

## FINANCIAL MARKETS

[20 November 2007](#)

### Review of the Lamfalussy process

EC published a Communication on the Review of the [Lamfalussy Process](#) (a four-level regulatory approach for the adoption, implementation and enforcement of legislation and implementing measures across the securities, banking and insurance sectors). Although the process has broadly met its overall objectives, there is a growing consensus that some important changes are required in order to make it more efficient. In particular, the functioning of the Level 3 Committees must be improved to enhance supervisory convergence and cooperation.

The overall approach can be formulated as: "the evolutionary approach is the only one which will work; random, *ad-hoc* institutional renaissance, or radical revolution will not."

The Communication presents practical, achievable proposals with regard to all levels of the Lamfalussy structure. It nevertheless focuses more particularly on the work of the Committees of supervisors, the so-called Level 3 Committees (CEBS, CEIOPS and CESR). Their work is a critical factor in ensuring further supervisory convergence and cooperation. In the EC's view, the **Level 3 Committees' political accountability in relation to the EU institutions should be strengthened, as should compliance with Level 3 measures, even though they are not legally binding.** The **current legal basis of the Committees provided by Commission Decisions might need to be reviewed** in order to better reflect the Level 3 Committees' tasks and functions. Also, **their internal decision-making procedures should be improved** and should, subject to possible safeguards, **allow for qualified-majority voting on all decisions.**

The Communication is published in the context of a general assessment of the Lamfalussy process, which will be discussed by the ECOFIN Council on 4 December 2007.

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[29 October 2007](#)

### MiFID enters into force

On 1 November 2007, the [Markets in Financial Instruments Directive](#) entered into force. This landmark law will play a central role in creating a robust, common regulatory framework for Europe's securities markets. MiFID will increase competition among exchanges, multilateral trading facilities (MTFs) and investment firms, giving them a "single passport" to operate throughout the EU on the basis of authorisation in their home Member State. Investors will not only have access to a greater number of trading venues, but also a more robust and comprehensive framework ensuring high levels of investor protection. Significant market developments are already underway in anticipation of this new, more competitive environment.

[11 September 2007](#)

## Non-Equities Markets Transparency

The **public hearing on non-equities markets transparency** followed a related call for evidence launched in June 2006 (see [IP/06/768](#), [IP/06/1549](#)) with the aim to assist the Commission in preparation of a report that it is required to be produced under MiFID. This report investigates whether and to what extent new requirements on pre- and post-trade transparency should be introduced at EU level to the trading in non-equity financial instruments such as bonds and derivatives. Representatives from the European Parliament, the European Central Bank, the Committee of European Securities Regulators, the Securities Exchange Commission and many private sector and consumer representatives took part in the event. The summary of the hearing is available [here](#).

**Industry feedback** was: MiFID transparency provisions that apply to equities should not be extended to apply to other instrument types such as bonds and derivatives. However, there was industry support for exploring the possibility of self-regulatory measures to improve transparency, particularly for retail investors. There was some support expressed by regulators, exchanges and consumer representatives for mandatory transparency to be extended to non-equities. Lastly, there were a number of suggestions for enhancing non-trade transparency in a number of markets.

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[23 October 2007](#)

## Solutions to improve, simplify, and modernise EU fiscal compliance procedures

The EC's Fiscal Compliance expert group ([FISCO](#)) has issued a report setting out solutions to fiscal compliance barriers related to clearing and settlement of cross-border securities transactions, also known as 'post-trading'. The proposed solutions are expected to lead to improved, simplified, and modernised procedures adapted to the way EU financial markets operate today.

The report highlights:

- On **withholding tax procedures**: current EU Tax Relief Procedures suffer from administrative and efficiency problems that can be resolved by eliminating the need to pass on detailed information on beneficial owners through the custody chain up to the local withholding agents (abolish paper, allow electronic processing, allow the use of pooling of assets into tax-rate pools).
- On **transaction tax procedures**: any regime requiring transaction tax to be collected by settlement service providers will constitute a significant obstacle, dissuading, or preventing foreign Central Securities Depositories (CSDs) from accepting securities subject to such transaction tax. The recommendation is not to impose the tax-collection responsibilities on local settlement service providers. However, the FISCO Group could not identify another appropriate tax collection mechanism.

## FINANCIAL SERVICES

[26 October 2007](#)

### Substitute investment products

EC has published a call for evidence on the **impact of the fragmented regulatory landscape for retail investment products on the protection of retail investors**. Input from all interested stakeholders is invited by 18 January 2008 on:

- which investment products should be taken into consideration;
- the factors driving the sale and promotion of particular investment products;
- whether, and how varying information disclosures or distribution regulations lead to investor detriment; and,
- whether material risks are identified, on the need for corrective action.

Responses to this consultation will contribute to the EC's assessment of whether existing rules are sufficient to protect retail investors and, if not, whether corrective action is needed.

A feedback statement on the responses received will be produced in March 2008, followed by a structured dialogue with all interested stakeholders. The EC will draw evidence-based and informed conclusions on the need for action in this area in autumn 2008. The call for evidence is available [here](#).

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[15 October 2007](#)

### National divergence hinders cross-border private placement

EC has published a [summary](#) of the 38 responses it received to a **call for evidence regarding the functioning in EU Member States of private placement regimes (IP/07/523)**. Under private placement, securities can be sold privately to expert investors without triggering rules on investor protection, reporting and disclosures that apply when instruments are sold to the retail public.

Respondents recognise **serious problems in the cross-border distribution** of some types of investment products, in particular, **non-harmonised investment funds**, and note that the arrangements established under the Prospectus Directive work well for securities and closed-end funds. They suggest that these arrangements should be extended to non-harmonised open-ended funds; such as institutional funds and hedge funds.

The responses represent a valuable input to the EC's assessment on the need and potential options for a European private placement regime scheduled for spring 2008.

[15 October 2007](#)

### **Easier public access to financial information on listed companies**

The EC is encouraging Member States to **create an electronic network interconnecting the national repositories which store financial information on listed companies**. The implementation of this recommendation will facilitate **investors' access to historical information on companies' performance and financial position as well as on changes in major shareholdings**.

The Directive on transparency obligations of listed companies ([2004/109/EC](#)) requires that regulated financial information remains available to market participants at central depositories appointed nationally by Member States. The recommendation foresees an important role for the Committee of European Securities Regulators (**CESR**) in launching the electronic network.

CESR has also been invited to reflect, by September 2010, on the future development of this pan-European network. The long term goal would be to provide a one-stop-shop for investors (and other interested parties) for regulated financial information on listed companies. [More information](#)

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[15 October 2007](#)

### **Inter-Institutional Monitoring Group publishes final report on Lamfalussy process**

The Inter-Institutional Monitoring Group (IIMG) has published its third and **final report on the Lamfalussy process**, a four-level regulatory approach for the adoption and implementation of financial services regulation which allows the EU to respond rapidly and flexibly to developments in financial markets.

With the termination of its mandate, the Group provides a general assessment of the Lamfalussy framework, an evaluation of its ability to deliver results and proposes concrete recommendations for improving the overall process.

The Group observes that the **Lamfalussy process has significantly contributed to the integration of European financial markets**. This has however resulted in **new challenges** for the present institutional arrangements and, in particular, for the Level 3 of the Lamfalussy structure. The Group's final report focuses therefore on the **functioning of the Level 3 Committees** and identifies the **areas where more progress is necessary to keep pace with the development of the markets**.

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## **ACCOUNTING & AUDITING**

[23 October 2007](#)

### **Ownership rules for audit firms: an independent study on the impact on the audit market**

DG MARKT published an [independent study](#) on the **ownership rules that apply to audit firms and their consequences on audit market concentration**. The study analyses whether changes to the ownership rules of audit firms might help increase the number of international players in the audit market. At present, the European Statutory Audit Directive requires that auditors hold a majority of the

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voting rights in an audit firm and control the management board. The study will contribute to DG Internal Market's work on how to improve competition in the audit market.

Key conclusions of the study are:

- The **audit market** for major listed companies is dominated by the Big Four audit firms. For the smaller audit firms, important investments might be necessary over years in order to expand and to enter the international audit market.
- Analysis indicates that an audit firm owned by external investors, instead of auditors, might take more easily the decision to **expand** into the market of large audits (existing ownership structures may be estimated to increase audit firms' cost of raising capital by perhaps as much as 10%).
- Other **barriers** which also play an important role are: reputation, the need for international coverage, international management structures, and liability risk.
- There may be good reasons for audit firms to maintain their current structures: e.g. to retain their human capital. From the **regulatory** point of view, existing ownership structures have been justified by the necessity to protect independence of audit firms. However, the analysis indicates that alternative ownership structures are unlikely to impair auditor independence in practice. Specific conflicts of interest could be dealt with through the establishment of appropriate safeguards.

[15 November 2007](#)

### US Securities and Exchange Commission: Ending Reconciliation to US GAAP

EC welcomed the US Securities and Exchange Commission's (**US SEC**) **decision to abolish the reconciliation to US Generally Accepted Accounting Principles (GAAP) for foreign companies using IFRS as published by the International Accounting Standards Board (IASB)**. It is a crucial decision by the SEC which will benefit EU companies listed in the US.

EU and the US are making major steps towards one global [accounting](#) language and many more countries are likely to follow. The next step in this strategy is to have a close look at the overall standard setting process by the IASB. The EC will continue to work with the IASB and our international partners to build on the success of IFRS by **enhancing the governance of the IASB, including its accountability to all stakeholders**.

On 7-Nov-07 the EC issued a [joint statement](#) with the US SEC, the Japanese Financial Services Agency and IOSCO announcing **reforms of the overall governance of the IASB and its parent entity, the International Accounting Standards Committee (IASC) Foundation**. The statement foresees, among other requirements, measures to **enhance the transparency and due process of the IASB's standard-setting process**. This is part of a broader strategy to ensure that the IASB's standards can be fully endorsed in the EU and that the existing carve-out concerning hedging rules can be removed.

[12 July 2007](#)

## Progress on standards convergence in key partner countries

The EC has published a [report](#) on the **work underway in Canada, Japan and the United States on convergence between their national Generally Accepted Accounting Principles (GAAPs) and the International Financial Reporting Standards (IFRS) used in the EU**. The report also contains some preliminary information on convergence work in other important jurisdictions. Under EU accounting rules the Commission is required to inform the European Parliament and European Securities Committee regularly about the progress on convergence and of progress on the elimination of reconciliation requirements that apply to EU issuers.

The EC calls for deeper co-operation and regular meetings between the EU and US to establish staging posts and take stock of ongoing developments. The EC is encouraged by the positive developments in Japan, Canada, China, and India.

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[12 July 2007](#)

## EU rules on company law, accounting, and auditing

Led by the principles of [better regulation](#), the EC put forward measures which would simplify the business environment for EU companies in the areas of company law, accounting, and auditing. The proposed measures, which are set out in a [Communication](#), would remove or reduce a range of administrative requirements that are considered outdated or excessive:

- repealing company law Directives that deal mainly with domestic situations **or** removing certain information obligations in the company law Directives;
- simplifying disclosure requirements for companies and for branches;
- further reducing reporting and auditing requirements for small and medium-sized enterprises.

Comments on the proposals were due by mid-October 2007.

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[12 July 2007](#)

## Support for EC action on non-EU audit firms

The EC published a [summary of the responses](#) to its recent **public consultation on the regulation of non-EU audit firms** (see [IP/07/31](#)).

Overall, respondents **support EC action within the framework of the Directive on Statutory Audit to regulate and supervise non-EU audit firms at national level** in order to encourage the development of effective systems of audit regulation and to avoid disruption of capital markets; as well as to increase co-operation with competent authorities from non-EU countries.

Respondents also welcomed the idea that the EC should **assess and decide on equivalence of non-EU countries' public supervision systems**. In particular they **supported the introduction of transitional measures for the non-EU audit firms** concerned to foster the development of effective regulatory systems and to prevent market fragmentation.

[19 July 2007](#)

## Application of EU recommendations on directors' pay and independence

The EC published two reports on Member States' application of EU recommendations on company directors' pay and independence. Both reports conclude that the **application of corporate governance standards has improved, but some weaknesses remain.**

The [Report on directors' remuneration](#) shows that transparency standards are widely followed, but in some Member States it is still not recommended that shareholders vote on this issue.

The [Report on independent non-executive directors](#) finds that there is a real progress in improving governance standards in this field, but some of the recommended standards have not been followed in all Member States. For example, in some Member States a former Chief Executive Officer (CEO) of a company can still become its chairman without any cooling off period. This undermines the independence of non-executive supervision. Also, some Member States do not recommend a sufficient number of independent board members in remuneration and audit committees.