

Date: May 2004
Ref: CESR/04-241

Terms of reference for the cooperation and collaboration regarding market risks and regulatory projects between the US Securities and Exchange Commission and the Committee of European Securities Regulators

The purpose of this document is to set forth the terms of reference for the cooperation and collaboration between the Committee of European Securities Regulators (CESR) and the US Securities and Exchange Commission (SEC).

The enhanced relationship between the SEC and the members of CESR has two objectives. The first objective is improved oversight of US and EU capital markets through increased communication regarding regulatory risks to enable regulators to anticipate regulatory problems more effectively. The second objective is to promote through timely discussion regulatory convergence with regard to future securities regulation¹.

The initial terms of reference include two primary areas of work. This work would be done through regular meetings among senior staff and chairs of CESR members and the SEC.

1. Identification and discussion of regulatory risks present in US and EU securities markets.

The cooperation and collaboration will provide an opportunity to identify risks developing in US and EU securities markets.

CESR members and the SEC will share their views regarding these emerging regulatory risks relating to multinational market participants active in the US and EU financial markets (including broker-dealer groups, issuers, exchanges, fund complexes, etc.) Such cooperation should serve as an early warning system about potential problems.

This enhanced cooperation may also allow CESR members and the SEC to develop a strategy for addressing the risks in a coherent fashion. In particular, as necessary, CESR members and the SEC will put in place appropriate information sharing links in case of market events that may affect the normal functioning of US and EU markets (crisis management).

CESR members and the SEC will share experiences regarding enforcement matters involving multinational market participants active both in the US and EU financial markets. Where necessary, CESR members and the SEC will coordinate their efforts

¹ For the purpose of these Terms of reference, “regulatory” refers to the competences of the SEC and of the European securities regulators members of CESR.

to increase the ability of uncooperative and under-regulated jurisdictions to exchange information.

2. Early discussion of potential regulatory projects in the interest of facilitating regulatory convergence.

The CESR - SEC cooperation will afford the opportunity to discuss at an early stage, issues of regulatory concern in the United States and in Europe. The purpose of these discussions is to facilitate converged, or at least compatible, approaches to regulatory issues.

The SEC and CESR will provide an annual indicative list of regulatory areas to be discussed in the course of the coming year.

3. Possible further areas of work

CESR members and the SEC may undertake additional areas of work in the future for the purpose of supplementing the early warning system regarding regulatory risks to be advanced through this dialogue. This may include a more articulated regulatory information-sharing and an expanded memorandum of understanding regarding cooperation on enforcement matters. CESR members and the SEC will consider these and other possible areas of work once meetings addressing the above issues are underway.

4. EU/US Financial Services Dialogue

CESR and the SEC will inform the institutions involved in the EU/US Financial Services Dialogue of the substance of the discussions undertaken as part of their cooperation and collaboration, unless bound by confidentiality requirements.

(2004/2005) Early discussion of potential regulatory projects in the interest of promoting regulatory convergence between the SEC and CESR

For the purpose of discussing issues of regulatory concern in the United States and in the European Union, the SEC and CESR members have established the following indicative list of areas for discussion:

- Market structure issues (the SEC's review of the US national market structure and the CESR work on the implementation of the new Investment Services Directive);
- Future mutual fund regulation, including with respect to stale price arbitrage, late trading, and corporate governance;
- Development of an effective infrastructure to support the use of International Financial Reporting Standards, in particular with respect to consistent application, interpretation and enforcement of these standards with the final objective of avoiding reconciliation with local GAAPs;
- Credit Rating Agencies;
- Financial Analysts.

This indicative list may be revised if new regulatory issues affecting the EU and US markets emerge in the course of the year.