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31 January 2005

Dear Mr Demarigny

BBA RESPONSE TO CESR'S ANALYTICAL PAPER ON SUPERVISORY TOOLS

The British Bankers' Association is the principal banking trade association in the United Kingdom representing more than 250 banks many of whom are banks from other European jurisdictions or banks from elsewhere who have chosen the London international financial centre as their headquarters for their European operations. We welcome the opportunity to comment on CESR's paper. We have consistently responded to previous CESR consultations on a variety of issues, including implementing measures for MiFID and the Market Abuse Directive, as well as the application of the Lamfalussy process. We are also members of the European Banking Federation and have participated in, and support, their submission in relation to the Supervisory Tools paper, as well as related aspects in the Third Inter-Institutional Monitoring Group Report and the Commission's consultation on the Lamfalussy process. We attach a copy of our most recent paper to the Commission responding to their working document.

CESR has made a significant contribution to the debate on the appropriate powers for EU regulators. The issues covered in the CESR paper, such as supervisory convergence and home/host supervisory relationships are important issues and have a wide resonance across all financial services sectors.

Following the adoption of most of the primary legislation in the FSAP, the BBA and its members believe that EU regulators and supervisors should first make full use of, and adapt, all current supervisory tools available to them. These include the full range of existing mutual recognition, home/host relationships, cooperation at both Level 2 and 3, and of course the role of supervisory convergence. One of the key challenges in the design of these arrangements will be to ensure that these are sufficiently flexible and proportionate in addressing different supervisory issues and institutions, while being sufficiently robust and consistent in the application of any supervisory response. We follow the outline of CESR's paper in responding to the questions and issues posed in

- challenges from the FSAP
- potential adaptive improvements to the network of regulators, and
- externally-sought improvements

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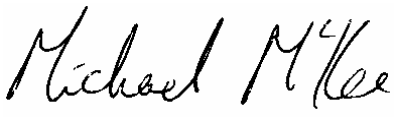
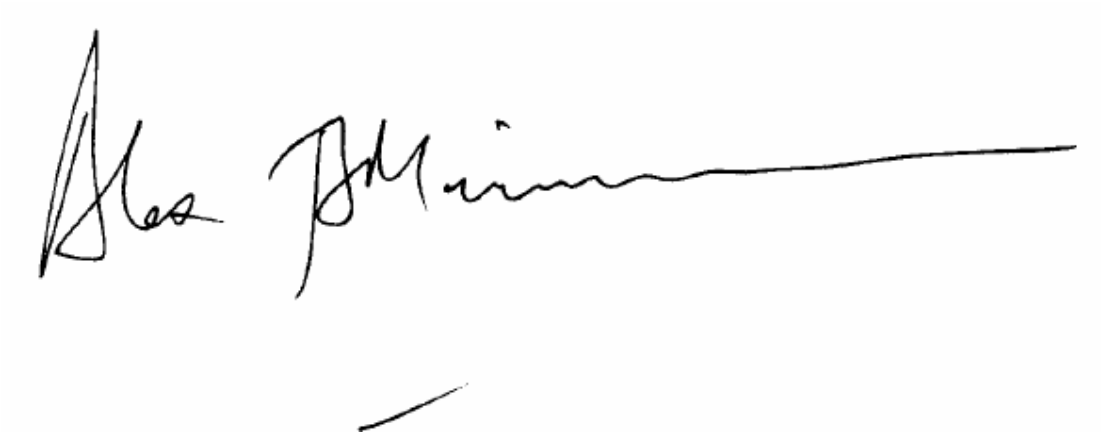
Yours sincerely



Michael McKee
Executive Director



Alex Merriman
Director

CESR'S ANALYTICAL PAPER ON SUPERVISORY TOOLS

Challenges from the FSAP

The BBA agrees that there is a wide **diversity** of powers, responsibilities and rule-making available to EU securities regulators. In order to overcome these disparities, the authorities in each Member State should look at the appropriateness of the powers devolved to each national regulator, and enhance these as appropriate (as indeed is suggested on page 21 of the paper). While we should stress that the BBA is not advocating any particular regulatory model – it is right that these should follow national characteristics, we believe that consolidating a number of different roles, as in the French AMF, does potentially make it easier for EU regulators to deal with a single point of contact. National regulators too should also map, and be aware of, where relevant (i.e. in relation to potential cross-border issues) the limits on the powers of their peers.

Mutual **reliance** and dependence is an important facet of supervisory co-operation. These relationships are not quickly built up but easily undermined. The existence of trust between regulators is an important component in ensuring that effective supervision is carried out. We believe that diversity in approaches and in powers can be overcome if regulators concentrate on the ends of the regulatory process, rather than the means. For instance, if the objective is to protect the market or the consumer, then one EU regulator may find it easier to curb the behaviour of an offending institution by the application of detailed rules and sanctions, whereas another will be able to obtain the same outcome through less formalised redress processes, notably market pressure. We also note the comments about supervisory **intensity**. It is vital that allowance is made for the quality of the resources available to a regulator, and not just the quantity.

A key facet in aiding supervisory convergence and mitigating mistrust among regulatory agencies, notably on implementation, is **transparency**. We would advocate, on the lines of Article 144 of the draft Capital Requirements Directive, a commitment by CESR's members to supervisory disclosure and the publication of all relevant policies (e.g. rulebooks, guidance, implementation notes etc) underpinning a particular regulatory measure (for instance national implementation of the MAD and MiFID). CESR's website could act as the fulcrum for this exposure.

Peer reviews are certainly one way of keeping fellow regulators on their toes provided the exercise is conducted in a thorough, well-measured and timely way. We suggest that the process needs to be a voluntary one, with perhaps some of the more significant EU regulators taking their turns first, in order to give the process initial credibility. We understand that CESR has already conducted peer reviews and we would therefore support their continuation and/or expansion.

In terms of how to **bench mark** the performance of fellow regulators, we believe this could be compared against existing modus operandi in regulators' rule books as well as through comparison with international standards such as those developed by the BIS, IOSCO and the IMF. CESR could also assist in the development of a common benchmarking framework to be used in all such peer reviews.

In terms of **co-ordination**, CESR's key role relates to pan-European issues or decisions with a cross-border dimension. That is not to say that purely domestic events, or crises, do not have some relevance at an EU level. This was notably the case in relation to both BCCI and Parmalat. But each case should be judged on its individual merits. We believe that the role of

regulation should not be to pre-empt or second guess market developments, particularly those of an innovative nature, but to follow and act only where there is a perceived threat to the stability of markets and institutions, and to the position of consumers.

Adaptive Improvements in the Network of Regulators

As noted above, we advocate CESR's members using more intensively its existing toolkit. We support the paper's suggestions in this respect. Of particular importance is the adaptation of the "**co-ordinating**" supervisory role on a case-by-case basis. It should be stressed however that the appointment of a "hard" lead supervisor will not necessarily be the best outcome for the supervision of a particular group. As described in relation to both the Euronext Group and Nordea, a collegiate and co-operative approach, which values the input of host regulators with a significant interest in the business of the group, is likely to be more appropriate. There is also a **global** dimension: best practice from co-operation with third country regulators, particularly the USA, should also be factored into this process. We favour a stronger emphasis on a co-ordinating supervisor than has been the case hitherto.

This co-operation would be underpinned, as the paper proposes, by the conclusion of **Memoranda of Understanding** ("MoUs") between the relevant supervisors, outlining the role of each in relation to the supervised entity. Again, this should be determined on a case-by-case basis. The BBA would urge that, in the interests of transparency, at least generic examples of these MoUs should be made available publicly and that it should also be possible to ascertain which MoUs have been concluded in the cross-border supervision of which institution. Again, CESR could act as a conduit for disclosing these agreements.

We note in this respect that the UK Financial Services Authority has begun to publish MoUs with a number of key (and largely non-EU) regulators. We would hope that this process will be extended, and not just in the UK, to EU regulators. A positive side effect of the publication of MoUs is that it will then be easier for markets to judge the extent of the supervisory reach over a particular institution or group, thus providing a measure of comfort and **accountability** for the actions of supervisors.

We noted above the need for greater transparency in the policies adopted by individual regulators. The proposed use of various **Panels** to review these rules would also be a welcome step. **Mediation**, by a committee of peers, should naturally occur if disagreements cannot be resolved in the normal course of discussions. It will also be vital to secure the commitment of the offending regulator to remedial action. Mere "naming and shaming", as in the non-transposition of Single Market Directives has shown, will not be a sufficient deterrent if unaccompanied by the threat of more substantive sanctions (beyond just recourse to the European Court). Persistently offending regulators could, for instance, be suspended from participating in the work of CESR until remediation has occurred. We would urge CESR members to sign up to this mutual act of faith as a sign of their renewed commitment to correct and timely implementation.

Where institutions have to report transactions to regulators or make other disclosures at the EU level, it would be sensible for this to occur on a compatible and consistent EU-wide basis. The formulation, harmonisation and introduction of common **regular reporting** could well assist in some alleviation of the regulatory burden on firms, and therefore on costs. But before CESR commits itself to any substantive outlay (on IT systems), it would helpful if CESR could flesh out some generic examples of the type mentioned in the paper in relation to MiFID and the Transparency Directive.

In relation to the regulatory burden, it was probably not the place in the paper to debate the merits of Level 2 implementing measures versus **Level 3** measures. It would, however, be the BBA's hope that many of the improvements and adjustments which are proposed could be the subject of agreement between regulators at Level 3, i.e. in recommendations or principles, rather than codified implementing measures. In this respect the definition of a **Mission Statement** for EU securities regulators, or over-arching principles, could provide an initial platform. The Lamfalussy report and the report of the post-FSAP Expert Group on securities markets both make important proposals about the sort of over-arching principles which would be relevant.

Externally-sought Improvements

We note the paper's consideration of potentially new rule-making powers, in the form of EU-wide "**Decisions**". We believe that this should only be considered as a last resort, if all other avenues have failed. In addition, this will give rise to a new category of EU Law which could have potential ramifications beyond just their use by CESR. For instance, would these powers also be given to the other financial services Level 3 committees? There is a fear also that the greater centralisation of powers might also presage the establishment of a single pan-European regulator, something which most market participants, and indeed regulators, are reluctant to concede at this stage.

The BBA would therefore see a more fruitful approach in developing the existing framework relating to the relationship between **home and host** supervisors. A particularly important proposal in this respect is that of the delegation of tasks or responsibilities (primarily) from the home supervisor to the host supervisors. We noted above how this could be applied where a number of supervisors have an interest in the oversight of a group undertaking cross-border business. Beyond just conduct of business responsibilities, we agree that there would be scope for these to be fleshed out in the bilateral MoUs and other agreements. Again this should occur as required on a case-by-case basis, for instance in relation to model validation. However, in this process, we would envisage that there would be no transfer of legal powers between the home and host supervisor; prime legal responsibility would remain with the home supervisor.

We agree that the framework for this delegation of tasks/responsibilities can be put in place rapidly. As the paper observes, there are a number of practical steps which can be initiated to enhance supervisory co-operation, such as joint inspections, pre-decision and pre-sanction consultations and notifications, and rapid exchange of supervisory information (both routine and particularly in situations of a threat to solvency or liquidity).

We do not support CESR having additional powers in relation to the application of accounting standards. As a matter of company law, the proper authority is the national standard setter.

Conclusion

In short, we support CESR continuing to use its existing supervisory tools and processes, particularly through the use of convergence of supervisory practices at Level 3. We believe, in particular, that this can be achieved through mapping and standardising existing national regulatory competences, enhancing transparency and supervisory disclosure (e.g. through publication of MoUs), as well as further fleshing out of operational requirements related to "consolidating" supervisors and home/host powers.

ANNEX: BBA RESPONSE TO SPECIFIC QUESTIONS RAISED IN THE CESR SUPERVISORY TOOLS PAPER

Page 12 – Powers of the Regulator: we would suggest that it is important for EU regulators to have roughly equivalent regulatory powers, with few gaps. The equalisation of these powers of course rests with the national authorities. CESR could have a role in acting as a catalyst in eliminating these disparities.

Page 13 – Supervisory Intensity: we recognise that the resources vary widely across EU regulators, depending on the maturity and quantum of the national financial sector. The quality of that supervision matters as much as, if not more than, the quantity of resources devoted to it. CESR should therefore not lose sight of the fact that the end-result of supervision is more important than the means by which it is achieved. In this way, national regulatory characteristics can be retained.

Page 13 – Misapplication of Directives: the BBA has consistently felt that not enough resource has been committed by either regulators, via CESR, or the Commission into identifying and correcting EU-wide disparities in the transposition and implementation of EU Directives. Once that misapplication has been identified, remediation should be pursued more vigorously. CESR can act, through peer group pressure, in generating a satisfactory outcome. This pressure must, however, be accompanied by more severe sanctions in the event of persistent failure to act, e.g. resulting in the suspension of the offending member from CESR.

Page 13 – Measuring Performance: we believe that peer group reviews have an important role to play in assessing the performance of regulators. CESR could develop a benchmarking framework which could be used to review the performance of EU regulators. The standards against which performance could be benchmarked should include internationally accepted measures such as principles developed by the BIS, IOSCO and the IMF. We would emphasise that participation in peer group review should be voluntary, perhaps with the larger EU members showing a lead. Follow-up action (in the event of an unsatisfactory outcome) could include a range of solutions, from an agreed programme of remedial action, to suspension from CESR for repeated failings.

Page 13 – Co-operation: we note that gaps in the equivalence of powers of EU regulators could undermine the ability of CESR's members to co-operate. However, notwithstanding a deficit in legal rights and responsibilities, CESR does and can provide a framework by which individual regulators can exchange information, e.g. in CESR-FIN. Failure to co-operate could mean that an entity, or group of entities, is not being subject to the thorough supervision that may be required. This would have consequences for that firm, and indeed for the non-cooperating regulators. We suspect that the risk of this reputational damage should bring the relevant organisations into line. This risk ought to incentivise regulators to find a solution voluntarily. If this does not succeed, (third party peer) mediation should have a part to play, and we believe that to be effective, it will have to be binding on all parties.

Page 13 – Consistent decision making: it is important that if such decisions take place then, at least initially, these decisions, through CESR, should be confined to entities which either have significant cross-border business (i.e. involving more than one regulator), or where a case in one Member State might well have repercussions in another, e.g. because of the reach of that entity's business, or because of the similarity of the product/situation across the Union. *Ex post* review should be possible in the light of experience.

Page 13 – Market crisis: we firmly believe that intervention should be determined on a case-by-case basis, since each case demonstrates different characteristics. We recognise that crises of a pure domestic nature can have repercussions on a cross-border basis, and this will involve a wider spread of regulators, in the way that a global systemic crisis does. But not all regulators need be actively involved in a crisis (especially where there is no risk of knock-on effects), and could be informed after the event. One area which does require close attention is in the oversight of the cross-border provision of clearing and settlement services. Failures here, in one domestic market, can have knock-on effects in another. Systemic consequences could also follow from major payment/settlement disruption.

Page 13 – Identification of emerging issues: it should be the role of CESR to discuss innovation, but not to hinder it. Innovative instruments and products have the capacity to improve risk management and enhance end-user and consumer choice, as well as increasing competition. We would thus favour an *ex post* role for CESR acting as a forum in discussing market developments, but not one in legislating ahead of innovation.

Page 17 – EU securities note: we should wait and see whether the harmonisation of public offers through the Prospectuses Directive can bring simplification to the market.

Page 17 – Standardised UCITS: the Commission has proposed that the whole area of the UCITS Directives and their impact on the EU mutual funds market requires comprehensive revision. The Commission anticipates producing a follow-up Communication to the Financial Services Action Plan in the Spring which will clarify their intentions. As a result, we would recommend that CESR takes no action in this area in the immediate future, pending this clarification.

Page 17 – Application of accounting standards: we suggest that this is best left to the national market authority/standard setter, for instance the Financial Reporting Council in the UK. But CESR could have a role in reviewing *ex post* issues/decisions which have an EU-wide application.

Page 17 – Credit rating agencies (CRAs): we do not believe that CRAs should be subject to specific approval by the authorities, and therefore the issue of a "single" EU approval should not arise. The nature of the relationship between a CRA and its corporate client is a private contractual one, based on the client's voluntary engagement in having its credit standing verified, and is not, and should not be, determined by regulatory permissions. We shall be responding separately, and in more detail, to the CESR Consultation Paper on CRAs.

We recognise, however, that if there are separate colleges of regulators for separate institutions there is also a need for some form of central information exchange and common supervisory approaches with a view to developing a range of common principles that the difficult colleges should employ when supervising large institutions. In the absence of this there is a risk that there are differing standards of regulation for different institutions.

Page 17 – Supervision of cross-border infrastructure providers: these are important cases for testing the efficacy of EU supervisory arrangements. We would strongly argue for dealing with these on an individual case-by-case basis, given that different regulators are involved, for instance with the Euronext and Euroclear Groups. At present the number of these cross-border entities or tie-ups is still relatively limited. With increasing infrastructural consolidation in the EU, however, other examples could also occur (e.g. if the London Stock Exchange does merge with one of its bidders). Flexibility needs to be retained and Memoranda of Understanding are

key to determining the nature of the regulatory oversight. Using the supervision of trading, clearing and settlement providers should underpin CESR's consultation with its members on relevant examples. CESR could well subsequently develop a regulatory template for use in future cases.

Page 18 – Mutual recognition: in order for this to be effective, regulators have to develop trust in each others' powers and abilities. If there are question marks over the quality of the home authority's supervision, it should be possible to develop a "breaking the glass" framework in which the host authority can take action, subject to certain criteria being met.

Page 18 - MAD aspects: we would anticipate that CESR members are aware of each other's powers in relation to market abuse, and know which regulator to contact. A helpful way to underpin this is being clear which regulator maintains adequate professional secrecy provisions. The UK Financial Services Authority has recently published a list of (mainly non-EU) authorities which it regards as maintaining equivalent standards of professional secrecy. This should be replicated at the EU level. CESR could act as a catalyst in this respect.

Page 19 – Conduct of business (CoB) rules: the existence of entities offering cross-border products through multiple branches does complicate the enforcement of appropriate CoB rules. The way to tackle this, however, is for country of origin rules to predominate. Further simplification could also come from moves to standardise (rather than harmonise) CoB rules across the EU. This would be particularly relevant for cross-border products and in relation to transparency and informing the consumer in the host country how the system operates in the home country. Where considerable monitoring of adherence to home CoB rules is involved, the home authority could delegate certain tasks to the host authority, which would verify the adherence on behalf of the home authority. The legal requirement would rest with the home authority

Page 19 – Investor compensation schemes: the principle of *caveat emptor* should apply. The purchase of any financial product involves risk, and devolves from personal (i.e. the purchaser's) responsibility, subject to ensuring that misleading claims have not been made during the sale of that product. Where the home authority can help is in ensuring that compensation arrangements prevailing in the home member state are clear and transparent to the investor in the host state.

Page 19 – Host withdrawal from supervisory tasks: through mutual recognition, trust is required in the home authority's ability to undertake supervision. This can be achieved, even where equivalent powers do not exist, through agreeing, in a MoU, which tasks can be shared or delegated to a host supervisor. CESR should also not lose sight of the benefits and efficiency gains through regulators co-operating and reducing the regulatory burden for the firm.

Page 19 – Internalisation of trades: we believe CESR should follow the model recognition proposals in (Article 129 of) the Capital Requirements Directive. It should operate at a consolidated level. In the case of an entity operating in multiple jurisdictions, this should be subject to agreement within a defined time frame.

Page 19 - Host participation in trans-EU supervision: the proper way to supervise groups is to involve (voluntarily) relevant host supervisors who believe that they account for a significant proportion of that group's business, or qualify by virtue of systemic considerations. This college of supervisors model is already broadly accepted for infrastructure providers such as Euronext and Euroclear, as well as banking groups (e.g. HSBC). CESR could undertake a useful role in

ensuring that the college arrangements are roughly compatible across relevant groups. At a practical level, attention also needs to be paid to co-operation with third country regulators, and CESR's dialogue with the SEC should be taken into account in this respect.

Page 20 – Disclosure of non-misleading information by home authority of issuer: if this is a gap in the powers granted by the Prospectus Directive, then it should be closed by further legislation. Alternatively, such a power could be made a feature of Memoranda of Understanding between authorities.

Page 20 – Operational powers in the application of accounting standards: we do not believe that there should be more operational powers at the EU level. The correct route is making these subject to the national standard setters/enforcement authority (Accounting Standards Board/Financial Reporting Council in the UK).

Page 20 – Sufficient tools to interpret IFRS: as above; this should be down to national standard setters, not CESR. However the EU Accounting Regulatory Committee could discuss issues and coordinate positions.

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31 January 2005

European Commission
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Dear Sirs

BBA Response to Commission Staff Working Document: The Application of the Lamfalussy Process to EU Securities Markets Legislation

The British Bankers' Association is the principal banking trade association in the United Kingdom representing more than 250 banks many of whom are banks from other European jurisdictions or banks from elsewhere who have chosen the London international banking centre as their headquarters for their European operations. We welcome the opportunity to respond to the Commission's Working Document ("the WD"). We have consistently responded to previous consultations on the Lamfalussy process by the Commission, CESR and the Inter-Institutional Monitoring Group ("IIMG"). We are also members of the European Banking Federation and have participated in, and support, their submission in relation to the WD.

The Lamfalussy Process Review

We consider that the Lamfalussy Process to date has been, in general, a success and support this overall conclusion of the Commission (para 16 of the WD) – which is also a conclusion of the Post-FSAP Expert Group for Securities Markets ("the Post-FSAP group"). We support the continuation of the process and the renewal of sunset clauses – or the permanent embedding of the process in the legislation to which it applies (whichever is most politically acceptable). We agree with the Commission and the Post-FSAP group that the process must be seen as dynamic and evolutionary – and consequently there is continuing scope for improving the process and making it as flexible and practical as possible. The overriding considerations for our members are (1)

that the process should be an effective means of building practical knowledge of how securities markets work into the policy making process and (2) that the process should permit legislation to be quickly adapted to significant developments in the securities markets when this is necessary.

The process itself is only a means to an end. The end should be a dynamic and growing European capital market which is internationally attractive and an engine for the growth of the European economy as a whole – so delivering benefits to all European citizens. In view of this consideration of the Lamfalussy process should also focus on the quality of the legislation which is being produced – and continually seek to improve this, and to remove or amend legislation if it does not work well.

We support the extension of the Lamfalussy process to the banking, insurance and asset management sectors and regard the support of the Council, Parliament, the Commission and the financial services industry for this as, in itself, evidence of the continuing validity of the process.

We agree that the views of CESR, CEBS, CIOPS, the IIMG and external stakeholders such as ourselves must be taken into account by the Commission in its review (para. 3 of the WD). When weighing the comments of external stakeholders we consider that the views of external stakeholders who have consistently followed the process from its outset, such as the BBA, should be given particular attention.

Improvements to the Process

We welcome the various improvements to the process which the Commission has made during the first three years of its operation (para. 14 of the WD). The Commission has been responsive to many of the suggestions made by ourselves, the EBF and other industry bodies – and we believe that this joint endeavour has improved the process significantly.

How the Process Might be Further Improved in the Future

Timetables

We agree that timetables remain a problem – particularly with regard to the time given for industry to respond to some of the CESR consultations which relate to Commission Level 2 mandates. This has been particularly true in the context of the Markets in Financial Instruments Directive ("MFID") where there have been a range of "mini-consultations" with very short response dates – often simultaneous with other MFID consultations.

We agree with the IIMG that further work needs to be undertaken to develop an optimal balance between speed and the expected workload for all stakeholders. At present there is too much emphasis on speed at the expense of quality as the Post-FSAP expert group

concluded. We agree with the Commission that "some speed in the process may have to be sacrificed in order to optimise consultation practices" (para. 19 of the WD).

In our experience when speed is prioritised there is a tendency to reduce consultation time for market participants – whether at the Level 2 advice development stage or during national implementation. If extra time is built in it is important that the Commission ensures that the bulk of the extra time is given to the consultees.

Level of detail in legislative and implementing measures

We agree with the Commission (paras 20 and 21) and the IIMG that there is still a tendency for too much detail to be included at Level 1 of Lamfalussy process legislation – and that there is also a risk of too much detail being included in Level 2 legislation.

The Market Abuse Directive and the Prospectus Directive were the first laws to go through the Lamfalussy Process. We consider that it would be helpful to review the operation of those laws in 2007 or 2008 to consider how they are operating in practice and the extent to which experience suggests that the Level 1 and Level 2 measures are set at the right level. A similar review should be conducted for MFID and the Transparency Directive in about 2009.

We agree that it is important to continue to build trust between the various participants in the Lamfalussy process (paras. 22 and 23 of the WD). Exchanges and secondments might be one means of doing this – as are events such as open hearings, conferences and similar discussion events.

We would not necessarily agree that "the advice submitted by CESR on the possible content of Level 2 measures to underpin the Market Abuse and Prospectus Directives has been of high quality" (para. 24 of the WD). We believe that the fast timetables, the novelty of the process and the unfamiliarity of some of the regulators with some of the issues raised by these pieces of legislation had an impact on the quality of the advice. We consider that CESR did its best against a difficult background but we believe that CESR would itself accept that the quality of its technical advice and its consultation process and procedures is something which it, and the other committees, will continue to have to improve. We have ourselves seen improvements in the lay out and content of CESR consultations in the context of MFID, for example, which show that CESR is learning from its experience in previous consultations. We consider that the concerns expressed by the Post-FSAP securities expert group about speed having an impact on the quality of Level 2 legislation was in part influenced by a view that the quality of CESR's technical advice was capable of being improved.

Choice of Legal Instrument at Level 2

While the IIMG in its second and third report has expressed a preference for the use of regulations we continue to agree with the Commission that the right approach is a case by case approach. We agree with the Commission's analysis set out in para. 26 of the WD.

Implementation and Convergence – Level 3

We attach a copy of the BBA's response to CESR's Supervisory Tools Consultation Paper ("the Himalaya Paper"). This includes more detail about implementation and convergence.

We consider that it is vital that the Level 3 committees are given sufficient space and time to focus over the next few years on improving convergence of regulatory practices. CEBS is already undertaking important work in seeking to reduce national discretions in the context of the Capital Requirements Directive. CESR should undertake similar work in the context of conduct of business rules – perhaps as an aspect of MFID implementation.

It is also very important for CESR to strengthen the exchange of supervisory information, develop common reporting forms – so that equivalent information is readily understandable, and to develop more organised and efficient approaches to the supervision of the largest financial institutions e.g. by joint inspections and the creation of regulatory colleges. This work needs to be developed in an EU context – but also in an international context given the importance of a number of non-EU jurisdictions for the international regulation of multi-national financial institutions.

A heavy workload of CESR Level 2 advice would be an impediment to the development of supervisory convergence work – and consequently efforts should be made to reduce the Level 2 workload on CESR and other such Committees.

It is important that supervisory convergence work is carried out against a framework of the higher level economic policy considerations i.e. supervisory convergence arrangements should be directed towards two mutually supportive objectives (1) lessening supervisory and regulatory duplication – so as to reduce the regulatory burden on financial institutions and permit them to focus on bringing internationally profitable business to Europe; and (2) strengthening regulators' ability to regulate financial institutions – because the flow of information to them, and their understanding of the institutions is improved.

We consider that a core principle of supervisory convergence should be the embedding of a risk-based approach to the regulation of financial institutions. Institutions which are likely to have a limited impact on consumers, for example, need less regulation than institutions which are heavily engaged in selling direct to the general public. Similarly institutions which are unlikely to trigger a collapse of the financial system in a country or a series of countries need less regulation than institutions which could create such a collapse.

In the light of this we consider that the Financial Services Committee, the Economic and Monetary Affairs Committee of the European Parliament and Committees such as the European Securities Committee and the European Banking Committee should have a role in giving direction to the Level 3 Committees about the overarching principles that they need to take into consideration in developing supervisory convergence: as they are better

placed (as elected representatives and as guardians of the overall economic wellbeing of Europe) to balance the objectives of attaining economic growth against consumer protection considerations.

We agree with the Commission that there is a case for further examination of the structures and powers of national regulators (para. 32 of the WD). We agree that this is a matter for the member states themselves – but we would encourage member states to give further thought to a more co-ordinated approach to the powers of securities regulators in particular. We believe that, in general, the powers of banking supervisors are typically more similar than those of securities regulators.

We consider that a lot more work needs to be done to develop a more common approach to implementing Directives. Anecdotal evidence suggests that member states are adopting very different approaches to implementation of the Market Abuse Directive, for example.

Enforcement – Level 4

We agree that the Commission needs to devote more resources to enforcement. One means of doing this would be to reallocate some of the existing resources within the relevant Directorates to enforcement rather than the development of new legislation – particularly as it would appear that there is widespread support for a focus on implementation and enforcement as a major part of the Post-FSAP agenda.

Better Regulation

We support a much stronger emphasis on better regulation. Regulatory impact assessment is an important aspect of this – although we consider that it is important that there is a strong emphasis on good quality practical arguments for and against particular policy alternatives rather than a simplistic focus on quantitative information. Both elements should be important aspects of regulatory impact assessment.

An important aspect of regulatory impact assessment and the policy formation process is to broaden out the consideration of different ways in which policy objectives can be attained. We support the Post-FSAP securities expert group report's emphasis on alternatives to legislation – such as competition policy, market solutions and forms of self-regulation or co-regulation.

Interaction of Community Rules with those of other jurisdictions

It is important for the European Union to develop its rules and supervisory approaches in as consistent a way as possible with other major economic actors internationally. Consequently we support the EU-US regulatory dialogue and believe that it should be primarily forward looking – i.e. focused on ensuring that future initiatives likely to have international impacts are developed together rather than separately.

It is important, however, that in developing such initiatives the EU is not overly influenced by the US regulatory approach which is heavily rule based and lawyer driven.

We support a more flexible and more principles based approach as we believe that this is more consistent with both the code-based approaches of civil law countries such as France and Germany and the principles-based regulatory approach of the UK. We also believe that such an approach is more consistent with the spirit of the original Lamfalussy Report and the Lamfalussy process as it is developing.

Obtaining Better Input from Consumers in the Consultation Process

We consider that consultation of all affected parties is important. We consider that this important objective is attained by a good public consultation process. This permits all individuals and associations which wish to participate in the policy formation process to do so.

The experience to date has shown that the process has been opened up for all to comment but that consumer bodies have generally been slow to take up the opportunity. CESR has pointed out that they have offered a number of consumer representatives opportunities to participate in a range of different ways – but that relatively few consumer representatives have taken up these opportunities.

We do not oppose efforts to obtain better consumer input – but we consider that the continuance of the existing open consultation procedures is the best way to permit such input and that there should not be "positive discrimination" to force consumer input. We are not convinced that the FIN-USE proposals are the right way forward but we do not disagree with the idea that there should be technical briefings given to consumer associations about the issues on which input is sought (para. 49 of the WD).

The Inter-Institutional Monitoring Group

We agree that the mandate for the IIMG should be extended and a new group should be nominated. We believe that it has carried out very useful work. We also agree that the scope of its work should be revised in the light of the extended scope of the Lamfalussy process.

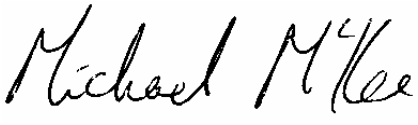
Codification of European Securities Rules

We consider that a lot of time and effort could be wasted on such an exercise. We are not against some targeted work in particular areas – the rules for research disclosures, for example, are complex and conflicting throughout Europe, for example – but a significant effort to codify securities rules would be a gargantuan task and give rise to significant political arguments. We think that, in the medium term, it is more important to focus on supervisory convergence.

Conclusion

We hope that these comments are helpful and would be glad to discuss them further with you. Please contact Michael McKee on 00 44 20 7216 8858 or Michael.mckee@bba.org.uk

Yours sincerely



Michael McKee
Executive Director

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31 January 2005

The Inter-Institutional Monitoring Group
c/o European Commission
Internal Market DG
Review of the Lamfalussy Process
Unit G2 (Securities Markets)
Rue de la Loi 200
B-1049 Brussels
Belgium

Dear Sirs,

BBA RESPONSE TO INTER-INSTITUTIONAL MONITORING GROUP'S THIRD REPORT

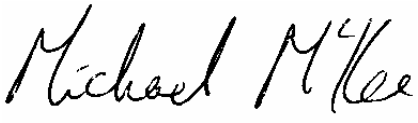
The British Bankers' Association is the principal banking trade association in the United Kingdom representing more than 250 banks many of whom are banks from other European jurisdictions or banks from elsewhere who have chosen the London international banking centre as their headquarters for their European operations. We welcome the opportunity to respond to the Third Report. We have consistently responded to previous consultations on the Lamfalussy process by the Commission, CESR and the Inter-Institutional Monitoring Group ("IIMG"). We are also members of the European Banking Federation and have participated in, and support, their submission in relation to the Third Report.

The Third Report was published around the same time as the European Commission's Staff Working Document: "The Application of the Lamfalussy Process to EU Securities Markets Legislation". Both documents cover many of the same issues and both are extremely helpful documents and, overall positive about the Lamfalussy process.

We support that analysis and attach our response to the Working Document which serves also as a response to the issues raised by the IIMG Third Report. We also attach a copy of our response to CESR's Supervisory Tools Consultation Paper (otherwise known as the Himalaya Report).

If you would like to discuss this letter and its attachments with us please contact Michael McKee on 00 44 7216 8858 or by e-mail: michael.mckee@bba.org.uk

Yours sincerely



Michael McKee
Executive Director
Wholesale and Regulation