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Questions and Answers on CESR's Advice on possible Level 2 Implementing Measures for the proposed Market Abuse Directive

1) Why the paper?

This paper is the first consultation paper published by CESR pursuant to a mandate from the Commission to provide technical advice on the level 2 implementing measures. Following the consultation, CESR will finalise its advice to the European Commission by the end of this year. In the first half of next year, the advice will be formalised by the European Commission and approved by the European Securities Committee.

2) How can you work on level 2 when the level 1 directive has not been agreed?

It is true that the proposed market abuse directive has yet to have finished its legislative passage through the European Parliament and the Council of Ministers. However, this directive is making good progress and in order to ensure that implementation can occur before the end of 2003, the European Commission deemed it necessary to issue a provisional mandate to CESR to start working on the level 2 technical implementing measures.

3) What is level 1 and level 2?

The Market Abuse Directive is the first of two proposed directives to employ the new four level legislative process recommended in the Lamfalussy report. The process is designed to ensure that the legislative framework can keep pace with, and facilitate, developments in the EU's emerging single capital market. The four level legislative process consists of:

- Level 1: directives that confine themselves to framework principles;
- Level 2: implementing measures developed by the Commission on the advice of a committee of independent regulators (CESR) and after the approval by a committee of high level representatives of member states (the European Securities Committee);
- Level 3: joint recommendations, consistent guidelines and common standards issued by CESR regarding matters not specified by EU legislation to ensure uniform implementation and application of the legislative framework; and
- Level 4: enforcement of Community law through Commission action.

4) What measures are covered in this consultation paper?



CESR has been asked to produce implementing measures in five substantive areas. These include the definition of inside information and market manipulation, the disclosure by issuers of inside information, the fair presentation of research and the safe harbours for share buy-backs and stabilisation.

5) How about level 3?

In order to give a better understanding of the proposed level 2 measures, the paper has also included additional guidance that regulators might issue to assist in uniform implementation of the level 2 measures. Without including the guidance in this consultation paper, consultees might well misunderstand the scope of the level 2 measures.

6) Why has this paper been issued over the summer?

CESR is obliged to work according to a timetable set by the European Commission. In order to meet the deadline set by the European Governments, the Commission has decided that CESR's advice needs to be delivered by the end of December 2002. CESR received the mandate at the end of March 2002 and has had to work rapidly in order to allow a three month consultation period. The consultation period must close on 30 September 2002 to allow CESR sufficient time to finalise its advice and if necessary, seek further input from the market.

7) How have market participants been involved in this work?

A central element of the way CESR works is to ensure full consultation. The process is set out in CESR's Statement of Consultation Practices, (ref: CESR/01/007c). Under the terms of this statement, CESR established a Consultative Working Group of eleven experts drawn from across the markets and include investor interests. This group assisted CESR by providing technical input during the drafting of the level 2 measures. The members of this group are set out in the notes to Editors of the press release.

8) How will CESR respond to the consultation?

Once again, this is set out in the Statement of Consultation Practices. It is anticipated that all responses, unless marked confidential, will be published by CESR. In addition, CESR will deliver a feedback statement which sets out the key issues raised during the consultation, together with CESR's response to those issues.

9) What happens if the level 1 directive changes in the Autumn?

CESR relies on the European Commission to inform it of relevant developments at level 1 insofar as they affect the provisional mandate. If during the course of the consultation, there are significant developments at level 1, CESR will, on the advice of the European Commission, seek to inform readers of this paper of such developments. In doing so, CESR will also identify any impact it believes these developments have on the proposals contained in the consultation paper.

10) What is the relationship between the mandate and the proposed level 1 directive?



It is important that readers of the consultation paper understand the scope of this document. CESR will be responding to the Commission's mandate. This will be done in the context of the current proposals before the European Parliament and the Council of Ministers. CESR, however, has no formal participation in the negotiations at level 1 and will not, therefore, take into account comments that relate to level 1 issues.

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