September 2008 forced many of these funds to deleverage, which in turn had negative feedback effects on stock markets. A further setback for the hedge fund industry was the Madoff fraud. Overall, the average fund exhibited returns of -18.3% last year, with the average fund of funds down 20% after fees⁽⁶⁾. In addition, hedge funds' assets under management lost about one-third of their value in 2008, falling to US \$1.8 trillion, while liquidations hit a record high as poor performance and funding pressure forced almost 15% of the hedge fund industry out of business⁽⁷⁾.

The emerging markets' index, the global hedge fund, the private equity and the commodity indices faced decreases during the second half of 2008, but with performance across the sectors stabilising in December 2008.

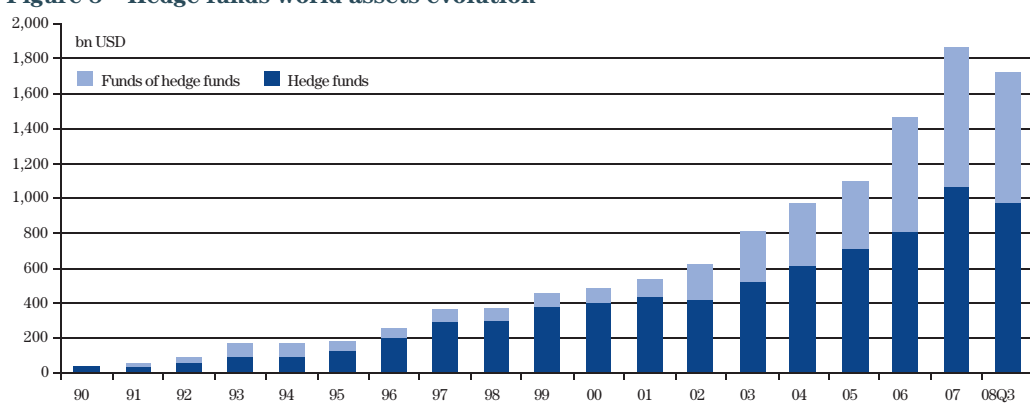
Figure 7 – Comparative performance of major asset class indices since the beginning of 2008



Source: Bloomberg.

(6) Source: Hedge Fund Research.

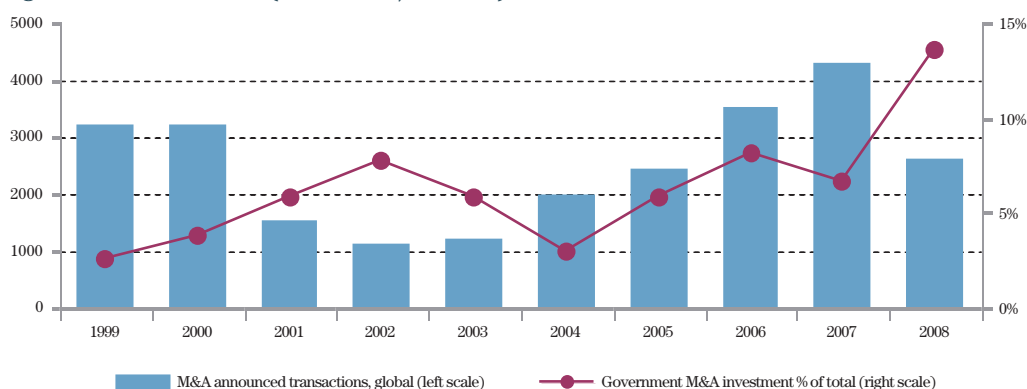
(7) Sources: <http://www.independent.co.uk/news/business/news/hedge-funds-to-see-further-falls-1638536.html> and <http://www.ft.com>.

Figure 8 – Hedge funds world assets evolution

Source: Hedge Fund Research.

The volume of worldwide mergers and acquisitions showed a serious decline in 2008

Due to the historically high financing costs after five consecutive years of increasing activity, the volume of worldwide mergers and acquisitions (M&A) showed a serious decline in 2008. The global volume in M&A amounted to US \$2.9 trillion in announced deals during 2008, meaning a decrease of 29.6% from 2007 totals and being the lowest level for annual deal activity since 2005. Highlighting the difficult deal making environment, the number of withdrawn M&A transactions reached an all-time high in 2008.

Figure 9 – Global M&A (1999-2008, USD bn)

Source: Bloomberg.

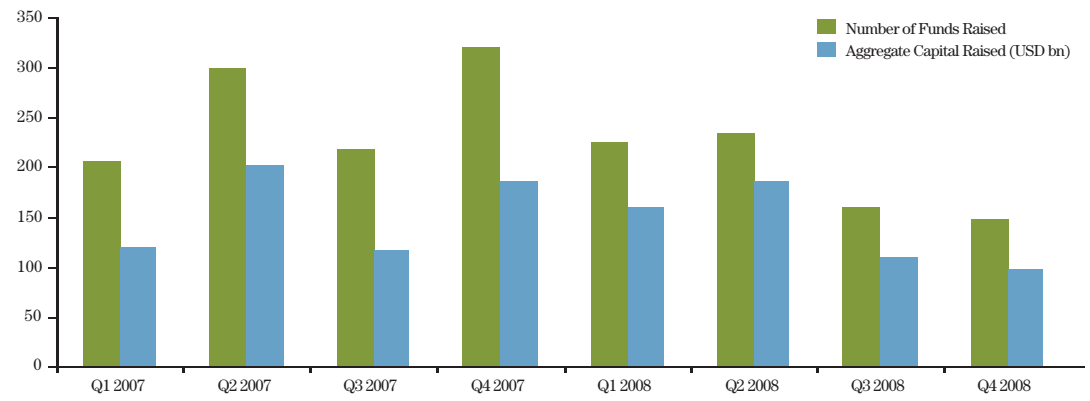
Cross-border deal activity amounted to US \$1.1 trillion during 2008. This corresponds to 38% of worldwide mergers, as opposed to 47% in 2007, and represents a 38.5% decline in deal volume with respect to the previous year. By M&A target industry, the financial sector was the most active with 23% of global M&A deals, followed by energy and power with 15% and consumer staples with 12% of worldwide merger activity during 2008.

As a consequence of the increasing government investments in major financial institutions, the overall investments by government entities amounted to US \$396 billion during 2008, representing 13.5% of worldwide M&A deal volume.

Private equity fundraising remained remarkably strong especially during the first three quarters of 2008

2008 was the second highest fundraising year for private equity to date with only 2007 seeing more capital raised by the industry. A total of 768 private equity funds achieved a final close during 2008, raising aggregate commitments of US \$553.8 billion. One reason for this positive outcome is the attention given by private equity investors to strategies such as venture and mezzanine, which over-compensated the low activity of the big buyout funds.

Figure 10 – Quarterly Global Fundraising Q1 2007-Q4 2008



Source: Preqin Ltd.

Although fund raising began strongly in the first half of 2008, figures from the last half of the year indicated a slowdown. In addition, the big deals have vanished; for example in the fourth quarter of 2008, the average buy-out size was US \$78.8 million, down from US \$280.8 million in the final quarter of 2007 and US \$726.3 million in the last three months of 2006⁽⁸⁾.

In the European bond markets, corporate and government bond spreads continue to widen throughout 2008

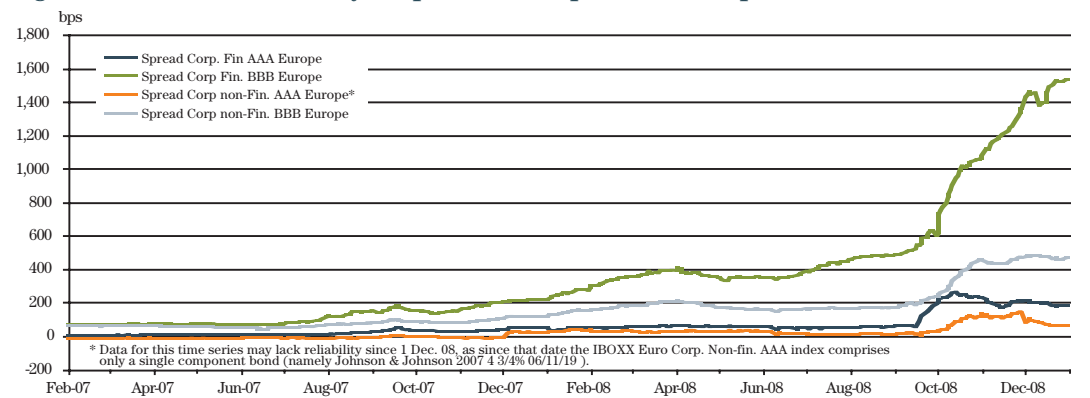
Over the year 2008, corporate bond spreads in Europe continued widening. This movement already started after the collapse of Bear Stearns in March 2008 and was further enhanced by the collapse of Lehman Brothers in September. Prices of all types of corporate papers fell dramatically mainly because demand collapsed and selling pressure from mutual funds and pension funds badly hurt the market.

Although spreads stabilised in most sectors from December 2008 onwards, this was not the case for the financial sector, indicating that investors’ perception of risk remained high despite the EU governments’ recapitalisation plans and other public policy measures implemented to support the financial system.

Investor risk sensitivity, subdued global investor demand, prospects for a significant slowdown in economic growth and uncertain pricing contributed to continued depressed market conditions and sharply lower issuance volumes in the EU high yield bond and leveraged loan markets. In the European high yield bond market, the primary market was virtually closed in the fourth quarter of 2008 with high yield bond and leveraged credit issuance reaching only €73.7 billion for the full year 2008 compared to €240.3 billion in 2007.

In the European government bond market, the effect of the crisis on the budgets of countries such as Greece, Ireland, Italy, Spain and Portugal, led spreads to rise strongly. For instance, spreads on 10-year Greek bonds exceeded 200 basis points over German Bunds in December 2008, compared with 40 basis points in January 2008.

Figure 11 – IBOXX vs Treasury Corporate bond spreads in Europe

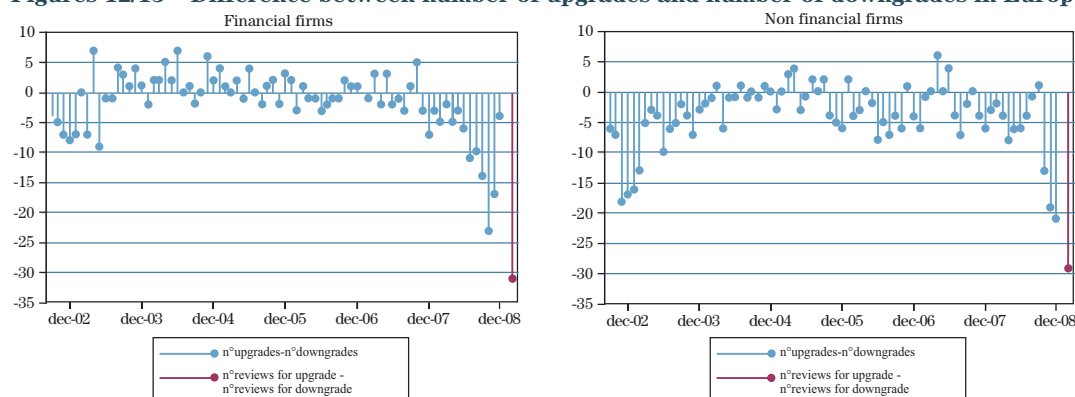


Source: Markit.

(8) Source: Dealogic.

Finally, the dramatic wave of downgrading in all types of listed companies in Europe, which started in December 2007, continued during the course of 2008, especially for financial institutions, where the number of downgrades exceeded by far the number of upgrades.

Figures 12/13 – Difference between number of upgrades and number of downgrades in Europe

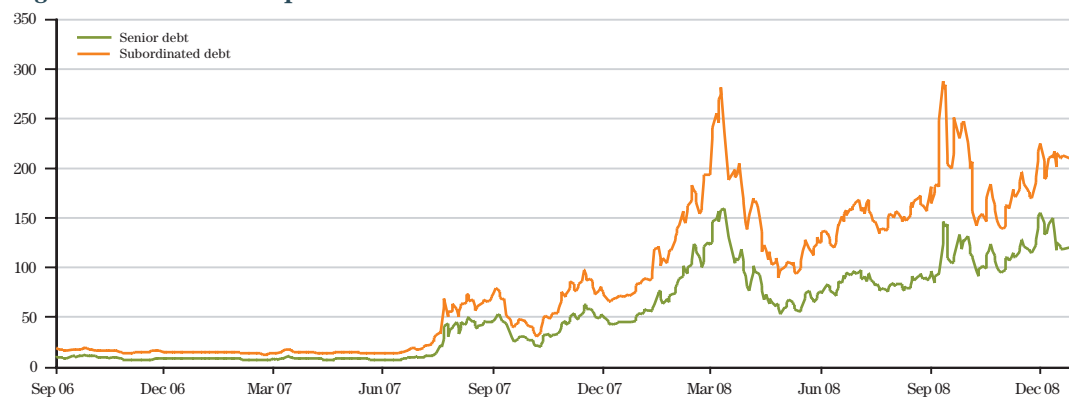


Source: Moody's, own calculations

In the credit derivatives markets, the credit default swap spreads reached a peak twice in 2008

The cost of insuring against counterparty default, as represented by Credit Default Swap (CDS) spreads for the European financial companies, has increased very rapidly since the beginning of the credit crisis in July 2007. When Bear Stearns faced financial problems in March 2008, the CDS spreads reached a peak over several months; the collapse of Lehman Brothers in September 2008 then led the spreads to new highs.

Figure 14 – iTraxx Europe Financials



Source: Markit.

An ongoing problem in the credit derivatives markets in 2008 was the backlog in trade processing, which has accompanied the rapid growth in the CDS market, already lasting for several years.

Before the breakout of the subprime crisis in 2008, outstanding confirmations in CDS markets have been reduced significantly; but as a result of the market turmoil, backlogs rose again in June 2008. A report by Markit in June 2008 showed that there were 59.430 outstanding confirmations in comparison to 32.865 in December 2007. This was due to the increase in CDS transaction volumes and constraints in human resources in connection with the coverage of the subprime crisis.

02

CESR 2008:

objectives, priorities
& key achievements

02 CESR's objectives, priorities and key achievements in 2008

2.1 CESR's objectives

Sound and effective regulation of securities markets is important for the growth, integrity and efficiency of Europe's securities markets. Furthermore, effective regulation is a key factor in securing and maintaining confidence amongst market participants. In order to foster these conditions throughout Europe, CESR, in its role as a network of European securities regulators, improves the co-ordination amongst its Members, provides technical advice to the European Commission (Commission) and seeks to ensure that EU securities legislation is implemented more consistently across Member States.

The ECOFIN conclusions of 14 May 2008 committed CESR to increasing accountability regarding reporting on its work programme. The annual report is therefore a critical tool in ensuring this accountability. Furthermore, CESR took this opportunity to consider further how it could provide greater strategic clarity on the work it was undertaking and decided, both on this basis, and in response to requests by market participants, to define further the purpose of individual work streams in relation to what could be considered as core high-level objectives, which underpin the main elements, that define CESR's work. To achieve this, CESR began by defining five objectives to which CESR's work can be said to contribute, namely, achieving:

- Market integrity, transparency and efficiency;
- Convergence;
- Investor protection;
- Transparency of implementation; and
- Technical advice and reporting to EU institutions, implementation of EU roadmaps.

It should be noted that some of CESR's objectives are interlinked, or actions taken to achieve one objective will also serve in achieving one of the other key objectives identified. For example, delivering market integrity, transparency and efficiency should also promote investor protection; equally, delivering convergence amongst supervisors should also result in increased investor protection by ensuring that retail investors can be sure of a comparative level of protection wherever the provider is based in Europe. Furthermore, one objective in particular, that of 'market integrity, transparency and efficiency' is grouped together as each element is particularly tightly linked with the others. Therefore, CESR has tried for the first time to present its work in achieving these objectives by grouping the work streams under chapters on these objectives, rather than focusing its reporting on expert or operational groups. Nevertheless, in order to provide the reader with the facility to view the information by expert group as well, we have included in this section a presentation by the chairs of the major groups and an index of the work streams by expert group. In addition, we have sought to identify the key objectives. As explained, each work stream may achieve more than one of CESR objectives and where this is the case, the report highlights the other objectives to which the work streams contributes.

A short description of the objectives is also included below:

Market integrity, transparency and efficiency

Securities regulators seek to secure the orderly functioning of financial markets by ensuring that markets function in a fair, efficient and transparent manner. Regulation of markets achieves this by looking at issues, such as the integrity of price formation; the clarity of information on the product being sold and its functioning; the prevention of manipulative behaviour (which might distort the price); ensuring that appropriate laws for customer protection exist, are implemented and enforced effectively. CESR fosters the integrity, transparency and efficiency of EU financial markets by improving the co-ordination amongst EU regulators through guidance, Question and Answers (Q&A), and where appropriate, through publishing market data and regulatory decisions taken by CESR Members to provide clarity to market participants.

Convergence

By seeking to converge day-to-day implementation of Community legislation, CESR ensures a more consistent implementation of securities legislation across the Member States. Efforts to achieve this also include improving co-ordination among securities regulators by developing effective operational network mechanisms to enhance day-to-day supervision and effective enforcement, enabling the EU Single Market for Financial Services to be fully established. The convergent application of EU legislation, which is one of CESR's main objectives, will, in almost all cases, contribute to the achievement of the other CESR objectives identified, as the convergent application of EU legislation ensures that the principles of regulation, such as market integrity or consumer protection, are uniformly applied across Europe.

Investor protection

Work towards achieving this objective takes many forms and includes ensuring that retail investors are only sold products from licensed or authorised service providers permitted to offer investment services. Furthermore, seeking to ensure the effective disclosure of information to investors is key, as this helps investors to better assess the potential risks and rewards of their investments. Much of the work described to ensure market integrity and efficiency also seeks to protect investors by ensuring they are protected from misleading, manipulative or fraudulent practices, including insider trading, or the misuse of client assets, and that best execution requirements are honoured. In addition to ensuring the interest of investors is effectively reflected in the legal frameworks, which CESR attempts to do through its technical advice to the Commission, CESR serves investor protection throughout Europe by disclosing cross-border information on national authorisation, complaint and compensation schemes, as well as contact information on national competent authorities. Circulating information on non-authorised investment providers through the CESR-Pol network for inclusion on national websites by way of alerting retail investors can also be considered as part of cross-border disclosure benefiting the investor.

Transparency of implementation

Transparency of implementation refers to the work done by CESR to either explain where differences in implementing EU Directives occur, through the mapping exercises carried out by its Review Panel or, for example, in assessing how CESR Members have implemented derogations where the Directive or Regulation have allowed differences to exist. In addition, CESR's work to harmonise views amongst CESR Members and market participants brings clarity on implementation, both of which is done through publishing Level 3 guidance and Q&As. By addressing the differences and areas of convergence that occur in the day-to-day implementation of EU law nationally, transparency of implementation also serves in achieving market efficiency, transparency and encourages greater convergence in the future by highlighting the areas where further work should be done.

Technical advice and reporting to EU institutions, implementation of EU roadmaps

This objective, that will be referred to (in short) as 'advice and reporting to EU institutions', refers to CESR's role to act as an advisory group to assist the Commission, in its preparation of draft implementing measures of EU framework Directives in the field of securities. Furthermore, as requested by the ECOFIN conclusions of May 2008, CESR has committed to reporting to the European institutions on how it is undertaking its work and in particular, on how it is implementing the various roadmaps established at a European level.

2.2 Key achievements and priorities in 2008

2008: A timeline of key dates and policy actions by CESR

Date	Events	CESR policy action
January 2008	<ul style="list-style-type: none"> – Stock markets worldwide suffer major falls. – Financial institutions report losses and profit falls. – Bank of America buys struggling Countrywide. 	<ul style="list-style-type: none"> – CESR starts reviewing its Standard No. 2 on financial information.
February 2008	<ul style="list-style-type: none"> – Northern Rock is taken into state ownership by the Treasury of the UK. 	<ul style="list-style-type: none"> – CESR consults on the role of CRAs in structured finance. – CESR submits a report to EU institutions on the trends and risks in securities markets. – CESR publishes advice on KID disclosure for UCITS.
March 2008	<ul style="list-style-type: none"> – Bear Stearns is bailed out with emergency funding from JP Morgan Chase and the US Fed avoiding bankruptcy. – Financial Stability Forum (FSF) recommends actions to enhance market and institutional resilience. 	<ul style="list-style-type: none"> – CESR publishes advice on equivalence of Chinese, Japanese and US GAAPs. – CESR publishes a consumer guide to MiFID. – CESR provides assessment of financial turmoil to the EFC-FST.
April 2008	<ul style="list-style-type: none"> – US and EU banks report big quarterly losses, job cuts follow. – Commission issues non-paper on the Lamfalussy process and the role of the 3L3 Committees. 	<ul style="list-style-type: none"> – CESR's action plan to strengthen market confidence following the FSF recommendations and ECOFIN conclusions. – CESR starts mapping supervisory powers, practices and sanctioning regimes under MiFID.
May 2008	<ul style="list-style-type: none"> – US Fed and the ECB providing extra liquidity to the banking system. – Commission consults on new decision establishing the Committees of Supervisors. – ECOFIN issues its 'financial stability' conclusions. 	<ul style="list-style-type: none"> – CESR issues second report on CRA's compliance with IOSCO Code. – CESR-CEBS start to review the commodities business by issuing a consultation paper.
June 2008		<ul style="list-style-type: none"> – CESR publishes advice on equivalence of Canadian and South Korean GAAPs.
July 2008	<ul style="list-style-type: none"> – US Fed provides/ increases credit lines to Fannie Mae and Freddie Mac. – Commission's consultation on policy proposals regarding future regulating of CRAs. 	<ul style="list-style-type: none"> – CESR meets with the US SEC to discuss issues such as IFRS, G20 follow-up, fair value accounting, XBRL etc.
August - September 2008	<ul style="list-style-type: none"> – Federal takeover of Fannie Mae and Freddie Mac in US. – Lehman Brothers Holding Inc. files bankruptcy protection in US. – US Fed lending \$ 85 billion to AIG. – US SEC bans short-selling in stocks of all companies in financial sector. – US authorities close Washington Mutual with JP Morgan Chase acquiring banking operations. – Icelandic banks being nationalised by Financial Supervisor. 	<ul style="list-style-type: none"> – Several conference calls and two physical meetings at the level of CESR Members. – CESR sets up a task force on short-selling to co-ordinate the measures taken by CESR Members throughout Europe. – CESR sets up a task force on the impact of the Lehman default. – CESR responds to Commission consultation on proposed CRA regulation. – CESR submits report to EU institutions on the trends and risks in securities markets. – CESR starts mapping supervisory powers and sanctioning regimes under the TD.
October 2008	<ul style="list-style-type: none"> – Central banks in the US, UK, China, Canada, Sweden Switzerland and the ECB cut rates in co-ordinated effort to aid world economy. – EU summit on financial crisis in Paris. – Declaration on a concerted European action plan of the euro zone countries. – US start Troubled Asset Relief Program (TARP). – Commission issues financial crisis recovery framework. 	<ul style="list-style-type: none"> – CESR publishes statement on fair value accounting in illiquid markets. – Joint 3L3 statement regarding the latest developments in accounting (fair value). – CESR and ERGEG publish their advice on market abuse issues related to energy trading.
November 2008	<ul style="list-style-type: none"> – G 20 meets in Washington DC announcing five policy principles to face the crisis. – Commission consults on control structures in audit firms and their impacts on audit market. – Commission issues European recovery plan. 	<ul style="list-style-type: none"> – CESR issues a call for evidence on MiFID's impact on secondary markets functioning. – CESR meets with the US SEC to discuss issues such as IFRS, G20 follow-up, fair value accounting, etc. – CESR publishes advice on equivalence of Indian GAAP.
December 2008	<ul style="list-style-type: none"> – Revelation of the fraud of Bernhard Madoff Investment Securities LLC. – Commission consults on hedge funds. 	<ul style="list-style-type: none"> – CESR sets up of task force on the Madoff fraud to co-ordinate efforts of CESR Members. – CESR consults on non-equity markets transparency. – 3L3 Committees publish guidelines on cross-border acquisitions.

ECOFIN conclusions and roadmaps driving CESR's 2008 agenda

The Lamfalussy structure of four levels of financial legislation - Level 1 (EU Directives or Regulations), Level 2 (binding implementing legislation), Level 3 (consistent and equivalent implementation through the use of 'Level 3 measures', such as standards, guidelines, recommendations and peer reviews) and Level 4 (the enforcement of Community rules mainly by the Commission) is at the basis of CESR's foundation as one of the three Level 3 (3L3) Committees⁽⁹⁾. The Lamfalussy structure had been adopted in 2001 to accelerate the process of EU legislation in the fields of securities, banking and insurance with the successive creation of the 3L3 Committees; CESR and the Committees of European Banking (CEBS) and Insurance and Occupational Pensions Supervisors (CEIOPS).

The Lamfalussy review

In the sixth year of the functioning of the structure, the Commission conducted a review of the Lamfalussy structure, which resulted in publishing the so-called 'Lamfalussy ECOFIN conclusions' of EU Finance Ministers. The work undertaken in 2008 by CESR was therefore to a large extent influenced by these conclusions which highlighted the need to strengthen the role of the 3L3 Committees, their cross-sector co-operation and to review the Commission's mandates setting up the 3L3 Committees.

The conclusions of the Lamfalussy review introduced changes both to the working methods and to the work plan of CESR: the working methods accordingly now request the 3L3 Committees to transmit their draft work programmes for the coming year to the Commission, the Council and the Parliament to allow them to express views on the key priorities and give policy advice on supervisory convergence and co-operation. The conclusions also request the Committees to introduce qualified majority voting (QMV) into their charters.

The turmoil roadmap

Earlier in 2007, the ECOFIN Council had already agreed on another roadmap that responded to the turbulences in financial markets. This so-called 'turmoil roadmap' set out in some detail the work expected from CESR, the other 3L3 Committees, and from the Commission, regarding the further developments of the financial crisis. The roadmap set out key priorities at European level for enhancing financial stability considering policy responses to the financial turmoil, strengthening the financial stability framework and co-operating at global level.

Financial stability roadmap

On 9 October 2007, the EU Council finally agreed on conclusions enhancing the arrangements for financial stability in the EU, setting out common principles for strengthening financial stability and on a further roadmap which includes the extension of the EU-wide Memorandum of Understanding of 2005 to cover all three financial sectors.

These three roadmaps – and in particular the Lamfalussy and the turmoil roadmaps – requested the 3L3 Committees, CESR, CEBS and CEIOPS, to undertake a number of work streams during 2008, and therefore influenced their respective and joint 3L3 work programmes. This covered introducing new work streams related to, for instance, differences in supervisory powers, delegation, asset valuation standards (the application of fair value), risk management standards, credit rating agencies and non-regulated debt markets.

In addition, the Lamfalussy conclusions invited the Commission to clarify the role of the 3L3 Committees and consider different options to strengthen their way of working. In 2008, this process has continued with the development of the new Commission decisions for the 3L3 Committees and the setting up, in October 2008, of the Commission High-Level Expert Group on Financial Supervision in the EU, led by Jacques de Larosière.

2.3 CESR groups, task forces, networks and panels

CESR acts as a network of European securities regulators on a great variety of issues regarding securities legislation and its implementation throughout the European Union. CESR conducts its work through different working groups, task forces, panels and networks, which draw together senior experts from CESR's Member authorities. The different CESR groups are established both permanently or limited in time, depending on the issues handled and the mandate given. The technical work carried out by CESR groups is aimed at achieving CESR's overall objectives, and the work of one group might also deliver to different objectives of other groups. The following presentation of CESR's groups, task forces, panels and networks therefore shows which key and other objectives each of the groups serves.

(9) This structure was proposed in the Lamfalussy report published in February 2001.

Review Panel

“ In 2008, CESR’s Review Panel started to map the implementation in practice of the key pillars of Europe’s Financial Services Directives, such as the Transparency Directive and MiFID. Given the Directives are still relatively recent, the panel’s first task was to establish how this implementation looked in the various Member States. From May to June 2008, the Review Panel conducted a mapping exercise on how Member States had transposed the Transparency Directive, publishing the results in October 2008. Throughout 2008, the Review Panel progressed in compiling the data for further analysis on differences in supervisory powers and objectives between national supervisors with regard to MiFID. CESR published in February 2008, a review on the implementation of MiFID’s supervisory powers and practices. The review also captured information on administrative and criminal sanctioning regimes across Europe under MiFID. This work can therefore be seen as another key contribution in identifying and helping CESR to focus on areas where further convergence still has to take place. A further area, in which the Review Panel also served in achieving transparency of implementation in 2008, is the re-assessment and review of its Standards No.1 and 2 on financial information, which define standards for convergence in the enforcement of financial information. Our work to complete this picture will continue into 2009, however, we will also move into a new phase of peer review which will provide a further and important impetus for convergence.” *

Division of the Review Panel’s work

Review Panel’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Mapping of Transparency Directive’s implementations	3.2	52	Transparency of implementations	Convergence, Advice and reporting to EU institutions
Mapping of MiFID’s implementations	3.2	51	Transparency of implementations	Convergence, Advice and reporting to EU institutions
Review of CESR’s standards on financial information	3.2	52	Transparency of implementations	Convergence
Review of CESR’s guidelines to simplify the notification of UCITS	3.2	53	Transparency of implementations	Convergence

Background on the Review Panel’s work

CESR established its peer pressure group, the Review Panel, in order to contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective co-operation between national supervisory authorities, carrying out peer reviews and promoting best practice. The key task of the Review Panel is to review the day-to-day implementation of EU legislation, CESR standards and guidelines into national rules by CESR Members. The panel reviews the overall process of implementation, provides common understanding and expresses views on specific problems in the implementation process encountered by individual Members and uses reviews, mapping exercises and self-assessments to develop its findings. It then exercises peer pressure by reviews which are carried out by fellow Members on the implementation by setting up benchmarks that help evaluating Members’ compliance with Level 3 measures. In certain circumstances, the Review Panel establishes a special group to address issues of a technical nature – currently there are sub-groups on mapping the implementation of the Markets in Financial Instruments Directive (MiFID), the Transparency Directive (TD) and others that work on reviewing CESR’s Standards No.1 and 2.



* **Carlos Tavares**,
Chair of the Portuguese
Comissão do Mercado de
Valores Mobiliários
(CMVM), Vice-Chair of
CESR and Chair of the
Review Panel.

Objectives the Review Panel serves

Transparency of implementation

Convergence

Market transparency

Investor protection

Advice and reporting
to EU institutions



* **Kurt Pribil**,
Chief Executive Officer of
the Austrian
Finanzmarktaufsicht (FMA)
and Chairman of CESR-Pol.

CESR-Pol

“ In 2008, CESR-Pol dealt with a wide spectrum of issues. The key ones, of course, directly linked to the financial crisis: CESR-Pol set up a task force on short-selling, facing the need to further analyse and further co-ordinate the actions taken by CESR Members to secure efficient and upright functioning of markets. Publishing, continuously updating and co-ordinating the measures taken by CESR Members on short-selling served in achieving market integrity, transparency and efficiency as well as ensuring the confidence of investors. Much of CESR-Pol's work in 2008 was aimed at higher investor protection, convergence and increasing market integrity by co-ordination amongst CESR Members, for example, dealing with the Madoff fraud and co-operating within special task forces or urgent issues groups that had been set up during 2008 whenever necessary.” *

Objectives CESR-Pol serves

Market integrity
Convergence
Investor protection
Market efficiency

Division of CESR-Pol's work

CESR-Pol's 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Surveillance and intelligence issues	3.1	35	Market integrity	Convergence; Investor protection
Urgent issues groups	3.1	34	Market integrity	Convergence; Investor protection
Common application of the Market Abuse Directive	3.3	56	Convergence	Market efficiency, Investor protection
Non-cooperative jurisdictions and contacts with IOSCO	3.1	35	Market integrity	Market efficiency, Investor protection
Task force on short-selling	3.1	36	Market integrity	Convergence; Investor protection
Task force on Madoff fraud	3.1	34	Market integrity	Convergence; Investor protection

Background on CESR-Pol

Effective enforcement of securities laws is a key element in CESR's delivery of its market integrity objective and its ability to protect investors. The purpose of CESR-Pol is to provide a forum to bring together senior enforcement officials from each CESR Member to develop policy options relating to co-operation and enforcement issues. CESR-Pol is a permanent operational group with a strong focus on facilitating the effective, efficient and proactive sharing of information on specific cases, in order to enhance co-operation on, and the co-ordination of, surveillance and enforcement activities between CESR Members. CESR-Pol's key objective is to make information flow across borders between CESR Members as rapidly as it would between departments within an authority and, by so doing, to enhance the integrity, the fairness and necessary protections to Europe's markets as a whole. CESR-Pol is mandated to promote active co-operation and to ensure the consistent and effective application of key EU Directives, particularly of the Market Abuse Directive (MAD). As the work of CESR-Pol is becoming more operational in nature, the group established a permanent sub-group, the surveillance and intelligence group (S&I group). When necessary, CESR-Pol forms urgent issues groups (UIG) to co-ordinate cross-border investigations.

CESR-Fin

“ CESR-Fin’s main priority in 2008 was to contribute to the consistent application and enforcement of accounting standards which is a key lynchpin in achieving market integrity. Such consistency ensures a fair and efficient functioning of markets and price formation; both premises important to the sound protection of investors. Despite these overall objectives, much of CESR-Fin’s work during 2008 focused on market integrity issues, still ongoing, in the international regulatory Community regarding the effects of fair value accounting on market confidence during a time of financial crisis. The group also dealt with accounting and auditing issues related to prospectuses and transparency, monitored the developments in IFRS and liaised with the US SEC and worked on the equivalence of other third countries’ GAAPs.” *

Division of CESR-Fin’s work

CESR-Pol’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Fair value accounting	3.1	40	Market transparency	Investor protection
Accounting and auditing issues related to prospectuses and transparency	3.1	42	Market transparency	Investor protection
Monitoring of IFRS	3.1	42	Market transparency	Investor protection
Dialogue with the US SEC	3.3	57	Convergence	Market efficiency; Investor protection
Equivalence of third countries’ GAAPs	3.3	57	Convergence	Market efficiency; Investor protection

Background on CESR-Fin

CESR-Fin is the other operational working group in CESR, besides CESR-Pol. Its main role is to co-ordinate the work of CESR Members in the area of endorsement and enforcement of financial reporting standards in Europe, the International Accounting and Financial Reporting Standards (IAS/ IFRS). As a whole, CESR-Fin enables CESR to play an effective role in ensuring that international accounting standards are implemented and enforced in a convergent, consistent and harmonised manner across the EU. CESR achieves this objective by participating proactively in the dialogue between key policymakers and standard setting bodies involved throughout the European endorsement process, both during the formation and the implementation of IAS/ IFRS. A further role of CESR-Fin is to assist CESR Members in delivering the co-ordinated and effective application of IAS/ IFRS by EU listed companies, by means of the provision of guidelines and standards relating to the supervision and enforcement of financial reporting in Europe. CESR-Fin has also been tasked with monitoring developments in Europe in the field of auditing. The group consists of sub- and project groups on IFRS, accounting, auditing and equivalence and of the European Enforcers Co-ordination Sessions (EECS).



* **Fernando Restoy**, Vice-Chair of the Spanish Comisión Nacional del Mercado de Valores (CNMV) and Chair of CESR-Fin.

Objectives CESR-Fin serves

Market transparency

Convergence

Investor protection

Market efficiency



* **Jean-Paul Servais**,
Chair of the Belgian
Commission Bancaire,
Financière et des
Assurances (CBFA) and
Chair of CESR's MiFID
Level 3 Expert Group.

MiFID Level 3 expert group

“ In 2008, the year after MiFID's implementation in November 2007, CESR's MiFID Level 3 expert group has very much focused on looking into the effects the Directive has had on the European market – covering both its functioning and its possible impacts. At the same time, the group also worked on new areas by investigating the transparency of non-equity, energy and commodities markets, and the latter two jointly with other European groups of regulators. Beyond investigating MiFID's impacts, the group focused on operational issues and questions relating to CESR Members' use of MiFID: Members co-ordinated and discussed within the MiFID group issues ranging from suspensions and removals from trading to the functioning of the MiFID passport, issues that will greatly enhance investor protection and promote market integrity. By issuing a consumer guide on MiFID that explains how the Directive affects retail investors when dealing with firms that provide investment services in Europe, the group underlined its commitment to investor protection.” *

Objectives MiFID group serves

Market efficiency
Investor protection
Market integrity
Convergence

Division of MiFID group's work

MiFID Level 3 expert group's 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Non-equity markets transparency	3.1	43	Market transparency	Investor protection; Convergence; Market efficiency
Maintenance of MiFID database	3.1	44	Market transparency	Investor protection
Suspensions and removals from trading	3.1	45	Market transparency	Investor protection; Convergence
MiFID's impact on secondary markets functioning	3.1	48	Market efficiency	Investor protection; Convergence
Q&As on MiFID	3.3	58	Convergence	Market transparency; market efficiency; Investor protection
MiFID's operational work and sessions	3.3	58	Convergence	Market transparency; market efficiency; Investor protection
MiFID's passport functioning	3.3	59	Convergence	Market transparency; market efficiency; Investor protection
Review of MiFID's transaction reporting obligations	3.3	59	Convergence	Market transparency; market efficiency; Investor protection
Impact of Lehman Brothers default	3.4	69	Investor protection	Convergence
Consumer guide to MiFID	3.4	69	Investor protection	Market integrity; Market transparency; Market efficiency; Transparency of implementation
CESR-EREGG Advice on energy markets	3.5	82	Advice and reporting to EU institutions	Market integrity; Market transparency; Market efficiency

Background on the MiFID Level 3 expert group

The MiFID Level 3 expert group undertakes work to deliver supervisory convergence in the day-to-day application of the Markets in Financial Instruments Directive (MiFID) and conducts related policy work. More than one year on from MiFID's implementation, the group, made up of senior MiFID experts of CESR Members, focuses on developing mechanisms to ensure consistent implementation of Level 1 and 2 requirements of the Directive and to foster supervisory convergence among CESR Members. The group has two sub-groups reporting to it – one being the intermediaries sub-group, and the other being the

markets sub-group. Nevertheless, in 2008 both the intermediaries and the markets sub-groups established several drafting groups to prepare the work of sub-groups themselves, for example one on non-equity markets transparency.

Investment management expert group

“ In 2008, the investment management expert group continued its work in response to the request for technical advice from the Commission in relation to the detailed form and content of key investor information disclosures for UCITS, work which should greatly assist retail investors in identifying appropriate funds for their particular risk appetite. A further important area in which the group provided assistance to the Commission was in response to the request for advice at Level 1 on the UCITS management company passport, a measure which could greatly increase market efficiency. Beyond the preparation of advice to the Commission, the group continued its work on fostering a convergent application of the UCITS Directive and associated measures, in particular via its operational task force. During 2008, the Madoff fraud came to light and CESR’s investment management expert group consequently set up special task forces to both investigate the Madoff fraud and the impacts the financial crisis had on the European fund industry – both of which aimed at ensuring that European markets function efficiently and at clarifying how much European investors were at risk. ” *

Division of the investment management expert group’s work

Investment management group’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
The crisis’ impact on the EU fund industry	3.4	70	Investor protection	Convergence
The Madoff fraud	3.4	70	Investor protection	Convergence
KID – CESR improves investor information for UCITS products	3.4	71	Investor protection	Advice and reporting to EU institutions; Convergence;
CESR’s advice on the management company passport	3.5	80	Advice and reporting to EU institutions	Market efficiency

Background on the investment management expert group

The investment management expert group was set up to work in the area of Undertakings for Collective Investments in Transferable Securities (UCITS) and asset management in order to provide a coherent regulatory framework across Europe in this area. The group, bringing together experts from CESR Members, focuses on UCITS related issues, but also deals with issues arising in alternative investment management. Its work ranges from promoting convergence in CESR Members’ approaches to the eligibility of assets, to responding to specific requests from the Commission such as on the content of the Key Information Document (KID) for retail investors. The investment management expert group also works on proposals for a European management company passport. The group itself consists of two sub-groups – one dealing with operational issues like risk measurement and management, whilst a second sub-group focuses on dealing with preparing CESR’s advice on the KID.



* **Lamberto Cardia**,
Chair of the Italian
Commissione Nazionale
per le Società e la Borsa
(CONSOB) and Chair of
CESR’s Investment
Management Expert Group.

Objectives CESR’s investment management group serves

Investor protection

Market efficiency

Market transparency

Market integrity

Advice and reporting to EU institutions



* **Karl-Burkhard Caspari**

Chief Executive Director of Securities Supervision at the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and Chair of CCSR's Credit Rating Agencies Expert Group.

Credit rating agencies expert group

“ In 2008, it became more and more obvious that credit rating agencies played a prominent role in the financial crisis. Therefore, the Commission rightly took the initiative to regulate these powerful market participants in Europe. Whilst in 2008 CCSR continued to review the codes of conduct of European and global CRAs, the forthcoming Regulation constitutes an enormous challenge as it is the first legislative instrument endowing CCSR with substantial functions in day-to-day supervision. Moreover, in response to the global nature of ratings, colleges of supervisors will play a key role in the new supervisory infrastructure for CRAs. Implementing the new Regulation will require an immense amount of resources both on the part of market participants and supervisors. But I believe we are on the right track which will ultimately increase the overall quality of ratings.” *

Division of the credit rating agencies group's work

CRAs network's 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Consultation on CRA's role in structured finance	3.1	36	Market integrity	Convergence; Transparency of implementation; Investor protection; Advice and reporting to EU institutions
Second report on CRA's compliance with the IOSCO Code	3.1	37	Market integrity	Convergence; Transparency of implementation; Investor protection; Advice and reporting to EU institutions
CCSR's response to the Commission consultation on CRA regulation	3.1	38	Market integrity	Convergence; Transparency of implementation; Investor protection; Advice and reporting to EU institutions

Background on the CRA expert group

CCSR's credit rating agencies expert group was created to co-ordinate closely with fellow regulators both within the EU, such as CEBS, and internationally, with the IOSCO members, on issues relating to CRAs. The expert group is responsible for reviewing the implementation of the voluntary framework which reviews how CRAs are implementing the IOSCO Code. This is the second year of the framework's operation. Furthermore, after having developed appropriate legislative proposals to deal with CRAs, the group will prepare to implement the future European Regulation on CRAs and co-ordinate national competent authorities in the role given to them in the supervision of CRAs.

Objectives the CRA Network serves

Market transparency

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions

Transparency expert group

“ The Transparency Directive aims to ensure that broadly the same information is made available by issuers in all European markets, thus enhancing market confidence and stability. In 2008, CESR’s Transparency expert group worked on harmonising the implementation of the Transparency Directive among Member States, thus facilitating market integrity. In the course of 2008, CESR consulted on possible Level 3 work on the Directive and based on the supportive feedback received, started work in this respect in the last quarter of 2008 by setting up a respective working group. A keystone of stable and integrated markets is free access to up-to-date information on issuers. A key tool to deliver this, as established by the Directive, is a mechanism for the central storage of regulated information, an OAM, that stores and makes available information published by issuers. As a first step towards setting up such an EU network of national storage mechanisms, CESR decided in 2008 to use its MiFID database of shares admitted to trading and extended its purpose to achieve this objective by adding links through each share on the database to the relevant OAM.” *

Division of the transparency group’s work

Transparency group’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Call for evidence on possible L3 work on Transparency Directive	3.1	46	Market transparency	Convergence; Transparency of implementation; Investor protection; Advice and reporting to EU institutions
EU network of national storage mechanisms	3.1	47	Market transparency	Investor protection
Mapping of Transparency Directive’s implementation	3.2	54	Transparency of implementation	Convergence; Market transparency; Investor protection

Background on the transparency expert group

The transparency expert group brings together experts from CESR Members and was created by CESR to publish comparative information on the Transparency Directive’s implementation in all Member States, to reach common views on practical questions regarding the TD and to establish an EU network of national storage mechanisms. Among the key objectives of the Directive is the desire that investors receive periodic information from listed companies, including annual and interim financial reports whose content is defined in order to meet investor’s needs. The mandate to CESR’s transparency group mainly covers the following topics: practical provisions for notifications of shareholdings, dissemination and storage of regulated information, some aspects of periodic financial reporting and the equivalence between third-country reporting regulations and the TD’s requirements. The difficulty however, in carrying this out, is that the different requirements in the Member States arise partly because an issuer’s home authority is able to impose more stringent requirements than those provided under the TD.



* Hans Hoogervorst, Chair of the Dutch Autoriteit Financiële Markten (AFM) and Chair of the Transparency Expert Group.

Objectives transparency expert group serves

Market transparency

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions



* **István Farkas**,
Chair of the Hungarian
Financial Supervisory
Authority (HFSA) and
Chair of CESR's Post-
Trading Expert Group.

Post-trading expert group

“ In 2008, the year in which the financial crisis was most fully felt, with high volatility in global securities markets, and defaults of firms active on these markets, systems for clearing and settling transactions in securities proved to be resilient. All on-going efforts in response to these developments, both from a political and from a supervisory point of view, underlined the need to review further and strengthen the resilience of systems. CESR therefore stepped up its efforts to monitor the functioning of clearing and settlement systems through enhanced reporting on these developments in its post-trading expert group. Much of the policy-making work by the group that has been done during 2008, much of which is still ongoing, is therefore linked to the theme of market integrity and efficiency. This will continue to be the main focus in the year ahead.” *

Objectives the PTEG serves

Market efficiency

Market transparency

Market integrity

Convergence

Division of the post-trading expert group's work

PTEG's 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
CESR monitors Target 2 for securities project	3.1	48	Market efficiency	Convergence
CESR-ESCB recommendations for securities settlement systems and central clearing	3.3	60	Convergence	Market efficiency; Market transparency
Access and interoperability arrangements	3.5	83	Advice and reporting to EU institutions	Market efficiency; Market transparency

Background on the post-trading expert group

The role of CESR's post-trading expert group (PTEG) is to co-ordinate the work of CESR Members in the area of post-trading. The PTEG was established in early 2007 to monitor and contribute to a number of public and private sector initiatives in the area of post-trading and to serve as a platform for the exchange of supervisory experiences amongst regulators. The objectives of these activities are: to foster a level-playing-field and to encourage measures that foster the safety and soundness of post-trading activities within the EU and by doing so, ensuring a sound, efficient and transparent functioning of post-trading. Furthermore, the chairman of the PTEG represents CESR in a number of related work streams, namely in CESAME II, the Advisory Group to the Commission for clearing and settlement, and in the MOG, the Monitoring Group for the Code of Conduct. Additionally, the chairman of the PTEG is the observer on behalf of CESR in the Target 2 Securities (T2S) Advisory Group, established by the European Central Bank (ECB) for the T2S project.

CESR-Tech

“CESR-Tech has focused on two key objectives in 2008: Firstly, settling its existing TREM system and secondly, preparing the ground for future CESR systems in the field of IT. In November 2008, CESR Members delivered an improved version of TREM by adding new key features: the exchange of transaction reports on derivatives instruments identified by the Alternative Instrument Identifier (AII), the addition of automated data quality controls and the improvement of routing by using the available reference data. This latter point will be enhanced with the implementation of a central CESR database to share instrument reference data (IRD), on all instruments admitted to trading on regulated markets in Europe. The so-called IRD project, that aims at building this database, is expected to be fully operational in June 2009. This will ensure a perfect routing of transaction reports to the relevant competent authority, especially for bond and derivative instruments. CESR-Tech also drafted a plan for the next four years regarding the future IT needs of CESR and, at the same time, requested funding from the Commission for the ‘key’ projects following IT requests incorporated in EU legislation.”*

Division of CESR-Tech’s work

CESR-Tech’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Implementation of a new version of TREM	3.1	39	Market integrity	Convergence
The All project	3.1	39	Market integrity	Convergence
The IRD project	3.1	40	Market integrity	Convergence

Background on CESR-Tech

CESR-Tech is an expert group in charge of the information technology (IT) governance of CESR. The expert group enables CESR to work on IT projects that CESR undertakes in conjunction with its Members. The group is composed of senior CESR representatives who have experience, knowledge and expertise in IT project management, financial markets, and supervisory related issues. In the course of 2008, CESR-Tech renewed its mandate to better reflect the operational objectives of the group. CESR-Tech’s main objectives are to lead pan-European IT projects of CESR to provide CESR and its Members with IT systems and services that help CESR Members to fulfil their obligations, prepare reporting on IT issues of relevance to EU institutions for the approval by CESR and to consult and advise CESR on IT related issues.



* **Ari Voipio**,
Senior Advisor at the
Finnish Finanssivalvonta
(Fiva) and Chair of CESR-
Tech.

Objectives CESR-Tech serves

Market efficiency

Market transparency

Market integrity

Convergence



* **Alexis Pilavios**,
Chair of the Hellenic
Capital Markets
Commission (HCMC) and
Chair of ECONET.

ECONET

“ During the course of 2008, ECONET issued three reports to EU institutions, assessing the risks and trends in the securities markets, highlighting first the impacts of the subprime crisis and, at that time, analysing the following developments of a tighter credit environment and worsening global economic outlook due to the general increase in risk aversion. ECONET generally identified that falling equity markets coupled with investors' risk aversion resulted in investors moving their assets to cash and money markets, cautious managed multi-asset and bond funds. Analysing the developments and risks of securities markets, especially when facing markets in crisis, is even more important in order to provide evidence and advice to EU institutions on what to base their possible policy responses on. Facing increased demands to provide economic input to EU institutions, a need to further strengthen ECONET has become clear.” *

Objectives ECONET serves

Advice and reporting
to EU institutions

Market transparency

Division of ECONET's work

ECONET's 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Report on economic trends and risks to FSC	3.5	79	Advice and reporting to EU institutions	Market transparency
Reports on economic trends and risks to EFC-FST	3.5	79	Advice and reporting to EU institutions	Market transparency

Background on ECONET

CESR created ECONET, its network of economists from Member authorities, in order to facilitate the ability of CESR to meet an increasing number of reporting requests to European bodies that require the input of financial economists. ECONET also evaluates and, as appropriate, develops CESR's approach to the use of impact analysis of securities legislation across Europe. Generally, the network enhances CESR's capability to undertake economic analysis of market trends and key risks in the securities markets that are, or may become, of particular significance for its Members.

Takeover bids network

“ During the course of 2008, CESR organised meetings with representatives from the EU authorities who regulate takeover bids to discuss issues regarding the application of the Takeover Bids Directive, such as equitable pricing, persons acting in concert, squeeze-out and sell-out provisions, and cross-border co-operation between competent authorities. In order to assist Member States in providing the Commission with certain information on the takeover bids taking place in their markets, CESR’s takeover bids network in 2008 assisted the Commission in drafting a list of relevant information elements. The list is aimed at providing the information needed to the Commission in its examination of the effectiveness of the Directive in 2011 (as stated in the Directive itself) – all of which is important work to foster and further increase cross-border market transparency, integrity and convergence when supervising takeovers.” *

Division of the takeover bids network

Takeover bids network’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Exchange of experience on the application of the Takeover Bids Directive	3.1	49	Market efficiency	Market transparency; Convergence
Checklist on annual information on takeover bids	3.1	49	Market efficiency	Market transparency; Convergence

Background on the takeover bids network

CESR set up a network of authorities dealing with takeover bids (whether being CESR Members or not) to discuss views, experiences and future developments in the implementation of the Takeover Bids Directive (TOD). The TOD aims to ensure a level playing field in Europe for companies to launch bids and to ensure a transparent and fair treatment of investors, covering two separate areas: company law aspects and securities or market related issues. However, as the CESR Members composing the network do not, in general, have powers in relation to company law issues, the object of the network is limited to securities or market related issues, with the aim of exchanging information and experience. The network fosters co-operation between CESR Members, especially in the context of cross-border transactions.



* **Eddy Wymeersch**,
Chair of the Supervisory Board of the Belgian Commission Bancaire, Financière et des Assurances (CBFA), Chair of CESR and Chair of the Takeover Bids Network.

Objectives the takeover bids network serves

Market integrity

Market transparency

Convergence



* **Gerard Rameix**,
Executive Director of the
French Autorité des
Marchés Financiers (AMF)
and Chair of the Prospectus
Contact Group.

Prospectus contact group

“ Investors rely on prospectuses to make orderly and informed investment decisions. A key element in ensuring confidence in prospectuses and hence in supporting the objective of market integrity is the consistent application of the Prospectus Directive. During 2008, the group updated its Q&As three times, providing to market participants common positions agreed by CESR Members on prospectuses, and continued to collect and publish statistical data in relation to the number of prospectus approved and ‘passported’ within the EU – both of which, are important tasks which should foster market transparency and convergence in the Directive’s application. With regards to third country issuers, CESR in 2008 continued to work on the equivalence of prospectuses from countries outside the EEA, and by doing so, serving market efficiency by ensuring that European investors receive the same information as they do in relation to European issuers. CESR’s prospectuses contact group also looked into employee share schemes setting out to establish what employees might reasonably expect to receive.” *

Division of the prospectus group’s work

Prospectus group’s 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Updates of the prospectuses data and Q&As	3.1	45	Market transparency	Convergence; Transparency of implementation; Investor protection; Advice and reporting to EU institutions
Assisting the Commission’s work on employee share schemes	3.1	46	Market transparency	Transparency of implementation; Investor protection; Advice and reporting to EU institutions
Publication of data on prospectuses	3.1	46	Market transparency	Convergence; Transparency of implementation; Investor protection; Advice and reporting to EU institutions
Assessment of the equivalence of non-EEA prospectuses	3.3	61	Convergence	Transparency of implementation; Investor protection; Advice and reporting to EU institutions

Background on the prospectus contact group

CESR’s prospectus contact group was created to develop guidance on the various disclosure requirements under the implementing measures of the Prospectus Regulation. The Prospectus Directive (PD) asks issuers to publish a prospectus when offering securities to the public or admitting them to trading, also defining overarching content requirements. In order to facilitate market participants’ assessments of national applications of the PD, the prospectus contacts group is holding practical and operational meetings to discuss specific implementation and application issues aiming at increasing the degree of pan-European convergence. The group publishes Q&As on questions regarding prospectuses, providing market participants with commonly agreed answers by CESR Members.

Objectives the prospectus group serves

Market transparency

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions

Other groups, networks and task forces

Depending on the nature of a CESR work stream, which might be on an ad hoc basis and hence much more limited in time compared to permanent groups of CESR, there are a number of other groups, networks and task forces which are not covered by the above presentation. For example, there are joint groups that have been formed together with other organisations in order to respond to special mandates which are not covered in this section but are reported on within the annual report. For example, in 2008, CESR worked jointly on energy markets with ERGEG, the European Regulator's Group for Electricity and Gas, or on clearing and settlement in a joint working group together with the European System of Central Banks (ESCB). Further, there are taskforces that respond to roadmaps adopted by the ECOFIN Council on mutual recognition, work on Human Resources and training. In addition, CESR has established a Retail Investor Network to find ways to enhance the dialogue with representatives of retail investors. In order to foster cross-sector convergence throughout the securities, insurance and banking markets, the 3L3 Committees work jointly in areas such as: anti-money laundering, cross-border mergers and acquisitions, conglomerates. As well there are 3L3 task forces on training, internal governance, cross-sector risks and delegation of tasks – all of which are presented under cross-sector convergence in this annual report.

CESR's other 2008 work streams

CESR's Other 2008 work streams	Chapter	Page	Objectives served	
			Main	Secondary
Joint 3L3 protocol	3.3	62	Convergence	Advice and reporting to EU institutions
3L3 Work on cross-sector risks	3.3	62	Convergence	Market integrity; Market transparency; Market efficiency; Investor protection
3L3 Home-host delegation	3.3	62	Convergence	Market efficiency
3L3 Work on valuation of financial instruments	3.3	63	Convergence	Market transparency; Investor protection
3L3 Anti-money laundering task force consults on payer information	3.3	63	Convergence	Transparency of implementation; Market integrity
3L3 Guidelines on cross-border acquisitions	3.3	64	Convergence	Market transparency
3L3 Task force on internal governance	3.3	65	Convergence	Market efficiency
Impact assessment guidelines	3.3	64	Convergence	
CESR-CEBS' Advice on review of commodities business	3.3	65	Convergence	
3L3 Work on conglomerates	3.3	66	Convergence	
3L3 Training	3.3	67	Convergence	Market efficiency; Market integrity
CESR's Inter-institutional work	3.5	74	Advice and reporting to EU institutions	Convergence
Supervisory convergence report to the FSC	3.5	76	Advice and reporting to EU institutions	Convergence
CESR's Contribution to ECON	3.5	79	Advice and reporting to EU institutions	
ECONET's Economic trends and risks report	3.5	79	Advice and reporting to EU institutions	
Market Participants Consultative Panel	3.5	84	Advice and reporting to EU institutions	Convergence



03

CESR

delivering

its objectives

3.1

Market integrity, transparency and efficiency



03 CESR delivering its objectives

3.1 Market integrity, transparency and efficiency

Market integrity

CESR-Pol



Other objectives served

Convergence

Investor protection

Urgent issues groups

CESR, through its operational group CESR-Pol, facilitates effective, efficient and proactive sharing of information, in order to enhance co-operation on, and the co-ordination of, surveillance and enforcement activities between CESR Members, aiming at ensuring the integrity of markets. This implies achieving greater supervisory convergence and ensuring rapid supervisory responses to potential and actual threats to the Single Market. CESR has developed the capacity to create, on an ad-hoc basis, urgent issues groups which allow CESR Members, concerned by alleged unlawful cross-border activities, to co-ordinate and conduct joint investigations in urgent cases.

During 2008, one urgent issues group was established. The group, formed of five CESR Members, investigated a number of suspects that seemed to have collaborated in an insider trading ring in the context of a takeover activity that appeared to be spread over several jurisdictions. This co-operation greatly benefited the CESR Members involved and led to referrals to national judicial authorities, so representing an excellent example of the efficiency and effectiveness of urgent issues groups.

NEXT STEPS

CESR will continue in its efforts to tackle enforcement cases in the area of market abuse with cross-border relevance. With the increasing amount of cross-border trading, the urgent issues groups will continue to be an efficient tool in ensuring close co-operation on cases under investigation.



Other objectives served

Convergence

Investor protection

EU regulators co-operate in dealing with Madoff fraud

CESR-Pol's key objective is to make information flow across borders between CESR Members as rapidly as it would domestically and, by so doing, to enhance the fairness and integrity of European markets as a whole.

Since mid-December 2008, CESR Members have co-ordinated their efforts by gathering and sharing information on the fraud of Bernard Madoff and its implications to European investment firms, investment funds and other investors who had invested in the US firm Bernard L. Madoff Investment Securities LLC.

CESR started collecting information from its Members for two main purposes: to aggregate the information on exposures by European investors to Bernard L. Madoff Investment Securities LLC at an EU level, in order to share it among CESR Members and, to open ways to co-ordinate actions within the EU and also with the US and Swiss authorities, particularly with regards to evaluating the extent of any cross-border impact.

NEXT STEPS

Once the initial assessment has been completed and a clear picture established of the impacts the Madoff case has had on European markets, CESR will be focusing on drawing lessons from this experience and establishing work where appropriate to address this.

CESR Members share experience on market surveillance and intelligence work

The exchange of opinions and experiences among CESR Members is essential to ensure a high level of convergence and to achieve a common understanding among Members of what constitutes market abuse.

CESR-Pol's permanent sub-group, the Surveillance and Intelligence group (S&I group), provides experts in the investigation and enforcement of market abuse with a forum for sharing their experiences on the basis of individual cases, and exchanging valuable information on methods and procedures used in day-to-day supervision.

In 2008, several practical aspects were discussed in the S&I group concerning the application of the market abuse regime which gave rise to consider if there was merit in conducting further Level 3 work in the area of MAD. In particular, a mapping on how CESR Members in practise apply the definition of an adequate public disclosure for stabilisation activities and buy-back programmes provided input to CESR's work on guidance on the operation of MAD to the market.

NEXT STEPS

With the ever increasing complexity of the financial markets and products, sharing knowledge on the efficient methods for the investigation of market abuse and enforcement of MAD will continue to be key in CESR Members' efforts to ensure the integrity of markets.

Exchange of views on non-cooperative jurisdictions and contacts with IOSCO

In order to contribute to maintaining the integrity of markets and protection of investors as a key focus of all securities regulators, CESR Members share with each other their experiences - both positive and negative - on co-operation with non-EU regulators. To this end, CESR also maintains contacts with other institutions that tackle co-operation issues, such as IOSCO, as well as with regulators that are not Members of CESR.

In 2008, CESR continued its dialogue and collaboration on non-cooperative jurisdictions with other bodies that are affected by similar co-operation difficulties in order to exchange views and experiences. CESR will take further steps towards non-cooperative jurisdictions with the aim of fostering a common understanding of the need to co-operate closely and to improve the compliance with international standards.

NEXT STEPS

Combating market abuse together with its peers globally will continue to be a key priority on the agenda of CESR-Pol. It is encouraging to see the support given to this work by important stakeholders.



Other objectives served

Convergence

Investor protection



Other objectives served

Convergence

Investor protection



Other objectives served

Convergence

Investor protection

Co-ordination of measures regarding short-selling

In September 2008, financial market conditions were becoming volatile in several Member States. Wide fluctuations in share prices were being experienced and there was a genuine concern that abusive activity was occurring, which in turn could have led to disorder in the markets. Some expressed concerns that short-selling was contributing to volatility during the market turbulence. In order to maintain the integrity of markets and protect investors, some authorities took actions to temporarily restrict short-selling in either all securities or in securities of financial sector companies. In order to increase transparency, some regulators also introduced temporary disclosure obligations for those who held short positions.

Immediately after the first decisions were made by some competent authorities, CESR started co-ordinating the activities of its Members by organising meetings and conference calls where the measures taken and planned were discussed. At the same time, a consolidated list of all national decisions was compiled and published on the CESR website (Ref. CESR/08-742). This list was intended to provide market participants with a clear overview of actions being taken across the Member States. CESR Members committed themselves to updating that list on an ongoing basis.

At the same time, CESR decided to set up a dedicated task force on short-selling. The task force produced an internal report focused on the temporary measures taken by CESR Members and is currently conducting further work to:

- Further assess the impact of the measures that were introduced by CESR Members;
- Consider the range of future policy options for taking a more convergent EU approach to short-selling; and
- Enhance the co-ordination and co-operation between CESR Members regarding national decisions on short-selling.

Based on the conclusions of the work performed by the task force, CESR will prepare a detailed proposal for a harmonised EU approach.

NEXT STEPS

CESR will form its conclusions on the best way forward in the area of short-selling by summer 2009. We are conscious of the fact that more convergence between CESR Members is important to ensure a level playing field between various market participants across Europe.

Credit rating agencies network

CESR consults on the role of CRAs in structured finance

Recent market events have demonstrated the role played by credit rating agencies (CRAs) in market integrity particular in the area of structured finance. In order to establish possible policy reactions to this influence on market integrity, and also to advise the Commission on possible legislative measures, CESR undertook a consultation on the role of CRAs in structured finance during 2008.

On 13 February 2008, CESR published a consultation paper on this respect (Ref. CESR/08-036), seeking market participants' views on the main issues surrounding CRAs' activities in the structured finance market and, in particular, on possible policy options relating to those issues. The consultation paper covered the following areas in relation to structured finance:

- **Conflicts of interest:** The key focus of the consultation was on whether the nature of CRAs' interaction with issuers during the structured finance process presents additional, un-managed or poorly managed conflicts of interest leading to reduced rating integrity; whether the CRAs' activities constitute advisory activity in this area; whether some of the ancillary services offered may lead to potential conflicts of interest and whether greater disclosure is required on the fees CRAs earn from structured finance activity as a result of the 'issuer pays' model and the specific 'success' fee structure for this activity;
- **Transparency of rating processes and methodologies:** The consultation in particular focused on the ease of investor access to information on key limitations and assumptions in complex structured



Other objectives served

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions

finance methodologies. The paper also asked for opinions on the procedures followed by CRAs when applying changes to their methodologies, for example, on the need for clear disclosure to investors of which methodology a rating is based on;

- **Monitoring of rating performance:** CESR sought views on the need for regular public disclosure of the performance of structured finance rating and the need for CRAs to maintain sufficient resources and organisational flexibility to act promptly in reviewing structured finance ratings;
- **CRAs' staff resourcing:** The consultation asked market participants' views on whether CRAs were adequately resourced for the volume and complexity of structured finance ratings they were producing and whether there needed to be more transparency from CRAs over their resourcing and levels of staff experience. In addition, CESR asked whether market participants agreed that more clarity and greater independence is desirable for analyst remuneration at the CRAs; and
- **Regulatory options:** CESR also requested market views on what regime would be more appropriate. But at that stage, the paper remained open regarding the possible policy options, setting out the benefits and negative features of the current self-regulatory approach and the benefits and costs of a possible formal regulatory regime.

Consultation on the role of CRAs in structured finance (Ref. CESR/08-036)



In addition to the consultation held, CESR organised an open hearing for interested market participants on 26 March 2008 at CESR's premises in Paris.

CESR's second report on CRAs' compliance with IOSCO Code

A further step in the legislative process relating to CRAs was to establish to what extent leading CRAs already comply with existing codes of conducts aimed at ensuring ratings' integrity. As a contribution to the discussion process, CESR was requested to provide information on CRA's compliance with the Code of Conduct for CRAs of IOSCO, the International Organization of Securities Commissions.

On 19 May 2008, CESR published its second report (Ref. CESR/08-277) to the Commission on CRAs' compliance with the IOSCO Code. The publication of the report followed an additional request from the Commission for CESR to review several aspects of the rating process regarding structured finance instruments (Ref. CESR/07-608). CESR also incorporated an analysis of the responses received from market participants to CESR's consultation on CRAs role in structured finance in February 2008.

In preparing the report, CESR worked in close co-operation with CEBS, IOSCO and the US Securities and Exchange Commission (SEC).

In the report, CESR advised the Commission to take the following steps and offered its proposals on enhancing the integrity and quality of the rating process:

- In its report and, as an immediate step, CESR urged the Commission to form an international CRA Standard Setting and Monitoring Body to develop and monitor compliance with international standards in line with the steps taken by IOSCO. Such a body should be fully transparent with the public and use 'name and shame' to enforce compliance with these standards. The monitoring body should be formed from senior representatives from the investor, issuer and investment firm communities and be of an international nature. CRAs should also form part of the body when it is setting standards but, not when it is performing monitoring activities. The members of the body would be appointed in the majority by the international regulatory Community and should be accountable to those that appoint them;
- If international regulatory involvement cannot be achieved in the short term, CESR recommended that this body be formed at an EU level. CESR saw itself in a good position to play a key role in the process of



Other objectives served

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions

regularly assessing whether the body was fulfilling its objectives and recommended the body report periodically to this effect; and

- If support from market participants was not forthcoming or the body failed to meet its objectives of ensuring the integrity and transparency of ratings, CCSR considered that the supervisory authorities should then step in to ensure, probably through regulation, the integrity and quality of the rating process.

The report emphasised that the proposal should be implemented within a short timeframe and to that end, CCSR encouraged the Commission to prepare a timetable setting out deadlines for each of the different steps. CCSR thought that any unjustifiable lack of progress in comparison to the timetable should lead the Commission to shift to considering supervisory oversight structures.

In addition to the main policy proposal, the report also included recommendations in relation to the main areas analysed by CCSR: Transparency, Human Resources, monitoring of ratings and conflicts of interest. The report also gave an analysis of the CRAs' codes of conduct: building on the work contained in CCSR's first report to the Commission, the second report set out, in columnar format, an analysis of the changes made to the provisions of the codes that CCSR identified in 2007 as non-compliant with the IOSCO Code. The conclusion of this work has been that the four codes analysed comply to a large extent with the IOSCO Code. Some agencies had implemented improvements in their respective code of conduct, but there still remained areas where they could have gone further.

NEXT STEPS

As requested by the Commission and the EFC, the Expert Group on Credit Rating Agencies will draw up in 2009 a further report on the compliance of European CRAs with the IOSCO Code of Conduct. This work will also directly follow the request of the G20 meeting held in November 2008 to check the compliance of CRAs with the IOSCO Code. CCSR, however, stands ready to implement the future European regulation of CRAs and will proactively inherit the role to be given to the Committee in the registration, issuance of guidance and supervision of CRAs in Europe.



Other objectives served

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions

CCSR responses to Commission consultation on proposed CRA regulation

A significant factor in achieving market integrity is proportionality in regulatory approach. In order to better inform this aspect of legislation, CCSR responded to the Commission's consultation on possible CRA regulation. In September 2008, CCSR published and submitted its response to the Commission's consultation on a draft proposal for a directive/ regulation on CRAs (Ref. CCSR/08-671). Owing to the short time frame of the consultation, CCSR limited its comments to some of the general underlying assumptions on which the consultation document was based. In particular, given the global nature of the ratings business, CCSR insisted on the need to ensure international co-ordination to avoid inconsistencies and an unlevel playing field. CCSR also highlighted the need to consider including a general provision on proportionality that would allow differences in dimension between internationally active and local CRAs to be taken into account and would help to mitigate any possible anti-competitive consequences of the Commission's proposal.

NEXT STEPS

The new regulation on CRAs is expected to be finally adopted and published in the Official Journal in September 2009. CCSR could expect to have an important role to play under the new regulation. The group will closely follow the discussions at Council and Parliament level and will begin preparing for future work emerging from such legislation. Along the way, the group will create a specific consultative working group and will co-ordinate closely with CEBS, CEIOPS and other international organisations and third country regulators that are performing activities in relation to CRAs.

CESR-Tech

TREM, CESR's Transaction Reporting Exchange Mechanism

CESR's Transaction Reporting Exchange Mechanism (TREM) is an IT system that allows CESR Members to exchange transaction reports on instruments admitted to trading in Europe. Transaction reporting is a tool for CESR Members for market monitoring and therefore to ensure the integrity of European markets. CESR-Tech, CESR's IT governance body, set up the system on 1 November 2007 – as requested by the MiFID Level 2 regulation – to exchange all transaction reports on instruments admitted to trading in Europe amongst CESR Members. This means that, for example, the Finnish regulator Finanssivalvonta (Fiva) receives through TREM all transaction reports on Nokia shares and derivatives in Europe from other CESR Members. Using TREM allows Fiva to detect market abuse and conduct investigations to ensure market integrity in Nokia shares throughout Europe. As each financial instrument admitted to trading in Europe has one relevant national competent authority supervising the instrument, TREM enables the authority in question to receive all transaction reports on the instrument.

The TREM user group

At the end of 2007, CESR-Tech created a sub-group of TREM users to look at issues related to the usage and functioning of the system. The user group identified the quality of the data exchanged as a key issue for an efficient use of TREM. The group therefore worked on improving the data quality, tackling this in delivering a document issued in June 2008. The document listed the key issues of TREM and, at the same time, proposed improvements to the system, especially by adding new automated data controls and sharing reference data, such as lists of markets, currencies and trading dates. Most of these improvements were implemented in November 2008, together with the All project.

NEXT STEPS

CESR's TREM user group will deliver in January 2009 a second document that will list the different transaction reporting schemes in Europe. This will help CESR Members to better understand and analyse the reports exchanged and eventually harmonise work streams.

A new version of TREM - the All project

One year on from TREM's launch, the key project of CESR-Tech in 2008 was to introduce a new version of the system. The purpose of this new version is to add the possibility to also exchange transaction reports on derivative instruments that are using the Alternative Instrument Identifier (All). After its implementation, this identifier is used to exchange reports on instruments admitted to trading on Euronext Liffe (French, Belgium, Dutch, Portuguese and English markets), Eurex (Germany) and the Athens Stock Exchange (Greece). Each authority will start exchanging All transaction reports as soon as their local systems are ready to collect them. CESR Members also took the opportunity of introducing the new version of TREM to improve quality controls on the data exchanged.



Other objectives served

Convergence



Other objectives served

Convergence



Other objectives served

Convergence



Other objectives served

Convergence

The IRD project

In March 2008, CCSR started another IT project, the Instrument Reference Data (IRD) project. The objective of IRD is to implement a central database that includes reference data of all instruments admitted to trading in Europe for the usage of CCSR Members. After its expected implementation in June 2009, CCSR Members will, on a daily basis, feed the IRD database with data they receive from the European exchanges according to Article 11 of the MiFID level 2 Regulation. In July 2008, CCSR Members agreed on the specifications of the system and a training seminar was hosted by the German BaFin in Frankfurt am Main to train CCSR Members: more than 50 participants attended the seminar, representing all Member States.

NEXT STEPS

In 2009, CCSR-Tech will focus on finalising the IRD project, improving co-ordination among CCSR Members, and fostering more transparency on European markets. Furthermore in this respect, CCSR-Tech also will launch a new project in 2009 to expand TREM to exchange transaction reports on OTC derivative instruments between the authorities.

Market transparency

CCSR-Fin



Other objectives served

Investor protection

Fair value accounting

Throughout the latter half of 2008, investor focus has been very much on the issue of how fair value accounting may or may not have influenced decision making during the financial crisis. CCSR has carried out significant work in 2008 identifying and analysing the various issues surrounding fair value accounting and feeding the results of this work into the international debate on the future path of accounting.

The ECOFIN Council stated in 2008 that in order to ensure stability in financial markets, authorities should stand ready to take regulatory and supervisory action, and that one of the main policy responses needed was to improve valuation standards, in particular for illiquid assets. This view was further confirmed by the European Council in March 2008.

During 2008, CCSR has actively contributed to the debate around fair value accounting and financial instruments in the following ways:

1. CCSR statement on fair value measurement and related disclosures in illiquid markets

On 3 October 2008, CCSR published a statement on fair value measurement and related disclosures of financial instruments in illiquid markets (Ref. CCSR/08-713b), aimed at providing useful input on the application of existing International Financial Reporting Standards (IFRS). The publication of the statement followed a public consultation held from July to September 2008, receiving 34 answers. The statement aimed to achieve the following objectives:

- To assist preparers and auditors when preparing financial statements;
- To promote disclosures that take into account the investors' perspective; and
- To provide input to the work being performed by the IASB on fair value measurement and related disclosures of financial instruments in illiquid markets.

Consultation on the draft statement on fair value measurement and related disclosures in illiquid markets (Ref. CCSR/08-437)



● 14 Banking	● 1 Government, regulatory and enforcement
● 5 Investment services	● 5 Legal and accountancy
● 1 Insurance, pension and asset management	● 8 Others

This work eventually also formed the basis for CCSR's contribution to the ECOFIN Council.

2. 3L3 statement on the latest developments in accounting

On 21 October 2008, the 3L3 Committees published a joint statement (Ref. CESR/o8-839) on the latest developments in accounting. In its statement, the 3L3 Committees supported the initiatives put forward by the US SEC, the International Accounting Standards Board (IASB) and the Commission regarding issues surrounding active and inactive markets, and the IASB's recent amendments to reclassification of some financial assets, avoiding an EU carve out on IAS 39 Financial Instrument's Recognition and Measurement.

The Committees explicitly supported the aim of achieving global accounting standards and of endorsing the new amendments regarding reclassification.

3. CESR supports IASB's expert advisory panel

In October 2008, the IASB expert advisory panel published its report on measuring and disclosing the fair value of financial instruments in markets that are no longer active. CESR, on this respect, published a press statement (Ref. CESR/o8-888) expressing support for this report as it dealt with substantially the same issues as did the CESR statement on fair value measurement and related disclosures of financial instruments in illiquid markets.

4. CESR feedback statement on fair value measurement and disclosures in illiquid markets

On 10 July 2008, CESR issued a consultation paper (Ref. CESR/o8-437) on fair value measurement and related disclosures of financial instruments in illiquid markets. The main issues coming out of this consultation were whether CESR would in effect be providing guidance on the application of IFRS by issuing a statement along the lines of the consultation paper and whether or not CESR should submit its statement to the IASB Expert Advisory Panel.

In December 2008, the IASB and the Financial Accounting Standards Board (FASB) formed another group to discuss and advise on high-level issues surrounding the financial crisis and in particular whether current accounting for financial instruments had, in any way, contributed to that crisis. The group, called the Financial Crisis Advisory Group, is also aiming at identifying possible areas on which the IASB and FASB might concentrate their efforts at improving accounting for financial instruments and off balance sheet vehicles. CESR has been invited to participate as an active observer in the meetings of this advisory group.

The ECOFIN Council also formed a Procyclicality Working Group during the latter months of 2008, whose aim is to identify possible measures to counteract the procyclical nature of the current regulation in the financial services industry, with issues of accounting high on its agenda. CESR has been offered, and accepted, a seat as observer to this group. The group is expected to present an interim report of its findings in the first quarter of 2009, and a final report in the first half of 2009.

5. European Enforcement Co-ordination Sessions

The European Enforcement Coordination Sessions took place seven times during 2008 and a significant number of IFRS practical cases, dealt with by a span of EU enforcers, were discussed at roundtables. These cases are part of the EECS database. The EECS also met with IASB and IFRIC members in order to assess IFRS practical cases at an informal basis.

NEXT STEPS

In January 2009, CESR will publish a further statement relating to the reclassification of financial instruments. In this statement, CESR will analyse the application, in certain issuers' interim financial statements for the third quarter 2008, of the amendment to IAS 39, published by the IASB in October 2008 regarding reclassification of financial instruments. CESR will follow up this work by reviewing the disclosures required by the amendments to IFRS 7 regarding reclassification in the annual financial statements for 2008, when these financial statements will be published during spring 2009. Especially in the area of financial instruments, CESR is of the view that one single set of accounting standards at a global level is a matter of urgency. Such work should, therefore, be prioritised by the standard setters. In 2009, CESR will make full use of its invitation to observe the meetings of both the ECOFIN's Working Group on Procyclicality and the Financial Crisis Advisory Group; the latter of which aims at reporting its preliminary findings to the G20 Summit in April 2009 and publishing a final report in the first

half of 2009. CESR underlines the importance of appropriate and sound technical solutions that are being identified for issues related to fair value accounting and accounting for financial instruments. Such high quality solutions need to be acceptable to the broadest possible range of users of financial statements. In CESR's view it is therefore important that any solutions found would not reduce the transparency and coherence of financial statements. CESR will continue to closely monitor future developments in the area of financial instruments and fair value accounting.



Other objectives served

Investor protection

Monitoring of IFRS

IFRS, as a common accounting language, has done much to harmonise the presentation of financial information in European markets. The development of IFRS in a consistent and logical manner is key to protecting investors and insuring the integrity of markets through preserving transparent reporting. CESR continues to monitor developments in IFRS proposed by the IASB and IFRIC, the International Financial Reporting Interpretation Committee, to respond to calls for market input from these bodies by representing the views of CESR Members – both as securities regulators and enforcers of accounting information.

On this respect, CESR-Fin regularly provides comment letters to the European Financial Reporting Advisory Group (EFRAG) with the aim of contributing to the standard setting and endorsement process within Europe. On the same respect, the group also participates as an observer in the Accounting Regulatory Committee (ARC). During the past 12 months, CESR-Fin has issued such letters in relation to the following projects:

- IFRIC's Exposure Draft D 24 on Customer Contributions;
- IASB's Exposure Draft on amendments to IFRS 1 and IAS 27;
- IASB's Exposure Draft on proposed Improvements to IFRS 2007;
- IASB's Exposure Draft ED 9 Joint Arrangements;
- IASB's Discussion Paper on Financial Instruments with the Characteristics of Equity;
- IASB's Discussion Paper on reducing Complexity in Reporting Financial Instruments;
- EFRAG's Draft Endorsement Papers on IFRS 3 Business Combinations and IAS 27 Consolidated and Separate financial Statements;
- IASB's Exposure Draft on an improved conceptual Framework for Financial Reporting Chapter 1 (the objective of financial reporting), and Chapter 2 (qualitative characteristics and constraints of decision-useful financial reporting information); and
- IASB's Exposure draft on IFRS 7 improving Disclosures about Financial Instruments.

CESR has also provided comments to the International Accounting Standards Foundation (IASCF), the legal entity under which the IASB operates, on the first part of its review of the constitution regarding the creation of an IASCF Monitoring Board. CESR, in those comments to the IASCF, requested being part of the monitoring board of the IASCF as CESR represents the largest and most experienced block of IFRS enforcers in the world. In 2008, CESR also commented to EFRAG on its consultation on strengthening the European contribution to the international standard setting process – referred to as 'EFRAG enhancement'.

NEXT STEPS

CESR-Fin will continue to monitor the EU endorsement of standards and interpretations published by the IASB and IFRIC. CESR believes in arriving at solutions which aim at achieving global high quality accounting standards that establish a good basis for consistent application and enforcement.



Other objectives served

Investor protection

Accounting and auditing issues related to prospectuses and transparency

Consistent application of existing legislation by regulators serves to enforce investor confidence and therefore market integrity. Prospectuses and particularly the financial information contained in them play an important role in informing investors about companies that offer securities in European markets. CESR continues to contribute to this consistent application through the work of its sub-group on accounting and

auditing issues relating to prospectuses. CESR-Fin has been actively monitoring the work that is taking place within Europe and internationally regarding international auditing standards – both at the International Auditing and Assurance Standards Board (IAASB) and the Audit Regulatory Committee (AuRC).

During the course of 2008, the IAASB formed first a project working group and then a task force, aiming at analysing whether there is a need at a global level to produce assurance standards in relation to engagements to report on financial information contained in prospectuses. CESR was invited to participate in both these groups, as a participant in the project working group and as an observer to the IAASB Task Force. Whilst the project working group was designed to assess the feasibility of an assurance project in the area of prospectuses, the IAASB Task Force is more concretely looking at producing standards in the first instance for engagements relating to reports on pro-forma financial information. Two meetings of the task force took place in 2008.

NEXT STEPS

CESR-Fin will continue to monitor the developments regarding accounting and auditing related to prospectuses and transparency areas. International auditing standards is a focus area for CESR-Fin as audit of financial statements from issuers around Europe should be conducted with the highest quality. In addition, the international auditing standards will be an area where work is expected to accelerate during the course of 2009.

MiFID Level 3 expert group

MiFID: CESR consults on non-equity markets transparency

Transparency – the availability of essential information about the markets and products is needed for markets to function optimally. As the financial crisis originated in the markets for corporate bonds, structured finance products and credit derivatives, CESR decided in April 2008 to re-evaluate its earlier conclusions included in the advice given to the Commission on non-equity markets transparency in August 2007. Therefore, a consultation paper on the transparency of corporate bonds, structured finance products, and credit derivatives markets was published in December 2008. This consultation paper (Ref. CESR/08-1014) is open for comments until February 2009. Given the market crisis, the consultation sought to gather views of market participants in order to assist CESR in analysing the role of trade transparency on markets for corporate bonds, structured finance products and credit derivatives.

In relation to corporate bonds, the objective was to review whether CESR's conclusions on trade transparency in bond markets, published in August 2007 (Ref. CESR/07-284b), remain appropriate in the light of the experiences from the recent market turmoil. Regarding structured finance products and credit derivatives, the key question CESR sought to consider was the extent to which post-trade information plays a role to support price formation, reinforce valuation practices and provide supplementary information about the scale of credit risk transfers.

Transparency of corporate bond markets

In its consultation paper, CESR noted that insufficient post-trade transparency was not the key reason behind the problems of the corporate bond market, nor did CESR believe at that stage, that additional post-trade transparency would be able to solve these problems as a singular measure. However, CESR thought it likely that there would be value for market participants in receiving access to greater post-trade information. CESR aimed at exploring whether additional post-trade transparency could play a role in supporting a return to more normal market conditions in the corporate bond markets and be of value thereafter.

CESR also analysed the existing market-led solutions and noted that they focus on aggregated and delayed data and have a limited coverage in terms of issues and transactions covered as well as institutions providing the data. However, in the consultation paper CESR noted that it considers that market-led solutions in this area could still be appropriate provided that they can deliver an adequate level of post-trade transparency in a timely manner and are subject to close external monitoring.

Transparency of structured finance products and credit derivatives markets

In order to analyse whether a post-trade transparency regime could be envisaged for structured finance



Other objectives served

Investor protection

Market efficiency

Convergence

products and credit derivatives, the consultation paper also described the main characteristics of those markets, providing background on the recent turbulence and highlighting the expansion of new financing techniques based on securitisation.

In its consultation paper, CCSR stated its opinion, which at that stage was that post-trade information plays a role in these markets, although stressing that insufficient post-trade transparency may not have been the key reason behind the recent market turmoil. CCSR also stated that additional post-trade transparency would not be able to solve the different problems experienced in the structured finance market on its own; the appropriate level of transparency should be calibrated taking into account the relevant instruments, their trading methods as well as market participants active in the markets for these instruments.

NEXT STEPS

CCSR will publish a report on the results of its review together with a feedback statement by early summer 2009. With this work, CCSR seeks to increase the transparency of these markets, but the means to achieve this increased transparency are still under consideration.



Other objectives served

Investor protection

Maintenance of CCSR's MiFID database

The MiFID market transparency framework requires the competent authorities to calculate and publish a set of information regarding all shares admitted to trading on a regulated market in order to allow market participants to recognise liquid shares and to determine the block sizes for waivers from pre-trade transparency requirements and for delayed post-trade publication. CCSR publishes the results of the calculations on its web site. By doing so, CCSR fosters market transparency by facilitating the provision of sufficient trading information to the market by those market participants subject to the MiFID pre- and post-trade transparency obligations.

After the first few months of functioning of this database, CCSR launched a consultation on improving its functioning in December 2007 (Ref. CCSR/07-832). As a result of the consultation, CCSR made several modifications to the database that were described in a feedback statement (Ref. CCSR/08-147). Furthermore, in February 2008, and in order to ensure the smooth and harmonised calculation and publication of data, CCSR agreed on the protocol on the operation of the CCSR MiFID database (Ref. CCSR/08-144). This protocol describes the tasks and responsibilities of CCSR Members and the CCSR Secretariat respectively and contains practical guidance on how to conduct the calculations.

In the course of spring 2008, CCSR took further measures to improve the usability and reliability of the information included in the MiFID database. In April, it published a list of contact e-mail addresses of CCSR Members for market participants. This list was a response to the large number of queries CCSR had received since the establishment of the database. Although the competence for providing responses to these queries mainly lies with the national authorities, CCSR recognised that the information regarding the relevant national contacts had not been readily available and therefore addressed this issue.

Furthermore, in April 2008, CCSR published a list providing information on the use of the liquidity criteria set out in Article 22 of the MiFID Implementing Regulation in the Member States.

Consultation on improving the functioning of the MiFID database (Ref. CCSR/08-832)



- 4 Banking
- 2 Investment services
- 2 Insurance, pension and asset management
- 2 Regulated markets, exchanges and trading systems
- 3 Others

NEXT STEPS

During 2008 CCSR has made continuous efforts to update its database and to adapt it to the needs of stakeholders, requesting feedback from market participants and providing improvements to its users in a timely manner. This effort will be maintained in 2009, reflecting CCSR's commitment to contribute to the functioning of the MiFID market transparency regime.

CESR Members co-operate on suspensions and removals from trading

MiFID created a regime to ensure effective co-operation between competent authorities with respect to their obligations to notify each other on suspensions and removals of financial instruments from trading. This co-operation is important for the integrity, transparency and efficiency of financial markets, but it is also important in order to afford the same level of protection to investors across all Member States, regardless of where they trade.

The co-operation obligations of MiFID are further detailed in a protocol between CESR Members regarding the notifications on suspensions and removals of financial instruments from trading published in May 2008 (Ref. CESR/08-363).

Article 41(1) of MiFID gives operators of regulated markets the power to suspend or remove financial instruments from trading which no longer comply with the rules of the regulated market, unless such a step would be likely to cause significant damage to the investors' interests or, the orderly functioning of the market. If a market operator suspends or removes a financial instrument from trading, it is required to give notice to the competent authority and make a public announcement. The competent authority must then inform other Member States' competent authorities.

Where a competent authority suspends or removes financial instruments from trading, according to Article 41(2) of MiFID, it must immediately make public its decision and notify other competent authorities, who are then obliged to take similar action unless it would be likely to cause significant damage to the interests of investors or the orderly functioning of financial markets.

As the impact of notifications made to other competent authorities under Articles 41(1) and 41(2) differ, there might or might not be an obligation for other competent authorities to follow a decision to suspend or remove financial instruments from trading. In order to ensure that immediate action can be taken by other competent authorities, the CESR protocol describes the process and method for sending the notifications to relevant contact persons within the CESR Membership.

It should be noted however, that MiFID does not harmonise the reasons for suspending or removing a financial instrument from trading. Accordingly, CESR Members' powers or obligations to suspend or remove a financial instrument from trading under national laws and regulations vary from one Member State to another.

NEXT STEPS

The protocol prepared by CESR is an important step in ensuring timely and efficient communication between CESR Members on suspensions and removals of financial instruments from trading, and we will consider further improvements to this process on the basis of the experiences drawn. CESR Members will thus continue to apply this protocol in their day-to-day supervisory activities in accordance with their national laws and regulations.

Prospectuses contact group

Updates of data and Q&A on prospectuses

Prospectuses are key documents that inform investors on the risks of the companies they invest in at the point of initial investment. Markets rely on such documents to ensure orderly and informed investment. A key element in ensuring confidence in such documents and hence in supporting the objective of market integrity is the consistent application of the Prospectus Directive (PD) by CESR's Members.

During 2008, CESR published three updates of its Q&As on common positions agreed by CESR Members on prospectuses. CESR published commonly agreed answers to questions on specific issues relating to prospectuses. The latest update (Ref. CESR/09-103) brought the number of questions covered by the document up to 70. Of particular note in this respect was the common position on the disclosure requirements for securities which are guaranteed by a Member State when issuers voluntarily decide to opt-in to the PD included in the seventh update published in December 2008.



Other objectives served

Investor protection

Convergence



Other objectives served

Convergence

Transparency of implementation

Investor protection

Advice and reporting to EU institutions

The Q&A is intended to provide market participants - in a quick and efficient manner - with commonly agreed responses to 'everyday' questions brought up to CESR or to CESR Members. CESR responses do not represent standards, guidelines or recommendations. However, CESR seeks to operate the Q&A process in a way that will enable its Members to react promptly if any aspect of the common positions already published needs to be modified or any of the responses need further clarification. In the latest updates of the Q&A several answers were updated to take into account comments received from market participants and to omit previously dissenting views of certain CESR Members as those Members aligned their position with the CESR consensus. The Commission participates in the discussions of the group and has provided its position on some of the questions discussed in the paper. However, these views do not serve to bind the Commission.

Publication of data on prospectuses approved and passported

Since CESR received a mandate by the Commission in July 2007 to collect statistical data in relation to the number of prospectus approved and 'passported' in the EU, CESR has decided to institutionalise the exercise and provide the information on an on-going basis. As a result CESR published three tables in 2008 showing aggregated, quarterly data of prospectuses approved and 'passported' across Europe between July 2006 to June 2008.



Assisting the Commission's work on employee share schemes

Increasingly issuers are seeing share schemes as a means of aligning their own objectives and those of their employees. The significant amount of detailed information that would be required in a prospectus for third party investors is not pertinent to employee offers on the basis that employees are privy to information in their companies and have the option to purchase the securities directly from the market if they choose to pursue this option. CESR therefore set out to establish what level of information employees might reasonably expect to receive when subscribing securities under employee share schemes.

EU Commissioner McCreevy sent CESR a letter in September 2007 requesting work, in its Level 3 capacity, on employee share schemes. CESR was to try to agree a short-form disclosure regime for offers to employees in those cases where a prospectus is required. Following this, CESR in December 2007 published a public statement (Ref. CESR/07-825), informing market participants that it had started work on this request.

During 2008, CESR spent time analysing the issue of employee share schemes in detail and maintained close contact with the Commission seeking clarification on certain legal aspects that arose from discussions in the CESR expert group while preparing the proposal.

NEXT STEPS

The CESR prospectus contact group will continue to meet regularly to provide updates to the Q&A. Specifically, the group will publish its proposal for a light-touch approach under the Prospectus Directive and regulation in relation to employee share schemes as requested by the Commission. Furthermore, the group will continue to publish statistical data on the number of prospectus approved and passported and will continue to update, whenever necessary, its documentation on the use of language and the translation requirements relating to the summary in different jurisdictions. The group will also undertake a common assessment of the prospectus requirements of certain third countries compared to the EU requirements, starting with Israel and the United States. Finally, the group will also work on the preparation of a CESR response to the Commission's consultation on the review of the Prospectus Directive which it expects to deliver up early in 2009.

Transparency expert group

CESR's call for evidence on possible L3 work on Transparency Directive

The Transparency Directive aims to ensure broadly the same information is made available by issuers in all European markets, thus enhancing market confidence and stability. CESR's transparency group aims to encourage harmonised implementation of the TD among Member States, thus facilitating market integrity.

On 21 February 2008, CESR published a feedback statement (Ref. CESR/08-066) on its call for evidence regarding possible Level 3 work on the TD. The consultation period ran from July to September 2008.

Other objectives served

- Convergence
- Transparency of implementation
- Investor protection
- Advice and reporting to EU institutions



Other objectives served

- Convergence
- Transparency of implementation
- Investor protection
- Advice and reporting to EU institutions

CESR's reaction to the call for evidence

Based on the feedback received, CESR chairs decided in October 2007 to start Level 3 work on the TD and set up a group within CESR composed of national experts in the Transparency Directive. The Commission participates in the group as an observer and the group has started working in parallel on the following areas:

- Conducting a mapping exercise on implementation of the Directive in Member States;
- Preparing a paper containing responses to questions asked by market participants and regulators on the Level 1 and 2 Directives; and
- Establishing an EU network of national mechanisms for the storage of regulated information.

NEXT STEPS

CESR will regularly discuss practical issues relating to the day-to-day implementation of the Directive. The outcome of these discussions will be published in a Q&A document. The issues covered in the discussions will be those submitted by CESR Members or market participants as well as those identified as being issues where further convergence should be sought. This will be dealt with on the basis of the mapping exercise on the implementation of the TD. CESR will also improve the accessibility of national standard forms for notification of major shareholdings and explore ways to improve the EU standard form for notification of major shareholdings.

EU network of national storage mechanisms

A keystone of stable and integrated markets is free access to up to date information and a key element to this is the OAMs that store and make available information published by issuers pursuant to the TD.

Article 21 of the TD requires each Member State to officially appoint at least one mechanism for the central storage of regulated information (an OAM). Article 22 of the TD foresees that in the future there should be some kind of networking among the national storage mechanisms which seeks to achieve the linkage of:

- Electronic networks at national level to existing national business registers; and
- Those national electronic networks to each other at European level.

The aim of such an interlinked network would be to provide a one stop shop for investors and other interested parties looking for regulated financial information on listed companies.

In June 2006, CESR presented its advice to the Commission on a possible network between national storage mechanisms (Ref. CESR/06-292). CESR recommended a simple network model (the so called 'model C'), which would consist of a single interface for end users (e.g. a web site) containing a central list of all issuers with, for each issuer, a link to the relevant storage system on which the actual regulated information could be found.

In October 2007 the Commission adopted a recommendation on OAMs for the central storage of regulated information (2007/657/EC). CESR has been given a key role in the establishment of the network and in facilitating and providing support to Member States in executing the provisions of article 22.1 (b) of the TD.

As a first step towards setting up an EU network of national storage mechanisms, CESR has decided to use the MiFID database of shares admitted to trading on EU regulated markets that is already running on its website. Links to the relevant OAM are available directly through each share on the database.

NEXT STEPS

CESR will explore the development of the OAM network to also cover issuers of other securities than shares. In that work CESR will co-operate with the national OAMs.



Other objectives served

Investor protection

Market efficiency

MiFID Level 3 Expert Group



Other objectives served

Convergence

Investor protection

MiFID's impact on secondary markets functioning

In the secondary markets area, MiFID is designed to promote competition between trading venues for execution services so as to increase investors' choice, encourage innovation, lower transaction costs, and increase the efficiency of price formation process on a pan-Community basis.

One year on from MiFID's implementation, CESR considered it important to conduct an internal evaluation of the workings of the new regulatory framework and its impact on market structure, which will also serve as a preparation for the upcoming Commission evaluation of some of the MiFID provisions.

In November 2008, CESR published a call for evidence on the impact of MiFID on secondary markets functioning (Ref. CESR/08-872) in order to ask stakeholders for their views on the workings of MiFID and its impact. During the first stage of CESR's work, the analysis concentrates on shares admitted to trading on regulated markets. It covers the functioning of the MiFID provisions and the related provisions of the MiFID implementing regulation in the following areas: market transparency and integrity, regulated markets, MTFs and systematic internalisers. In this review, CESR analyses the following issues:

- Trends in the markets since MiFID has come into force and the effects of these trends on market structure and competition;
- The consequences of fragmentation for price formation and market efficiency;
- Dark pools of liquidity and pre-trade transparency waivers;
- Categorisation of shares for pre- and post-trade transparency purposes, data quality and consolidation;
- Attainment of the objectives of MiFID (e.g., fostering competition and a level playing field between EEA trading venues, providing for efficient and orderly markets); and
- Potential policy implications.

Call for evidence on MiFID's impact on secondary markets functioning (Ref. CESR/08-872)



- 7 Banking
- 7 Investment services
- 2 Issuers
- 5 Insurance, pension and asset management
- 1 Government, regulatory and enforcement
- 12 Legal and accountancy
- 1 Press
- 3 Others

NEXT STEPS

MiFID introduced significant changes to the European regulatory framework, in particular in relation to secondary markets. CESR's evaluation of the workings of the new regulatory framework and its impact on the functioning and structure of equity secondary markets, due to be finalised during the first half of the year, will form a valuable input in the debate on the impact of MiFID. A report on the impact of MiFID on the functioning of equity secondary markets is scheduled to be published by CESR in the summer of 2009. In the second stage, the analysis will be extended, where applicable, to secondary markets in other financial instruments covered by MiFID. The work on the second stage is planned to start after the finalisation of the first stage.

Post-trading expert group



Other objectives served

Convergence

CESR monitors ESCB's work on single pan-EU platform for securities settlement

The settlement of domestic and, in particular, cross-border securities transactions will enhance safety and efficiency of settlement when done on a single platform. The TARGET2-Securities (T2S) project will offer

settlement services for securities transactions in central bank money on the basis of a single technical platform. Subject to various conditions, almost all EU central securities depositories (CSDs) have expressed an interest in participating in the future platform. The euro system is currently working on the development of the platform and, although T2S remains work in progress at this stage, it is expected to have a profound impact on the settlement landscape in Europe once it becomes operational in 2013. This will have important implications for the supervision of national CSDs by securities regulators.

During 2008 CESR remained involved as an observer at various levels of the T2S project of the European System of Central Banks (ESCB). CESR has also entered into a dialogue with representatives of CSDs, under the umbrella of the European Central Securities Depositories Association (ECSDA).

Based on their respective national supervisory responsibilities, CESR Members have raised several questions with the ESCB on topics such as the governance and management of conflicts of interests, both in the development and in the operational phase of the project. In order to function properly, the proposed platform requires arrangements to be in place between the Euro-system and those national CSDs which, subject to various conditions, have expressed an interest in participating. Ultimately the introduction of a pan-European CSD would imply a transfer of certain settlement functions from national CSDs to the pan-European platform, which again would have important supervisory impacts for national securities regulators.

NEXT STEPS

The next step for CESR in this long-term project by the Euro-system will be to continue its dialogue with the ESCB and other stakeholders in 2009 in order to enable securities regulators to safeguard the objectives for the supervision of securities markets.

Takeover bids network

Exchange of experience on the application of on Takeover Bids Directive

The Takeover Bids Directive aims to ensure a level playing field in Europe for companies to launch bids and to ensure a transparent and fair treatment of investors. Some CESR Members do not themselves regulate takeovers so CESR has formed a network to ensure an interface exists which allows takeover regulators to exchange information and harmonise views.

CESR has continued to organise meetings with representatives from the EU authorities who regulate takeover bids (whether these are CESR Members or not) to discuss their experiences in the application of Directive 2004/25 on Takeover Bids. Three meetings were organised during the course of 2008 - in January, June and November - to discuss issues put forward by the members of the network such as equitable pricing, persons acting in concert, squeeze-out and sell-out provisions, and cross-border co-operation between competent authorities.

Presentations were also made during these meetings of actual EU takeover cases so that Members could exchange views and ask questions of the authorities that handled the cases concerned.

CESR assists in drafting checklist on annual information on takeover bids

CESR was requested by the Commission to assist in the drafting of a checklist pursuant to Article 20 of the Takeover Bids Directive. This article obliges the Commission to carry out an examination of the effectiveness of the Directive in 2011 and to that end requires Member States to provide the Commission with certain information on the takeover bids taking place in their markets.

In order to assist Member States in providing this information and to help ensure its comparability, the Commission and the CESR Takeover Bids Network have drafted a list of information elements to be provided.

NEXT STEPS

The Takeover bids network will continue to meet regularly to exchange experiences on the application of the Directive.



Other objectives served

Market integrity

Market transparency

Convergence

3.2

Transparency of implementation



3.2 Transparency of implementation

Monitoring and self-assessment

Review Panel

Mapping of supervisory powers, practices and sanctioning regimes under MiFID

Following a request by the ECOFIN Council in December 2007, CESR's Review Panel aims to provide an extensive factual overview to the various EU institutions on how the different provisions in MiFID are applied in practice throughout the EU Membership. In this respect, a mapping of the MiFID has been conducted throughout 2008, aiming to show the level of convergence already achieved in implementing the Directive, but also aiming to reveal those areas in which divergence exists with regard to supervisory powers, practices and sanctioning regimes across Europe.

The review, which started in 2008, covers powers, practices and sanctioning regimes, but not the actual use of sanctioning powers and the enforcement of measures and sanctions, keeping in mind that the implementation of the Directive is quite recent. The key areas of this mapping are as follows:

- How supervisory powers concerning MiFID have been assigned to competent authorities in all Member States, although not always necessarily to a CESR Member;
- The degree of convergence in relation to the procedures and methods used by CESR Members to regularly monitor that investment firms comply with their legal obligations;
- With regard to the sanctioning regimes: whether administrative measures are more common throughout the Membership than criminal sanctions;
- In respect to the specific provision on unauthorised provision of investment services by investment firms: Which CESR Members provide for administrative fines and criminal sanctions as well, or for the infringement of the other provisions of MiFID: which CESR Members can only impose administrative measures and administrative fines, but not criminal sanctions;
- The range of criminal sanctions that can be imposed by CESR Members (which may include imprisonment), depending on the infringement and the jurisdiction; and
- Whether there are huge differences between jurisdictions in terms of the range of administrative and criminal fines that can be imposed.

NEXT STEPS

The Review Panel will publish its review in February 2009. The work undertaken should be seen in the context of a series of studies undertaken to map to which extent the key pillars of the Financial Services Directives are applied in practice. These results serve to help us identify those areas we might wish to prioritise for further convergence in 2009. For example, in relation to MiFID, lack of convergence in procedures in approving platforms or regulated markets is perhaps a less significant issue, whilst differences on measures and procedures to authorise and supervise investment firms are more critical to the Single Market, as is the actual use of sanctioning powers and the enforcement of measures and sanctions. And, more crucially, the streamlining of these processes is within the competencies of CESR Members.



Other objectives served

Convergence

Advice and reporting
to EU institutions



Other objectives served

Convergence

Advice and reporting
to EU institutions

Mapping of supervisory powers and sanctioning regimes under the Transparency Directive

Following a request by the ECOFIN Council in December 2007, CCSR's Review Panel aims to provide an extensive factual overview to the various EU institutions on how the different provisions, with regard to supervisory powers and sanctioning regimes in the Transparency Directive, are applied in practice throughout the EU Membership. In this regard, CCSR's Review Panel started a mapping of the TD in October 2008, in which the relevant factual information was gathered from its Members. By the end of 2008, good progress was made in compiling the data for further analysis. The results of this mapping will be set out in a report which will be published mid-2009, representing the contributions of those CCSR Members that, at the time of publication, will have fully implemented the TD and its implementing measures. The mapping will show the level of convergence already achieved, but also reveal those areas in which divergence exists with regard to supervisory powers and sanctioning regimes across Europe.

NEXT STEPS

The Review Panel will publish the TD mapping report, presumably in early 2009, and send its findings to the EU institutions. We expect, as with earlier mapping exercises, that the results will help us identify those areas we might wish to prioritise for further convergence across Europe. In 2009, CCSR will therefore look into actual use of sanctioning powers, possibly issuing guidelines concerning privileged information and a definition of market manipulation.



Other objectives served

Convergence

CCSR reviews its standards on financial information

In 2008, the Review Panel of CCSR reassessed how the CCSR standards No.1 and 2 on financial information are applied in practice by its Members. As part of this work, CCSR started a self-assessment of Standard No.2 in 2008. The self-assessment report will be finalised and published in April 2009. The Review Panel will also conduct a peer review on its Standard No.2 which will be published mid 2009, showing the main areas in which Members are (fully) compliant or not.

CCSR Standard No.2 (Ref: CCSR/03-317c) was originally published in April 2004 and contains proposals for achieving the necessary co-ordination and convergence of enforcement activities carried out by CCSR Members. Mainly, these proposals set out that:

- EU national enforcers should take into account decisions taken by other enforcers;
- Enforcement decisions should be made available to the other EU national enforcers via a database;
- Those EU national enforcers not being CCSR Members, but being separate national authorities, should follow a confidentiality regime consistent with that applicable to CCSR Members; and
- Enforcement decisions and experiences should be discussed by the EU national enforcers within the framework of the European Enforcers Co-ordination Sessions, the EECS.

CCSR Standard No.1 (Ref: CCSR/03-073), was originally published in March 2003 and provides principles on how, in CCSR's view, harmonisation of the institutional oversight systems in Europe may be achieved. Particularly, it defines standards for convergence in the enforcement of financial information, its scope, the selection techniques applicable by the enforcers and the responsibility of different parties involved.

The Review Panel also conducted work, during the course of the last quarter of 2008 to update the peer review of the implementation of CCSR Standard No.1 (Ref: CCSR/06-181) that was published in August 2006. During the latter part of 2008, CCSR's review panel drafted a peer review report of Standard No.1 on financial information which will be finalised and published in April 2009.

NEXT STEPS

The Review Panel will finalise the update of the peer review on CCSR's Standard No.1 on financial information during the course of 2009 and will also finalise its self-assessment and peer review report on the CCSR Standard No.2 and publish its report early 2009. The review of both of CCSR's Standards will help to identify the levels of harmonisation already

achieved on the enforcement of financial information and will also provide CESR, its Members and the EU institutions with information on those areas where further convergence still needs to be fostered.

CESR reviews CESR guidelines to simplify the notification of UCITS

During the course of 2008, CESR assessed how CESR Members applied CESR's guidelines to simplify the notification process of UCITS in practice. CESR started a peer review of the guidelines, which will show the degree of convergence across Europe by showing the main areas in which Members are (fully) compliant or not.

In the course of 2008, CESR started a peer review exercise on how CESR Members implemented CESR's guidelines to simplify the notification process of UCITS. This review followed an earlier self-assessment exercise of the guidelines (Ref: CESR/o8-113) that has been conducted during the first half of 2008 and has been published in April 2008. The self-assessment mainly addressed the extent to which CESR Members were considered to have implemented a package of guidelines on five specific areas regarding the notification process:

- The language regime of the notification letter (CESR Members agreed that UCITS can submit their notification letter to the host authority in a language commonly used in international finance, if this is not contrary to the domestic legislation or regulation);
- Completeness of the notification letter (CESR Members agreed that if a notification is incomplete, the competent host state authority shall inform – in any case within one month from the date of receipt of the incomplete notification – the UCITS about the incompleteness and the information missing as soon as possible);
- The shortening of the two-month notification period (CESR Members agreed that the two-month period for notification is the maximum period available for the host competent authority to check the notification and that it should be shortened whenever possible);
- Certification of documents (CESR Members agreed to rely on self-certification of copies of original attestations by the notifying UCITS and that the original attestation should include an English version, in order to simplify the practices and reduce costs for applicants); and
- Treatment of umbrella funds (CESR Members agreed that the necessary time for the host authority to check new sub-funds which are added to the umbrella fund with the intention of being marketed in the host state - where the marketing arrangements are already familiar to the host country competent authority - should be significantly less than the two-month period).

NEXT STEPS

The Review Panel will finalise the peer review on the implementation of CESR's guidelines to simplify the notification procedure of UCITS during the course of the second half of 2009. The results of this review will be also sent to CESR Members and the EU institutions and therefore show the level of convergence already achieved, but it will also reveal those areas where further harmonisation would still have to take place in 2009.



Other objectives served

Convergence



Other objectives served

Convergence

Market transparency

Investor protection

Transparency expert group

Mapping of Transparency Directive's implementations

CCSR's transparency expert group aims to provide a forum to facilitate a harmonised implementation of the TD in Europe. As the implementation of the Directive is still relatively recent, the group's first task was to establish how this implementation looked in the various Member States.

In the period from May to June 2008, as part of a mandate given by the CCSR chairs, the group conducted a mapping exercise on how Member States had transposed the TD. The results of this exercise were published in October 2008 (Ref. CCSR/08-514b).

Lack of a central information source

A previous call for evidence conducted in 2007 had highlighted that the lack of a central information source was a major obstacle to the practical operation of the TD, especially for internationally active investors and issuers. Consequently, CCSR was asked to gather together and publish information on how the Directive had been implemented across different jurisdictions particularly in areas such as notification thresholds, the reporting procedure and how shareholdings were calculated.

Respondents to the 2007 call for evidence had also highlighted that difficulties in knowing the exact requirements in the different Member States arose through a combination of the Directive's minimum harmonisation status, which implied that Member States could prescribe additional transparency measures and the right of those Member States to choose between different options allowed by the Directive.

CCSR's TD mapping exercise

The mapping exercise conducted by CCSR consisted of 160 questions on the transposition of the TD covering, amongst others, general information on the availability of implementing rules, guidance and other key information, major shareholding notifications, periodic financial information and dissemination of regulated information.

The results of the mapping exercise showed that in certain areas there is divergence in the national regulations implementing the TD. Even though at the time of the mapping exercise, not all Member States had fully implemented the TD rules and prepared interpretations relating to them, the results provide detailed information on the nature of the Directive's implementation in the various Member States. The results will also help CCSR to identify areas where further convergence might be sought.

NEXT STEPS

CCSR will regularly discuss practical issues relating to day-to-day implementation of the Directive. The outcome of these discussions will be published in a Q&A document. The issues covered in the discussions will be those submitted by CCSR Members or market participants as well as those identified as being issues where further convergence should be sought on the basis of the mapping exercise on implementation of the TD.

3.3

Convergence



3.3 Convergence

CCSR-Pol



Other objectives served

Market efficiency

Investor protection

CCSR promotes convergent application of the market abuse regime

Convergent application of key European Directives is a prerequisite for a well-functioning single EU financial market, providing a level playing field for all market participants, and ensuring fair and transparent securities trading. CCSR therefore ensures the consistent and effective application also of the Market Abuse Directive (MAD) and conducts Level 3 work in the area of MAD.

Third set of CCSR guidance on the common operation of MAD

Throughout 2008, CCSR continued to prepare a common ground for the convergent implementation and application of the EU market abuse regime by ensuring a common approach towards the operation of MAD amongst CCSR Members. In this respect, CCSR is about to finalise the third set of CCSR guidance and information on the common operation of MAD, covering the following issues:

- Insider lists;
- Suspicious transactions reports;
- Stabilisation and buy-back programmes; and
- Rumours (in relation to inside information).

In May 2008, CCSR published a first consultation paper on the third set of guidance outlining draft guidance on insider lists and suspicious transaction reports (Ref. CCSR/08-274). In October 2008, a second consultation paper, suggesting guidance on stabilisation, buy-back programmes and rumours (Ref. CCSR/08-717), was issued. CCSR also held a public hearing in November 2008 to discuss both consultation papers with market participants, receiving broad support from industry representatives.

Consultation on third set of guidance and information on the common operation of MAD (Ref. CCSR/08-717)



- 7 Banking
- 4 Investment services
- 2 Issuers
- 5 Others

Measures and sanctions under MAD

In February 2008, CCSR published an executive summary (Ref. CCSR/08-099) to its report on administrative measures and sanctions as well as criminal sanctions available in Member States under MAD (Ref. CCSR/07-693), published in November 2007 upon request by the Commission. The purpose of CCSR's report was to inform the EU Institutions and market participants about the different approaches to applying sanctions and administrative measures across the Member States.

According to the MAD provisions, Member States have the discretion to decide on the amount of fines and the types of administrative measures applicable in market abuse cases. Furthermore, the Member States may also introduce criminal sanctions in market abuse cases.

The exercises undertaken by CCSR revealed differences in sanctions applied in cases of market abuse. The report, however, did not seek to analyse these differences, or to draw any conclusions on the impact of differences. CCSR therefore noted that the differences that exist are largely due to the fact that Member States' legal systems differ, and that the division of responsibilities between competent authorities in each Member State also vary in relation to the investigation of cases and subsequent enforcement. Administrative sanctions and measures of CCSR Members include a public or private reprimand, monetary penalties, disqualification from management, or ownership of a regulated entity and withdrawal of licenses.

NEXT STEPS

CESR will finalise its third set of guidance on the common operation of MAD and will publish a feedback statement on the feedback received to the two consultation papers during the first half of 2009. Further steps in 2009 relating to the market abuse regime will include work on directors' dealings and considering possible further Level 3 work, taking into account the information on the timetable and outcome of the MAD review of the Commission.

CESR-Fin

CESR's dialogue with the US SEC

CESR-Fin continues to pursue a dialogue with the US SEC, designed primarily to ensure a co-ordinated approach to the enforcement of IFRS in the accounts of those EU issuers who maintain dual listings in the EU and US. Two meetings between CESR and the SEC took place in 2008, one in July and one in November respectively. The topics discussed covered:

- The SEC roadmap for allowing US companies to use IFRS;
- Issues arising out of the G20 summit;
- Developments in the EU and US regarding fair value accounting;
- Themes arising from reviews of the 2007 IFRS financial statements in the US and EU markets;
- The use of XBRL;
- The IASCF's constitutional review; and
- Possible CESR-IOSCO co-operation on publication of enforcement decisions.



Other objectives served



NEXT STEPS

There are plans to hold two further meetings in 2009 and for a US delegate to speak on accounting issues relevant to the US market at the CESR Conference to be held in 2009.

Equivalence of third country GAAPs

CESR-Fin continued to work closely with the Commission during 2008 providing advice on the equivalence of Generally Accepted Accounting Principles (GAAPs) used by third country issuers for the purposes of the Prospectus and Transparency Directives.

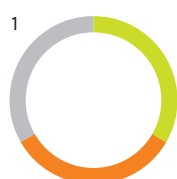
Following publication by the Commission of a mechanism for establishing the equivalence of third country GAAPs in December 2007, CESR was asked to perform an equivalence assessment work in relation to the GAAPs of China, Japan and the US (delivering advice to the Commission in March 2008), of Canada and South Korea (delivering advice to the Commission in June 2008) and of India (delivering advice to the Commission in November 2008). Following CESR's consultations and recommendations, the Commission put forward a final proposals that US and Japanese GAAP be found equivalent as of 1 January 2009 and that a transitional exemption for the use of Canadian, Chinese, Indian and South Korean GAAPs on EU markets be granted until 31 December 2011. These proposals were taken up and passed into law in December 2008.



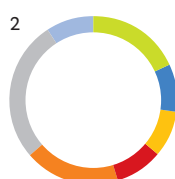
Other objectives served



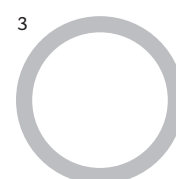
- 1 – Consultation on CESR's advice on Canadian and South Korean GAAPs (Ref. CESR/08-094)
- 2 – Consultation on CESR's advice on the equivalence of Chinese, Japanese and US GAAPs (Ref. CESR/08-761)
- 3 – Consultation on CESR's advice on Indian GAAP (Ref. CESR/08-639)



- 1 Banking
- 1 Regulated markets, exchanges and trading systems
- 1 Legal and accountancy



- 2 Banking
- 1 Investment services
- 1 Issuers
- 1 Government, regulatory and enforcement
- 2 Regulated markets, exchanges and trading systems
- 3 Legal and accountancy
- 1 Others



- 1 Legal and accountancy

NEXT STEPS

The final provisions on the equivalence of third country GAAPs, however, require the Commission to update the European Parliament regularly on the progress that is being made by those countries granted transitional exemption to converge with or adopt EU endorsed IFRS. The first such update needs to be made by the Commission during the later half of 2009 and CESR expects to receive a mandate to perform review work in support of this report in the first quarter of 2009. CESR expects to perform further work on the progress of Canada, China, India and South Korea in adopting or converging with IFRS in 2009.

MiFID Level 3 expert group



Other objectives served

Market transparency

Market efficiency

Investor protection

Q&As on MiFID

Informed market participants are vital to ensure the orderly functioning of financial markets and to maintain fairness, efficiency and transparency of trading. To this end, and in order to promote the convergent application of MiFID throughout Member States, CESR maintains a MiFID Q&A and also provides input to the Commission's Q&A on MiFID.

In April 2008, CESR published its first MiFID Q&As (Ref. CESR/ 08-266), including commonly agreed positions by CESR Members. The aim of the Q&A is to provide responses in a quick and efficient manner to 'everyday' questions which are commonly posed to CESR by CESR Members, market participants or the general public. Additional Q&As on MiFID were published in December (Ref. CESR/08-943).

CESR also continues to provide input to the Commission's MiFID Q&A and seeks to ensure a high degree of co-ordination and integration between the CESR and the Commission Q&As.

NEXT STEPS

The main purpose of the MiFID Q&A is to address issues of practical application, for which a formal consultation process is considered to be unnecessary. Before generating an answer, CESR checks the potential impact and relevance of the issue concerned. CESR guidance on issues that are essential for the industry will always be subject to a regular consultation process, no matter whether it is issued as an ordinary Level 3 measure or as Q&A. In 2009, CESR will therefore continue to update the MiFID Q&A whenever new questions are posed to CESR.



Other objectives served

Market transparency

Market efficiency

Investor protection

MiFID's operational supervisory work and sessions

Supervisors equipped with up-to-date knowledge are vital to ensuring the proper functioning and oversight of the market, as well as ensuring new regulations developed are implemented in a convergent, transparent and efficient way, which also helps protect the interests of investors.

In 2008, CESR focused its MiFID Level 3 thematic work on issues of supervisory convergence. CESR received feedback from its Members, as well as from market participants, that more practical work on certain areas in MiFID would enable consistent implementation and provide certainty. As a consequence, CESR included the supervisory stream of work as a priority item in its MiFID 2008 work programme and organised a series of workshops for supervisors and the industry.

The workshops acted as a platform for exchanging information and market practices, generated interesting discussions and enabled participants to obtain a better understanding of the effects of MiFID on the compliance and business systems of firms. The following key areas were covered:

- Best execution;
- Inducements;
- Conflicts of interest; and
- Investment advice.

The workshops resulted in the production of thematic handouts, so called ‘supervisory briefings’, on best execution (Ref. CESR/08-735), inducements (Ref. CESR/08-734) and conflicts of interest (Ref. CESR/09-733), with the aim of helping supervisors to identify the key components of the associated rules and equip them with a list of issues and questions that could be used in their day-to-day activities. Furthermore, the supervisory briefings served in identifying and prioritising future work on the supervisory front.

NEXT STEPS

Regarding the supervisory work stream, 2009 will see the first thematic supervisory effort by CESR to assess firms’ practices on inducements. Over 200 firms and banks have already been identified and asked to participate in this exercise, the final outcome of which will be reflected in a pan-European report on practices. In parallel, building on the success of the supervisory briefings, which were positively received by both press and industry, CESR will also produce additional supervisory briefings on key MiFID topics for investor protection, such as on the information that firms should provide to clients before, during and after the provision of an investment service. Finally, a series of workshops will be organised on topics of practical relevance for supervisors, such as the supervision of local and incoming tied agents and inducements. The policy work will commence with Level 3 material on the classification of complex/non-complex financial instruments under MiFID, and will cover issues relating to the harmonisation of product classification. This will also include the production of recommendations/guidelines on the provision of investment advice. However, both areas have been identified as high priority in the light of current market circumstances.

MiFID passport functioning

Championing agreements between CESR Members on the supervision of cross-border branches improves co-operation and more consistent supervision of investment firms across Europe.

Since MiFID’s implementation in 2007, CESR has worked to improve the co-operation of its Members in core supervisory functions. One of these areas is the supervision of cross-border branches, where CESR Members have developed numerous co-operation agreements throughout 2008, following two models developed by CESR in 2007: common oversight programmes or requests for assistance based on efficient allocation of supervisory tasks. The second model is general in nature, whilst the first one allows supervisors to adopt a tailored agreement for particularly important branch operations.

NEXT STEPS

The main aspect of the passporting work in 2009 will be a pan-European fact finding exercise in order to assess the effectiveness of CESR’s protocols for the supervision of branches and for passport notifications. The aim of the work will be to identify areas for improvement and further co-operation, suggesting ways of doing so, if appropriate.

Review of the scope of the MiFID transaction reporting obligation

In order to achieve the goals of MiFID, it is key to enable competent authorities to be sufficiently informed about transactions in which they have a supervisory interest so that they are in a position to carry out their obligations under MiFID as expeditiously and efficiently as possible. Therefore, it is necessary to ensure that a single set of data is requested from all investment firms with a minimum of variation between Member States, so as to minimise the extent to which businesses operating across borders are subject to different reporting obligations, and so as to maximise the proportion of data held by a competent authority that can be efficiently shared with other competent authorities. In order to achieve these goals, in 2008, CESR launched work to further increase the degree of convergence in relation to MiFID’s transaction reporting.

The starting point for the work were the CESR Level 3 guidelines on MiFID transaction reporting (CESR/07-301) published in May 2007, where, among others, the scope of the transaction reporting obligation was tackled. In those guidelines, CESR Members had recognised the competent authorities’ need to specify under which circumstances transactions are being executed and need to be reported. In addition, CESR Members had agreed to commit themselves to collecting and exchanging certain transaction information.



Other objectives served

Market transparency

Market efficiency

Investor protection



Other objectives served

Market transparency

Market efficiency

Investor protection

This was seen as an interim solution in order to avoid disruptions in the existing reporting and supervision systems of CCSR Members. As a consequence, CCSR committed to launching a review of the scope of the transaction reporting obligation after the regime had been in operation one year. To this end, CCSR launched a call for evidence in November 2008, inviting views as to what CCSR should consider when conducting the review. This review is aimed at producing definitive guidance in this area. The call for evidence focused on the following aspects:

- Whether the differences in the scope of the transaction reporting obligation between CCSR Members had caused any problems to market participants (requesting examples of the practical problems encountered);
- Investment firms' practical experiences in reporting transactions that fall under each of the categories set out by the interim guidance; and
- Advantages and disadvantages of competent authorities systematically receiving transaction reports covering the information on the ultimate client versus acquiring that information on an ad hoc basis by other means.

Call for evidence on the review of the scope of MiFID's transaction reporting obligations (Ref. CCSR/08-873)



NEXT STEPS

This work stream will help CCSR Members to analyse the benefits and drawbacks of the various scopes of the transaction reporting obligation with the aim at formulating a harmonised agreement on the scope of this obligation. More specifically, taking into account the responses to the call for evidence, the transaction information required to be reported will be reviewed and clarified where necessary so as to achieve a common understanding. A consultation paper is scheduled to be released in the summer of 2009, with a view to publish revised Level 3 guidelines, if necessary, by the end of the year.

Post-trading expert group

CCSR-ESCB recommendations for securities settlement systems and central counterparties

Specificities in the European landscape for clearing and settlement led CCSR and the ESCB to propose an EU-focused adaptation of the existing CPSS-IOSCO recommendations in order to promote competitive, efficient, safe and sound pan-European post-trading arrangements. This should ultimately lead to greater confidence in securities markets, better investor protection and limit systemic risk. In addition, the recommendations seek to improve the efficiency of the market infrastructure, which should in turn promote and sustain the integration and competitiveness of the European markets. In the absence of an EU framework for all entities active in this area, it is anticipated that the CCSR-ESCB recommendations will, where needed, promote harmonisation of European securities markets by encouraging efficient structures and market-led responses to developments.

In 2008, CCSR, together with the European System of Central Banks (ESCB), started to finalise the draft CCSR-ESCB recommendations for securities settlement systems in the EU after the publication of the ECOFIN Council conclusions of 3 June 2008, taking into account the following guidance given by the ECOFIN Council:

- To transform the existing draft standards addressed to the entities into recommendations for public authorities;
- To include the international central securities depositories and to exclude custodians from the scope of application of the recommendations; and



Other objectives served

- Market efficiency
- Market transparency

→ To replace the draft standard 9 on credit and liquidity controls by the original recommendation 9 of the 2001 recommendations by the Committee on Payment and Settlement Systems (CPSS) and IOSCO.

Representatives of the Committee of European Banking Supervisors (CEBS) and the Commission participated as observers in the preparatory work. Furthermore, on 3 June 2008, the ECOFIN Council invited CEBS to further review, in co-operation with CESR, the coverage of risks borne by custodians, taking into account that some (international) central securities depositories and central counterparties (CCP) are also subject to the Capital Requirements Directive.

In accordance with the ECOFIN Council request to adapt and finalise the draft by autumn 2008, CESR and the ESCB published their redrafted recommendations in October for a public consultation of three months.

As the financial crisis deepened in the second half of 2008, the ECOFIN Council invited CESR and the ESCB in December 2008 'to adapt the existing draft recommendations on CCPs so as to explicitly address also risks of OTC derivatives and co-ordinate with CPSS-IOSCO recommendations in order to ensure global consistency as soon as possible'. This additional stream of work is not expected to affect the ongoing supervision/ oversight by competent authorities for CCPs which would extend their current services in this area, nor the scope of the current exercise and the agreed deadlines. In accordance with an earlier conclusion of the ECOFIN Council, CESR and the ESCB aim to finalise this work in early 2009.

NEXT STEPS

The next step for the recommendations will be the analysis of the responses to the first consultation paper and the preparation of another consultation paper with regard to central clearing of OTC derivatives before the full set of recommendations will be adopted by CESR and by the relevant ESCB bodies during the first half of 2009.

Prospectuses contact group

Assessment of the equivalence of non-EEA prospectuses

Market efficiency depends on access by issuers to the markets in a quick and cost-effective manner. With regards to third country issuers, many of whom are subject to regulatory oversight in their own jurisdictions, market efficiency is best served by ensuring that European investors receive substantially the same information as they do in relation to European issuers.

CESR's prospectus contact group in 2008 has continued to work on the equivalence of prospectuses (Article 20.1 PD) from countries outside the European Economic Area (EEA). In particular, the group has sought to establish the exact meaning of Article 20.1 PD and has analysed the individual decisions taken by CESR Members who have assessed the equivalence of some non-EEA prospectuses.

The outcome of this work was summarised in a statement (Ref. CESR/08-972) published by CESR in December 2008. In this statement, CESR clarified its interpretation of Article 20.1 PD, informing market participants that, at the date of the statement, no Member State had taken any blanket or unconditional decision with respect to the equivalence of the prospectus standards of any third country. Furthermore, CESR indicated that it had decided to work on a common assessment of the prospectus requirements of certain third countries compared to the EU requirements, for example, initial work focusing on the requirements of Israel and the US.

Cross-sector convergence

3L3

The so called 3L3 work – the common work of the 3L3 Committees – is generally focused on achieving convergence between the three financial sectors within capital markets, credit institutions (banks), the insurance and pensions sector. These different segments of the financial markets are interlinked. The need for the three sector Committees, CESR, CEBS and CEIOPS, to work together is driven by aspects of creating an European level-playing-field, consistency in legislative implementation, cost effectiveness and proper assessment of cross-sector risks.



Other objectives served

Transparency of implementation

Investor protection

Advice and reporting to EU institutions



Other objectives served

*Advice and reporting
to EU institutions*

Joint protocol on 3L3

CCSR, CEBS and CEIOPS have co-operated closely since the setting up of the 3L3 Committees. In 2005, the Committees formalised their co-operation by signing a joint protocol on co-operation. In 2008, the 3L3 Committees updated their protocol to reflect their experiences of joint work done, and to take into account the latest developments, such as the Lamfalussy review and the deepening financial crisis. Both the review and concerns about the impact of the crisis on EU financial institutions led to an increased number of requests from EU institutions⁽¹⁰⁾ and stakeholders to develop cross-sector aspects, closer co-operation and more aligned positions among the 3L3 Committees became even more important. As the year progressed, contacts among the 3L3 chairs became ever more frequent.

The new 3L3 protocol, which was signed on 8 December 2008 in Brussels, introduces the concept of a co-ordinating committee. The co-ordinating committee carries the main responsibility for 3L3 co-ordination on behalf of the 3L3 Committees, on a six month rotational basis, with CCSR being the initial co-ordinating committee for the second half of 2008, followed by CEIOPS in the first half of 2009 and CEBS in the second.



Other objectives served

Market integrity

Market transparency

Market efficiency

Investor protection.

3L3 work on cross-sector risks

Identifying cross-sector risks will help the 3L3 Committees, their members and the EU institutions in ensuring the stability of European financial markets. Following the ECOFIN Council conclusions of May 2008 and the request to the 3L3 Committees to respond to financial stability concerns of a cross-sector nature, the 3L3 Committees started testing this form of co-operation in a pilot exercise. This was done by organising a joint initiative to address the issue in detail and to find the best way forward by adding a cross-sector dimension to the 3L3 Committees' work on sector risk assessment.

The cross-sector perspective has been assigned to those sector working groups already established earlier for assessing sector risk frameworks. The intention in doing so has been to find the most efficient way forward rather than establishing a separate 3L3 cross-sector group with again another separate meeting frequency.

NEXT STEPS

A 3L3 task force on cross-sector risks, accountable to the 3L3 chairs, will be formed in 2009 to make sure that cross-sector financial stability risks are effectively identified. The task force will ensure that, at an early stage, the 3L3 Committees' ability to capture cross sector risks relevant to the risk assessment exercises of the Committees: common risks across sectors, risks which are contagious from one sector to another, and endogenous risks, where regulatory action in one sector has significant risk implications for another sector. This task force will therefore contribute to the response to additional requirements that will follow from the review of Commission decisions establishing the 3L3 Committees.



Other objectives served

Market efficiency

3L3 work on home-host delegation

The 3L3 work on delegation and issues of home-host arrangements serves to achieve convergence among regulators, across sectors and markets. Consistent and predictable application of EU legislation across financial sectors leads to greater level of consistency of application across different jurisdictions and helps supervisors rely on each other's work. In June 2008, the Commission requested the 3L3 Committees to work on delegation for home and host authorities.

The work of the 3L3 will also feed into the Commission's review of the financial services Directives, with a view to include provisions on the voluntary delegation of tasks and the analysis of options on voluntary delegation of supervisory competences. The request related to delegation of tasks, to the delegation of supervisory responsibilities and to the legal and practical obstacles to delegation. A 3L3 task force was set up, representing participants from the three sectors. In early November 2008, the task force sent a report on delegation of tasks (Ref. CCSR/08-744) to the Commission. The report sets out 15 key principles to be followed when the delegation of tasks takes place between competent authorities. The principles cover

(10) The revised Commission Decisions establishing the Committees, published in January 2009, explicitly requires 3L3 co-operation.

issues such as the legal basis, compliance with the national law, liability, confidentiality, transparency and accountability, to be followed when delegation of tasks takes place between competent authorities. The 3L3 task force continued its work in autumn 2008 by mapping obstacles to delegation to supervisory responsibilities by publishing a questionnaire, mapping CESR Members' current legal and supervisory frameworks.

NEXT STEPS

The 3L3 delegation task force has finalised, in April 2009, its work on delegation as requested by the Commission with a paper on obstacles to delegation of supervisory responsibilities. The 3L3 Committees stand ready to further contribute to the developments in this field, including possible future legislative initiatives.

3L3 statement on the valuation of financial instruments

In October 2008, the 3L3 Committees published a joint statement on the latest developments in accounting. The statement refers to the relevant work undertaken by bodies from the different financial sectors on accounting and fair value. The 3L3 Committees welcomed the urgent work of the IASB and the flexibility shown in terms of application of the mark-to-market valuation. The Committees also welcomed the new Regulation from the Commission that promptly implemented this change. The 3L3 Committees supported the aim to arrive at global accounting standards and appreciated the solution found by the IASB regarding the issue of reclassification and therefore avoiding a European carve-out on IAS 39. The 3L3 have also high-lighted the support for the clarifications given by IASB in October 2008 with regard to the following:

- Management's internal assumptions;
- The use of market quotes;
- Results of disorderly transactions; and
- Transactions in an inactive market.

NEXT STEPS

In 2009, the 3L3 Committees will continue their co-ordination and exchange information on the sector work undertaken on accounting.

3L3 anti-money laundering task force

The 3L3 Committees' Anti-Money Laundering Task Force (AMTLF) aims at achieving convergence in national implementations of the Third Anti-Money Laundering Directive across the different sectors of European financial markets. On 26 March 2008, the 3L3 Committees launched a joint public consultation (Ref. CESR/08-247) on a common understanding of the information on the payer accompanying a funds transfer. The AMTLF has proposed a solution to deal with payments that lack the required information in respect to the Regulation 1781/2006 on information on the payer accompanying transfers of funds and other provisions, covering anti-money laundering and terrorist financing. The proposed common 3L3 understanding on the information on the payer accompanying a funds transfer to payment service providers of payees, has been developed through an informal industry consultation, including a workshop held in January 2008.

The AMTLF was established in the second half of 2006 by CESR, CEBS and CEIOPS, with a view to provide input into anti-money laundering and counter terrorism finance issues, with a specific focus on the Third Anti-Money Laundering Directive.



Other objectives served

Market transparency

Investor protection

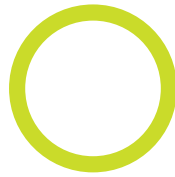


Other objectives served

Transparency of implementation

Market integrity

3L3 consultation on common understanding of obligations on information on the payer accompanying funds transfers (Ref. CESR/08-247)



● 9 Banking

NEXT STEPS

The AMLTF will continue its work in relation to the practical aspects of the Third Anti-Money Laundering Directive and will in 2009 produce work on aspects of ‘Know Your Customer and Customer Due Diligence’.

3L3 guidelines on cross-border acquisitions

Directive 2007/44/EC of 5 September 2007 on cross-border acquisitions in the financial sector⁽¹¹⁾ amends a number of sector Directives with regards to prudential requirements to be applied in acquisitions and increase of holdings in the financial sector. The Directive sets out five criteria to be applied by the competent authorities in the EU in order to assess a cross-border acquirer, such as the reputation of the acquirer and its compliance with prudential requirements. In order to develop a common understanding among the members of 3L3 Committees as to the application of these criteria, the 3L3 Committees set out to develop a common understanding of these assessment criteria. Following a consultation in December 2008, a 3L3 cross-border merger and acquisitions task force published guidelines on the five prudential criteria applicable to the Directive.

The 3L3 Committees also defined co-operation arrangements in order to ensure an adequate and timely flow of information between supervisors, taking into account the limited time of normally 60 days, provided under the Directive for completing prudential assessments. They also established an exhaustive and harmonised list of information that proposed acquirers should include in their notifications to the competent supervisory authorities.

Consultation on 3L3 guidelines for the prudential assessment of acquisitions and increase in holdings (Ref. CESR/08-543)



● 3 Banking
● 4 Insurance, pension and asset management
● 2 Others

NEXT STEPS

In 2009, the 3L3 Committees will further discuss and assess the possibilities to perform additional work in the area of fitness and properness criteria. However, this item has been given a low priority in the 2009 work programmes, given the volume of work that needs to be done in other areas following the financial crisis.

Impact assessment guidelines

CESR, CEBS and CEIOPS published on 30 April 2008 their joint Impact Assessment (IA) guidelines. These guidelines have been developed as a practical tool to help ensuring the effective use of IA within the 3L3 Committees. The guidelines will assist the Committees in their effective policy decisions regarding future regulation, and by enhancing the credibility and accountability in policy-making and therefore also fostering the efficiency of markets as a whole. The IA guidelines bring additional structure to policy making and reinforce the Committees’ commitment to transparent, evidence-based policy-making. One key feature through which this is achieved, is the role given to market and regulatory failure analysis, as tools for ensuring that the case for regulatory intervention is considered properly.

⁽¹¹⁾ Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards to procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (text with EEA relevance).



Other objectives served

Market transparency



Other objectives served

Market efficiency

The expectation is that IA will apply to the work of the 3L3 Committees, where the policy issues under consideration are likely to have significant structural and cost implications to consumers, investors and/or market participants.

The 3L3 Committees conducted pilot studies to establish how the guidelines would work effectively. CESR tested the guidelines in relation to the existing simplified prospectus work; CEBS tested them in relation to its large exposures work; CEIOPS is applying them in its work to deliver advice to the Commission in relation to the Solvency II project.

NEXT STEPS

The 3L3 Committees will continue providing joint 3L3 training to members of the Committees on the application of guidelines as well as on implementation and use of impact analysis in their activities.

3L3 task force on internal governance

In July 2008, the 3L3 Committees set up a common internal governance task force intended to address cross-sector issues related to internal governance. The purpose of the work is to develop, within the current legal framework, cross-sector guidance on internal governance for institutions and conglomerates operating in different financial sectors. In doing so, the task force will identify the consequences of differences in Level 1, 2 and 3 measures of regulating internal governance which might have a significant practical impact on institutions.

NEXT STEPS

The internal governance task force will perform a stock take of the differences between Level 1 and 2 measures on internal governance with regard to MiFID, CRD, Solvency II and to the Conglomerates Directive, in the second and third quarter of 2009. We expect the work to be finalised during 2009.

CESR-CEBS' advice on the review of commodities business

CESR and CEBS published a consultation paper (Ref. CESR/08-370) in May 2008, responding to the Commission's joint mandate for technical advice on the review of commodities business with regards to Article 65 of MiFID and Article 48 of the Capital Adequacy Directive (CAD).

The review related to the regulatory treatment of firms providing investment services in commodity and exotic derivatives and the views of the two Committees were sought on whether the treatment of these types of firms continues to support the intended aims of market and prudential regulation.

The consultation paper began with an overview of the EU commodity derivatives markets, products, trading venues and participants, and included an analysis of possible market and regulatory failures linked to asymmetric information and negative externalities, which provided a framework for the subsequent discussion of policy issues. The two final sections of the consultation paper examined whether the current regulatory framework, as set out in MiFID and CAD, adequately addresses the issues raised in the market and regulatory failure analysis or whether there is a need for amendments. A number of possible options were discussed.

CESR and CEBS published their advice to the Commission in October 2008 and concluded with recommendations, in particular concerning the future scope of exemptions, which exist in MiFID, and the prudential treatment of specialist commodity derivatives firms. In relation to MiFID, CESR and CEBS saw a case for revising the exemptions in Article 2(1)(i) and (k) of MiFID by providing 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. Furthermore, CESR and CEBS recommended 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.



Other objectives served

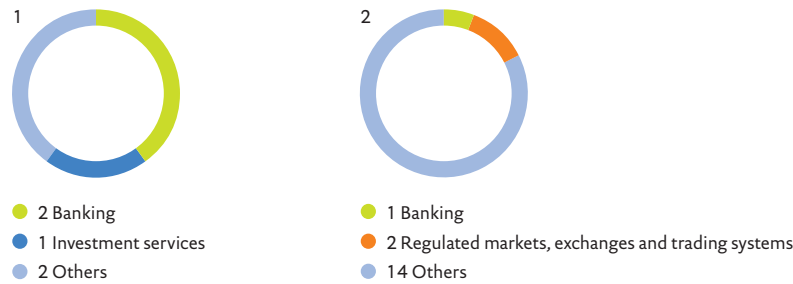
Market efficiency



Other objectives served

Market efficiency

- 1 – CCSR-CEBS' call for evidence on the review of commodities business (Ref. CCSR/08-350)
2 – Consultation on CCSR-CEBS' review of commodities business (Ref. CCSR/08-370)



NEXT STEPS

Both Committees stand ready to provide further assistance, should that be needed in the next stages of the process.



Other objectives served

Market efficiency

3L3 work on conglomerates

The work on financial conglomerates is led by CEBS and CEIOPS, with CCSR participating as an observer. Most of the work of the Interim Working Committee on Financial Conglomerates (IWCFC – renamed JCFC in 2009) during 2008 was related to the measures following the financial crisis and three calls for advice received from the Commission and the EFCC, the European Financial Conglomerates Committee. In 2008, the following issues were dealt with:

- In February 2008, the group published a technical advice on the equivalence of the supervision of financial conglomerates in Switzerland and the United States;
- In April 2008, a final and third piece of advice was published to the Commission regarding the eligibility of own funds. According to the comparison of the sector rules two types of differences were identified, i.e. differences related to the nature of the business of each sector (treatment of unrealised gains and revaluation reserves, sector specific capital components such as profit reserves for life insurers) and differences unrelated to any business specificities and thus prone to regulatory arbitrage (i.e. calculation method at group level, intra-sector deductions, reference points for deductions, definition/ application of prudential filters);
- In June 2008 and in the context of increased convergence, the IWCFC issued Practical Guidance for supervisors in relation to the supervision of risk concentrations and intra-group transactions.
- In September 2008, the IWCFC submitted its annual report on macro-prudential developments to the financial stability table on financial conditions and financial stability in European financial conglomerates. It was followed by a survey amongst supervisors on how liquidity arrangements between the banking and insurance parts of financial conglomerates work in practice;
- On early October 2008, the IWCFC updated its list of financial conglomerates including identification of the co-ordinator and relevant competent authorities for each financial conglomerate on the list;
- In April 2008, the IWCFC received a call for advice on the review of the Financial Conglomerates Directive (FCD). The Commission asked the IWCFC to also come forward with a range of possible solutions to the issues it has identified in its work to date in the three requested areas (language, scope and internal control mechanisms); and
- Currently, the IWCFC is undertaking a stock-take on the existing national implementation practices of the FCD in the context of its review.

NEXT STEPS

The JCFC is conducting an impact analysis exercise by developing and incorporating suggested solutions into a paper that will be released for consultation by the end of May 2009. In January 2009, CEBS, CEIOPS and the JCFC will jointly published ten principles regarding the functioning of colleges of supervisors, which are based on their existing work and supervisory experience. Throughout 2009, the JCFC will conduct further work on the assessment of the crisis and its consequences for the regulation and the supervision of financial conglomerates.

Common Supervisory Culture

3L3 training

Training staff of EU regulatory authorities on a cross-sector basis is crucial in achieving a common European supervisory culture. Following the two pilot training courses that were held in the last half of 2007, six additional 3L3 courses were organised in 2008 by members of the supervisory Committees, or the Committees themselves, covering areas such as the supervision of financial conglomerates, credit risk transfer, reputational risk, anti-money laundering, operational risk and risk models. All in all, 280 people participated in these courses.

A strong emphasis was placed on ensuring these seminars were as interactive as possible, and that the learning opportunity enabled new information to be applied to real supervisory situations. The 3L3 Committees also continued to organise evening events, especially during two days seminars in order to give the supervisors the possibility of networking with colleagues coming from other EU supervisory authorities.

Based on the positive feedback received from our members and in line with the Lamfalussy process that argues for a common supervisory culture in the European Union, the 3L3 Committees decided to dedicate even more resources to the training activity. The target is to increase the quantitative and qualitative level of the courses offered to fellow supervisors and to continue creating the required link between the 3L3 products and the day-to-day training of our members' staff, allowing for swifter implementation of the 3L3 products in the day-to-day supervision of European institutions.

NEXT STEPS

The Committees agree that only combined efforts could make the committed 2009 training programme feasible, especially since the target for this year has been doubled to twelve cross sectoral courses covering areas as corporate governance, risk management, securitisation, quantitative approaches to risk, conduct of business, supervisory interactions with firms, negotiating skills for European supervisors, assessment of IT systems and applications in financial institutions, reputational risk, IFRS and accounting and impact assessment. To this end, the 3L3 Committees have applied for EU co-funding and have intensified their efforts so as to deliver the required results both on a sectoral and cross sectoral basis. Also, in 2009 courses will be open to participants from third countries. This will further support the process of regulatory and supervisory convergence at the global level.



Other objectives served

Market efficiency

Market integrity

3.4

Investor protection



3.4 Investor Protection

MiFID Level 3 expert group

The impact of the default of Lehman Brothers

The default of Lehman Brothers accentuated structural problems in the markets and deepened the loss of market confidence. Its effects were not however limited to market infrastructure and the wholesale markets. It also affected retail investors who had acquired retail structured products written by Lehman Brothers, or that incorporated a Lehman Brothers bond repackaged by another financial institution.

Responding to the Lehman Brothers default and subsequent events in 2008, CESR created a task force with the purpose of producing a report on lessons learned. The aim of the report is to provide a coherent picture of the regulatory challenges lying ahead, especially on issues of investor protection, the retail distribution of structured products, and to identify further work to take forward in the 2009 CESR work streams.

NEXT STEPS

2009 will see the publication of an executive summary of the internal report, laying out the principles that should guide future work and detailing the new work streams to be carried out by CESR. The future work streams will be linked with the convergent implementation of EU Directives and with the development of relevant policies for cross-border firms, which require a sound international framework and heightened level of co-operation between national supervisors.

A consumer's guide to MiFID

Improving the understanding of MiFID amongst consumers helps to protect investors and increases their ability to make sound decisions in choosing financial products. Education serves to enhance consumers' financial capability. In March 2008, CESR published a guide for retail investors focusing on the key provisions of MiFID. The purpose of the guide is to explain, in clear and straightforward language, the new protections for retail consumers when provided with financial services.

This is the first time CESR has developed a guide for consumers, and it reflects CESR's strong commitment to increase confidence amongst retail investors. This is in line with one of the main purposes of MiFID: to harmonise investor protection throughout Europe and increase consumers' confidence, that the products they are being sold, are actually appropriate for their needs. The list of languages into which the guide has been translated includes German, Icelandic, Lithuanian, English, Maltese, Finnish, Hungarian, Spanish, French and Dutch.

NEXT STEPS

The guide will continue to be translated into further languages by CESR Members, the national securities regulators.



Other objectives served

Convergence



Other objectives served

Market integrity

Market transparency

Market efficiency

Transparency of implementation



Other objectives served

Convergence

Investment management expert group

The financial crisis' impact on EU fund industry and related CCSR work

In an environment of financial markets, where cross-border business is significantly increasing, it is important that regulators are able to react quickly to serious market events in order to be able to assess their impact, as well as to strengthen co-operation and convergence of measures taken. As European investment funds, UCITS in particular, are important actors from the perspective of investor protection, it was essential to enhance the co-operation within CCSR in order to cope with the recent market crisis.

Market events

Since the end of 2007, the global financial markets have been subject to significant turbulence. Since the fall in US real estate prices, that froze mortgage- and asset-backed securities markets leading to subsequent collapses of some major US financial institutions, the markets have been under strong pressure and subject to severe liquidity problems.

This has in turn impacted funds, including UCITS, as they are largely invested in debt instruments and have, at the same time, the obligation to provide liquidity to their investors. In order to cope with this situation, UCITS often had to take exceptional measures, including suspension of redemptions. In particular, funds labeled 'money market funds' were not always able to face the increasing amount of redemption requests resulting from the liquidity crunch, as they were themselves holding assets, which proved to be less liquid, than expected.

As cross-border marketing of UCITS has increased over the past few years, CCSR has intensified co-operation between its Members in order to allow them to identify and address cross-border issues, exchange views and experiences on the measures taken at national level, and discuss possible actions at EU level. Such enhanced co-operation mechanisms were put in place in order to assess the impact of the above mentioned major successive market phenomena on the European fund industry: the collapse of the asset-backed securities market and the liquidity crisis.

In addition, to facilitate supervisory work at national level, in 2008 CCSR mapped existing rules on suspension of redemptions and possible measures of CCSR Members to address liquidity problems at national level.

The Madoff case

In early December 2008, the alleged fraud of Bernard Madoff was unveiled in the US. It was quickly revealed, that funds of Bernard Madoff Investment Securities LLC had also been marketed throughout Europe, through European funds.

In December 2008, CCSR set up a co-operation framework for CCSR Members in order to map the impact of the Madoff collapse on the European fund industry, which allowed CCSR Members to identify cross-border issues, in particular on impacted funds of funds, and to take timely actions. At the same time, this was an opportunity to clarify with Members certain issues within the UCITS framework, in particular in relation to the role of depositaries.

NEXT STEPS

With respect to money market funds, CCSR will in 2009 further investigate the need for additional or amended regulation. Regarding the Madoff fraud, it appeared that some UCITS depositaries had delegated the safekeeping of the UCITS' assets to the US Madoff entity. In that respect, the question arose regarding whether and to what extent the depositary should be liable for the failure of the sub-custodian. CCSR has started mapping existing rules at national level and will assess the need for clarification in this area.



Other objectives served

Advice and reporting
to EU institutions

Convergence

CESR to improve information to retail investors for UCITS products

Investor protection is a key objective of CESR. The information asymmetries that exist in relation to some products and markets, can create risks to investors. Sound disclosures can play an important role in addressing these risks and help to ensure that investors make well-informed investment decisions. With this objective in mind, in April 2007, CESR began working on developing an improved disclosure document for UCITS funds directly aimed at investors.

In February 2008, CESR published its advice to the Commission on the content and form of a Key Information Document (KID) disclosure for UCITS (Ref. CESR/08-087). The new disclosure document is intended to simplify and highlight the crucial elements that a retail investor should consider when investing in UCITS.

KID to replace simplified prospectus

The work on the KID, the ultimate purpose of which is to replace the Simplified Prospectus, was launched at the request of the Commission in April 2007 as part of its wider work to revise the UCITS Directive. The final proposals will take into account the results of a consumer testing exercise that the Commission has been carrying out since March 2008.

CESR's proposal was subject to significant consultation with market participants and EU retail consumer associations; the results of this are presented in a feedback statement (Ref. CESR/08-035) published in February 2008. In addition, a preliminary impact assessment was undertaken and included in the advice. This marked the first application of CESR's IA guidelines adopted for testing by the 3L3 Committees in 2007 (Ref. CESR/07-089). A full assessment of the costs and benefits of the policy options will be included in the consultation on the final advice to the Commission later in 2009.

CESR has considered the factors that are likely to make disclosures of product information useful to retail investors and, in particular, the need for such information to be short, focused, expressed in plain language and presented in a way that enables comparisons to be easily made between different offerings.

CESR's recommendations:

- **A general recommendation** is to rename the disclosure the 'Key Information Document', or 'KID'. This is in line with feedback to the consultation and reflects CESR's preference for a single, standardised disclosure document;
- **Objectives and scope of the KID:** CESR recommends that the KID should contain only the essential elements for making and carrying out investment decisions, which excludes information serving only legal or regulatory requirements;
- **Format and general content:** CESR is of the view that the KID should be a single document, covering a maximum of two sides of A4. There should be a standardised list of permitted contents in fixed order and hierarchy. Specific recommendations are made for funds of funds, umbrella funds and multiple share classes;
- **Risk-reward:** CESR outlines two broad recommendations for the Commission's testing phase: the inclusion of a synthetic risk-reward indicator (SRRRI) alongside an explanatory text; or improved narrative disclosure. Consultation responses were mixed in this area; there was support from retail investors' representatives for the concept of an SRRRI, while the majority of industry representatives expressed a preference for a narrative approach. CESR noted the need for further technical work on development of a methodology underlying the SRRRI. With a view to improving the narrative disclosure, CESR recommends a set of general principles designed to increase the focus on material issues;
- **Past performance:** CESR's recommendations for presentation of past performance information include that the information be presented using bar charts; percentages be used rather than cash figures; and that average yearly performance be shown rather than cumulative. CESR further recommends that the performance of the benchmark should be shown if the fund is managed against one; and that simulated performance be allowed only in specific cases; and
- **Charges:** CESR recommends two options for the Commission's consumer testing exercise, the first an improved version of the existing Simplified Prospectus disclosure, the second supplementing this information with a single 'summary' figure.

Further technical work

CCSR identified a number of areas covered by the recommendations on which further technical work was required; in particular, aspects of risk and reward disclosure, past performance information and charges.

Risk reward

On risk and reward, CCSR's work has focused on developing a methodology to support a synthetic risk and reward indicator. Key points for discussion have included the data that should be used as the basis for the calculation; the length of the time series for the data used; and whether the methodology should be developed in such a way as to promote stability of the categorisation.

Past performance

The discussions on past performance have focused on two categories of disclosure: i) disclosures for funds that have actual past performance data; and ii) disclosures for structured funds, for which by definition no meaningful past performance information can be displayed. For the first category, CCSR has discussed a number of different options designed to underpin the recommendations in the February 2008 advice. These include the calculation of the past performance data, treatment of situations in which there has been a material change (such as a new investment strategy or a change of manager), the handling of benchmarks and the circumstances in which a track record extension may be used.

As noted above, traditional past performance information is not appropriate for certain types of fund, such as structured funds. In these cases, 'performance scenarios' may be a more meaningful form of disclosure. The February 2008 advice recommended three approaches for the testing exercise: scenarios, back-testing and probability tables. The further technical work has considered the merits and drawbacks of these approaches and methodologies that underpin them.

Charges

The final area covered by the technical work is charges. CCSR has considered several issues related to the overall presentation of the disclosures, in particular the so-called 'illustration of charges' approach which uses cash figures instead of percentages. Further work has also been carried out with a view to harmonising calculation of the ongoing charges disclosure, which would replace the Total Expense Ratio. Other issues covered include performance fees, portfolio transaction costs and the handling of charges information for new funds or where there has been a material change in the charging structure.

NEXT STEPS

CCSR will launch a consultation in March 2009 on the technical issues arising from its initial advice to the Commission. In parallel, CCSR will work with the Commission on the final stages of the consumer testing exercise. Taking into account the outcome of the technical consultation and the results of the testing, CCSR will prepare its proposals on the full package of KID advice for consultation in summer 2009. This will allow CCSR to submit its final advice by the deadline of end-October 2009.

3.5

Technical advice
and reporting to
EU institutions,
implementation
of EU roadmaps

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3.5 Technical advice and reporting to EU institutions, implementation of EU roadmaps



Other objectives served

Convergence

CCSR's inter-institutional work: the Lamfalussy review

Based on the review of the Lamfalussy process that has been initiated in 2007, the ECOFIN Council in December 2007 issued its conclusion on the Lamfalussy process. Following this review, the Commission issued a non-paper on the Lamfalussy process and the role of the 3L3 Committees to the April 2008 EFC meeting. The 3L3 Committees jointly responded to the Commission non-paper in a common letter, issued in 25 March 2008, in particular stressing:

- The need to strengthen the role of the 3L3 Committees;
- The high expectations from stakeholders on the results of the 3L3 Committees needs to be reflected in the abilities of the Committees to deliver;
- That the 3L3 Committees welcomed a revision of the Commission mandates setting up the Committees;
- A recognition of the 3L3 Committees role in Community legislation;
- An assignment to the 3L3 Committees of financial stability tasks; and
- A new Commission decision with explicit emphasis on cross-sector co-ordination.

NEXT STEPS

CCSR awaits with great interest the expected result from the Commission's High-level Expert Group on the future architecture of the European Supervisory landscapes, the so called de Larosière group. CCSR expects the report will lead to intensive work in 2009.



Objectives served

Convergence

New Commission decisions setting up the 3L3 Committees

In May 2008, the Commission launched a consultation on a new Commission decision establishing the 3L3 Committees, covering the 3L3 Committees' mediation mechanisms, delegation of tasks and development of a common supervisory culture amongst other issues. The 3L3 Committees contributed with a common response. In the 3L3 Committees' view:

- Mediation is potentially beneficial, but it should be performed by a 'gatekeeper' rather than by the Committees as such;
- The delegation of tasks is a possibility to enforce the positive effects of co-operation and mutual trust among supervisors; and
- The development of a common supervisory culture is an important element, and the need for EU funds for common supervisory training programmes would be important;

On 31 October 2008, the 3L3 Committees also contributed with a common 3L3 response to the advanced draft of the Commission decisions presented in autumn 2008.

CCSR's institutional work

In 2008, CCSR's legal work was linked to the activities of the Post-ECOFIN task force, based both on the ECOFIN conclusions of 4 December 2007 and on CCSR's contribution to the evaluation of the Lamfalussy procedure, initiated by the Commission. In order to contribute to the review of Lamfalussy process and to the Post-ECOFIN task force, CCSR introduced changes to its Charter, worked on legal issues for introducing an EU mandate for CCSR Members and on the delegation of tasks to foster convergence across Member States.

Amendments to the CCSR Charter

In September 2008, CCSR changed its Charter mainly by introducing qualified majority voting (QMV), which replaced the previously applicable consensus voting rule. QMV will facilitate the working procedures of CCSR by facilitating the adoption of common decisions and will therefore contribute to supervisory and regulatory convergence across Europe. Moreover, this work stream constitutes a response to the relevant request by the ECOFIN Council and the Lamfalussy review to strengthen the 3L3 Committees.

CESR introduces qualified majority voting

CESR Members approved the changes to the CESR Charter in September 2008, introducing QMV in the following way:

- The general rule being that all decisions by CESR (i.e. L2, L3 and internal decisions) are taken by consensus. However, if consensus cannot be reached, decisions are taken by QMV. The definition of a qualified majority vote is set out in accordance to the then applicable rules of the European Treaty;
- The exceptions to the above general rule are: a) amendments to the CESR Charter need to be decided by consensus; and b) the elections of the Chair and the Vice-Chair of CESR need to be decided by absolute majority;
- With regard to the L3 decisions, CESR's new Charter provides for a procedure according to which, the lack of consensus should be established at the earliest possible stage at the level of the technical group, and specific effort should be made at the level of the plenary in order to find a solution and reach consensus failing which, any dissenting opinion will be included in the document to be approved by Chairs;
- All CESR Members are expected to apply decisions of CESR, except for specific cases described in the new Charter. CESR will apply peer pressure on those Members not applying the decisions, e.g. in the form of selective reviews being made public and reported to the EU institutions.

Amendments based on the ECOFIN conclusions and the Lamfalussy review

- The general reference to the voluntary delegation of tasks and to colleges of supervisors on the basis of framework agreements or templates;
- The reference to the cross-sector co-operation;
- The task of CESR in relation to financial stability;
- The reference to the 'external' relations of CESR and to mutual recognition;
- In terms of accountability, the obligation of CESR to transmit its work program to the European Parliament, the Council and the Commission; and
- The possibility for CESR to receive external contributions or financing notably by the EU institutions.

NEXT STEPS

The new Commission Decision is expected to be formally approved and published in early 2009.

CESR explores introduction of EU mandate into Members' mission statements

Following CESR's contribution to the Lamfalussy evaluation⁽¹²⁾ and to the ECOFIN conclusions, according to which, the ECOFIN underlined the importance of including in the mandates of national supervisors a task to co-operate within the EU and to work towards European supervisory convergence, at the same time, taking into account the financial stability concerns in all Member States. The ECOFIN Council invited the FSC and EFC to examine this issue with a view to report to the informal ECOFIN in April 2008. In January 2008, the FSC asked CESR, CEBS and CEIOPS to investigate whether and how supervisory co-operation and convergence within the EU are currently incorporated into the mandates of the national authorities as this could address the following cases:

- Financing EU projects that are only marginally beneficial to national interests with national funding;
- Allocation of human and financial resources in international activities;
- Application of L3 measures in case these measures are additional or non-consistent with national rules;
- Trans-national crimes or infractions with impact in more than one member state. In those cases, a national competent authority may need to act although the impact on its market is not that important; and
- Political message in the sense that the inclusion of such a mandate will give a political message in the national constituencies in favor of the EU activity.



Objectives served

Convergence

(12) Source: CESR, A proposed evolution of EU securities' supervision beyond 2007, (Ref. CESR/07-783), November 2007.

As the FSC asked for contribution by all 3L3 Committees, the Committees decided to issue a joint 3L3 query on EU national authorities' mandates, which was circulated in January 2008. The 3L3 Committees have received answers representing 27 Member States of the EU and the EEA. The responses showed that the mission statement of a number of authorities already include some reference to supervisory co-operation. However, in some other cases reference to supervisory co-operation is made in other national and regulatory texts and not in the legal statement itself. The mission statement of only a few authorities includes some reference to supervisory convergence.

CCSR called an ad hoc meeting of legal experts of its Members to examine the different aspects of this issue. The work conducted, resulted in CCSR's contribution to the FSC (Ref. CCSR/o8-210). In this document, the EU mandate has essentially been presented as dealing with contradictions between the national mandates of supervisors and the need for more far-reaching EU co-operation in the fields of:

- Financial matters (EU projects financed by contributions of national supervisors);
- Sanctions; and
- Liability cases.

On the possible legal basis, it was stated that a European co-decision directive seems indispensable. Furthermore, CCSR made concrete drafting proposals on the text to be included in the mission statements of the national supervisors.

NEXT STEPS

CCSR considers that the introduction of the EU mandate in the mission statements of the national supervisors will facilitate the co-operation between CCSR Members and convergence at the EU level. CCSR, together with CEBS and CEIOPS, will continue to address this issue vis-à-vis the EU institutions.



The supervisory convergence report to the FSC

For the third year, in 2008 CCSR contributed to the work of the FSC on progress towards greater supervisory convergence. In 2008, CCSR, CEBS and CEIOPS provided their findings on supervisory convergence in a common report following a request by EU Ministers, included in December 2007's ECOFIN conclusions. The report is divided into four parts, covering the progress made with regard to supervisory convergence in the respective sectors and in a common cross-sector part. The 3L3 section highlighted the progress made in a number of 3L3 areas, such as conglomerates, anti-money laundering, cross-border consolidation and regarding supervisory culture with the establishment of a common framework for staff exchanges.

3L3 convergence

The 3L3 Committees also identified a number of obstacles to achieving convergence across the three financial sectors, summarised as being legal obstacles, budgetary limits and increasing demand on the Committees' limited resources:

- The legal constraints to 3L3 convergence are in some cases the result of an insufficient level of cross-sector alignment of sector Directives. Where this is the case, the convergence that can be achieved at Level 3 is limited. Examples of this are in the area of internal governance, where there is a difference between the CRD Level 1 provisions, which are more general in nature, resulting in CEBS developing Level 3 guidelines, and the detailed, binding MiFID legislation in the form of Level 2 measures;
- Budgetary constraints exist for the development of a 3L3 training platform, as a tool for supervisory convergence. The Committees' proposals are relying on adequate financing through EU funding. The figures mentioned by the Commission in preliminary discussions are lower than needed to make adequate progress;
- There has been an increase in the demand on the Committees' limited resources. This last year has seen the addition of a new driver to the Level 3 Committees work, namely the market turmoil, which due to its potential implications, needs to be addressed through the application of a flexible approach to the Committees' work programmes. This needs to be taken into consideration when mandating the Committees to undertake additional streams of work; and

Objectives served

Convergence

→ The 3L3 Committees have been requested by the Commission to deliver advice within very tight timelines. Even if there is a great willingness to contribute to better convergence and co-operation, it has to be emphasised, that if short deadlines continue to be set, there is a risk that the Committees may not be able to continue to deliver high quality and to respect its own policy making procedures, for example particularly impact assessments.

CESR's work on sector convergence

In addition to the efforts on cross-sector convergence, CESR made the following efforts in achieving supervisory convergence in its sector, while, at the same time, noting that obstacles that CESR has highlighted in the last three reports are still valid.

CESR's work on achieving supervisory convergence during 2008 focused on:

- The introduction of operational task forces for UCITS and MiFID respectively;
- The continued use of Level 3 tools and the further development of more consistent Level 3 measures, such as the databases used for enforcement issues related to accounting and market abuse cases. These databases assist regulators in applying the provisions of MAD, and help CESR Members to keep records of enforcement decisions made on accounting treatments as adopted by issuers following decisions by EU national enforcers under IFRS, recording sanctions imposed by CESR Members. The necessary green light by the French authorities needed, in order for CESR to proceed with this project, was given in early 2008;
- Supervisory convergence was also improved by the publication of guidance on the practical application of MAD, the Prospectus Directive and MiFID; and
- To further strengthen CESR's Review Panel, CESR revised its protocol and methodology for conducting peer reviews and mapping exercises.

However, CESR still noted some obstacles to convergence in its report revealing a lack of:

- Adequate EU financing or legal arrangements to carry out necessary IT projects to achieve convergence;
- Adequate Directive provisions in relation to delegation;
- Timely or correct transposition of Directives; and
- Convergence of supervisory and sanctioning powers.

In that respect, CESR also noticed potential further obstacles to supervisory convergence that have become apparent during the course of 2008. Firstly, the increasing work load triggered by market conditions and political expectations on CESR. While it is legitimate at both a political and CESR Member's level to expect CESR to come up with possible technical solutions to issues related to securities regulation, raised by the current market conditions, CESR, however, pointed out, that the strain on CESR's limited financial and staff resources had become even more apparent during the course of 2008, which makes it even more challenging to act as quickly and efficiently as desired. Another issue that was noted, was the problem of non-enforceability of the non-binding Level 3 measures.

Other reports to the FSC in 2008

In 2008, CESR contributed substantially to all of the activities of the FSC and also participated in all of its 2008 meetings. The FSC met on five occasions, reaching from February to November. The 2008 agenda of the FSC was heavily influenced by the crisis in the financial markets. The February FSC meeting dealt with the market conditions and the two main issues of deposit-guarantee schemes and non-organised debt markets. Secondly, the meeting was devoted to the so-called Lamfalussy roadmap issues.

The March 2008 FSC meeting dealt with the Lamfalussy roadmap with regard to the national mandates. CESR contributed a paper regarding the EU mandates of CESR Members' mission statements. There was a discussion on the draft work programmes of the 3L3 Committees, and the way forward with regard to the CESR-ESCB standards was also discussed. Following up the October 2007 turmoil roadmap, there was also a discussion on the cross-sector Memorandum of Understanding and its implementation.

The May 2008 FSC dealt firstly with clearing and settlement, with a view to agree on the ECOFIN conclusions regarding the CESR-ESCB recommendations, the code of conduct and the Target 2 securities project. Secondly, the implementation of the Lamfalussy roadmap with regard to qualified majority voting was discussed. For the first time in 2008, there was also a final discussion on the work programmes of the

3L3 Committees, following the new procedure of finalising the work programmes, as set out in the Lamfalussy ECOFIN conclusions.

In July 2008, an informal FSC took place in Paris, which dealt with crisis prevention tools, deposit guarantee schemes, implementation of the ECOFIN turmoil roadmap and the Lamfalussy roadmaps, on which the 3L3 Committees provided their input. CCSR reported on its ongoing work in relation to valuation standards and risk management and the work on CRAs. Furthermore, the items following the Lamfalussy ECOFIN roadmap were covered, and, in particular, updates on the work regarding supervisory powers being conducted by the Review Panels of the 3L3 Committees. The 3L3 Committees also made a presentation of the common 3L3 supervisory convergence report for 2008.

The September 2008 FSC meeting dealt with both the outcome and follow-up work from the informal ECOFIN held in September 2008. CCSR presented the first outcome of its survey regarding short-selling as requested by the EFC and the FSC. The meeting was also spent exchanging information on Member States' activities following the default of Lehman Brothers.

At the November 2008 FSC meeting, CCSR contributed to discussions on the market conditions and on clearing and settlement, where CCSR and ESCB are developing guidelines to include OTC derivatives in central counterparty clearing operations. Other important issues being discussed were the 2009 work programmes of CCSR and the other 3L3 Committees. As for CCSR, seven key priorities are mentioned within the 3L3 work programme for:

- Impact of the market crisis on investment funds activities;
- Short-selling;
- Regular monitoring of the orderly functioning of post-trading infrastructures;
- The set-up and report of a Lehman's task force;
- CRA, where an important role for CCSR is expected;
- Investment management and the awaited regulatory initiatives on UCITS IV; and
- 3L3 and CCSR training.

NEXT STEPS

CCSR will contribute to all, approximately ten, FSC meetings in 2009.

CCSR's 2008 contribution to the EFC

CCSR participated in six meetings of the EFC in 2008, compared to previous participations just in the EFC/FST meeting, which takes place twice a year. The February EFC was held in the Financial Stability Table format. CCSR contributed to the meeting with a report on the assessment of the situation and the risks in the market in the second half of 2007 and January of 2008, providing an updated economic risk assessment report for the April 2008 EFC.

At the April 2008 meeting, a new EU supervisory framework in preparation to the April meeting of the ECOFIN Council was discussed. The 3L3 Committees commonly intervened by accenting that a strong reinforcement of the Committees would be necessarily based on four elements:

- A revision of the mandates of the 3L3 Committees to work towards supervisory convergence;
- The explicit recognition of the 3L3 Committees in EU Community legislation;
- The assignment of tasks related to financial stability; and
- A strong emphasis on cross-sector co-ordination.

In the early September 2008 EFC, CCSR contributed with its an assessment on the situation and risks in the securities markets during the first half in 2008, showing clear difficulties in all sectors of equities, bonds credit derivatives and the private equity markets and asset managers. Apart from financial stability as such, the meeting dealt with the implementation of the roadmaps on financial turmoil and supervision. The 3L3 Committees also contributed to that meeting with their annual written report regarding off-shore centers. CCSR Members have problems in supervisory co-operation in relation to certain jurisdictions. Some of the issues encountered relate to the structure of the legal system which provides for the possibility to challenge

in court, the decision to disclose information on beneficial ownership to a foreign authority, with the result that the exchange of information is significantly delayed (if not completely prevented). CESR also presented recent examples from Members that still encounter difficulties in receiving the identity of the beneficial owner of a financial instrument in relation to one certain jurisdiction. There were also cases where banking secrecy laws were preventing information being given to the requesting authority, and a few examples of a general unwillingness to co-operate, or enter into Memoranda of Understanding.

A second EFC meeting was held in late September 2008, at a point in time, where the market developments had become particularly difficult. CESR's input to this meeting concerned the situation after the Lehman Brothers' default on 15 September 2008. At the same time, CESR also had begun in co-ordinating CESR Members' actions towards short-selling.

The November 2008 EFC concerned crisis management tools and Member States' measures provided to stabilise markets. There were also conclusions on clearing and settlement, giving support to the CESR-ESCB recommendations. CESR reported on its activities with regard to short-selling, the Madoff collapse, money market funds and non-equity transparency, highlighting the work it is undertaking on all of these issues. CESR also reported on the work undertaken by CESR with regard to fair value accounting and risk management principles for UCITS.

NEXT STEPS

For 2009 the number of EFC meeting with involvement of CESR are expected to increase.

CESR contribution to ECON

During the course of 2008, CESR has had several contacts with ECON, the Economic and Monetary Committee of the European Parliament (ECON). CESR meets with ECON at least bi-annually for an exchange of views on current issues. In 2008, however, CESR visited ECON on five occasions: on 30 January 2008, CESR and ECON met to discuss the Lamfalussy review, following the outcome of that process in December 2007, on 8 April 2008 to deal with private equity and on 3 June 2008, CESR also participated in an exchange of views on the future structure of financial supervision in Europe, where the discussion also covered the report by the MEP's Icke van den Burg and Daniel Daianu. On the same day, the CESR Chair, Eddy Wymeersch, also visited ECON, giving a speech emphasising the need to allocate more powers to CESR and the 3L3 Committees respectively; he also spoke on the future supervisory structure in the EU and on the CESR proposal for a legal act on CRAs.

On 15 September 2008, ECON arranged a work shop on UCITS in which CESR participated. On this occasion, CESR presented its work in relation to the Key Investor Document, the simplified prospectus, and the mandate on the management company passport that CESR worked on and subsequently delivered its advice on 31 October 2008. In this context, CESR also consulted on issues such as: identification of non-harmonised rules and supervisory concerns that may arise in divisions between supervisors, the relationship between the depository and the management company, the framework for an effective enforcement (contractual funds).

Carlos Tavares, CESR's Vice-Chair also visited ECON in 2008, on 4 November, in order to discuss CRA and the possible role CESR could have in this respect in a future EU regulation.

On 28 May 2008, CESR was visited by a delegation of ECON, led by its Chairwoman Pervenche Berès. The meeting was part of an ongoing dialogue between CESR and ECON and gave CESR a chance to present its view on a wide range of current topics. The discussions dealt with budgetary issues and the Lamfalussy review.

ECONET

ECONET's economic trends and risks reports to EU institutions

During the course of 2008, the network of economists of CESR Members, ECONET, prepared three reports on economic trends and risks to the European institutions.

In February 2008, ECONET produced a report (Ref. CESR/08-137) for the FSC assessing the situation and the risks involved in the securities markets during the second half of 2007 and January 2008, highlighting,

that uncertainties with respect to the impact of the subprime crisis may persist as, at that time, there was a perception in the market that further losses might be disclosed, leading to further write-offs during 2008. In its report, ECONET therefore stressed the importance that banks should disclose their full 'off-balance sheet' exposures and strengthen their risk management processes also with respect to the methodology of the valuation of illiquid structured products. The tighter credit environment and worsening global economic outlook were likely to increase pressures on corporate earnings and could bring equities under renewed pressure in 2008.

In March 2008, ECONET prepared its assessment on the financial turmoil to the Financial Stability Table of the European Financial Committee (EFC-FST) by commenting on an updated report from the EFC⁽¹³⁾. In line with the EFC's assessment, ECONET's report also concluded that the overall risks of further deterioration and that of a negative spiral in the financial markets had increased and that persisting tensions in the market were to be expected.

In September 2008, ECONET prepared a report (Ref. CESR/08-565) on the situation and risks in securities markets during the first half of 2008 to the EFC-FST: the report highlighted that, despite the intense downward pressure on equity prices, the high volatility encountered during the second half of 2008 and the sharp reduction in IPO activity in Europe, trading in secondary equity markets remained high. The increased popularity of credit derivatives resulted in an increase in the number of unconfirmed trades and other settlement problems during the period under observation. Fund managers in private equity markets, at that time, faced increased difficulties to meet their funding targets due to tougher credit conditions and due to the general increase in risk aversion. Those difficulties were particularly evident in the buyout-oriented market segment, since representing the bulk of the European industry. Consequently, many traditional asset managers changed their business models and expanded their product offerings to ensure being viable throughout the economic cycle. However, ECONET in its report found that falling equity markets coupled with investors' risk aversion resulted in investors moving their assets to cash and money market, cautious managed (multi-asset) and bond funds, which in turn resulted in a decline of assets under management.

Investment management expert group

CESR's advice on the management company passport

In the process of preparing the new UCITS Directive, which aims at introducing new cross-border possibilities for UCITS, the Commission identified a number of supervisory issues likely to arise from the 'management company passport' mechanism that was not covered in the original Commission proposal for the UCITS Directive. The Commission asked CESR to propose a framework that would both allow actors to save costs and maintain a high level of investor protection.

Content of CESR's advice

The Commission requested assistance from CESR in July 2008 on supervisory issues which would arise in the event that a UCITS was managed by a management company situated in another Member State. The request followed publication of the Commission's proposals for an improved EU framework for investment funds, to be introduced via revisions to the UCITS Directive. The Commission's request to CESR was designed to facilitate the development of provisions, permitting the introduction of a management company passport under conditions, that are consistent with a high level of investor protection. The Commission stated that, following the receipt of CESR's advice, it would aim to come forward with an appropriate legislative proposal in time for its adoption during the current legislature.

CESR delivered its advice to the Commission in October 2008 (Ref. CESR/08-867). CESR's advice covered a number of key points:

- **Definition of domicile:** CESR set out detailed provisions designed to ensure clarity on the home Member State of the management company, the UCITS and the depositary. This section of the advice included the introduction of a new concept, that of the local point of contact, which should be put in place for remotely managed contractual funds;
- **Applicable law and supervisory responsibilities:** CESR's advice included detailed provisions on the applicable law and allocation of responsibilities both in the case of free provision of services and services



Other objectives served

Market efficiency

(13) Source: EFC: Report on financial turmoil: recent developments, risks to financial stability and state of play on the October Roadmap.

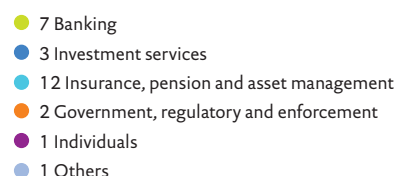
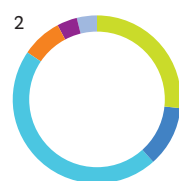
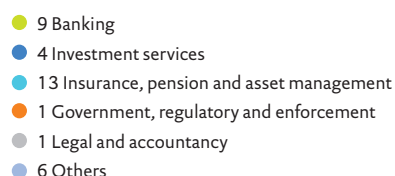
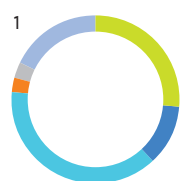
provided via a branch. This section also set out provisions designed to facilitate co-operation between competent authorities, including mutual delegation of supervisory tasks and the possibility to establish colleges of supervisors;

- **Authorisation procedure for UCITS funds whose management company is established in another Member State:** The advice set out clearly the procedure to be followed when a UCITS is authorised under the framework of the management company passport. This included provisions on the conditions under which the competent authority of the UCITS home Member State should approve the choice of the management company. In particular, it should be able to rely on an attestation, by the competent authorities of the UCITS, regarding the type of UCITS that the management company can manage;
- **On-going supervision of the management of the fund:** CESR's advice set out detailed provisions on the flow of information from the entities involved to the competent authorities, and among the entities themselves. There were also provisions relating to the role of auditors in the context of the passport; and
- **Dealing with breaches of rules governing the management of the fund:** The advice covered circumstances in which a competent authority wishes to take enforcement action against an entity established in a different Member State. There were also specific provisions designed to ensure fair treatment of unit-holders in the case of an infringement.

The publication of CESR's advice follows a call for evidence (Ref. CESR/08-572) issued earlier in 2008 and a consultation (Ref. CESR/08-748) started in October 2008, both incorporating the views of market participants.

1 – Call for evidence on the UCITS management company passport (Ref. CESR/08-572)

2 – Consultation on UCITS management company passport (Ref. CESR/08-748)



Final framework for the management company passport in the UCITS IV Directive

In the beginning of 2009, the European Parliament will adopt in plenary session the Directive containing amendments to the UCITS Directive (85/611/EEC). This will follow the approval by the Council of an identical compromise text at a COREPER meeting of 17 December 2008.

The provisions governing the management company passport took largely into account the advice provided by CESR. In particular, the split of applicable rules and supervisory responsibilities between the UCITS competent authority and the management company competent authority was largely retained as proposed by CESR. Matters pertaining to the management company and its organisation would be subject to rules applying in the Member State where the management company is located, under the supervision of the management companies' competent authority, whereas matters relating to the creation and the functioning of the UCITS would be subject to the rules applying in the Member State, where the UCITS is located, under the supervision of the UCITS' competent authority.

Moreover, the framework recognised the need to supplement the level 1 Directive on the passport with level 2 implementing measures aimed at harmonising organisational requirements, risk management, conflicts of interests and conduct of business.

On the basis of the compromise text, the Commission is expected to request CCSR's assistance on the content of the implementing measures to be taken pursuant to the revised Directive. As the Directive imposes a strict deadline (1 July 2010) for adoption of certain level 2 measures, the Commission feels it is important for CCSR to start its work as soon as possible.

NEXT STEPS

The future work on the preparation of the advice for Level 2 measures, which will also cover issues relating to new cross-border mechanisms, will be a key priority for CCSR during 2009. As soon as it gets the mandate, CCSR will launch a call for evidence and take its outcome into account, when preparing its proposals to the Commission. Stakeholders will naturally be further consulted during the finalisation of the advice. The Council's final approval on the framework for the management company passport in the UCITS IV Directive is expected in April/May.

MiFID Level 3 expert group

CCSR-ERGEG's advice on energy markets

In December 2007, the Commission gave CCSR and the European Regulators' Group for Energy and Gas (ERGEG) a mandate to provide advice to the Commission in the context of the Third Energy Package. CCSR and ERGEG's advice included an initial fact-finding exercise as well as advice on market abuse, record-keeping, transparency and exchange of information.

CCSR-ERGEG call for evidence on record keeping, transparency, supply contracts and derivatives for electric and gas (Ref. CCSR/08-140)



Advice on market abuse

In October 2008, CCSR and ERGEG published their final advice to the Commission on market abuse issues related to energy trading. In their joint advice, CCSR and ERGEG advocated to develop a tailor-made EU market abuse framework in the energy sector legislation for all electricity and gas products not covered by the MAD. To better prevent market abuse in energy trading, the regulators also called for legally binding disclosure obligations in energy sector regulations including sanction mechanisms. The advice followed a public consultation held from July to August 2008, receiving 36 responses from market participants. A feedback statement on the consultation was also published (Ref. CCSR/08-754).

CCSR-ERGEG consultation on their joint advice in the context of the Third Energy Package (Ref. CCSR/08-753)



CCSR and ERGEG noted in their advice that MAD applies almost exclusively to financial instruments admitted to trading on regulated markets and therefore does not adequately address market integrity issues in energy markets. The market abuse regulations establishing measures to prohibit insider trading and market manipulation, as well as the disclosure obligations of MAD, do not currently apply to physical



Other objectives served

Market integrity

Market transparency

Market efficiency

markets for electricity and gas, such as spot contracts. They only partly cover the derivatives markets for energy (i.e. products admitted to trading on regulated markets). CESR and ERGEG therefore advocated the creation of an EU market abuse framework and legally binding disclosure obligations for electricity and gas products not covered by MAD within the electricity and gas sector legislation.

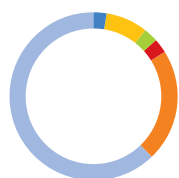
Advice on record-keeping, transparency and exchange of information

CESR and ERGEG delivered in December 2008 their final advice to the Commission on record-keeping, transparency and exchange of information (Ref. CESR/08-998). In relation to transparency, they recommended that all EU trading platforms publish harmonised post-trade information, on a trade-by-trade basis and close to real-time for standardised electricity and gas supply contracts and derivatives traded on or cleared through these platforms. This information would provide market participants with timely and important price signals.

The Third Energy Package contains new obligations for supply undertakings (persons active in the sale or resale of electricity or gas to wholesale or final customers) to keep records related to their transactions. To allow an effective oversight of electricity and gas trading, CESR and ERGEG proposed that supply undertakings should be able, as a minimum, to provide data derived from their records, upon request from a regulator, in an electronic format. On the exchange of information between regulators, CESR and ERGEG recommended that this should be possible on a case-by-case basis so as to ensure a proper oversight of the market. This would require a sound legal basis which should be provided by European legislation. Although the Third Energy Package does not include any requirements on transaction reporting, ERGEG and CESR noted that they see value in considering the pros and cons of such a scheme at a later stage.

The advice was given following a public consultation held from October to November 2008 on which 27 responses were received. A feedback statement on the consultation will be published in the beginning of 2009.

Joint CESR-ERGEG consultation in the context of the Third Energy Package (Ref. CESR/08-509)



- 1 Investment services
- 3 Issuers
- 1 Investor relations
- 1 Government, regulatory and enforcement
- 8 Regulated markets, exchanges and trading systems
- 23 Others

NEXT STEPS

The results of the fruitful co-operation between CESR and ERGEG are now being utilised by the Commission in its further work in the context of the Third Energy Package.

Post-trading expert group

Post-trading: Access and interoperability arrangements

Since MiFID was implemented in 2007, and the implementation of the Directive's requirements for providing access to clearing and settlement arrangements, a growing number of entities are offering services in the area of trading and post-trading. As a result, there has been a greater focus on access to and interoperability between these entities. The existence of the industry-led code of conduct for clearing and settlement also underlines the importance of these themes. However, in practice, a high number of requests for access and interoperability among infrastructure providers - stock exchanges, central counterparties and central securities depositories - have existed for a long time, in some cases without a clear plan for taking them forward. In early 2008, CESR decided to map the existing arrangements in all EU jurisdictions, in order to identify bottlenecks and to find ways forward. A preliminary outcome was presented to the Commission in February 2008. In response to an official mandate from the Commission in August 2008 to complete the exercise, CESR was in the process of completing the review by the end of the year.



Other objectives served

Market efficiency

Market transparency

Call for evidence on identification of regulatory arrangements for post-trading infrastructures (Ref. CCSR/o8-643)



- 6 Banking
- 4 Investment services
- 3 Regulated markets, exchanges and trading systems
- 3 Others

NEXT STEPS

CCSR will publish the second advice to the Commission in the beginning of 2009. The key messages that regulators are likely to give with their advice is: firstly, a call for strong political endorsement by the EU institutions, when the CCSR–ESCB recommendations are adopted in 2009, as these recommendations may improve some of the issues at stake; and, secondly, the need to strengthen co-operation for those jurisdictions where arrangements for access and interoperability are under development. As a next step, the Commission will decide how to follow up the advice. CCSR stands ready to contribute further in this important area of work.

CCSR’s market participants consultative panel

CCSR’s market participants consultative panel (MPCP) is currently composed of 16 members, representing executives from the highest corporate level of financial sector companies across Europe, and one US member participating as an observer. Members have extensive experience in various segments of the securities markets relevant for CCSR. The tasks of the MPCP consist of the following four interlinked activities: to assist CCSR in the definition of priorities and work program, to provide comments on the ways CCSR is exercising its role, to alert CCSR on regulatory inconsistencies in the European Single Financial Market and to inform CCSR on major developments in financial markets. By publishing statements on the outcome of the MPCP’s meetings, the MPCP follows CCSR’s approach of transparency.

In 2008, CCSR’s market participants consultative panel (MPCP) that consists of senior industry representatives, put three issues on top of its agenda:

- The market crisis in general;
- Credit Rating Agencies; and
- The regulatory developments in trading and post-trading.

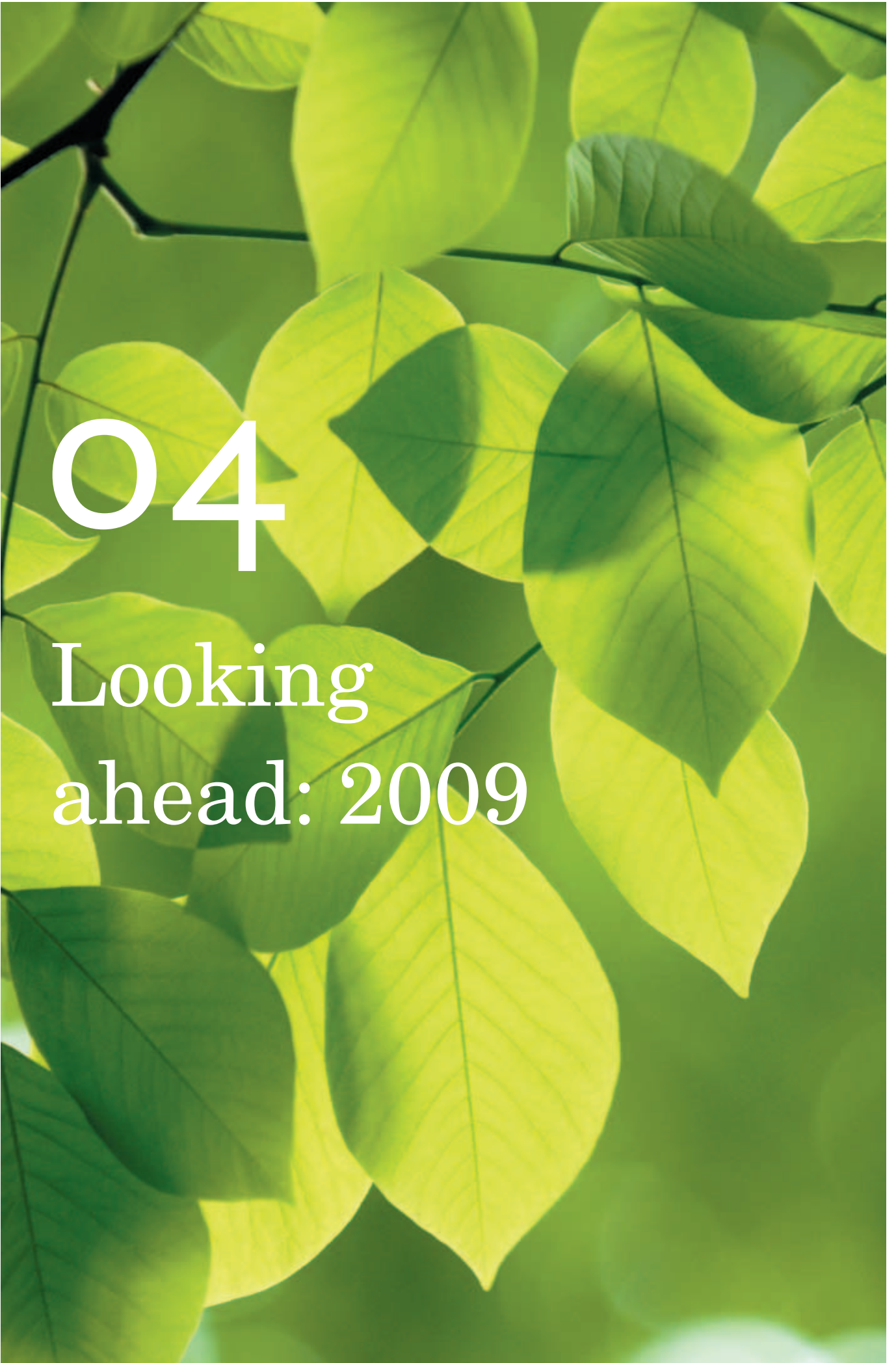
All three meetings of the MPCP in 2008 recurrently focused on the market crisis. When the crisis deepened in the course of 2008, the MPCP intensified discussions and broadened the scope of attention given to the events that occurred. The panel especially focused on the link between monetary policy and the crisis’ impact on financial markets, the initial rescue operations on a firm-by-firm basis and the role of CRAs. Other issues that emerged in the discussions of the MPCP were the number of items kept off-balance and therefore outside the supervisory scope of attention and the need to revise the supervisory structure in the US – based on the so-called ‘Blueprint’ published by the US Treasury earlier that year.

One issue being discussed in depth by the MPCP in early 2008 was the role of CRAs. Members of the panel concluded at that stage, that regulation was not necessary and that self-regulation was the future way forward. Nevertheless, members of the MPCP understood the dissatisfaction in the market with the current practices applied by the agencies but, according to these views, members stressed this did not equal market failure. The MPCP also underlined that the limitations of a rating were not very well understood by the audience at large and therefore should be better communicated by the agencies.

The third important issue discussed by the MPCP in 2008 was the developments in trading and post-trading in Europe. As MiFID’s implementation enabled the creation of new MTFs, the code of conduct for clearing and settlement led to numerous requests for access and interoperability among providers of those kinds of infrastructures. Both of these regulatory outcomes, although different in nature, were characterised as facilitators for the present developments in post trading. The discussion on this matter focused on the need for CCSR to pay more attention to consolidation among central counterparties and the expectation that the push for improving safety and soundness in the area of post-trading will most likely come from the Target-2-for-Securities project, when it becomes operational.

04

Looking
ahead: 2009



04 Looking ahead: 2009

The ECOFIN Council conclusions of December 2007 invited CESR to transmit to the Commission, the European Parliament and the Council its work programme, and requested CESR to start reporting annually on progress achieved. In line with these conclusions, the content of the CESR work programme dealing with 2009 deliverables has been submitted jointly with the other 3L3 Committees in November 2008. In April 2009, the three institutions have submitted their views on CESR's work programme for 2009 and the joint 3L3 one for 2009.

4.1 CESR's Work Programme 2009

CESR's 2009 work programme is composed of two parts:

- Part A focuses on the new key projects that are likely to affect the activity of the Committee over the current year;
- Part B reflects the areas of work for various expert groups and is split into those areas of work that had to be completed by the end of 2008, and those areas of work that are expected to be completed during the course of 2009.

4.1.1 Key new priorities for 2009

New work arising as a result of the current market crisis

A.1 Investment management

- Mapping exercise on the impact of the market crisis on the investment funds industry.

A.2 CESR-Pol

- Report on effectiveness of immediate actions, for example the short-selling bans.
- Comparison of different national legislation and identify loopholes, aiming at convergence.

A.3 Clearing and settlement

- Extended monitoring of the orderly functioning of post-trading infrastructures to ensure the smooth finalisation of transactions, in particular in periods of instability.
- Work with the ESCB to adapt the draft ESCB-CESR Recommendations for CCPs to take account of CDS specific issues.

A.4 Task force on Lehman Brothers

- Report to the CESR plenary by the task force on Lehman Brothers default.

Other new areas of work

A.5 Credit rating agencies

- Implementation of the Commission's Regulation on CRAs.

A.6 Investment management

- UCITS IV

A.7 Common supervisory culture

- 9 courses of CESR training (and development of a web site).
- 12 courses of 3L3 training

A.8 A new architecture for financial regulation – de Larosière report

- Possible implementing of the new EU architecture for financial regulation.

4.1.2 On-going work in 2009

B.1. PROSPECTUS

Work completed by end of 2008

- Guidance on Level 3 work on employees share schemes.

Work to be done during the course of 2009

- On-going update of Q&A in the CESR's web site.
- Collaboration with the Commission in its review of Directive and its implementing measures.
- Collection from CESR Members of statistical data on prospectuses approved and passports (quarterly disclosure).
- Common positions in the extranet: database of common (or not common) positions.
- CESR assessment of the equivalence of the US, Japanese and Israeli regimes on prospectuses.
- Exchange of information about decisions on equivalence adopted by CESR Members.
- Interaction with CESR-Fin on equivalence of third countries GAAP.
- Possible Level 3 work on complex financial histories.
- Interaction with CESR-Fin sub-group on financial information in prospectuses.
- Follow up of IAASB project group on an auditing standard in the area of prospectus.
- Delegation of powers: analysis of the legal regime applicable.
- Possible Level 2 measures on documentation for take-over bids and link with the Prospectus Directive

B.2. CESR-Fin

Work completed by end of 2008

- Fair value of instruments in illiquid markets.
- Preparation of advice to the Commission on equivalence and transitional arrangements for individual countries (US, Japan, India, China, Canada and South Korea).

Work to be done during the course of 2009

- XBRL: Analysis of the mapping conducted by CESR's transparency group.
- Ongoing discussion of enforcement decisions through the EECS and regular publication of extracts at the CESR website.
- Mapping of the application of fair value IFRS requirements regarding IAS 39 financial instruments.
- Equivalence: preparation of advice on equivalence/ convergence for individual countries (Mexico, Taiwan, Argentina, Brazil).
- On-going dialogue with the SEC to implement the CESR/SEC work programme on IFRS.
- Monitoring of IFRS development and endorsement.
- Co-operation with the level 3 work of other CESR groups on accounting and auditing matters (prospectus and transparency).
- Contribution to the Level 2 Committee on accounting (ARC).
- Contribution to the Level 2 Committee on auditing (AuRC), based upon views developed in CESR-Fin.
- Contribution to EFRAG.
- Contribution to the IASB's Standards Advisory Council.
- Monitoring of ISA development and endorsement.
- Analysis of the work carried out by the enforcement authorities in 2006 and 2007.

B.3. Takeover Bids

Work to be done during the course of 2009

- Exchange of experiences in the field of takeover regulation.
- Discussion of practical experience of problems that have arisen as a result of implementation of the Directive.
- Qualitative and quantitative information on takeovers made in the EU.

B.4. Corporate Governance

Work to be done during the course of 2009

- Exchange of information and fact finding exercises on aspects of corporate governance related to the securities markets.
- Empty voting - the implications of the use of derivatives on the attribution and exercise of voting rights and computation of qualified holdings.
- Review of directors' remuneration practices in Europe.

B.5. Credit Rating Agencies

Work done during the course of 2009

- Monitoring compliance by CRAs with IOSCO Code of Conduct.

B.6. Transparency

Work to be completed by end of 2008

- Mapping exercise about the implementation of the directives in Member States.

Work to be done during the course of 2009

- Initiate level 3 works on the practical application of the Transparency Directive.
- Facilitate of the creation of the EU network of national storage mechanisms.
- Exchange of information about issuers admitted to trading in a market situated in a Member State different than the Member State of incorporation.
- Production of Q&A on Transparency Directive.

B.7 MiFID

Work completed by end 2008

- Fact-finding on the extent of the applicability of the CFTC's requirements in Europe.

Work to be done/ finished during the course of 2009

- Maintenance of the MiFID Q&A Database.
- Responding to Commission mandates in relation to the reports to be prepared by the Commission on the basis of Art. 65 of MiFID (transparency, best execution, data consolidation).
- Supervisory convergence reports / good and bad practices on inducements.
- Supervisory briefings on suitability / appropriateness / execution only.
- Workshops (structured discussions to be held within the Intermediaries Sub-group).
- Supervisory briefings on information to clients.
- Policy work on investment advice.
- Policy work on harmonisation of classification of products.
- Review of the effectiveness of the protocol for supervision of branches.
- Review of the effectiveness of the passport recommendations and protocol for passport notifications.
- Report on non-equity markets transparency.
- Review of the scope of the transaction reporting obligation.

- Calculation/ estimation and publication of data relevant for MiFID pre- and post-trade transparency requirements (waivers from pre-trade transparency, delayed post-trade publication, liquid shares, list of systematic internalisers).
- Analysis of the impact of MiFID on secondary markets functioning.
- Operational issues in relation to the application of MiFID.

B.8. Clearing and Settlement

Work to be done during the course of 2009

- Based on political guidance given by the ECOFIN conclusions of June '08, CESR is invited jointly with the ESCB, to transform the draft CESR/ESCB standards for securities clearing and settlement in the EU, into Recommendations for public authorities.
- Advice to the Commission on access and interoperability review of existing arrangements.
- Report on developments concerning T2S.
- Regular reports to the chairs on role of regulators on monitoring of the Market Participants Code of Conduct.
- Advice to the European Commission on issues relating CCPs and, potentially, trade information warehouse for OTC derivatives.
- Analysis of legislative action on the post-trading area, in order to ensure a level-playing field in the EU post-trading sector and international competitiveness of EU post-trading infrastructures, based on the conclusions to be issued by the EU Commission later in 2009.

B.9. Investment Management⁽¹⁴⁾

Work to be done during the course of 2009

- Assistance to the Commission in relation to the recast for the UCITS Directive - Final advice to the Commission on KII/ KID.
- Recommendations on co-operation work in view of fostering mutual understanding and improving convergence of regulatory practices (OTF).
- Interaction between UCITS and MiFID.
- Report on developments on conduct of business rules.
- Mapping exercise on the impact of the market crisis on the investment funds industry.

B.10 CESR-Tech

Work completed by end of 2008

- Report on IT security review of the CESR IT systems.

Work to be done during the course of 2009

- Second sub-project on Alternative Instrument Identifier.
- TREM maintenance organisation.
- TREM training.
- Tail end of the project on Instrument reference data logistic – long term solution.
- Move of the HUB into the Secretariat Infrastructure.
- Exchange of Transaction Reports on OTC derivatives.
- Central shareable reference data project.
- IT strategy.
- User network – data quality in TREM.

B.11. CESR-Pol

Work to be done during the course of 2009

- Joint investigations through urgent issues groups.
- Surveillance and intelligence work.

(14) Note that most of the activities in the area of post trading require follow-up/continuous activities on the part of CESR (i.e. PTEG).

- Short-selling task force.
- MAD Level 3 guidance for supervisors and for the market (contacts with ESME and several associations).
- Enforcement aspects of MiFID in support of MiFID Level 3 expert group.
- Database on enforcement cases.
- Exchange of views and experiences in the area of co-operation and enforcement.
- Contacts with IOSCO.

B.12 Mediation

Work to be done during the course of 2009

- Possible mediation cases.
- Reporting to EU institutions on functioning of mechanisms.

B.13 Review Panel

Work completed by end of 2008

- Self assessment of CESR guidelines to simplify UCITS notification procedure.
- Methodology for mapping exercises.

Work to be done during the course of 2009

- Mapping of MiFID.
- Mapping of the Transparency Directive.
- Self-assessment and peer review of CESR Standard No. 2.
- Update of self assessment and peer review of CESR Standard No. 1.
- Peer review of CESR guidelines to simplify UCITS notification procedure.
- Work on the Prospectus Directive.
- Review of the use of national options and discretions and gold-plating by CESR Members in relation to MiFID and MAD.

B.14 ECONET

Work completed by end of 2008

- Economic assessment included in CESR's annual report.
- Improve intelligence gathering of data at EU level.
- Bi-annual contribution to the EFC-FST (March/September 2008).
- Contribution to the FSC.

Work to be done during the course of 2009

- Economic assessment to be included in the annual report.
- Bi-annual contribution to the EFC (March/ September).
- Continuous monitoring of EU and other financial markets' risks and developments.
- Increase sharing of knowledge and national work being undertaken amongst members of group.

B.15 3L3

- Consistency - Reporting requirements: follow up of questionnaire, internal governance: develop a consistent Level 3 approach, competing products.
- 3L3 working groups that CESR participates in or leads - money laundering, conglomerates, mergers and acquisitions, internal governance, delegation home-host, training platform.
- Joint reporting to EU institutions -work programme and update on progress, cross-sector risks to EFC, non-cooperative jurisdictions (OFC), ECOFIN conclusions work streams.

B.16. Legal Work

Work to be done during the course of 2009

- Legal support to expert groups.
- Monitoring of legal initiatives related to CESR work.
- Legal aspects of the functioning of CESR and institutional issues.

B.17. Report to institutions

Work to be done during the course of 2009

- Annual and half-yearly report to Commission, ECOFIN and European Parliament.
- Supervisory convergence report to the FSC.
- Economic trends of financial markets to EFC/ FST, twice a year.
- (Half)-yearly hearing in EU Parliament.

B.18. Common Supervisory Culture

Work to be done during the course of 2009

- 9 courses of CESR training.
- 12 courses of 3L3 training.
- HR secondment implementation of toolkit and principles.

B.19. Engaging retail investors more effectively and investor education

Work to be done during the course of 2009

- Organisation of half-yearly sessions with consumers' representatives.
- Involvement of consumer representatives in simplified prospectus for UCITS.

B.20. Communications

Work to be done during the course of 2009

- Promoting more effectively our efforts to develop convergence.
- Redesign and re-organisation of CESR's website.
- Update of Review Panel database.
- Handling of press enquiries.
- Developing internal communications for the staff of CESR Members.

B.21. Relations with third countries

Work to be done during the course of 2009

- Transatlantic dialogue (SEC and CFTC).
- Swiss/ Liechtenstein.
- Work of task force on mutual recognition.
- Consultative group of Non EEA countries (Turkey, Croatia, Serbia, Montenegro, etc).
- China, Israel.



05

Appendix

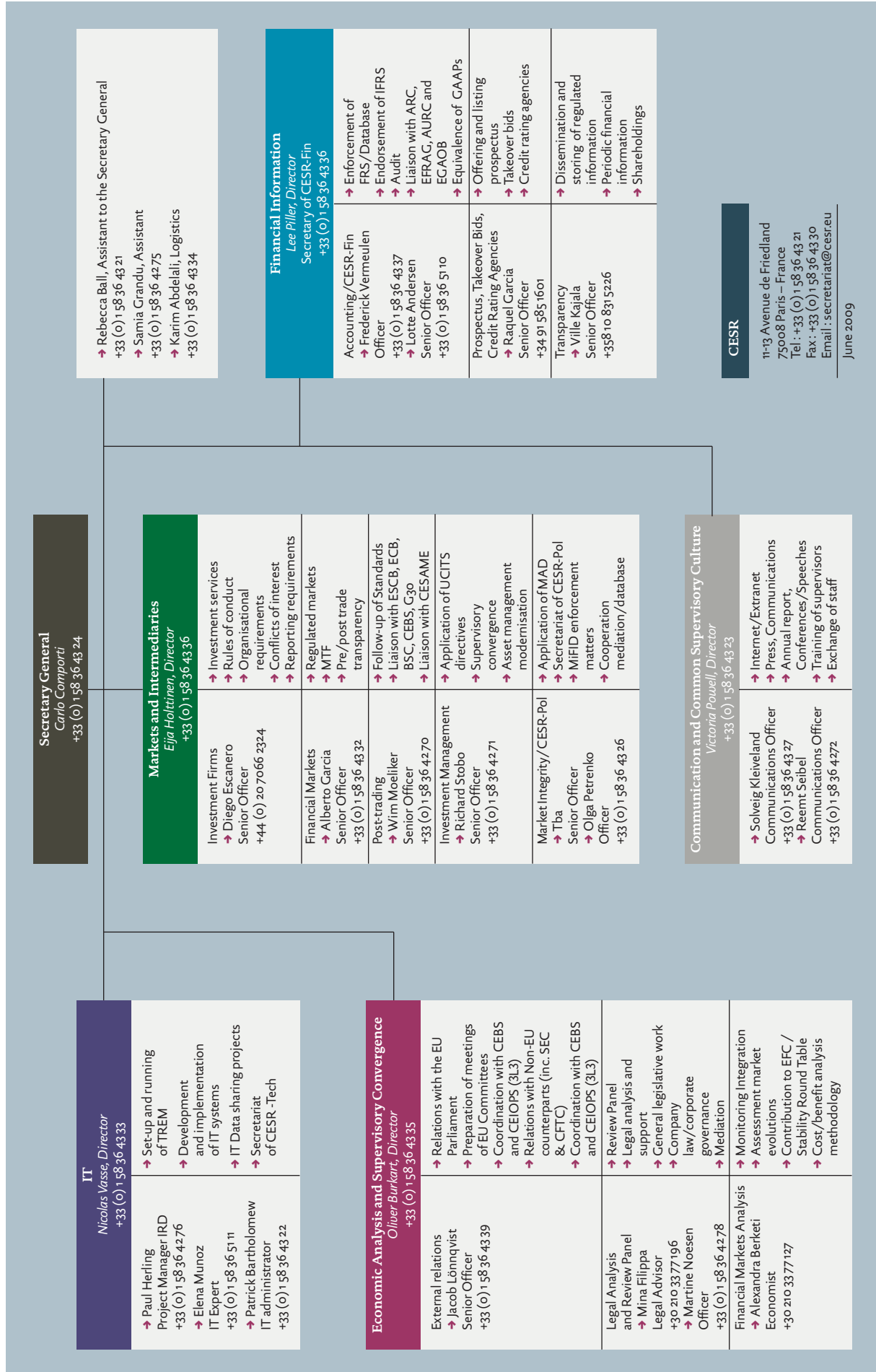
05 Appendix

5.1 Audited Financial Statements

Profit and loss (Revenues and Expenses)

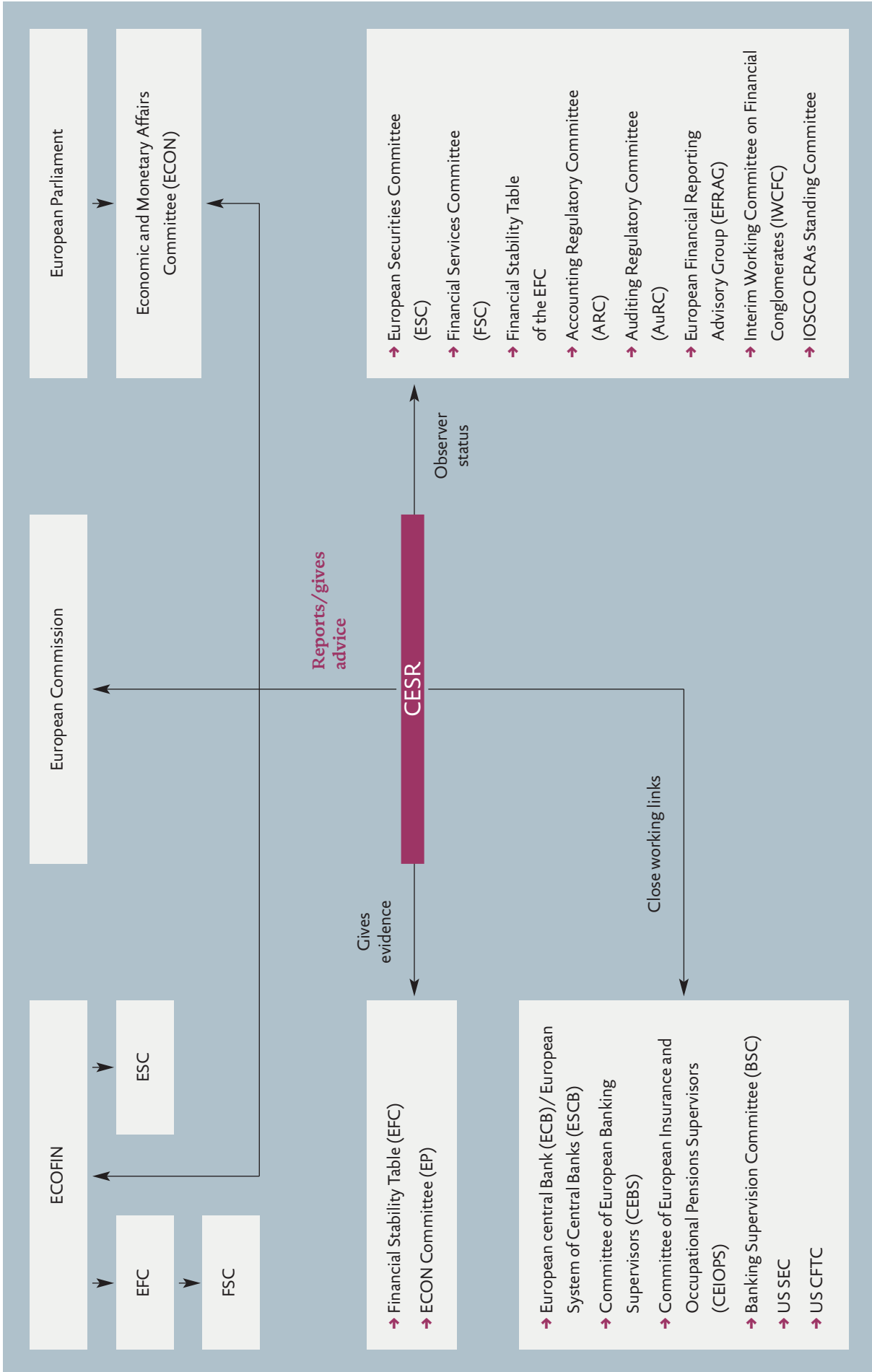
As at December 31, 2008 (In Euros)	31/12/2008	31/12/2007
REVENUES		
Contributions from Members	4 102 712	4 009 995
Annual conferences	0	0
Profit on marketable securities	203 596	86 410
TREM Running costs	99 948	0
Other	153 925	3 850
Total revenues	4 560 181	4 100 256
EXPENSES		
Salaries and employee benefits	2 311 182	1 780 921
External staff	100 921	239 982
Rental	660 758	564 580
Travelling	247 999	223 088
Office supplies	24 208	31 250
Organisation and follow up of meetings	77 964	59 909
Telecommunications	50 461	42 766
TREM project	502 398	251 316
Transportation and communication expenses	0	0
Printing	28 979	21 646
Computer & IT development	38 823	75 855
Professional fees	133 317	98 403
Depreciation of fixed assets excluding computer	48 608	42 688
Miscellaneous	2 193	12 806
Total expenses	4 288 418	3 445 210
Excess of revenues over expenses	271 763	655 046

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 June 2009

5.3 CESR's Inter-Institutional Relations



5.4 List of CESR Members (as of 1.6.2009)



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