

Circular addressed to Investment Services Industry outlining the main issues contained in the Market Abuse Directive - CESR Review Panel - Options and Discretions document

6th April, 2010

This circular has the purpose of providing the investment services industry with an outline of the **Market Abuse Directive - CESR Review Panel - Options and Discretions document (Ref. CESR/09-1120)** published by CESR on the 29th March, 2010.

This document presents the manner in which securities regulators across Europe use options and discretions, applied by CESR Members under the European Market Abuse Directive regime, (**'MAD regime'**) which is made up of the Market Abuse Directive (**'MAD'**) and its Level 2 implementing measures as developed by CESR.

The report gives evidence of the wide use of options and discretions by Member States with regard to the MAD regime. Through this report divergence were found on how national supervisors disclose information on supervisory measures or sanctions, inside information directors' dealings and suspicious transaction reports.

While acknowledging the legitimate use of options and discretions, under the MAD regime, CESR's Review Panel has restated its commitment towards increased convergence of supervisory practices in the EU and recommends that the results of this exercise are taken into account in the ongoing revision of the MAD.

This work follows conclusions of the ECOFIN Council of December 2007, on aiming at reducing the use of discretions, and of May 2008 and June 2009, on the need to aim at enhancing supervisory convergence in the EU. CESR's re-commitment to providing convergence is in line with the recent decisions by the EU Parliament and Council of establishing a single European supervisory rule book.

This document allows CESR to identify those areas where it is within its Members' power to bring about further harmonisation and where it might focus future efforts more effectively. It also allows legislators to identify the necessary regulatory actions to achieve convergence and a real level playing field.

Overall, the review by CESR showed some divergence in the application of the MAD regime, but a greater level of divergence for Multilateral Trading Facilities (**'MTFs'**).

Based on this survey, a number of recommendations for further work by CESR to increase convergence are proposed. This includes further work on the extension of the

MAD regime to MTFs, once the Commission has addressed this issue in the MAD review.

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

A copy of the CESR report is available on: www.mfsa.com.mt under the section 'EU and International Associations – CESR - Press Releases'.

Contacts

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