

Response from the Futures and Options Association to CESR's consultation on Which supervisory tools for the EU securities markets? Preliminary Progress Report (Himalaya Report)

We are writing to confirm that the FOA supports the combined Association response on this matter which has been co-ordinated by the London Investment Banking Association (LIBA) and submitted to CESR. That said, there is perhaps a slight shift of emphasis in one or two areas so far as the FOA is concerned to which we would wish to draw your attention.

The FOA is not wholly averse to the eventual establishment of a *central European regulatory authority*, providing the critical criteria of flexibility, appropriate differentiation (to reflect customer, product and market diversity), cost-efficiency and regulatory pragmatism (including observance of principles of good regulation) are addressed on a consistent and substantive basis. However, the FOA believes that the implementation standards, enforcement policy and prevailing law across the 25 member states are so diverse that to establish any new centralised institution at this stage or in the near future would not cure those divisions, but would merely internalise them – an approach which would do little to advance the cause of investor protection, market integrity, regulatory pragmatism, etc.

For these reasons, we very much subscribe to CESR's views expressed in its CP that:

1. its role is as a “supervisor of national supervisors”;
2. “it is not proposed to create new institutions embedded in the Treaty with no precise idea of their role, but rather to pragmatically adapt the EU supervisory arrangements to what will occur in the European securities markets”;
3. “it is manifest that the present system is capable of significant development and improvements in ways described in the paper.”

With regard to CESR's approach to establish a regulatory framework of *equal supervisory intensity*, the FOA believes that the key criterion is to ensure that the supervisory procedures of each member state competent authority are adequate for the purpose of delivery of common regulatory outcomes rather than that they should be the same.

It is also recognised, however, that there has to be much greater coherence in terms of supervision and enforcement practice and procedure than exists at present:

- in order to persuade competent authorities that they may safely rely on a policy of mutual recognition in real terms with regard to the supervision of cross-border business;
- to give effect to the need for much greater legal certainty for both regulated institutions and their customers when dealing cross-border in financial services as well as predictability in terms of regulatory policy and treatment;
- if third countries such as the US are to be encouraged and persuaded to deal with the EU, for the purposes of regulatory recognition, as a single state.

The FOA has reiterated on many previous occasions and in many of its response papers (as and where the topic is relevant) the essential importance of establishing statutory-based common principles of good regulation that can and should be held in common by all EU regulatory authorities. This will not only further the cause of establishing a framework in which common regulatory and common standards (as envisaged in CESR's CP) could be developed across the EU, but would also serve as a clear public commitment to good regulation. In this context, it is noted that CESR emphasises the importance of defining a “mission statement” for EU securities supervisors. The FOA would suggest that there is no

reason why that proposed “mission statement” could not only set out the objectives of financial services regulation (which, in the UK, are articulated in terms of market integrity, investor protection, reduction in financial crime, etc.) include a commitment as to the criteria by which those objectives are achieved i.e. through the setting out, albeit in brief, of principles of good regulation.

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