Danish Bankers Association
Danish Securities Dealers Association

Mr. Fabrice Demarigny, Secretary General
CESR

1 June 2004

Finansrådets Hus
Amaliegade 7
DK-1256 Copenhagen K

Telefon +45 3370 1000
Fax +45 3393 0260

mail@finansraadet.dk
www.finansraadet.dk

Journalnr. 182/03
Dok. nr. 104763-v1

Comments by the DBA and DSDA on CESR's consultation paper "The role of CESR at "level 3" under the Lamfalussy proces"

The Danish Bankers Association and the Danish Securities Dealers Association welcome the opportunity to provide comments on the consultation paper from CESR "The role of CESR at "level 3" under the Lamfalussy process"

We generally find that the consultation paper contains several constructive and relevant tasks for CESR in order to fulfill its role at level 3.

CESR plays a very important role in the Lamfalussy process and especially at level 3. In order to make the FSAP a success it is essential that the implementation of the EU-legislation is coordinated and followed up through CESR. The members of CESR often possess a technical knowledge and have a close contact with the market participants. Therefore, CESR is able to alert the Commission on any need to update EU-legislation on level 1 and 2 that can keep the FSAP up-to-date in changeable financial markets.

We find it very important that CESR is given sufficient time to provide quality to its work, for instance when CESR is asked for advice on different issues. Sufficient time to consult market participants must be regarded as pivotal in the process of providing qualitative legislation.

It is essential that CESR keep in mind that guidelines, recommendations and standards should only be drawn up when necessary in order to avoid over-regulation. Measures should be developed with an evidence-based approach. The markets must be given some flexibility to develop and should not be restricted unnecessarily.

Making sure that there is a common interpretation of EU-legislation among the members of CESR should have the highest priority for CESR. If it is the opinion of CESR that there is a need for additional rules etc., CESR should draw this to the attention of the Commission in order for the Commission to consider regulation that is legally binding at EU level. CESR should be reluctant drawing up independent CESR standards in non EU-regulated areas. Independent standards should be limited to well-justified cases and be the exception and not the rule. Such standards need to be compatible with binding level 1 and level 2-legislation and should not prejudice upcoming EU-law in the same area.

Journalnr. 182/03
Dok. nr. 104763-v1

Hence, it is our opinion that CESR's primary role in the rulemaking process is to give recommendations to the Commission on the level 1 and level 2-legislation, and that CESR therefore whenever possible should abstain from making common rules in form of own standards. Standards made by CESR are not legally binding at EU level.

CESR suggests that all CESR members should be given similar powers to make rules to implement both EU legislation and CESR standards and guidelines. It is our opinion that this in practice would be almost impossible, since in many cases it will conflict with fundamental national lawmaking procedures. The legislative process in Denmark is a parliamentary procedure that is based on our constitution and the legislative power and means of the Danish Supervisory Authorities is based on this procedure.

We find that CESR in every guideline, recommendation and standard should state what power and means each CESR member has to implement these rules. That would be relevant information for the market participants and for the members of CESR as well.

As an example of an inexpedient use of an independent level 3 standard we can mention CESR' standard on conduct of business rules which has lead to Danish regulation in this area. Over the last year Danish investment firms have had a huge administrative task in educating employees, making new customer agreements, revising existing documents and developing new electronic systems in order to comply with the regulation. These costly efforts will now to some extent have to be repeated or changed when the FIM-directive is implemented into national law. Such costly dual work for the market participants should be avoided. Hence, independent level 3-rules should be kept at a minimum.

CESR suggests many initiatives in order to reach supervisory convergence. Many of these suggestions include exchange of information. We agree that exchanging information between CESR members is very important and largely required in EU-legislation. CESR should carefully consider whether cases should be kept anonymous, for instance if a case is entered in a common database.

Kind regards

Søren Gade