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## PRESS RELEASE

### **Market Abuse Directive – CESR reviews options and discretions**

CESR publishes today a review (Ref. CESR/09-1120) of how securities regulators across Europe use options and discretions applied by CESR Members 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 gives 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 re-commitment to providing convergence is in line with the recent decisions by the EU Parliament and Council of establishing a single European supervisory rule book.

**Carlos Tavares**, Vice-Chair of CESR, Chair of the Portuguese Comissão do Mercado de Valores Mobiliários (CMVM) and Chair of the Review Panel, CESR's peer pressure group, which conducted the survey, stated:

*"The results of this Review Panel work clearly show that use of options and discretions allowed by MAD, though legitimate, are a real source of divergence across CESR members.*

*Today's publication is an important contribution to work conducted by CESR on supervisory convergence, as well as to the MAD review by the Commission. CESR's report presents a comprehensive picture of the full range of options and discretions used in the EU. The work allows CESR to identify those areas where it is within our Members' power to bring about further harmonisation and where we might focus future efforts more effectively. It also allows legislators to identify the necessary regulatory actions to achieve convergence and a real level playing field".*

#### **Review showed 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 (20 out of 29) of CESR Members 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. 15 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.

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 presented to the CESR-Pol, CESR's policy group dealing with market abuse, for further considerations. The report will also be presented to the European Commission to serve as input into its ongoing review of the Market Abuse Directive.



**Notes for editors:**

1. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to improve co-ordination among securities regulators and act as an advisory group to assist the European Commission, in particular in its preparation of:
  - Draft implementing measures in the field of securities;
  - Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States.

The Committee was initially established under the terms of the European Commission's decision of 6 June 2001 (2001/527/EC) which was repealed and replaced by the Commission Decision of 23 January 2009 (2009/77/EC). CESR was one of the two Committees first envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets chaired by Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.

2. Each Member State of the European Union has one Member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated as its representative the Director General of the DG MARKT. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

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