



INVESTMENT COMPANY INSTITUTE

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Via E-mail and International Airmail

Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 avenue de Friedland
Paris 75008
France

Dear Mr. Demarigny:

The Investment Company Institute¹ appreciates the opportunity to comment on the consultation paper of the Committee of European Securities Regulators (CESR) on how it should develop its role in Level 3 of the Lamfalussy process to ensure consistent application of EU legislation ("Consultation Paper"). The Consultation Paper sets forth CESR's recommendations and seeks comment on Level 3 functions, which CESR divides into three categories: (1) coordinated implementation of EU law; (2) regulatory convergence; and (3) supervisory convergence.

As an initial matter, we agree with CESR that these three areas are of critical importance in promoting a pan-European securities market, including a EU-asset management industry. We discuss each of these areas in more detail below.

Coordinated Implementation of EU Law

CESR takes the view that coordinated implementation of EU law covers both the process by which EU legislative directives are transposed into national law and rules and the day-to-day application of EU legislation. To this end, CESR currently coordinates ad hoc sessions of national regulators to discuss implementation issues and has established a Review Panel to conduct peer reviews of Member State transposition of EU legislation.

In the Consultation Paper, CESR recommends that its members all be given rulemaking powers to implement EU legislation and CESR standards, which would facilitate further coordinated work at Level 3 with respect to regulatory convergence. In CESR's view, providing

¹ The Institute is the national association of the US investment company industry. Our membership includes 8,632 open-end investment companies ("mutual funds"), 621 closed-end investment companies, 126 exchange-traded funds, and 5 sponsors of unit investment trusts. Our mutual fund members have assets in excess of \$7.5 trillion, accounting for approximately 95% of total industry assets. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households. Many of our members also manage assets in Europe, including UCITS and pension funds, and our comments reflect their experiences in Europe.

national regulators authority to transpose certain EU legislation into national rules, without the requirement of national legislation, would provide the flexibility necessary to adapt to any subsequent changes. CESR also proposes to retain the network of CESR experts who prepared CESR's Level 2 advice to the European Commission to act in an advisory role for issues arising in the application of the legislation.

We agree with CESR and believe that it could be helpful for all CESR members to be given rulemaking powers to implement, and adapt to changes in, EU legislation and CESR standards. Transposing EU legislation through rules of national regulators may have benefits by allowing rules to be adopted or amended more quickly and to be drafted by those with technical expertise. We, however, would caution that, with such rulemaking authority, CESR members also should be subject to certain transparency standards (possibly developed at the EU-level) to permit interested persons to provide comments. Unlike an elected body that adopts national laws, regulatory authorities may not be accountable directly to any constituencies. As a result, we believe it would be beneficial if national regulatory authorities implemented EU legislation in a fully transparent manner to receive input from interested persons and to obtain broad support of the rules transposing EU legislation. We also support CESR's plans to retain the network of CESR experts who prepared CESR's Level 2 advice because they can be helpful with respect to issues arising from the application of the legislation.

Regulatory Convergence

CESR views regulatory convergence as the process of creating common rules. To make converging regulatory decisions, CESR agrees on common approaches, produces guidance, makes recommendations, and produces standards, which are introduced into Member States' regulatory practice on a voluntary basis. Moreover, CESR states that it may intervene in areas not covered by EU law (non-harmonized sectors) and adopt autonomous standards as a common EU-wide regulatory approach to a particular securities business, such as clearance and settlement. To further achieve regulatory convergence, CESR proposes in the Consultation Paper that it conceive of ways to give more authority to its guidelines, recommendations, and standards and to alert the EU Commission as needed to update EU legislation.

We believe that the ability of investors and industry participants to rely on common rules across the European Union would foster a single EU market. We, therefore, support CESR's intention to find ways to give more authority to its work on regulatory convergence. In the Consultation Paper, CESR asks whether an "endorsement" by the Commission of CESR's common guidance would be helpful to ensure consistent application of EU legislation. We are of the view that such an endorsement could be helpful to persuade Member States to take a more consistent approach to EU legislation. We strongly believe, however, that CESR should alert the EU Commission about the need to update EU legislation or to request that the Commission intervene to make certain standards or guidance binding should CESR find that the voluntary approach on a particular issue or area is not effective in promoting consistent application of EU law.

We also support CESR reviewing areas not covered by EU law to adopt autonomous standards as a common EU-wide regulatory approach to particular businesses. CESR's

regulatory intervention should focus on eliminating barriers to integration in an area not yet covered by EU-legislation.

Supervisory Convergence

According to CESR, supervisory convergence relates to how regulators approach the practical operation of rules and legislation. CESR takes the view that convergence of both supervisory objectives and techniques will be achieved by sharing these objectives and techniques to secure a common approach across Europe. To this end, CESR has instituted procedures to enhance the sharing of information, cooperation, and coordination of surveillance and enforcement activities among CESR members.

In the Consultation Paper, CESR proposes to prepare guidelines for, and to undertake, joint investigations of cross-jurisdictional institutions, to exchange and train staff, to create additional databases of regulatory interpretations and judicial cases, and to develop a mediation mechanism by peers when two competent authorities disagree or where regulators fail to cooperate.

We support CESR's proposals to enhance cooperation and coordination of surveillance and enforcement activities among CESR members. We believe that joint investigations of cross-jurisdictional institutions specifically and greater interaction among staff of national authorities more generally will promote consistency in supervising regulated entities in the European Union. We also agree that it would be helpful to create databases of regulatory interpretations and judicial cases to which CESR members could refer. This type of database will provide national regulators with access to information on how other national regulators practically enforce EU-wide rules and legislation. Over time, greater transparency of the regulatory interpretations and judicial decisions will likely promote greater convergence of supervision across the European Union. We also support the development of a mediation mechanism for disagreements among Member State regulators.

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We appreciate the opportunity to comment on CESR's views on how it would likely approach its Level 3 responsibilities. We believe it is critically important for the success of a pan-European securities market, including asset management, for EU-wide legislation to be applied consistently throughout the Member States of the European Union. By ensuring that investors and participants can expect uniform application of laws and standards, CESR will greatly contribute to the facilitation of a single EU market.

If we can provide any other information or if you would like to discuss further any issues, please contact me at podesta@ici.org or at (202) 326-5826 or Jennifer Choi at jchoi@ici.org or at (202) 326-5810.

Sincerely,

Mary S. Podesta
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