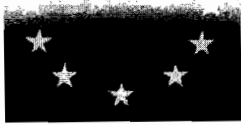


# CESR

THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS



Ref.: CESR/05-335

## Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities

The members of the Committee of European Securities Regulators (CESR),

Considering the provisions of European Directives in the financial field stating that the closest co-operation should take place between the competent authorities of the Member States for the purpose of carrying out their duties;

Considering the increasing internationalisation, harmonisation and interdependence of European Financial Markets due e.g. to the use of modern technology, closer co-operation between European exchanges and the completion of the Internal Market for financial services;

Considering that broader objectives have been set by the members of CESR as competent Authorities of the Contracting States of the European Economic Area (EEA) in order to achieve a successful oversight of the European Financial Markets;

Considering the means stated in the CESR Charter to achieve these objectives, in particular those relating to the provision of the broadest possible mutual assistance, and the strengthening of cross-border co-operation in order to enhance investor protection, to promote the integrity of financial markets and more generally to facilitate performance of the supervisory functions and the effective enforcement of the laws and regulations governing the markets;

Considering that such approach entails the sharing of different types of information given the various duties vested in the Authorities;

Considering that the most expedient way to achieve a necessary consensus is a Memorandum of Understanding;

The CESR Members have thus reached the following understanding:



## Article 1 - Principles

Without prejudice to the provisions set forth by the EU legislation, the purpose of this Multilateral Memorandum of Understanding is to establish a general framework for co-operation and consultation between the Authorities referred to hereinafter, in order to facilitate the fulfilling of their supervisory responsibilities.

## Article 2 - Definitions

1. "Authority" means any member of CESR as listed in Annex A.
2. "Requested Authority" means the Authority to whom a request is made under this Multilateral Memorandum of Understanding.
3. "Requesting Authority" means the Authority making a request under this Multilateral Memorandum of Understanding.
4. "Laws or regulations" means any laws or regulations in force in the respective states of the Authorities.
5. "Person" means any natural or legal person.
6. "Securities" means shares, bonds and other forms of securitized debts, futures and derivative products including commodity derivatives, units of undertakings in collective investment schemes and other financial products traded in the respective states of the Authorities.
7. "Financial markets" means EEA regulated markets, as defined in the Council Directive 93/22/EEC of 10 May, 1993 on investment services in the securities field (Investment Services Directive, ISD) and any other securities and derivatives market supervised by a competent authority.
8. "Intermediary" means any investment firm, bank, collective investment scheme and any other person acting within the scope of competence of the Authorities.
9. "Issuer" means a person making an offer to the public or seeking listing of a security.

## Article 3 - Scope of assistance

1. The Authorities shall provide each other with the fullest mutual assistance in any matters falling within the competence of the Authorities, including in particular the following areas:
  - a. investigations and enforcement in connection with applicable laws or regulations relating to insider dealing, market manipulation and other fraudulent or manipulative practices in the securities field,
  - b. investigation and enforcement of, and monitoring compliance with, applicable laws and regulations relating to dealing in, advising on and the management, administration and safekeeping of securities,



- c. checking that the conditions for the taking up of (or continuing in) business as an Intermediary are met (including e.g. the enforcement of requirements to be authorised),
  - d. enforcing and monitoring compliance with applicable laws and regulations relating to the disclosure of interests in securities, takeover bids or the acquisition of influence over financial intermediaries,
  - e. the supervision of the Financial Markets, including the clearing and settlement, the monitoring and surveillance of OTC-transactions in securities listed on EEA regulated markets as defined in the ISD,
  - f. enforcing or monitoring compliance with applicable laws relating to the duties of issuers and offerors of securities in relation to the disclosure of information.
2. In cases where the information requested may be maintained by, or available to, another authority within the country of the Requested Authority, the Authorities will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by law. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information to establish direct contact between the Requesting Authority and the other authority.
  3. If the request for assistance is made on the basis of regulations under European law, it must be in line with these regulations. In other cases the Requested Authority may only refuse to act on a request for assistance where communication of the information might adversely affect the sovereignty, security or public policy of the State of the Requested Authority or where judicial proceedings for the imposition of criminal penalties have already been initiated or where final judgement has already been passed or administrative sanctions have already been applied by the competent Authorities, in the jurisdiction of the requested Authority, in respect of the same actions and against the same persons.
  4. To the extent permitted by their respective national law and procedures and without prior request, each Authority should provide any other Authority with any relevant factual information available to it and which it believes to be helpful to the other Authority for the discharge of its functions and for the purposes, which it may specify in the communication (unsolicited information).

#### **Article 4 - Requests for Assistance**

1. Requests for assistance shall be made in writing and addressed to the contact person of the Requested Authority listed in Annex B.
2. In case of emergency, requests for information and replies to such requests may be transmitted orally provided that these requests are confirmed in the manner required in this Article unless the Requested Authority agrees to waive such requirements.
3. To the extent available to the Requesting Authority and in order to facilitate the Requested Authority's work the Request should specify the following:
  - a. a description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;



- b. a description of the specific information requested by the Requesting Authority; in case of discharging their responsibilities pursuant to European directives or regulations the Requesting Authority shall also name these directives and regulations;
- c. in so far as the request results from investigations of violations of any laws or regulations, a short description of the relevant provisions that may have been violated and, if known to the Requesting Authority, a list of the persons or institutions believed by the Requesting Authority to possess the information sought or the places where such information may be obtained;
- d. in so far as the request concerns information relating to transactions in specific securities
  - a description of the securities in question as precise as possible (including e.g. the securities code),
  - the names of those firms with whose dealings in the securities the Requesting Authority is concerned,
  - the dates between which transactions in the securities are considered relevant for the purposes of the request,
  - the names of any persons on whose behalf relevant transactions in the securities are believed or suspected to have been entered into;
- e. in so far as the request relates to information concerning the business or activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified;
- f. an indication of the sensitivity of the information contained in the request and whether the Requesting Authority is content for the fact that it has made the request to be disclosed to persons whom the Requested Authority may need to approach for information;
- g. whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the State of the Requested Authority in relation to the subject matter of the request;
- h. any other Authority whom the Requesting Authority is aware has an active interest in the subject matter of the request;
- i. an indication of the urgency of the request, or the desired time period for the reply.

## **Article 5 - Execution of Requests for Assistance**

1. To the extent permitted by law, the Requested Authority shall take all reasonable steps to obtain and provide the information sought.
2. The Requested Authority shall use the relevant means at its disposal for the execution of the request. The Authorities shall consult and agree on the types of enquiry that may be necessary for the execution of a request.

To the extent permitted by law, the Requesting Authority shall provide the Requested Authority with such further assistance as may reasonably be required for the efficient



execution of the request including the provision of further information as to the circumstances surrounding the request, staff or other resources.

Without prejudice to the provisions set forth by the EU legislation relating to the inspection of branches, the Authorities will consider (to the extent permitted by law) conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations, where it would assist in the effective investigation of the alleged violations. The Authorities should consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and responsibilities and the follow up actions to such investigations.

## **Article 6 - Permissible Uses of the Information Exchanged and Confidentiality**

1. If the information is exchanged pursuant to the provisions of any of the relevant European Directives, the Requesting Authority shall observe the requirements of the Directives.
2. If the information is not exchanged pursuant to the provisions of any of the relevant European Directives, the Authorities shall use the information exchanged solely for the purposes of:
  - a. securing compliance with or enforcement of the domestic laws or regulations specified in the Request;
  - b. initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the laws or regulations specified in the Request;
  - c. any of the particular purposes specified in Art. 3 (1) a.-f. to the extent that they are administered by the Requesting Authority.

The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings or for the discharge of the obligation to report to judicial authorities.

3. To the extent permitted by law, each Authority will keep confidential any request for assistance made under this Multilateral Memorandum of Understanding, the contents of such requests and the information received under this Multilateral Memorandum of Understanding as well as the matter arising in the course of its operation, in particular consultations between Authorities.
4. If an Authority intends to use or disclose information furnished under this Memorandum for any purpose other than those stated in this Article, it must obtain the prior consent of the Authority which provided the information. If the Requested Authority consents to the use of the information for purposes other than those stated, it may subject it to certain conditions.
5. Nothing in paragraphs 2 and 3 of this Article shall prevent an Authority from using or disclosing information in circumstances where such use or disclosure is required in order to comply with the obligations under European Directives.



6. If an Authority decides to make public an administrative or a disciplinary sanction within the course of its duties it may, with the consent of the Authority providing the information, indicate that the successful outcome of the case has been achieved with the aid of the international co-operation mechanisms provided for in this Multilateral Memorandum of Understanding.

## **Article 7 - Consultations**

The Authorities will review the implementation of this Multilateral Memorandum of Understanding regularly and conduct consultations in order to improve its operation and to resolve possible difficulties.

## **Article 8 – CESR Exchange of Information and Surveillance Co-ordination Group**

Senior officials of each Authority who are responsible for the surveillance of securities activities and the exchange of information should meet regularly, in particular in order to clarify issues of co-operation. CESR shall specify the particulars regarding the frequency and the organisation of such meetings. Senior officials of Authorities pursuing enquiries in the same or related matters may meet to co-ordinate their activities where appropriate.

The Authorities may, where appropriate, invite senior officials from other competent authorities of Member States of the European Union or of the Contracting States of the European Economic Area, which are responsible for the surveillance of securities activities and the exchange of information, also to take part in such meetings.

## **Article 9 - List of Regulated Markets and Directory of Competent Authorities**

1. The Authorities will submit any changes to the list of regulated markets as referred to in this Multilateral Memorandum of Understanding in Article 2 (7) and enclosed as Annex C to this Multilateral Memorandum of Understanding and make available the relevant rules of procedures and operation of these regulated markets upon request. The Authorities might consider making available the list of regulated markets under their respective jurisdiction on their Internet homepages.
2. The Authorities will provide each other with a directory of competent authorities within their jurisdictions, setting out the responsibilities of each body. In case of any changes thereto, the respective Authority will provide the other Authorities with an updated version of the directory.

## **Article 10 - Amendments to the Multilateral Memorandum of Understanding**

The Authorities may by common consent make amendments and add further Annexes to the Multilateral Memorandum of Understanding they consider necessary.

## **Article 11 - Additional Parties**

The Authorities which are members of CESR shall, by common consent, agree that further authorities of the Member States of the European Union or of the Contracting States of the

# CESR



European Economic Area become party to this Multilateral Memorandum of Understanding by executing the Joinder Agreement appended hereto as Annex D.

## Article 12 - Publication

The Authorities agree to publish this Multilateral Memorandum of Understanding

## Article 13 - Relations between this Multilateral Memorandum of Understanding and the other bilateral Memoranda signed by CESR authorities

This Multilateral Memorandum of Understanding replaces any conflicting provision which is more restrictive to co-operation contained in bilateral Memoranda of Understanding signed prior to the date of its entry into effect.

## Article 14 - Entry into Effect and Termination

1. This Multilateral Memorandum of Understanding shall be effective as to the undersigned at the date set out below this Article. It shall be effective as to additional parties at the date set out in the Joinder Agreement (Annex D).
2. This Multilateral Memorandum of Understanding shall be concluded for an unlimited period of time and may be denounced by any of the Authorities at any time by giving, at least, thirty days prior written notice to each other Authority. If the Requested Authority undertakes to denounce the Multilateral Memorandum of Understanding, requests for information communicated before the effective date of denunciation will still be processed under this Multilateral Memorandum of Understanding.

## Article 15 – Annual Report

CESR shall prepare an Annual Report setting forth the result achieved in using and complying with the present Memorandum. The report shall be published within the first quarter of each year starting in the year 2000.

DONE in Paris on January 26, 1999.