Date: October 2010
Ref.: CESR/10-1027

REPORT

CESR Half-Yearly Report 2010

1. Introduction

This interim report for 2010 complements CESR's Annual Report for 2009, published in June 2010, by providing a half-yearly update on the activities of the Committee of European Securities Regulators (CESR) to the European Commission (Commission), Parliament and the European Securities Committee (ESC). The report covers work conducted by CESR from January to June 2010; all work conducted after this, is referred to as 'next steps'.

In the first half of 2010, CESR's work can be dived into two broad areas: firstly, work to develop technical advice and guidance already initiated earlier and, secondly preparatory work on implementing and designing future policies and procedures for ESMA, the European Securities and Markets Authority CESR is due to become in 2011.

On policy, the first six months of 2010 focused predominantly on the review of MiFID, the Markets in Financial Instruments Directive, aiming in particular at improving the functioning of secondary markets. During the spring of 2010, CESR conducted a set of consultations looking to review the legal framework for equity and non-equity equity instruments, dealing also with pre- and post-transparency and transaction reporting. All feedback received during the consultations has been used to form CESR's final technical advice to the Commission, on the MiFID review. The final parts of CESR's advice are due to be finalised by end of the autumn of 2010.

Another important policy proposal put forward in the first two quarters of 2010 was that of introducing a pan-European disclosure regime for short positions. In March, CESR published its final report on a short selling disclosure system to the Commission, recommending the development of an EU legal basis to introduce such a system on a pan-European basis. CESR's advice follows the lessons learnt from the financial crisis, as CESR Members widely recognised that a short selling disclosure regime is an efficient means to ensure transparency for market participants in periods of extreme turbulence.

CESR also undertook work to prepare the implementation of the Credit Rating Agencies (CRAs) Regulation. This is a key area for CESR going ahead, and much of this work will also form an important basis for ESMA. During the spring of 2010, CESR consulted market players on proposed guidance laying out the registration processes and related issues for the pan-European supervision of CRAs. In addition, CESR also began building the central repository for CRAs, a database that ESMA will run to keep statistical historical ratings as set out in the Regulation and published further guidance on how it will function. Assessing the equivalence of third countries, has also been a major piece of work, and in this regard CESR also published its technical advice on the equivalence of both the US and the Japanese legal framework for CRAs, which will now assist the Commission in reaching its conclusions.

Finally, CESR also began to prepare itself for the transition to ESMA and reviewed how it was structured to deliver its technical work, putting the appropriate internal framework in place, which will ensure continuity and a smooth transition to ESMA. In addition, CESR began planning for a potential adoption of the proposals to establish ESMA, naturally these efforts will intensify during the second half of the year.

The technical work is carried out by CESR through its standing committees, task forces, panels and networks, which draw together senior experts from CESR's Member authorities, is aimed at achieving CESR's overarching objectives. The following report is therefore organised by showing which objectives the particular work stream carried out is attempting to serve. CESR's objectives include securing greater market transparency, efficiency and integrity (p. 8), delivering greater convergence in implementation (p. 21), adopting measures to increase investor protection (p. 31), and providing technical advice as well as reporting to EU institutions, and implementing EU roadmaps (p. 35). For the purposes of the current report, however, work streams to which CESR has attributed high priority are reported in greater length, whilst those of medium or lower priority are reported in less detail.

Table of contents

2. CESR's objectives and groups

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. 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 capacity as a network of securities regulators across the European Union (EU), improves the co-ordination amongst its Members, provides technical advice to the Commission and seeks to ensure that EU securities legislation is applied more consistently across EU Member States.

To achieve this, CESR defined four objectives to which CESR's work can be said to contribute, namely, ensuring:

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

Some of CESR's objectives are interlinked, that is to say, actions taken to achieve one objective will also serve in achieving one of the other objectives.

2.2 CESR's working structure

CESR works on a great variety of issues regarding securities legislation and its application throughout the EU. CESR conducts its work through different Standing Committees (SC), task forces, panels and networks, which draw together senior experts from CESR's Member authorities. The different 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 SCs is aimed at achieving CESR's overall objectives, and the work of one Committee might also deliver to different objectives of other groups. The following presentation of the SCs, task forces, panels and networks of CESR presents the division of work streams per group/ SC.

Review Panel

CESR established its peer pressure group, the Review Panel, in order to contribute to the consistent and timely implementation and application of Community legislation and CESR measures (standards, guidelines, and recommendations) in the Member States by securing more effective co-operation between national supervisory authorities, carrying out peer reviews, and promoting best practice. Its overall objective is to achieve supervisory convergence. The panel reviews the overall process of implementation and application, outlines 'common understandings amongst supervisors and expresses views on specific problems encountered by its Members. To perform its tasks, it uses reviews, mapping exercises and self-assessments. It then exercises peer pressure by reviews which are carried out by fellow Members on the implementation and application by setting up benchmarks that help to evaluate Members' compliance with Level 3 measures and practices and to evaluate how Directives have been implemented.

Division of the Review Panel's work

Review Panel's work streams	Chapter	Page
- Review of application of UCITS' notification procedures	3.2	28
- Review of MAD's option and discretions	3.2	29

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 the CESR-Pol Standing Committee 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 has 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 between CESR Members across borders as rapidly as it would between departments within an authority and, by so doing, to enhance the integrity, the fairness and necessary protections to the

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).

Division of CESR-Pol's work

CESR-Pol's work streams	Chapter	Page
- MiFID review: CESR proposes changes on transaction reporting	3.1	14
- CESR proposes pan-EU disclosure regime for short positions	3.1	17

Corporate Reporting

The Corporate Reporting Standing Committee conducts CESR's work on issues related to accounting, audit, periodic reporting and storage of regulated information. In particular, it pro-actively monitors and influences regulatory developments in the area of accounting and auditing, including an active monitoring of the EU endorsement process of international standards and the work of relevant EU accounting and/or auditing Committees. The Committee co-ordinates the activities of national enforcers in the EEA in relation to the enforcement by assessing the compliance with International Financial Reporting Standards (IFRS). This includes the analysis and discussion of individual enforcement decisions under IFRS and emerging financial reporting issues under IFRS. The Committee also pro-actively monitors and influences developments relating to periodic financial reporting under the Transparency Directive and establishes and maintains appropriate relationships with securities regulators from major capital markets outside Europe to foster operational co-operation.

Division of work on Corporate Reporting

Work streams on Corporate Reporting	Chapter	Page
- CESR monitors developments in IFRS and contributes to EFRAG and the IASB	3.1	16
- CESR held four EECS meetings	3.1	16
- Development of pan-EU access to financial information	3.1	17

Corporate Finance

The Corporate Finance Standing Committee is responsible for developing all of CESR's work relating to the Prospectus Directive (PD) and Corporate Governance. Additionally, it carries out CESR's work with regard to major shareholding disclosure under the Transparency Directive (TD), except in relation to how such disclosures are stored.
The Committee promotes greater efficiency in day-to-day work undertaken by supervisors, increases supervisory convergence and ensures the coherent application of rules across the membership. The SC also works to increase harmonised implementation of EU legislation.

Division of work on Corporate Finance

Work streams on Corporate Finance	Chapter	Page
- CESR consults on extension of major shareholding notifications	3.1	18
- Tenth update of the Prospectus Q&A	3.2	30
- CESR publishes data on prospectuses approved and 'passported' in the EU	3.2	30
- CESR consults on amending PD recommendations for mineral companies	3.2	30

Secondary Markets

The Secondary Markets Standing Committee undertakes all CESR's work related to the structure, transparency and efficiency of secondary markets for financial instruments, including trading platforms and over-the-counter (OTC) markets, i.e. regulated markets, Multilateral Trading Facilities (MTFs), systematic internalisers and the activity of intermediaries in trading platforms. In particular, the SC assesses the impact of changes in the market structure to the transparency and efficiency of trading and develops CESR's policy in relation to the issues identified. This applies not only to shares that are currently subject to MiFID's transparency requirements, but also to other financial instruments and commodities. The Committee also fosters supervisory convergence among CESR Members in its area of competence.

Division of the Secondary Markets SC

Secondary Markets SC work streams	Chapter	Page
- CESR updates protocol for the operation of the MiFID database	3.1	11
- MiFID review: CESR consults on policy options for equity markets	3.1	12
- CESR launched work on micro-structural issues	3.1	13
- MiFID review: CESR consults on non-equity markets transparency	3.1	14
- MiFID Q&A: CESR publishes commonly agreed positions	3.1	15
- CESR updates MiFID pre-trade transparency waivers	3.1	15

Investor Protection and Intermediaries

The Investor Protection and Intermediaries Standing Committee undertakes CESR's work on all issues related to the provision of investment services and activities by investment firms and credit institutions. It also seeks to facilitate the convergent implementation of MiFID with particular regard to investor protection, including the conduct of business rules, distribution of investment products, investment advice and suitability.

In terms of policy, the Standing Committee has responsibility for elaborating Level 2 advice and Level 3 measures on the provisions of MiFID that are applicable to investment services and activities, including the authorisation of investment firms, conduct of business, organisational arrangements and 'passporting'.

Division of the work on investor protection and intermediaries

2010 Investor Protection and Intermediaries work streams	Chapter	Page
- CESR consults on definition of advice under MiFID	3.2	21
- MiFID: CESR consults on inducements: good and poor practices	3.2	27
- 3L3 look into internal governance issues	3.2	26
- MiFID review: CESR consults on investor protection and intermediaries	3.4	31
- MiFID: CESR issues Q&A on investor protection and intermediaries	3.4	32

Investment Management

The Investment Management Standing Committee 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 SC, 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 Committee has also been **closely involved in developing the framework** to support the European management company passport.

Division of the investment management group's work

2010 Investment Management work streams	Chapter	Page
- CESR consults on UCITS's risk management	3.2	23
- CESR moves forward the UCITS management company passport	3.2	24
- UCITS: Work on mergers, master-feeder and cross-border notification	3.2	24
- CESR sets out harmonised EU definition of money market funds	3.2	25
- CESR fine-tunes format and content of KII disclosure for UCITS	3.3	33
- CESR works on L3 guidance for the content of the KID	3.3	34

Credit Rating Agencies

In order to fulfil its objectives as set out by the EU Regulation on Credit Rating Agencies (CRA), the CRA Standing Committee promotes convergence in the application by Members of the Regulation, facilitates a coherent approach by the competent authorities and enhances legal certainty for market participants. The Committee will prepare and publish common guidelines. Generally, the SC deals with the implementation of the EU Regulation on CRAs. It will undertake the necessary work to enable both CESR and its Members to discharge their functions as outlined in the Regulation and co-ordinate with other international organisations and third country regulators that are performing activities in relation to CRAs.

Among other organisations, the SC will coordinate with CEBS, CEIOPS and IOSCO.

Division of the work on CRA

2010 work streams on CRA	Chapter	Page
- CESR issues guidance on CRA registration and related issues	3.1	8
- Q&A: CESR publishes common positions on CRA Regulation	3.1	9
- CRAs: CESR advices on equivalence of US and Japanese supervisory regimes	3.1	10

IT Management and Governance

CESR's IT Management and Governance Group is in charge of the information technology (IT) of CESR. The group enables CESR to work on IT projects that CESR undertakes in conjunction with its Members. It 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 renewed its IT mandate to better reflect the operational objectives of the group. The group'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.

Division of CESR's IT work

2010 work streams on IT	Chapter	Page
- CESR prepares to extend transaction reporting to OTC derivative instruments	3.1	19
- CEREP: CESR builds disclosure system for statistics of CRA's performance	3.1	20

3. CESR delivering its objectives

3.1 Market transparency, efficiency and integrity

Securities regulators seek to secure the orderly functioning of financial markets. This is achieved by ensuring that markets function in a fair, efficient and transparent manner. Regulation looks into 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; ensuring that appropriate laws for customer protection exist, are implemented and enforced effectively. As a network of securities supervisors, CESR fosters the integrity, transparency and efficiency of EU financial markets by improving the co-ordination amongst EU regulators through issuing guidance, Q&As and, where appropriate, through publishing market data and regulatory decisions taken by CESR Members.

Credit Rating Agencies

CESR issues guidance on CRA registration and related issues

According to the Regulation on CRAs, CRAs operating in the EU will need to apply for registration between 7 June and 7 September 2010, for their ratings to be used for regulatory purposes in the European Community.

For this purpose, CESR issued a first set of guidelines by 7 June 2010 on:

- The registration process and co-ordination arrangements between competent authorities and with CESR, including on the information set out in Annex II, and regime for applications submitted to CESR;
- The operational functioning of the colleges, including on the modalities for determining the membership to the colleges, the application of the criteria for the selection of the facilitator referred to in points (a) to (d) of Article 29.5, the written arrangements for the operation of colleges and the coordination arrangements between colleges;
- The application of the endorsement regime under Article 4.3 by competent authorities; and

- Information that the credit rating agency must provide in the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5.

CESR consulted on a proposed guidance

CESR issued a public consultation in October 2009 to seek comments from market participants on CESR's initial proposal on the set of guidelines due to be published by 7 June 2010. To facilitate the consultation process, CESR held an open hearing on November 2009. CESR received 17 responses to the consultation document, all respondents coming from the credit rating and banking sectors. All responses that are public can be viewed on CESR's website. under

Link:http://www.cesr.eu.org/index.php?page=responses&id=152 .

CESR's guidance lays out requirements

On 4 June 2010, CESR published its final guidance (Ref. CESR/10-347) alongside a feedback statement (Ref. CESR/10-346) providing a summary of the main suggestions received with an explanation of CESR's decision on some of the most significant issues raised.

Q&A: CESR publishes common positions on EU Regulation for CRAs

On 8 March 2010, CESR published commonly agreed positions by CESR Members regarding the EU Regulation on Credit Rating Agencies (CRAs) that entered into force on 7 December 2009. The Question and Answer (Q&A) document published (Ref. CESR/10-222) is intended to provide clarity to market participants with responses in a quick and efficient manner, to questions which are commonly posed to CESR Members.

However, CESR responses do not contain standards, guidelines or recommendations, and therefore no prior consultation process has been followed. It is CESR's intention to operate in a way that will enable its Members to react quickly and efficiently, if any aspect of the common positions published needs to be modified or the responses clarified further.

CESR updates its Q&A in June 2010

CESR published the first update of its CRAs Q&A in June 2010 (Ref. CESR/10-521), updating answers given to issues ranging around corporate governance and compliance, endorsement regime, exemptions, disclosures, Structured Finance, scope and employees' rules.

CESR consults on a second set of guidance

According to Article 21.3(a)(b) of the Regulation, CESR shall issue guidelines by 7 September 2010 on:

- Enforcement practices and activities to be conducted by competent authorities under the Regulation
- Common standards for assessing compliance of credit rating methodologies with the requirement set out in Article 8.3.

In May 2010, CESR issued two consultation, both open for comments until 18 June 2010.

Guidance on enforcement practices

The purpose of the consultation paper (Ref. CESR/10-536) is to seek stakeholders' views on the conclusions CESR has drawn for setting guidelines on enforcement practices applicable as part of ongoing supervision as well as the interaction expected between CRAs and competent authorities. The consultation sets out the typical information and data that competent authorities would expect to receive as part of their ongoing supervision of CRAs. It also outlines the level of interaction competent authorities expect to have with CRAs in the form of regular and ad-hoc meetings. However it does not aim to cover the level of information and interaction expected as part of the registration process.

Guidance on common standards for assessment of compliance of credit rating methodologies

The purpose of the consultation paper (Ref. CESR/10-537), published is to seek comments on the conclusions CESR has drawn for setting guidelines on common standards for assessing compliance of credit rating methodologies with the requirement on Article 8.3. This Article provides that 'a CRA should use rating methodologies that are rigorous, systematic, and

continuous and subject to validation based on historical experience, including back-testing'.

CESR understands the purpose of Article 8.3 is to ensure that CRAs' methodologies are developed, used and reviewed in such a way as to produce a well informed and well founded opinion on the credit worthiness of a rated entity and/or financial instrument. CESR also considers this article requires that credit assessments are based on all information that is deemed relevant and made available. Therefore, the consultation paper for the assessment of compliance of CRA's methodologies proposed the steps that would have to be taken by competent authorities to monitor CRAs compliance with this Article.

Next steps

CESR will continue to work on finalising the guidelines by building on the feedback received by market participants. The final guidance both on enforcement practices and common standards for assessment of compliance of credit rating methodologies will be published by 7 September 2010.

CRA: CESR's advice on the equivalence of US and Japanese legal and supervisory frameworks

On 21 May 2010, CESR published a technical advice to the European Commission on the equivalence between the US regulatory and supervisory framework and the EU regulatory regime for CRAs (Ref. CESR/10-332). CESR concludes that, overall, the US legal and supervisory framework is broadly equivalent to the EU regulatory regime for CRAs.

By 9 June 2010, CESR issued its second technical advice assessing the Japanese regime for CRAs (Ref. CESR/10-333) and concludes that, overall, the Japanese legal and supervisory frameworks is equivalent to the EU regulatory regime for CRAs by assuring that users of ratings in the EU would benefit from equivalent protections in terms of the credit rating agencies integrity, transparency, good governance and reliability of the credit rating activities.

In contrast to CESR's normal process when delivering its advice to the European Commission, CESR has not conducted a consultation with the market at large, given the nature of this particular advice that CESR has been asked to give and the very tight timeframe.

Differences between the US and EU legal and supervisory frameworks

There are a number of differences between the US legal and supervisory framework and the EU regulatory regime that mainly relate to the issue of disclosure of credit ratings and the quality of credit ratings and credit rating methodologies. CESR recommends to address the differences identified for further convergence between both regimes and considers that those differences may be reduced by future regulatory amendments to the US Securities and Exchange Commission's (SEC) rules.

CESR assessed the ability of the US legal and supervisory framework to achieve the main objectives of the relevant EU requirements. The assessment of the US regime covered the scope of the regulatory and supervisory framework, the corporate governance, the conflicts of interest management, the organisational requirements, the quality of methodologies and quality of ratings, the disclosure, and the effective supervision and enforcement.

CESR considers the US system to be stronger in some areas and weaker in others, in terms of its ability to achieve the relevant objectives. In accordance with its mandate by the European Commission, CESR has not taken into account any consideration of a political nature.

Different philosophies and approaches to the regulation and supervision of CRAs

CESR highlights in its technical advices that there are differences in terms of the philosophical approaches towards regulation.

For example, the supervisory approach in the US relies very heavily on upfront and detailed disclosure being made during the application process demonstrating substantive policies that the applicant is required to adopt, which has to be kept updated and whose accuracy has to be certified on an annual basis.

On their side, the Japanese have introduced a two tier system in relation to the regulation and supervision of credit rating agencies. The first tier relates to registration of credit rating agencies with the Japanese Financial Supervisory Authority (JFSA). CRAs have to

register with the JFSA if they want to enable their ratings to be used for regulatory purposes by the cut-off date of the existing designated rating agencies regime.

The second tier, which will become effective as of October 2010, provides for additional obligations on broker dealers in relation to the explanations that they have to give to their clients when soliciting transactions relating to financial instruments rated by entities that are not registered as CRAs with the JFSA.

Next steps

Following CESR's technical advice, the Commission will make a final decision regarding the determination of the equivalence between a third country legal and supervisory framework and the EU regulatory regime for credit rating agencies.

CESR lays out guidelines for the central repository database for CRAs

In order to increase market transparency, the EU Regulation for CRAs, requested CESR to establish a central repository (CEREP) where CRA shall make available information on their historical performance, data including the ratings transition frequency, and information about credit ratings issued in the past and on their changes.

According to Articles 21.2 (d) of the EU Regulation on CRAs, CESR shall also:

- Define the standardised form in which CRAs shall provide information to that repository;
- Make that information accessible to the public and publish summary information on the main developments observed on an annual basis; and
- Issue guidance on common standards on the presentation of the information, including: structure, format, method and period of reporting, that CRAs shall disclose. In particular, credit rating agencies shall disclose "(…) every six months data about the historical default rates of its rating categories, distinguishing between the main geographical areas of the issuers and whether the default rates of these categories have changed over time (…)".

On 4 June 2010, CESR issued its guidelines for the implementation of the CEREP (Ref. CESR/10-331). The guidelines are targeted at all CRAs that are registered in compliance with the EU Regulation, and CRAs that have been certified on compliance with said Regulation. The guidelines shall serve as a manual for those CRAs to deliver their data to the CESR CEREP. Thus, they specify the scope and definition of the data that CRAs have to deliver. Additionally, these guidelines provide information about the design and the intention of the CEREP to investors and all other interested parties.

Next steps

Further technical information containing more details and specifications are provided in the CRA Reporting Instructions which will be available for CRAs on request to CESR as of July 2010. The go-live of the Central Repository is projected for 1st July 2011 (see page 22).

Secondary Markets

CESR updates protocol for the operation of the MiFID database

On 1 March 2010, CESR updated its protocol (Ref. CESR/09-172c) for the operation of the MiFID database. The operation of the MiFID market transparency regime involves making certain information regarding shares admitted to trading available to market participants. The regime requires CESR Members to make certain calculations regarding shares admitted to trading on a regulated market and to some extent 'liquid shares'.

The results of the calculations are published by CESR. In order to fulfil the requirements, a specific MiFID database has been set up as a part of the CESR website.

Link: http://www.cesr.eu/popup2.php?id=6485

CESR has considered it necessary to review its protocol so as to follow MiFID Implementing Regulation where it refers to the use of the Community wide data in the calculations to be made after the first trading day of March 2009, using not only data from the regulated markets (as before), but also data from the most relevant MTFs. This protocol describes the tasks and responsibilities of the CESR Members and the CESR Secretariat respectively. Additionally, it

contains practical guidance on how to conduct the calculations as well as the necessary technical instructions.

The prescribed annula review of the calculations of the data in the MiFID database has been undertaken in spring 2010. The new calculations which were valid from 1 April 2010, were published at the beginning of March 2010.

MiFID Review: CESR consults on policy options for equity markets

On 13 April 2010, CESR published three consultation papers on its technical advice to the Commission in the context of reviewing MiFID. The first issues subject to review included proposed technical advice by CESR on equity markets (Ref. CESR/10-394) but also on investor protection and intermediaries (Ref. CESR/10-417) as well as transaction reporting (Ref. CESR/10-292).

Since MiFID's entry-into-force, European financial markets have undergone a fundamental restructuring. For instance, markets have seen greater competition and more pan-European trading, the emergence of dark pools, consolidation between exchanges, improvements in trading technology as well as other innovations, such as smart order routing, algorithmic trading and new clearing arrangements.

In its consultation paper on equity markets, CESR addressed areas of the MiFID legal framework where it has identified a need for improvement, including quality, cost and consolidation of post-trade transparency data and delays in the publication of such data.

CESR has been working on assessing the functioning of the MiFID regime since 2008, when it provided its advice to the Commission on the review of the MiFID provisions relating to commodity derivatives business (Ref. CESR/08-752). This work was followed by the publication of the report on the impact of MiFID on equity secondary markets functioning in June 2009 (Ref. CESR/09-355) and the submission of CESR's report on the transparency of corporate bond, structured finance product and credit derivatives markets (Ref. CESR/09-348) to the European Institutions in July 2009.
The consultation paper on CESR Technical Advice to the European Commission in the context of the MiFID Review: Equity Markets (Ref. CESR/10-394) was the outcome of CESR's continued work on the issues identified in its previous report on the impact of MiFID on equity secondary markets functioning (Ref. CESR/09-355). It marked the culmination of nearly 18 months of work by CESR, including a call for evidence published in November 2008 (Ref. CESR/08-872), fact finding exercises, roundtables with market participants and presentations held by stakeholders.

On 17 May, during the consultation period, CESR hold a public hearing on the proposals outlined in this consultation papers to allow direct interventions by market participants to the policy proposal by CESR. 77 written contributions were received to this consultation, including confidential responses.
The main topics addressed in this consultation paper can be summarised under the following headings:

Retaining pre-trade transparency regime for organised markets

Data from CESR's survey showed that more than 90 percent of trading on organised markets in Europe can be qualified as being pre-trade transparent. CESR provided the preliminary view of retaining the general requirement for pre-trade transparency on organised markets, regulated markets (RMs) and Multilateral Trading Facilities (MTFs).

However, it was proposed as well that exceptions to pre-trade transparency should continue to be allowed under certain circumstances. In order to provide greater clarity for regulators and market participants, CESR proposed to move from a 'principle based approach' for pre-trade transparency waivers to an approach that is more 'rule based'. As regards the scope and criteria for the waivers, CESR consulted on whether some of the waivers should be recast (i.e. thresholds for, and scope of, large in scale waiver, introduction of a minimum order size for the reference price waiver) and provided further clarifications on the interpretation of the waivers.

Review definition and obligations for systematic internalisers

CESR's initial recommendation was to retain the current systematic internaliser regime, but to revisit the definition of systematic internaliser (SI) and related obligations to ensure a

consistent understanding and implementation and to improve the value of information provided to the market. In particular, CESR consulted on the possibility to require SIs to maintain two-sided quotes and a minimum quote size and to identify themselves in post-trade reports.

Improving post-trade transparency regime

A key proposal in this consultation paper was to improve the quality and timeliness of post-trade transparency data and the ability to effectively consolidate information received from multiple European equity markets. CESR therefore proposed to retain the current framework for post-trade transparency, but to introduce formal measures to improve quality, shorten delays for regular and deferred publications and reduce the complexity of the regime. More specifically, it was proposed to amend MiFID to embed standards for the publication of post-trade information and to provide further clarifications of the post-trade transparency obligations.

Transparency obligations for equity-like instruments

CESR also consulted on the eventual increase of the scope of MiFID's transparency regime by applying transparency obligations to equity-like instruments admitted to trading on an RM, including depository receipts, exchange-traded funds, exchange-traded commodities and certificates. These instruments are considered to be equity-like, since they are traded like shares and, from an economic point of view, are equivalent to shares. CESR believed that there are benefits for investors stemming from a harmonised pan-European pre-and post-trade transparency regime for these instruments.

Consolidation of market data

In its consultation paper, CESR recognised that significant barriers to the consolidation of post-trade data remain and that, without further regulatory intervention, market forces are unlikely to deliver an adequate and affordable pan-European consolidation of transparency information. Two possible approaches to achieve this goal were proposed for consultation. Both approaches also addressed the cost of market data. One approach would retain the commercially-driven consolidation process currently taken by MiFID but supplement the introduction of new standards to improve data quality and to achieve greater consistency in trade publication practices by requiring investment firms to publish their trades through so-called Approved Publication Arrangements (APAs). All APAs would be required to operate data publication arrangements to prescribed standards. The other approach would build on this APA regime but would require all trades to be made available to and published by a single consolidated tape to offer market users a single point of access.

Addressing regulatory boundaries and requirements

CESR also addressed concerns about certain inconsistencies within MiFID which may have impacted the level playing field. It was proposed to align the requirements which apply to RMs and MTFs under MiFID, and to introduce tailored additional obligations for investment firms operating crossing systems/processes (e.g. notification of activity to regulators, identification of the crossing system in post-trade reports). Similar to the US approach, CESR also consulted on the possibility of requiring investment firms operating crossing systems/processes to set up MTFs for their crossing activity once they have reached a certain size on their own or in combination with other crossing systems/processes with which they have a private link. This would imply that, for instance, obligations such as pre-trade transparency and fair access would be applicable once internal crossing processes reached a certain market share.

Eliminating certain options and discretions of MiFID

CESR's consultation also asked about the desirability of eliminating some options and discretions relating to MiFID's markets provisions. These include the discretion for Member States to choose some of the criteria to define liquid shares for the purposes of the MiFID systematic internaliser requirements.

CESR launched a call for evidence on micro-structural issues

Since the publication of CESR's report on the impact of MiFID on equity secondary markets functioning (Ref. CESR/09-355), number of technology-driven developments have intensified such as high frequency trading, sponsored access and co-location. In order to assist with CESR's assessment of these developments and their

potential impact on the overall EU equity markets structure and efficiency and to inform certain aspects of the MiFID review, CESR has published a call for evidence on 'Micro-structural Issues of the European Equity Markets' (Ref. CESR/10-142) in April 2010. This evidence-collecting exercise covered high frequency trading, sponsored access, co-location services, fee structures, tick size regimes and indications of interest.

48 contributions were received in this call for evidence, including confidential submissions.

Next steps

The feedback received in the CESR's consultation on MiFID Equity Markets Review and the Call for Evidence on micros-structural issues will feed into CESR's overall review of MiFID and will be put forward as a whole to the Commission to be considered in its legislative proposals. A feedback statement reacting to the submissions received in the consultation will be issued alongside CESR's Technical Advice to the European Commission.

MiFID review: CESR consults on non-equity markets transparency

MiFID introduced significant changes to the European regulatory framework for equity secondary markets, leaving open to Member States the possibility to extend transparency requirements to financial instruments other than shares. CESR already analysed the eventual extension of MiFID transparency requirements to non-equity financial instruments in CESR's response to the Commission on non-equities transparency (Ref. CESR/07-284b) in August 2007 and CESR's report on transparency of corporate bond, structured finance products and credit derivatives markets (Ref. CESR/09-348) as of July 2009. CESR concluded that at the time there was no evident market failure in respect of market transparency on corporate bond markets and that there was no need of a mandatory pre- or post-trade transparency regime. When CESR re-examined the need for additional transparency in the wake of the financial crisis (CESR/09-348), it focused solely on post-trade transparency. In that report, CESR concluded that additional post-trade information would be beneficial to the market.

On 7 May 2010, CESR issued another consultation (Ref. CESR/10-510) in the context of the MiFID review dealing with transparency in non-equity markets. As a follow-up to the recommendations included in CESR's report on non-equity transparency of July 2009 (Ref. CESR/09-348) and as part of its advice to the Commission on the MiFID review, proposed a mandatory post-trade transparency regime for corporate bonds, Asset Backed Securities (ABS), Collaterized Debt Obligations (CDOs) and Credit Default Swaps (CDS). In addition, and in response to the Commission, CESR extended the scope of the exercise to assess the need for pre-trade transparency for the above mentioned instruments and for additional non-equity instruments, i.e. interest rate, equity, commodity and FOREX derivatives. CESR in December 2009 also decided to extend its work on analysing the need for post-trade transparency to these derivatives markets, the importance of which was confirmed by the Commission in its request for additional information to CESR.

On 27 May, during the consultation period, CESR hold a public hearing on the proposals outlined in this consultation papers. 47 responses, including confidential ones, were received in this consultation.

Next steps

The feedback received in the CESR's consultation on non-equity transparency will feed into CESR's overall review of MiFID and will be put forward as a whole to the Commission to be considered in its legislative proposals. A feedback statement reacting to the submissions received in the consultation will be issued alongside CESR's Technical Advice to the European Commission.

CESR-Pol

MiFID review: CESR's proposals on transaction reporting

CESR's third consultation paper (Ref. CESR/10-292) out of the MiFID package dealt with transaction reporting. The paper set out CESR's proposal for amending and clarifying the transaction reporting regime under MiFID. In preparing this consultation paper, CESR has benefited from the feedback given by stakeholders to its call for evidence (Ref.

CESR/08-873) issued in November 2008. The key purpose behind the suggested amendments is to improve market supervision and ensure greater market integrity. The main changes proposed focus on:

Introduction of a third trading capacity - riskless principal

CESR considers the introduction of a new trading capacity, a so-called riskless principal, in transaction reports to be the best and most robust way to differentiate principal transactions made by a firm on its own account and on behalf of the client from other types of principal and agency transactions reported to the competent authorities. CESR recommends the MiFID Implementing Regulation to be amended accordingly.

Mandatory client and counterparty identifiers

CESR intends to suggest to the Commission that the collection of client IDs and meaningful identifiers for all counterparties would be made mandatory in all Member States. The provision of such identifiers could lead to greater efficiency in market surveillance and detection of market abuse. Furthermore, CESR is investigating the use of a unique identifier for each client or counterparty and elaborates in the consultation paper on possible future standards and guidance for such identifiers.

Client ID collection when orders are transmitted for execution

CESR suggests amending MiFID to enable competent authorities to require the reporting of client IDs when orders are transmitted for execution, with the transmitting firm either providing the client ID to the receiving firm or reporting the transaction, including the client ID, to the competent authority.

Mandatory transaction reporting for all members of RM and MTFs

Finally, CESR suggests amending MiFID by extending the transaction reporting obligation to all members of regulated markets and MTFs – whether they are investment firms or not – or, alternatively, by introducing an obligation on regulated markets or MTFs that admit these undertakings as members, to report the transactions on their behalf.

Next steps

CESR intends to publish feedback statements for the three consultations launched in April and provide its final advice to the Commission by the end of July 2010. CESR is continuing its work in preparing its draft advice to the Commission in other areas of the MiFID review.

Secondary Markets

MiFID Q&A: CESR publishes commonly agreed positions by Members

In May 2010, CESR published a Q&A document (Ref. CESR/10-591) regarding MiFID by providing commonly agreed answers to questions received by stakeholders. This consolidated Q&A publication follows the model that is used by CESR for the Prospectus Directive. It is intended to provide market participants with responses in a quick and efficient manner to everyday questions which are commonly posed to CESR by market participants, CESR Members, or the public generally.

CESR responses do not constitute standards, guidelines or recommendations. 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. CESR intends to operate in a way that will enable its Members to react quickly and efficiently if any aspects of the common positions published need to be modified or the responses clarified further.
The Q&A published in May covered issues such as dark pools of liquidity and remote membership of regulated markets.

Next steps

CESR will continue to summarise questions received by market participants and provide commonly agreed answers when considered appropriate.

CESR updates MiFID pre-trade transparency waivers

On 26 June 2010, CESR updated its waiver document first published in May 2009 (Ref. CESR/09-324); publishing its successive assessment of the proposals for pre-trade

transparency waivers for trading systems and order types that are intended to be offered by regulated markets and MTFs under MiFID.

Assessment of MiFID compliance

The MiFID compliance of these functionalities has been assessed at CESR level on the basis of the new joint process that CESR launched in February 2009. Although the legal responsibility for granting the waivers lies with the national competent authorities, CESR Members have agreed that when an operator of a regulated market or an MTF seeks to rely on a MiFID pre-trade transparency waiver, the arrangements will be considered at CESR level at the initiative of the relevant CESR Member. This is consistent with CESR's role in providing a forum for supervisors to achieve greater supervisory convergence and contributes to ensuring an appropriate level of market transparency across Europe.

However, the table listing the waivers assessed does not include all waivers granted by competent authorities. Only waivers that have been considered at CESR level after the establishment of this process in February 2009 are included.

Next steps

CESR will continue to assess new pre-trade transparency waivers and update the information available in the document published as soon as these cases are agreed at CESR level. However, the Committee already proposed changes to the waivers regime for the Commission's review of MiFID. CESR seeks to move from a 'principle-based approach' for waivers from pre-trade transparency to an approach that is more 'rule-base'. In addition, CESR recommends the Commission provides ESMA with specific powers to monitor and review the pre-trade transparency waivers and to develop binding technical standards in this regard.

Corporate Reporting

CESR monitors developments in IFRS and contributes to EFRAG and the IASB

International Financial Reporting Standards (IFRS) have contributed much towards harmonising 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 the developments in IFRS proposed by the IASB and the IFRS Interpretations Committee and to respond to calls for market input from these bodies by putting forward the views of CESR Members – both as securities regulators and enforcers of accounting information.

In this capacity, CESR regularly provides comment letters to EFRAG with the aim of contributing to the standard-setting and endorsement process within Europe. In the first half of 2010, CESR provided comment letters to the IASB and to EFRAG in relation to the following projects:

- ED *Management Commentary*;
- ED *Measurement of Liabilities in IAS 37*
- IFRIC's April 2010 tentative agenda decisions: *Reversal of disposal group impairment losses relating to goodwill*;
- EFRAG's amended draft response on the IASB's Exposure Draft Measurement of Liabilities in IAS 37;
- ED *Amortised Cost and Impairment;* and
- ED *Fair Value Option for Financial Liabilities;* and
- ED *Conceptual Framework for Financial Reporting: the Reporting Entity.*

Next steps

CESR will continue to monitor EU endorsement of standards and interpretation published by the IASB and the IFRS Interpretations Committee. CESR believes in arriving at solutions aimed at achieving high quality global accounting standards that establish a good basis for consistent application and enforcement.

Four EECS meetings in first half of 2010

European Enforcers Co-ordination Sessions (EECS) as a forum which brings together all EU National Enforcers of financial information met four times in the first half of 2010 to exchange views and to discuss experiences of enforcement of IFRS.

An extract of eight decisions included in the EECS's database of enforcement was published at the beginning of July 2010.

Development of pan-European access to financial information disclosed by listed entities

The Transparency Directive required each Member State to have at least one Officially Appointed Mechanism for the central storage of regulated information (OAM). Every time an issuer disclosed information, the information is required to be filed with the OAM of the home Member State.

CESR prepared a report for the Commission on how the usefulness of the OAMs could be enhanced and on the creation of a European central access point of all the information stored in the 29 different European national databases. CESR sought views from market participants through a consultation paper '*Development of pan-European Access to Financial Information Disclosed by Listed Entities* in August 2010' (Ref CESR/10-791c).

CESR-Pol

CESR proposes pan-European disclosure regime for short positions

In an advice issued on March 2 (Ref. CESR/10-088), CESR recommends to the European institutions the introduction of a pan-European disclosure regime for net short positions in shares. . Those CESR Members that already have powers to introduce a permanent disclosure regime, as elaborated in the report, began the process of implementing this regime. Those CESR Members who do not have the necessary legal powers at present, will aim towards implementing this regime on a best efforts basis, until an EU regime is adopted.

By proposing a pan-European harmonised disclosure regime for short selling, CESR seeks to enhance supervisory convergence, improve market transparency and promote market efficiency and integrity. CESR, recognises that legitimate short selling plays an important role in financial markets. It contributes to efficient price discovery, increases market liquidity, facilitates hedging and other risk management activities and can possibly help mitigate market bubbles. However, it can also be used in an abusive fashion to drive down the price of financial instruments to a distorted level and, in extreme market conditions, can have an adverse impact on financial stability. Following the financial turmoil, it was widely recognised that for a short selling disclosure regime to be efficient and to ensure transparency for market participants, a convergent pan-European regulatory approach is necessary.

Consequently, CESR launched in July 2009 a consultation on a proposal for a pan-European short selling disclosure model (Ref. CESR/09-581) to which it received 49 responses. After careful consideration of the submissions received, CESR prepared its report on a model for a pan-European short selling disclosure regime and the feedback statement to the consultation paper (Ref. CESR/10-089).

CESR published a report on technical details of the pan-European short selling disclosure regime (Ref. CESR/10-453) in May 2010. This report complements the report on a model for a pan-European short selling disclosure regime and gave further details on:

- the determination of economic exposure for the purposes of calculating a net short position;
- the calculation of changes in a net short position;
- a clarification at the level at which to net and aggregate short positions;
- the mechanics of disclosure; and
- the definition of exemption for disclosure obligations.

CESR proposes two-tier system

The short selling disclosure regime proposed by CESR is a two tier-model for the disclosure of significant individual net short positions in all shares that are admitted to trading on an European Economic Area (EEA) regulated market and/or an EEA MTF, when the primary market of those shares is located in the EEA. Under the proposed regime, at the lower threshold of 0.2%, positions should be disclosed to the relevant competent authority. In addition, steps of 0.1% would trigger further disclosure obligations. After the position reaches the higher threshold of 0.5% and any additional steps of 0.1% thereafter, the position should be disclosed to the competent authority as well as to the market as a whole.

In calculating whether a disclosure is required, market participants should aggregate any position which provides an economic exposure to a particular share. Positions held in exchange-traded and OTC derivatives would therefore be covered, as well as short positions in cash markets. Disclosure calculations and reports would be done on a net basis with any positions involving long economic exposures to a share subtracted from the short positions. Disclosure reports of short positions—whether to the regulator, or to the market, would be made on the trading day following that on which the relevant threshold or additional step has been crossed. Market making activities will be exempted from the disclosure requirements.

Corporate Finance - Transparency

CESR consults on extension of major shareholding notifications

CESR in January 2010 started work on examining whether instruments that create a similar economic effect to holding shares and entitlements to acquire shares should be disclosed as part of major shareholding notifications. CESR recognised that these instruments may potentially be used to acquire or exercise influence in a company with shares admitted to trading on a regulated market, or allow for creeping control. Instruments that create a similar economic effect to holding shares and entitlements to acquire shares, effectively create a long economic exposure to the issuer. Currently these instruments are outside the legal scope of the Transparency Directive. CESR intends to widen this scope to include all instruments referenced to shares that allow the holder to benefit from an upward movement of the price of these shares.

Broadening the scope of instruments that need to be disclosed

There is a range of instruments that can be used to create a similar economic effect, and a long economic exposure, to those financial instruments already captured under the TD without giving legal title to or the legal right to acquire the underlying shares, including certain options, equity swaps and Contracts for Difference (CfD's). Several Member States have taken, or are planning to take steps, to broaden the scope of their national regime for the reporting of major holdings to include such instruments or to establish specific disclosure rules regarding them. The minimum harmonisation required by the Transparency Directive allows for these national initiatives.

In January 2010, CESR issued a consultation paper (Ref. CESR/09-1215b) on the extension of major shareholdings notifications to include all instruments that give a similar economic effect to holding shares and entitlements to acquire shares in the broadest sense. The intention is to cover all instruments that can be used to create an economic long position.

While seeking to broaden the scope of the TD's major shareholding disclosure regime, CESR does not seek to change the general principles underlying the current regime. The scope of the broadened disclosure regime is to remain limited to instruments referenced to shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

This broad approach proposed by CESR seeks to co-ordinate national efforts in this area in order to achieve a more uniform approach for possible regulatory initiatives at national level. It will also be part of the feedback to the European Commission for its future review of the TD. The purpose of CESR's consultation was limited to instruments that give a similar economic effect to holding shares and entitlements to acquire shares, and does not seek to harmonise other aspects of the TD's application across the membership.

Next steps

CESR recognises the need for further harmonisation and will seek to promote convergence by advising the Commission as how to review the Transparency Directive.

IT Management and Governance

CESR moves forward to extend transaction reporting to OTC derivative instruments

Competent authorities throughout the EEA are committed to detecting market abuse and maintaining the integrity of markets. The receipt and examination of transaction reports is an essential element in enabling regulators to abusive behaviour. MiFID gives securities regulators the power and obligation to collect

transaction reports on instruments admitted to trading on regulated markets.

However, many supervisors have noted that there are a range of OTC financial instruments that mirror instruments admitted to trading on regulated markets that can equally be used for the purposes of market abuse which do not fall under reporting obligations. Therefore, CESR Members extended the collection of transaction reports to include OTC instruments whose value is derived from instruments admitted to trading on a regulated market to enhance their ability to detect suspicious activity and maintain the integrity of their markets. Some other competent authorities are currently investigating this option as well.

After one and a half years of running and studying the different practices within the CESR Membership, CESR decided to launch a project to amend its Transaction Reporting Exchange Mechanism (TREM) to facilitate the exchange of transaction reports on OTC derivative instruments amongst the 27 national supervisors comprising CESR's Membership.

TREM is currently limited to the scope of the MIFID Level 2 regulation, i.e. the exchange of transaction reports on instruments admitted to trading on a regulated market in Europe.

CESR consults to define guidance

CESR decided that only transactions on securities derivatives whose underlying instrument is traded on a regulated market should be exchanged. This excludes indices or baskets of securities, apart from derivatives where all the underlying securities are issued by the same entity; e.g. single name credit default swaps. As with TREM, this excludes non-securities derivatives that have a specific transaction reporting regime.

Therefore, CESR decided to include within TREM transactions, the following OTC derivatives:

- Options;
- Warrants;
- Futures;
- Contracts for Difference and Total Return Swaps;
- Spread bets;
- Swaps (except CfDs, TRS and CDS);
- Credit Default Swaps; and
- Complex derivatives.

CESR decided to go for a more comprehensive approach where derivatives that would not fall within plain-vanilla general categories would still be reported under a common 'complex derivatives' label.

To foster further harmonisation, CESR in January 2010 consulted (Ref. CESR/10-768) on guidance to investment firms to report transactions on those instruments.

The consultation also took into account CESR's decision on the technical standards for classification and identification of OTC derivative instruments which resulted from a previous consultation (Ref. CESR/09-1036).

TREM is being adapted

The IT project that aims at adapting TREM to enable CESR Members to exchange transaction reports on OTC derivatives is on track.

This project, which was launched in October 2009, also encompasses the upgrade of the Reference Data System (RDS) to allow for the collection and distribution of harmonised reference data to CESR Members.

Following internal and external consultations on the reporting of OTC derivative transactions, the detailed functional and technical specifications of the new version of TREM and RDS were signed off by the IT Governance and Management group of CESR at the beginning of May 2010. The implementation of the central modules has been launched; a first version is to be delivered shortly for testing.
Improvements have been made to the central component facilitating the exchange of files between CESR Members (the hub), by installing and testing a new version of the system on a test platform.

A seminar has also been prepared and held in order to train the teams of CESR Members on what should be implemented by them.

Next steps

Now that the central components have been implemented, CESR Members will start upgrading and then testing their local transaction reporting

systems, so as to get prepared for the go-live date of 1 December 2010.

Using the feedback received to its latest consultation, CESR will define useful common standards for consistent collection of data from investment firms, and how the fields of transaction reports should be populated in a harmonized manner for each type of derivative.

CEREP: CESR builds disclosure system for statistics of CRA's performance

According to the Regulation on Credit Rating Agencies published on 17 November 2009 (Regulation (EC) No 1060/2009), CESR shall, among other tasks:

- Establish a central repository (CEREP)[1] where credit rating agencies shall make available information on their historical performance data including the ratings transition frequency and information about credit ratings issued in the past and on their changes;
- Define the standardised form in which the credit rating agencies shall provide information to that repository;
- Make that information accessible to the public and publish summary information on the main developments observed on an annual basis; and
- Issue guidance on common standards on the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose. In particular, credit rating agencies shall disclose every six months data about the historical default rates of their rating categories, distinguishing between the main geographical areas of the issuers and whether the default rates of these categories have changed over time.

In order to fulfil its requirements, CESR launched the CEREP project at the end of 2009 following a consultation period, and a Business Requirements Document was approved by CESR's plenary in October 2010 together with the budget of the project.

Between December 2009 and March 2010, a public tender was issued resulting in the choice of an IT consulting firm for building the CEREP. The software provider was appointed in March 2010 and has been developing the central system since April 2010.

The network layer for the communication has been set up; the HUB file server being now available for data transfer between the CRAs and CESR.

In parallel, the SG3, joint group formed by Members of both CESR's CRA Standing Committee and its IT management group, worked on the methodological and technical details for the collection of rating data from CRAs and the compilation of the CEREP statistics. As a result:

- the *CEREP Functional Specifications* was finalised in May 2010, a document containing all the technical details of the system; and
- the *CESR Guidelines for the implementation of the CEREP* were published on 4 June 2010.

Next steps

The technical implementation of the system is scheduled to be finalised by the end of 2010. A kick-off workshop will be held with the CRAs in July to inform about the project timetable and planning, the Guidelines and distribute reporting instructions the CRAs should follow when reporting to the CEREP. The network layer for communication between the CRAs and CESR will be tested during the summer of 2010, together with the CRAs.

A training seminar will be organized in September to facilitate the implementation phase of the project for CRAs, with testing to follow from early 2011. The go-live of the system is projected for 1st July 2011.

[1] This project has been made possible with the financial assistance of the European Union. This project is carried out under the sole responsibility of CESR and can under no circumstances be regarded as reflecting the policies of the European Union.

3.2 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 and Intermediaries

CESR consults on definition of advice under MiFID

In April 2010, CESR published a set of Q&A (Ref. CESR/10-293) and a feedback statement (Ref. CESR/10-294) responding to comments that CESR had received in response to its consultation on 'Understanding the definition of advice under MiFID' in 2009. In that consultation paper, CESR consulted on questions and answers designed to clarify and illustrate situations where firms will, or will not, be considered as providing investment advice. Investment advice is an investment service under MiFID, which is why the distinction is important.

Determining the nature of a service

The main questions for consideration when determining whether a particular service amounts to investment advice are set out in MiFID. CESR wishes to stress that all five of the tests laid out by MiFID have to be met for a service to be considered as investment advice.

The Q&A published by CESR includes the key subjects covered such as:

- The provision of personal recommendations and whether other forms of presenting information such as 'investment research', filtering, general recommendations, generic advice, presenting multiple products or access to model investment portfolios could constitute investment advice;
- The presentation of a recommendation as suitable for a client or based on the clients' circumstances, including making recommendations to become a client of a particular firm; making recommendations which are clearly unsuitable in light of knowledge about the client, definitions of a 'person's circumstances'; and, when recommendations will be considered as based on a view of a person's circumstances;
- Perimeter issues around the definition of personal recommendations, including disclaimers to the client and failing to use known customer information; and
- Issues around the form of communication, including whether the Internet is always a "distribution channel"; messages to multiple clients; distinguishing corporate finance and investment advice; and, whether these are mutually exclusive.

The feedback statement set out CESR's response to various issues that respondents raised, including by clarifying that:

- A service will only be considered as investment advice if it meets all five of the tests set out in the Q& A; and
- While the tests described in the Q&A apply in relation to both professional clients and retail clients, CESR accepts that in practice firms can often place greater reliance on the ability of professional clients to understand whether they are receiving advice.

Other issues discussed in the feedback statement include respondents' views and concerns about:

- The inclusion of potentially subjective criteria in assessing whether or not a particular service amounts to advice (including a client"s perception of the service he receives);
- The potential for recommendations to be made implicitly, or to be implicitly presented as suitable;
- The risk that marketing communications will be viewed as presented as suitable or based on personal circumstances; and

- Different ways in which investment advice and corporate finance advice might be distinguished from one another.

Next steps

CESR will use the feedback received to the consultation to form a final definition of advice under MiFID. This will then be fed into the overall review of MiFID to the Commission to include in their review of the Directive in 2010.

MiFID: CESR consults on inducements: good and poor practices

Following its consultation in October 2009, CESR published its report (Ref. CESR/10-295) on 'Inducements – good and poor practices' in April 2010. A feedback statement (Ref. CESR/10-296) was published alongside the report. MiFID sets out requirements for the receipt or provision by an investment firm of a fee, commission or non-monetary benefit.

CESR's report highlights some of the observed industry practices (based on a questionnaire CESR Members distributed to investment firms) on the MiFID inducements rules and provides investment firms with an understanding of how CESR views such practices. Throughout the report, CESR indicated what types of firm behaviour European securities regulators encourage (good practices) and discourage (poor practices). This is expected to provide firms with a benchmark for industry compliance with the MiFID inducements rules, with the additional comfort of knowing whether European securities regulators encourage or discourage particular instances of firm behaviour.

The main objective of the report is to assist regulated firms in gathering a better understanding of some of the main industry practices on inducements. This document does not form part of the MiFID review and it is based on the MiFID rules as they stand. None of CESR's views, opinions, judgments and statements contained in the report constitute EU legislation.

The five main points covered by CESR's report are as follows:

Classifying payments and non-monetary benefits

Most investment firms understood the MiFID inducements rules and have taken measures with a view to ensuring compliance. The differences observed in the arrangements and procedures firms set up to comply with the rules were partly due to the scale and nature of their business and the degree to which the MiFID inducements rules had impacted their business. Where firms documented their processes, the decisions on admissible payments and non-monetary benefits were based on predefined assessment principles/ factors, or decisions were taken by specific functions within the firm. The role of the compliance function, with the support of senior management, was generally seen as essential in facilitating effective compliance.

Only a small number of firms (mostly investment firms providing portfolio management services) reported a change in the structure of the payments they make/receive as a consequence of the rules. Some firms also considered the rules had enhanced transparency to clients of the commission structures.

Proper fees

Investment firms gave examples of payments they considered were proper fees under Article 26(c) of the Level 2 Directive. CESR then provided a view on some of the payments which it views as proper fees. These include, all fees necessary for the provision of order execution services which, by their nature, cannot give rise to conflicts with the best interests of the investment firm's clients; all kinds of fees paid by a firm in order to access and operate on a given execution venue and those which should normally be considered as such (under the general category of settlement and exchange fees).

Enhancing the quality of the service provided to the client

Many of the firms responding to the questionnaire listed specific methods of managing potential conflicts caused by third party payments and non-monetary benefits provided or received by the firm and considered the conflicts of interest policy as a vital tool in ensuring that such payments and benefits do not cause the firm to act contrary to the client's best interests.

A variety of justifications were put forward by investment firms as to why certain payments and non-monetary benefits were designed to enhance the quality of the service to the client. However, some of the responses suggested that firms find it difficult to grasp the 'designed to' aspect and focused on whether the payment 'enhances the quality of the service to the client'. In addition, some firms considered that the 'designed to enhance' criterion is not separate from the duty to act in the best interests of the client.

Disclosure

Most investment firms disclose to clients third party payments and non-monetary benefits they provide or receive through a summary disclosure. There were differences in the degree to which these disclosures provided sufficient information to enable clients to make an informed investment decision. A large majority of firms noted that their clients did not request further information after receiving a summary disclosure.

Cross-border implementation

The majority of investment firms did not have to adopt any different arrangements or procedures across the Member States concerned to comply with Article 26 of the Level 2 Directive. The small minority of firms that reported that they had to make changes were mostly internationally active groups operating several subsidiaries across Europe, and tended to develop a uniform group approach to comply with the MiFID inducements rules.

Next steps

CESR will use the insights of this report to include proposals or definitions on good and poor practices regarding inducements into its review of MiFID where it is considered necessary.

Investment Management

CESR consults on UCITS' risk measurement

On 19 April 2010, CESR started consulting on its proposed guidelines on risk measurement and the calculation of global exposure and counterparty risk for UCITS (Ref. CESR/10-108). The guidelines are designed to accompany the Level 2 implementing measures for the revised UCITS Directive (2009/65/EC).

Guidelines provide methodologies

The key purpose of these guidelines is to provide stakeholders with detailed methodologies in order to foster a level-playing-field among Member States in the area of risk measurement and the calculation of global exposure and counterparty risk for UCITS. The calculation of the global exposure represents only one element of the UCITS' overall risk management process. It remains the responsibility of the UCITS to select an appropriate methodology; in that context, CESR proposes detailed methodologies to be followed by UCITS when they use the commitment or the Value at Risk (VaR) approach.

The commitment approach

For the commitment approach, CESR sets out proposed guidelines on:

- the conversion of financial derivatives into the equivalent position in the underlying assets of those derivatives;
- the methodologies for netting and hedging arrangements and principles to be respected when calculating global exposure; and
- the calculation of global exposure when using Efficient Portfolio Management Techniques.

Under the commitment approach CESR has also identified, for interest rate-related financial derivative instruments that only expose the UCITS to general interest rate risk, two possible methodologies based on the sensitivity. The consultation seeks stakeholders' views on which option should be retained. In the context of the commitment approach, CESR also sets out its initial thoughts on specific guidelines for structured UCITS which would involve an alternative approach to the standard commitment methodology for such UCITS, as well as the criteria they would have to satisfy in order to apply such an approach.

The VaR approach

For the VaR approach, CESR proposes guidelines on:

- the principles to be applied for the choice between Relative and Absolute VaR;
- the criteria to be taken into account in the selection of the reference portfolio for use in the Relative VaR calculation;
- the methodology for the computation of the global exposure when using Relative and Absolute VaR, including a set of quantitative and qualitative requirements to be respected; and
- additional safeguards which UCITS should put in place when calculating the global exposure using the VaR approach.

In these guidelines, CESR also defines a set of high-level principles relating to assets used as collateral to reduce counterparty risk and cover rules for transactions in financial derivative instruments.

Next steps

CESR will consider the feedback received by stakeholders when preparing its final version of the guidelines, which are expected to be published during summer 2010.

CESR moves forward the UCITS management company passport

In April 2010 CESR published a feedback statement (Ref. CESR/09-990) summarising the responses received to the consultation on its technical advice on the level 2 measures related to the UCITS management company passport (Ref. CESR/09-624). Generally, CESR's proposals were welcomed by respondents; as such, there were relatively few changes made in the finalization of the advice.

UCITS: Work on mergers, master- feeder structures and cross-border notification

On 19 April 2010, CESR published a feedback statement (Ref. CESR/09-1226) summarizing the responses received to the consultation on its technical advice on Level 2 measures relating to mergers of UCITS, master-feeder UCITS structures and cross-border notification of UCITS (Ref. CESR/09-785).

In general, respondents were broadly supportive of the approach proposed by CESR. The number of substantive changes to the draft advice was therefore relatively small. More detail on the amendments is set out in the relevant section below.

Mergers of UCITS

CESR's advice on mergers of UCITS focused on the information to be provided to unit-holders in the merging and receiving UCITS. In light of the broad support from the majority of respondents for its proposals in this area, CESR did not make significant changes in its final advice. CESR did, however, provide some clarification on the distinction to be made between information provided to unit-holders in the merging UCITS and the receiving UCITS, as well as on the content of the information to be included with a view to allowing unit-holders to make an informed decision. With regards to the manner of provision of the information, CESR confirmed its intention not to submit any specific advice in this area.

Master-feeder structures

CESR's advice in this area covered the content of the written agreements that should be put in place between the master and feeder UCITS, as well as their respective depositaries and auditors. CESR clarified certain elements of the content of these agreements, while reaffirming its view that there should at all times be equitable treatment of all unit-holders. As regards the law applicable to the agreement, CESR agreed with the majority of respondents that in cross-border situations, the two parties should be free to choose whether to apply the law of the feeder or the master. CESR also set out detailed requirements on the steps to be taken in the case of a liquidation, merger or division of a master UCITS in order to satisfy the time constraints set out in the Level 1 Directive. In this context, CESR considered an alternative proposal put forward by several respondents regarding liquidation of the master

fund, but ultimately took the view that this would have gone against the principle that the feeder should not have preferential treatment over other unit-holders of the master UCITS and created a risk that unmanageable conflicts of interest may be generated.

Notification procedure

CESR took account of its existing level 3 guidelines on notification (Ref. CESR/06-102b) in preparing its advice, which covered, inter alia, the information that Member States should make available in relation to marketing in their jurisdiction of UCITS established in another Member State. Here, CESR recommended that Member States review their national requirements for the marketing of units of UCITS, prior to implementation of the recast UCITS Directive in 2011. CESR also clarified certain elements of the standard notification letter and attestation. Finally, CESR took into account respondents' concerns about possible impediments to the UCITS' right to market its units freely in the host Member State and made corresponding adjustments to its advice.

CESR sets out harmonised European definition of money market funds

On 19 May 2010, CESR published its guidelines on a common European definition of money market funds (Ref. CESR/10-049). The guidelines aim to improve investor protection by setting out criteria to be applied by any fund that wishes to market itself as a money market fund. The criteria reflect the fact that investors in money market funds expect the capital value of their investment to be maintained while retaining the ability to withdraw their capital on a daily basis. A common definition will also help provide a more detailed understanding of the distinction between funds which operate in a very restricted fashion and those which follow a more 'enhanced' approach.

Guidelines create two categories of money market fund

CESR's guidelines set out two categories of money market fund: Short-Term Money Market Funds and Money Market Funds. This approach recognises the distinction between short-term money market funds, which operate a very short weighted average maturity and weighted average life; and money market funds which operate with a longer weighted average maturity and weighted average life.

For both categories of fund, CESR expects that there should be specific disclosure to explain clearly the implications of investing in the type of money market fund involved. For Money Market Funds, for example, this means taking account of the longer weighted average maturity and weighted average life of such funds. For both types of money market fund, this disclosure should reflect any investment in new asset classes, financial instruments or investment strategies with unusual risk and reward profiles.

Next steps

The guidelines will enter into force in line with the transposition deadline for the revised UCITS Directive i.e. by 1 July 2011. However, money market funds that existed before that date will be granted an additional six months to comply with the guidelines as a whole.

Investor Protection and Intermediaries

3L3 look into internal governance issues

The three Level 3 Committees (3L3), CEBS, CEIOPS, and CESR, launched a call for evidence on cross-sector internal governance issues in with a joint stock-take report on internal governance requirements (Ref. CESR/09-1176) with an end date of 4 April 2010. The '3L3 Task Force on Internal Governance' (TFIG), which is composed of experts in banking, insurance and securities markets from the Members of the three Committees, was created with the aim of exploring ways of promoting greater convergence of regulatory and supervisory practices in the area of internal governance.

The Task Force had been mandated to conduct a stock-take of the internal governance requirements applicable to some specific activities undertaken in the financial sector and to analyse them in order to (i) identify consequences of differences which have significant practical impact on institutions and make recommendations for Level 3 measures to enhance convergence; and (ii) develop cross-sector guidance for institutions operating in

different financial sectors in the area of internal governance.

The report issued, contains the result of the stock-take that was performed by the TFIG on the existing requirements for entities undertaking activities in the areas of banking, insurance and securities, and the subsequent analysis of the differences identified, as well as some proposed options to achieve the intended level of harmonisation.

The results of the analytical work performed by the TFIG led it to conclude that the existing (or, in the case of insurance, perspective) internal governance requirements for the activities undertaken in the banking, insurance and securities sectors are generally similar and have the same intended outcomes or comparable outcomes, i.e. despite the fact that in many cases requirements are set at different levels of compliance, varying from European Level 1 Directives to Level 3 guidance or recommendations, the final intention is approximately the same.

The TFIG considered that there are a number of areas where some guidance could be beneficial, including:

- Management of conflicts of interest;
- Policies, processes and procedures related to the risks covered by the risk management systems;
- How the risk management, compliance and internal audit functions might be 'independent' in the light of their different sectoral requirements; and
- The supervisory review process.

The TFIG considers that the development of guidance in these areas would, on the one hand, contribute to a more harmonised interpretation of these requirements for each sector and, on the other, complement the existing gaps between sectors in the cases where no specific requirements exist.

Next steps

The 3L3 will further analyse the responses to the consultation before next steps are decided in order to clarify whether existing differences or gaps harm the industry in practical terms and whether any changes to them would be a priority at present.

Cross-sector convergence

Providing supervisory convergence through training

In order to implement the recommendations of the ECOFIN Conclusions of 5 May 2006, calling for the development of an EU supervisory culture through the training of staff, the 3L3 Committees started the first joint effort on training and staff exchange during 2007 and this has continued.

The supervisory convergence actions taken by CESR and its Members, on training and the exchange of staff, through study visits and secondments are intended to respond to:

- the Commission's White Paper of 5 December 2005, which states the need to: "To deliver common decision-making and enforcement practices - in particular, for multi-country or cross-sector groups - joint inspections, peer reviews and practical measures such as staff exchanges, joint training between supervisors, exchange of information and expertise should be developed ambitiously over the next 5 years".
- the ECOFIN conclusion of 5 May 2006, which 'calls for further progress in the convergence of supervisory practices and cross-border co-operation among supervisory authorities in the EU' and in which ECOFIN invites CESR to develop and assess 'the tools aimed at fostering supervisory culture and indicate any ways to help them work better'.
- the FSC report of 23 February 2006 and The European Parliament Resolution on the current state of integration of EU financial markets (2005/2026(INI)).

Training initiatives

CESR began sector and cross-sector training in 2008. After the first "pilot" year a dedicated training officer was assigned to co-ordinate and manage the training and staff-exchange related actions.

During the first half of 2010 three training seminars were organised by CESR and its Members (see Annex 1 for further details) [2].

HR Network

The Human Resources (HR) Network was re-established and met in June 2010 to discuss training and how to promote further secondments and study visits.

The role of the network will be to:

- act as the contact point and information channel on training/HR related issues amongst the authorities;
- facilitate co-operation on the development and implementation of the training programmes;
- encourage the promotion and implementation of secondments and study visits; and
- enable HR officers to share best practices.

Secondment and study visits

As a part of the effort to meet the recommendations of the ECOFIN report, CESR developed a toolkit on secondment and Study visit during the first half of 2007, in cooperation with the Members.

In the first half of 2009, a survey was conducted to establish the extent of implementation of the "Toolkit for organizing study visits and secondments", amongst the Members, and to establish the number of secondments / study visits that have taken place since the toolkits inception.

Regarding implementation, the results of the survey indicated that: 53% of the Members have set in place a policy covering exchange of staff. 10% has a mentor programme for secondees; 21-26% of the Members used the two flowcharts setting out the process for secondments; and 32% of the Members had drawn on the different templates provided in the toolkit which were intended to facilitate secondments.

Regarding the number of secondments, 47% of CESR Members reported they had had outgoing secondments; and a further 26% of Members reported that had welcomed incoming secondments.

On study visits, 47% of Members reported they had organised outgoing study-visits to CESR Members and 63% of the Members had hosted incoming study-visits. As such, a total of 115 'outgoing' study-visits were reported and 84 'incoming' study-visits were also reported.

Next steps

CESR will continue to implement the training program for 2010, in line with the EU grant agreement. Work is now underway to identify the courses for the 2011 sector and cross-sector training programmes. The CESR Secretariat will continue fostering staff exchange and study-visit by drawing offers to the attention of Members and encouraging HR departments to identify appropriate opportunities within their authorities. CESR will also strengthen the sharing of information amongst the Members on training and on human resource management, through the use of the HR network.

Review Panel

CESR reviews application of notification procedures of UCITS across Europe

CESR published on 29 January 2010 the results of a peer review (Ref. CESR/09-1134) of how its Members across Europe apply CESR's guidelines to simplify the notification procedures of UCITS. This stock-take has been conducted during the course of 2008, looking into the degree of application of 13 CESR guidelines for the notification of UCITS by the 27 CESR Members. The results published reflect the situation of the cut-off day set for the review which was 1 April 2008.

The work carried out by the Review Panel in the form of peer reviews contributes to achieve CESR's objectives of increasing supervisory convergence amongst its Members through peer

[2] This project has been made possible with the financial assistance of the European Union. This project is carried out under the sole responsibility of CESR and can under no circumstances be regarded as reflecting the policies of the European Union.

pressure, as well as increasing transparency of implementation.

The report provides evidence of the level of application of the CESR guidelines on notification procedures for UCITS in the CESR Membership. Out of the 13 CESR guidelines for UCITS notification, seven had been identified as key guidelines according to the CESR self-assessment (Ref. CESR/08-113) published on the CESR website, namely the notification letter (guideline 1), possible grounds to refuse notification (guideline 2), the starting of the two-month notification period (guideline 4), the maximum two-months period to check information (guideline 5), the requirement to submit the latest version of the notification documents and certification of them (guideline 7), and marketing of only part of an umbrella fund and the single notification letter for several sub-funds and cross-reference (guideline 10).

In order for Members to be considered as fully applying the CESR guidelines, the benchmark set for the peer review required that at least the key guidelines be applied fully. This was the case for five CESR Members – Belgium, Bulgaria, Italy, Luxembourg and Norway.

Members were considered as partially-applying the guidelines when, according to the benchmark, any of the key guidelines was partially applied. This was the case for four further CESR Members – Hungary, Portugal, Romania and Sweden. Countries were considered as being 'non-applicants of the guidelines' when any of the key guidelines were not fully complied with. This was the case for the 20 remaining CESR Members.

After the cut-off date of the peer review on 1 April 2008, the situation is likely to have changed to a higher degree of compliance with the guidelines in the jurisdictions of some CESR Members which formally adopted national implementation measures – but, because of the cut-off date, the assessment of these measures was not part of the present peer review. Furthermore, the UCITS IV Directive integrates some of the simplifications to the notification procedure envisaged by CESR in the Guidelines, such as those regarding the electronic filing of the notification document and the language regime of the notification letter and of the attestation of the home competent authority.

Moreover, the European Commission may adopt implementing measures in other areas which are partly covered by the CESR guidelines.

Next steps

The mapping shows the importance of creating peer pressure amongst CESR Members in order to achieve greater convergence. The Review Panel will continue to maintain pressure for supervisory convergence and notes that with the implementation of the UCITS IV Directive and following Level 2 legislation, remaining uneven levels of application, for instance, with regard to electronic filing, will be resolved.

CESR reviews MAD's options and discretions

CESR published in April a review (Ref. CESR/09-1120) of how securities regulators across Europe use options and discretions under the European Market Abuse Directive regime, (MAD regime) which is made up of the Market Abuse Directive (MAD) and its Level 2 implementing measures as developed by CESR. The report gave evidence of the wide use of options and discretions by Member States with regard to the MAD regime. CESR's stock take found divergence in how national supervisors disclose information on supervisory measures or sanctions, inside information directors' dealings and suspicious transaction reports.

While acknowledging the legitimate use of options and discretions, under the MAD regime, CESR's Review Panel restates its commitment towards increased convergence of supervisory practices in the EU and recommends that the results of this exercise are taken into account in the ongoing revision of the Market Abuse Directive. This work follows conclusions of the ECOFIN Council of December 2007, on aiming at reducing the use of discretions, and of May 2008 and June 2009, on the need to aim at enhancing supervisory convergence in the EU. CESR's commitment to providing convergence is in line with, and has been strengthened by the recent decisions by the EU Parliament and Council of establishing a single European supervisory rule book.

Variations in application of MAD

Overall, the review by CESR showed some divergence in the application of the MAD regime, but a greater level of divergence for Multilateral Trading Facilities (MTFs). Whilst some four CESR Members found that the full set of applicable MAD rules should be applied as a general rule to MTFs, many Members only apply part of the MAD regime to all, or some, of their MTFs. However, the report shows that the majority of CESR Members (20 out of 29) apply some of the MAD regime to at least some of their MTFs.

Divergences also exist in all other areas addressed. Regarding the information of decisions to delay the publication of inside information, 16 Members require notification of the regulator should the issuer decide to delay the publication of such information, while 11 do not. For the notification of transactions by persons discharging managerial responsibilities, eight Members have added requirements in addition to the minimum ones following from the implementing directive. Also, the reasons for possible exemptions to professional secrecy vary in the membership and, as CESR has highlighted in previous work (Ref. CESR/07-380) of the Review Panel, sanctions regimes differ between Member States. Regarding disclosure of measures or sanctions, the report shows a clear division in the CESR Membership between those regulators that publish every measure or sanction on market abuse violations (19) and those that do not (10). Secondly, there are also divergences in relation to measures to ensure that the public is correctly informed. Fifteen members supervise directly the measures in place to ensure that the public is correctly informed and the tools and methods for doing so vary.

The report also revealed variations in the content required of Suspicious Transaction Reports (STRs). This concerned, for example, whether additional guidance has been issued, how the materiality thresholds have been set, and the extent to which OTC derivatives are covered in such STR reports. Furthermore, nine Member States require and nine Member States encourage persons to voluntarily report suspicious unexecuted orders to trade.

Next steps

Based on this survey, a number of recommendations for further work by CESR to increase convergence are proposed. This includes further work on the extension of the MAD regime to MTFs, once the Commission has addressed this issue in the MAD review. Further, CESR's Review Panel recommended that all Member States encourage the reporting of STRs on OTC derivatives, where the underlying asset is an instrument admitted to trading on a regulated market, until such time as it becomes mandatory due to changes to the MAD Directive. The work now conducted by the Review Panel of CESR, will be analysed by CESR-Pol, CESR's policy group dealing with market abuse, for further conclusions to be drawn. The report will also serve the Commission as input to its ongoing review of MAD.

Corporate Finance - Prospectus

Tenth update of the Prospectus Q&A

On 15 January 2010, CESR published the tenth update of its Q&A (Ref. CESR/09-1148) on the application of the Prospectus Directive. This update is intended to provide market participants with responses in a quick and efficient manner, to everyday questions which are commonly posed to the CESR secretariat or CESR Members.

CESR responses do not contain standards, guidelines or recommendations, and therefore no prior consultation process has been followed. It is CESR's intention to operate in a way that will enable its Members to react quickly and efficiently if any aspect of the common positions published need to be modified or the responses clarified further. The views of the Commission Services on some of the issues discussed were sought. However, the Commission Services note that only the European Court of Justice can give a legally binding interpretation of provisions of EU legislation. Moreover, the views expressed in the paper do not bind the European Commission as an institution, and the Commission would be entitled to take a position different to that set out in this Q&A guide in any future judicial proceedings concerning the relevant provisions.

Next steps

CESR will continue to update its Q&A on Prospectus if so considered necessary, building on the questions received by the market.

CESR publishes data on prospectuses approved and 'passported' in the EU

In March 2010, CESR published data (Ref. CESR/10-282) on the number of prospectuses approved and 'passported' in the EU for the period from July to December 2009. The tables published reflect the information as provided by CESR Members. It is important to note that the competent authorities have different internal databases in place that might lead to some divergences in the data provided.

Next steps

CESR will continue to collect the data, with quarterly disclosure, on passports approved and 'passported' in the EU and publish the results twice a year.

CESR consults on amending CESR's PD recommendations for mineral companies

On 23 April 2010, CESR published a consultation paper (Ref. CESR/10-411) proposing to amend CESR's recommendations for the consistent implementation of the Commission's Regulation on Prospectuses regarding mineral companies. The purpose of this consultation document from CESR was to present CESR's proposals to amend its recommendations for the consistent implementation of the Commission's Regulation on Prospectuses as they impact mineral companies, and to seek comments on those proposals with a view to issuing revised Level 3 measures.

The revision is intended to address an existing need for clear harmonised prospectus disclosure standards for mineral companies in the EU, ensuring in the process that disclosure meets existing international standards. It seeks to do so in a way that will assist the ongoing process of international convergence of standards in these sectors.

Following representations from national competent authorities, CESR has developed proposals to amend its Level 3 recommendations on the Prospective Directive (Ref. CESR/05-054b), so as to improve the implementation of the Directive as it impacts mineral companies.

In the case of the PD, the Level 3 measures set out in the CESR Recommendations include, among other things, recommendations designed to facilitate co-ordination among competent authorities when applying Article 23 of the PD Regulation. This article gives competent authorities powers to require additional information for certain specialist issuers, including mineral companies. Sections 131-133 of the CESR Recommendations set out those recommendations to competent authorities as to how the PD Regulation should be implemented in the case of mineral companies. These sections provide, in other words, key provisions for mineral companies raising capital on EU regulated markets.

Next steps

CESR will use the feedback received to its consultation to publish a feedback statement and amend accordingly its Level 3 recommendations on the Prospective Directive (Ref. CESR/05-054b).

3.3 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.

Investor Protection and Intermediaries

MiFID review: CESR consults on investor protection and intermediaries

On 13 April 2010, CESR published its consultation paper on its proposed technical advice to the Commission on investor protection and intermediaries (Ref. CESR/10-417) in the context of reviewing MiFID.

With some exceptions, CESR has limited its review in this area to those provisions where the legal text of MiFID incorporated review clauses. In some areas, CESR had already suggested proposals for changes to the legislation. In other cases, CESR intends to provide technical advice to the Commission without providing specific legislative proposals, but setting out CESR's view on the policy approach that should be adopted. CESR's consultation covered six main policy lines:

Recording telephone and email conversations

CESR sought views on the key elements of a possible common EEA recording requirement for orders received or transmitted by telephone or through electronic communications. CESR believes that such a regime would be an important step forward in terms of legal certainty, consumer protection, and surveillance of markets.

Execution quality data

CESR considered whether or not regulatory intervention is required to ensure that necessary information to select appropriate execution venues is available in the market. The two main policy options in relation to the issue of execution quality data for shares put forward by CESR were:

(i) Whether CESR should define key metrics that execution venues and data vendors would use on a voluntary basis to provide comparable execution quality data to their members and clients; or

(ii) Whether execution venues should be required to produce periodic reports on execution quality using metrics defined by CESR.

Both of these alternatives are assumed to take effect in a regulatory context in which the quality and comparability of post-trade transparency data has been improved.

Complex vs. non-complex financial instruments

CESR proposes to clarify and deliver a more graduated risk-based approach to the distinction between complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements.

The proposals included in the consultation paper were based on the feedback received to CESR's consultation in May 2009 (Ref. CESR/09-295) on MiFID complex and non-complex financial instruments, where the industry requested CESR to provide further clarification on the types of MiFID products that might be categorised as complex/non-complex.

Definition of personal recommendation

CESR also sought to clarify that the provision of personal recommendations provided exclusively through distribution channels amounts to investment advice as defined under Article 4(1)(4) of MiFID. This issue was included in the consultation paper as a result of a CESR consultation in July 2009 (Ref. CESR/09-665) on investment advice, where CESR considered that the current definition in Article 52 of the MiFID Implementing Directive needed greater clarity.

Supervision of tied agents and related issues

CESR's proposed amendments to the MiFID tied agents regime focused on three broad areas:

- Further harmonising the national rules on the use of tied agents;
- Enhancing transparency concerning the identity of tied agents; and
- Enhancing investor protection through clarifying the passport regime for firms using tied agents (Articles 31 and 32 of MiFID).

MiFID options and discretions

CESR conducted an internal mapping exercise of discretions within MiFID in order to identify areas where a more harmonised approach might be desirable. A reduction of options and discretions in the EU regulatory framework may remove key differences in national legislation and could generally contribute to the realisation of a single European rulebook, an aim that has been endorsed at a political level by the ECOFIN Council. As a result, in both the investor protection and intermediaries area and the equity markets area CESR proposes either eliminating certain discretions or converting them into rules to reach greater convergence.

Next steps

In the area of investor protection and intermediaries, CESR will consult on certain aspects of the client classification regime on the basis of the additional questions received from the Commission. Another consultation paper is also likely to be published in relation to some of the questions regarding transaction and position reporting.

MiFID: CESR issues Q&A on investor protection and intermediaries

On 6 May 2010, CESR published a Q&A on MiFID document (Ref. CESR/10-589). This document set out the common positions agreed by CESR Members of the Investor Protection and Intermediaries Standing Committee. It is intended to provide market participants with responses in a quick and efficient manner to everyday questions that are commonly posed to CESR by market participants, CESR Members, or the public generally in relation to investor protection and intermediaries issues.

CESR responses do not constitute standards, guidelines or recommendations. The main purpose of the Investor Protection and Intermediaries Standing Committee's MiFID Q&A is to address issues of practical application, for which a formal consultation process is considered to be unnecessary. Answers to the questions submitted are closely coordinated with the European Commission.

Next steps

CESR intends to operate in a way that will enable its Members to react quickly and efficiently if any aspects of the common positions published need to be modified or the responses clarified further.

Investment Management

CESR fine-tunes format and content of key investor disclosures for UCITS

In April 2010, CESR published a feedback statement that summarises the responses received to the consultations on its technical advice on the format and content of Key Information Document (KID) disclosures for UCITS (Ref. CESR/09-552), published on 8 July 2009, and the methodology for the calculation of the synthetic risk and reward indicator (Ref. CESR/09-716), published on 4 August 2009.

In general, respondents were broadly supportive of the approach proposed by CESR. The number of substantive changes to the draft advice was therefore relatively small. More detail on the amendments is set out in the relevant section below.

Format and presentation of the KID

A large majority of respondents agreed with the proposed appearance, use of plain language and document length of the KID. Some respondents asked for more clarity on the expected format and language to be used. CESR committed itself to undertake further work at level 3 on the development of a common glossary for the use of terms and good-practice guides for UCITS providers.

Objectives and investment policy

Concerning the information on the objectives and investment policy to be provided to investors, a majority of respondents supported CESR's proposals.

Risk and reward disclosure

In light of the results of the consumer testing exercise and stakeholder feedback, CESR confirmed its preference for a synthetic risk and reward indicator accompanied by a narrative text. Detailed feedback is also given in relation to the proposed methodology for calculation of the indicator.

Charges

CESR's proposal to require inclusion in the KID of a table setting out clearly the different elements of the charging structure (in percentage terms) was overwhelmingly welcomed by respondents. This approach was therefore confirmed in the advice. Detailed feedback is also given in relation to the methodology for calculation of the ongoing charges figure.

CESR had proposed the inclusion of a charges disclosure in cash terms on the basis of results of the consumer testing exercise, as well as feedback from retail investor representatives at earlier stages of the KID project. However, given the largely negative feedback received on the proposal made in the July consultation, CESR decided not to require any disclosure of charges using cash figures.

Past performance

Respondents expressed a range of views on CESR's proposals for the presentation of past performance. Taking particular account of the results of the consumer testing exercise, CESR decided to confirm its proposals for presentation of past performance using a bar chart displaying up to ten years' performance.

Practical information

The main comments received from respondents on this section of the KID concerned the liability regime and the information regarding any potential impact of a fund's Home State taxation regime.

CESR slightly amended its advice to take into account the remarks on both points. The sentence on the liability regime was redrafted, while CESR recommended that information on the possible impact of a fund's Home State taxation regime be disclosed in the KID.

Structured funds, capital-protected funds and other comparable UCITS

In its initial advice to the Commission, CESR noted that past performance was not appropriate for all types of fund, especially for structured funds such as formula funds, capital-protected funds and comparable funds. CESR considered that for those funds, the objectives and investment policy disclosure should be supplemented by performance scenarios which illustrate the risk and reward trade-offs of the fund.

The work carried out by CESR in that respect envisaged two possible options for performance scenarios:

Option A: prospective scenarios showing the return of the fund under favourable, adverse and average market conditions;

Option B: tables showing the probability of certain defined events: achieving a negative return or achieving a positive return worse, equal to or better than the risk-free rate.

A large majority of respondents to the consultations expressed a preference for Option A prospective scenarios. Many of the respondents that supported Option A expressed strong disagreement with Option B on the basis that it would be misinterpreted as a guarantee and that the reliance on risk-neutral probabilities in the methodology was flawed. Option A was therefore retained by CESR in its final advice.

CESR works on Level 3 guidelines for the content of the Key Investor Information Document

The technical advice to the European Commission on the format and content of Key Information Document was supplemented in December 2009 by two detailed technical methodologies on the risk and reward indicator (Ref. CESR/09-1026) and the ongoing charges figure (Ref. CESR/09-1028). The Commission had indicated that it saw these methodologies as being more appropriately adopted via binding technical standards by the new European Securities and Markets Authority (ESMA) rather than as Level 2 implementing measures. During the period leading up to the establishment of ESMA, CESR agreed to adopt the methodologies as Level 3 guidelines in order to provide clarity to the industry in implementing the new package of UCITS requirements.

In light of the feedback from the public consultations on the Key Investor Information Document, CESR decided to develop additional Level 3 guidelines to help stakeholders in the preparation of KIDs. These additional guidelines will consist of a plain language guide, a KID template illustrating the information that should be disclosed to investors, guidelines on the selection of the scenarios for structured UCITS and guidelines on the transition from the Simplified Prospectus to the Key Investor Information Document.

Next steps

Level 3 guidelines on the methodology for the calculation of the Synthetic Risk and reward Indicator and ongoing charges should be adopted and published by CESR during the summer of 2010.

The other set of Level 3 guidelines on the Key Investor Information Document will be subject to a public consultation during the summer of 2010, with a view to adopting the final guidelines by the end of 2010.

3.4 Advice and reporting to EU institutions, implementing EU roadmaps

This objective refers to CESR's role to act as an advisory group to assist the Commission in particular, 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, how it is undertaking its work and in particular, on how it is implementing the various roadmaps established at a European level.

Investment Management

CESR maps duties and liabilities of UCITS depositaries

In January 2010 CESR published the results (Ref. CESR/09-175) of a mapping exercise on the requirements in place in each Member State regarding the duties and liabilities of UCITS depositaries.

General criteria on the depositary

The mapping, which was conducted in 2009, looked into the criteria of the depository, such as eligibility requirements; prudential requirements; requirements in relation to the experience and skills of the key personnel; organisational requirements; and any other requirements.

Liability of the depositary where delegation of custody functions

This part of the mapping relates to the extent to which and under what conditions the depositary would be held liable toward investors when assets are not safe-kept; and the extent to which and under what conditions the depositary would be required to restore assets in the case of sub-custody arrangements.

Obligation of means/obligation of result

"Obligation of means" should be understood as an obligation on the depositary to devote appropriate resources and carry out appropriate due diligence so as to ensure safe-keeping of assets. "Obligation of result" should be understood as an obligation on the depositary to safe-keep assets and to restitute them in case of loss.

Legal framework (administrative/civil)

The mapping also identified whether the provisions of the domestic framework as regards depositary liability are administrative or civil in nature.

Requirements on depositaries when delegating (due diligence)

Furthermore the mapping gathered information on the due diligence requirements which depositaries must satisfy when selecting a sub-custodian under the relevant legislation.

Next steps

CESR will use the results of this mapping exercise when considering any future work on harmonising the duties and liabilities of UCITS depositaries.

Annex 1

Course Title	Organiser and host	Date	Evaluation
Sectoral Courses			
Implementation of TREM 3.0 and reporting of OTC derivatives	Organiser: CESR, Host: MFSA, La Valetta	3-4 June 2010	36 participants 94% satisfaction
Cross – sector Courses			
Corporate Governance	CNVM, Lisbon	26 February 2010	36 participants 93% satisfaction
Understanding the impact of Lehman's default on market participants	AMF, Paris	17-18 June 2010	26 participants 82% satisfaction