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PRESS RELEASE

CESR Final Consultation on Best Execution and Transparency Requirement under the MiFID

CESR is today releasing a last consultation paper (Ref. CESR/05-164) on possible implementing measures needed of the Directive 2004/39/EC on Markets in Financial Instruments (MiFID). MiFID forms one of the cornerstones of the EU's securities regulatory regime, and is intended to deliver an effective 'single passport' allowing investment firms and regulated markets to operate across Europe, under a common set of rules which enhance the protection of European investors.

These measures are being developed on the basis of mandates given to CESR by the European Commission. Under these mandates, CESR has been asked to widely consult on many substantive areas set out in the MiFID and to provide its advice to the Commission on the possible implementing measures by two different deadlines: 31 January 2005 and 30 April 2005. CESR already sent its technical advice to the Commission on substantive areas of the MiFID (Ref: CESR/05-024c).

The consultation paper released today addresses the technical advice required by 30 April 2005 and covers the following areas:

- **General obligation to act fairly, honestly and professionally and in accordance with the best interests of the client - lending to retail clients (Article 19(1))**
- **The definition of investment advice – generic and specific advice (Article 4(1))**
- **Best execution (Article 19 (1) and 21)**
- **Transparency requirements (Article 4, 22(2), 27 to 30, 44 and 45)**

CESR has already publicly consulted on its draft technical advice to the European Commission regarding most of these issues and received high number of responses. In some cases, this second consultation paper seeks comments from market participants on issues which appeared to be most debated during the previous consultation. As a result, this consultation paper reflects the current views of CESR on these issues taking into account the general results of the first round of consultation; in other cases the document presents new proposals.

An Expert Group on Intermediaries under the Chairmanship of Mr Callum McCarthy, Chairman of the UK's Financial Services Authority, and an Expert Group on Markets under the Chairmanship of Mr Karl Burkhard Caspari, Vice-President of the German Financial Services Authority (BaFin) are developing these measures. CESR's Expert Groups are also assisted by a Consultative Working Group of market experts (a full list of the members is available on CESR's website).

The deadline for submitting responses to the consultation paper is 4 April 2005. Responses should be submitted via the CESR website www.cesr-eu.org, in the section Consultations. Given the 30 April 2005 deadline set by the European Commission for receipt of CESR's advice, CESR cannot guarantee that due consideration will be given to responses received after 4 April 2005. CESR will publish all responses unless we have specifically been asked to keep a response confidential. A public hearing will be held on 23 March 2005.



Notes for Editors:

1. When finalised, these implementing measures will complement and develop how the high level political objectives (known as level 1 measures of the Lamfalussy Directive) should be applied. This level 1 measure, in the form of the MiFID Directive was adopted by the European Council on 21 April 2004, following a second reading in the European Parliament in March 2004. At present, the entire legislative package of measures will apply in EU Member States from 21 April 2006 but this may be delayed by one year subject to approval by the European co-legislature, under a proposal from the European Commission.
2. CESR has already submitted to the Commission its final technical advice on implementing measures for the MiFID on 31 January 2005 (ref.CESR/05-024c) containing all issues included in the formal mandate from the European Commission on 20 January 2004 with the exceptions where the deadline for the advice was extended by the Commission. CESR also published the feedback statement (Ref: CESR/05-025) in which it provided answers to the main issues raised by market participants during the public consultations.
3. CESR will therefore submit its advice in April on the remaining areas of the first set of mandates, namely the professional client agreement (Article 19(7)); Investment research (Articles 13 and 18); Best execution (Article 21); Admission to trading (Article 40) and order handling rules (Article 22(1)); along with the areas covered by the second set of mandates (described below).
4. The second set of mandates on which CESR will submit its advice will cover:
 - the list of financial instruments to be established by the future implementing measures, in accordance with the requirements in Article 4 of the MiFID Directive. In particular, this will include clarification and greater detail concerning which commodity derivatives should fall under the scope of the list of financial instruments and therefore the Directive generally;
 - the definition of investment advice as identified in Article 4 of the Directive;
 - the conduct of business rules in particular, this will cover 'know your customer' rules; what is considered to be the provision of advice and the rules of execution only (as identified in Article 19 of the Directive);
 - respect to eligible counterparties (as identified under Article 24): namely, which entities can be allowed to enter into transactions without being subject to the protections set out under the conduct of business rules;
 - how orders are made available to the market (as identified under Article 22);
 - pre-trade transparency requirements: in particular the extent to which trades agreed off market should be disclosed (known as internalisation and identified under Article 4 and 27 of the Directive).
3. As indicated CESR has formed three expert groups to prepare CESR's advice, however, the additional mandates fall to only two of these groups. The first four areas of the second set of mandates identified will be handled by the **Expert Group on intermediaries' issues**. This expert group is chaired by Mr Callum McCarthy (Chairman of the UK's Financial Regulator, The Financial Services Authority [FSA]). The last two issues will be covered by the **Expert Group on markets**. This expert group is chaired by Mr Karl Burkhard Caspari, Vice-President of the German Financial Services Authority (BaFin).
4. **The ISD Consultative Working Group:** A consultative group of 23 market participants has also been appointed to provide technical advice to the expert groups. The market participants are experts drawn from across the European Markets. They are not intended to represent national or a specific firm's interest and do not replace the important process of full consultation with all market participants. A full list of the participants can be found on the page of the MiFID Directive under Consultative Working Group.
5. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:



- Improve co-ordination among securities regulators;
- Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
- Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States;
- The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR's website.

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

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