



## CESR ANNUAL REPORT 2010



## CESR becomes ESMA

By January 2011, CESR will have transformed into ESMA, the European Securities and Markets Authority. After nine years of existence, CESR, the network of securities regulators, will have become an independent European authority. ESMA will contribute to safeguarding the stability of the European Union's financial system. Equipped with more powers than CESR, ESMA will ensure the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. As a standard setter, it will continue to foster supervisory convergence both amongst securities regulators, and across financial sectors by becoming a strong and independent pillar of the European System of Financial Supervision.



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# Foreword by the Chairman

2010 was again a challenging year: for financial institutions, regulators and for the Committee as well. It was also a significant year as it marked the last year of CESR's existence. By the time you read these words, CESR will have been replaced, after nine years of existence, by ESMA, the European Securities and Markets Authority. However, it is not with regret that I present this last annual report of CESR. The evolution of the legal status of the Committee to an EU institution with further powers to foster regulatory and supervisory convergence and co-operation in Europe was an old ambition of our Members. As such, the fruitful and important work which started under this Committee will not only continue under ESMA, but it will be taken to a whole new level, with even greater authority.

The establishment of ESMA will mark a historic junction in the financial supervision in Europe. At the time this report is published, three European Supervisory Authorities for markets, banking and insurance will have been created as well as, for a first time, a pan-European Systemic Risk Board. These new bodies combined will form the new European System of Financial Supervision which is aimed at ensuring more stable financial markets where investors can enjoy the

same level of protection wherever they go in Europe. CESR's successor, ESMA, will play a vital role in this new architecture.

In order to ensure CESR's readiness to become ESMA, 2010 saw a lot of internal preparatory work in terms of organisation, but also in terms of policy. CESR reviewed its internal organisation and started designing future policies and procedures for ESMA. In its policy advice to the European Commission, CESR included recommendations on how to best prepare ESMA's role in the different pieces of legislation that make up the EU framework for securities supervision in Europe.

That said, 2010 was indeed a challenging year: CESR worked hard on finalising advice on a great variety of policy issues stemming from work already started earlier or directly following up on issues that have arisen during or after the financial crisis.

A key area for CESR was to continue the implementation of the EU Regulation on Credit Rating Agencies. CESR laid the groundwork for the key role ESMA will have in this respect. Different types of guidance were put forward that are aimed at explaining and facilitating both regulators and those being regulated to properly comply with the new rules. 2010 even saw an important step forward in this respect with the registration of the first Credit Rating Agency in Europe; further applications are currently being processed. CESR also started building a central repository for ratings and, overall, found the U.S. and Japanese supervisory regimes for rating agencies equivalent to EU rules. All these were important steps towards a direct supervision of credit rating agencies by ESMA. The ongoing financial crisis revealed the role CRAs play in contributing to market integrity. CESR prepared the ground for an effective regulation in Europe so as to ensure the rating process becomes more transparent and investors are protected properly.



Of course, the CRA Regulation was not the only important policy area on which CESR contributed in 2010: there was also considerable work undertaken on another cornerstone of Europe's securities markets legislation, the MiFID, the Directive which was reviewed, provides the regulatory framework for trading in European financial instruments. In 2010, CESR published two sets of advice recommending the European Commission to overhaul the Directive's legal framework in order to adapt to changed market realities. This work of the Committee represented the results of two years of continuous fact-finding and of assessing the impacts of MiFID on securities markets. CESR identified those areas where amendments and changes to the legal framework might be needed. Overall, MiFID increased market competition by opening up the field to other trading venues than exchanges, which in of itself is a very good thing. There are, however, some diverse consequences, such as an increased opacity and fragmentation in trading data. The new MiFID II framework will seek to address these issues.

Not only were the rules governing the actual trading a key focus for CESR in 2010, but also on post-trading issues, 2010 was a demanding year for CESR. Following the regulatory roadmap laid out by the G20 in 2010, a proposal for a regulation on OTC derivatives an area still largely unregulated, CCPs and trade repositories was adopted by the European Commission. CESR started preparatory work for future technical standards as such responsibility is expected to be assigned to ESMA.

Another area of continued work in 2010 was the regulation of the fund industry, the so-called UCITS. Following CESR's advice on the implementing measures of the revised UCITS Directive in 2009, in 2010, CESR's focus was more on giving a common EU definition of money market funds, the risk measurement of UCITS generally, and elaborating further the requirements on Key Investor Information (KID). The KID document will replace the

Simplified Prospectus soon, facilitating investors' investment decisions and ensuring consistency of information across Europe. Generally, making financial information easier to understand has always been an important part of CESR's agenda. In this regard, the implementation of the KID will be an important step forward in setting a new benchmark for effective retail investor information. In addition, CESR also worked to improve financial information by monitoring and ensuring CESR's advice was heard in the international financial reporting community, in particular regarding accounting standards for financial instruments.

As much as consistency of rules for securities across Europe is important, it is also crucial for rules across the different financial sectors to converge. The more integrated and innovative banking, securities and insurance conglomerates get, the more regulators have to work together on these issues. This was well reflected by the increase in joint work on cross-sector issues at the level three sector Committees, CESR, CEBS and CEIOPS, in 2010. The set-up of the new European supervisory architecture will formalize this co-operation even further. The new supervisory structure seeks to establish a common EU rule book, but also to put in place a real common supervisory culture.

Finally, I also would like to take this opportunity to thank all the individuals, and they are numerous, that contributed to a successful 2010 for CESR. My thanks go to my colleague supervisors from the Member States, to the technical experts working on all the policy issues mentioned, and of course to all of CESR's staff led by the Secretary General, Carlo Comporti. Without the joint effort and the continuous commitment of each and everybody, CESR could not have achieved so much and this has established a solid foundation for ESMA to now build even more intensively on.

**Carlos Tavares,**  
Chairman of CESR.

## List of commonly used acronyms

<b>A</b>	<b>AII</b>	Alternative Instrument Identifier	<b>EEA</b>	European Economic Area
	<b>AIFMD</b>	Alternative Fund Managers Directive	<b>EECS</b>	European Enforcers' Co-ordination Sessions
	<b>AMLTF</b>	Anti-Money Laundering Task Force	<b>EFC</b>	Economic and Financial Committee
	<b>AUM</b>	Assets Under Management	<b>EFCC</b>	European Financial Conglomerates Committee
	<b>ARC</b>	Accounting Regulatory Committee	<b>EFrag</b>	European Financial Reporting Advisory Group
	<b>AuRC</b>	Auditing Regulatory Committee	<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>C</b>	<b>CCP</b>	Central Counterparty Clearing	<b>EMIR</b>	European Market Infrastructure Regulation
	<b>CEBS</b>	Committee of European Banking Supervisors	<b>EP</b>	European Parliament
	<b>CEMA</b>	Standing Committee for Market and Economic Analysis	<b>ERGEG</b>	European Regulators' Group for Energy and Gas
	<b>CEREP</b>	Central Ratings Repository	<b>ESRB</b>	European Systemic Risk Board
	<b>CESR</b>	Committee of European Securities Regulators	<b>EU</b>	European Union
	<b>CEIOPS</b>	Committee of European Insurance and Occupational Pensions Supervisors	<b>ESAs</b>	European Supervisory Authorities
	<b>CDS</b>	Credit Default Swaps	<b>ESC</b>	European Securities Committee
	<b>CDO</b>	Collateralized Debt Obligations	<b>ESCB</b>	European System of Central Banks
	<b>CFTC</b>	Commodity Futures Trading Commission	<b>ESFS</b>	European System of Financial Supervision
<b>COMMISSION</b>		European Commission	<b>ESMA</b>	European Securities and Markets Authority
	<b>CPSS</b>	Committee on Payment and Settlement Systems	<b>ESME</b>	European Commission's European Securities Markets Standing Committee
	<b>CRAs</b>	Credit Rating Agencies	<b>F</b>	
	<b>CRD</b>	Capital Requirements Directive	<b>FASB</b>	Financial Accounting Standards Board
	<b>CSD</b>	Central Securities Depositories	<b>FCD</b>	Financial Conglomerates Directive
<b>E</b>	<b>EBA</b>	European Banking Authority	<b>FESE</b>	Federation of European Stock Exchanges
	<b>ECB</b>	European Central Bank	<b>FICOD</b>	Financial Conglomerates Directive
	<b>ECOFIN</b>	Economic and Financial Affairs Council of the European Parliament	<b>FSC</b>	Financial Services Committee
	<b>ECON</b>	Economic and Monetary Affairs Committee of the European Parliament	<b>FSB</b>	Financial Stability Board
			<b>FST</b>	Financial Stability Table



<b>G</b>	<b>GAAP</b>	Generally Accepted Accounting Principles	<b>MiFID</b>	Markets in Financial Instruments Directive
<b>I</b>	<b>IA</b>	Impact Assessment	<b>MSCI-indices</b>	Indices maintained by Morgan Stanley Capital International
	<b>IAASB</b>	International Auditing and Assurance Standards Board	<b>MoU</b>	Memorandum of Understanding
	<b>IAS</b>	International Accounting Standards	<b>MTF</b>	Multilateral Trading Facility
	<b>IASB</b>	International Accounting Standards Board	<b>O</b>	<b>OAM</b> Officially Appointed National Mechanism
	<b>IASCF</b>	International Accounting Standards Foundation	<b>OFC</b>	Non-cooperative Jurisdictions
	<b>IFRIC</b>	International Financial Reporting Interpretations Committee	<b>OTC</b>	Over-The-Counter
	<b>IFRS</b>	International Financial Reporting Standards	<b>P</b>	<b>PTSC</b> Post-Trading Standing Committee
	<b>IMSC</b>	Investment Management Standing Committee	<b>Q</b>	<b>Q&amp;A</b> Questions and Answers
	<b>IMF</b>	International Monetary Fund	<b>S</b>	<b>SEC</b> Securities and Exchange Commission
	<b>IOSCO</b>	International Organisation of Securities Commissions	<b>SLD</b>	Securities Law Directive
	<b>IPO</b>	Initial Public Offering	<b>T</b>	<b>TD</b> Transparency Directive
	<b>IPISC</b>	Investor Protection and Intermediaries Standing Committee	<b>TOD</b>	Takeover Bids Directive
	<b>IT</b>	Information Technology	<b>TREM</b>	Transaction Reporting Exchange Mechanism
	<b>IWCFC</b>	Interim Working Committee on Financial Conglomerates	<b>U</b>	<b>UCITS</b> Undertakings for Collective Investment in Transferable Securities (Directive)
<b>J</b>	<b>JCFC</b>	Joint Committee on Financial Conglomerates	<b>US</b>	United States
<b>K</b>	<b>KII</b>	Key Investor Information /	<b>X</b>	<b>XBRL</b> Extensible Business Reporting Language
	<b>KID</b>	Key Information Document	<b>3L3</b>	3 Level 3 Committees
<b>M</b>	<b>MAD</b>	Market Abuse Directive		
	<b>M&amp;A</b>	Mergers and Acquisitions		

# SECURITIES MARKETS IN 2010: TRENDS AND RISKS

The development of European financial markets in 2010 remained mixed, with a strong focus on sovereign debt and the possible risks associated to it. The overall mixed picture persisted in 2010, albeit some recovery from the financial crisis had been seen the year earlier, with financial markets, both in Europe and around the world, starting to recover.

# 01



Following some recovery from the financial crisis in 2009, during which financial markets, both in Europe and around the world, started to recover driven by low real interest rates and an abundant liquidity, 2010 saw mixed developments in different market segments. The overall picture though remained mixed with a strong focus on the development of sovereign debt through Europe and possible risks associated to it.

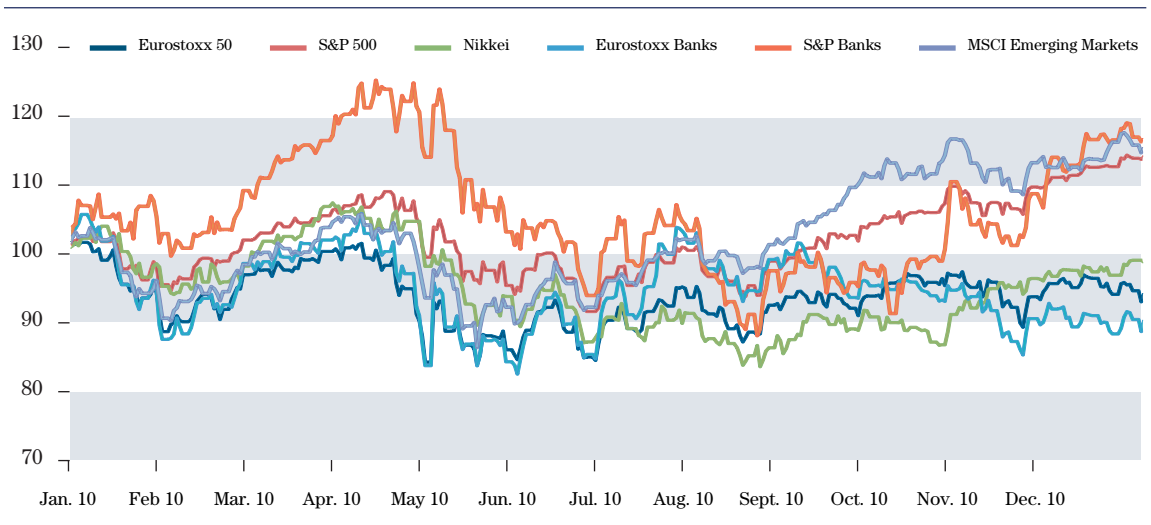
## Sluggish equity markets in Europe but positive signs in IPOs

In 2010, European equity markets recorded negative returns with a 5% decline for the Eurostoxx 50 index amid concerns related to the European debt crisis. On the contrary, over the same period, US and emerging markets indexes increased by around 15% (Figure 1, page 9). At sector level the Eurostoxx banks index decreased by 12% whilst the S&P banks index increased by 17%, as American banks are less exposed to European sovereign bonds than their European counterparts.

In the first semester of 2010, European stock markets indexes followed a common trend: after increasing from February to April, they all experienced a strong decline in May due to the European debt crisis. However, from September on, stock market indexes have diverged as the European debt crisis looked confined to Europe dragging European indexes down, whereas in emerging markets positive economic data and the quantitative easing initiated by the US Federal Reserve Bank sustained US stock market indexes.

From a longer-term perspective, at the end of 2010, the Eurostoxx 50 index has lost 30% of its value since January 2007, whilst the S&P500 has lost 11% since then. Over the same period, the Eurostoxx banks index has lost 62% and the S&P bank index 45% respectively. The MSCI index of emerging markets, in contrast, surged by 26%, together with significant returns posted in commodities markets. This raised concerns about the potential for asset price bubbles in a context of large capital inflows to emerging markets.

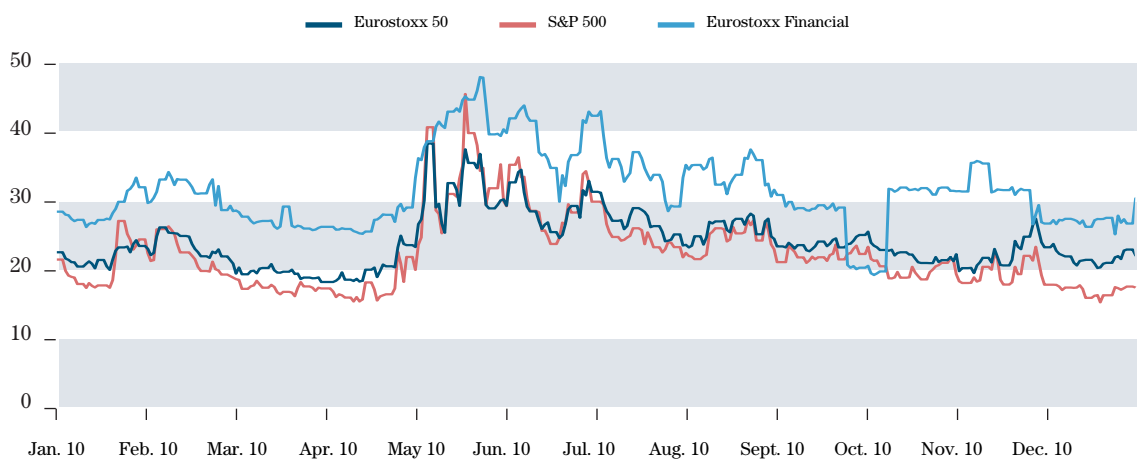
Figure 1: Stock markets' performance (Base=100 in January 2010)



Source: Bloomberg, ESMA's calculations. Last data point: 31 December 2010.

In 2010, part of the downwards trend in European equity markets was linked to an increase in perceived risk, which was mirrored in implied volatilities in option markets (Figure 2): the large increase in risk (mirrored by the increase in implied volatilities) in May 2010 accounted for the decline in the European stock market. However, expected volatility has steadily declined since then, with no further improvement in the European equity index. This evolution shows that European stock market performance in 2010 can be partly explained by more structural factors, such as a grim economic outlook for some countries in Europe, such as Ireland, Portugal and Greece.

Figure 2: 3-Month implied volatility in stock option prices

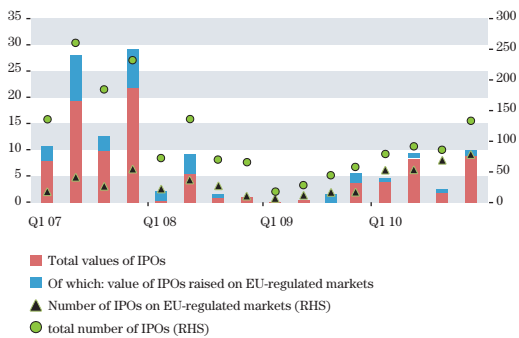


Source: Bloomberg. Last data point: December 2010.

In 2010, there were signs of a revival of primary issuances by corporate firms and banks in European exchanges, with a strong rebound in initial public offerings (IPOs): there were 382 deals raising €26.3bn, against €7bn raised by 145 deals in 2009 (Figure 3, page 11).

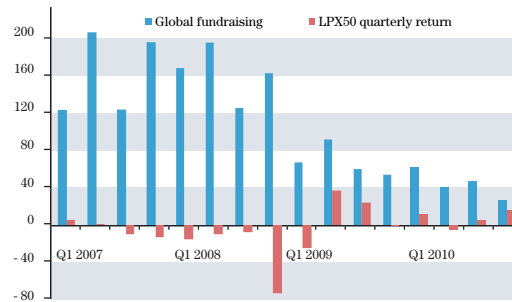
At the global level, private equity fundraising, remained subdued in 2010, edging at around € 24bn, the lowest amount since 2003 (Figure 4, page 11), with Europe accounting for one fifth of it. Despite strong performance recorded by the private equity firms index in 2010 (+37%), its value at the end of year edged at about 60% of its level in January 2007.

Figure 3: Initial Public Offerings (IPOs) in european exchanges (€bn)



Source: PWC.

Figure 4: Global private equity fundraising (\$bn)



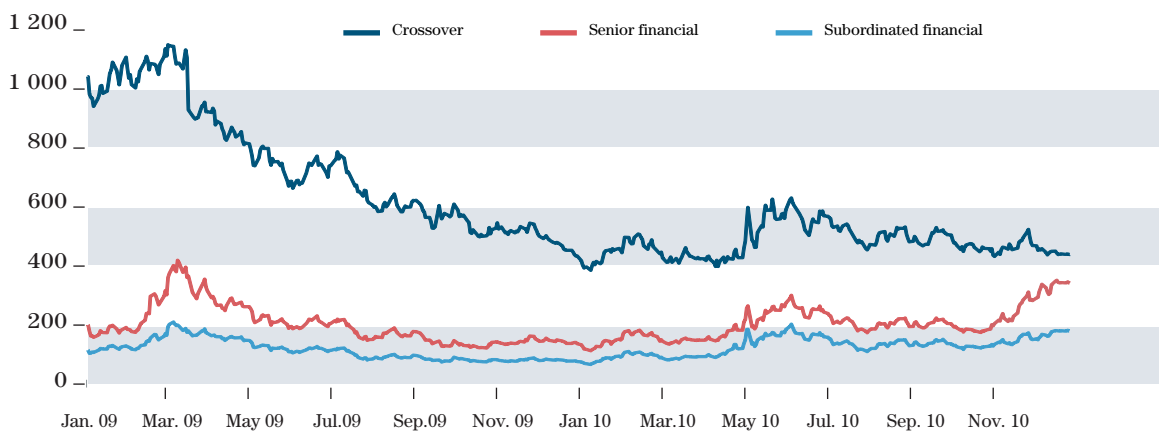
Source: Preqin, Bloomberg.

## Bond markets: continued discrimination of sovereign credit risk

From May 2010 onwards, spread in European credit markets experienced a substantial increase, reflecting concerns about the debt crisis in Europe. Spreads in the financial sectors increased significantly over the whole risk spectrum approaching their peaks of March 2009 for senior and sub-ordinated indexes (Figure 5).

After already reaching record highs in 2009, the European corporate bond markets remained more stable in 2010. Net issuance by non-financial corporations amounted to €64bn YTD in November in the Euro Area according to ECB data (against €153bn in 2009), while net issuance for financial institutions was negative at -€5.1bn (against €180bn in 2009). This was partly linked to difficulties in the covered bond market<sup>(1)</sup>.

Figure 5: European Itraxx Corporate CDS spreads (bp)



Source: Bloomberg. Last data point: 31 December 2010.

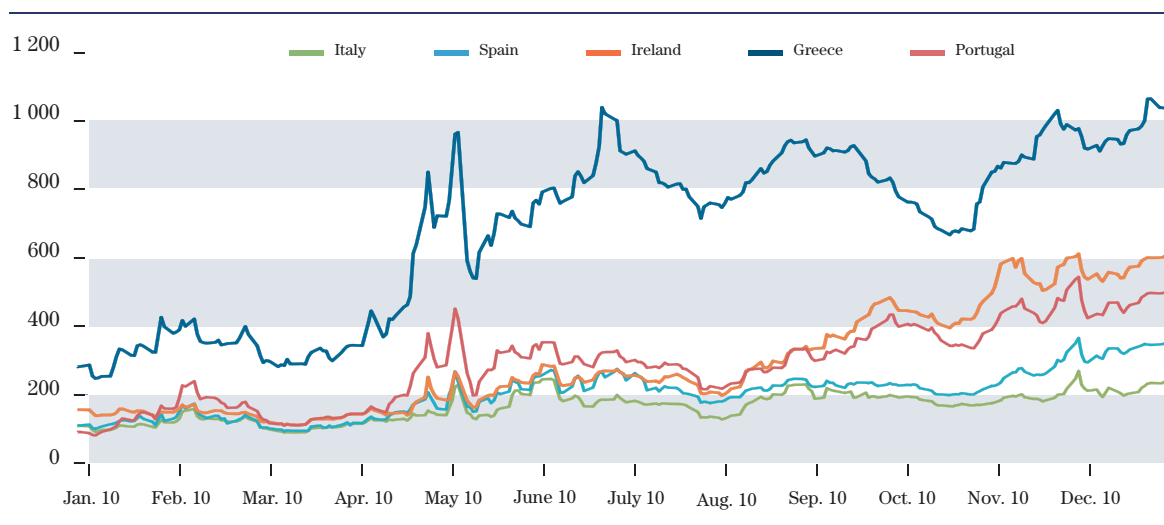
Note: The Crossover index is based on 50 sub-investment grade names.

(1) Cf. also pages 15-16.

Sovereign risk continued to increase across the European Union (EU) since January 2010, especially for peripheral countries such as Greece, Ireland and Portugal and to less an extent for Spain and Italy (Figure 6). The monetary support provided by European governments and the ECB to Greece in May and to Ireland in December 2010 respectively, had some positive effects, but funding pressures remained elevated for peripheral countries. The rising sovereign risk at the end of 2010 appears especially problematic in light of the high rollover needs of European governments.

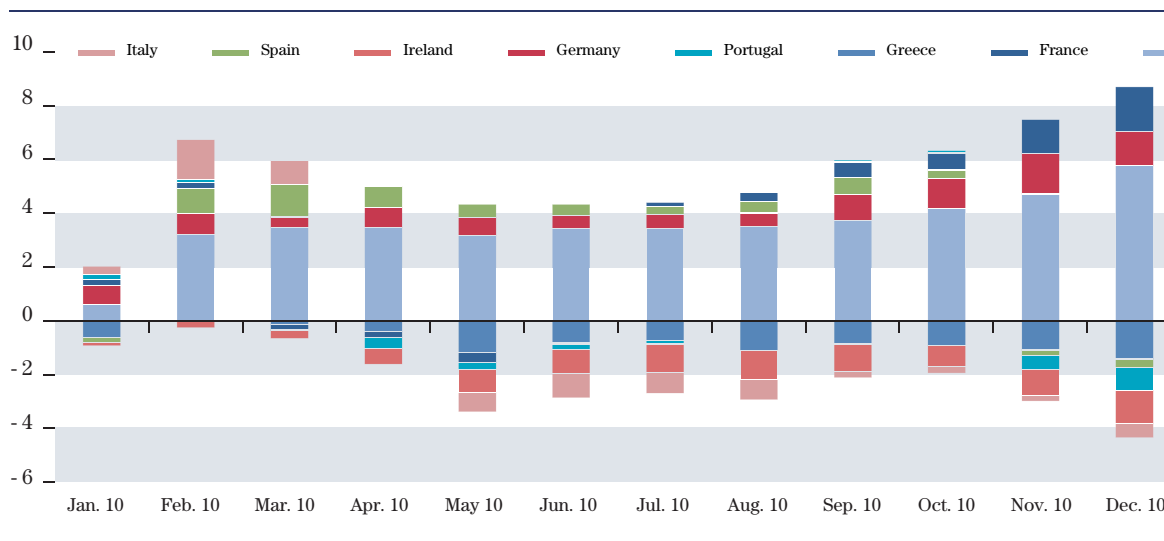
However, the rising risk perception did not lead to a significant demand for credit risk protection for peripheral countries, as witnessed in the cumulated 4-week change in sovereign Credit Default Swaps (CDS) net notional (Figure 7). Throughout 2010, the CDS net national amount has decreased for peripheral countries such as Greece (-US\$ 3bn), Ireland (-US\$ 2.1bn) and Portugal (US\$ 1.25bn), while it has increased for countries such as Germany (+US\$ 3.1bn), France (+US\$ 8.5bn) and UK (+\$7.9bn).

Figure 6: Cost of insurance against sovereign default: 5 year CDS spreads (bp)



Source: Bloomberg. last data point: 31 December 2010.

Figure 7: Cumulated 4-weeks change in sovereign CDS net notional (US\$ bn)



Source: DTCC and ESMA's calculations.

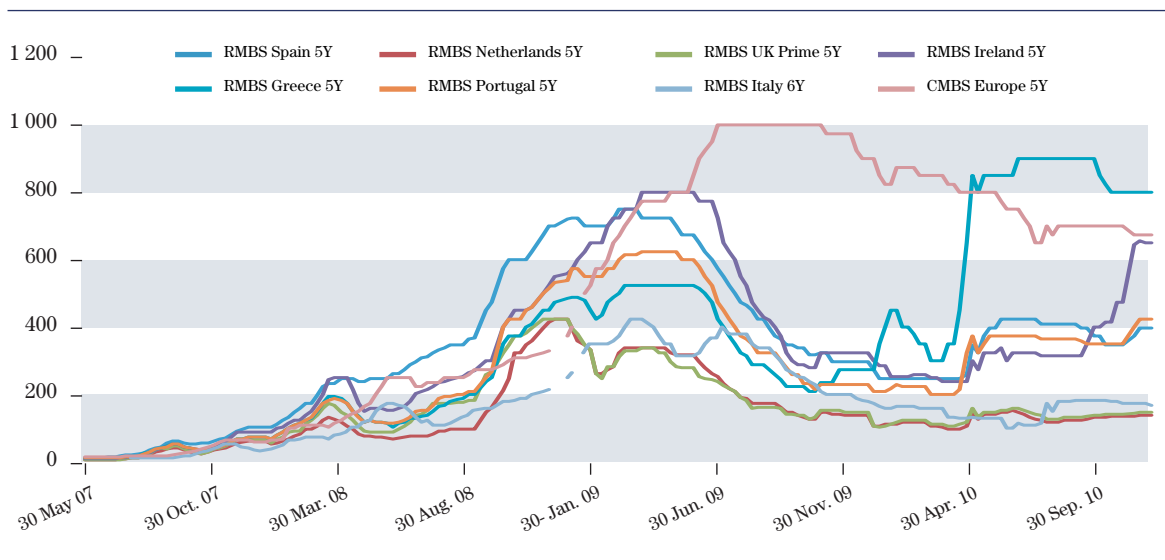
## Mixed trends in the European securitisation and covered bond markets

In Q2-2010, fears of sovereign risk had devastating effects on the securitisation market. Distressed trading and primary market closures were seen in highly indebted economies of the Eurozone. Although the secondary-covered bond issuance experienced similar distress, overall issuance was still stronger in 2010 than in 2009, which might be in part due to the bonds' purchase program by the ECB.

In 2010, the securitisation market witnessed a severe setback in the wake of the Greek debt crisis. In several Eurozone countries, European residential mortgage backed securities (RMBS) spreads skyrocketed (Figure 8). By contrast, conditions in the European commercial mortgage backed securities (CMBS) segment did not deteriorate further with spreads continuing to fall but on small volumes.

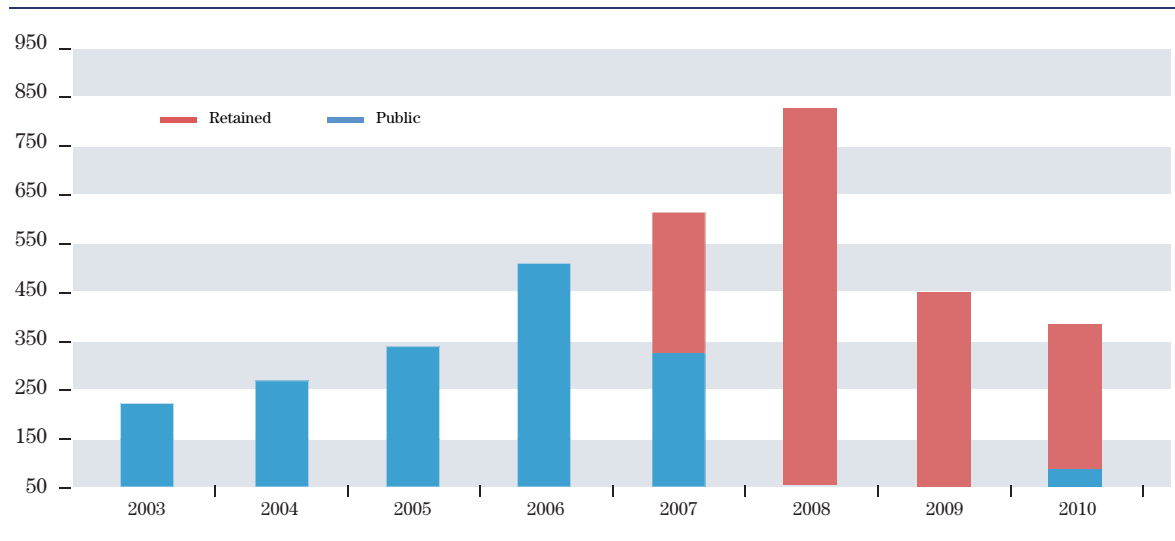
In parallel to distress witnessed in the secondary markets, a growing risk perception among investors caused a collapse in volumes issued with issuances, all assets confounded, declining by more than 30 % between Q3-2009 and Q3-2010 (Figure 9, page 14). The decline was comparable across asset classes, implying that RMBS remained by far the dominant form of securitisation in Europe.

**Figure 8: European Residential and Commercial Mortgage Backed Securities  
AAA RMBS & CMBS spreads (bp)**



Source: JP Morgan. Note: Prime RMBS involves high quality mortgages.

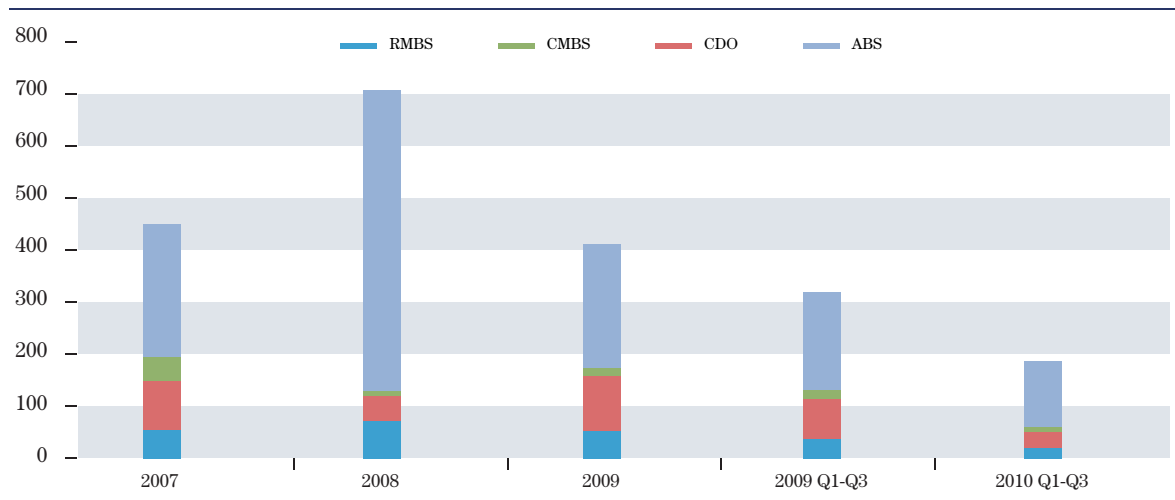
Figure 9: European securitisation issuance (€bn)



Source: European Securitisation Forum.

More positive though, is the fact that in 2010 less of the volume issued (79%) was retained in the balance sheet of issuers (mainly banks) compared to (98%) 2009. In 2009, only 2% of the total notes issued (€8.4bn) were distributed to end investors, compared to 21% in 2010. The lower level of retention reflects greater willingness of investors to take exposures to riskier assets and perhaps also less endeavour of central banks to enhance liquidity and availability of credit by making securitisation eligible as collateral for repo funding (Figures 9 and 10).

Figure 10: European Asset Backed Securities (ABS) issuance by type (€bn)



Source: European Securitisation Forum.

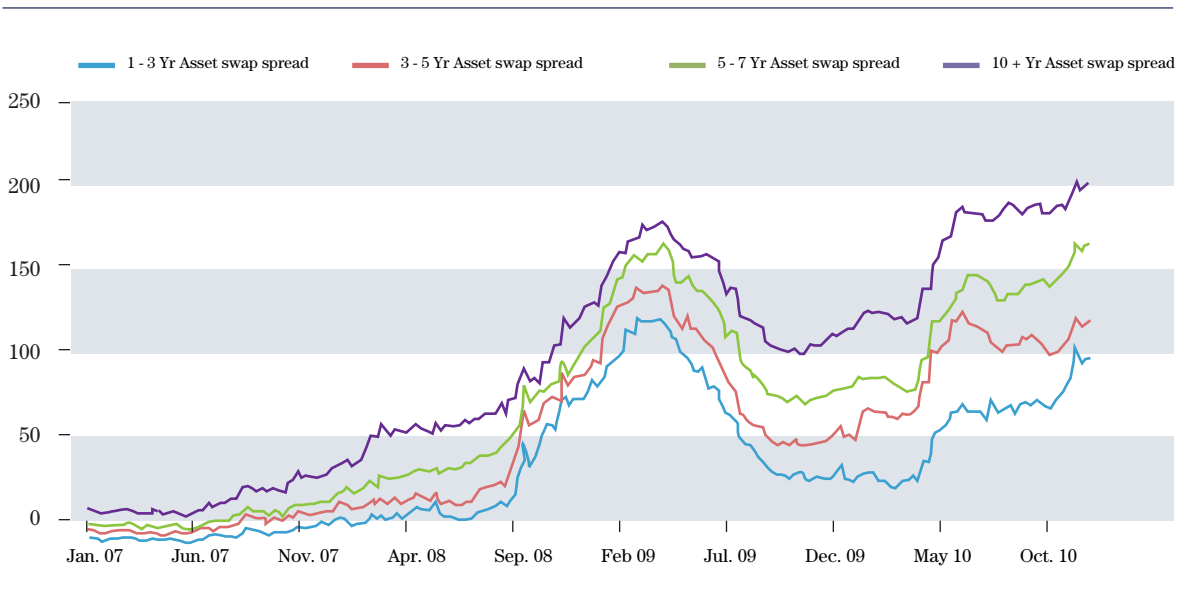


In 2010, the Netherlands was the largest European issuer of Asset-Backed Securities (ABS) totalling a €77 bn (excluding Q4-2010) of bonds predominantly structured and retained, followed by the UK and Spain with both scoring issuance of approximately €45 bn each.

Fund managers continued to account for the largest share of European ABS trading volume (59%) in 2010, while the share of banks and insurers amounted to 27% and 6%<sup>(2)</sup> respectively. Overall, the investor base has been severely eroded. UK and Irish investors accounted for a large proportion of the final investor base, increasing from 39% at the half year to 56% at the end of 2010. German and Austrian investors in the meanwhile saw the most notable retrenchment over the course of 2010, from 24% down to 15% of traded volumes.

The secondary European covered bond market has experienced stress comparable to the ABS market from Q2-2010 onwards as testified by the sharp rise of covered bond spreads (Figure 11). However, activity in the primary market has been strong compared to 2009 (Figure 12, page 16). Contributing to this trend was the ECB program to buy about €60bn of euro-denominated covered bonds from July 2009 to June 2010. In 2010, the ECB provided about €30bn of liquidity through the covered bond purchase program.

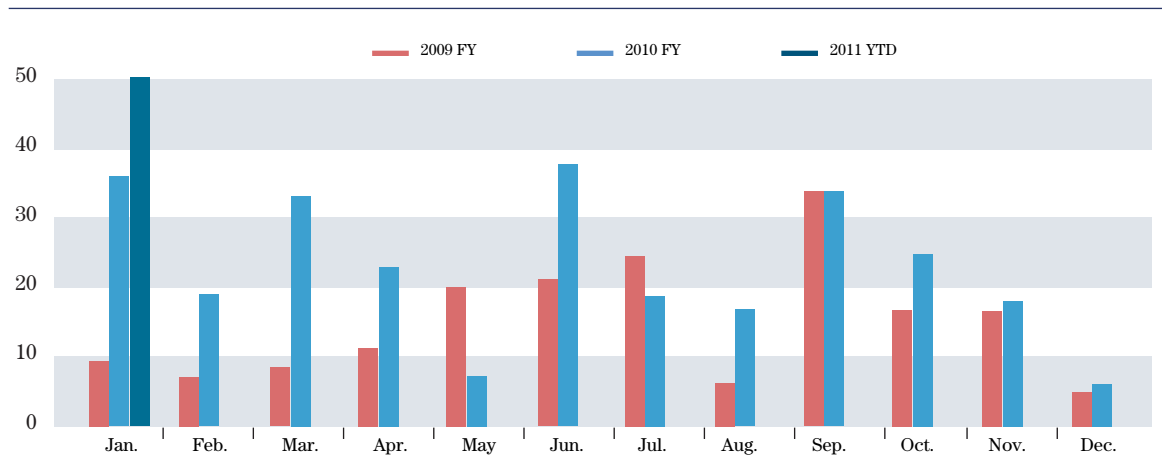
Figure 11: European Covered Bond spreads (bp)



Source: J.P. Morgan Covered bond research

(2) See, JP Morgan (2010), op. cit.

Figure 12: European covered bonds issuance (€bn)



Source: Dealogic, retained and private transactions excluded.

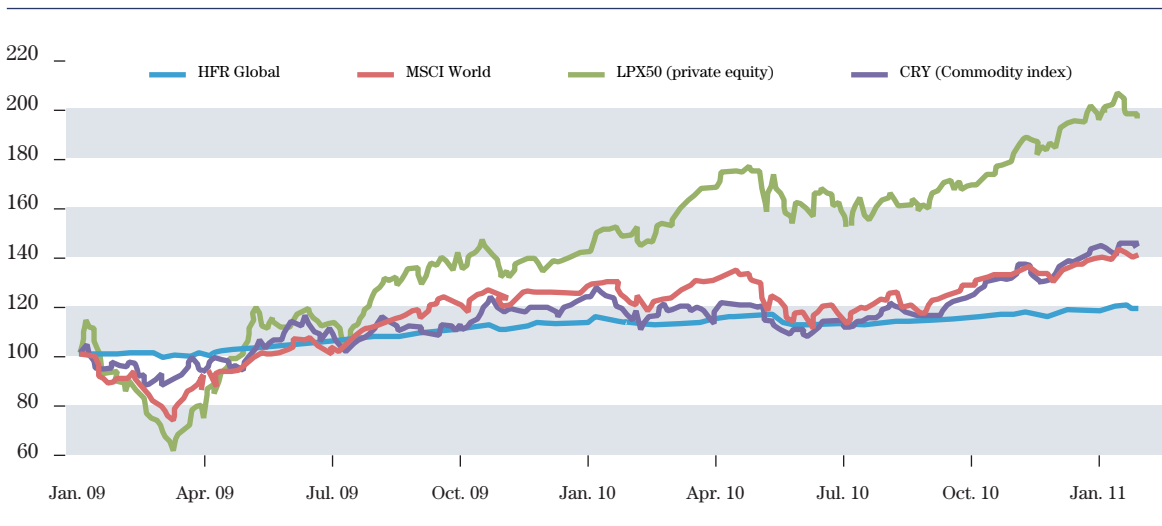
### 2010: A year of mixed fortunes in the hedge funds industry

The hedge fund industry experienced a temporary setback in Q2-2010 related to concerns about the Greek debt crisis. Long-short equity funds positioned for rallying market were hardest hit. The hedge fund global index underperformed other major indices throughout 2010 (Figure 13).

Net inflows trended upwards. According to Hedge Fund Research, the fund's performance accounted for the bulk of the increase in net inflows which stood at € 158bn against € 56bn from investors. Sub-sector breakdowns show CTA/managed futures and Global macro strategies recorded the largest net inflows in 2010.

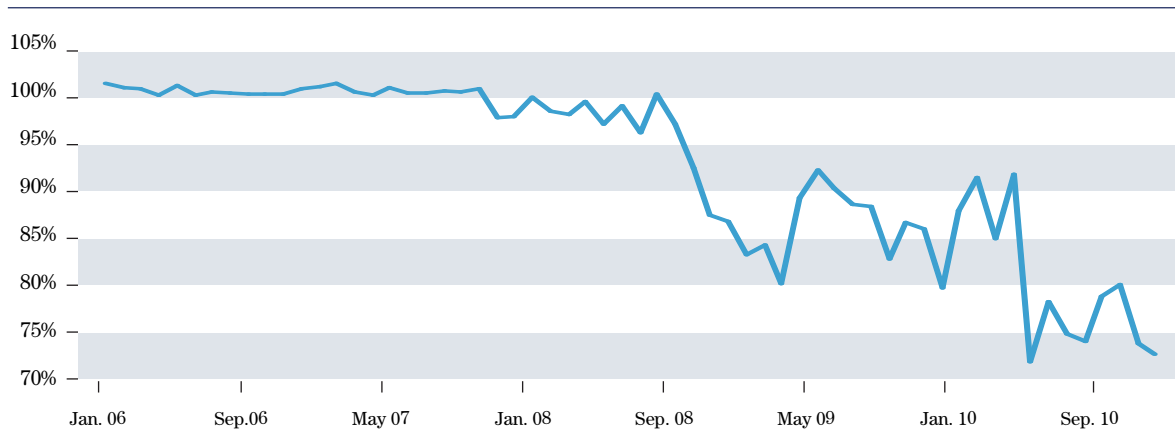
Despite high volumes in the secondary market, the continued deleveraging among investors implied that the premium demanded on liquidity to acquire stakes in a fund by investors remained elevated (Figure 14, page 17) in 2010. This might also have revealed significant disparities between liquid and illiquid funds in the ability of hedge funds to raise capital in the markets.

Figure 13: Hedge funds, private equity and commodity index returns (Base=100 in January 2009)



Source: Bloomberg.

Figure 14: Average discount to Net Asset Value paid for hedge funds stake in secondary market



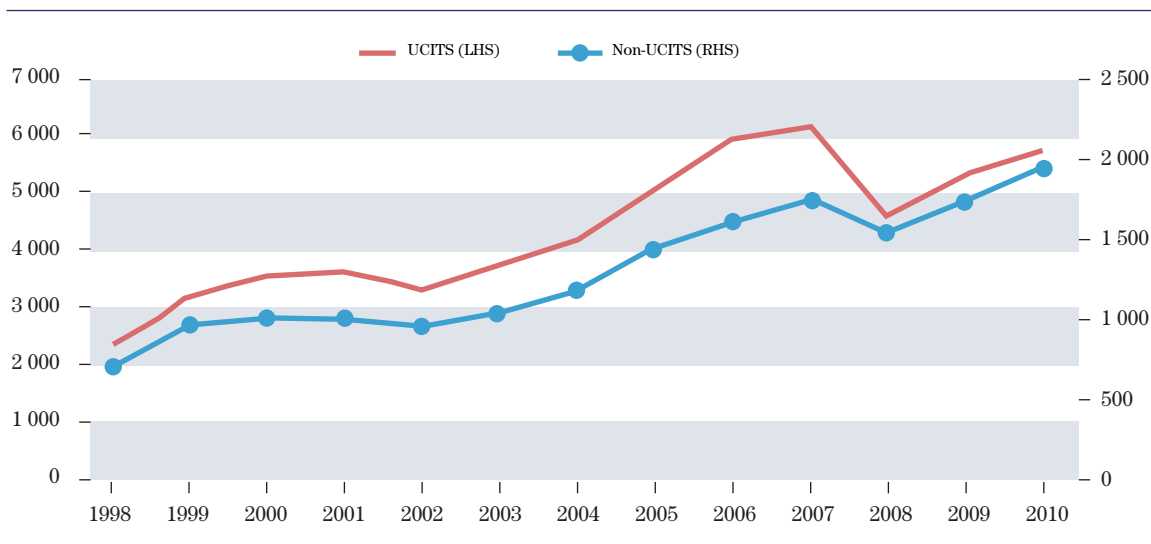
Source: Hedgebay – SMI.

Note: The Secondary Market Index (SMI) is a proprietary, asset-weighted index that describes the average premium or discount to NAV paid for hedge funds that trade in the secondary market in any given month.

## Net inflows into European investment funds continued to recover in 2010 though at a slower pace

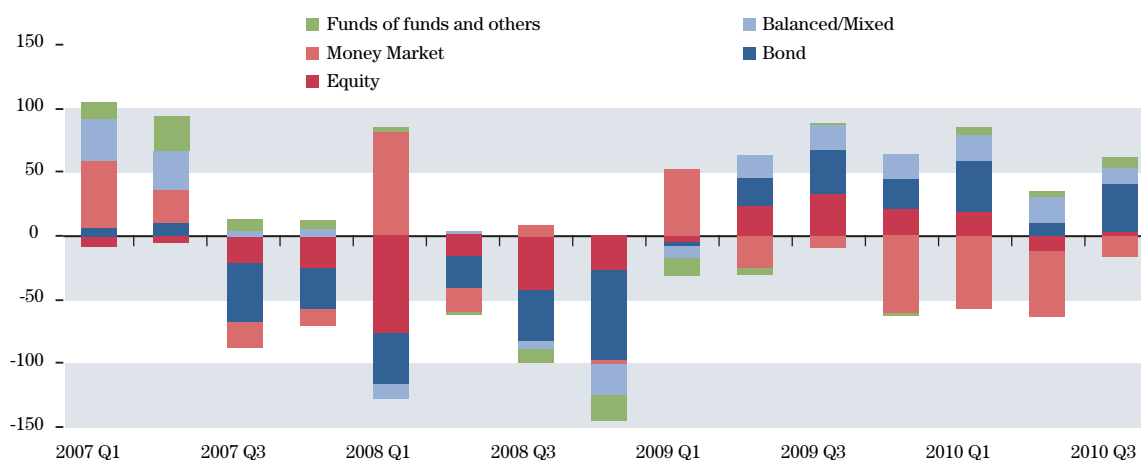
The European investment fund industry continued to witness positive growth in 2010 with assets under management (AUM) totalling €7,727 bn at the end of September. The recovery was less pronounced in the market for undertakings in collective investments in transferable securities (UCITS) (+9%) than in the non-UCITS segment (+12%), which already recorded strong growth in 2009 (Figure 15). In the UCITS market, the AUM stood at € 5,777bn in Q3-2010, up from € 5,299bn in 2009. The bulk of the net inflows in the first two quarters stemmed from long term funds (bonds and balanced/ mixed funds), while money market funds experienced a significant setback which was due to a renewed search for yield triggered by a prolonged period of low interest rates. However, there were persistently low inflows into equities (Figure 16, page 18).

Figure 15: Assets under management of UCITS and non-UCITS (€bn)



Source: EFAMA.

Figure 16: Net inflows in UCITS by category of assets (€bn)



Source: EFAMA. Note: The 2009 Q4 figures are net inflows until the end of November only.

## CDSs remain broadly stable in 2010

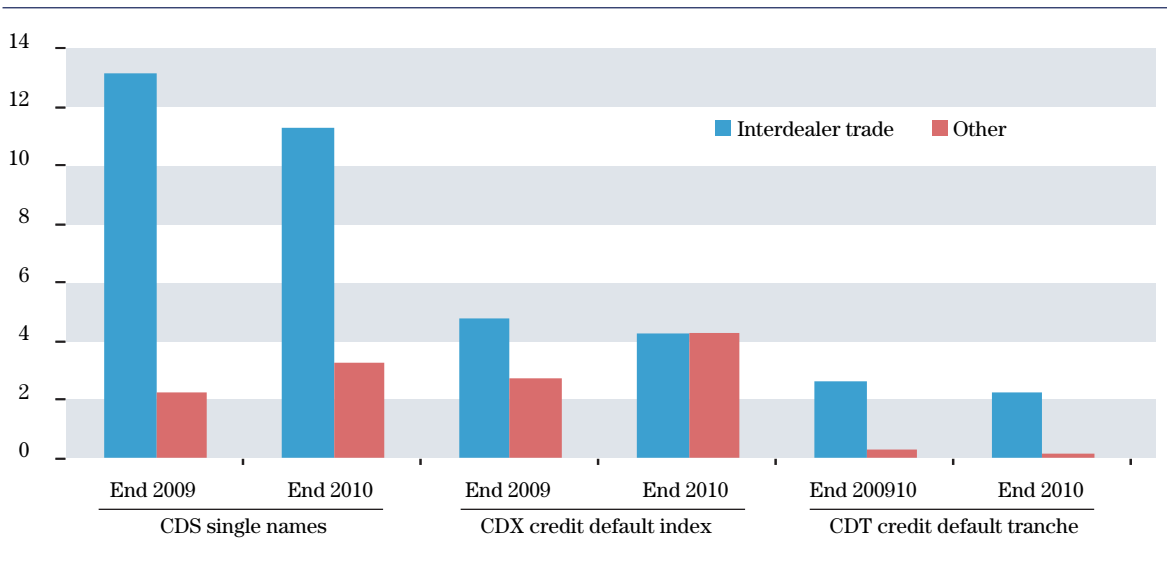
In 2010, gross notional amounts of all types of credit derivative products remained broadly stable at US\$ 25.3tn (-1%), according to data from DTCC<sup>(3)</sup>. The stability of the CDS market can be partly explained by structural changes, such as trade compression and the increased use of central counterparties (CCPs).

The 13% decline in interdealer trades seen in 2010 (-US\$ 2.7tn) has been offset by a large increase in "other trades"<sup>(4)</sup>, which increased by 47% (+US\$ 2.5tn). This aggregated figure masks some differences between credit derivative products: globally, single-name CDSs' notional decreased by 4% in 2010, along with credit default tranches (-13%), while the Credit Default Index increased by 9% (Figure 17, page 19). At the end of 2010, global single name CDS represented about 60% of the whole credit derivative market, credit default indices about 30% and credit default tranches around 10%. Among single-name CDSs, only sovereign CDSs' notional increased in 2010 (+US\$ 338bn), while financials, consumer services and goods decreased by US\$ 160bn, US\$ 230bn and US\$ 123bn respectively (Figure 18, page 19).

(3) The depository trust & clearing corporation (DTCC) stores OTC derivatives data in a global repository, the Trade Information Warehouse. While DTCC data are based on CDS records registered, in the warehouse, the BIS data rely on dealers' reports to national central banks. See the Box, "The size of the global CDS market-BIS and DTCC data", in *BIS Quarterly Review*, December, p23-25. It is worth keeping in mind that the DTCC data do not currently include CDOs and ABS.

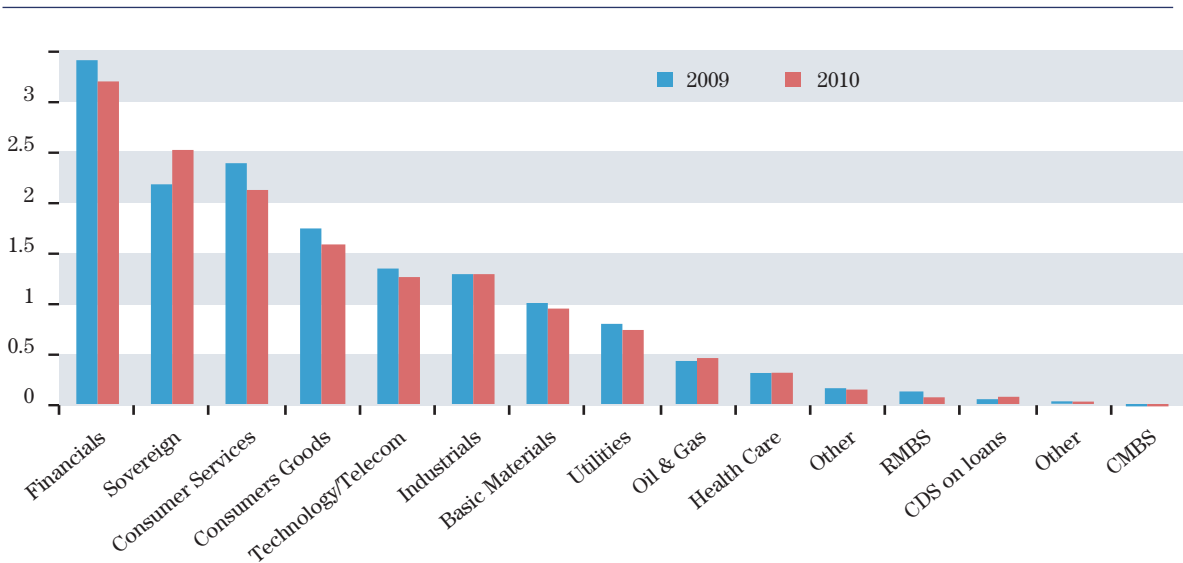
(4) Other trades refer to trades involving at least a non dealer or a customer at the buy or sell side.

Figure 17: Gross notional amounts of all credit derivative products (in US\$ trn)



Source: DTCC.

Figure 18: Single Name CDS gross notional amount by reference entity type (in US\$ trn)



Source: DTCC

# CESR'S ACHIEVEMENTS IN 2010

Effective and sound regulation of securities trading is key in both ensuring the growth, integrity and efficiency of financial markets and at the same time maintaining investor's protection.

# 02



## 2.1 From CESR to ESMA

The financial crisis exposed shortcomings in financial supervision, both globally and within the European Union (EU). The European model at the time, of nationally-based supervision, did not always keep pace with financial innovation taking place on globally integrated and interconnected financial markets. As many market participants operate across borders, internationally or within the European Economic Area (EEA), the crisis revealed insufficiencies in the co-operation, co-ordination, and consistent application of Union law between national regulators. To better reflect the integrated nature of financial markets in the EU, the European Institutions called for a move towards a more integrated model of supervision in Europe in order to ensure a true level playing field for all actors in European financial markets.

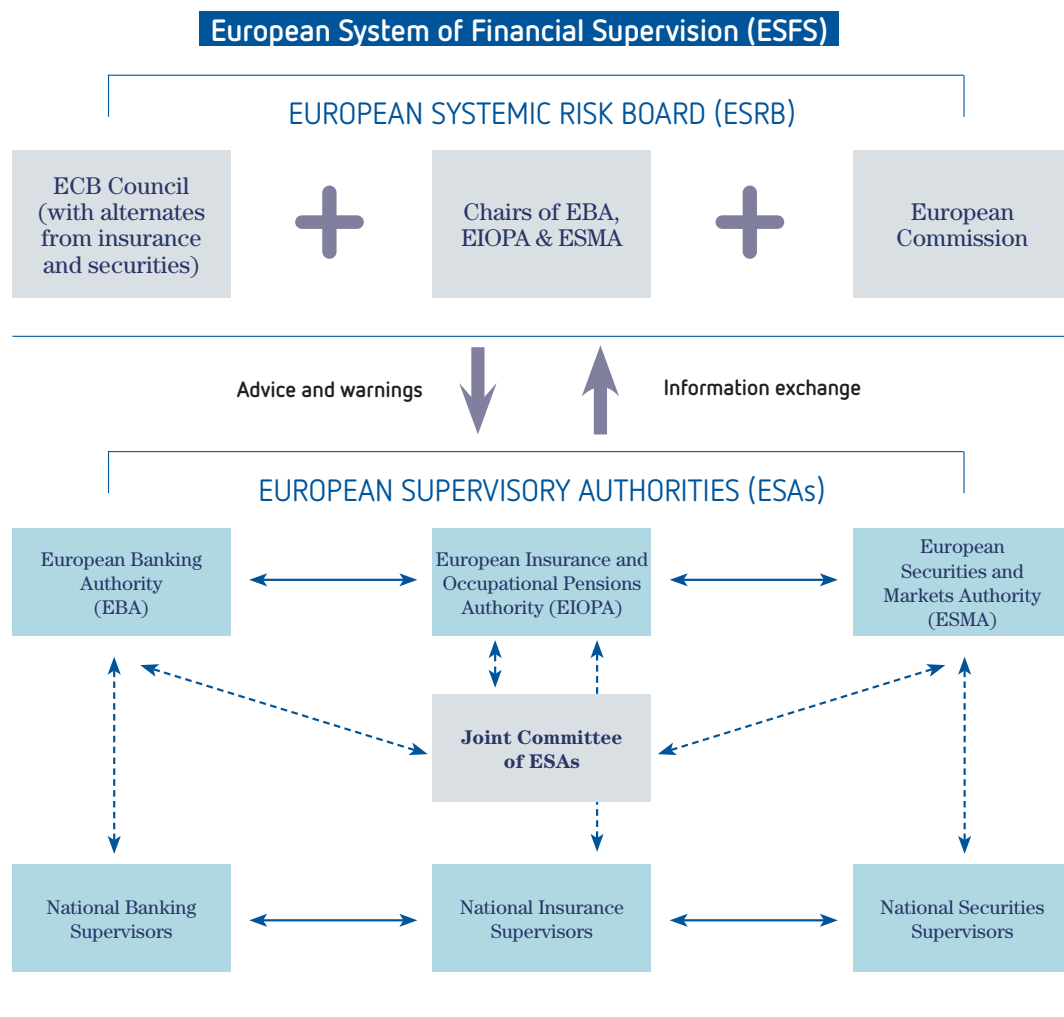
In November 2008, the European Commission (Commission) mandated a high-level group chaired by Jacques de Larosière to propose how to strengthen supervisory co-operation, co-ordination, and consistent application of Union law, in order to ensuring better protection of Europe's citizen and re-establishing trust in the financial system as a whole. On 25 February 2009, the so-called 'de Larosière report' recommended reforms to the structure of supervision of the financial markets in Europe. In particular, their concern was that despite the fact that financial institutions operate across borders using the EU single market, supervision had remained mostly at national level, uneven and often un-coordinated.

The group concluded that a stronger financial sector in the EU would require greater convergence between Member States on technical rules, and the establishment of a mechanism for ensuring better agreement and co-ordination between supervisors. Additionally, it was considered necessary to ensure that co-ordinated decision-making could take place in emergency situations. The conclusion of the group therefore was that the financial services advisory committees, CESR, CEBS and CEIOPS, did not have the necessary powers at the time to carry out these functions and that it would be necessary to change their legal nature in order for these to be able to execute these tasks. The group therefore proposed to create a European System of Financial Supervision (ESFS), comprising three European Supervisory Authorities (ESAs), one for the banking sector (EBA–European Banking Authority), one for the securities sector (ESMA–European Securities and Markets Authority) and one for the insurance (EIOPA–European Insurance and Occupational Pensions Authority) as well as the creation of a European Systemic Risk Board (ESRB). The idea was to identify possible risks in financial markets, both from a micro- (the ESAs) and a macro-prudential (the ESRB) point of view. Given the role Credit Rating Agencies (CRAs) played in the crisis regarding market integrity, the draft legislation emphasised that ESMA should also have direct supervisory powers in relation to CRAs, which led to the drafting of a respective Regulation on CRAs by the Commission.

On 22 September 2010, the European Parliament (EP), following agreement by all Member States in the Council, voted through the new supervisory framework for financial regulation in Europe. It will come into force in January 2011, formally establishing EBA, ESMA, EIOPA and the ESRB.

## CESR prepares for a smooth transition to ESMA

In 2010, CESR began preparing its transition to a European Authority and began preparations to play its part in the new ESFS. In January, CESR introduced a new working structure to better deliver its many priorities, to streamline internal processes and redefine the role of CESR's technical groups and of its plenary meeting. The restructuring of CESR was considered crucial to ensure that the new responsibilities that ESMA was anticipated to receive, could be carried out effectively within this structure. As a result, from January 2010 on, CESR conducted its work through Standing Committees (SC) rather than through working groups. Those Committees dealt with issues ranging from corporate reporting and finance to market surveillance and enforcement or secondary markets. They also tackled policy questions on intermediaries and CRAs. Each of these SCs was supported by one or more Member(s) of the CESR Secretariat. Prior to this, CESR's work was conducted by a growing number of expert and operational groups. Using SCs instead of working groups allowed more flexibility in terms of aligning the various mandates of CESR.



## New structure to streamline work

The decision to rationalise the way in which CESR works was taken with the following objectives in mind which aimed to ensure:

- the quality of CESR's output was maintained;
- that the output of CESR's work remains convergent (for example, expanding the use of consultative panels for all the areas);
- that both the resources of the CESR Secretariat and those of the Member's ,who send experts to the meetings, are drawn upon more efficiently; and
- that both the seniority of the experts in the SCs and their ability to represent their authority will be increased.

Albeit the structural changes, CESR's work continued to be conducted in an open and transparent manner by holding numerous public consultations or hearings, seeking stakeholder's input. In the past, on a case-by-case basis, CESR's groups have formed consultative working groups which drew on expertise from the various stakeholders experienced in the market practices of the areas under consideration. This approach was even broadened, so that almost all SCs would have such a consultative working group and the Membership of existing consultative working groups were also renewed.

## Preparing the governance of, and the rules and procedures for ESMA

During the latter half of 2010, once the final legal texts setting up the new European supervisory architecture and ESMA respectively were approved by the EP and the Council, CESR's preparatory work focused more on drafting rules and procedures for ESMA's governance to function properly and to fulfil its duties as sought by its founding fathers. Priority was given to the future rules and procedures for the Management Board and the Board of Supervisors, ESMA's two future decision taking bodies. In order to ensure ESMA would be able to execute its tasks and powers and resources efficiently, CESR also started including in different sets of policy advice, developed or finalised in 2010, recommendations to assign specific powers to ESMA. Other issues dealt with included the preparation of the transfer of existing staff and the recruitment of new staff; the change of the legal entity of CESR; and, the preparation to move to new premises as well as the change of corporate identity.

## 2.2 Key achievements and priorities in 2010

Besides ensuring CESR's readiness to become ESMA in 2011, in terms of policy, 2010 was a busy year too: the Committee worked hard on finalising advice on a great variety of policy regarding securities legislation. Some of which was follow-up work of initiatives coming out of the financial crisis and the G20 recommendations, whilst other work was already started earlier or were long-term projects as well as recurrent surveillance, co-ordination or monitoring work regularly conducted by CESR.

Needless to say the review of MiFID, the Markets in Financial Instruments Directive, was one of the key policy areas of CESR in 2010. On MiFID, CESR published two sets of advice recommending to the Commission, the overhaul of the Directive's legal framework in order to adapt it to changed market realities. The final advice presented by CESR reflects the results of more than two years of continuous work analysing the impacts MiFID had on securities markets and in the field of investor protection and intermediaries. Overall, CESR found that MiFID had achieved its goal to increase market competition by opening up the field to other trading venues than exchanges. However, CESR also found some negative consequences, such as an increased opacity and fragmentation. Therefore, CESR's two sets of advice to the Commission tackle those areas where amendments and changes to the legal framework might be needed.

Not only were the rules which govern the actual trading a key focus for CESR in 2010, but also on post-trading issues the year in question was a busy year for CESR. Following the regulatory roadmap laid out by the G20, a proposal for a regulation on OTC derivatives, Central Clearing Counterparties (CCPs) and trade repositories was adopted by the Commission. CESR started preparatory work for future technical standards as such responsibility is expected to be assigned to ESMA.

Of course, not only MiFID and other market infrastructural issues were on CESR's plate in 2010, but also the implementation of the EU Regulation on Credit Rating Agencies was another key area for CESR. In 2010, CESR laid the groundwork for the future role of ESMA in this respect. CESR published guidance which aim to explain and facilitate both regulators and the CRAs how they should comply with the new CRA Regulation. The first CRA was even registered in Europe in 2010; further applications are currently being processed by national supervisors. CESR also began building a central repository for ratings and compared the U.S. and Japanese supervisory regimes for rating agencies with the EU rules in order to assess their equivalence.

A further area of continued focus in 2010 was CESR's work on UCITS, the Undertakings for Collective Investment in Transferable Securities. Following CESR's advice on the implementing measures of the revised UCITS Directive in 2009, in 2010, CESR focused further on giving a common EU definition of money market funds, the risk measurement of UCITS generally and detailing further the requirements on Key Investor Information (KII), the document that is supposed to replace the Simplified Prospectus across Europe. Ensuring that easy to understand financial information exists, has always been an important part of CESR's agenda. This includes monitoring and making sure CESR's voice is heard in the international financial reporting community and international standard setting bodies. 2010 was no different in this respect; CESR provided comment on International Financial Reporting Standards (IFRS) and other accounting related issues.

In terms of policy, the proposal put forward by CESR to introduce a pan-European disclosure system for short positions was an important proposal too, and directly followed from the lessons learnt during and after the financial crisis. In 2010, CESR also continued its recurrent work on sharing experiences and discussing the implication between its Members on issues such as the Prospectus (PD) and Transparency Directives (TD), Takeover Bids, market surveillance issues and continued its joint work with the other 3 Level 3 (3L3) Committees on cross-sector issues, such as financial conglomerates. Continued effort was also made on mapping the actual use and application of different sets of EU legislation in the field of securities aiming at identifying those areas where more convergence is sought.

## 2.3 CESR's objectives

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

CESR's annual report is also a tool in ensuring accountability towards its stakeholders regarding the work the Committee undertakes. In order to provide greater strategic clarity on the work of CESR, this report defines further the purpose of individual work streams in relation to what could be considered as core high-level objectives which underpin the main elements of CESR's work. To facilitate a better understanding, CESR identified five objectives to which its work can be said to contribute, namely, by contributing to:

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

However, some of those objectives are interlinked, or actions taken to achieve one objective also serve in achieving one of the other objectives. For example, delivering market integrity, transparency and efficiency subsequently should also promote investor protection. Equally, delivering convergence across Europe should also result in increased investor protection by ensuring that retail investors can be sure of a comparative level of protection for the product bought, irrespective of where the provider is based in Europe. Another objective, in particular that of 'market integrity, transparency and efficiency', is grouped together as each element is particularly tightly linked with the others.

That said, CESR's annual report of 2010 presents its work by allocating the single work streams to chapters which are organised by objectives, rather than focusing its reporting on Standing Committees or other working groups. Nevertheless, in order to provide the reader with the facility to view the entirety of work conducted by SCs as well, this section also includes a presentation of the working Committees of CESR, including a word of the chairs of the respective SC and an index of their work streams. Should a work stream deliver to more than one objective, the report highlights the other objectives to which it contributes.

## 2.4 CESR's standing committees, task forces, networks and panels

CESR acts as a network of European securities regulators on a great variety of technical issues regarding securities legislation and its implementations throughout the Union. As such, the Committee conducts its work primarily through different standing committees, task forces, panels and networks, which draw together senior experts from CESR's Member authorities. The different CESR Standing Committees and Groups are established both permanently or can be 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 SC might also deliver to different objectives of other SCs. The following presentation of CESR's SCs, groups, panels and networks therefore shows which key and other objectives each of the SCs serves.

STANDING COMMITTEE	AREA OF WORK	CHAIR	OVERVIEW PAGE
Review Panel	Contributing to supervisory convergence, reviewing the day-to-day implementation of EU legislation, and CESR standards, guidelines and recommendations; and conducting mappings, self-assessments and peer reviews.	<b>Jean Guill,</b> Chair of Luxembourg CSSF	<b>27</b>
CESR-Pol	Market surveillance, enforcement of securities laws as well as CESR Members' co-operation and exchange of information, particularly in market abuse investigations; policy making with regards to MAD.	<b>Anastassios Gabrielides,</b> Chair of the Greek HCMC	<b>28</b>
Secondary Markets	Issues related to the structure, transparency and efficiency of secondary markets for financial instruments, including trading platforms and OTC markets; and convergent implementation of MiFID and implementing rules.	<b>Alexander Justham,</b> UK FSA Director of Markets	<b>29</b>
Investor Protection and Intermediaries	Issues related to the provision of investment services and activities by investment firms and credit institutions; convergent implementation of MiFID intermediaries with particular regard to investor protection, including the conduct of business rules, distribution of investment products, investment advice, and suitability.	<b>Jean-Paul Servais,</b> Chair of the Belgian CBFA	<b>30</b>
Investment Management	Issues related to collective investment management, covering both harmonised and non-harmonised investment funds; and convergent implementation of the UCITS Directive, the future directive on AIFM and depositaries.	<b>Vittorio Conti,</b> Board Member of the Italian CONSOB	<b>31</b>
Credit Rating Agencies	Convergent implementation of the Regulation on Credit Rating Agencies.	<b>Karl-Burkhard Caspari,</b> Chief Executive Director Securities Supervision of the German BaFin	<b>32</b>
Corporate Finance	Convergent implementation of the Prospectuses Directive, including Q&As; future Level 2 advice and equivalence with third countries; corporate governance; and notification of major shareholdings under the Transparency Directive.	<b>Hans Hoogervorst,</b> Chair of the Dutch AFM	<b>33</b>
Corporate Reporting	Accounting and enforcement of IFRS; audit; publication of periodic information; and storage of regulated information and OAMs.	<b>Fernando Restoy,</b> Vice-Chair of the Spanish CNMV	<b>34</b>
Post-Trading	All issues related to the provision of central counterparties, clearing and settlement services (including T2S) as well as operation of trade repositories.	<b>Jean-Pierre Jouyet,</b> Chair of the French AMF	<b>35</b>
IT Management and Governance	Project, develop and maintenance of CESR IT projects.	<b>Arja Voipio,</b> Senior Advisor of the Finnish FIN-FSA	<b>36</b>
Economic Markets' Analysis	Financial markets monitoring and analysis, impact assessments.	<b>Carlos Tavares,</b> Chair of CESR and of the Portuguese CMVM	<b>37</b>
Takeover Bids Network	Exchange of views and experiences on cross-border take-over bids to promote convergent implementation of the Take-Over Bids Directive.	<b>René Maatman,</b> Board Member of the Dutch AFM	<b>38</b>
Other groups, networks and task forces	CESR also conducts work through a number of other networks, covering issues like legal matters, cross-sector issues, and others.	<b>CESR Secretariat</b>	<b>39</b>



## Review Panel

### Jean Guill

CHAIR OF THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER OF LUXEMBOURG (CSSF), VICE-CHAIR OF CESR AND CHAIR OF ITS REVIEW PANEL.



« The work of the Review Panel has been central for CESR as a Level 3 Committee in the Lamfalussy structure and has allowed CESR to contribute to supervisory convergence and a realisation of the objectives under the Financial Services Action Plan. CESR has, through the Review Panel, made significant results in the comprehensive mappings of the implementation and practical application of the directives in the financial sector. In 2010, work has been undertaken in relation to the Market Abuse Directive, the Prospectus Directive, MiFID, and the Transparency Directive. The Review Panel has mapped the powers that are available to Member States for the application of the requirements under those directives. In addition, as regards the Market Abuse Directive and the Transparency Directive, the Review Panel also mapped the options and discretions available in Member States and for the Prospectus Directive a report has been produced on its practical application in the Member States. Looking ahead, and given the prominent position given to the Review Panel for the new financial architecture in the EU, the Panel will continue to be of central and even higher importance in the work of ESMA and the ESAs respectively. »

## Background on the Review Panel

CESR's peer pressure group, the Review Panel, contributes to supervisory convergence through the review of the consistency and timeliness of the implementation of Community legislation in the Member States, and the identification of areas of regulation and supervision where there is room for further convergence. It achieves this aim by securing more effective co-operation between national supervisory authorities, carrying out reviews and promoting best practice. One key task of the Review Panel is to review the implementation of EU legislation, and CESR standards and guidelines into rules and supervisory practices in the national jurisdictions. The panel assesses the overall process of implementation, provides common

understanding and expresses views on specific problems in the implementation process encountered by individual Members. It uses mappings and, based on commonly agreed benchmarks, self-assessments to obtain a first picture of the practice of supervision in a given area. Most importantly, it exercises group pressure through peer reviews which are carried out by fellow national authorities on the implementation in all jurisdictions concerned, in order to evaluate the competent authorities' state of compliance. In certain circumstances, the Review Panel carries out selective peer reviews, i.e. it establishes a special group to address issues of a technical nature or focus on a limited group of countries. The findings of the Review Panel are communicated to the Commission, market participants, and the wider public.

### OBJECTIVES THE REVIEW PANEL SERVES

Convergence

Market transparency

Investor protection

Advice and reporting to EU institutions

### DIVISION OF THE REVIEW PANEL'S WORK

REVIEW PANEL'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
MAD: CESR maps the use of options and discretions	3.2	71	Convergence	Investor protection
CESR looks into compliance of the simplified notification process	3.2	72	Convergence	Investor protection
PD: CESR looks into actual use and application across Europe	3.2	73	Convergence	Investor protection
CESR develops good practices for reviewing Prospectuses	3.2	74	Convergence	Investor protection

# CESR-Pol

Anastassios Gabrielides

CHAIR OF THE GREEK FINANCIAL MARKET COMMISSION (HCMC) AND OF CESR'S CESR-POL STANDING COMMITTEE.



In 2010, CESR-Pol continued its work on enhancing the effectiveness of market surveillance activities and on ensuring the efficient co-operation between national authorities. The Standing Committee prepared advice to the European Commission on issues relating to market integrity, notably on short selling, the MiFID review, mainly on transaction reporting. The proposed pan-European harmonised disclosure regime for short selling should enhance supervisory convergence, improve market transparency and promote market integrity. In addition, the suggested amendments for transaction reporting obligations should improve market supervision.”

## Background on CESR-Pol

Effective enforcement of securities laws is a key element in CESR's delivery of its market integrity objective and its ability to protect investors. The purpose of CESR-Pol is to provide a forum to bring together senior enforcement officials from each CESR Member to develop policy options relating to co-operation and enforcement issues. The CESR-Pol Standing Committee undertakes CESR's work on issues relating to market surveillance, enforcement of securities laws, facilitation of co-operation of national authorities and exchange of information in market abuse investigations. Regarding surveillance, the Standing Committee works in order to enhance the effi-

ciency and effectiveness of the market surveillance activities of national authorities, including the use of various market surveillance tools, including analysis of transaction reports. The Standing Committee also provides a forum in which national authorities may share their experiences concerning their market surveillance and enforcement activities. In the area of co-operation, the Standing Committee works to ensure efficient and timely co-operation in cross-border cases and facilitates sharing of information. Finally, the Standing Committee has responsibility for elaborating advice to the Commission, and technical standards and guidelines and recommendations on issues relating to the integrity of markets on issues such as MAD and short selling.

### OBJECTIVES CESR-POL SERVES

- Market transparency
- Convergence
- Investor protection
- Market efficiency

### DIVISION OF CESR-POL'S WORK

CESR-POL'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR proposes pan-European disclosure regime for short selling	3.1	67	Market transparency	Convergence, Investor protection
MiFID review: enhancing the scope of mandatory transaction reporting	3.1	68	Market transparency	Convergence, Investor protection

## Secondary Markets

Alexander Justham

DIRECTOR OF MARKETS OF THE UK FINANCIAL SERVICES AUTHORITY AND CHAIR OF CESR'S SECONDARY MARKETS STANDING COMMITTEE.



In 2010, CESR's Secondary Markets Standing Committee has managed a vast amount of work in a short-time-frame in order to prepare technical advice to the European Commission on the MiFID Review. The recommendations are both extensive and highly significant, tackling the key issues that CESR and market participants have identified as needing action. They relate to market transparency, orderly functioning of the markets and the scope of current regulation, taking into account market developments since MiFID was originally drafted and G20 recommendations. Importantly, these proposals will impact many elements of securities market regulation and constitute a major change in the regulatory landscape if taken forward. Wide-ranging processes have been employed to develop the advice. CESR has undertaken a number of consultations, analysed a great amount of responses received and debated a huge variety of issues via the Standing Committee and its Task Forces. It has also liaised with its Consultative Working Group as well as interested parties via open hearings, a Retail Investor Day and by forming a CESR/Industry Working Group on post-trade transparency standards to help shape aspects of the technical advice. These processes have been pivotal in shaping the package of recommendations."

### Background on the Secondary Markets Standing Committee

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 markets. The SC also fosters supervisory convergence among national competent authorities in its area of competence.

#### OBJECTIVES THE SECONDARY MARKETS STANDING COMMITTEE SERVES

Investor protection

Convergence

Market integrity,

Market transparency

Market efficiency

#### DIVISION OF WORK ON SECONDARY MARKETS

THE COMMITTEE'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR updates its protocol for the operation of the MiFID database	3.1	51	Market transparency	Investor protection, Market integrity
MiFID review: CESR advises the Commission on MiFID equity markets	3.1	52	Market transparency	Market integrity, Market efficiency, Advice and reporting to EU institutions
MiFID review: CESR advises on non-equity instruments	3.1	55	Market transparency	Market integrity, Market efficiency
MiFID review: CESR provides additional information in relation to the MiFID Review	3.1	58	Market transparency	Market integrity, Market efficiency
MiFID review: More standardisation and organised platform trading of OTC derivatives	3.1	59	Market transparency	Convergence, Investor protection
CESR assesses compliance of two new proposals for MiFID pre-trade transparency waivers	3.1	61	Market transparency	Convergence

# Investor Protection and Intermediaries

Jean-Paul Servais

CHAIR OF THE BELGIAN COMMISSION BANCAIRE, FINANCIÈRE ET DES ASSURANCES (CBFA) AND CHAIR OF CESR'S INVESTOR PROTECTION AND INTERMEDIARIES STANDING COMMITTEE.



In 2010, the Investor Protection and Intermediaries Standing Committee worked hard on ensuring a comprehensive set of European rules exists that not only facilitates pan-European competition, but also harmonises the protection of investors throughout Europe. A key area of our 2010 work was developing and providing technical advice to the EC on its MiFID review in the area of investor protection and intermediaries. The Standing Committee put forward recommendations to the EC on various issues including introducing a common, minimum harmonised, EEA regime for the recording of orders received or transmitted by telephone or through electronic communications; introducing a general obligation in MiFID for execution venues to produce regular reports on the quality of execution in shares; delivering a more graduated risk-based approach to the distinction between complex and non-complex financial instruments for the purposes of MiFID's appropriateness requirements; clarifying the scope of the definition of investment advice; and, while believing that the current MiFID rules on the categories of clients, and the obligations attaching to each, are generally appropriate and do not need significant change, CESR suggested that there is scope for some clarification of relevant definitions and terms where there may be some ambiguity. CESR also made some additional important recommendations and statements to the Commission regarding disclosure measures for over-the-counter derivatives and other complex or tailor-made products, the organisational requirements related to the launch of new services or products, and on inducements. These CESR proposals are forward looking in terms of certainty, investor protection, and surveillance of markets. They ensure that there is evidence to resolve disputes between investment firms and their clients, assist with supervisory work in relation to conduct of business rules and facilitate the prevention and detection of market abuse. Under ESMA, the Standing Committee will consider the Commission's MiFID consultation and forthcoming legislative proposals in shaping its future work in the area of investor protection and intermediaries."

## Background on the Investor Protection and Intermediaries Standing Committee

The Investor Protection and Intermediaries Standing Committee (IPISC) undertakes CESR's work on issues relating to the provision of investment services and activities by investment firms and credit institutions. Particular regard is made to investor protection, including the conduct of business rules, distribution of investment products, invest-

ment advice and suitability. In terms of policy, IPISC has responsibility for elaborating advice to the Commission, developing technical standards, guidelines and recommendations relating to the provisions of the Markets in Financial Instruments Directive (MiFID) applicable to investment services and activities, including the authorisation of investment firms, conduct of business, organisational arrangements and 'passporting'. IPISC also fosters supervisory convergence among national authorities in the area of investment services and activities.

### OBJECTIVES THE INVESTOR PROTECTION AND INTERMEDIARIES STANDING COMMITTEE SERVES

- Investor protection
- Convergence
- Market integrity,
- Market transparency
- Market efficiency
- Advice and reporting to EU institutions

### DIVISION OF THE INVESTOR PROTECTION AND INTERMEDIARIES STANDING COMMITTEE'S WORK

IPISC'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR consults on definition of advice under MiFID	3.2	80	Convergence	Investor protection
Inducements – good and poor practices	3.2	81	Convergence	Investor protection
MiFID Q&A: due diligence, and tied agents	3.2	81	Convergence	Investor protection
Best execution: summary of trends	3.2	82	Convergence	Investor protection
MiFID review: CESR consults on investor protection, intermediaries and client categorisation	3.3	98	Investor protection	Convergence

# Investment Management

## Vittorio Conti

MEMBER OF THE BOARD OF THE ITALIAN COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA (CONSOB) AND CHAIR OF CESR'S INVESTMENT MANAGEMENT STANDING COMMITTEE.



Following the heavy workload of the Investment Management Standing Committee (IMSC) in 2009 to prepare CESR's advice on the implementing measures of the revised UCITS Directive, in 2010 the IMSC focused on promoting convergence via development of Level 3 guidelines. A significant achievement in this regard was the adoption of the guidelines on a common definition of money market funds, while further important progress was made on elaborating the requirements on Key Investor Information. Finally, IMSC continued its work to develop a comprehensive framework with regard to risk measurement for UCITS."

## Background on the Investment Management Standing Committee

The Investment Management Standing Committee undertakes work on issues relating to collective investment management, covering both harmonised and non-harmonised investment funds.

The Standing Committee is responsible for elaborating advice to the European Commission, and technical standards and guidelines and recommendations relating to

the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and the Alternative Investment Fund Managers Directive (AIFMD). This work covers the full spectrum of issues addressed by both Directives.

Finally, the Committee also addresses the rules that apply to other key entities, such as depositaries. Beyond the Directives and specific work outlined above, the Committee works more generally to foster supervisory convergence among national authorities in the area of investment management.

### OBJECTIVES CESR'S INVESTMENT MANAGEMENT STANDING COMMITTEE SERVES

Investor protection

Market efficiency

Market transparency

Market integrity

Advice and reporting to EU institutions

### DIVISION OF THE INVESTMENT MANAGEMENT STANDING COMMITTEE'S WORK

COMMITTEE'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR published guidelines on UCITS' risk management	3.2	75	Convergence	Investor protection
CESR consults on possible alternative risk approach for structured UCITS	3.2	75	Convergence	Investor protection
CESR moves forward the UCITS management company passport	3.2	76	Convergence	Investor protection
CESR work on mergers, master-feeder structures and cross-border notification of UCITS	3.2	77	Convergence	Investor protection
CESR sets out harmonised European definition of money market funds	3.2	78	Convergence	Investor protection
AIFMD: CESR seeks input from stakeholders	3.2	78	Convergence	Investor protection
CESR fine-tunes format and content of KID disclosures	3.3	93	Investor protection	Advice and reporting to EU institutions
CESR works on L3 guidelines for content of KID	3.3	94	Investor protection	Advice and reporting to EU institutions
CESR maps duties and liabilities of UCITS depositaries	3.3	97	Investor protection	Advice and reporting to EU institutions



# Credit Rating Agencies

## Karl-Burkhard Caspari

CHIEF EXECUTIVE DIRECTOR OF SECURITIES SUPERVISION AT THE GERMAN BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT (BAFIN) AND CHAIR OF CESR'S CREDIT RATING AGENCIES STANDING COMMITTEE.



The Credit Rating Agencies Standing Committee conducted a great deal of work in 2010: CESR published guidance on the EU CRA Regulation in order to enhance the coherence and harmonisation in the registration processes and the supervision of the credit rating agencies across the EU; we began building a central repository for ratings issued by CRAs; we provided advice to the European Commission on the equivalence of the supervisory systems for CRAs in Japan and the USA, and last but not least, a first CRA was registered in Europe in 2010. The Standing Committee also laid the groundwork for the direct supervisory role ESMA will have in supervising CRAs from July 2011 onwards. Most of the registration processes of the CRAs which applied for registration before 7 September 2010 are still ongoing; more registrations are to follow in 2011. The Standing Committee will continue its work under ESMA, actively collaborating in the drafting of the Regulatory Technical Standards which the revised CRA Regulation has mandated ESMA to submit to the European Commission and ensuring that the supervisory regime achieves the objectives laid out in its Regulation.”

## Background on CRA Standing Committee

According to the Regulation, CESR and from 2011 on, ESMA is required to discharge important co-ordination and advisory functions alongside its traditional role of promoting convergence through Level 3 guidelines and recommendations. Furthermore, the CRA Regulation mandates CESR/ ESMA to maintain a central repository where information on the past performances of CRAs and information about credit ratings issued in the past are to be kept and made public. A Standing Committee has been established within CESR to assist in preparing ESMA for these new tasks relating to CRAs. In order to fulfil its objec-

tives, the CRA Standing Committee will promote convergence in the application by Members of the Regulation, facilitate a coherent approach by the competent authorities and enhance legal certainty for market participants. The Standing Committee will prepare and publish common guidelines as required by the regulation and deal with the implementation of the EU Regulation on CRAs. It also will undertake the necessary work to enable both ESMA and its Members to discharge their functions spelled out in the Regulation, co-ordinate with other international organisations and third country regulators that are performing activities in relation to CRAs. Among other organisations, the Standing Committee will co-ordinate with EBA, EIOPA and IOSCO.

### OBJECTIVES THE CRA STANDING COMMITTEE SERVES

Market transparency

Convergence

Investor protection

Advice and reporting to EU institutions

### DIVISION OF THE CREDIT RATING AGENCIES GROUP'S WORK

CRAS' 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR issues guidelines on CRA Regulation and related issues	3.1	42	Market integrity	Convergence, Investor protection
Q&A: CESR published common positions on EU Regulation for CRAs	3.1	43	Market integrity	Convergence, Investor protection
CESR issues guidance on enforcement of rating methodologies	3.1	43	Market integrity	Convergence, Investor protection
CESR advises Commission on equivalence of US and Japanese regimes for CRAs	3.1	45	Market integrity	Convergence, Investor protection
CESR lays out guidance for central repository for CRAs	3.1	45	Market integrity	Convergence, Investor protection
CESR publishes annual report on the application of the CRA Regulation	3.1	46	Market integrity	Convergence, Investor protection

## Corporate Finance

Hans Hoogervorst

CHAIR OF THE DUTCH AUTORITEIT FINANCIËLE MARKTEN (AFM) AND CHAIR OF THE CORPORATE FINANCE STANDING COMMITTEE.



« The Corporate Finance Standing Committee aims to ensure broadly the same information is made available by issuers in all European markets, thus enhancing market confidence and stability. In 2010, the Committee issued Q&As on the Prospectus Directive providing market participants with common answers to day-to-day questions regarding the Directive, thus enhancing convergent and coherent application. During 2010, consultations were held on amending the recommendations on the PD with regard to mineral companies. With the first consultation an update was sought in order to have clear harmonised prospectus disclosure standards for mineral companies in the EU, ensuring in the process that disclosure meets existing international standards. The second consultation dealt with major shareholding notifications. The aim of this work stream is to widen the scope of major holdings notifications in order to include all instruments that give a similar economic effect to holding shares and entitlements to acquire shares in the broadest sense. Both consultations had one objective in common, which is transparency in terms of free access to up-to-date information on issuers. Ensuring market transparency is key for stable and integrated markets. »

### Background on the Corporate Finance Standing Committee

The Corporate Finance Standing Committee is responsible for developing all work relating to the Prospectus Directive and Corporate Governance. Additionally, it carries out CESR's work with regard to major shareholding disclosures under the Transparency Directive, 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. In terms of developing technical advice and guidance, the Standing Committee has responsibility for elaborating Level 2 advice and Level 3 measures on the

provisions of the Prospectus and Transparency Directives. In the area of Corporate Governance, the Corporate Finance Standing Committee will identify and consider a proposed CESR response to areas which relate to securities (as opposed to company) laws in the European Union, which are of interest and relevance to CESR and which are not addressed by other CESR working groups. The Standing Committee also works to increase harmonised implementation of EU legislation. If needed or when requested, the Standing Committee also advises the European Commission on the need for possible changes to the appropriate Level 1 Directives. The Committee also develops 'Questions & Answers' (Q and A) to continue to deliver greater supervisory convergence and transparency for market participants.

#### OBJECTIVES THE CORPORATE FINANCE STANDING COMMITTEE SERVES

Market transparency

Convergence

Investor protection

Advice and reporting to EU institutions

#### DIVISION OF THE CORPORATE FINANCE WORK

THE COMMITTEE'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR updates Q&A on prospectuses	3.1	65	Market transparency	Convergence, Advice and reporting to EU institutions
CESR feeds into Commission's review of the PD	3.1	66	Market transparency	Convergence, Advice and reporting to EU institutions
CESR proposes to amend prospectus recommendations for mineral companies	3.1	66	Market transparency	Convergence, Advice and reporting to EU institutions
CESR publishes 2010 data on prospectuses approved and passported	3.2	80	Convergence	Advice and reporting to EU institutions
CESR assesses equivalence of non-EEA prospectuses	3.3	98	Convergence	Advice and reporting to EU institutions

# Corporate Reporting

## Fernando Restoy

VICE-CHAIR OF THE SPANISH COMISION NACIONAL DEL MERCADO DE VALORES (CNMV) AND CHAIR OF THE CORPORATE FINANCE STANDING COMMITTEE.



CESR's main priority in 2010 regarding corporate reporting was to contribute to the consistent application and enforcement of IFRS which is key to market integrity. Ensuring such consistency enables a fair and efficient functioning of markets and of price information within those markets: both important for the sound protection of investors. Alongside this overall objective, the

Committee has made an ongoing contribution to the work being performed in the international financial reporting community, in particular regarding accounting for financial instruments and the governance framework around the IFRS Foundation. During the period, the group has also dealt with the development of a network of European Officially Appointed Mechanisms, the use of XBRL, participated in the development of IFRSs and the role of auditors, held regular dialogue meetings with other securities regulators and worked on further equivalence assessments of certain third country GAAPs."

## Background on the Corporate Reporting Standing Committee

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 rele-

vant EU accounting and/or auditing Committees. CESR-Fin also coordinates the activities of national enforcers in the EEA regarding enforcement of IFRS. This includes the analysis and discussion of individual enforcement decisions and emerging financial reporting issues. 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.

### OBJECTIVES CORPORATE REPORTING STANDING COMMITTEE SERVES

Market transparency

Convergence

Investor protection

Advice and reporting to EU institutions

### DIVISION OF THE WORK ON CORPORATE REPORTING

THE COMMITTEE'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
Financial reporting in times of crisis	3.1	61	Market transparency	Convergence
CESR monitors developments in IFRS and contributes to EFRAG and the IASB	3.1	62	Market transparency	Convergence
External contributions on accounting	3.1	63	Market transparency	Convergence
CESR consults on OAM and XBRL	3.1	64	Convergence	Market transparency
Equivalence of third-country GAAPs	3.2	79	Convergence	



## Post-Trading

Jean-Pierre Jouyet

CHAIR OF THE FRENCH AUTORITÉ DES MARCHÉS FINANCIERS AND OF CESR'S POST-TRADING STANDING COMMITTEE.



2010 was a demanding year for CESR on post-trading issues. Still, this record is likely to be surpassed in coming years, due to the major role ESMA is expected to have in drafting technical standards on OTC derivatives, CCPs and trade repositories and in taking over the responsibility for the registration and surveillance of trade repositories. In September 2010, in the wake of the G20 agreement on regulatory initiatives on OTC derivatives, a proposal for a Regulation on OTC Derivatives, CCPs and Trade Repositories was adopted by the European Commission. Council negotiations are ongoing but CESR has already started preliminary work for the preparation of technical standards where such responsibility is expected to be assigned to ESMA. This immediate work is key having in mind that the G20 objectives have to be accomplished by the end of 2012, while ESMA needs to respect certain procedures including a call for evidence, a cost-benefit analysis and a public consultation, all to take place during 2011. Regulatory work on OTC derivatives, CCPs and trade repositories will therefore be the first priority of the PTSC in 2011. Ensuring consistency between European and international initiatives on OTC derivatives and financial market infrastructures will also be an important objective. ESMA will continue to play a key role in all significant post-trading initiatives during 2011. The preparation for the T2S project to be launched in 2014 continues and the European Commission has been considering a Securities Law Directive and legislation on CSDs. Drawing on earlier PTSC work, notably the ESCB-CESR Recommendations on Settlement Systems and Central Counterparties, ESMA stands ready to contribute to these initiatives to ensure a harmonised, efficient and safe post-trading infrastructure in Europe.”

### Background on the Post-Trading Standing Committee

The role of CESR's Post-Trading Standing Committee (PTSC) is to co-ordinate the work of CESR Members in the area of post-trading. The PTSC was established in early 2007 to monitor and contribute to a number of public and private sector initiatives in the area of post-trading and to serve as a platform for the exchange of supervisory experiences amongst regulators. The objectives of these activities are: to foster a level-playing-

field and to encourage measures that foster the safety and soundness of post-trading activities within the EU and by doing so, ensuring a sound, efficient and transparent functioning of post-trading.

The PTSC Chair represents CESR in a number of related work streams, namely in CESAME II, the Advisory Group to the Commission for clearing and settlement, and in the MOG, the Monitoring Group for the Code of Conduct. The PTSC Chair is also observing, on CESR's behalf, the TARGET2-Securities (T2S) Advisory Group, established by the European Central Bank (ECB) for the T2S project, a single platform for securities settlement in Europe.

#### OBJECTIVES THE POST-TRADING STANDING COMMITTEE SERVES

Market efficiency

Market transparency

Market integrity

Convergence

#### DIVISION OF THE WORK ON POST-TRADING

WORK STREAMS ON POST-TRADING IN 2010	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
OTC derivatives: CESR starts work on technical standards of EMIR	3.1	46	Market integrity	Convergence, Investor protection
CESR inputs into T2S settlement platform	3.1	47	Market integrity	Convergence, Investor protection
CESR contributes to Commission initiative on CSD	3.2	82	Convergence	Advice and reporting to EU institutions

# IT Management and Governance

**Arja Voipio**

SENIOR ADVISER AT THE FINNISH FINANSSIVALVONTA (FIVA) AND CHAIR OF CESR'S IT MANAGEMENT AND GOVERNANCE GROUP.



CESR's ITMG has focused on two key objectives in 2010: Improving its existing Transaction Reporting Exchange Mechanism (TREM) and building a new Central Repository (CEREP) for the collection and publication of data about credit ratings. CESR and its Members enhanced TREM by accommodating the exchange of OTC-derivatives and improving reference data and controls. This will allow Competent Authorities to better monitor market abuse all over Europe. The EU Regulation on Credit Rating Agencies (EC 1060/2009) requires credit rating agencies to provide information on their historical performance data and CESR/ESMA to make this information accessible to the public by establishing a central repository CEREP. CESR's ITMG also drafted a plan for the coming years regarding the future IT needs of ESMA. ”

## Background on the IT Management and Governance Group

CESR's IT Management and Governance Group is in charge of the Information Technology (IT) governance of CESR. The group steers CESR's IT projects especially those that the Committee undertakes in conjunction with the national authorities. It is composed of senior CESR representatives who have experience, knowledge and

expertise in IT project management, financial markets, and supervisory related issues. The group's main objectives are to lead pan-European IT projects of CESR to provide CESR and the national authorities with IT systems and services that help national competent authorities to fulfill 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.

### OBJECTIVES THE IT MANAGEMENT AND GOVERNANCE GROUP SERVES

- Market efficiency
- Market transparency
- Market integrity
- Convergence

### DIVISION OF IT WORK

2010 WORK STREAMS ON IT MANAGEMENT AND GOVERNANCE	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR kicks-off OTC derivatives transaction reporting	3.1	48	Market integrity	Convergence, Investor protection
CESR implements central repository for CRAs	3.1	50	Market integrity	Convergence, Investor protection

## Economic and Markets' Analysis

Carlos Tavares

CHAIR OF CESR, THE PORTUGUESE COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS (CMVM), AND OF CEMA.



During the course of 2010, CEMA prepared three reports for the EU institutions, assessing trends, risks and vulnerabilities in the securities markets. One such report was made public for the first time. The publication shows CESR's determination to contribute to the promotion of financial stability and the enhancement of consumer protection through regular reporting on markets' trends and risks. CESR's Committee for Economic and Markets Analysis (CEMA) has been put in place to fulfil this task. Its activity covers the pro-active identification, the monitoring, and the assessment from a micro-prudential perspective of key developments and risks in financial markets. This includes a cross-border and cross-sector dimension, as well as a thorough focus on financial innovations and incentives related to market practices both at the wholesale and retail level. Our first report stresses several trends and risks which should be taken seriously not only by regulators, but also market participants and investors to be better prepared for the future."

### Background on CEMA

CESR's Committee for Economic and Markets Analysis (CEMA) is a Standing Committee with responsibility to cover two broad areas: Financial markets monitoring and analysis: CEMA provides pro-active identification, monitoring, and assessment from a micro-prudential level of trends, potential risks and vulnerabilities in financial mar-

kets, including a cross-border and cross-sector perspective, and a thorough focus on financial innovations, and incentives related to market practices both at the wholesale and retail level; with regard to Impact Assessment: the committee contributes to better regulation by actively supporting ESMA's commitment to Impact Assessments of existing and planned / proposed regulation and supervisory practice, eg ex ante and ex post Impact Assessments.

#### OBJECTIVES CEMA SERVES

Advice and reporting to EU institutions

Market transparency

#### DIVISION OF CEMA'S WORK

CEMA'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
CESR monitors risks and trends on financial markets	3.4	102	Advice and reporting to EU institutions	Investor protection, Convergence

# | Takeover Bids Network

## René Maatman

MEMBER OF THE MANAGEMENT BOARD OF THE DUTCH AUTORITEIT FINANCIËLE MARKTEN (AFM), AND CHAIR OF THE TAKEOVER BIDS NETWORK.



During the course of 2010, CESR organised meetings with representatives from the EU authorities who regulate takeover bids to discuss issues regarding the application of the Takeover Bids Directive and cross-border co-operation between competent authorities. Following continued work in 2010 by CESR, ESMA will assist the Commission in its examination of the effectiveness of the Directive in 2011– all of which is important work to foster and further increase cross-border market transparency, integrity and convergence when supervising takeovers.”

## Background on the Takeover Bids Network

CESR has set up a network of competent authorities dealing with takeover bids to discuss views, experiences and future developments in the implementation of the Takeover Bids Directive (TOD). The TOD aims to ensure equality of treatment in Europe for all companies launching bids and to ensure a transparent and fair treatment of investors in companies that find themselves the targets

of takeover bids. The legislation covers two separate areas relating to takeovers: company law aspects and securities or market related issues. However, as the national authorities composing the network do not, in general, have powers in relation to many company law issues, the mandate of the network is limited to securities or market related issues, with the goal of promoting an exchange of information and experience. The network aims to foster co-operation between all authorities supervision of the takeover legislation, especially in the context of cross-border transactions.

### OBJECTIVES THE TAKEOVER BIDS NETWORK SERVES

Market integrity

Market transparency

Convergence

### DIVISION OF THE TAKEOVER BIDS NETWORK

TAKEOVER BIDS NETWORK'S 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
EU regulators discuss takeover bids	3.1	69	Market integrity	Convergence

## Other groups, networks and task forces

Depending on the nature of a CESR work stream, which might be on an ad hoc basis and hence much more limited in time compared to permanent groups of CESR, there are a number of other groups, networks and task forces which are not covered by the above presentation. For example, there are joint groups that have been formed together with other organisations in order to respond to special mandates which are not covered in this section but are reported on within the annual report. For example, in 2010, CESR devoted quite some time work on preparing CESR's transition into the European Securities and Markets Authority (ESMA). Further, there are task forces that responded to other roadmaps, such as those on mutual recognition with the US, work on Human Resources and training. In addition, CESR has established a Retail Investor Network to find ways to create more dialogue with representatives of retail investors. In order to foster cross-sector convergence throughout the securities, insurance and banking markets, the 3 Level 3 (3L3) Committees work jointly in areas such as: anti-money laundering, cross-border mergers and acquisitions, conglomerates as well as there are 3L3 task forces on training, internal governance, cross-sector risks and delegation of tasks – all of which are presented under cross-sector convergence in this annual report.

OTHER 2010 WORK STREAMS	CHAPTER	PAGE	OBJECTIVES SERVED	
			MAIN	SECONDARY
3L3 provide input new European financial supervisory framework	3.2	85	Convergence	Market integrity
3L3 task force works on cross-sector risks	3.2	86	Convergence	Market integrity
3L3 anti-money laundering task force	3.2	86	Convergence	Market integrity
3L3 work on financial conglomerates	3.2	87	Convergence	
3L3 internal governance	3.2	88	Convergence	
Joint work on non-cooperative jurisdictions	3.2	89	Convergence	
3L3 Joint task force on PRIPs	3.2	89	Convergence	
Fostering Convergence through 3L3 Training	3.2	90	Convergence	



# CESR DELIVERING ITS OBJECTIVES IN 2010

Ensuring sound financial markets that function in an efficient, transparent and fair manner is a key objective for securities regulators. CESR works to ensure investors enjoy the same level of legal protection no matter where they go.

# CESR

# 3.1 Market integrity, transparency and efficiency

<b>Credit Rating Agencies Expert Group</b>	<b>42</b>
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CESR implements central repository for credit ratings	50
<b>Secondary Markets Standing Committee</b>	<b>51</b>
CESR updates its protocol for the operation of the MiFID database	51
MiFID review: CESR advises the Commission on MiFID equity markets	52
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MiFID review: CESR provides additional information in relation to the MiFID Review	58
MiFID review: More standardisation and organised platform trading of OTC derivatives	59
CESR assesses compliance of two new proposals for MiFID pre-trade transparency waivers	61
<b>Corporate Reporting Standing Committee</b>	<b>61</b>
Financial Reporting in times of crisis	61
CESR monitors developments in IFRS and contributes to EFRAG and the IASB	62
External contributions on accounting	63
CESR continues its work on the audit of financial statements	63
CESR consults on OAM and XBRL	64
<b>Corporate Finance Standing Committee</b>	<b>65</b>
CESR updates Q&A on prospectuses	65
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CESR proposes to amend prospectus recommendations for mineral companies	66
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CESR proposes pan-European disclosure regime for short selling	67
MiFID review: enhancing the scope of mandatory transaction reporting	68
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EU regulators discuss takeover bids cases	69

## 3.1 Market integrity, transparency and efficiency

Securities regulators seek to secure the orderly functioning of financial markets by ensuring sound markets that work in a fair, efficient and transparent manner. Regulation of financial markets achieves this by looking 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, and are implemented and enforced effectively. CESR fosters the integrity, transparency and efficiency of EU financial markets by improving the co-ordination amongst EU securities regulators by issuing guidance, Question and Answers (Q&As), and where appropriate, through publishing market data and regulatory decisions taken by CESR Members to provide clarity and transparency to market participants.

### Market integrity

#### CREDIT RATING AGENCIES STANDING COMMITTEE



#### CESR issues guidance on CRAs registration and related issues

##### OTHER OBJECTIVES SERVED

Convergence

Investor protection

The financial crisis clearly demonstrated the role played by Credit Rating Agencies (CRAs) in market integrity, which is why the European Parliament (EP) and Council approved an EU Regulation on Credit Rating Agencies on 23 April 2009, introducing an EU-wide system for the registering and supervision of CRAs. The Council formally signed the text on 16 September 2009, entering into force on 7 December 2009. According to that EU Regulation (1060/2009/EC), the CRAs which were operating in the EU before 7 June 2010 had to apply for registration between 7 June and 7 September 2010.

#### CESR issues guidance to facilitate implementation

Consequently, and in order to assist both regulators and CRAs in implementing the new rules, on 4 June 2010, CESR issued guidance (Ref. CESR/10-347) on registration and related issues, dealing with:

- the registration process and co-ordination arrangements between CESR and national competent authorities, including on the information set out in Annex II, and on the regime for applications by CRAs submitted to CESR;
- the operational functioning of the colleges of supervisors, 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 and the co-ordination arrangements between colleges;
- the application of the endorsement regime under Article 4.3 of the CRA Regulation by competent authorities; and
- information that the credit rating agency must provide in its 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.



### Guidelines follow earlier consultation

Before issuing its guidance on registration and related issues, CESR carried out a public consultation in 2009 to collect comments from market participants on its initial proposals. Following the feedback gathered from market participants through the consultation process, on 4 June 2010, CESR published its final guidance (Ref. CESR/10-347) accompanied by a feedback statement of the consultation (Ref. CESR/10-346).

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

On 8 March 2010, CESR published a Q&A document (Ref. CESR/10-222) illustrating the common positions agreed by CESR Members with regard to the EU Regulation on CRAs. The document provides responses in a quick and efficient manner, to questions which were frequently posed by market participants.

However, CESR's responses do not contain standards, guidelines or recommendations and, therefore, no prior consultation was needed. 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 published an update of the Q&A (Ref. CESR/10-521) in June 2010, including answers on issues regarding: corporate governance and compliance of CRAs, the endorsement regime, exemptions, disclosure, structured finance ratings and rules for CRAs' employees.



#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

### NEXT STEPS

**New EU legislation on CRAs, that has been agreed by the European Parliament and Council in December 2010, will be published in the first half of 2011 and enter into force consequently. This text amends the 2009 CRA Regulation (1060/2009/EC) in order to empower ESMA, following its establishment on 1 January 2011, with full responsibility for the supervision of CRAs in the EU starting from the second half of 2011. The new Regulation will require ESMA to draft technical standards that consequently must be endorsed by the Commission, on a number of subjects, such as the registration and supervision of CRAs that have already been addressed in June 2010 by CESR's guidance. That said, in the course of 2011, ESMA will continue to work on those areas, with the aim to transpose, and where appropriate, adjust, modify or supplement, the content of CESR's guidance into technical standards.**

### CESR issues guidance on enforcement and rating methodologies

On 30 August 2010, as requested by the European CRA Regulation, CESR issued guidance on both enforcement practices and activities to be conducted by competent authorities under said Regulation, and on common standards for assessing compliance of credit rating methodologies with the requirement set by the Regulation.

#### CESR explains enforcement practices for national supervisors

CESR's guidance on enforcement practices and activities lays down the type of information and data that competent authorities would expect to receive from CRAs in order to be able to effectively carry out their ongoing supervision. It also outlines the level of interaction that competent authorities expect to have with CRAs in the form of regular and ad-hoc meetings.



#### OTHER OBJECTIVES SERVED

Convergence

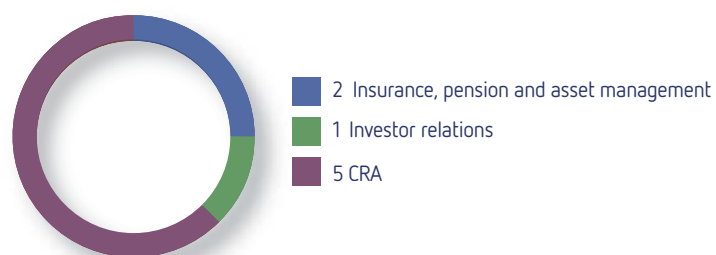
Investor protection

## Second guidance helps assessing whether CRAs' methodologies are compliant

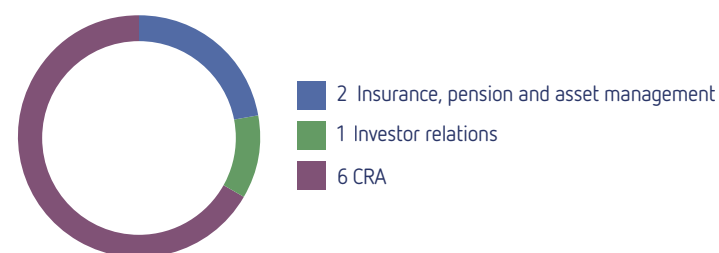
The guidance on the standards for assessing compliance of credit rating methodologies with the requirements set out by the Regulation indicates the information that would have to be provided by CRAs in order to allow competent authorities to assess CRAs' compliance. Article 8.3 of the Regulation states 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 that 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 sound opinion on the credit worthiness of a rated entity and/or financial instrument. CESR also considered that this Article requires credit assessments to be based on all relevant available information.

The issuance of the two guidance follows two public consultations held by CESR in May 2010: one on enforcement practices for the ongoing supervision of CRAs (Ref. CESR/10-536), and another (Ref. CESR/10-537) on the common standards for assessing the compliance of credit rating methodologies with the requirement as laid down by the CRA Regulation. The feedback received by market participants was fed into the final CESR guidance.

Consultation on Guidance on the Enforcement Practices and Activities to be Conducted under Article 21.3(a) of the Regulation



Consultation on Guidance on Common Standards for Assessment of Compliance of Credit Rating Methodologies with the Requirements set out in Article 8(3)



## NEXT STEPS

The new Regulation on CRAs will require ESMA to draft regulatory technical standards also on the assessment of compliance of CRAs with the requirements set out in Article 8.3. Consequently, in the course of 2011, ESMA will continue to work on this area, with the aim to transpose, and where appropriate modify or supplement, the content of the concerned CESR's guidance into regulatory technical standards.

## CESR advises Commission on the equivalence of U.S. and Japanese legal and supervisory frameworks for CRAs

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

On 9 June 2010, CESR issued its second technical advice on the Japanese regime for CRAs (Ref. CESR/10-333), concluding that, overall, the Japanese legal and supervisory framework is equivalent to the EU regulatory regime for CRAs.

These assessments aimed at verifying that investors and users of ratings in the EU would benefit from equivalent protection, in terms of the integrity, transparency, good governance and reliability of the CRA, when the ratings are issued in these jurisdictions.

In contrary to its normal procedure, CESR has in this case not conducted a consultation with the market at large, given the nature of this particular advice and the fact that CESR was asked to deliver it in a very tight timeframe.

### Different approaches to CRA supervision across the Atlantic

CESR, however, assessed the ability of the U.S. legal and supervisory framework to achieve the main objectives of the relevant EU requirements. CESR considered the U.S. system to be stronger in some areas and weaker in others, in terms of its ability to achieve the relevant objectives. In this regard CESR highlighted in its technical advices that there are differences in terms of the philosophical approaches towards regulation and supervision between the U.S. and the EU. For example, the supervisory approach in the EU relies very heavily on upfront and detailed disclosure being made during the application process, demonstrating substantive policies that the applicant is required to adopt.

### Japanese system built on two tiers

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 CRAs 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. The second tier, which has become effective in 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.

Following CESR's technical advice, on 29 September 2010, the Commission has published its recognition (2010/578/EU) of the equivalence with the EU regime of the Japanese legal and supervisory framework for CRAs.

## CESR lays out guidelines for the central repository database for CRAs

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

According to the respective Article, Article 21.2 (d), of the Regulation, CESR was also requested to:

- define the standardised form in which CRAs shall provide such 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.



### OTHER OBJECTIVES SERVED

Convergence

Investor protection



### OTHER OBJECTIVES SERVED

Convergence

Investor protection

Pursuant to this mandate, 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 and established in the EU, alongside third-country CRAs that are certified according to Article 5 of the Regulation. The guidelines give indications to CRAs in order to submit their ratings data to the CEREP database. These specify the scope and definition of the data that CRAs have to deliver. Additionally, the guidelines provide information about the design and the intention of the CEREP to provide information investors and all other interested parties.

In order to help CRAs to comply with Article 11 of the Regulation and to introduce them to the reporting requirements established thereof, CESR organised a meeting with CRAs in July 2010, where it announced the timeline for the implementation of the CEREP and the details of the connectivity tests between CRAs and CESR. In addition, CESR has circulated to the CRAs a specific package, a so-called 'CRA Reporting Instructions', which illustrates the technical steps of the procedure to be followed by the reporting CRAs and the detail of the information concerning the ratings.

## NEXT STEPS

The new legislative text, which will amend the Regulation on CRAs, states that ESMA shall also draft regulatory technical standards on the information, including structure, format, method and period of reporting, that CRAs are obliged to disclose in accordance with the Regulation. This means that in the course of 2011, ESMA will have to work on transposing CESR's guidelines, and related documents, concerning the CEREP, into regulatory technical standards.



### CESR publishes annual update on the application of the CRA Regulation

#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

On 6 December 2010, CESR published an annual report on the application of the CRA Regulation (Ref. CESR/10-1424). The report serves the purpose to inform the public about the overall status of the application of the Regulation on CRAs in the EU and, in particular, to refer on the implementation of the requirements established in its Annex I.

At the time of writing the report the registration process was still pending for the large majority of the applications submitted by CRAs. Therefore, CESR only provided a high level description of the status of the application of Regulation, as it was not in the position to report in detail about the implementation of the requirements set out in Annex I of the Regulation. In fact, the final shape of the policies, procedures and arrangements adopted by the CRAs for the purposes of the Regulation will depend on the outcome of the interaction with the competent authorities as part of the supervisory assessments relating to the applications for registration submitted.

## POST-TRADING STANDING COMMITTEE



### OTC derivatives: CESR starts work on technical standards under EMIR

#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

During the first half of 2010, CESR participated in the Commission's working group for the preparation of the European Market Infrastructure Legislation project. The proposal for a Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) was published in September and is currently negotiated in the Council. In view of the number of EMIR technical standards to be drafted by ESMA, CESR already conducted internal preparatory work on the standards in parallel to the work undertaken by the Council. In this respect the ESMA formed three task forces dedicated to the specific areas covered by EMIR:

- OTC derivatives;
- CCP requirements; and
- Trade repositories.

## NEXT STEPS

In 2011 the Council and Parliament are expected to agree on the final version of EMIR. According to the proposed Regulation, ESMA will have to draft technical standards and then submit them to the Commission in June 2012. That said, ESMA expects to launch a call for evidence on the technical standards to be prepared, as well as to publish a consultation paper on them together with a cost-benefit analysis. ESMA will also be active in preparing for the new responsibilities assigned to it in the supervision of trade repositories and in the determination of the clearing obligation.

## CESR inputs into TARGET2-Securities settlement platform

In order to enhance the efficiency of cross-border settlement of securities transactions in the EU, the ECB launched the TARGET2-Securities (T2S) project in 2006. In 2010 the project moved from the specification phase to the development phase; the platform is expected to go live in 2014.

CESR has been involved in the project in various ways:

- by assessing the appropriateness of the T2S Framework Agreement for central securities depositories (CSDs) participating in the project;
- by advising the Commission on possible legal changes to ensure the proper functioning of T2S; and
- as co-chair of the group of supervisors and overseers preparing a co-operative framework for the monitoring of T2S services; and iv) as an observer in the T2S Advisory Group.

The future outsourcing of the settlement function by national CSDs to the T2S platform may require regulatory approval by several national competent authorities at different levels. EU securities regulators therefore intensified the dialogue with CSDs and the T2S Programme Board during 2010.

### Analysis of the T2S framework agreement

In 2010 CESR analysed the draft Framework Agreement to be signed between CSDs participating in T2S and the T2S operator. A separate dialogue was held between CESR and the T2S Programme Board on the one hand and between CESR and the CSDs participating in T2S on the other hand.

CESR sent observations on the Framework Agreement to the ECB. These mainly referred to the difficulty for CSDs to maintain full control of the outsourced functions, in view of the multilateral character of T2S and the role of the Eurosystem. Suggestions were provided to balance the situation. In particular, CESR commented on the contemplated liability regime and emphasised the need to ensure fair protection of all counterparties. This implies, for instance, that there should be no contractual limitation in the liability regime in case of gross negligence on the part of the Eurosystem and that there should be appropriate liability of the Eurosystem in case of ordinary negligence. CESR also focused its analysis on the need to ensure adequate powers to the competent authorities of participating CSDs, as regards access to relevant information and on-site inspections of T2S; the need for the Eurosystem to justify to competent authorities the refusal to implement changes requested by the CSDs; and the regulators' rights to examine T2S on an ad hoc basis. Suggestions were also provided on the management of the suspension and termination of the service. CESR did not comment on any commercial aspects of the agreement (e.g. pricing). CESR looks forward to follow up on these observations on the Framework Agreement and any amendments therein from a regulatory perspective.



### OTHER OBJECTIVES SERVED

Convergence

Investor protection

## CESR's advice to the Commission on legal issues related to CSDs participating in T2S

In 2010, CESR raised the Commission's attention to three major aspects related to T2S:

- Outsourcing;
- Finality of transfer orders; and
- Location of securities accounts.

On those issues, CESR recommended that the Commission makes appropriate proposals in the context of the Commission's legislative initiative on CSDs to facilitate a sound and safe legal framework under T2S.

## CESR's participates in co-operative framework for the supervision and oversight of T2S

In the beginning of 2010, CESR and the ECB agreed on a co-operative framework for the oversight and supervision of T2S in the development phase. This framework involves all central banks and securities regulators responsible for the oversight and supervision of CSDs outsourcing their settlement services to T2S.

The main aims of the co-operative framework are to:

- support the assessment of the soundness and efficiency of T2S as a critical infrastructure;
- enable the oversight and supervision of CSDs outsourcing to T2S;
- assist non-euro issuing central banks in monitoring transactions settled in their currencies in T2S; and
- promote co-operation and co-ordination amongst competent authorities.

A pre-assessment of the T2S arrangements against the ESCB-CESR Recommendations on Securities Settlement Systems was initiated in 2010 and a pre-assessment report is expected to be completed in 2011. As foreseen in its current version, the co-operative framework will be revised ahead of the launch of T2S.

### NEXT STEPS

T2S is expected to 'go live' in 2014. ESMA will follow the evolution of the draft Framework Agreement during 2011. Once all relevant documentation has been finalised, the central banks and securities regulators will conduct a full assessment of the T2S arrangements.

## IT MANAGEMENT AND GOVERNANCE GROUP

### CESR kicks-off OTC derivative transaction reporting



#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

The Markets in Financial Instruments Directive (MiFID) gives securities regulators the power and obligation to collect transaction reports on instruments admitted to trading on regulated markets. Transaction reporting is a key element used in the detection and investigation of suspected instances of market abuse, such as insider trading and market manipulation. Transaction reporting allows European supervisory authorities to monitor the activities of investment firms and to reduce financial crime and thereby helps investors to maintain confidence in community financial markets.

The Transaction Reporting Exchange Mechanism (TREM) of CESR came into being in November 2007 to implement the reporting regime set out by MiFID.

Following the introduction of MiFID, many supervisors noted that there is a range of OTC financial instruments that mirror instruments admitted to trading on regulated markets that could equally be used for the purpose of market abuse which do not fall under reporting obligations.

Therefore, CESR Members decided both to set up a dedicated Task Force to define guidance and to launch an IT project to amend TREM to facilitate the exchange of transaction reports on OTC derivative instruments amongst the 29 national supervisors, with a view to enhancing their ability to detect suspicious activity and maintain the integrity of their markets.

### CESR consults to define guidance

In 2009, CESR agreed on the outline of the exchange, notably the type of OTC derivative instruments to fall under transaction reporting. To foster further harmonisation, CESR in January 2010 consulted (Ref. CESR/10-768) on draft guidance to investment firms to report transactions in those instruments. The consultation built on CESR's previous decision on the technical standards to be used for classification and identification of OTC derivatives (Ref. CESR/09-1036).

CESR published the feedback statement (Ref. CESR/10-512) and the final guidance document (Ref. CESR/10-661) on 8 October 2010. That guidance sets out common standards for consistent collection of data from investment firms. It defines and explains, for each derivative instrument type, how the fields of transaction reports should be populated to represent in a harmonised manner the execution of a transaction on such instruments.

### New version of TREM goes live on 1 December

The IT project to amend TREM was launched in October 2009 with the financial assistance of the Commission. The updated detailed functional specifications were signed off by CESR's IT Governance and Management group of CESR at the beginning of May 2010. Improvements were made to the central components facilitating the exchange of files between CESR Members (the hub).

Beyond its main objective – enabling national supervisory authorities to exchange transactions on OTC derivatives – the project also aimed at improving the quality of both transaction data exchanged among regulators and instrument reference data received from regulated markets and eventually stored in a Reference Data System (RDS). To facilitate harmonisation, CESR promoted the usage of BIC and MIC ISO standards for transaction reporting purposes and organised a central distribution of SWIFT reference data. The latter was therefore upgraded so as to collect and distribute reliable, up-to-date and harmonised reference data to CESR Members for a better 'straight-through' processing of transaction reports.

CESR Members tested both the central components and their local transaction reporting system during the last quarter of 2010.

After the first version of TREM that was launched in November 2007 and the second release that included 'Aii' derivatives in the exchange in the course of 2008, TREM's v3.0 went live successfully, on 1 December 2010.

## NEXT STEPS

CESR acknowledges that other initiatives are running in parallel in this area and that the OTC market generally is extremely dynamic. Consequently, CESR's guidelines will be changed and/or replaced by new ones if so necessary, depending on the future outcomes of parallel studies and the evolution of the market. These guidelines to report transactions on OTC will be updated according to its protocol of revision (Ref. CESR/10-663). Additionally, CESR has been following very closely and contributing to the ongoing MiFID review. Although TREM might already be ready to support the likely extension of reporting obligations to OTC derivatives in the coming years, ESMA will take over from CESR and will keep up with the evolution of the Directive, notably all amendments that could be introduced in the transaction reporting part of it.





## CESR implements central repository for credit ratings

### OTHER OBJECTIVES SERVED

Convergence

Investor protection

According to the Regulation on Credit Rating Agencies published on 17 November 2009 (EC/1060/2009), CESR shall, among other tasks:

- Establish a central repository (CEREP) 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 after the consultation period. The IT system itself has been implemented during 2010.

A CESR task force formed by Members of both CESR's CRAs Standing Committee and its IT Management CESR Group worked on the methodological and technical details for the collection of rating data from CRAs and the compilation of the CEREP statistics. In 2010, the task force put forward:

- The CEREP Functional Specifications, the document containing all the technical details of the system, was finalised in May 2010;
- The CESR guidelines for the implementation of the Central Repository (CEREP) on common standards on the presentation of historical performance data, published on 4 June 2010; and
- The CRAs Reporting Instructions as a basis for programming or amending CRAs' IT systems on 8 July 2010, slightly updated at the end of 2010.

CESR held a kick-off workshop with the CRAs on 8 July to inform them about the project timetable and planning and a seminar was organised the 9 September 2010 with all CRAs to facilitate the implementation phase of the project for CRAs. The seminar dealt with reporting instructions, explaining the documents to the agencies that are containing all the details necessary for them to provide to the CEREP system.

In parallel, CESR advanced the IT project and the technical implementation of the IT system. The network layer for communication between the CRAs and CESR was tested during the summer of 2010, together with the CRAs.

### CEREP to increase transparency and investor protection

Two main arguments led to the creation of the CEREP: one of them being market participants' claim of a lack of transparency of CRAs with regard to the information provided on historical performance data, e.g. rating transitions and default statistics. In particular, it was indicated by market participants that the data presented by CRAs were not always complete and that there were differences in their approaches to collecting and presenting the data. The other argument centres around the CRA Regulation's request to enhance transparency on ratings and to contribute to the protection of investors by providing information on the past performance of CRAs and about credit ratings issued in the past. The very idea is that relevant information on the CRAs' performance is being made public by ESMA in a standardised form. In addition, ESMA will publish annual summaries on the main developments observed on this information.

The main purposes of the CEREP are:

- to enhance transparency: provide complete, standardised and consistent data;
- to protect investors: facilitate the comparison of rating performances of CRAs; and
- to help regulators to assess developments with regard to CRAs' annual reports.

CRAs that are registered in compliance with the EU Regulation as well as CRAs that were certified in compliance with the Regulation will have to provide their data to the CEREP. The CRAs will be ultimate responsible for the accuracy and completeness of the data sent.

## NEXT STEPS

The CRAs will test the CEREP and their reporting systems during the first semester of 2011. The go-live of the system is projected for 1st July 2011. Investors will have access to the statistics in October 2011. Guidelines and reporting instructions will be transformed into technical standards during 2011. From then on, the CEREP system will collect centrally data on credit ratings issued by credit rating agencies that are registered in compliance with the EU Regulation, on credit ratings that are endorsed by a registered CRA, and on credit ratings issued by CRAs that have been certified in compliance with the Regulation. In addition, CEREP will collect credit ratings issued in a third country by CRAs not certified or registered in the Community but belonging to the same group of CRAs as a registered one, if these ratings are provided to CEREP on a voluntary basis. The CEREP will calculate performance and rating statistics for pre-defined periods of time in a harmonised manner and will disclose them for public access through the CEREP's website. By so doing, the CEREP will contribute to reduce the information costs for searching and processing the data for both market participants and regulators. Reduced information costs create an incentive for market participants to conduct more comprehensive analyses of a CRAs' rating performance. This should help them to better assess the reliability of credit ratings and CRAs, and thereby assist them when taking investment decisions.

## Market transparency

### SECONDARY MARKETS STANDING COMMITTEE

#### CESR updates its protocol for the operation of the MiFID database

The operation of the MiFID market transparency regime involves making certain information regarding shares admitted to trading in the EU available to market participants; the regime requires national competent authorities to make certain calculations regarding shares admitted to trading on a regulated market and to some extent also to 'liquid shares'. CESR's protocol for the operation of the MiFID database (Ref. CESR/09-172d) describes the tasks and responsibilities of the national competent authorities and CESR staff respectively, leaving the calculation and collection of the data to national authorities whereas CESR makes publically available the data on a distinctive database. Additionally, the protocol contains practical guidance on how to conduct the calculations as well as the necessary technical instructions.

#### Calculation method amended, broader scope proposed under ESMA

In 2010, CESR considered it necessary to review its protocol twice so as to comply with the MiFID Implementing Regulation which refers to the use of Community wide data in the calculations to be made after the first trading day of March 2009. In the first amendment published on CESR's website on 1 March 2010 (Ref. CESR/09-172c) it was noted that, as an interim procedure applicable only for a transitional period for the 2010 calculations, not only data from the regulated markets (as before) but also data from the three most relevant MTFs would be used.

The second update of the protocol (Ref. CESR/09-172d) published in December 2010 expanded the number of MTFs whose data will be used for the calculations in 2011. This system is aimed at staying in place with minimum amendments, such as inclusion of data from additional MTFs, until (and provided that) the regulatory proposals included in CESR's advice to the Commission on equity markets in the context of the MiFID review (Ref. CESR/10-802) come into force. That advice recommends amending MiFID to require each regulated market, MTF and Approved Publication Arrangement (APA) for OTC data to provide data free of charge to the relevant competent authority and, where appropriate, to ESMA for market transparency calculations.



#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

Market efficiency

The 2010 annual review of the data published in the MiFID database was undertaken in spring. The new calculations which became valid from 1 April 2010 were published at the beginning of March 2010. The results of the calculations were published by CESR. In order to fulfil the requirements, a specific MiFID database has been set up for this purpose as a part of the CESR website. The database can be accessed through:

<http://mifiddatabase.esma.europa.eu/>

## NEXT STEPS

ESMA will revise the Protocol in light of the outcome of the MiFID review and the improvements in the quality of market data so as to broaden, as much as possible, the data used for the calculations.



### MiFID review: CESR advises the Commission on MiFID equity markets review

On 13 April 2010, CESR published a consultation paper on its technical advice to the Commission in the context of the MiFID review on equity markets (Ref. CESR/10-394). CESR also invited stakeholders to comment on its proposals by 31 May 2010. Having analysed 77 written responses to its consultation and the feedback provided in a public hearing on the proposals, CESR published its technical advice to the Commission on the MiFID equity markets review (Ref. CESR/10-802) on 29 July 2010. This advice took stock of CESR's previous report on the impact of MiFID on equity secondary markets functioning (Ref. CESR/09-355) where CESR had identified the key elements of the fundamental restructuring of European financial markets since MiFID's entry into force, such as greater competition and more pan-European trading, the emergence of dark pools, consolidation between exchanges, improvements in trading technology, algorithmic trading and new clearing arrangements.

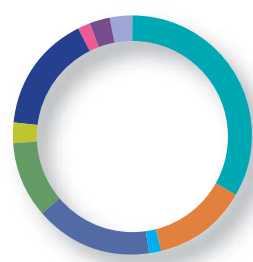
#### OTHER OBJECTIVES SERVED

Technical advice and reporting to EU institutions

Market integrity

Market efficiency

Consultation on CESR's advice to the Commission in the context of the MiFID Review – Secondary Markets

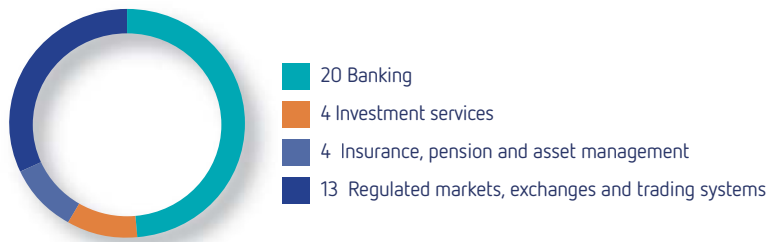


23	Banking
9	Investment services
1	Issuers
11	Insurance, pension and asset management
7	Investor relations
2	Government, regulatory and enforcement
11	Regulated markets, exchanges and trading systems
1	Legal and accountancy
2	Individuals
2	Press

CESR's advice was the outcome of continued work on issues identified in European equity markets and marked the culmination of more than 20 months of work by CESR, besides the consultation, including:

- a call for evidence on the impact of MiFID on secondary markets functioning (Ref. CESR/08-872);
- a call for evidence on micro-structural issues of European equity markets (Ref. CESR/10-142); and
- other fact finding exercises, roundtables with market participants, such as a public hearing on the proposals put forward in the consultation and presentations held for stakeholders. A feedback statement was published on 13 October 2010 (Ref. CESR/10-975).

### Consultation on CESR's advice to the Commission in the context of the MiFID Review – Secondary Markets



However, the main issues addressed in CESR's advice can be summarised under the following headings:

#### Retaining the pre-trade transparency regime for RMs/MTFs

CESR recommended retaining the general requirements for pre-trade transparency on organised markets (RMs/MTFs). However, exceptions from pre-trade transparency should continue to be allowed under certain circumstances.

In order to provide greater clarity for regulators and market participants and facilitate continuous supervisory convergence, CESR suggested moving from a 'principle based approach' of waivers from pre-trade transparency, to an approach that is more 'rule based'. In addition, CESR recommended that the Commission provides ESMA with specific powers to monitor and review the pre-trade transparency waivers going forward and to develop binding technical standards (BTS) in this regard.

Regarding particular waivers, CESR recommended the Commission to undertake further analytical work based on empirical data to determine whether the existing large-in-scale (LIS) thresholds should be revised. CESR also recognised the need for a harmonisation of the treatment of 'stubs' under the LIS waiver and recommended to clarify that venues using the reference price waiver should not embed a fee in the price of trades. With respect to the existing wording of the waivers, CESR committed to continue to work on appropriate clarifications which may, as appropriate, be included in BTS at a later stage.

In addition, CESR recommended that MiFID be amended to clarify that actionable indications of interest (IOIs) are considered to be orders and as such, subject to pre-trade transparency requirements.

#### Definition of and obligations for systematic internalisers

CESR recommended that the Commission clarifies the objective of the Systematic Internaliser (SI) regime and considers a broader review of this regime within the MiFID review, including further consideration of whether to establish appropriate thresholds for the material commercial relevance of the activity to the market and whether to retain/remove the price improvement restriction.

Notwithstanding the recommendation for a broader review, CESR saw value in some clarifications to ensure consistent understanding and implementation of the regime, as well as in some specific amendments to the regime to improve the value of information provided to the market. CESR therefore recommended clarifying the criterion 'according to non-discretionary rules and procedures' in the definition of an SI and (inter alia) revising the SI obligations to require two-sided quotes and minimum quote sizes.

#### Retaining the post-trade transparency regime, but new standards on data quality

CESR recommended retaining the current framework for post-trade transparency but introducing formal measures to improve the quality of post-trade data, shorten delays for regular and deferred publication and reduce the complexity of the regime. Additionally in this area, a joint CESR/Industry Working Group developed detailed proposals for binding post-trade transparency standards and guidelines on the obligations for post-trade transparency. Both pieces were delivered to the Commission as CESR's technical advice on

post-trade transparency standards in the context of the MiFID equity markets review (Ref. CESR/10-882) in October 2010.

As a supplement to the introduction of new standards on data quality and guidelines on trade publication, CESR recommended in its advice on equity markets requiring investment firms to publish their OTC trades through Approved Publication Arrangements (APAs). All APAs would be required to operate data publication arrangements to prescribed standards.

### Enhancing transparency obligations to equity-like instruments

CESR recommended to enhance the scope of the MiFID transparency regime by applying the same transparency obligations to equity-like instruments admitted to trading on an RM, including depository receipts, exchange-traded funds 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 found it beneficial for investors to enjoy the same transparency stemming from a harmonised pan-European pre- and post-trade transparency regime for these instruments.

### Need for a regulatory framework for consolidation and cost of market data

CESR recognised that significant barriers to the consolidation of post-trade data remain and that, without further regulatory intervention, it seems unlikely that market forces will deliver an adequate and affordable pan-European consolidation of transparency information. CESR therefore recommended that a European consolidated tape be mandated and its main features be outlined in MiFID. Regarding the technical implementation, CESR recommended a solution involving the industry within a clear scope and relatively short timeframe set by the Commission and ESMA. The process for the development of the European consolidated tape by the industry should be launched and progress and implementation monitored by ESMA. In case of non-delivery at any stage of that process, MiFID should identify a clear course of action and require the establishment of a mandatory single European consolidated tape run as a not-for-profit entity on the basis of terms of reference and governance to be set out by ESMA.

### Regulatory boundaries and requirements

In its advice, CESR addressed concerns about certain inconsistencies which may have impacted the level playing field. It was recommended that the requirements which apply to RMs and MTFs under MiFID be further aligned.

As regards broker crossing systems (BCSs), CESR recommended that a new regulatory regime with tailored additional obligations be introduced for investment firms operating such systems. This would include: notification by investment firms that they operate a BCS; publication of a list of BCSs; a requirement for a generic BCS identifier in post-trade transparency information; publication of aggregate trade information at the level of each BCS at the end of the day; and identification of BCSs in transaction reports. CESR also acknowledged concerns expressed by some market participants and regulators about the speed of growth of BCSs and the potential impact of these OTC markets on price formation in the future. It was therefore recommended to impose a limit on the amount of business that can be executed by BCSs. CESR also offered assistance to the Commission in the refinement of these proposals.

### MiFID options and discretions

CESR identified certain options and discretions within MiFID's markets provisions and consulted on the desirability of eliminating them or turning them into rules. CESR recommended retaining the discretion regarding the use of pre-trade transparency waivers and also retaining the role of CESR/ESMA in considering the use of the waivers to ensure their consistent and reasonable use. Taking the feedback from the consultation into account, the discretion of Member States to choose some of the criteria to define liquid shares and the discretion regarding requirements for admission of units in collective investment undertakings to trading on a RM should also be retained. However, CESR's advice saw merit in converting the discretion of Member States under Article 22(2) of MiFID into a rule by prescribing that investment firms comply with their obligation to make an unexecuted client limit order immediately public by transmitting it to a pre-trade transparent RM/MTF.

## Micro-Structural issues

CESR published in April 2010 a Call for Evidence on Micro-Structural Issues of the European Equity Markets (Ref. CESR/10-142) on a number of technology-driven developments such as high frequency trading, sponsored access, co-location, fee structures, tick size regimes and indications of interest.

In its technical advice on equity markets, CESR set out the key themes emerging from this Call for Evidence and proposed an action plan for further work in this area. CESR also recommended that the Commission amends MiFID to include specific references to ESMA competencies to develop BTS on RMs'/MTFs' organisational requirements regarding sponsored access, co-location, fee structures and tick sizes, as appropriate.

## Other MiFID provisions related to secondary markets

Since the activity of MTFs in host Members States has become increasingly significant post-MiFID, CESR recommended extending the obligation in Article 56(2) of MiFID for competent authorities to cooperate, such that it extends to the activities of MTFs as well as RMs.

## NEXT STEPS

ESMA will continue working on identifying the need for regulatory reaction to the technological developments identified in its work stream on micro-structural issues. Pending the revision of MiFID, ESMA will consider dealing with some of these issues under ESMA guidelines and recommendations. Additionally, ESMA will provide further advice on the MiFID review, as appropriate.

## MiFID review: CESR advises on non-equity instruments

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 its response sent to the Commission on non-equities transparency (Ref. CESR/07-284b) in August 2007 and in CESR's report on transparency of corporate bond, structured finance products and credit derivatives markets (Ref. CESR/09-348), published in July 2009.

CESR's positions in this area have evolved over time. In CESR's response of August 2007, it was concluded that at that time, there was no evident market failure in respect of market transparency on corporate bond markets and that, in CESR's view, there was no need of a mandatory pre- or post-trade transparency regime. However, when CESR re-examined the need for additional transparency in the wake of the financial crisis (Ref. CESR/09-348), it concluded that additional post-trade information would be beneficial to the market.

On 7 May 2010, CESR issued a consultation paper (Ref. CESR/10-510) in the context of the MiFID review dealing with transparency in non-equity markets. During the consultation period, CESR held a public hearing on some of the proposals outlined in this consultation paper. 48 responses were received to the consultation. A feedback statement was published on 13 October 2010 (Ref. CESR/10-851).



### OTHER OBJECTIVES SERVED

Technical advice and reporting  
to EU institutions

Market integrity

Market efficiency

### Consultation on CESR's advice in the context of the MiFID Review: Non-equity markets transparency



CESR's technical advice to the Commission in the context of the MiFID review on non-equity markets transparency (Ref. CESR/10-799) went beyond CESR's previous reports in several aspects. Firstly, it included within its scope sovereign Credit Default Swaps (CDSs) and 'public bonds'. Since other derivatives than CDS were not analysed in the past, CESR also explored the possibility of a post-trade transparency regime for the most significant subset of these financial instruments: interest rate derivatives, equity derivatives, foreign exchange (FOREX) derivatives and commodity derivatives. At the request of the Commission, CESR also considered whether there is a need for pre-trade transparency for corporate bonds, Asset Backed Securities (ABS), Collateralised Debt Obligations (CDOs), CDS and the other derivatives mentioned above.

The main recommendations were:

#### Re-defining the scope of a post-trade transparency regime for bonds

CESR proposed that the MiFID post-trade transparency regime should cover the majority of the bond universe which would include not only corporate bonds, but also public bonds, i.e. bonds issued by public entities such as sovereign bonds, government bonds and regional bonds, for which a prospectus has been published (i.e. including all bonds admitted to trading on EEA RMs), or which are admitted to trading on either a RM or an MTF. It was proposed that the corporate bond regime should cover bonds, exchangeable bonds, convertible bonds and Spanish 'participaciones preferentes'.

The recommendation for the thresholds and delays for publishing the trade information on corporate and public bonds was based on three bands depending on trade size with their corresponding delays. As an example of its proposals, CESR recommended real-time reporting of price and volume for transactions in public bonds for trade sizes below € one million, whereas for transactions between one and five million, the price and volume of the transaction should be made public at the end of the trading day. For transactions above € five million, information on the price, but not the volume of the transaction, should be disclosed at the end of the trading day, with an indication that the transaction has exceeded the € five million threshold.

A similar proposal was made for corporate bonds where real-time reporting should take place for transactions of a size between € 500,000 and one million.

#### Phased approach for introducing a post-trade transparency regime for structured finance products

CESR recommended that the transparency regime for structured finance products (SFPs) should cover all ABS and CDOs for which a prospectus has been published, i.e. including all ABS and CDOs admitted to trading on EEA RMs, or which are admitted to trading on an MTF. Due to the perceived illiquidity of these markets, CESR recommended that the transparency requirements should be introduced in a two step approach. In the first phase, all the instruments rated as AAA, AA or A (or any equivalent terminology used by other credit rating agencies) should be covered. For the instruments covered in the first phase, price and volume of transactions below € five million should be publicly disclosed at the



end of the trading day, whilst for transactions above that size, information on the price but not the volume, with an indication that the transaction has exceeded the € five million threshold, should be disclosed at the end of the trading day. In the second phase, the rest of the SFP universe should be covered.

### Extending the scope of disclosure to sovereign CDS

In its July 2009 report, CESR proposed to include within the scope of a mandatory post-trade transparency regime all CDS contracts which are eligible for clearing by a Central Counterparty (CCP) due to their level of standardisation. Following the support market participants gave in their responses to the public consultation, CESR proposed to extend the regime also to sovereign CDS.

Basing again the different reporting bands on the transaction size, CESR proposed a different regime for single name and sovereign CDS, for which, as an example, real time reporting of price and volume was set out for transactions of a size below € five million, and for index CDS, for which their larger average trade size was considered and the threshold was raised to transactions of a size below € ten million.

### Enhancing post-trade transparency of derivatives markets

Despite the difficulties in providing technical advice on these markets, given the heterogeneity of all the OTC derivative segments included in the analysis, CESR is of the view that enhancing post-trade transparency for these assets would assist market participants in making investment decisions as well as in supporting more resilient and transparent markets in general. As a result, CESR recommended to the Commission that a harmonised post-trade transparency regime for these assets should be developed in the near future. CESR also offered assistance to the Commission in calibrating a regime for these assets which would take into consideration the different features of the markets in question.

### Conducting a post-implementation review

As a general standpoint, CESR is of the view that the calibration of publication thresholds and related time delays for the instruments covered in its advice should ideally be based on the liquidity of each asset in question. Unfortunately, due to the largely OTC nature of these markets, trading data which could reliably have been used to robustly calibrate a regime was impossible to retrieve. As a consequence, CESR recommended that, at this stage, calibration should be based on the average trading size of each of the markets in question and made a proposal for each asset class.

However, CESR assumes that this information will quickly become available once the regime has been implemented. CESR therefore saw a need to undertake a post-implementation review (for all asset classes) with a view to reaching conclusions one year after introducing the new transparency obligations.

### Introducing pre-trade transparency requirements for non-equity financial instruments traded on RMs and MTFs

In its advice, CESR stressed that there is currently an uneven playing field in the EEA in respect to the provision of pre-trade transparency information for financial instruments other than shares. CESR therefore recommended that given their growing importance current voluntary arrangements should be put on a formal footing and that a compulsory harmonised pre-trade transparency regime be introduced. The regime should apply to RMs and MTFs with respect to the non-equity instruments traded on these platforms. Similar to the pre-trade transparency regime for equity markets, this regime would need to be refined to provide appropriate pre-trade transparency standards for various market structures and trading models, taking into account the various instruments and asset classes traded. As for equity markets, this may also involve the provision of appropriate waivers.

Given the different characteristics of the wide range of products concerned, each with its respective market micro-structure and the varying degree of liquidity exhibited in these markets, CESR did not, at that stage, propose introducing mandatory pre-trade transparency

requirements to the OTC space. Nevertheless, CESR would welcome that any future regime allows Member States to introduce local requirements if they deem them to be necessary given the specificities of their markets.

## NEXT STEPS

ESMA will collaborate with the Commission in the development of the new MiFID framework, as appropriate.



### CESR provides additional information in relation to the MiFID review

#### OTHER OBJECTIVES SERVED

Technical advice and reporting to EU institutions

Market integrity

Market efficiency

On 13 April 2010, CESR received from the Commission a letter requesting additional factual information and policy advice on several areas related to the MiFID review. Whereas some of the topics addressed by the Commission were connected to the work streams on equity markets and non-equity markets transparency, others were not included in previous CESR work streams.

Therefore, CESR also provided its views on transaction and position reporting on OTC derivatives and the scope of the transaction reporting obligations on the basis of the public consultation launched in July 2010 (Ref. CESR/10-809). In addition, the responses covered factual information and views on position reporting requirements and position limits in commodity markets.

Consultation on Transaction Reporting on OTC Derivatives and Extension of the Scope of Transaction Reporting Obligations



### Using trade repositories for transaction and position reporting of OTC derivatives

CESR suggested defining a new position reporting regime through trade repositories, as foreseen in the Commission proposal for a regulation on OTC derivatives, central counterparties and trade repositories (COM(2010) 484/5) and recommended recognising trade repositories in the MiFID review as reporting mechanisms through which investment firms will be able to fulfil their transaction reporting obligations.

### Extending the scope of transaction reporting obligations

In that respect, CESR also suggested extending the scope of transaction reporting obligations to financial instruments admitted to trading only on MTFs and to certain OTC derivatives.

The key purpose behind this advice is to align the transaction reporting obligations in MiFID with previously announced intention of the Commission to extend the scope of the Market Abuse Directive to financial instruments admitted to trading and/or traded on an MTF but not on a RM. By putting forward the proposal to include certain OTC derivatives into the scope of transaction reporting obligations, CESR aimed at enhancing competent authorities' ability to detect suspicious activity and to maintain the integrity of their markets.

## Further assessing the need for position limits

CESR also recommended Commission to analyse whether exchanges/regulators have a sufficiently extensive set of powers to manage positions across the entire life of commodity derivatives market contracts and on setting up a harmonised set of powers for them in European legislation.

CESR, however, stated in its advice that it remains to be further assessed whether or not position limits are suited to achieving the objectives of reducing volatility or limiting the impact that large positions may have on market prices.

## Extending the reporting obligations to commodity markets firms

In its advice to the Commission, CESR noted that significant alternative reporting methods already exist through which regulators can obtain information on the transactions and positions of commodity markets firms currently exempted under Articles 2(1)(i) and (k) of MiFID through methods such as reporting by market operators. Accordingly, arrangements are in place to mitigate the potential gaps arising from the current exemption of certain firms from MiFID reporting requirements. In addition, in the future, regulators may also receive relevant data on commodities markets positions of firms exempted from MiFID through trade repositories, depending on the application of the future EU regulation on OTC derivatives, central counterparties and trade repositories to non-financial firms and the determination of the related information thresholds.

While extending a general transaction and position reporting obligation to commodity markets firms exempted under MiFID would have the benefits of standardising reports and offer regulators a 'whole market' view, CESR stated that the extent of such benefit would depend on the significance of any gaps left by the alternative reporting arrangements described above. CESR also noted the cost such an extension would involve to both firms and to regulators need which would be taken into consideration.

## MiFID review: more standardisation and organised platform trading of OTC derivatives

On 19 July 2010, CESR published a consultation paper on 'Standardisation and Exchange Trading of OTC Derivatives' (Ref. CESR/10-610). That document framed in a number of regulatory initiatives launched after the financial market turmoil to address the problems identified in relation to the derivatives that are traded OTC.



### OTHER OBJECTIVES SERVED

Convergence

Investor protection

### Responses received to consultation on Standardisation and exchange trading of OTC derivatives



In line with the Commission's communication 'Ensuring efficient, safe and sound derivatives markets: Future policy actions' (COM (2009) 332 final), CESR explored the need for further standardisation for credit, equity, interest rate, commodity and foreign exchange derivatives. CESR also consulted on whether further standardisation should be recommended, to promote trading of these derivatives on organised markets and gave its opinion on the benefits and limitations of such trading.

CESR received 58 responses to the consultation and held an open hearing with market participants on August 11. A feedback statement was published on 21 December 2010 (Ref. CESR/10-1210) summarizing the feedback received.

CESR released its technical advice 13 October 2010 (Ref. CESR/10-1096) where the following key messages were contained:

## More standardisation

In its advice, CESR considered the current level of transparency in OTC trading unsatisfactory and a higher level of legal, operational and product standardization, including increased use of electronic confirmation systems, can be achieved and would be beneficial for operational efficiency and the reduction of systemic risk.

CESR found market participants should develop further legal and product standardization and aim at more automated trading processes, but did not recommend, at that stage, mandating as such the use of electronic confirmation systems. Standardisation should hence not be understood as purely electronically confirmed contracts, but rather ambitious targets to be set aiming at increased, high-level of standardisation and electronic confirmations in order to achieve more straight-through processing.

CESR was also of the view that European regulators, with appropriate involvement by ESMA, should be involved in international fora where such issues are discussed to ensure consistency of approaches and a level playing field.

CESR proposed that ESMA should launch a process to set targets by asset class for increased legal, process and product standardisation, and to make arrangements to monitor the industry developments. In case the targets were not met, appropriate mandatory regulatory intervention should be adopted by ESMA, in conjunction with EEA national regulators, to lead to their achievement by the industry.

## Fostering trading on organised platforms

In relation to trading on venues offering an organised trading environment, CESR considered that the current situation is unsatisfactory and stated that trading of standardised derivative products on organised trading venues is to be incentivised by regulators, even though not mandated at that stage. It was proposed that ESMA should develop carefully defined industry targets, with arrangements to monitor the achievement of those targets. In case the targets were not met, appropriate mandatory regulatory action should be adopted by ESMA to ensure their achievement by the industry.

In CESR's view, it was clear that increased market transparency and operational efficiency are, as a minimum, necessary to meet the G20 objectives, i.e. that "all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate". In addition, CESR considered that it may be necessary to incorporate further functional characteristics into the definition of an organised trading venue, based on a fuller assessment of their role in furthering the G20 objectives. Such characteristics may already include some or all of the requirements set out for RMs/MTFs in MiFID, e.g. easy and non-discriminatory market access, non-discretionary and transparent rules, objective criteria for the efficient execution of orders.

As an initial conclusion, CESR considered that RMs and MTFs, as defined by MiFID, would meet the full range of functional characteristics necessary to meet the G20 objectives (e.g. easy and non-discriminatory market access, non-discretionary and transparent rules) and, accordingly, would unequivocally meet the objectives of the G20.

In legislative terms, it was proposed that the key objective of ESMA's further work should be to determine whether other trading platforms, in addition to RMs and MTFs, meeting certain criteria, may qualify as organised trading venues.

In order to effectively design, implement and oversee a system of targets, CESR proposed that ESMA be appointed to fulfil these functions. ESMA's responsibilities would include:

- the determination of the eligible derivatives to be covered by the targets;
- the determination of the targets: in particular the proportion of business in eligible derivatives that should take place on organised trading venues over a specified period of time (expressed as a percentage of total business by relevant participants in Eligible Derivatives over the same period of time); and
- the publication of the targets and general statements, at an appropriate juncture, regarding the compliance or non-compliance of industry with the targets.

In case the targets are not met, appropriate mandatory regulatory intervention should be adopted by ESMA, in conjunction with EEA national regulators, to ensure their achievement by the industry. The core principles of the objectives pursued and the approach taken by regulators to incentivise trading of standardised OTC derivatives on organised venues should be set in regulatory measures.

## NEXT STEPS

ESMA will collaborate with the Commission in the development of the new MiFID framework as appropriate.

## CESR assesses compliance of two new proposals for MiFID pre-trade transparency waivers

On 26 June and 22 December 2010, CESR updated its waiver document first published in May 2009 (Ref. CESR/09-324). The documents includes the assessments of proposals for pre-trade transparency waivers for trading systems and order types that are intended to be used by RMs and MTFs under MiFID.

The MiFID compliance of these functionalities has been assessed at CESR level on the basis of the joint process that CESR launched in February 2009. Although the legal responsibility for granting the waivers lies with the national competent authorities, it has been agreed that when an operator of a RM 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 national competent authority. However, only waivers that have been considered at CESR level after the establishment of this process in February 2009 are included. This has been 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. This procedure will be upheld by ESMA.



### OTHER OBJECTIVES SERVED

Convergence

## NEXT STEPS

ESMA 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 ESMA level.

## CORPORATE REPORTING STANDING COMMITTEE

### Financial reporting in times of crisis

The financial crisis had a major impact on the financial position and performance of publicly traded companies, particularly those in the financial sector. The goal of strengthening investor confidence will require improved transparency on the actual financial situation of financial companies. CESR published three reports with this objective in mind in 2009, resulting in a follow-up report published in 2010.

In this follow-up report CESR restates its commitment to report to the market on the subsequent developments in the area of financial instruments disclosures under International Financial Reporting Standards (IFRS) and presents the main enforcement actions taken by European regulators with respect to 2008 financial statement disclosures and the effects those actions had on companies' 2009 financial statements. CESR welcomed the improvements made by the issuers while strongly encouraging financial institutions to continue to enhance or maintain their levels of transparency in the future.

### Enforcement of IFRS

Working under the banner of CESR, the European Enforcers Co-ordination Sessions (EECS) is a forum in which all EU National Enforcers of financial information, whether CESR Members or not, meet to exchange views and discuss experiences of enforcement of IFRS. A key function of EECS is the analysis and discussion of decisions taken by independent EU National Enforcers in respect of financial statements published by issuers with securities traded on a regulated market and who prepare their financial statements in accordance



### OTHER OBJECTIVES SERVED

Convergence

with IFRS. The objective of these meetings is to share and compare practical experience in the fields of accounting and enforcement in order to achieve harmonisation and coordination of future decisions. Another objective is to identify issues which are not covered by financial reporting standards, or, which may be open to conflicting interpretations for referral to standard setting, or, interpretative bodies such as the International Accounting Standards Board (IASB) and the IFRS Interpretations Committee.

A total of eight regular meetings were organised in 2010 and two further meetings with IFRS Interpretation Committee Members.

In 2010, EECS has published its activity report on IFRS enforcement activities in Europe (CESR/10-917). The document provides an overview of the monitoring and enforcement structures and processes and level of co-ordination of such activities as a consequence of the crisis. It also reports on the main areas of focus in enforcement either as a result of such areas becoming of heightened significance because of reporting during the financial crisis or because of the complexity of the transactions concerned.

CESR published two extracts from its database of enforcement cases. Publication of enforcement decisions aims to inform market participants about which accounting treatments EU National Enforcers consider as complying with IFRS; that is to say, whether the treatments are considered as being within the accepted range of those permitted by the standards or interpretations. Such publication, together with the rationale behind such decisions, contributes to a consistent application of IFRS in the European Union.

## NEXT STEPS

EECS is due to meet eight times in 2011 to discuss enforcement decisions taken by its Members and will continue to publish extracts of the EECS database on a regular basis. The Group will continue to seek further ways to improve enforcement activities in order to contribute to the co-ordination and harmonisation of IFRS applications in Europe.



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

### OTHER OBJECTIVES SERVED

Convergence

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 ensuring the integrity of markets through preserving transparent reporting. CESR continues to monitor 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 CESR Member's views – both as securities regulators and enforcers of accounting information.

In this capacity, CESR regularly provided 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 decision: *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*;
- ED *Fair Value Option for Financial Liabilities*;
- ED *Conceptual Framework for Financial Reporting: the Reporting Entity*;
- ED *Fair Value Option for Financial Liabilities*;
- ED *Measurement Uncertainty Analysis Disclosure for Fair Value Measurements*;
- ED *Defined Benefit Plans (proposed amendments to IAS 19)*;
- ED *Presentation of Items of Other Comprehensive Income*;
- ED *Revenue Recognition from Contracts with Customers*;

- IFRIC's September 2010 tentative agenda decisions;
- ED *Deferred Tax: Recovery of Underlying Assets – Proposed amendments to IAS 12*;
- ED *Insurance Contracts*; and
- ED *Leases*.

With a view to contributing to the development of high-quality accounting standards for financial instruments suitable for use in global capital markets, CESR decided to provide comments to the IASB and FASB on the FASB's ED Financial Instruments and Revisions to the Accounting for Derivative Instruments and Hedging Activities.

CESR participated actively in the review of the governance framework around the IFRS Foundation and in particular in the high level Working Group that was set up by the IFRS Foundation Monitoring Board undertaking a review of the IFRS Foundation including the composition of the Monitoring Board.

CESR has also provided comments to the IFRS Foundation, the legal entity under which the IASB operates on:

- The annual improvements process: *Proposals to amend the Due Process Handbook for the IASB*
- *Status of Trustees' Strategy Review*

## External contributions on accounting

CESR participates in the European Commission's Accounting Regulatory Committee (ARC) and in EFRAG's monthly Technical Expert Group (TEG) meetings as observer. CESR has also been granted observer seats at EFRAG's Supervisory Board and its working groups on accounting for insurance contracts and financial instruments. Such observerships allow CESR to feed its views directly into the process of developing accounting standards for endorsement in the EU.

In June 2010, Fernando Restoy, chairman of CESR's Corporate Reporting Standing Committee, delivered a speech as key note speaker at the IFRS Conference organised by the IFRS Foundation in London, stating CESR's view on the convergence, governance and regulation of accounting.



### OTHER OBJECTIVES SERVED

Convergence

## 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.**

## CESR continues its work on the audit of financial statements

A majority of CESR Members do not have responsibility for the supervision of audit firms in Europe. However, CESR maintains a small working group consisting of those Members who do bear such responsibility which prepares responses to consultations by the European Commission and to the International Accounting and Assurance Standards Board (IAASB) on several of their projects. In 2010, the group prepared CESR responses to the European Commission on its Green Paper Audit Policy: Lessons From the Crisis jointly with CEBS and CEIOPS.

In 2010, CESR provided comment letters to the IAASB in relation to the following projects:

- ED on ISAE 3420 Assurance Reports on the Process to Compile Pro Forma Financial Information Included in a Prospectus ;
- Consultation on the proposed revisions to International Standard on Auditing (ISA) 315, Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment, and ISA 610, using the Work of Internal Auditors.



### OTHER OBJECTIVES SERVED

Convergence



CESR also participated as observer in the IAASB's current working group preparing the exposure draft on Assurance Reports on the process for compiling the Pro Forma Financial Information Included in Prospectuses. CESR-Fin holds an observership at the European Commission's Auditing Regulatory Committee (AuRC).

## NEXT STEPS

CESR-Fin will continue monitoring developments in the EU on auditing and the group will respond to such developments as appropriate. The Group will continue to bring its contribution to the new proposals made by the IAASB.



## CESR consults on OAM and XBRL

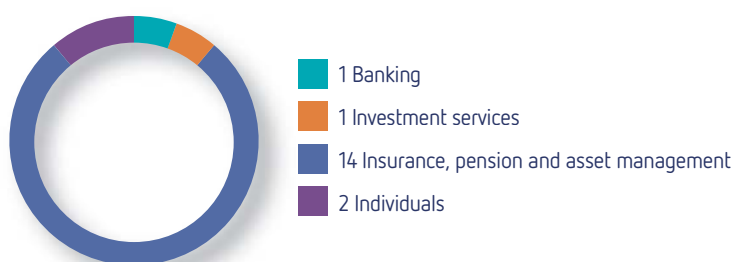
### OTHER OBJECTIVES SERVED

Convergence

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 sought views from market participants on a consultation paper *Development of pan-European Access to Financial Information Disclosed by Listed Entities* in August 2010 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.

### Consultation on the Development of Pan-European Access to Financial Information Disclosed by Listed Companies



In its final report submitted to the Commission, CESR proposes maintaining the underlying principle of the current network structure: information will be filed with national OAMs and a Central Access Point (CAP) operated by CESR will be the pan-European access point to regulated information.

The functionalities and common elements of the network are proposed to be developed in three steps. Step 1 would extend the list of issuers to cover issuers of all securities. Step 2 would enhance the search capabilities within the network and allow multiple-country searches for information on the basis of metadata stored at the level of the CAP. Such metadata would cover key search criteria relating to issuers and filings. Step 3 would fully integrate the network by allowing searches of individual filings throughout the network.

A second measure to harmonise and enhance pan-European access to financial information disclosed by listed entities builds further on the call for evidence on *The Use of a Standard-Reporting Format for Financial Reporting of Issuers Having Securities Traded on Regulated Markets* published in 2009. CESR decided in 2010 to move forward with an investigation of the possible use of eXtensible Business Reporting Language (XBRL) for the financial reporting of listed issuers.

## CORPORATE FINANCE STANDING COMMITTEE

### CESR updates Q&A on prospectuses

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

During 2010, CESR published three updates of its Q&As on common positions agreed by CESR Members on prospectuses. CESR published commonly agreed answers to questions on specific issues relating to prospectuses. On 23 November 2010, CESR published the latest update (twelfth update Ref. CESR/10-1337) that brought the number of questions covered by the document up to 75.

The Q&A is intended to provide market participants - in a quick and efficient manner - with commonly agreed responses to 'everyday' questions raised either by market participants to CESR Members or by those Members to CESR itself. The aim of publishing the Q&A is to encourage consistent application of the provisions of the PD and hence to foster market integrity. CESR responses do not represent standards, guidelines or recommendations as no prior consultation process has been followed. However, CESR seeks to operate the Q&A process in a way that will enable its Members to react promptly if any aspect of the common positions already published needs to be modified or any of the responses need further clarification. This achieves market transparency and efficiency. In the latest updates of the Q&A several answers were updated to take into account comments received from market participants and to omit previously dissenting views from certain CESR Members as those Members aligned their position with the CESR consensus. The Commission participates in the discussions of the group and has provided its position on some of the questions discussed in the Q&A. However, these views do not serve to bind the Commission.

The Prospectus Directive and the accompanying Regulation establishes a harmonised format for prospectuses in Europe and allows companies to use a prospectus to list on all European markets without the need to re-apply for approval from the local regulator. This is intended to help companies avoid the inherent delays and cost that re-application would involve and hence helps achieve market efficiency. The legislation also ensures investors receive consistent and standardised information which will enable them to compare in a more transparent and effective manner the various securities offers available to them from a wider number of European companies.



#### OTHER OBJECTIVES SERVED

Convergence

Reporting EU institutions,  
implementing EU roadmaps

### NEXT STEPS

ESMA will continue to update its Q&A for future queries and as soon as ESMA Members have agreed common positions.



## CESR feeds into Commission’s review of the Prospectus Directive

### OTHER OBJECTIVES SERVED

Convergence

Since the entry into force of the Prospectus Directive, CESR has actively contributed to the process of promoting a harmonised and common approach towards prospectuses amongst EU securities regulators. To further this objective, CESR published its response (Ref. CESR/09-240) on 10 April 2009, to the Commission’s consultation seeking to improve and simplify the Directive. CESR generally welcomed the Commission’s proposal to review the PD.

In the absence of unanimity amongst its Members on all of the issues the EC raised, CESR decided to restrict itself in its response to only commenting on those issues where CESR Members were in common agreement.

On 11 December 2010, the Directive 2010/73/EU, amending Directive 2010/73/EU, was published on the Official Journal of the European Union. As stated in Article 5, this Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union. Under Article 3, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2012.

### NEXT STEPS

ESMA expects to receive in early 2011, a Commission mandate requesting advice to develop Level 2 measures and will continue to offer its expertise to the Commission and to provide input on any decision taken by it. ESMA will continue its work to ensure a smooth and harmonised introduction of the amendments to the PD that result from Commission’s review.



## CESR proposes to amend prospectus recommendations for mineral companies

### OTHER OBJECTIVES SERVED

Convergence

Investor protection

On 23 April 2010, a consultation paper on the CESR proposed amendments to CESR’s recommendations for the consistent implementation of the Commission’s Regulation on Prospectuses n° 809/2004 (Ref. CESR/05-054b) regarding mineral companies was published.

Consultation on amending the Prospectuses Regulations for mineral companies



Responses were gathered by 15 July 2010 and a group of CESR Members is considering the responses received and working on the feedback statement to the consultation.

## NEXT STEPS

ESMA expects to publish the amended CESR recommendations for the consistent implementation of the Commission's Regulation on Prospectuses n° 809/2004 (CESR/05-054b) in 2011.

## CESR-POL STANDING COMMITTEE

### CESR proposes pan-European short selling disclosure regime in shares

In its advice of March 2010 (Ref. CESR/10-088), CESR proposed to the European institutions a pan-European short selling disclosure regime for shares. In parallel, CESR Members that already have powers to introduce a permanent disclosure regime, as elaborated in CESR's proposal, began the process of implementing this regime. CESR Members who did not have the necessary legal powers at the time, aimed towards implementing this regime on a best efforts basis, until the adoption of an EU regime.

By proposing a pan-European harmonised disclosure regime for short selling of shares, 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). 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).

In order to complement the report on a model for a pan-European short selling disclosure regime, CESR published a report on technical details of the pan-European short selling disclosure regime (Ref. CESR/10-453) in May 2010. This complementary report 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 on the level at which to net and aggregate short positions; the mechanics of disclosure; and (v) 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. It requires disclosure of significant individual net short positions in all shares that are admitted to trading on an 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%, the position should be disclosed to the competent authority as well as to the market as a whole.



#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

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 being 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 would be exempted from the disclosure requirements.

On 15 September 2010, the Commission made a proposal for an EU regulation on short selling and certain aspects of Credit Default Swaps. This proposal is largely based on the proposals of CESR.

## NEXT STEPS

The final proposal by the Commission for a pan-European short selling disclosure regime is expected later in 2011. It is very likely that ESMA will have to draft some technical standards related to this proposal.



## MiFID review: enhancing the scope of mandatory transaction reporting

### OTHER OBJECTIVES SERVED

Convergence

Investor protection

In the light of the MiFID review, CESR also provided its advice to the Commission on possible amendments to MiFID and its Implementing Regulation on transaction reporting (Ref. CESR/10-808) in July.

### Consultation on Standardisation and exchange trading of OTC derivatives



The advice set out a number of proposals for amending the transaction reporting regime under MiFID. The key purpose behind the suggested amendments was to improve market supervision.

The proposed main amendments focused on the following areas:

- Introduction of a third trading capacity (client facilitation);
- Collection of client and meaningful counterparty identifiers – CESR suggested to the Commission that the collection of client IDs and other meaningful identifiers for all counterparties and their submission to competent authorities would be made mandatory in all Member States;
- Standards for client and counterparty identifiers – CESR elaborated on possible guidance and future standards for client and counterparty identifiers;
- Client ID collection when orders are transmitted for execution – CESR suggested amending MiFID to enable Member States to require that, when orders are transmitted

for execution, the transmitting firm either provides the client ID to the receiving firm or reports the trade, including full client ID, to the competent authority; and

- Transaction reporting by market Members operating under the MiFID Article 2(1)(d) exemption (i.e. persons who do not provide any investment services or activities other than dealing on own account) – CESR suggested amending MiFID by introducing a transaction reporting obligation to those persons that are Members of a regulated market or MTF or, alternatively, by introducing a similar obligation on regulated markets or MTFs that admit these undertakings as Members.

### Trade repositories: new position reporting system

Furthermore, providing the Commission with additional information in the course of MiFID review, CESR presented its view on how to arrange the flow of information on transaction and position reporting (Ref. CESR/10-1254). CESR suggested defining a new position reporting regime through trade repositories (TRs), as foreseen by the Commission proposal for the regulation on OTC derivatives, trade repositories (EMIR) and Central Counterparty Clearing (CCPs), and in the MiFID review recognising TRs as reporting mechanisms through which investment firms will be able to fulfil their transaction reporting obligations, to the extent that TRs will be able to record all the necessary fields to comply with the transaction reporting obligation.

In line with the EMIR proposal, position reporting would be conducted through TRs and, when they would not be able to record the details of the contracts, directly to regulators.

## NEXT STEPS

Upon finalisation of its advice on the MiFID review, ESMA will continue the efforts to improve market supervision through further harmonisation of transaction reports on the basis of the current MiFID, being at the same time prepared to provide further technical advice to the Commission or prepare technical standards required in the context of the revised MiFID.

## Market efficiency

### TAKEOVER BIDS NETWORK

#### EU regulators discuss takeover bids cases

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

In 2010, CESR has continued to organise meetings with representatives from the EU authorities who regulate takeover bids, whether these are CESR Members or not, to discuss their experiences. One meeting was organised during the course of 2010, in May, to discuss the topics put forward by the Members of the network, such as equitable pricing, persons acting in concert, squeeze-out and sell-out provisions, and cross-border co-operation between competent authorities. Presentations were also made during these meetings of actual EU takeover cases so that Members could exchange views and ask questions of the authorities that handled the cases concerned.



#### OTHER OBJECTIVES SERVED

Convergence

## NEXT STEPS

The Takeover Bids Network will continue to meet regularly to exchange experiences on the application of the Directive.

# 3.2 Convergence

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## 3.2 Convergence

By seeking to harmonise day-to-day implementation of Community legislation, CESR ensures more consistent 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 core 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.

### REVIEW PANEL

#### MAD: CESR maps the use of options and discretions

CESR decided to map the options and discretions of the European market abuse regime following conclusions of the ECOFIN Council of December 2007, aiming at reducing the use of discretions, and of May 2008 and June 2009, on the need at enhancing supervisory convergence in the Union.

CESR finalised and published the result of this work in early April 2010. That review (Ref. CESR/09-1120) sets out how securities regulators across Europe use options and discretions under the European market abuse regime made up of the Market Abuse Directive (MAD) and its Level 2 implementing measures as developed by CESR. The report shows that Member States make a wide use of the options and discretions possible under the MAD regime. The report also shows divergence in how national supervisors disclose information on supervisory measures or sanctions, inside information, directors' dealings, and suspicious transaction reports.

#### Variations in degree of application found

The report was sent to the European Commission to feed into its work on reviewing MAD. CESR re-started its commitment towards increased convergence of supervisory practices in the EU, while acknowledging the legitimate use of options and discretions under the MAD regime. Overall, this review showed variations in the application of the MAD regime, but more so as regards to the application of MAD for MTFs. Whilst a few CESR Members found that the full set of applicable MAD rules should be applied to MTFs as a general rule, many Members only apply part of the MAD regime to all, or only some, of their MTFs. However, the report shows that the majority (20 out of 29) of CESR Members apply a part of the MAD regime to some of their MTFs.

The results demonstrate that divergences exist also among Members in all other areas addressed. Regarding 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, so-called Directors' Dealings, eight Members have added requirements in addition to the minimum ones following from the implementing directive. Furthermore, the reasons for possible exemptions to professional secrecy vary in the Membership and, as CESR highlighted in previous work, sanctions regimes differ between Member States<sup>(5)</sup>. 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). There are also divergences in relation to measures to ensure that the public is correctly informed. While 15 Members supervise directly the measures that are in place to ensure that the public is correctly informed, the tools and methods for doing so, vary.

(5) See the report of the Review Panel on the sanctions regime of the MAD (Ref. CESR/07-380).



#### OTHER OBJECTIVES SERVED

Investor protection

The report also shows variations in the content required of Suspicious Transaction Reports (STRs). Variations exist here whether additional guidance has been issued, on how the materiality thresholds have been set, and the extent to which OTC derivatives are covered in reports of suspicious transactions. Furthermore, nine Member States require, and a further nine Member States encourage, individuals to report suspicious unexecuted orders to trade.

Based on the survey, a number of recommendations are proposed for further work by CESR to increase convergence. These include further work on the extension of the MAD regime to MTFs, once the Commission has addressed this issue in the MAD review. CESR also recommend 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.



#### OTHER OBJECTIVES SERVED

Investor protection

## CESR looks into compliance of simplified notification process for UCITS

CESR finalised in January 2010 work on the application in the CESR Membership of the CESR guidelines to simplify the notification procedures of Undertakings for Collective Investments in Transferable Securities (UCITS) in Europe (Ref. CESR/09-1134). A stock-take was conducted in the course of 2008, looking into the degree of application of the 13 CESR guidelines for the notification of UCITS in the CESR Membership.

The work carried out by the Review Panel of CESR was conducted in the form of peer reviews. It serves the objectives of increasing supervisory convergence amongst CESR Members as well as increasing transparency of implementation.

The results published in the report reflect the situation by the cut-off day of 1 April 2008. Seven CESR guidelines out of the 13 that exist had been identified as key guidelines according to the CESR self-assessment (Ref. CESR/08-113) that preceded the peer review.

The seven key guidelines are:

- the notification letter (guideline 1);
- possible grounds to refuse notification (guideline 2);
- the start 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).

### Five Member States fully, majority did not fully apply guidelines

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 were fully applied. At the time, this was the case for the five CESR Members from 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. At the time, this was the case for four further CESR Members from 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.

It should be noted that after the cut-off date of the peer review on 1 April 2008, the situation has changed to a higher degree of compliance with the guidelines in the jurisdictions of some CESR Members which have formally adopted national implementation measures. Furthermore, the UCITS IV Directive (chapter XI) 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.

## NEXT STEPS

With the implementation of the UCITS IV Directive and following implementing legislation ahead, to be developed by ESMA, discrepancies which remain or remained at the time of the review between Members, for instance, with regard to electronic filing, will be resolved. The Commission may also adopt implementing measures in other areas which are partly covered by the CESR guidelines.

## Prospectus Directive: CESR looks into actual use and application across Europe

Prospectuses are key documents that inform investors on the risk of a company at the moment of the initial investment. The Prospectus Directive requires issuers to publish a prospectus when offering securities to the public or admitting them to trading, and defines content requirements. The mapping of the actual use and application of the Prospectus Directive within the EU aims at contributing to further convergence.

CESR published in November 2010, the results of a mapping of the actual use and application of the Prospectus Directive in Member States [Ref. CESR/10-123]. The key findings of the full report gives a picture of the practices applied in Member States in relation to different organisational aspects and controls in place regarding investment prospectus. The mapping shows existing divergences both in practices and in the day-to-day application.

This work of CESR followed the request by the ECOFIN Council of December 2007, which aimed at generally reducing the discretions used in Member States' implementations and applications of the Directives of the Financial Services Action Plan. The ECOFIN Council conclusions of May 2008 and June 2009 re-stressed the need to make progress in this direction in order to enhance European supervisory convergence.

### Mapping shows mixed picture

The full report by CESR deals with those internal processes that national supervisors follow to approve prospectus documents, the availability of the prospectus documents once approved, and Member States' use of the authorisation for the omission of information. The mapping looked into how Member's of CESR, when reviewing investment prospectuses, deal with:

- The **accuracy and comprehensiveness** of comments provided on the prospectus – Key controls reported include the co-ordination of comments, having a senior reader, the existence of an internal work instruction for the person vetting prospectuses, and always having a second reader. The mapping shows a mixed picture with a system for co-ordination of comments being the tool most often used with 79% of CESR Members;
- The **checking of the completeness** – Key controls performed by a large majority of Members (of between 62 and 97 %) include formal checks that all items required are included, checks on publicly available information and comparison with previous documents, and meetings with the issuers and/or their advisors;
- **Checking consistency** – Key controls reported by almost all Members include checking the consistency of the information contained throughout the prospectus document itself and documents incorporated by reference, while the control of consistency of prospectus information with information given in other instances was less often used, especially as a rule;
- **Verifying comprehensibility** – Key controls in this respect were reported by a large majority of Members, including the request for a glossary of technical/specialist words and a request for a description of mathematical formulas. Some Members require in addition, standards for disclosure of risk factors and check that the language is comprehensible from the perspective of an average investor; that the risk factor section is easily understandable, and that the structure of the prospectus is clear;
- **Ensuring that all information is included** to enable investors to make an informed decision – Members reported with very few exceptions that their key controls include requirements on information given in the prospectus to be complete for each of the



### OTHER OBJECTIVES SERVED

Convergence

Investor protection

information items on a case-by-case basis, as set out in Article 3 of the Prospectus Regulation, requiring supplementary information to be provided to the authority on a case-by-case basis as set out in Article 16, ensuring consistency and comprehensibility of information given in a prospectus, and requiring disclosure of all material information which may have an effect on the assessment of the securities admitted to trading as set out in Article 21(4)(a) of the Prospectus Directive;

- **Checks performed concerning financial information** – All Members reported ensuring steps were taken by issuers to meet the criteria of annex II of the Prospectus Regulation 809/2004.

A majority of Members check that the prospectus summary does not contain information which is not detailed in the main part of the prospectus document.

Regarding controls carried out over the compliance of advertising activity, the Members are almost evenly divided between those that perform ex ante controls, and those who perform ex post controls.

## NEXT STEPS

CESR sent its findings to the Commission for them to consider any further actions, in which ESMA might be involved, to further improve convergence.



### OTHER OBJECTIVES SERVED

Investor protection

## CESR develops good practices for reviewing prospectuses

CESR's Review Panel in 2010 also developed good practices for the review of prospectuses. The good practices, which were endorsed by the CESR Standing Committee on Corporate Finance, and approved by CESR Chairs in November 2010, shall be implemented by national competent authorities in 2011.

The good practices contain principles on the following subjects:

- Similar comments to similar prospectuses;
- Four eyes principle, i.e. the principle that two persons should be involved in the reviewing a prospectus, or parts thereof;
- Financial information;
- Consistency of the prospectus document;
- Comprehensibility for the investor;
- Controls over the summary; and
- Structure of the prospectus document.

## NEXT STEPS

The Review Panel of CESR in 2010 began work on the development of a self-assessment of the implementation of the above-mentioned good practices in the CESR Membership, which will be conducted in 2011, and later be followed by a peer review.

## INVESTMENT MANAGEMENT STANDING COMMITTEE

### CESR publishes guidelines on UCITS' risk management

On 28 July 2010, CESR published guidelines on 'Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS' (Ref. CESR/10-788). The guidelines are to accompany the Level 2 implementing measures for the revised UCITS Directive (2009/65/EC).

#### Guidelines set out risk measurement 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, however, represents only one element of the UCITS' overall risk management process. It remains the responsibility of the UCITS to select an appropriate methodology to calculate it; in that context, CESR proposes detailed methodologies to be followed by UCITS when they use either the commitment or the Value at Risk (VaR) approach.

#### The commitment approach

For the commitment approach, CESR sets out 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 also developed an alternative method based on sensitivity for interest rate-related financial derivative instruments that only expose the UCITS to general interest rate risk.

#### The VaR approach

For the VaR approach, CESR sets out guidelines on:

- the principles to be applied for the choice between two types of VaR, Relative and Absolute VaR;
- the criteria to be used 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 with a set of quantitative and qualitative requirements to be respected; and
- additional safeguards which UCITS should put in place when calculating the global exposure with 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.

### CESR consults on possible alternative risk approach for structured UCITS

In the consultation paper (Ref. CESR/10-108), CESR also set out, in the context of the commitment approach, its initial thoughts on specific guidelines for structured UCITS (i.e. formula funds) which would involve a specific 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.



#### OTHER OBJECTIVES SERVED

Investor protection



#### OTHER OBJECTIVES SERVED

Investor protection

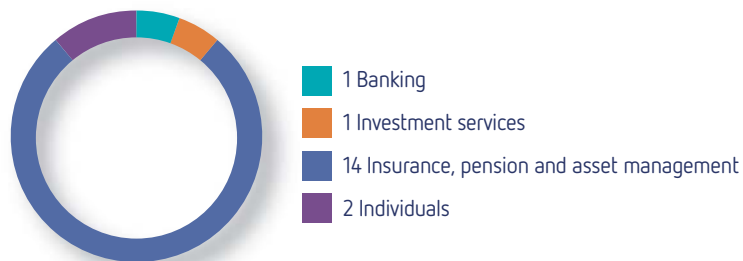
Consultation on CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS



In order to be able to fully take into account the feedback from the public consultation on CESR's initial views on specific guidelines for structured UCITS, CESR decided to carry out further work to assess whether it would be appropriate for certain type of structured UCITS to use other methodologies to calculate their global exposure.

Therefore, on 18 November 2010, CESR published a consultation paper (Ref. CESR/10-1253) setting out a specific approach to the application of the guidelines on the calculation of the global exposure for certain types of structured UCITS. The specific approach, as proposed by CESR, consists of the calculation, for each scenario to which investors can be exposed at any one time, of the global exposure using the commitment approach. Under this approach, each scenario must comply at all times with the 100% global exposure limit using the existing CESR Guidelines (Ref. CESR/10-788). CESR considers that the scope of this specific approach must be clearly defined. Therefore, a list of criteria with which structured UCITS should comply in order to be able to benefit from this specific approach is set out in this consultation.

Consultation on CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure for certain types of structured UCITS



## NEXT STEPS

ESMA will consider the feedback from stakeholders in preparing the final version of the guidelines, which is expected to be published in the first quarter of 2011.



## CESR moves forward the UCITS management company passport

### OTHER OBJECTIVES SERVED

Investor protection

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). CESR's proposals aimed at ensuring as much consistency as possible with the existing MiFID provisions. This took account of the desirability of having a level playing field between the firms active in those sectors, given the similarities between the service of individual

portfolio management and the activity of collective management of a UCITS. CESR did, however, pay close attention to the need to reflect properly the specificities of the activity of collective portfolio management. In addition, CESR took the view that a level playing field was important with a view to putting in place a similarly high level of investor protection for investors receiving similar types of service. Finally, CESR emphasised the need to ensure sufficient flexibility in the requirements in such a way that their application is proportionate and takes into account the nature, scale and complexity of a management company's business, including the nature of the UCITS it manages. These proposals were welcomed by respondents; as such, there were relatively few changes made in the finalisation of the advice.

## CESR works on mergers, master-feeder structures and cross-border notification of UCITS

On 19 April 2010, CESR published a feedback statement (Ref. CESR/09-1226) summarising 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 on master-feeder structures 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.



#### OTHER OBJECTIVES SERVED

Investor protection





## CESR sets out harmonised European definition of money market funds

### OTHER OBJECTIVES SERVED

Investor protection

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 funds: '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 funds, 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 funds, 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.



## AIFMD: CESR seeks input from stakeholders

### OTHER OBJECTIVES SERVED

Investor protection

On 2 December the Commission sent a provisional request for assistance (hereafter 'the request') to CESR on the content of the implementing measures of the Alternative Investment Fund Managers Directive (AIFMD). The advice is to be delivered by 16 September 2011, in order to allow the Commission to deliver the full package of implementing legislation, at the latest, one year before the end of the transition period for the Directive. A call for evidence on the request was published on 3 December (Ref. CESR/10-1459) with a deadline for responses of 14 January 2011.

### Structure of the mandate

The AIFMD makes provision for an extensive set of implementing measures. To structure the work, the Commission divided the request into four sections.

#### **Part I covers general provisions of the AIFMD, the authorisation of and the operating conditions for AIFM. It includes:**

- Procedures for small managers to 'opt-in' under the Directive (Article 3(5));
- Procedures for the calculation of de minimis thresholds (Article 3(6)); and
- The calibration of capital requirements to cover risks related to professional liability (Article 9(9)). This includes Level 2 measures in relation to:
  - General principles of operation (Article 12(3));
  - Conflicts of interest and the avoidance thereof (Article 14(4));
  - Risk management, including the adequacy of systems, frequency of review, hierarchical and functional separation of functions and the avoidance of associated conflicts of interest (Article 15(5)); liquidity management systems and procedures (Article 16(3));
  - Investment in securitisation positions (Article 17(1) and Article 61);

- General principles of organisation (Article 18(2));
- Procedures and frequency of valuation, and the professional guarantees to be provided by external valuers (Article 19(11)); and
- Conditions for delegation of functions (Article 20(5)).

**Part II covers provisions relating to the depositary requirements. These include:**

- Level 2 measures [all in Article 21(15)] in relation to the appointment of the depositary;
- The equivalence of prudential regulation and supervision in third countries;
- The conditions for the performance of depositary functions;
- Due diligence obligations in the event of delegation;
- The segregation of assets; and
- The loss of financial instruments; the definition of certain 'external events'; and reasons for contractual discharge of liability.

**Part III covers provisions relating to transparency requirements and leverage. These include:**

- Level 2 measures relating to the definition of leverage (Article 4(3));
- The content and format of the annual report (Article 22(4));
- The content and frequency of disclosure to investors (Article 23(6));
- The content of reporting obligations to competent authorities (Article 24(6)); and
- The circumstances under which competent authorities may take action to limit the use of leverage (Article 25(9)).

**Part IV, finally, covers provisions relating to the supervision of AIFM, including third country AIFM. These include:**

- Level 2 measures relating to the content of cooperation arrangements with third country authorities (Article 34(2));
- The exchange of information between supervisors relating to the potential systemic consequences of AIFM activity (Article 51(4)); and
- The procedure for identifying the Member State of reference (Article 37(13)).

The AIFMD also makes provision for an extensive set of technical standards and guidelines. The Commission considers that these measures constitute an important part of the regulatory framework and will contribute to the clarity, effectiveness and coherence of the overall package. CESR was therefore invited to consider how to co-ordinate work on these standards and guidelines with the development of advice on implementing measures so as to ensure a maximum level of consistency.

## NEXT STEPS

ESMA will take into account the responses to the call for evidence in the preparation of its draft advice on the implementing measures of the AIFMD. ESMA expects to publish its draft advice for consultation in summer 2011 in view of the deadline for submission of the advice of 16 September 2011.

## CORPORATE REPORTING STANDING COMMITTEE

### Equivalence of third country GAAPs

In December 2007, the Commission published a Regulation ((EC) 1569/2007) establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council. This Regulation established the conditions under which the GAAP of a third country can be considered equivalent to IFRS or EU IFRS.

Following the publication of the Regulation, CESR was asked and accordingly provided advice on the equivalence in relation to certain countries GAAPs. In 2008, a transitional exemption has been granted for the use of Canadian, Chinese, Indian and South Korean GAAPs on EU markets until 31 December 2011. The aim of granting this transitional period was to allow the standard setters and regulators of these countries concerned, more time



#### OTHER OBJECTIVES SERVED

Market integrity

Reporting EU institutions,  
implementing EU roadmaps

to pursue their existing programs either to converge their existing accounting standards with or to adopt IFRS.

At the European Commission request, in November 2010, CESR prepared an update report (CESR/10-1301) on the level of progress made by those countries in their process of adoption or convergence with the IFRS.

## NEXT STEPS

In accordance with the mandate given by the Commission in 2010, CESR-Fin will conduct on the spot investigations in China and India in 2011, in order to supplement the 'update report' prepared in 2010.

## CORPORATE FINANCE STANDING COMMITTEE



### CESR publishes 2010 data on prospectuses approved and 'passport'

#### OTHER OBJECTIVES SERVED

Reporting EU institutions, implementing EU roadmaps

Since receiving a mandate from the Commission in July 2007 to collect statistical data in relation to the number of prospectus approved and 'passport' in the EU, CESR has decided to institutionalise the exercise and provide the information on an on-going basis. As a result, on 30 March 2009, as part of its remit to promote transparency to stakeholders, CESR published details of the number of prospectuses approved and 'passport' by CESR Members (Ref. CESR/09-315) from July 2006 to December 2008. In addition, on September 2009 CESR published similar data from January 2009 to June 2009, on March 2010 data from July 2009 to December 2009 and on October 2010 data from January 2010 to June 2010. CESR provided data on the number of prospectuses approved and 'passport' per Member State in the periods concerned broken down by quarter. In addition, the data was split into passports received and sent. The publication of this data helps to achieve market transparency.

## NEXT STEPS

ESMA will continue to publish statistical data on the number of prospectus approved and 'passport' by its Members and will continue to update, whenever necessary, its documentation on the use of language and the translation requirements relating to the summary in different jurisdictions.

## INVESTOR PROTECTION AND INTERMEDIARIES STANDING COMMITTEE



### CESR consults on definition of advice under MiFID

#### OTHER OBJECTIVES SERVED

Investor protection

Investment advice is an investment service under MiFID, and the main considerations when determining whether a particular service amounts to investment advice are set out in MiFID. However, CESR considered it important to clarify, by way of illustration, situations where firms will, or will not, be considered to be providing investment advice. Therefore, CESR sought to harmonise the interpretation of the rules on the definition of investment advice as it currently stands, and, in April 2010, CESR published Q&A (Ref. CESR/10-293) and a feedback statement (Ref. CESR/10-294) in response to its 2009 consultation on 'Understanding the definition of advice under MiFID'.

CESR used the consultation feedback to propose a revised definition of investment advice to clarify that investment advice can be provided through distribution channels under

MiFID. In July 2010, a clarification of the scope of the definition of 'investment advice' was fed back to the Commission as part of its MiFID review (Ref. CESR/10-859).

## NEXT STEPS

ESMA will reflect on the Commission's consultation paper and its forthcoming proposals on the MiFID review before deciding whether anything further needs to be done.

## Inducements - good and poor practices

In April 2010, following its consultation in October 2009, CESR published its report (Ref. CESR/10-295) on 'Inducements – good and poor practices' as well as the related feedback statement (Ref. CESR/10-296). The report is based on the current MiFID rules which set out requirements for the receipt or provision by an investment firm of a fee, commission or non-monetary benefit.

In order to assist regulated firms to better understand some of the main industry practices on inducements, CESR's report highlighted some of the observed industry practices (based on a questionnaire CESR Members distributed to investment firms) on the MiFID inducements rules. By indicating what types of firm behaviour European securities regulators encourage (good practices) and discourage (poor practices), CESR provided firms with a benchmark for industry compliance with the MiFID inducements rules. In doing so, CESR sought to further ensure a common and consistent interpretation and application of the MiFID inducements rules across the EU.



### OTHER OBJECTIVES SERVED

Investor protection

## NEXT STEPS

ESMA will reflect on the Commission's consultation paper and the forthcoming proposals on the MiFID review before deciding whether anything further needs to be done.

## MiFID Q&A: due diligence on sub-custodians, and tied agents

In May 2010, CESR published an updated version of its Q&A on MiFID (Ref. CESR/10-589). The Q&A set out the common positions agreed by CESR Members in the area of the Investor Protection and Intermediaries Standing Committee, and are 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. While the answers provided do not constitute standards, guidelines or recommendations, they are closely coordinated with the Commission and are provided in an effort to ensure a higher degree of harmonised implementation between CESR Members. The May 2010 version included questions and answers on due diligence on sub-custodians, and on tied agents.



### OTHER OBJECTIVES SERVED

Investor protection

## NEXT STEPS

ESMA will continue to facilitate the development of the common positions between national competent authorities by using this Q&A format. In addition, ESMA will continue to provide assistance, in an advisory capacity, to the European Commission with its own MiFID Q&A database, when requested.



### Best execution – summary of trends observed

#### OTHER OBJECTIVES SERVED

Investor protection

In November 2010, CESR published its report 'Summary of responses from investment firms and execution venues to CESR's 2009 Best Execution Questionnaire (Sections 1-4)' (Ref. CESR/10-1415). CESR published this summary in order to provide feedback on the questionnaire. It does not represent any policy or recommendation by CESR or CESR Members. CESR recognises that the specific form of the MiFID best execution rules was a significant new departure for most EU Member States, and that, therefore, implementation posed some challenges - made all the more difficult by the onset of the financial crisis in 2007. Against this background, CESR Members have been looking at firms' implementation of MiFID and have been seeking to ensure that adjustments are made, including in relation to best execution, where implementation has fallen short of what was required.

The purpose of the 2009 questionnaire was to assist CESR in its work on the MiFID review and to enable it to see whether further Level 3 work was required to achieve greater consistency in the implementation of the MiFID best execution requirements. The information from Section 4 of the questionnaire assisted in the preparation of CESR's July 2010 advice to the Commission on execution quality data as part of the MiFID review.

## NEXT STEPS

ESMA will reflect on the Commission's consultation paper on the MiFID review before deciding whether to take forward any work on information to clients on execution policies and on selection of execution venues.

## POST-TRADING STANDING COMMITTEE



### CESR contributes to the Commission initiatives on CSD

#### OTHER OBJECTIVES SERVED

Reporting EU institutions, implementing EU roadmaps

The Commission launched a Central Securities Depositories (CSD) related work stream in 2010, announcing a public consultation for early 2011. CESR welcomed this initiative and the fact that the Commission would use the ESCB-CESR Recommendations for securities clearing and settlement systems and central counterparties in the EU (Ref. CESR/09-447) as a basis for its legislative initiative on CDSs.

In the context of the CSD legislation, CESR also provided the Commission with its views on settlement discipline. In particular, CESR emphasised the disparities between the sanctioning regimes on settlement fails in Europe (notably as regards penalties) and the advantages of a more harmonised environment. Besides reducing regulatory arbitrage and possibly increasing settlement efficiency, such a harmonisation would also be relevant in the context of Target-2-Securities (T2S), the future single platform for the settlement of securities in the EU.

## Project for securities law directive

Taking into account the earlier work of the Legal Certainty Group (since 2004), a stakeholder working group of the Commission, and its consultation (in 2009), the Commission launched in late November 2010, a new consultation on the Securities Law Directive (SLD), open until early 2011.

CESR has been following the process, which is of the utmost importance in ensuring legal certainty in the European securities markets in their most critical aspect: the legal basis for securities transfer and ownership. This also includes the determination of the applicable law, reversals of ownership, priority of interests and some insolvency related aspects. This initiative has a major impact on the management of legal risk.

## NEXT STEPS

The ESCB-CESR Recommendations were a landmark in the post-trading area in Europe and have greatly contributed to the legislation being prepared for CSDs and CCPs. The Securities Law Directive is a major challenge for European jurisdictions and an agreement of Member States in that respect will represent a major breakthrough for cross-border securities deals, with benefits for the entire trading and post-trading chain. ESMA will contribute to this legislative initiative during 2011, awaiting a formal proposal by the Commission.

## CESR TRAINING

### CESR training, staff exchange and HR network in 2010

2010 was the second year in which CESR received an EU grant<sup>(6)</sup> to foster common supervisory culture through training programmes organised for national regulators' staff.

#### CESR organises more trainings in 2010

The 2010 sector training programme for CESR was created building on the 2009 one. But compared to 2009, there was an increase, of more than 150%, in the number of courses offered (from 6 to 10) during 2010. The total number of participants in 2010 was 311 compared to 179 in 2009, which results in an average attendance of 31 people per seminar in 2010.



#### OTHER OBJECTIVES SERVED

Investor protection

(6) The 2010 CESR Training Programme was co-financed by the Commission. The rest of the costs were covered by CESR's budget, and participation fees.

## Name, title and location of CESR courses held in 2010

Course Title	Location	Date	Participants
Implementation of TREM 3.0 and reporting of OTC derivatives	MFSA, Malta	3-4 June 2010	37
MiFID	Estonian FSA, Tallin	16-17 September 2010	32
Implementation of the KIID	Madrid, CNMV	6-7 October 2010	22
IFRS (IFRS 39)	AMF, Paris	18-19 October 2010	41
Inducements and conflicts of interest	MFSA, Malta	22 October 2010	39
Impact Assessment	CESR, Paris	8-9 November 2010	10
Best Execution	FMA, Vienna	15-16 November 2010	47
Short Selling	KNF, Warsaw	3 December 2010	20
Transaction reporting	FSA, London	10 December 2010	29
PD review: investor's protection versus market efficiency	CBFA, Brussels	16 December 2010	34
<b>Total</b>			<b>311</b>

CESR's co-financing for the host organisers was in 90% of the cases reimbursed by the Commission.

### CESR looks into staff exchange

In 2010, the Human Resources (HR) Network of CESR, which is made up of the 27 CESR Members, conducted a review on the implementation of 'The CESR Toolkit for Staff Exchange and Secondment' (which has been created in 2007) on the actual use of staff exchange by CESR Members. The results of the survey were promising: 53% of the Members put in place a policy covering exchange of staff. Regarding the number of secondments, 47% of CESR Members reported they had had outgoing secondments; and a further 26% of Members reported that having received incoming secondments. On study visits, 47% of Members reported having organised outgoing study-visits to CESR Members and 63% of the Members welcomed incoming study-visits. As such, a total of 115 'outgoing' study-visits were reported and 84 'incoming' study-visits were also reported.

In 2010, a sub-group has been established inside the HR Network, to investigate the possible implementation of e-learning to support the supervisory convergence.

## NEXT STEPS

There will be an annual review on staff exchange and secondment from 2011 on. To investigate the possible implementation of e-learning, a pilot-project will be run in Q1 2011, and based on the experiences and on the findings of the group a report will be submitted for the Board of Supervisors.



## Cross-Sector Convergence

### 3 LEVEL 3 COMMITTEES

The joint work of the 3 Level 3 Committees (3L3), CESR, CEBS and CEIOPS, focused on achieving convergence between the financial sectors of securities markets, credit institutions (banks), and the insurance and pensions markets. The inter-linkages of these sectors called for close co-operation among the 3L3 Committees in order to ensure a European level playing field, consistency in legislative implementation, cost effectiveness and proper assessment of cross-sector risks. In 2005, the 3L3 Committees formalised this co-operation by signing a joint protocol on co-operation. In December 2008, this protocol was updated to reflect the 3L3 experiences of joint work completed, and to take into account the latest developments, such as the Lamfalussy review and the effects of the financial crisis.

### 3L3 provide input in preparing new European financial supervisory framework

The 3L3 Chairs and Secretariats regularly met and dealt with all activities described in the 3L3 work programme during 2010, where their priority was their supervisory response to the reform of the EU financial supervisory architecture and the preparation of the Level 3 Committees for their transition to the new European Supervisory Authorities (ESAs).

In this respect, the 3L3 actively followed and co-ordinated, where necessary, developments in relation to the proposals setting up the ESAs. The Level 3 Chairs and their respective Secretary Generals and Secretariats regularly convened conference calls, exchanged briefings and met often in advance of meetings with the EU institutions.

On 18 June 2010, the 3L3 Committees submitted a detailed note to the EU institutions involved in the trilogue discussions outlining their specific concerns on the basic questions of the clear assignment of responsibilities to the ESAs, their accountability and their independence. The note considered five main issues:

- The independence of the Authorities - independent financing of the Authorities, selection of the Chairperson and the Executive Director, composition of the Board of Supervisors, Board of Appeal and Peer Review;
- Crisis situation and emergency measures;
- Enhanced 3L3 cooperation through the "Joint Committee";
- Collection of information and cooperation with the ESRB; and
- Operational issues linked to the transition.

Several meetings were held during 2010 with the European Commissioner for Internal Market and Services, Michel Barnier, the Chairwoman of the European Parliament's Committee on Economic and Monetary Affairs (ECON), Sharon Bowles, and the President of the European Central Bank, Jean-Claude Trichet.

Throughout 2010, the 3L3 attended meetings of the EU Council's Financial Services Committee (FSC) and were invited to attend most meetings of the EU Council's Economic and Financial Committee (EFC) in order to discuss issues such as financial market developments, crisis management (e.g. stress testing) and international regulatory dialogue.



#### OTHER OBJECTIVES SERVED

Market integrity

### NEXT STEPS

Given the landmark institutional change, namely the creation of the three new European Supervisory Authorities (ESAs), ESMA, EBA and EIOPA, which respectively came into being on 1 January 2011, the three ESAs' coordination is now formalised in the new Joint Committee of the ESAs. The first meetings of the Board of Supervisors of the ESAs were held from 10-12 January 2011 and the first meeting of the ESRB Steering Board was held on 20 January 2011. The senior management of the ESAs is expected to be in place by June 2011.



#### OTHER OBJECTIVES SERVED

Investor protection

Market integrity

## 3L3 task force works on cross-sector risks

Identifying cross-sector risks will help the 3L3 Committees, their Members and the EU institutions in ensuring the stability of European financial markets. Following the ECOFIN Council conclusions in May 2008, the European Commission's decisions establishing each of the 3L3 Committees, and the request to the 3L3 Committees to respond to financial stability concerns of a cross-sector nature, the 3L3 Committees set up a 3L3 Task Force on Cross-Sector Risks, which has been tasked with enhancing the 3L3 Committees' sectoral risk assessments by capturing cross-sectoral issues and identifying contagion channels. In April 2010, the Task Force, which is chaired by Jukka Vesala, Deputy Director General of the Finnish FSA, delivered to the EFC-FST (Economic and Financial Committee – Financial Stability Table) the second of two pilot reports.

These developments show, at an early stage, the 3L3 Committees' ability to capture cross-sector risks relevant to the risk assessments of the Committees: common risks across sectors, and especially risks which are contagious from one sector to another and endogenous risks where regulatory action in one sector may have significant risk implications for another sector.

The work aims at capturing contagion risks between individual institutions and sectors from a supervisory cross-sector viewpoint, and brings the micro-prudential focus into the overall assessment of the financial stability.

The second pilot report of April 2010 dealt with the following risks: interdependence and feedback loops between the financial sector and the real economy; cross-sector holdings and exposures; market sentiment spill-over; and changes in asset prices and deleveraging.

In September 2010, the 3L3 provided the EFC with a report. Whilst the report noted improvements in the macro-economic conditions and that successful government support measures had had a positive effect on financial institutions, it highlighted the following risks: spill-over risks of sovereign debt problems for financial markets and institutions, risks associated with banks' funding position, a new deterioration in assets markets, a shift and/or changed shape of the yield curve, 'retailisation' of certain complex products, business model and profitability-related risks, and finally business model and profitability-related risks.

## NEXT STEPS

The ESAs will continue the work started by the 3L3 Committees on cross-sectoral risk identification and assessment under the Joint Committee of the ESAs and, together with the sectoral risk assessments done by each of the ESAs, will contribute to the overall assessment of the systemic risk, which is the shared responsibility of the ESAs together with the ESRB.



#### OTHER OBJECTIVES SERVED

Investor protection

## 3L3 anti-money laundering task force

The 3L3 Anti-Money Laundering Task Force (AMLTF) was established in the second half of 2006 by CESR, CEBS and CEIOPS, with the aim of achieving convergence in national implementation of the Third Money Laundering Directive (3rd MLD) across the different sectors of European financial markets and with a view to provide supervisory input into anti-money laundering (AML) issues.

Throughout 2010, the AMLTF met four times under the new chairmanship of Uldis Cerps (Finansinspektionen, Sweden). In the course of 2010, the Task Force investigated supervisory practices related to the 3rd MLD by way of questionnaires sent to all task force Members in relation to a) Beneficial Owners and b) Simplified Due Diligence (SDD), with a view to assessing whether the differences in any implementation practice noted might result in different outcomes for AML, and its supervision throughout the EU.

Reflecting current developments in European AML legislation and practice, with the recently introduced Payment Services Directive (PSD), the AMLTF also undertook a stock-take exercise of supervisory practices in relation to Agents of Payments Services Institutions (PSIs) providing the payment services of money remittance.

Furthermore, the AMLTF has undertaken preparatory work for a home/host supervisory protocol between involved AML supervisors of a PSI and its agents and branches. During this preparatory stage, the AMLTF found that the Protocol would provide for a practical and pragmatic framework for involved home and host supervisors of a PSI to assist the supervision relating to the anti money laundering obligations under the 3rd MLD and the PSD.

During 2010, AMLTF Members also discussed the Financial Action Task Force/OECD lists of non cooperative and high risk jurisdictions published in February 2010, and their supervisory approach to SDD and reliance on 3rd parties, vis-à-vis the jurisdictions named on these two FATF published lists.

## NEXT STEPS

In light of the establishment of the three ESAs, the Joint Committee of the ESAs will establish a Sub-Committee on Anti Money Laundering to take over and finalise all AMLTF work streams initiated in the course of 2010, namely:

- a) To assess implications for money laundering risk and AML supervision, in respect of differences in supervisory implementation practices noted in the 3rd Money Laundering Directive (based on 2010 work on Beneficial Owners and Simplified Due Diligence), and possibly develop guidance;
- b) To develop a supervisory protocol between involved AML supervisors of a Payment Services Institutions and its agents and branches; and
- c) To assess implications for AML supervision, and possible development of a supervisory protocol, in relation to the new 2nd E-money Directive.

## 3L3 work on financial conglomerates

The Joint Committee on Financial Conglomerates (JCFC) met four times in 2010 under the chairmanship of Thomas Schmitz-Lippert (Bafin, Germany) from mid 2010, and Patrick Brady (IFRSA, Ireland) until mid 2010.

The JCFC provided input to the European Commission's proposals for the quick review of the Financial Conglomerates Directive (FICOD), known as FICOD I, and the fundamental review of this Directive, FICOD II throughout 2010. For example, in July 2010 the JCFC sent a letter to the European Commission to advise a seamless transition from the current Insurance Groups Directive towards Solvency II, by proposing to amend the definition of a holding company in the Solvency II text in so that also under the new insurance regulation both sector-specific (banking and insurance) supervision and supplementary supervision could be applied on the conglomerate's parent entity. Oral reports were provided by the JCFC to the EFCC at their two meetings held in 2010. Further the JCFC provided recommendations to the EC on Omnibus I in relation to Financial Conglomerate supervision.

The JCFC published and submitted its annual list of financial conglomerates, as at 1st June 2010, based on 2010 year-end figures reported by the undertakings, so that Member States could meet the reporting requirements in Article 4(2) of the FCD. The JCFC noted that the ongoing dynamics in the financial sector were reflected by several mergers of previously identified conglomerates, as well as new conglomerates created, and the restructuring of existing conglomerates such that they are no longer captured under the scope of the FICOD.

Further to its 2009 advice to the European Commission on the review of the FICOD on definitions, scope and internal control requirements, and how these areas and their implementation within the existing legislative framework may impact on the fulfillment of the objectives of the FICOD, supervisors felt it was necessary to immediately start working on one topic, namely participations, so as to strive for more convergence between Member States, even before the review of the FICOD. Accordingly, the JCFC established a Participations Working Group to concentrate on:

- Identification of Financial Conglomerates and specifically the to address how to include participations in the calculation (durable link, indirect participations); and



### OTHER OBJECTIVES SERVED

Investor protection

Market integrity

- When identified, how to include participations in the day-to-day supervision (for example risk concentration and intra-group transactions and what kind of information could be reasonable obtained in the case of non-controlled participations)

By the end of 2010, the JCFC's Participations Working Group prepared draft guidance on Durable Link on how to include participations in the calculations when identifying a Financial Conglomerate.

The JCFC monitored also the Financial Conglomerates dimension of CEBS and CEIOPS sector work on Colleges, to ensure FICOD consistency. At each of the JCFC's 2010 plenary meetings, JCFC Members discussed their practical experience of discussion of the FICOD requirements within a college and also the Secretariat conducted a survey amongst the JCFC Membership. The JCFC noted, amongst others their preference not to duplicate sector colleges. The Secretariat conducted an analysis of the status of college discussions to date on FICOD requirements, which noted improvements could be made as not all groups have colleges, and that those that do meet, have varying degrees of discussing the FICOD dimensions. Accordingly the JCFC drafted its recommendations on Supplementary FICOD requirements in supervisory colleges of financial conglomerates that could be added to the already existing sector guidelines. These seven recommendations were endorsed and published on 21 December 2010, by CEBS and CEIOPS. These recommendations include, among others, the setting up, for every financial conglomerate, of a platform for discussing FCD issues within the existing college structure. The platform is either established at banking level, for a banking-led financial conglomerate or at insurance level, for an insurance-led financial conglomerate.

## NEXT STEPS

The three ESAs will continue the work on financial conglomerates in the Joint Committee's Sub-Committee on Financial Conglomerates, including:

- Publication of the list of identified Financial Conglomerates, in accordance with the legal requirements following Omnibus I Directive;
- Draft guidance on the identification and supervision of participations will be published for consultation;
- Commence work on providing advice to the EC on FICOD II;
- Develop templates for colleges on cross-sector aspects; and
- Commence preparation of Guidance and Technical Standards on specific FICOD requirements.



## 3L3 internal governance

### OTHER OBJECTIVES SERVED

Market integrity

In January 2010, the 3L3 Task Force on Internal Governance, chaired by Gabriel Bernardino of the Portuguese Insurance and Pensions Funds Supervisory Authority, published a report on a cross-sector stock-take and analysis of internal governance requirements and sent this to the European Commission. The report aimed to identify areas, for possible harmonisation of the differing regulations of the three financial services sectors. The report identified no areas, of a high priority, for harmonisation. Although for some areas, a low or medium priority was identified. A Call for Evidence was published with the report, with the aim to get industries' views on the need for harmonisation.

On 9 February 2010, the Commission's Company Law, Corporate Governance and Financial Crime Unit convened a meeting with representatives of CESR, CEBS and CEIOPS to discuss the 3L3 work on Internal Governance and also the European Commission's work on Corporate Governance.

In June 2010, the Commission published its Green Paper on Corporate Governance and Remuneration policies. At the beginning of September 2010, CEBS<sup>(7)</sup> and CEIOPS sent their respective sector responses to the European Commission. The European Commission held a meeting with the 3L3 on 16 September 2010 to discuss its Corporate Governance Green Paper and Remuneration issues, in particular regarding the responses received from CEBS and CEIOPS. The European Commission received more than 200 responses to its

(7) [http://www.cebs.org/documents/Publications/Other-Publications/Comment-letters-by-CEBS/Other-Areas/2010-08-31-\(CEBS-response-to-EU-Commissions](http://www.cebs.org/documents/Publications/Other-Publications/Comment-letters-by-CEBS/Other-Areas/2010-08-31-(CEBS-response-to-EU-Commissions).

Green Paper, and invited CEBS, CEIOPS and CESR to discuss more specific issues raised by respondents and how they could be dealt with, within the proposed regulation. A further meeting was planned for January 2011.

On 13 October 2010, the Commission published its Green Paper on Audit Policy. The 3L3 Committees prepared a common 3L3 cover letter for their responses to this Green Paper. This 3L3 cover letter included, as an Annex, more detailed comments from each of the 3L3 committees.

## NEXT STEPS

**The Joint Committee of the ESAs may undertake further work comparing MiFID, CRD and Solvency II, in light of the EC's work on corporate governance and audit.**

## Joint work on non-cooperative jurisdictions

In order to assist the EU political institutions in preparing the meetings of the Financial Stability Board and G20 held in the first half of 2010, the 3L3 Committees asked its Members for an update on their experience on cooperative jurisdictions within their Members' regulatory/supervisory competencies. The 3L3 Committees summarised the results that were provided to the EFC Financial Stability Table meeting on 9 April 2010.

For the EFC-FST meeting on 20/21 September 2010, in line with the 2004 political request of the EFC, the 3L3 Committees further submitted a report based on the 3L3 Committee Members' response collected over the summer. The report noted developments as well as remaining/deepening issues that Members from the three sectors experienced in 2010.

The 3L3 Committees noted that part of the G20 agenda relates to tax concerns which go beyond the 3L3 supervisory competencies, whilst continuing to support the strong momentum in the G20/FSB agenda for reforms to repair, strengthen the resilience and improve the functioning of financial systems going forward.



### OTHER OBJECTIVES SERVED

Market integrity

## NEXT STEPS

**In light of the establishment of the three European Supervisory Authorities and as per decision of the September 2010 EFC, the future Joint Committee, will continue the practice of the 3L3 Committees, to provide an annual report to the political level on related developments of non-cooperative jurisdictions in the EU financial sector.**

## 3L3 Joint task force on PRIPs

A 3L3 Task Force on Packaged Retail Investment Products (PRIPs) was set up in February 2010 to formulate a common 3L3 position on the scope of PRIPs and the appropriate principles for pre-contractual product disclosures and selling practices.

The Task Force was chaired by Anneli Tuominen (Finanssivalvonta, Finland) and was composed of an equal number of representatives from CESR and CEIOPS, as well as of experts from CEBS on structured deposits and of observers from the European Commission.

Five meetings were held between 9 April 2010 and 10 September 2010. On 6 October 2010, a report was submitted to the European Commission, under a joint 3L3 Chairs cover letter, and it was published on the websites of the 3L3 Committees on 12 October 2010.

The Task Force sought, wherever possible, to form consensual views on the key aspects of PRIPs. However, where this was not possible, alternative positions were expressed.



### OTHER OBJECTIVES SERVED

Investor protection

The European Commission published a Consultation Paper on its proposed legal framework for PRIPs scope and product disclosure on 26 November 2010. Draft legislative proposals on pre-contractual product disclosures for PRIPs are expected in June 2011. Legislative proposals regarding sales of PRIPs, which will be incorporated in a revised MiFID and IMD, are not expected until later 2011. The 3L3 Committees, in their new formulations as ESAs stand ready to assist with any further policy work by the European Commission in this area.

## NEXT STEPS

The Task Force may take up further work within the framework of the Joint Committee of the ESAs in the second half of 2011 to eventually provide advice in response to the Commission's legislative proposals on product disclosure.

## COMMON SUPERVISORY CULTURE



### OTHER OBJECTIVES SERVED

Market efficiency

Market integrity

### Fostering convergence through 3L3 Training

In 2010, the 3L3 Task Force on training, which brings together senior representatives from each of the Level 3 Committees and their Members, continued to foster convergence amongst supervisors by reaching a higher level of co-operation on cross-sector training. These cross-sector seminars supplement the sector training seminars which each of the Committees organises.

The three major areas of co-operation during 2010 included:

- organising cross-sector seminars,
- planning annual 3L3 Training Programme, and
- reviewing the 3L3 Manual on Training Processes.

Organising cross-sector seminars: The Task Force and the 3L3 Secretariats made a joint effort in developing, monitoring and assessment of the 3L3 training programme. Along with other projects of the 3L3 Committees, cross-sector training has benefited from a second year of financial support from the European Commission in 2010.

Following the analysis of the learning outcomes provided in the feedback received on the training, the Task Force concluded that the further involvement of the Secretariats in the implementation of training and a closer co-ordination with the hosts would be beneficial in the future.

Planning the annual 2011 Training Programme: The 3L3 Secretariats co-operated in the development of a common questionnaire aimed at assessing the demand for training needs in 2011 and to identify volunteers to host and organise seminars. For the first time, the online questionnaire facilitated a co-ordinated response by single regulators who are Members of the 3L3 Committees. The feedback provided was used by the Task Force as a basis for planning the 3L3 training programme of the following year.

Reviewing the 3L3 Manual on Training Processes: Given the transformation of the 3L3 into ESAs as of 1 January 2011, the Task Force reviewed its manual on training, developed in 2009, in order to reflect the budgetary procedures of the ESAs and to make it more user friendly. The updated ESAs Manual on Training will be finalised and published in 2011.

The 3L3 Committees maintained the number of cross-sector seminars in 2010: The 3L3 Committees developed a cross-sector training programme to ensure cross-sector convergence, together with the essential support of the Members who volunteered in hosting and organising seminars.

The 3L3 training programme for 2010 included the following cross-sector seminars:

No	Name of the seminar	Date & Location	Host	Number of participants
1	Corporate Governance	26 February, Lisbon	CNVM	35
2	Assessment of IT systems and applications in financial institutions	1-3 March, Eltville (Frankfurt)	BaFin	29
3	Negotiating skills for European Supervisors	4-5 March, Eltville	BuBa (ESE)	14
4	Seminar on Risk Management for Financial Conglomerates	18-19 March, Amsterdam	DNB & Duisenberg School of Finance	28
5	Negotiating skills for European Supervisors.	6-7 May, Eltville	BuBa (ESE)	10
6	Assessment of IT systems and applications in financial institutions	9-11 June, Eltville	BaFin	28
7	Understanding the impact of Lehman's default on market participants	17-18 June, Paris	AMF	43
8	Internal Model validation – Banking and Insurance sector	24-25 June, Rome	Banca d'Italia & ISVAP	47
9	Negotiating skills for European Supervisors	15-16 July, Eltville	BuBa (ESE)	12
10	Negotiating skills for European Supervisors	27-28 September, Eltville	BuBa (ESE)	9
11	Clearing and settlement – recent developments and challenges	29-30 September, Frankfurt	BuBa & BaFin	24
12	Negotiating skills for European Supervisors	21-22 October, Eltville	BuBa (ESE)	9
13	The new European System of Financial Supervision	6-7 December, Paris	CESR Secretariat	55
14	Supervisory Colleges	9-10 December, Berlin	BaFin & Ministry of Finance	30
<b>IN TOTAL</b>				<b>340</b>

The effort devoted to train staff of EU supervisory and regulatory authorities on a cross-sector basis during 2010 allowed for the training of over 350 supervisors, which mean a further strengthening of our common supervisory culture.

## NEXT STEPS

The Task Force, within the framework of the Joint Committee of the ESAs, will continue the training programme for 2011 and will finalise the ESAs' Manual on Training, as well as strengthen cooperation in supervisory training.

# 3.3 Investor protection

## **Investment Management Standing Committee** 93

CESR fine-tunes format and content of key investor disclosures for UCITS 93  
CESR works on Level 3 guidelines for the content of the KID 94  
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## **Corporate Finance Standing Committee** 98

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## **Investor Protection and Intermediaries Standing Committee** 98

MiFID review: CESR consults on investor protection, intermediaries and client categorisation 98



## 3.2 Investor protection

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

### INVESTMENT MANAGEMENT STANDING COMMITTEE

#### 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.

#### Disclosure of 'risk and reward' and charges

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.



#### OTHER OBJECTIVES SERVED

Advice and Reporting to EU institutions

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.

### Bar charts to show 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.



#### OTHER OBJECTIVES SERVED

Reporting EU institutions,  
implementing EU roadmaps

### CESR works on Level 3 guidelines for the content of the KID

The technical advice to the 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 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.

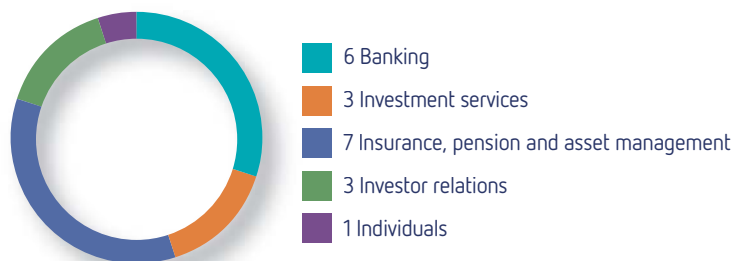
In light of the feedback from the public consultations on the Key Investor Information Document, CESR decided to develop additional Level 3 guidelines to help stakeholders in the preparation of KIDs. The guidelines were to consist of a plain language guide, a KID template illustrating the information 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.

## Guidelines on the selection of performance scenarios for structured UCITS

The revised UCITS Directive (2009/65/EU) requires, for structured UCITS (including capital-protected and guaranteed UCITS) and other comparable UCITS, the use of prospective scenarios. Article 36 of the Commission Regulation No 583/2010 implementing the Directive as regards Key Investor Information (KII) elaborates on this general requirement. In order to ensure comparability between structured UCITS, CESR decided to develop guidelines with a view to harmonising the selection and presentation of scenarios.

The draft guidelines, which were published for consultation in July (Ref. CESR/10-530), cover the factors to be taken into account when choosing the scenarios, such as the features of the formula, e.g. a knock-out feature or a guarantee with a conditional floor, and the link between the market conditions and the outcome for the investor. There is also guidance on how the scenarios themselves should be presented, including on the choice between using tables or graphs. Finally, an annex contains examples of performance scenarios using a table- or graph-based presentation.

Responses received to consultation on CESR's level 3 guidelines on the selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS



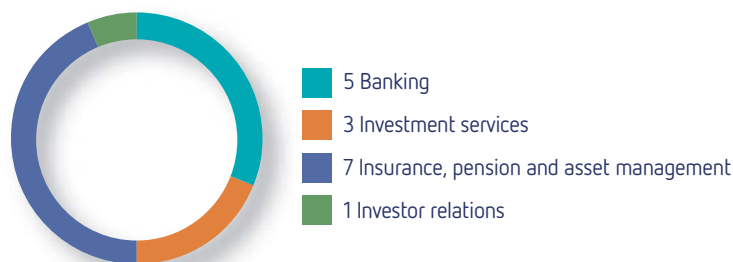
Feedback from respondents to the consultation was broadly positive. As set out in the feedback statement (Ref. CESR/10-1396) that accompanied the final guidelines published in December (Ref. CESR/10-1318), main changes made to the guidelines consisted of additional clarification on the circumstances in which the scenarios should be updated, as well as clarifying the link between the outcome from the investor's perspective and the market conditions.

## Good practice guide on clear language and layout for the KII

The KII document is aimed at improving the quality of disclosures for retail investors. In order to help UCITS management companies meet the regulatory objective for KII to achieve the clarity and simplicity of presentation that is required by retail investors, CESR decided to develop a good practice guide. The guide addressed such issues as the use of jargon and the elements to be taken into account when drafting the different sections of the KII.

The draft guide was published for consultation in July (Ref. CESR/10-532). As set out in the feedback statement (Ref. CESR/10-1320) published at the same time as the final guidelines (Ref. CESR/10-1320), respondents were generally supportive but sought clarification on a number of points. In the light of these comments, CESR clarified in the final version of the guide that there may be other ways in which UCITS can satisfy the KII requirements and that the document should be seen as a good practice guide rather than a mandatory set of requirements. CESR also took the opportunity to explain that certain points raised by respondents fell outside the scope of the guide and related in fact to the provisions of the revised UCITS Directive and related Level 2 legislation.

### Responses received to consultation on the guide to clear language and layout for the Key Investor Information document (KII)

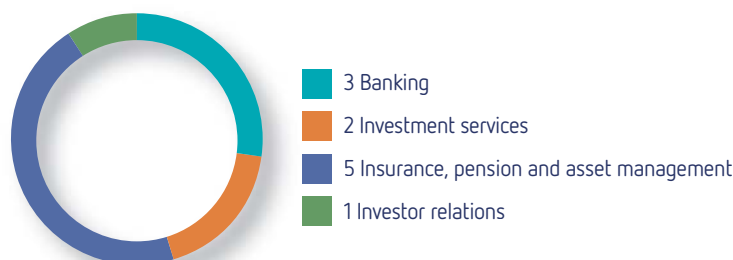


### Guidelines for transition from Simplified Prospectus to KII

Article 118(2) of the revised UCITS Directive allows UCITS management companies, up to 30 June 2012; to implement KII. In order to ensure as smooth a transition as possible, CESR decided to develop guidelines on the practical implications of Article 118(2). In trying to balance the scope for consumer confusion with the costs to be borne by management companies and ultimately consumers, CESR's draft guidelines (Ref. CESR/10-672) set out what it considered to be the appropriate approach that management companies should take during the transitional period when:

- making alterations to an existing Simplified Prospectus (SP);
- launching a new UCITS or investment compartment (sub-fund);
- adding share classes;
- 'passporting' a new or existing UCITS into another Member State; and
- undertaking a merger or setting up a master-feeder structure as allowed by the revised Directive.

### Response to the consultation on CESR's Guidelines for the transition from the Simplified Prospectus to the Key Investor Information document



Overall, CESR took the pragmatic view that in most circumstances the simplified prospectus could continue to be offered up until 30 June 2012, where the national law and regulation of the UCITS home state allows it. The exception to this is for new UCITS authorised after 30 June 2011, where the KII should be prepared from the outset.

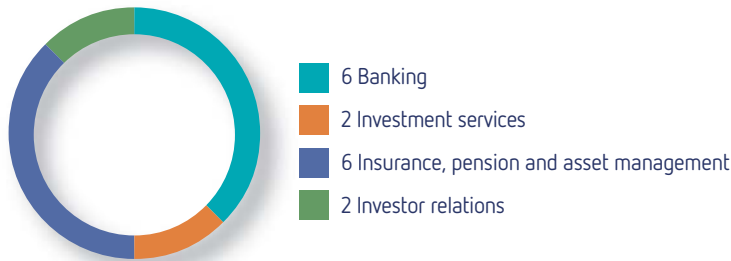
CESR published a feedback statement (Ref. CESR/10-1397) in December alongside the final guidelines. As set out in the former, given the broad support from respondents for the proposed guidelines, CESR decided to confirm most of its proposals in the final text (Ref. CESR/10-1319). However, one amendment was made to clarify that any decision to incorporate elements of the KII into the simplified prospectus is entirely at the discretion of the management company.

### Template for the Key Investor Information document

As a further means of assisting UCITS management companies in the transition to KII, CESR worked on the development of a template showing the type of contents and layout that UCITS management companies would be expected to follow for a standard UCITS. The final version of the template was published in December (Ref. CESR/10-1321) accompanied by a feedback statement (Ref. CESR/10-1399). Most of the responses to the consultation

were either supportive or related to issues that were outside the scope of the template; as such, CESR did not make significant changes to the version published for consultation. However, it was clarified that there was no prohibition on copying-out text from the full prospectus. CESR also agreed with the suggestion to incorporate into the past performance chart the year in which the fund started to issue units.

Responses received to consultation on CESR's template for the Key Investor Information document



## NEXT STEPS

The package of measures adopted in December represented CESR's final piece of work at Level 3 on KII. The onus now shifts to the UCITS industry to implement the KII framework in line with the transposition deadline for the revised UCITS Directive of 1 July 2011. The guidelines for the transition from the SP to KII will enter into force in line with the transposition deadline for the revised UCITS Directive, i.e. 1 July 2011.

## 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 depositary, 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 reconstitute them in case of loss.



### OTHER OBJECTIVES SERVED

Reporting EU institutions,  
implementing EU roadmaps

### 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

ESMA will use the results of this mapping exercise when considering any future work on harmonising the duties and liabilities of UCITS depositaries, as well as those of AIF depositaries.

## CORPORATE FINANCE STANDING COMMITTEE



### CESR assesses equivalence of non-EEA prospectuses

Market efficiency relies on access by issuers to the markets in a quick and cost-effective manner. With regards to third country issuers, many of whom are subject to regulatory oversight in their own jurisdictions, market efficiency is best served by ensuring that European investors receive substantially the same information as they do in relation to European issuers. CESR's Corporate Finance Standing Committee has continued to work in 2010 on the equivalence of prospectuses (Article 20.1 PD) from countries outside the EEA. This work was summarised in a statement (Ref. CESR/08-972) published by CESR in December 2008. In this statement, CESR clarified its interpretation of Article 20.1 PD, informing market participants that, at the date of the statement, no Member State had taken any blanket or unconditional decision with respect to the equivalence of the prospectus standards of any third country. During 2010, CESR has worked on a common assessment of the prospectus requirements of certain third countries compared to the EU requirements, focusing to begin with on the requirements of Israel.

#### OTHER OBJECTIVES SERVED

Reporting EU institutions,  
implementing EU roadmaps

## NEXT STEPS

The group will undertake a common assessment of the prospectus requirements of certain third countries compared to the EU requirements, starting with Israel and the United States. As a next step, in 2011, ESMA will make a statement on the framework for third country prospectuses under Article 20 of the Prospectus Directive and a statement on Israeli prospectuses.

## INVESTOR PROTECTION AND INTERMEDIARIES STANDING COMMITTEE



### MiFID review: CESR consults on investor protection, intermediaries and client categorisation

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

With some exceptions, CESR limited its review in this area to where the legal text of MiFID incorporated review clauses. In some areas, CESR suggested proposals for changes to the legislation. In other cases, CESR said it intended 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.

#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

### Responses received to consultation on CESR's advice in the context of the MiFID Review – Investor Protection and Intermediaries



### Advice to Commission to further develop MiFID

In preparing its advice, CESR consulted stakeholders on six main policy areas:

- key elements of a possible common EEA recording requirement for orders received or transmitted by Telephone or through electronic communications;
- execution quality data: whether or not regulatory intervention is required to ensure that necessary information to select appropriate execution venues is available in the market (execution quality data for shares) - either by defining 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, by requiring execution venues to produce periodic reports on execution quality using metrics defined by CESR;
- for complex and non-complex financial instruments, clarifying and delivering a more graduated risk-based approach to the distinction between complex and non-complex financial instruments for the purposes of MiFID's appropriateness requirements;
- the definition of personal recommendation: clarifying 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 amendments to tied agents regime, such as 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; and
- reducing the number of MiFID options and discretions, thereby limiting differences in national legislation.

CESR held an open hearing on the issues set out in the consultation paper on 17 May 2010.

In addition to providing the Commission with the technical advice, the Commission March 2010 request for additional information in relation to its MiFID review posed a number of questions on conduct of business issues to which CESR was required to respond. These questions included topics such as:

- complex/non-complex financial instruments and the appropriateness test;
- inducements requirements;
- client categorisation;
- tied agents;
- underwriting;
- ancillary services; and
- suitability.

The technical advice (Ref. CESR/10-859) in relation to the May consultation was published in July 2010 alongside CESR's response to the Commission's additional questions (Ref. CESR/10-860). The feedback statement (Ref. CESR/10-918) related to the consultation was published on 6 September 2010.

CESR also provided advice to the Commission on its own initiative. It made some additional important recommendations and statements regarding disclosure measures for over-the-counter derivatives and other complex or tailor-made products, the organisational requirements related to the launch of new services or products, and on inducements.

### Consultation on client categorisation

On 12 July 2010, CESR started its consultation on client categorisation (Ref. CESR/10-831). CESR decided to consult on the issue in order to reply to the additional questions on client categorisation the Commission posed to CESR in relation to the MiFID review because they touched on significant policy issues. They dealt with the MiFID client categories of 'professional client' and 'eligible counterparty', with a view to further calibrating the treatment of clients. The purpose of consulting on these issues was to gather stakeholders' views to assist CESR in shaping its response to the Commission.

Responses received to consultation on CESR's advice in the context of the MiFID Review – Client Categorisation



CESR sought views on whether distinctions should be made between regulated entities for the purposes of determining which entities are to be treated as 'per se' professional clients; asked whether it is necessary to clarify, for the purposes of the client categorisation regime, whether local authorities/municipalities can be treated as public debt bodies; and sought views on whether tests of knowledge and experience should be used more widely for client categorisation than is currently the case. In addition, CESR asked whether for very complex products (such as asset-backed securities and non-standard over-the-counter 'OTC' derivatives) the scope of the eligible counterparty categorisation should be narrowed and what standards should apply to transactions done with eligible counterparties.

### CESR finds MiFID client categorisation appropriate, only minor changes

The resulting technical advice (Ref. CESR/10-1040) was published on 13 October 2010, setting out CESR's response on client categorisation. In its advice, CESR considered that the current MiFID rules on the categories of clients, and the obligations attaching to each, are generally appropriate and do not need significant change. While supporting the Commission's initiative to review MiFID generally, in order to adapt its current provisions to recent developments of the financial markets, CESR said that MiFID's client categorisation regime, specifically, is largely working well. So, in the context of the wider MiFID review, the client categorisation regime does not need radical review. Nevertheless, CESR stated that there is scope for some clarification of relevant definitions and terms where there may be some ambiguity; and CESR does not rule out future work on clarifying what some terms mean in the context of the professional and eligible counterparty client categories. The related feedback statement (Ref. CESR/10-1045) was published on 22 October 2010.

## NEXT STEPS

ESMA will have due regard to the Commission's consultation and upcoming legislative proposals to consider the scope of its future work in the area of investor protection and intermediaries.



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

**CEMA**

CESR monitors key trends and risks in financial markets

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

This objective, referred to (in short) as ‘advice and reporting to EU institutions’, refers to CESR’s role to act as an advisory group to assist the Commission in particular, in its preparation of draft implementing measures of EU framework Directives in the field of securities. Much of CESR’s work in this technical advisory capacity has been covered in earlier sections of the annual report. In addition, CESR has committed to reporting to the European institutions on how it is undertaking its work and in particular on how it is implementing the various roadmaps established at a European level. Furthermore, CESR provides a number of assessments on the situation in financial markets to the Council.

### CEMA



#### OTHER OBJECTIVES SERVED

Convergence

Investor protection

### CESR monitors key trends and risks in financial markets

Between January and March 2010, CESR’s Committee for Economic and Markets Analysis (CEMA) provided its assessment of the situation in financial markets (Ref. CESR/10-310) to European Committees, such as the Financial Services (FSC) and the Economic and Financial Committee (EFC) respectively. The analyses provided by CESR culminated, at the end of July, in the publication of CESR’s first economic report on key trends and risks in financial markets (CESR/10-697). This report served as the basis for further reports to the EFC and the FSC later that year. An updated version of the report was prepared for the end of September 2010 (Ref. CESR/10-1099). The reports stressed, in particular, the following points:

#### Markets showed mixed picture in terms of risks in 2010

In light of some positive signs globally, a tendency to downplay the severity of the crisis seemed to emerge accompanied by reluctance to recognise the need for financial reforms. Therefore, the assessment was that risks that urgently required regulatory actions were never fully considered. At the same time, emergent risks seemed to trigger hasty regulatory actions deemed necessary. However, a prior and full analysis of the problems involved is essential.

In fact, there were non-negligible risks affecting both cash and derivatives markets such as the extent of the global economic recovery, and the rising and broadening of European sovereign risk. In particular, the sovereign CDS market continued to ‘test’ countries having difficulties achieving announced budget and debt targets.

#### Lower risk perceptions due to fiscal adjustment programs and publishing of stress tests

However, a sensible reduction in the perception of sovereign risk has been observed in both European cash and the CDS markets since the end of June 2010, with lower yield differentials with regard to the German bonds and lower CDS premia. The improvement has apparently been fuelled by the implementation of tough fiscal adjustment programmes in most European countries and by the disclosure of the results of stress tests in a significant number of European financial institutions. The tests seemed to have allowed investors to better discriminate among the different European financial institutions.

## Strains in the financial system persist

The persistency of severe strains in the financial system was particularly evident in the fact that banks were still relying on the ECB's deposit facility. An unprecedented package of support by the European Financial Stabilisation Mechanism, which included a € 440bn European Financial Stability Fund and additional funding from the International Monetary Fund (IMF), was agreed in 2010. Since May, the ECB started to buy treasury bonds in the secondary markets, trying to re-establish the equilibrium of this market, reducing the yields and creating more acceptable conditions to new issuances in the primary market.

Already at the time, it appeared possible that the financing requirements of countries and companies might become an issue in the near term. For investment-grade non-financial corporates the debt rollover conditions seemed favourable. However, sub-investment grade companies found it difficult to either finance themselves in the markets or through loans. In the second half of 2010, banks themselves were likely to build up liquidity for the regulatory changes ahead, with consequences for the funding of the corporate sector.

The financial crisis has triggered a process of financial disintermediation, whereby banks play a diminishing role in the financial system (e.g. reduced loan and securitisation activity). Therefore, in 2010 direct finance became increasingly important, as the record bond issuance of corporate firms in Europe and the U.S. shows for the year 2009. This shift, which is reflected in the significant increase in the share of bond issuance in the total debt of corporate firms, also had implications in terms of the risk distribution within the financial system, including systemic risk.

## Future development of markets depends on risk perception

Against this background, the main question in 2010 was how the European financial system would evolve in the medium term. In the past, the debate revolved around whether bank-based and market-based financial systems would converge into one, or whether there could remain a dichotomy. Neither theoretical nor empirical arguments seem to strongly support a convergence hypothesis. Instead, they point to the advantages and inconveniences of each model. Alternatively, the dichotomy hypothesis might have already lost some of its relevance as new financial innovations might lead to the emergence of new 'hybrid systems' which might combine the advantages (but also preserve some inconveniences) of both systems. CESR concluded that, going forward, it remains to be seen to what extent the combination of market and regulatory developments will be able to both develop the welfare-enhancing risk sharing functions and curtail the welfare-decreasing effects of informational asymmetries of financial innovations.

Aside from high asset valuation, two contributing factors to asset price bubbles (rapid growth in private-sector credit and significant investment flows into particular asset classes) did not seem to be present in 2010. CESR stressed that, looking forward, if a low interest rate environment were to persist, a close monitoring of the situation in emerging, commodities markets and in some local European markets (e.g. real estate) may be needed.

The evolution of the boundaries between wholesale markets and retail markets need to be monitored with due attention because of an increasing tendency to shift risks to (possibly unaware) retail investors through new complex financial products.

## NEXT STEPS

**CEMA will continue to proceed with publishing a report on trends, risks and vulnerabilities. The next report is expected to be available during the first half of 2011.**

# LOOKING AHEAD: ESMA IN 2011

CESR set the ground for a smooth transition to ESMA in 2011. Besides setting up its organisation, the rules and procedures, a detailed Work Programme for 2011 was developed setting out the key future priorities for the year ahead.

# 04

## 4.1 Key priorities: ESMA's draft Work Programme in 2011

From January 2011 on, CESR will be replaced by ESMA. Matter of fact, there are some work streams in the 2011 Work Programme that are linked to the establishment and becoming-operational of ESMA. The key policy areas of ESMA in 2011 are listed below:

### Establishment of ESMA

- **Establishment of ESMA** – new structure (new groups, decision, appeal processes) and powers (emergency, binding technical standards)
- **Credit Rating Agencies** – provision of repository database for historical ratings information, analysis of third country regimes for certification purposes and co-operation arrangements, and organisation of transfer of responsibilities for direct supervision of CRAs. Processing of CRAs applications for registration or certification, on-going supervision of CRAs, regular reporting to the EC
- **Alternative Investment Fund Managers Directive** – Level 2 mandate – leverage, conduct of business, organisational requirements and conflicts of interest, risk and liquidity management, valuation, depositaries, standard notification letter and attestation and co-operation/exchange of information arrangements between competent authorities and 3rd countries, investment in securitisation positions, disclosure to investors/competent authorities, content of annual report, delegation and remuneration
- **European Market Infrastructure Regulation (EMIR)** – Eligibility for the clearing obligation, reporting to Trade Repositories and access to data, risk mitigation for non-CCP cleared contracts, thresholds for non-financials, and CCP's capital requirements, governance arrangements, record keeping, business continuity, margin requirements, other risk controls, collateral requirements, investment policy, stress tests and back tests, and application for registration of TRs, their transparency and data availability, guidelines and recommendations for interoperability

## 4.2 Ad hoc work streams

### PANELS

#### Review Panel

- D peer review
- MAD use of sanctioning powers mapping
- CESR/ ESCB recommendations on settlement
- MiFID use of sanctioning powers mapping
- MAD use of 1st & 2nd set of level 3 Guidance mapping and, as appropriate, peer review
- CESR Recommendations on Art. 51(3) Implementing Directive MiFID
- Divergence in shareholding notification mapping

#### Mediation Panel

- Mediation

## 4.3 On-going work in 2011

### STANDING COMMITTEES

#### Corporate Reporting

- EECS, monitoring of IFRS development and endorsement, mapping of the application of requirements (e.g. IFRS 8), post-implementation work on IFRS 9
- Equivalence: analysis of the application of IFRS in China and India, on-going dialogue with the SEC and other third countries (China and Japan) to implement the CESR/SEC work programme on IFRS
- Contribution to the Level 2 committee on accounting (ARC) and auditing (AuRC), contribution to EFRAG, co-operation with the Level 3 work of other ESMA groups on accounting and auditing matters (Prospectus and Transparency)
- Level 3 work on interim management statements
- Monitoring of International Standards of Auditing (ISA) development and endorsement/ Introduction of ISAs in EU
- Follow up work on the OAM network (covering all issuers of securities), monitoring XBRL developments in the financial reports of listed issuers

#### Corporate Finance

- Possible Level 2 advice on possible Delegated Acts concerning the amended Prospectus Directive and in relation to the Review of the TD
- Supervisory convergence: update and maintenance of Q&A (PD and TD), collaboration with the Commission on implementation work following the review of the Transparency Directive
- Preparing the implementation of the amended PD
- Update and maintenance of a Q&A and of the takeover bids network (incl. exchange of experiences in the cross-border takeover bids)
- Possible response to the EC green paper on corporate governance, possible work on corporate governance statements by listed issuers
- Possible work on quality and integrity of proxy voting chain
- Possible follow-up and implementation work following EC review of the Takeovers Directive
- Assisting EC on compilation/recording of checklist, possible work on Institutional Investor Codes
- Exchange of information on equivalence decisions, Compilation and publication of 'passporting' statistics

## Credit Rating Agencies

- Credit Rating Agencies: production of Q&A, ongoing policy work and review of guidelines issued

## ESMA-PoI

- Market abuse across different trading platforms in a post-MiFID trading environment
- Short selling, MAD review (Level 2 mandate), Possible MAD Level 3 work, market abuse through OTC derivatives - follow-up to the work conducted in 2010, MAD Enforcement Database
- Ongoing operational work of ESMA-PoI, algorithmic trading, investigative tools

## ESMA-PoI & TECHNICAL SUPPORT GROUPS – IT Management and Governance

- Improving the quality of data/ minimising differences in reporting standards: home/host rules for branches, major differences in national reporting systems, minor differences in reporting schemes, finalising work on IRDS, adapting reporting to external requirements of new fields
- Improving the quality of the exchanged data, data collection from MTFs and supervision of MTFs as reporting entities: collection of reference data and possibly transaction/order book data, identification of a set of principles for supervising MTFs as reporting entities and other accepted reporting parties
- Home/ host rules for reporting by branches, OTC derivatives, TREM statistics quality

## Secondary Markets

- Calculation of data relevant for MiFID pre- and post trade transparency requirements, market transparency calculations, pre-trade transparency waivers (new functionalities)
- Follow-up of MiFID review, of the work on market micro-structural issues, on non-equity transparency, on standardisation and exchange trading of OTC derivatives
- Review of CESR Protocol on the operation of notifications of MiFID Article 41 suspensions and removals from trading, Maintenance of MiFID Q&A database
- Follow-up on CESR/ERGEG work on transparency of electricity and gas markets
- Emission allowances

## Post-Trading

- Settlement Discipline, Target2Securities, Securities Law Directive
- Follow-up of CESR-ESCB Recommendations and work in relation to the review of CPSS-IOSCO Standards
- OTC Derivatives Regulators Forum, Commission Expert Group on Market Infrastructure
- CSD Regulation

## Investor Protection and Intermediaries

- Follow up to the MiFID review related to intermediaries
- Best execution
- Supervisory briefings and further guidance on information to clients and on suitability / appropriateness / execution only
- Maintenance of the MiFID Q&A database

## Investment Management

- UCITS depositaries, Convergent implementation of UCITS legislation
- Ad hoc operational issues, issues raised by UCITS III Directive (including funds based on total return swaps, index funds, exchange-traded funds and Newcits)

## TASK FORCES

### Mutual Recognition

- Mutual Recognition

### Retail Investment products

- Packaged Retail Investment Products (PRIIPs)

## TECHNICAL/SUPPORT GROUPS

### Committee for Economic and Markets Analysis (CEMA)

- Regular & ad hoc reporting to EFC-FST & FSC, ESRB, IA-related work, ad hoc studies
- Contribution to the 3L3 TF on cross sector risks, support to CEMA WGs

### IT Management & Governance

- Tail of CRA Central Repository project
- PTSC -Registration of OTC derivatives subject to mandatory clearing and corresponding central counterparties (CCPs)
- CRA - Supervision of Credit Rating Agencies activity
- ESMA - Pol - Short Selling Disclosures
- CEMA - Collection and exchange of data with the ESRB
- AIFMD - Possible information sharing, reporting, and registration requirements arising from, business requirements
- Secure email / secure exchange of documents on investigations (ESMA-POL - CRAs)
- Maintenance / production / helpdesk of IT systems: IRDS and RDS, TREM / HUB, Web site, Lime Survey, CEREP
- UCITS - Exchange of UCITS Notifications
- Network of OAMs and XBRL Task Force - jointly with ESMA-Fin

## OPERATIONAL NETWORK

### Legal Network

- Legal advice

### Supervisory Culture

- Organising training seminars
- Human resources TF (implementation of secondment policy and study visits)

### Communications

- Press and media (answering queries, press releases, interviews, promoting ESMA documents)
- New website, Annual report, Conference

### Retail Investors

- Retail investors (alerting investor network, investor days, ...) and potentially a few attendees a consultative working group level



## ESMA Staff work

- Installation of the EU accounting system – ABAC, upgrade of the Secretariat’s office platform
- Financial and accounting reporting on ESMA activities, move of the IT systems of the Secretariat (together with the move of ESMA’s offices)
- IT helpdesk to ESMA employees, US contacts general, graphic design work for ESMA, maintaining current website, MiFID database
- Third countries, Swiss etc.
- ESMA internal communications, increase of the security of Office IT systems to support investigations

## 3L3 work streams

- Micro-prudential analyses of cross-sector developments, risks and vulnerabilities for financial stability
- Preparatory work for ESRB meeting for the second Vice Chair position of the Chair of JCESA
- Financial conglomerates, Scope, tools, powers, JC Impact Assessment network
- Annual Report on Joint Committee’s work programme, Common supervisory culture
- Packaged Retail Investment Products (PRIIPs)
- AML, Guidance in some areas of supervisory implementation practices in the 3rd EU AML Directive, guidance in some areas on AML issues regarding PSD, guidance in some areas on AML issues regarding 2nd E money Directive
- Financial conglomerates, Draft a written template for information exchange – re colleges of Financial Conglomerates, Update and maintain the monitoring template for colleges including all coordinators to ensure a college (whether existing at sector level or not) discusses cross border Financial Conglomerates, financial conglomerates, Guidelines/TS on Participations, financial conglomerates, guidelines on Internal Governance/Pillar 2 under the FICOD, guidelines in case of equivalent provisions, which provisions to apply at the level of this mixed financial holding company, guidelines on waiver of supervision under the FICOD, annual notification of list of Financial Conglomerates, financial conglomerates to have a resolution plan, training of supervisors of Financial conglomerates
- Regulatory arbitrage in own funds Comparison of CRD/SII regulation on own funds including recommendations for alignments, Non-cooperative jurisdictions, Annual report on non-cooperative jurisdictions and Database to record members updates, up-to-date contact lists on passporting as indicated in guidelines, internal governance, consideration of EC measure

# APPENDIX

- Financial statements
- CESR Secretariat
- List of CESR Members

# 05

## 5.1 Financial statements

### Profit and Loss (Revenues and expenses)

As at December 31, 2010 (in Euros)	31/12/2010	31/12/2009
<b>REVENUES</b>		
Contributions from Members	5 520 000	4 510 000
Annual conferences	0	160 100
Profit on marketable securities	14 573	43 261
Contributions from Members for TREM running costs	264 538	234 733
Other	3 004	4
Training	1 000	0
Commission's contribution	1 040 423	158 000
<b>TOTAL REVENUES</b>	<b>6 843 537</b>	<b>5 106 098</b>
<b>EXPENSES</b>		
Salaries and employee benefits	3 649 228	2 611 533
External staff	329 321	258 992
Premises	991 043	772 004
Travelling	290 084	267 956
Office supplies	31 553	32 983
Training	48 108	11 589
Organization and follow-up of meetings	90 884	226 744
Telecommunications	57 239	45 343
IT project	851 573	443 327
Transportation and communications expenses	0	0
Printing	29 583	33 400
Computer & IT development	71 725	64 476
Professional fees	280 181	67 155
Depreciation of fixed assets	245 556	143 877
Retired assets	0	0
Miscellaneous	9 004	7 473
Taxes	3 635	5 089
<b>TOTAL EXPENSES</b>	<b>6 978 948</b>	<b>4 991 892</b>
<b>Excess of revenues over expenses</b>	<b>-135 410</b>	<b>114 206</b>

## 5.2 CESR Secretariat

### IT and Administration Nicolas Vasse, Director +33 (0)1 58 36 43 33

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Patrick Bartholomew<br/>IT Administrator<br/>+33 (0)1 58 36 43 22</li> <li>• Alexandru Dincov<br/>IT Expert<br/>+33 (0)1 58 36 42 73</li> <li>• Elena Muñoz<br/>IT Expert<br/>+33 (0)1 58 36 51 11</li> <li>• David Nadry<br/>IT Expert<br/>+33 (0)1 58 36 42 76</li> <li>• Tba<br/>IT Expert CRAs<br/>+33 (0)1 58 36 43 21</li> </ul> | <ul style="list-style-type: none"> <li>• Set-up and running of TREM</li> <li>• Development and implementation of IT systems</li> <li>• IT Data sharing projects</li> <li>• Secretariat of CESR-Tech</li> </ul> |
|---|--|

### Supervisory Convergence and Economic Analysis Oliver Burkart, Director +33 (0)1 58 36 43 35

- |   |  |
|---|--|
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| <p>Legal Analysis</p> <ul style="list-style-type: none"> <li>• Jonathan Overett Somnier<br/>Legal Advisor<br/>+30 210 33 77 196</li> </ul>  | <ul style="list-style-type: none"> <li>• Legal analysis and support</li> <li>• General legislative work</li> <li>• Mediation</li> </ul>  |
| <p>Review Panel</p> <ul style="list-style-type: none"> <li>• Jörg Willems<br/>Expert Review Panel<br/>+33 (0)1 58 36 43 20</li> <li>• Martine Noesen<br/>Officer<br/>+33 (0)1 58 36 42 78</li> </ul>                    | <ul style="list-style-type: none"> <li>• Review Panel</li> </ul>   |
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- Frederiek Vermeulen  
Officer  
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Enforcement of FRS/  
Database

- Endorsement of IFRS
- Audit
- Liaison with ARC, EFRAG,  
AURC and EGAOB
- Equivalence of GAAPs
- Dissemination and storing  
of regulated information
- Periodic financial info

Corporate Finance

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- Ville Kajala  
Senior Officer  
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- Prospectus
- Corporate governance
- Disclosure of major  
shareholdings

Takeover Bids

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- Takeover bids

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- Raquel de Julian Artajo  
Expert CRAs  
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- Edina Balogh  
Expert CRAs  
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- Credit rating agencies

**Communication and Common Supervisory Culture**  
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- Reemt Seibel  
Communications Officer  
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- Solveig Kleiveland  
Communications Officer  
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Training Officer  
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- Internet/Extranet
- Press, Communications
- Annual report,  
Conferences/Speeches
- Training of supervisors
- Exchange of staff
- Retail investors

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- Kate Maidens, Assistant  
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- Karim Abdelali, Logistics  
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- Philippe Lentz, IT Help Desk  
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**Markets and Intermediaries**

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Investor Protection  
and Intermediaries

- Sarah Raisin  
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- Investment services
- Rules of conduct
- Organisational  
requirements
- Conflicts of interest
- Investment products  
(PRIIPS)

Secondary Markets

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- Eva-Christina Smeets  
Senior Officer  
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- Regulated markets
- MTF
- Pre/post trade transpar-  
ency
- OTC Markets
- Markets efficiency / MiFID  
Convergence on Markets

Post-Trading

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- Follow-up of Standards
- Liaison with ESCB, ECB,  
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- Liaison with CESAME
- T2S
- CCPS and warehouse

Investment Management

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- Application of UCITS  
directives
- Supervisory convergence
- Asset management  
modernisation
- Alternative Investments

CESR-Pol

- Nadia Aderkichi  
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- Olga Petrenko  
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- Application of MAD
- Secretariat of CESR-Pol
- Enforcement Securities  
laws
- Co-operation mediation/  
database

## 5.3 List of CESR Members



### COMMISSION BANCAIRE, FINANCIÈRE ET DES ASSURANCES (CBFA) / COMMISSIE VOOR HET BANK-, FINANCIE- EN ASSURANTIEWEZEN / KOMMISSION FÜR DAS BANK, FINANZ- UND VERSICHERUNGSWESEN

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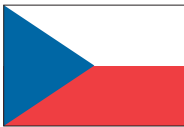
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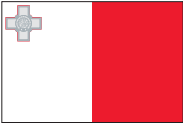
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