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28 May 2004

M. F Demarigny
Secretary General
CESR
11-13 Avenue de Friedland
75008 PARIS
France

Dear M. Demarigny

**RESPONSE TO CONSULTATION PAPER ON THE ROLE OF CESR AT “LEVEL 3”
UNDER THE LAMFALUSSY PROCESS**

Thank you for the opportunity to comment on CESR’s April 2004 consultation paper regarding its role at Level 3.

We would like to take this opportunity to commend CESR on the role it has played since it was established, particularly its use of an open consultation process, issuance of feedback and use of open-hearings. It is clear that the network is currently working well and we believe that CESR’s role will be increasingly important as use of the Lamfalussy process continues, with increasing focus on Level 3. It will be important that Level 3 facilitates the close cooperation between regulators through ‘mutual recognition’ of national rules, core standards and operational convergence, rather than a further push for standardisation of national legislation.

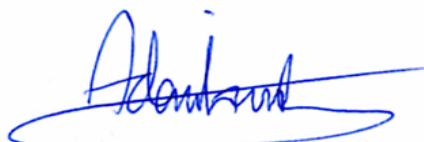
In terms of policy making process, the importance of industry involvement from the early stages is well recognised. However, given the multitude of consultations and initiatives coming out of Europe, market participants need plenty of forewarning and time to organise their activities if CESR is to benefit fully from their input. We therefore encourage CESR’s intentions to draw up preliminary work programmes, which should assist industry professionals in planning their responses and enable them to contribute effectively to Level 3.

We note that at the open hearing the issue of the special needs of wholesale markets was highlighted. The idea was raised of a ‘wholesale day’ – at which the perspective and opinions purely of the wholesale market would be considered. We welcome the recognition that CESR should be aware of specific stakeholders needs and support this initiative. Further, we propose it be extended to ensure that other groups such as retail, third country issuers and infrastructure providers are all given due consideration.

The London Stock Exchange believes the consultation to be a good examination of the issues regarding the role of CESR at Level 3. Our comments on the specific questions posed are set out in the attached appendix.

I hope our views are helpful to CESR's work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Adam Kinsley', with a large, sweeping underline.

Adam Kinsley
Head of Regulatory Strategy
London Stock Exchange
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London Stock Exchange responses to CESR's questions

Coordinated implementation of EU law

Q1. Do you agree with the described role of CESR with respect to the coordinated transposition and application of EU law?

We do agree with the described role, and support the use of ad hoc sessions and peer reviews to enhance consistent implementation. In particular, we feel that (in relation to Alternative Trading System standards) the production of synthesis tables and the list of ATSS currently operating in Member States are extremely valuable in improving transparency, and therefore we fully support their use and encourage the production of similar tables in the future.

We support the proposed new activity of keeping alive the network of CESR experts who advise on the application of EU law. It may be useful to periodically review and rotate these experts to ensure that CESR receives input from a wide range of constituents.

We note CESR's recommendation regarding the principle that regulators should all have similar rule-making powers, but would stress that if this is to be the case, these rule-making powers should be accompanied by rigorous transparency arrangements and be subject to a proper consultation process.

Q2. Do you see an "additional role" for CESR under level 3 where CESR could contribute to the coordinated implementation of EU law? If so, please explain what CESR should do to establish the role proposed?

We note that the recent European Commission's Securities Expert Group report has called for increased transparency and understanding of how each country's rules and practices will be affected and altered by EU legislation. We believe there is a role for CESR at Level 3 in facilitating shared knowledge of each country's rules and practices, to help ensure consistent implementation.

As mentioned above, we are also highly supportive of initiatives to track implementation of legislation/standards in Member States (such as for ATS standards), through the use of synthesis tables and see a clear role for CESR in this area.

Regulatory convergence

Q3. Do you see any other aspect of regulatory convergence where CESR could play a role?

We believe that CESR can play a strong role in alerting the Commission when bad or unworkable Level 1 and Level 2 legislation needs to be updated. Such concerns are likely to carry more weight if conveyed by a pan-European body such as CESR. We also believe CESR should have a role in alerting the Commission, where necessary, to gaps or inadequacies in Members States' implementation of EU law.

We also note the Securities Expert Group's suggestion that an implementation group should be established under CESR auspices for each Level 3 activity, to provide a collective sense of responsibility for common implementation practices and peer group assessment.

A further example of how CESR can encourage regulatory convergence at Level 3 is the approach taken in relation to its ('soft') standards for clearing and settlement systems. In the absence of other action in this area, CESR's initiative is welcomed.

Q4. Do you think that CESR could play a role in providing coordinated opinion on new services or products with pan-European scope?

In general, we do not believe it is appropriate for CESR to get involved in product regulation and would discourage any moves towards this area.

However, we note the suggestion at the open hearing that in some instances CESR could become a 'promoter' of new innovative products – for example where a new product may be accepted in some jurisdictions but where other jurisdictions may be more wary or have little experience in dealing with such products. It is also foreseeable that where a firm wishes to launch a completely new product in a number of Member States, CESR could assist the firm in obtaining a pan-European "passport" for its new product.

We therefore recognise that there might be scope for CESR involvement, provided this was focused on facilitating and encouraging regulatory approval, and based on the following principles:

- Any such involvement should be at the initiative of industry, rather than the other way around;
- CESR should only focus on services or products offered on a pan-European or global basis;
- CESR's objective should be to encourage, not stifle, innovation;
- Continuing primacy must be given to the home state principle; and
- New products and services should not require approval by CESR prior to their introduction in the EU for the first time.

Q5. Would you consider endorsement by the Commission of the common guidance established by CESR as a helpful tool to ensure consistent application of EU directives/ regulations?

We would tend not to agree with this proposal. We are supportive of the existing Lamfalussy approach and are concerned that this suggestion would risk losing flexibility and adaptability of regulation thus constraining the growth of financial markets and innovation.

Supervisory convergence

Q6. Do you see any other aspect of supervisory convergence where CESR could play a role? If so, how and why?

We recognise the importance of cooperation and efficient sharing of information between national regulators and welcome the initiatives taken so far to enhance this process. We believe that the lowest cost method of sharing regulatory information is by the regulators within their networks, rather than imposing onerous reporting requirements on firms and regulated entities whereby they are obliged to report information to numerous regulators in different jurisdictions.

We agree with the outlined proposed new activities - in particular the proposal that there should be exchanges of staff and joint training of staff. Further, the development of additional information databases with precedents on regulatory interpretation and judicial cases should prove a useful tool.

Q7. What kind of mediation role do you consider would be appropriate for CESR?

We can see the benefits of CESR establishing a role in mediation between disputing national regulators, at the consent of those concerned. This would provide a 'first port of call' and it may be possible to resolve some disputes in a quick and cost efficient manner. In terms of how it could work, CESR could appoint an impartial member(s) – and perhaps a member of CESR's Market Participants Consultative Panel – to mediate in any such disputes. However, we agree with CESR's point that such a system should not be regarded as an incentive to systematically question the increased automaticity of mutual recognition.

Q8. Do you have any comments on the catalogue of all mutual recognition and cooperation obligations under the Directives where CESR is active?

It is clear that the FSAP directives will increase the number of occasions on which regulators will need to work in close cooperation and share common experiences. We therefore appreciate the approach that CESR has taken in the production of the catalogue of all mutual recognition and cooperation obligations, and believe this will prove a useful document. We encourage CESR to continue to take a holistic approach by considering the implications contained across the range of FSAP directives.