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Dear M. Demarigny

## **RESPONSE TO CESR'S ANALYTICAL PAPER "WHICH SUPERVISORY TOOLS FOR THE EU SECURITIES MARKETS?"**

Thank you for the opportunity to comment on this analytical paper regarding the role of securities regulators in ensuring full and consistent implementation and enforcement of the Financial Services Action Plan.

We are very supportive of the work that CESR has conducted so far and we believe that cooperation, open discussion and transparency amongst regulators across the EU is an essential part of making the Lamfalussy process work. In particular, we are supportive of the analysis given in Annex 3 — we feel it is useful and informative for CESR to build an understanding of the current situation in each Member State. We believe there is an important role for CESR at Level 3 in facilitating shared knowledge of each country's rules and practices, to help ensure consistent implementation.

It is essential that regulators work together, share information and maintain a high degree of transparency in order that CESR members can develop increasingly convergent views — this is especially important in the area of market abuse, where approaches taken in one jurisdiction need to be communicated in order that workable solutions can be found that enable participants to operate cross-border, without being required to act in very different ways in different jurisdictions.

### **Improving implementation and enforcement**

CESR has identified a number of supervisory tools to facilitate its task. As noted in our response to CESR's consultation paper regarding its role at Level 3 (April 2004), we are very supportive of the use of peer group reviews and the introduction of a more effective mediation mechanism. This would provide a 'first port of call' and it may be possible to resolve some disputes in a quick and cost efficient manner. However, such a system should not be regarded as an incentive to systematically question the increased automaticity of mutual recognition.

In addition, there are further measures that we consider would be useful for improving implementation and enforcement, such as the introduction of national “single contact points” to monitor and report back to the Commission on Member States’ progress in implementing the directives. Also, sharing information through transposition working groups (made up of national experts), and the use of transposition tables (to demonstrate the link between provisions in a directive and their corresponding provisions in national law) would help increase convergence across Member States. The development of additional information databases with precedents on regulatory interpretation and judicial cases should also prove a useful tool.

## **Challenges and proposals**

We agree with the proposals put forward in the recent discussion paper “Supervising financial services in an integrated European Single Market” produced jointly by FSA, HM Treasury and the Bank of England; such proposals do not require new EU legislation but rather focus on practical solutions.

In summary, the challenges identified are:

- to ensure the effective, consistent and proportionate implementation and enforcement of EU legislation on financial services - this requires practical mechanisms involving supervisors and the financial sector and which build on initiatives already underway;
- to improve cooperation between supervisors, including better information sharing, consultation and joint working — within the scope of existing legislation;
- to ensure that the supply and sharing of data to, and between, financial supervisory authorities is efficient and effective - and to encourage market initiatives to improve the efficiency of data flows;
- to ensure that financial supervisory authorities, along with central banks and finance ministries, are able to work together to manage financial crises; and
- to continue to develop trust between market participants and supervisors and between supervisors themselves, for example through increased transparency.

## **Powers of the regulator and mutual reliance**

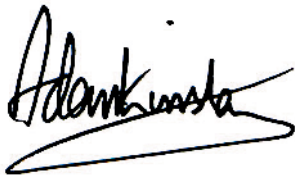
It is clear that regulators have diverging powers and that there are differences in approach across Member States, however, these should be reduced by the FSAP Directives which contain specific provisions for the designation of competent authorities in each Member State and for the powers that they should be granted. This should facilitate convergence — and failure by Member States to implement properly should be taken up by the Commission, using enforcement powers at Level 4. Therefore, it may be unnecessary for a separate programme to be developed as powers should converge as directives are implemented and enforced.

We understand CESR's view that common approaches have an impact on the day to day supervision of the single market, and we note that page 10 of the consultation states that "CESR is firmly determined to develop its political and democratic accountability links vis-à-vis the Financial Services Committee, the European Commission and the European Parliament". However it is our belief that if CESR decides to move in this direction, Level 3 must develop in an open and transparent manner that fully respects the institutional boundaries that were so carefully set out under the Lamfalussy report. Any such change should be balanced, and done in co-ordination with the European Parliament and the Commission.

The European Commission highlights this issue in its recent Working Document "The application of the Lamfalussy process to EU securities markets legislation" which highlights that CESR standards adopted at Level 3 must be fully compatible with the binding EU legislation at Levels 1 and 2, and should be seen as additional rather than substitute measures. They should not prejudice the political process, and therefore — whilst the Commission could decide, on a case-by case basis and after consulting all stakeholders, to propose upgrading Level 3 standards to binding rules at Level 1 or Level 2 - if this were to happen, it must go through the co-decision process.

I hope our views are helpful to CESR's work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Kinsley', with a long horizontal flourish extending from the end of the name.

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