Fédération Bancaire Européenne
European Banking Federation

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RESPONSE TO CESR'S PRELIMINARY PROGRESS REPORT:

"WHICH SUPERVISORY TOOLS FOR THE EU SECURITIES MARKETS? AN ANALYTICAL PAPER BY CESR" OCTOBER 2004

I. INTRODUCTION & EXECUTIVE SUMMARY

1. The European Banking Federation[1] (FBE) has been a strong supporter of the Lamfalussy Process from the start. The FBE was also closely involved in all of the consultations held by the various institutions over the last three years aimed at identifying and implementing further improvements to the functioning of the Process. The FBE therefore welcomes the current consultation held by CESR, which is a useful step to a debate on important issues related to CESR's own role in the Process.

2. Overall, the Paper is well-structured and well-presented. We commend CESR for its effort to open a debate on these important questions in a way which should allow for an analytical and objective discussion. We are very pleased with the open and creative exchange of views within CESR on issues that are of fundamental importance to the success of the Lamfalussy Process. We consider it a good step for CESR to attempt to develop a vision on these issues, and to seek views on these reflections from a broad spectrum of consultees. Even though it is not possible to answer all of the questions CESR poses at this point, we very much welcome the fact that CESR has started this debate and look forward to being engaged in it on future occasions.

3. At the same time, we believe that the focus for CESR, the EU institutions and the financial services industry at this stage must be on making the best use of the current structure, rather than introducing new tools which do not have a sound basis in the current system of cooperation among national regulators. There are several reasons for this, both principle-based and practical.

4. It is clear that before any changes to the current structure are introduced, we should exploit all the tools available to us under the current structure and ensure that the current design of the Lamfalussy Process reaches its maximum potential. This is not currently the case; there are tools that CESR has at its disposal which have yet to be utilised.

5. Moreover, we need to see an evolution of CESR before being able to finally evaluate the effects of the current system. We support CESR as an evolutionary network of regulators, and believe that any need for fundamental changes to this network would have to be considered in the presence of actual evidence of CESR's work within the current framework and the way in which it is evolving with greater experience, cooperation, and trust among its members.

6. Thirdly, all of the current directives in the FSAP which use the Lamfalussy Process (Market Abuse, Prospectus Directive, MiFID and the Transparency Directive) have been designed with the current structure in mind. Any deviation from the basic structure would also require a major re-writing of these Directives.

[1] Set up in 1960, the European Banking Federation (FBE) is the voice of the European banking sector. It represents the interests of over 4,500 European banks, large and small, from 26 national Banking Associations, with assets of more than EUR 20,000 billion and over 2.3 million employees.

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7. But this is not a mere question of practicality or political convenience. More importantly, we believe that these Directives would need to be tested and implemented with the tools provided by the current system before we can fully identify the extent of the changes to the structure that might be needed. Furthermore, review clauses exist to modify any aspects of these Directives that may be demonstrated to hinder their objectives. This should be the way of addressing any shortcomings in design in the future at least on a short-term basis. At a structural level, the current system designed for the existing capital market legislation, which uses a mixture of mutual recognition and harmonisation, holds a great potential for success. This approach was adopted by the Institutions and supported by the industry because of the consensus view that it is a tool that will open up markets.

8. As CESR has correctly noted, any revision of the structure will involve an intense political discussion, a thorough preparation and resources. While existing tools and additional ones in line with the current regulatory structure may contribute to improving cooperation and deepening convergence among the Member States, it is also clear to us that we cannot afford to wait for the full implementation of the current structure without at least starting to reflect on different scenarios for the outcome and what route may make sense under each scenario. Therefore we find the questions raised by CESR about the future useful as a starting point of collective reflection and debate. This thought process is a positive step, and we express our support for starting such an unbiased analysis in the very near future, which should involve all parties concerned including the market participants.

9. Thus, we agree with CESR's stated pragmatic approach, which is based on the objective of optimising its contribution to effective implementation and enforcement in the next five years. We consider this five-year horizon appropriate.

10. To achieve this objective, however, we believe that CESR's paper needs to be revised in some aspects. First of all, the Paper needs to be clearer about what CESR can and cannot do under the current structure. Some of the specific examples used by CESR clearly go beyond the current system, and would in fact not be possible to carry out without changes to the Treaty, the existing EU laws, and/or the way CESR is organised today. A review of these suggestions is necessary to ensure that the next steps can be focused on those suggestions that can be taken up without any changes to the structure. For example, some of the specific examples used by CESR clearly go beyond the current structure, and would require new powers which CESR does not have under the current framework (e.g. binding decisions such as pre-approval of a prospectus, pre-approval for pan-European products).

11. Secondly, those suggestions that do fit into the structure need to be evaluated carefully before moving forward. This should be subject to the simple criterion of:

    a. whether the proposal is **necessary** to implement the FSAP and achieve the full potential of the Lamfalussy process, and

    b. whether it is likely that it will be **effective** (by facilitating the role given to CESR under the Lamfalussy Process).

12. As an example, we support CESR's proposal concerning the Review Panel and a robust review. We support a greater role for the Market Participants Panel; specifying the role of regulators in the management of crises; a more active use of joint investigations as appropriate; and a mission statement for securities regulators. It seems to us quite reasonable, for the level playing field, that the members of CESR should have equivalent supervisory tools, i.e., tools that deliver similar results. We give more examples in the next section.

13. By contrast, some of the suggestions, while possible under the current structure, are **<u>not</u>** necessary. We do not think that a 'more automatic' mediation is either necessary or likely to be useful at this point. Similarly, we have some reservations about the practice of "embedding common approaches into guidelines and standards," and believe that it would have to be approached with caution in order not to undermine the general principles laid out by the Lamfalussy process. We give more examples in the next section.

14. More broadly, we believe that CESR needs to deepen its "coordinator of supervisors" role, which is linked with the Lamfalussy Process, as it describes the current structure. By contrast, we believe that the idea of "supervisor of supervisors" introduced in the Paper falls into the category of what might be considered in the future. We would therefore urge CESR to reflect further on improving its concept of "coordinator of supervisors" as a way of refining the role given to CESR in the Lamfalussy Process. To this end we recommend that CESR looks closely to the work of CEBS in developing the Consolidated Supervisor Model under the CRD.

15. We urge CESR to carry out further analysis in cooperation with all interested parties to determine which of its suggestions are necessary and likely to be effective and should therefore be pursued. CESR also needs to consider the proportional benefits and costs of any new tools.

16. We find this a good opportunity to discuss the scope and legal basis of CESR's actions at Level 3. We support CESR's efforts to increase the accountability of its actions at Level 3. As we have argued in the past, we believe that CESR should be guided by the following principles in carrying out its functions at this level:

    - First, in areas of work where CESR is working <u>within</u> a formal mandate, Level 3 work needs to focus on the uncertainties that could jeopardize the day-to-day exercise of the cross-border passport.

    - Secondly, whenever CESR is working <u>outside</u> a formal mandate, we need maximum caution to avoid entering into political questions. An open debate on the legal basis on which CESR is acting and a robust consultation with the industry are essential. The case of CESR's work with the ECB on the Standards for securities clearing and settlement raised some concerns on these points.

17. We find that the Paper would benefit from an overall viewpoint that is less "CESR-centric". Given the objectives of the Paper, it may be understandable that it focuses on CESR's role in the Lamfalussy Process. However, we find that at times it pays insufficient attention to the wider implications of the proposals for the other actors and institutions in the Process, in particular the market participants. There is a need to take a broader view and identify the broader impact of CESR's proposals on the whole market (for example, with respect to trade reporting).

18. Finally, we explicitly support CESR's decision to gather views from the market, consumers and the EU institutions at this stage. Some of the questions addressed by the Paper go to heart of the principles set by the EU institutions for the Lamfalussy process. We must especially take note of the legitimate concerns of the Parliament and those of the Commission. We would welcome an open debate on these issues.

II. DETAILED REMARKS

How integrated are the EU Securities Markets?

19. CESR presents data on the degree of market integration and the degree of legal integration. We agree with the general analysis in this section, but would like to comment on "the state of integration in retail markets". It may be true that the retail markets are not fully integrated today. However, this is not because the groundwork is missing. There is a gap between the market reality and the legal framework, which is already quite developed with respect to retail investors (PD, MIFID) but has yet to be fully transposed and implemented. Once these measures are implemented, we would expect the retail securities markets to become more integrated.

20. Having said that, the impact of the legal framework, of course, is difficult to predict at this point: It may be that the rules applying to the retail sector will prove to be too detailed, and will act as a hindrance to market integration, rather than as an enabler. Post-impact analysis will be necessary. This reinforces the importance of waiting for the results of the Post-FSAP before any new work is initiated in this field.

21. We agree with CESR's conclusion (page 8) that "The pace of integration suggests that obstacles still exist to the integration of securities markets. These obstacles will need to be systematically identified and subjected to careful analysis before deciding that further changes to the legal framework is necessary. Areas where this analysis needs to be undertaken include clearing and settlement, and fund management, including UCITs."

22. More generally, as we have argued in the context of the FBE Statement "State Of Integration Of Europe's Financial Markets Comments of The FBE On The Reports Of The Banking And Securities Groups", the FBE fully supports the view of the Securities Group that it is too early to say whether the FSAP has achieved its stated objectives as some key FSAP measures are yet to be adopted; important 'Level 2' measures are yet to be adopted; and many measures adopted at European level still need to be transposed in Member States.

23. In addition, even when the full range of legislation has been transposed into national law and the process of enforcement is under way, it will still take significant time for industry to assess to what extent the FSAP has changed working practices, opened up the securities markets across Europe and brought direct benefits to all market participants including investors.

24. The extent to which the FSAP will contribute to the creation of a truly European market for financial services will mainly depend on:

    - the correct and timely transposition as well as the effective and consistent implementation of the rules at domestic level;
    - convergence of supervisory practices; and
    - proper enforcement.

25. These developments will depend to a large extent on the success of the Lamfalussy Process and in particular on Levels 3 and 4 which will be key factors for the delivery of the FSAP objectives. Ensuring the effectiveness of the Lamfalussy committee structure should therefore be one of the top priorities in the post-FSAP era.

26. With the exception of clearing & settlement and the implementation of the Commission's Action Plan for "Modernising Company Law and Enhancing Corporate Governance in the EU", the FBE sees no further areas in the securities sector that are in immediate need of regulation at EU level. A legislative breathing space and a period of consolidation are needed. This concern applies to any proposal to regulate Credit Rating Agencies.

Current Role of CESR and amendments proposed by CESR (Pages 10-16)

27. CESR is proposing what it calls "a gradual approach" to adapt the supervisory tools to the degree of integration of the Single Market": In principle, we agree with this approach. However, we have reservations with some of the concrete proposals, as we explain below, since some are not part of the current legal framework and some not necessary or likely to be useful. As a formal point, we would like to reiterate the importance of separating those suggestions that can be pursued as part of the current framework and those that go beyond this structure. The Section from pages 10 to 16 mixes these two. We believe that the main focus of this section should rather be on exploiting the existing tools.

28. First of all, we believe that the diagram on page 11 would be clearer if the parts that are the exclusive responsibility of CESR in the process were highlighted. For example, it is not entirely clear in the diagram how CESR sees its role (or the role of its members) in terms of co-ordinated implementation ("Co-ordination efforts promoted by EU Commission"). It is not clear why this is included here; if what is meant is the involvement of CESR in the Commission's work, this involvement should be made clearer in the diagram and in the text.

29. Reviewing the proposals in this diagram and the subsequent explanatory section (Pages 10-16), we agree with the following proposals, which we consider part of the current framework:

- Keeping alive the network of CESR experts;
- More transparent coordination of individual decisions by CESR members;
- Exchange staff and joint training programmes;
- Coordination on joint inspections as appropriate;
- Specifying the role of securities regulators in the management of identified crisis;
- Discussion at CESR level of supervisory programmes by its members so as to set priorities and allocate resources accordingly;
- A more active role given to the Chairs of CESR-Pol and CESR-Fin to coordinate enforcement action for multi-jurisdictional live investigations or cases.
- Definition of a Mission Statement for EU securities regulators; and
- CESR's determination to "develop its political and democratic accountability links vis-à-vis the Financial Services Committee, the European Commission and the European Parliament."

30. We have the following comments regarding the following proposals made in the same section (Pages 10-16):

- "**Embedding common approaches into Guidelines, recommendations or Standards"** (Diagram on Page 11). This activity should be within the EU legal framework, and not a self-proclaimed right of initiative. We must also remember that the Lamfalussy Process did not foresee a Level 3 focused entirely on the tools of guidelines or standards, but rather one that used a range of tools, including day-to-day cooperation. Level 3 should not become a new layer of regulation.

- "**Recommending that CESR members all be given similar powers"**. (Diagram). We agree with the need to have similar powers. This should be aimed at achieving similar results, and not necessarily the same powers. Emphasis should be on the effect of the powers, not on the specific tools.

- **Establishing a role for CESR to "prepare guidelines" subject to EU law**. (Diagram). We would like to refer to our remarks on the conditions that must be fulfilled when CESR's actions are taking place in the absence of a mandate from the Commission (justification of the legal basis; avoidance of prejudice to EU law; consultation; and non-prejudice to EU law).

- **Establishing a role for CESR to develop a mediation mechanism and a larger scope for the mediation mechanism within CESR aiming at resolving conflicts of interpretations of directives between Home/Host(s) competent authorities that would accept the say of group of peers.** (Diagram, Page 14). As stated above, we have some reservations concerning CESR's original idea of a mediation mechanism. The same concerns apply to the potentially strengthened mechanism referred to here. This tool should not undermine the existing system and the recourse to the ECJ. Furthermore, we do not understand what is meant by "more automatic mediation by CESR in case of lack of cooperation." If CESR were to go ahead with a mediation mechanism, it would be very important to ensure that it does not become a routine method or a hindrance to the effective enforcement of existing EU law. Mediation should not become a way of 'shortcutting' the existing EU law.

- **Elaboration of a standard MOU for the supervision of trans-European market participants.** (Diagram and Page 14) We support the basic principle. However, we underline the importance of anchoring these MoUs in the existing directives. Moreover, given the importance of maintaining the global competitiveness of European banks, any standard MoU should be flexible enough for use with non-EU supervisors as well.

- **Creation of databases of sanctions**. (Diagram and Page 14) In principle, we support this initiative, which we believe to concern an issue related to the supervisory disclosure regime under the CRD. It would be useful for CESR and CEBS to cooperate on the establishment of disclosure databases. In our view, such a database could cover not just sanctions, but also supervisory decisions, both of which should be made available to the public, if needed, on an anonymous basis.

- **The possibility for promoters of pan European innovative products or services to seek a 'pre-clearance' at CESR level before applying for national authorizations and/or passporting.**' (Page 14) First of all, we see this proposal as an example of a decision which CESR could not take based on the powers given to it under the current system. We also have substantial reservations about its usefulness. As we argued in the context of the first CESR CP on its Level 3 role, we believe such a proposal could interfere with the existing mutual recognition rules established in the directives already adopted (in particular the MiFID, the Prospectus Directive). In such cases, we do not see any need for further review by CESR or any member of it. Moreover it would be an infringement of these Directives to install a mechanism for vetting a new product. The only area in which we could see a benefit in this mechanism would be the limited number of cases where CESR could play a useful role as a coordinator among regulators to achieve a common approach to new pan-European products and services that do not already benefit from a passport and which require an explicit approval in all Member States. While we appreciate that CESR prefaces its proposal with a commitment to encouraging innovation, we still fail to see how such a mechanism would be useful.

- **Developing a rigorous policy to enhance the role of CESR as "supervisor of national supervisors" through serious and effective "peer pressure" and an efficient mediation mechanism** (Page 15) As explained in the Introduction, we do not see the **"supervisor of national supervisors"** role as part of the existing framework. We find the concept of "coordinator of supervisors" much better linked with the Lamfalussy Process, and would urge CESR to reflect further on this function instead of "supervisor of supervisors". We believe that the concept of coordinator of supervisors is a better way of refining the role given to CESR in the Lamfalussy Process.

- **Envisaging the obligation for a CESR member to consult the other members before taking decisions that would have significant impact on other market players (extend the approach put in place for accepted market practices under the MAD)** (Pages 14-15). We are aware that the Market Abuse Directive foresees such a mechanism. However, we believe that it should continue to be anchored in the existing Directives and should not be introduced as a general rule. In principle, encouraging consultation would be welcome, but this should not become an obligation to consult CESR members before decisions. In particular, whenever there is a passport regime in place – such as the Prospectus Directive – members should not be – either formally or informally - expected to consult before they make their decisions. Otherwise, the approval mechanism used for the passport would be blocked, with severe damage to cross-border issuers.

- **A more active and systematic role for the Market Participants Consultative Panel**. (Page 15) We agree that the panel could be useful for pointing out inadequate applications by regulators of directives that create barriers to the Single Market. We would support this proposal subject to the condition that the work of this Panel be made more transparent, with its work fully available to the public.

- **The creation of a central or centrally accessible transaction reporting system under the MiFID accessible by all competent authorities**. (Page 16) As we stated in the context of the CESR's MiFID consultation on the 1st set of mandates, we welcome that CESR has paid special attention to existing arrangements for transaction reporting and intends to refrain from proposing unnecessary new requirements that would bring about excessive additional costs for the entities concerned. In the long term we welcome alignment, where appropriate, of existing arrangements in order to ensure a more consistent and efficient approach for reporting of financial transactions across Europe. At present, we should build on existing systems. We should implement MiFID first. If CESR agrees, and with discussions with the industry, there could be benefit in achieving a greater harmonisation of the reporting systems as a long-term goal.

- **The creation of a central or centrally accessible storage of regulatory information from listed companies under the Transparency directive in a manner that makes it accessible to the general publi**c. (Page 16) We fully support this and think this should also include the list of approved prospectuses. In the context of the Prospectus Directive implementation, we believe that regulators should include the full prospectus on their website (as opposed to only a list of approved prospectuses) as it is the case already in some Member States (France, Italy and Spain). There are two advantages: First, the investor has one-single point of access for all information. Second, it would lead to cost savings in terms of legal advice and IT mechanisms to restrict access to issuers' websites, particularly for US investors. We therefore see benefit in CESR investing in the necessary IT to put a "European-EDGAR" system in place, rather than in the immense amount of building of training and expertise that would be required to approve a prospectus – all the more so since this can be done appropriately at national level, in line with the general principle of subsidiarity and the Prospectus Directive.

Improvements suggested by the Interviewees which CESR submits for possible consideration by the EU Institutions (Page 17)

31. In this section, we respond to the examples given by CESR as improvements that could be considered by the EU institutions, which have been suggested in the course of the interviews held by CESR. We appreciate the fact that CESR acknowledges these examples have not been subjected to any of the tests that would be necessary in this context. We have the following comments:

Question: "For EU-wide public offerings of highly standardised products, could the approval of the Securities Note at EU level (the Registration Documents being nationally approved) prove more cost / efficient?"

32. We believe that having CESR approve the Securities Note (SN) is not efficient and would in fact contradict the spirit of the Directive and specifically the principle of the choice of competent authority for the standardised products, which would most likely be plain-vanilla bonds (which explicitly enjoy a choice of competent authority under Article 2 Paragraph (m)).

33. The design of a fully effective single passport regime introduced by the Prospectus Directive and the MiFID was one of the absolute priorities for the industry as well as the institutions. We expect the passports for primary and secondary market business, accompanied by the harmonized content of the Prospectus and the harmonized common rules of conduct for banks, respectively, to function well. We believe that there are no changes to the supervisory structure necessary to aid their functioning.

34. The proposal of the approval of the SN at EU level – with the Registration Document (RD) being nationally approved - for EU-wide public offerings of highly standardised products would go against the basic rationale of the Directive by creating two classes of approvals: one that is issued by a Member State and one that is issued by CESR. This duality would create confusion among issuers, intermediaries and investors, and may lead to the conclusion that the passport granted by a competent authority does not enjoy a full guarantee of mutual recognition from the other competent authorities.

35. Moreover, the suggestion raised in the Paper purports to address a situation that is already taken into account in the current design of the Directive. The PD introduces a

fully differentiated regime that tailors the content (and elements of the approval process) to the type of instrument, investor, denomination and issuer. The "standardised products" referred to by CESR will generally fall under the non-equity category, thus enjoying a choice of competent authority. Instead of increasing the technical efficiency of the process, the proposed mechanism would create inefficiencies by separating the approval of the RD from the SN, and thus creating two administrative tracks and forcing the issuer to deal with two separate authorities (CESR and the individual authority) for each such issue.

36. Separating the process for the three-part prospectus would create problems for liability and also for the coherence of the content, which will be inter-linked. Also, the mechanism seems to ignore the single-part prospectus and the base prospectus, where it is even more difficult to see how it would work. This is particularly problematic given that the proposal appears to have been conceived for non-equity instruments ("standardised"). (For shares in any event the principle of the Directive was to designate the authority closest to the company as the home authority.) The single decision for the SN would be technically incompatible with the case of an offering programme. The problem would be particularly acute for SMEs and mid-cap companies, which are not frequent issuers. These issues would normally use the single prospectus format and approach the competent authority of their registered office, since they and their intermediaries are used to dealing with those authorities.

37. With all these concerns in mind, we see no need for, but certainly a grave danger in, proposing an overhaul of the entire Directive to change this mechanism, and strenuously object to any proposal that might change the passport regime introduced by the Directive.

Question: Could standardised UCITS be approved at EU level before being widely marketed in Europe through national channels? This should be left to the UCITS review process.

38. As a possibility in a new regulatory framework not yet developed, the FBE would broadly welcome the marketing of pre-approved UCITS products through national channels, provided that the products themselves were sufficiently flexible and suitably portable for investors within the Single Market. However, such an approval would involve taking decisions by CESR, both binding for national regulators and market participants, which is not foreseen under the current system. If there is a need for such a tool, the necessary framework would have to be developed first.

39. Apart from these remarks on principle, from a practical point of view, in order to meet the needs of today's Single Market, the products would have to have a more liberal investment strategy than provided for by existing UCITS legislation and tailored to investors' risk appetite. This would also require appropriate and proportionate consumer protection, such as clear and readily intelligible descriptions of the product and the risk they carry, to be put in place before such products are marketed.

40. Nonetheless, the FBE would also welcome a thorough cost-benefit analysis of other consumer protection initiatives to explore how best to market UCITS products whilst providing for an appropriate degree of information for the investor. Voluntary codes established by the industry for consumers or the regulation of advice are possible alternatives to achieve the same objective.

41. For the industry as a whole, the most pressing issue is for legislators to recognise the shortcomings of the existing UCITS legislation which should inform the Commission's forward agenda for asset management. Above all, the industry would welcome a proportionate, liberalising and forward looking framework within which it could design

and market various UCITS products to best suit the needs of Europeans investing in the Single Market in the future.

Question: When market confidence is at risk, could a proper operational interface at EU level provide more expedient decisions on how best to apply accounting standards for listed companies and in tune with investors needs?

42. We believe that this issue is predominantly for accounting bodies, and not securities regulators.

Question: CESR is currently studying the regulatory issues raised by credit rating agencies and has not yet reached a conclusion on this matter. It has nevertheless been highlighted that there are today 3-4 players in the market (mostly US) getting formal or implicit recognitions in the 25 Member States based on very different assessments. Should there be an understanding that the Home/Host(s) supervisory tools do not answer all the questions, would one single permit be more efficient?

43. The FBE does not support the introduction of a regulatory framework for CRAs other than that which will be developed by CEBS fort the recognition of external credit assessment institutions (ECAIs) under the CRD. We do not, therefore, believe that CESR has a role to play in this area.

Question: Could certain trans-European market infrastructures, (exchanges and related, clearing and settlement services, …) that would expand significantly in a number of Member States and for which the supervisory arrangements based on the Home/Host (s) relationships (and their possible improvements) would appear to be insufficient, be more efficiently supervised at EU level?

44. In our view, the regulatory issues facing such entities are not fundamentally different from the cross-border issues faced in the case of banks. Moreover, such entities (exchanges, and to some extent entities offering clearing and settlement of securities) are covered by the scope of the MiFID. Hence we see no need in the creation of such arrangements at this point.

CESR's Discussion of the challenges faced by the mutual recognition model and its possible improvements (Pages 18-22)

45. As stated earlier, we believe that CESR should prioritise strengthening its contribution to the success of the FSAP rules by using the existing tools allowed to it within the existing framework, rather than searching for new tools in the short term. While it may be good to raise some of the questions posed by CESR for the distant future, it is important to distinguish between those issues which can be answered today and those which can only be answered once the FSAP and the current design of the Lamfalussy Process are fully tested. The system we have in place needs to be tested before considering any changes, and for that we need some time. Review clauses exist to modify any aspects of these directives that may be demonstrated to hinder their objectives. This should be the way of addressing any shortcomings in design in the future.

46. Having said that, we believe that it is not too early to start considering the different scenarios we could face based on different outcomes in the medium and long term. We see three distinct areas where further reflection would be useful:

   - **Scope** – What should be included in CESR's work? We believe that CESR should be very careful about extending its scope. However, it would be useful to consider what areas should properly be included in CESR's scope of activities which are not currently included.

- **Impediments** – What are the impediments, at a national and European level, to the achievement of the full benefits of CESR's activities in its defined scope?

- **Model** – What kind of model is best to overcome these impediments? Once the scope and impediments are clear, one needs to reflect on whether the current model, which is a cooperative network model, is suitable for the delivery of the required outcomes. Including the current model, we see three basic alternative models that are possible:

  - Current model of "cooperative network";
  - Lead regulator model; and
  - Single/central regulator.

47. Each of these three could develop in one of several different ways, and could be coupled, for example, with local or centralized supervision.

48. As you go from the network model to the others, the possibility to reach a harmonized legal and regulatory structure becomes greater, while, on the other hand, legal hurdles and political obstacles to consider become higher. Both should be carefully reviewed. Now seems to be the right time to start such a discussion.

III. CONCLUSION

49. We welcome the philosophical approach and the open debate on a range of interesting questions in the current Paper. We find that CESR makes some proposals that are in line with the current structure and which would be useful. To achieve the full potential of these suggestions, the Paper needs to be restructured, with a clear view to distinguishing between those activities that are and are not allowed within the current framework, and assessing in more detail the usefulness of those suggestions which would be possible within the current framework. We find that the current paper of CESR does not always make a good distinction between those proposals that go beyond the current structure and those that are possible.

50. Regarding the new (or modified) tools proposed by CESR which are within the scope of its current role, we believe that some are very useful (e.g. clarification of responsibilities in crises, convergence of powers to achieve similar results), while others should not be pursued in their current form (e.g. 'automatic' mediation, pre-approval of pan-European services or products).

51. While we urge CESR to concentrate on improving its current role within the Lamfalussy Process, we acknowledge that there is a value in studying long-term scenarios, together with the industry. This should involve a broad range of institutions and stakeholders.

52. Clearly, the success of the FSAP will depend on a range of factors, involving many actors. CESR's role in making the system work is immensely important. We believe that all the basic tools needed by CESR to fulfil its role are in place. Of course, the legal framework is one thing, and the cultural habits developed within institutions quite another. Time needs to be allowed to change cultural habits. CESR's success is based most of all on mutual trust among CESR members, which is being accumulated. CESR has already set up a very efficient and close working relationship but there is some

more way to go in building trust and transparency. There is a need to allow a real test of the capital markets directives and the existing Lamfalussy structure while at the same time starting a process to assess the merits of alternative scenarios to be prepared if changes are needed.

53. As we have pointed out in the past, for the Single Market to become a reality in the short run, all Level 3 Committees need to develop a pan-European and international view of policy and promote a culture of cooperation between their members. Over the last three years, CESR has made great strides in this regard and we hope that the practical implementation of the capital markets directives will help foster this trust.