

The Committee of European Securities Regulators



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Half-yearly report on the activities of
the Committee of European Securities Regulators
to
the European Commission
the European Parliament
the European Securities Committee

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1. Introduction

The present interim report complements CESR's Annual Report for 2005, published on 26 June 2006, and provides a half yearly update on the activities of the Committee of European Securities Regulators (CESR) to the European Commission, the European Parliament and the European Securities Committee. The report focuses on the functioning of CESR: the "Level 2" work where CESR provides advice to the EU Commission on possible implementing measures of Directives, and the "Level 3" work where CESR Members work together to ensure convergence of their regulatory and supervisory tasks. The report also deals with CESR's inter-institutional relationships, with the two other Level 3 Committees, CEIOPS and CEBS, as well as with CESR's current dialogue with third countries, which is at present primarily focused on the US.



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3. Market Participants Consultative Panel

The Market Participants Consultative Panel met once in the first half of 2006.

The discussion was facilitated by CESR's Chairman, Arthur Docters van Leeuwen, and included a policy discussion pertaining to the role of CESR in protecting individual retail investors and consistency of regulation across financial sectors.

The Chairman also updated the members of the Panel on the developments in the Transatlantic Dialogue with particular regard to the work programme with the SEC. With regard to the SEC, two issues were flagged: the self-contained discussion about IFRS and the proposal on de-registration. On the postponement of the US GAAP/IFRS convergence timetable, a formal decision is expected by the EU Commission this autumn. CESR will prepare an interim report for the EU Commission on the progress in the implementation of the IFRS in early 2007. A final report is envisaged for mid-2007.

On de-registration, it was noted that the SEC-proposal of December 2005 would, in CESR's view, not lighten the reporting burden for companies which want to de-register as much as had been hoped for.

Furthermore, the Chairman of CESR informed members of the Panel about the implications of a possible (Transatlantic) consolidation of stock exchanges.

Finally, the Chairman underlined the major milestone reached in relation to supervisory convergence and the future of supervision of EU financial markets, by referring to the conclusions of the ECOFIN Council on these matters in early May.

The role of CESR in protecting individual retail investors

Based on experience in the UK, and in particular the FSA-work on financial

capability, John Howard presented the most relevant issues that retail consumers are dealing with when shopping for financial services. While congratulating CESR on its continuous efforts to improve consumer representation (i.e. the consumer day in Valencia, Spain), it was also noted that consumer organisations clearly have a lack of resources to contribute to the process. Efforts should be made to enhance the level of representation of the consumers' voice in Europe. To overcome some of these difficulties, John Howard suggested that consultations should be conducted in the various languages and in a clear format.

According to John Howard, the relevant issues for retail investors are: qualification of products, status of advisors, execution-only, pre-contract documentation, suitability, and the handling of complaints. Particular attention should be paid to the phase of financial promotion, and especially that taking place via electronic means and cross-border. On the latter issue, John Howard argued for a role for CESR in streamlining national systems, as current ombudsman schemes and compensation schemes vary enormously across Member States. The more integrated financial markets and harmonised rules are across Europe, the less risk for consumers would remain. With regard to the issue of suitability, John Howard suggested that risk ratings of financial products would help and a plea was made for a strong role for CESR in this area.

It was concluded that boosting consumer confidence in the area of protecting retail investors, could be achieved by creating an understandable, consistent approach which is easy to use. Criteria for adequate qualification of investors and correlation to categories of products should be developed; self regulatory initiatives may be pursued. Furthermore, information given to retail investors should be targeted, simple and timely.

In the subsequent discussion, some members of the Panel noted that they expected the position of consumers to benefit from the entering into force of the MiFID at the end of 2007; others considered that it is too early to assess the impact of the MiFID. Other MPCP members mentioned the importance of



consumer education, even though it was considered to be only a partial solution. Members called for a mapping by CESR on the various national educational efforts. National education systems should address problems of education on key economic principles.

Consistency across financial sectors

Dominique Hoenn introduced the discussion starting from the issues listed on the joint working programme of CESR-CEBS-CEIOPS. In particular, he mentioned the following issues which are deemed relevant across the various financial sectors:

- Financial Conglomerates;
- Substitute products;
- Reporting;
- Internal Governance;
- Crisis management.

The highest priority however, should be given to (different) capital requirements for substitute products. Distortion of competition should be avoided. He called for the creation of a group of wise men to advise on a general prudential supervisory framework.

In the following discussion, members of the Panel strongly supported the cooperation between the 3L3 Committee. Level playing field and consistency across sectors were considered important objectives to be achieved, also for the protection of consumers. Compliance and monitoring requirements and hedge funds were identified as issues for further work. Lars-Erik Forsgardh suggested the issue of taxation of shareholders should be raised to create awareness among Member States about the negative effects of taxation.

In summarising this session, the Chairman of CESR acknowledged the issue of capital requirements, but noted that CESR lacks authority in this regard. Concerns will be conveyed to the competent authorities and the Commission. On substitute products, the Chairman underlined the stepped-up awareness by the EU-institutions about cross-sectoral effects of rules and regulations. On reporting requirements, it was emphasised that not everything is known to CESR with regard to statistical output. For this reason, CESR needs to conduct surveys and gather

evidence of problems signalled by market participants. He nevertheless noted a need for more pressure by the industry and called upon the industry to identify (and report) any idiosyncratic requirements. Finally, the Chairman proposed to table the issue of hedge funds for the joint meeting of MPCP and CESR, in mid-October 2006.

The detailed summary of the discussion (Ref. CESR/06-400) is available on CESR's website www.cesr.eu.

A list of members of the Market Participants Consultative Panel is set out on CESR's website, in the section Market Participants Consultative Panel.



4. Regulatory harmonisation (Level 2)

4.1 Transparency

Mandate of the Transparency Expert Group

In July 2005, CESR received from the European Commission a mandate for technical advice on implementing measures concerning the storage and filing of regulated information.

The mandate contained three elements and invited CESR to provide:

a. By **June 2006, an opinion** for possible implementing measures on two preliminary issues relating to **the architecture** for the EU storage network: (a) the agreement on interoperability of the national Officially Appointed Mechanisms i.e. how an agreement on technical requirements could allow technical interoperability of the national OAMs and (b) the **cost and funding implications** for the Member States arising out of the creation of the EU network.

b. By **June 2006, technical advice** on the role of the OAM for the central storage mechanism and on the role of the competent authority. More particularly, CESR was invited to determine the **minimum quality standards** the OAM will have to comply with, such as standards of security, of certainty as to the information source (authenticity), of time recording and of easy access by end users. In respect to **the role of the competent authorities**, CESR is invited to examine the power of the competent authorities in supervising the OAMs as well as their role in adapting the standards in case of technical developments.

Moreover, the same technical advice invited CESR to explore the issue of **filing** of regulated information with the competent authorities. More specifically to determine minimum quality standards to be complied by the competent authorities, in particular in relation to security, certainty as to the information source and of time recording, and to determine whether the procedure of filing with the competent authority can be aligned with the procedure of filing with the OAM in order to avoid duplicate submission of the same information.

c. By **April 2006, an interim report** regarding the **cost** of setting up and operating an OAM that would meet the prescribed quality standards.

CESR's advice was prepared by an expert group chaired by Carlos Tavares, Chairman of the Portuguese CMVM and supported by a permanent

A. CESR's final advice and opinion on the storage and filing of regulated information

On 6 July 2006, CESR delivered its final advice and its opinion on the storage and filing of regulated information, covering the minimum quality standards of the national storage systems and its opinion on establishing the interoperability amongst national storage systems (European Union network) (Ref. CESR/06-292). The information affected by the Transparency Directive and these implementing measures includes price sensitive information, regular financial reports, notifications for major holdings and, according to the Commission's Mandate, prospectuses.

The issue of how such information is stored is crucial for the development of EU financial markets. For the first time, there is a requirement to ensure that EU investors have easy access to information about all EU issuers on a pan EU basis, irrespective of where they are located. This will enable investors to better evaluate investment opportunities and make informed assessments of an issuer's business performance and assets. The storage system is intended to become a key tool in the integration of EU financial markets, fostering investor confidence.

In accordance with the relevant mandate, CESR provided its advice and its opinion in relation to both the development of the national storage mechanisms and the creation of an EU network of these national mechanisms.

The content of CESR's final advice and opinion reflected comments received during the consultation on CESR's draft technical advice on the storage and filing of the regulated information. The responses to this consultation had been largely supportive of the CESR approach. Moreover, it reflected comments that CESR received during the Investors' Hearing that it organised in March 2006 (Ref. CESR/06-092), as well as the comments of the Consultative Working Group on Transparency. CESR modified its advice in response to comments received as a result of the consultation and the investor hearing. A



Feedback Statement describes fully how CESR has adapted its advice in response to these comments (Ref. CESR/06-293).

The CESR paper on storage encompasses CESR's advice and CESR's preliminary opinion and more particularly it contained four parts, the main issues of which are analysed below:

CESR's final advice on the minimum quality standards of the national storage systems

The first part of the advice related to the national storage mechanisms called Officially Appointed Mechanisms (the "OAM"). CESR sets out some minimum 'quality standards' that such mechanisms would need to meet. The main standards proposed were:

- assurance of adequate security of the IT systems such as, an effective validation procedure, availability of the stored information, acceptance of waivers and recovery and back-up systems;
- certainty as to the information source and authenticity of origin of the information stored (authentication procedures);
- easy access by end-users, this includes for example ensuring the search functions can operate in different languages.

CESR's opinion on establishing the interoperability amongst national storage systems (EU network)

The second part of the mandate dealt with the architecture of the EU network of national storage systems (national OAMs).

CESR also considered how a network model could be implemented. To this end, CESR describes three alternative approaches. The first and preferred approach was based on the development of a binding provision, by which the model of network would be defined and an oversight responsibility would be assigned, Member States would ensure that the OAMs to be appointed, abide by an interoperability agreement and that co-ordination was ensured. This structure will be complemented with an interoperability agreement to be drafted by the competent authorities and to be followed by the OAMs. According to the

second approach, interoperability could be achieved with stand alone agreements among Member States alone and the third possible approach proposed that interoperability could be achieved with stand alone agreements between the OAMs themselves.

CESR presented four possible network models as a basis for its work on developing a system which could link the national OAMS. These models ranged from the most centralised of systems to the least centralised and could be summarised as follows:

- o **Model A: A Central Access Point (CAP)** which is based on a central application server, which collects the search requests coming from a web page available to the users and dispatches these requests to the OAM(s) of each Member State;
- o **Model B : A De-centralised system** under which an application server is located in each OAM;
- o **Model C: A Central list of issuers** which would operate as if there is a central server hosting an application, containing a complete list of issuers and the links to each OAM holding information on that issuer; and,
- o **Model D: Basic Access Model** which would require every national competent authority to publish on its website a list of hyperlinks to every OAM in the EU.

Although CESR had not been mandated to opt for a preferred network model, CESR decided to express a preference for Model C, which was also the one that gathered most support from consultees who provided views on these issues. It is also the model that, in accordance with preliminary cost estimates, has proved to have adequate functionalities with lower costs.

CESR also presented the possible content of the interoperability agreements, which will cover government and technical issues. For the more advanced network models, the technical issues would be common reference data items, common interface and communication standards as well as common search keys.



CESR's final advice on the technical issues in relation to the role of the competent authority and on the standards of filing of the regulated information with the competent authority

Finally, CESR's paper also addressed a number of technical issues regarding the role of the national competent authority. In addition, CESR's technical advice on the filing standards of the regulated information with the competent authority proposed standards in relation to security and certainty as to the information source and in relation to time recording, and examined possible ways of aligning the filing with the storage procedures.

B. CESR's Paper on Costs of the national OAMs and of the EU network

In May 2006, in response to the Commission's mandate on storage and filing of regulated information, CESR presented a preliminary report in relation to both the costs of setting up and operating national OAMs and costs in relation to networking all national OAMs. These cost estimates are intended to provide an indication of the order of magnitude of such projects. These are subject to certain assumptions further explained in the paper and were based on the standards for OAMs analysed in the final advice on storage.

In relation to the national storage mechanism (OAM), the paper on cost issues contained:

- a. The specific minimum quality standards to be complied with by the national OAMs have been the basis for the cost evaluation. These included security standards, standards of certainty as to the information source, standards of time recording and standards of easy access by end-users. It should be noted that the cost estimates provided in the paper were based on the standards for OAMs.
- b. The assumptions and caveats of the cost estimates in relation to the OAMs: One important assumption noted was that the OAMs will have to be set up from scratch. Therefore, the existing storage mechanisms have not been taken into account for the purposes of the evaluation.

- c. The actual cost estimates for the setting up and operating a national OAM was presented in the form of a table.

In relation to the EU network, the paper on cost issues contained:

- a. The four possible network models (Models A to D) contained in CESR's advice that are used as the basis for the cost evaluation.
- b. The assumptions and caveats of the cost estimates in relation to the network of national OAMs
- c. The actual cost estimates consisting of a summary cost estimate for all models.

C. Developments in the adoption of the Level 2 measures of the Transparency Directive

In June 2005, CESR submitted to the Commission its final Technical Advice on dissemination of regulated information, notification of major holdings of voting rights, equivalence of reporting duties, interim financial information and procedural arrangements for election of home Member State (Ref: CESR/05-407).

On the basis of the various elements of CESR's advice, the Commission presented its document for possible implementing measures. This is currently under discussion in the European Commission (ESC) and the European Parliament (ECON). CESR has actively participated as an observer in these discussions and contributed to the discussion in light of its advice.

Next steps

CESR will continue to follow the Commission's activity on the issues of storage and filing of regulated information (see above under A).

CESR will continue to follow up and participate in the discussions on possible implementing measures on dissemination of regulated information, notification of major holdings of voting rights, equivalence of reporting duties, interim financial information and procedural arrangements for election of home Member State (see above under C).



Finally, in the beginning of 2007 CESR will consider whether Level 3 work should be undertaken by the Transparency Expert Group and identify the areas where this possible work might need to be developed.



5. Supervisory Convergence (Level 3)

5.1 Policy

Second Progress Report on Supervisory Convergence in the Field of Securities Markets for the Financial Services Committee (FSC)

On 12 May 2006, CESR presented a detailed report on the steps it is taking to improve supervisory convergence in the European Union to the Financial Services Committee (FSC) (Ref. CESR/06-259b). The FSC is an EU Council Committee that gathers together high-level representatives of the European Union's Finance Ministries. This second report forms part of a periodic framework of reporting by CESR which will further strengthen CESR's accountability with the EU institutions

CESR has during the time since it last reported to the FSC made significant progress in order to enhance mutual understanding and to narrow down the differences of supervisory practices. The shift in nature of CESR's work from the provision of advice to the Commission on level 2 to the more operational level 3, has accelerated during the last year. CESR has considered very carefully what changes will be necessary for CESR to make in order for it to meet the future challenges it now faces. Therefore, CESR set up a task force and has agreed on a number of strategically important changes for the years to come. This will include a three criteria test to establish which work CESR will undertake, ensuring an operational focus on its work.

CESR has also seen a significant increase in its work with its fellow level 3 committees, (CEBS and CEIOPS) since the execution of the Joint Protocol and a joint level 3 work programme.

The ECOFIN has in its conclusions of the 5 May 2006 underlined that the continued success of the FSAP is dependent on intensifying supervisory convergence, and has instructed the FSC to monitor the convergence of supervisory powers. Furthermore, the ECOFIN has underlined the implementation of supervisory tools such as mediation, delegation, streamlined reporting

requirements and data-sharing arrangements, as essential in order to make this convergence a reality. CESR is already well on its way to putting the ECOFIN conclusions into practice and has introduced several new supervisory tools, namely a mediation mechanism, a group to deal specifically with all IT-related issues among its members including data-sharing arrangements, and establishing funding principles for such arrangements. A group of financial markets economists has been established to enable CESR to keep up with market developments and create a method by which CESR can build in consideration of cross-sector aspects when developing its work (See further information under ECONET). In addition to this, CESR will continue to strengthen a common culture by establishing tools to deal with issues such as staff exchanges (See section on HR later in this chapter). On an ongoing basis CESR is continuing to strengthen the common operational abilities of its members in areas of market integrity and financial information.

Remaining obstacles to supervisory convergence in the area of securities still exist, as concluded in the report to the FSC. CESR considers that there is a need to address the following:

a) There continues to be a lack of clarity among Member States regarding who the relevant competent authorities under the Transparency Directive are, which, given its imminent transposition on the 20 January 2007, may result in a delay of its timely implementation in some Member States thus diminishing supervisory convergence.

b) The delay in making a decision about applying rules regarding the equivalence of third countries GAAP and in particular US GAAP, is a significant risk to achieving harmonisation of treatment by CESR members of third country GAAP's and thereby issuers who use them.

c) CESR finds the lack of harmonisation of sanctioning powers in relation to breaches of market integrity rules to be an obstacle to achieving supervisory convergence.



Increasing active dialogue and assisting the cross border retail investor

Following CESR's consumer workshop which gathered together investor associations and CESR experts on investor education in Valencia in November 2005, CESR has started work on developing a common portal of information for the cross border investor.

The facilitation and sharing of best practices and experiences between members, is key to providing investors with a harmonised level of protection and information throughout Europe. As such, CESR has established a network of contacts in this area that members can draw on to gain or share information on good practice.

In addition, CESR has sought to increase the voice of retail investors in its development of advice. To this end CESR has reviewed how expert groups engage retail investors during the preparation of advice and has sought to enhance CESR's consultation practices in a tangible manner to gain more input from retail investors. This new practice was tested in relation to the development of CESR's advice on Transparency, and in particular in relation to Storage of Financial Information which CESR thought would be an area of particular interest and impact on retail investors. As such, CESR held a specific hearing for investors on March 2006 and developed tailored questions for retail investors on this issue. CESR members were asked to contact their national consumer association to establish if translations were needed and to explain the background and technical aspects of the paper. In addition, CESR sought in the Feedback Statement (Ref: CESR/06-293) to provide a particular response to the issues raised by retail investors and illustrated how the expert group had amended its advice to reflect the valuable input it had received. The hearing also provided an opportunity for CESR to update Retail Investor Associations on the progress in relation to MiFID. The practice of tailored consultations of this kind will continue, particularly where the issue has a clear impact on retail investors.

In addition, in response to comments made in Valencia, which suggested that retail investor associations did not feel CESR had a role to

provide education but that information would be useful, a small taskforce of CESR Members has been set up to prepare draft proposals on information to be made available to retail investors via a link from national securities supervisors' websites to a page on CESR's website, developed particularly with retail investors in mind. This page will provide information for investors on buying services and securities products cross border, for example information on the national securities regulators, any investor help-lines that exist and languages spoken, information encouraging individuals to check the firm is authorised to provide services and links to the national databases where this information is kept. The page will also contain advice on complaints and compensation. CESR intends to present the sample pages that have been prepared to Retail Investor Associations to gain their feedback on the usefulness of the information before the pages are finalised.

Finally, CESR agreed to hold at least one larger meeting with retail investors on a regular basis (every year or year and half).

Next steps

In order to ensure that meetings with the retail investors are very much focused on providing input into streams of CESR's work, the timing of the next meeting will be critical. As such, it is likely that the next meeting will be hosted in early 2007.

It is likely that the agenda of the next meeting will seek to gain input from retail investors on CESR's Level 3 work on MiFID; potential work which CESR may need to undertake if it receives a mandate to review a simplified prospectus for UCITS; a review of the Prospectus regime and how it is functioning since the new Prospectus Directive was introduced; reactions to the samples of the investor pages that have been developed.

Finally, CESR will seek to explain and discuss how CESR members go about enforcing rules and the work of CESR-Pol.

Developing supervisory convergence through movement of staff and joint training

On 7 April 2006, heads of human resource departments met at CESR's offices to discuss what could be done to develop the network culture amongst staff through movement of employees amongst the authorities and the development of joint training initiatives.



This initiative forms part of CESR's work to improve supervisory convergence, and CESR Members have agreed that increased use of staff exchange and joint training would be useful in developing a common CESR culture, and increase regulatory harmonisation in Europe.

A task force has been set up to develop a strategy for staff exchange, and a mandate will be developed for a feasibility study on a long-term strategy on training.

5.2 Monitoring

Review Panel:

Mandate of the Review Panel

The "Stockholm Resolution" adopted by the European Council on 23 March 2001 stated: 'The Committee of European Securities Regulators should also contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective cooperation between national supervisory authorities', carrying out peer reviews and promoting best practice.'

To fulfil this important task, CESR established the Review Panel, in March 2003. The Panel, chaired by Kaarlo Jännäri, Vice Chairman of CESR, is a permanent group comprising the representatives of each CESR Member. The Review Panel is mandated to review the implementation (day-to-day application) by all CESR Members of CESR standards and guidelines into national rules and of EU legislation where requested by the European Commission.

Its recent work includes a survey conducted at the request of the European Commission, regarding Implementation of the European Commission's Recommendations on UCITS.

Review of the implementation of the Standard no 1 on Financial Information

CESR agreed that the Review Panel should start a review of the implementation of the CESR Standard No.1 on Financial Information (Ref. CESR/03-073) in CESR Members' jurisdictions before the summer 2005. In its meeting of 14 April 2005, the Review Panel set up an ad-hoc group, coordinated by Mr Didier Niclaes from the Belgian CBFA, which developed the additional assessment criteria to be used in the exercise.

On 10 May 2006, CESR published a summary of the self-assessments regarding the implementation of Standard No. 1 on financial information (Ref. CESR/06-185). The final report on the review (Ref. CESR/06-181) was published on 2 August 2006, and sets out a full and comprehensive review of CESR Members' implementation of Standard No. 1 by the Review Panel. The review reflects some changes in the conclusions drawn by CESR Members within the framework of their self-assessments.

Review of implementation of CESR's guidelines on the transitional provisions of the amending UCITS Directive

On 23 May CESR published the results of an assessment of its Members' implementation of a number of CESR's guidelines on the transitional provisions of the amending UCITS Directives (the "UCITS Guidelines"). The 'UCITS Guidelines' (Ref. CESR/04-434B) published in February 2005, were developed to converge the different administrative practices that Member States had developed due to ambiguities contained in the UCITS III legislative texts. The review by Members began in June 2005 and the review took place in three separate phases in accordance with the different deadlines set out in the UCITS Guidelines themselves.

The first part of the assessment is a summary report which aims to facilitate readers in understanding how Members have implemented the UCITS Guidelines (Ref. CESR/06-182). The second part of the information includes the Members own self-assessment of their implementation of the UCITS Guidelines which can be viewed 'country by country' or 'measure by measure' on CESR's website by accessing the database 'Review Panel Assessments'. How the CESR Members' have (or have not) implemented the relevant guideline is set out in the details of the self assessment.

The results of the review based on the self-assessments of Members, are very encouraging, in that:

- In relation to the first phase of the review regarding the transitional



guideline concerning the availability of a simplified prospectus, the assessments show that this has been implemented in almost all Member jurisdictions, with very few exceptions;

- In relation to the second phase of the review which focused on the treatment of UCITS I funds of single fund structures authorised between 13th February 2002 & 13th February 2004, and UCITS I umbrella funds, the transitional guidelines have been implemented in all Member jurisdictions;
- In relation to the third phase of the review regarding Grandfathered UCITS I management companies managing “passportable” UCITS III funds, the transitional guidelines have been implemented in all Member jurisdictions.

The Review Panel notes that it is necessary to exercise caution in drawing conclusions from this review as many Members have not implemented the guidelines by issuing any specific regulatory measures. Rather, in many cases, implementation has taken place through the application of daily supervisory practices, the effectiveness of which is not something that can be verified objectively by the Review Panel.

For this reason, the Review Panel has recommended that the home Member State authorities make sure that the practical implementation at the actual fund level is effective, and has drawn to the attention of CESR’s Investment Management Expert Group the need to follow up on the efficacy of the fund level implementation of the transitional guidelines.

Next steps

The Review Panel will be commencing a similar exercise in relation to members’ implementation of the simplified notification guidelines published on 29 June 2006.

The Review Panel is in the process of conducting a mapping exercise of the members’ supervisory powers in relation to the Prospectus Directive and the Market Abuse Directive.

In addition, the Panel is planning to review which CESR standards, guidelines and recommendations should be deleted or amended following the implementation of a number of FSAP Measures.

Credit Rating Agencies

Mandate of the Credit Rating Agencies Task Force

The European Commission published on 27 July 2004 a call to CESR for technical advice on possible measures concerning credit rating agencies that was submitted by 1 April 2005.

The work in this area was carried forward by a task force led by Ingrid Bonde, Director General of Finansinspektionen, Sweden, and assisted by a member of the Secretariat, Javier Ruiz del Pozo.

On 17 May 2006, CESR received a letter from the European Commission formally requesting CESR to report on credit rating agencies’ compliance with the IOSCO Code by the end of this year.

On 30 March 2005, at the request of the European Commission, CESR delivered its advice (Ref. CESR/05-139b) regarding the potential options to regulate Credit Rating Agencies. In its advice, CESR proposed not to regulate the Credit Rating Agencies (CRAs) industry at an EU level for the time being, and instead proposed that a pragmatic approach should be adopted to keep under review how CRAs would implement the standards set out in the IOSCO Code of Conduct. CESR has therefore developed this strategy on the basis of voluntary participation from CRAs. Moody’s, Standard and Poors’, Fitch Ratings and Dominion Bond Rating Service Limited are the CRAs that have currently chosen to adhere to the voluntary framework.

In summary, this framework includes three elements: (i) an annual letter from each CRA will be sent to CESR, and will be made public, outlining how it has complied with the IOSCO Code and indicating any deviations from the Code; (ii) an annual meeting between CESR and the CRAs will also be organised to discuss any issues related to implementation of the IOSCO Code; and (iii) CRAs would provide an explanation to the national CESR member where any substantial incident occur with a particular issuer in its market.



The first annual letters of disclosure received by CESR from the Rating Agencies on their compliance with the IOSCO code were published on 6 July 2006.

Next steps

The May 2006 request from the European Commission fits appropriately into the work envisaged by CESR under the voluntary framework described above. The report CESR intends to publish by the end of December will have two separate sections. The first one will be to identify for each CRA whether there are any provisions of the IOSCO code that they have chosen to explain rather than comply with.

The second part of the report will provide indications of the level of day-to-day application of the codes. To this effect, CESR representatives held a meeting with the CRAs following the submission of their annual letters to discuss further how the codes are being applied. In addition, CESR has carried out a survey of market participants in order to assess their experience of the implementation of the codes by CRA's. The commenting period ended on 15 September and CESR received 17 responses that can be viewed at its website.

5.3. Operational groups

5.3.1 CESR-Fin

Mandate of CESR Fin

CESR-Fin is a permanent Operational Group with the role of co-ordinating the work of CESR members in the area of endorsement and enforcement of financial reporting standards in Europe. CESR-Fin enables CESR to play an effective role in the implementation and enforcement of IAS/IFRS in the European Union (EU) in the context of the EU's new accounting framework that is compulsory for all European listed companies, as of 2005. This allows CESR to participate pro-actively through an engaged dialogue with all the key policy makers involved throughout the European endorsement process, during the formation and implementation of the international accounting standards (IAS/IFRS).

Furthermore, CESR-Fin's role is to assist CESR members in delivering a co-ordinated and effective application of IAS/IFRS by EU listed companies, through the preparation of standards and guidelines on supervision and enforcement of financial reporting in Europe. CESR-Fin has also been tasked with monitoring developments in Europe in the field of auditing.

CESR-Fin is chaired by Paul Koster, Member of the Board of the Dutch AFM, and supported by Javier Ruiz del Pozo, Director of Financial Information at the CESR Secretariat, and Marion Bougel-Bomtemps, Senior Officer.

CESR-Fin, which is CESR's group of experts in the field of accounting and auditing, has revised its structure to be even more operational in nature (Ref. CESR/06-117b). The restructuring of CESR-Fin should ensure it is more efficient in dealing with the new practical challenges faced by securities regulators in the area of financial reporting.

These new challenges include above all the reinforcement of the cooperation among EU national enforcers in the field of enforcement of compliance with IFRS. Furthermore, in considering its new structure, CESR-Fin took into particular consideration the need to work on the global acceptance of IFRS financial statements prepared by EU entities subject to supervision in Europe and outside Europe, CESR-Fin was also encouraged to deepen the relationship with securities regulators in major third countries on financial reporting matters.

CESR-Fin will also maintain its influence on the European and global stage by continuing to play an active role in relation to the future developments and EU endorsement of standards/interpretations published by the IASB and IFRIC, as well as in relation to future regulatory developments concerning auditors' work. This entails the maintenance of structures within CESR-Fin for the oversight of the standard setting processes in the area of financial reporting and to maintain or develop a closer relationship with relevant EU and international third parties such as the ARC, AuRC, EFRAG, IASB, the EU Accounting Roundtable, or IAASB.

In addition, recent developments demonstrate the need for close cooperation between securities regulators and audit regulators. CESR has a strong interest in being closely associated with the European audit regulators represented in the European Group of Auditors Oversight Bodies (EGAOB) as well as with the recently established International Forum of Independent Audit Regulators (IFIAR).

The core business of CESR-Fin is to promote convergence on the application of IAS/IFRS in the European Union. To that effect, CESR-Fin organises monthly the European Enforcers Coordination Sessions – EECS – which includes



CESR and non-CESR members who have competences in the enforcement of compliance with IFRS.

Next steps

CESR-Fin is currently working to put in place the necessary arrangements to start publishing the enforcement decisions that are discussed at the EECS .

In addition, CESR-Fin will maintain close working relationship with the staff of the US SEC to endeavour to avoid conflicting regulatory decisions on the application of IFRS and US GAAP. CESR-Fin will in particular develop a framework Protocol for bilateral use by the SEC and CESR members (See Press Release Ref. CESR/06-423).

5.3.2 CESR-Pol

Mandate of CESR-Pol

CESR-Pol is a permanent operational group within CESR. It is made up of senior officials, from each CESR member, who are responsible for the surveillance of securities activities and the exchange of information. CESR-Pol's purpose is to facilitate effective, efficient and pro-active sharing of information, in order to enhance cooperation upon, and the co-ordination of, surveillance and enforcement activities between CESR members. CESR-Pol's key objective is to make information flow across borders between CESR members as rapidly as it would be internally and, by so doing, to enhance the transparency, the fairness and the integrity of European markets as a whole. The ability of CESR-Pol members to co-operate in the field of enforcement has been established by their signature of the CESR multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities (MoU) in January 1999.

Kurt Pribil, Chief Executive Officer of the Austrian Financial Market Authority (FMA) was appointed Chairman of CESR-Pol in September 2003. The group's work is supported by a member of the CESR secretariat, Angie Reeh-Schild.

CESR-Pol, CESR's group of experts in the field of cooperation and enforcement, has revised its organisation to achieve a more operational structure (see new terms of reference Ref. CESR/06-114). It has established operational working groups to promote closer cooperation and to ensure the consistent and effective application of EU key directives, particularly the Market Abuse Directive.

One element serving this purpose was the establishment of a permanent sub-group, the Surveillance & Intelligence Group chaired by Regina Schierhorn, Head of the Division for Investigation into Market Manipulation with the German BaFin. This sub-group provides experts in the investigation and enforcement of market abuse with a forum for sharing their experiences on the basis of individual cases, and exchanging valuable information on methods and procedures used in day-to-day supervision. In addition, CESR-Pol has the capacity to create on an ad-hoc basis Urgent Issues Groups. These groups are established when necessary, and allow the respective CESR-Pol members to co-ordinate and jointly conduct investigations in urgent cases. So far, four ad hoc Urgent Issues Groups have been established, and they have been working very successfully.

Next Steps

CESR-Pol will continue to work on ensuring the effective and consistent implementation of the Market Abuse Directive. To this end, on 19 June, CESR-Pol launched a Call for Evidence entitled "Evaluation of the supervisory functioning of the EU market abuse regime" (Ref. CESR/06-078) which closed on 31 October 2006. An open hearing was held on 17 October.

On 2 November 2006, CESR-Pol launched a consultation on the second set of draft guidance on the operation of the Market Abuse Directive (Ref. CESR/06-562). Comments are welcomed by 2 February 2007.

Moreover, CESR-Pol will work with the MiFID Expert Group on the convergent implementation of the MiFID as regards the cooperation among the EU regulators provided therein.

As a central part of CESR-Pol's activities, CESR-Pol will continue to build on the close co-operation established amongst CESR members on enforcement cases. In this context, Urgent Issues Groups will be established as and when necessary.

Externally, CESR-Pol will also continue to establish and intensify bilateral contacts with non CESR members who are lacking ability and willingness to collaborate. CESR-Pol also keeps close contact with other bodies that are affected by cooperation difficulties in a similar sense in order to exchange views and experiences as to uncooperative jurisdictions.

Upon the request of the US CFTC, CESR-Pol will also share its experiences regarding the enforcement of combined futures/cash transactions on bond markets.



5.4 Level 3 Expert Groups

5.4.1 Clearing and Settlement

Mandate of the CESR/ESCB joint working group

After the publication of the ESCB/CESR “Standards for Securities Clearing and Settlement in the EU” in October 2004, the Joint Working Group received the mandate from CESR/ESCB to work on three strands of follow-up work, as indicated below and as announced in the introduction of the aforementioned Standards. During the course of this work - given the nature, scope and complexity of this follow-up work - CESR/ESCB will closely link its work with the relevant political and other regulatory stakeholders, in particular the three EU-institutions (Commission, Parliament and Council), CEBS and the BSC. Since the adoption of the Standards, permanent contacts have been kept with the relevant industry associations.

Next steps

Early July, the European Commission published its position on the way forward in the area of clearing & settlement. No EU-legislation will be proposed at this stage, but instead the industry has created a Code of Conduct which will cover a number of relevant issues in this area. In this context, CESR has to consider if and how to resume its work on the ESCB/CESR Standards for Securities Clearing and Settlement.

5.4.2 MiFID

Mandate for the MiFID Expert Group

In the light of the changing emphasis of CESR’s work on MiFID, which is now focused on ensuring a seamless application in the day-to-day practice of the rules across Europe by CESR Members rather than providing technical advice on implementing measures, CESR has decided to dissolve the previous three Expert Groups and its MiFID Steering Group which prepared and submitted its Level 2 technical advice on implementing measures.

In its place, CESR has established a new single 'MiFID Level 3 Expert Group' that will undertake work to deliver supervisory convergence in the day-to-day application of the legislation (i.e. Level 3). This group is chaired by Arthur Philippe, Director and member of the Management Board at the Commission de Surveillance du Secteur Financier, Luxembourg’s securities supervisor. The secretariats’ rapporteur of this group is Carlo Comporti, Deputy to the Secretary General at CESR and Director of Markets and Intermediaries.

There are two working sub-groups reporting to the MiFID Level 3 Expert Group:

- the ‘Intermediaries sub-group’, chaired by Antonio Carrascosa, Director General at the Comision Nacional

del Mercado de Valores (CNMV), Spain’s securities supervisor. The rapporteur of the ‘intermediaries sub-group’ is Diego Escanero, Senior Officer at CESR Secretariat;

- the ‘Markets sub-group’, chaired by Hans Wolters, Head of Policy at the Autoriteit Financiële Markten, Holland’s securities supervisor. The rapporteur of the ‘markets sub-group’ is Jari Virta, Senior Officer at CESR Secretariat.

CESR has formed a MiFID Consultative Working Group which draws together technical experts from the markets and types of firms affected to provide advice on the technical practicalities of the guidance developed under the work programme. A list of its members is available on CESR’s web page.

Following the European Securities Committee and EU Parliament approval of the draft MiFID Level 2 implementing measures, CESR is now shifting its attention to ensuring that day-to-day application of the MiFID, which is due to be transposed by Member States by January 2007 and will apply by November 2007, takes place in a convergent manner amongst supervisors across Europe.

The first step in this process was a consultation issued on 6 July (Ref. CESR/ 06-413) which proposed the details of CESR’s work programme for a new MiFID ‘Level 3’ Expert Group. All market stakeholders were invited to indicate where they would find CESR guidance and consistency amongst supervisors particularly helpful.

Briefly, CESR has identified four categories of issues of ‘Level 3’ work under MiFID, on which it could be helpful for supervisors to ensure convergence in their practices, these include:

- Technical issues of operational importance where consistent implementation of the Level 1 and Level 2 legislative texts need to be achieved *before their implementation* to provide market participants with pan European strategies with greater certainty. These issues largely relate to the functioning of the passport of investment firms and regulated markets. Areas of work include for example amongst others, calculations relating to market transparency (such as the definition of liquid shares and “block sizes”) and publication and



consolidation of market transparency information.

- Other issues of a technical and operational nature, aimed at ensuring a convergent implementation of MiFID, not all necessarily to be tackled before the date of implementation of the new legislative framework. Amongst others, priority is given in the work programme to ‘best execution’ where for example, it may be considered useful to develop a convergent view amongst supervisors on, the best execution requirement for non-equity markets in particular and, clarifying interpretations of the execution performance which is also identified.
- Work to foster greater cross-sector convergence is also proposed and will be conducted with CEBS and CEIOPS. Examples of such work include outsourcing and a review of internal governance of intermediaries to ensure there is no unnecessary duplication. This joint work is set out in page 6 of the work programme.
- A number of reports or reviews are also anticipated in the MiFID legislative texts for example, a review of the possible extension of the pre- and post-trade transparency regime to transactions in classes of financial instruments other than shares

The criteria to select work that will fall under each category of the MiFID work programme has been determined by CESR on the basis of broader criteria developed by CESR in establishing its work priorities. These broader criteria for CESR work are described in a report by CESR to the Financial Services Committee (FSC) (See section 5.1).

Next steps

The MiFID ‘Level 3’ Expert Group aims to facilitate a smooth and consistent implementation of the new regime. In addition to the proposed work programme which is developed for this purpose, the MiFID Expert Group will also foster supervisory convergence by providing a close network of colleagues which will

enable Members to seek each others advice and share their experience in respect to operational issues arising out of the implementation of MiFID, where it is necessary to address certain issues at a European level.

5.4.3 Prospectus

CESR has been very active in the area of prospectus over the last four years, providing the European Commission with technical advice on the implementing measures of the Prospectus Directive. CESR completed this initial work in 2003 and continued its activity in this area during 2004 to ensure the consistent application of the Prospectus legislation. To this end, the CESR expert group prepared a set of recommendations (Ref. CESR/05-054b) which gave guidance on how to produce a prospectus. In addition, in 2005, CESR delivered its advice to the EC on how to deal with those circumstances where the historical financial information to be included in the prospectus might not sufficiently reflect the issuer’s whole business throughout the required period (“complex financial histories”). In a parallel manner, CESR members have been coordinating procedures to assist a seamless operation of the passport and to deliver supervisory convergence. These have contributed to the smooth functioning of the passport since 1 July 2005.

The Prospectus Directive and the Commission’s Regulation on prospectuses became effective on 1 July 2005. During the course of the 2005 and 2006, regulators and market participants have responded to practical application and operational issues arising from the implementation of this Community framework into national law. The need for a ‘common approach’ is compounded by the fact that the Prospectus Directive is a maximum harmonisation Directive and that the scope for interaction between competent authorities has increased because of the passport that it provides for issuers. It is therefore essential for CESR members to achieve convergence in their approaches. To this end, prospectus experts from CESR members have been holding practical and operational meetings to discuss specific implementation and application issues and, to the extent necessary, agree common solutions. This Expert Group is chaired by Gérard



Rameix, Secretary General of the French Autorités des Marchés Financiers and supported by by Javier Ruiz del Pozo, Director of Financial Information at the CESR Secretariat, and Raquel García Alcubilla, Senior Officer. The European Commission also participates at the meetings of the group as an observer.

The work of this group materialised on 18 July 2006, when CESR published a guide for market participants. This guide establishes a convergent response from all EU securities supervisors to commonly asked questions on the day-to-day application of the EU legislation regarding the preparation of prospectuses (Ref. CESR/06-296d). The purpose of this guide is to provide market participants with greater certainty and quick answers to their most common queries.

This ‘Q and A’ guide that CESR members have developed focuses on responses to queries that are likely to have an EU-wide impact on market participants or end users, and therefore on the smooth functioning of the Single Market. Some of the agreements aim at facilitating the correct functioning of cross-border offers (for example, information from the issuers to host competent authorities or passport of the supplements). The rest are responses to questions on the application of the legislation that have been arising frequently in most Member States (for example, how to treat employee share option schemes, free offers or offers of convertible or exchangeable securities).

CESR does not intend to issue new standards, guidelines or recommendations on prospectuses. Rather, the purpose of this publication (and the subsequent updates of this that may follow) is intended to provide quick answers to the questions market participants channel to the relevant CESR members and/or to CESR secretariat (placing either in copy). The common approaches reached are not set in stone. The Group operates in a way that will enable it to react efficiently if any aspects of the published ‘common positions’ needs to be modified or adapted for greater clarity.

The European Commission Services have provided very useful input on some of the

questions discussed in the paper. However, these views do not bind the European Commission as an Institution, who will be entitled to take a different position.

Next steps

The CESR group will continue to meet regularly to discuss the questions that might be raised by market participants. (CESR has set up a specific email address to receive these questions: prospectus@cesr.eu). The pace of the future publications will depend on the amount of new questions identified and how long it takes to analyse the issues and to develop common positions.

Finally, as the Prospectus Directive will have been in place for a year, it now seems an appropriate juncture for CESR to undertake an assessment of its practical functioning. To this end, CESR is currently working on an analysis of the impact that the Directive is having on the EU markets and is seeking to identify any practical day-to-day difficulties encountered with the passport and other relevant provisions of the Prospectus Directive. CESR will seek input from market participants and it is also organising an open hearing on 16 January 2007. Details of this hearing can be found of CESR’s website in the section Hearings. .

5.4.4 Investment Management

Mandate of the Investment Management Expert Group

CESR began working on investment management issues in April 2004 following the transfer of these responsibilities from the UCITS Contact Committee. This work is carried forward by an Expert group chaired by Lamberto Cardia, Chairman of the Italian securities regulator, the Commissione nazionale per le società e la Borsa (CONSOB). Two permanent members of the CESR Secretariat, Lucie-Anna Matolinova, Senior Officer and rapporteur for the expert group, and Enrique Velazquez, Junior Officer, assist the Chairman.

The mandate (Ref. CESR/04-160) and work programme for the Group was approved by CESR in June 2004. Drawing heavily on the responses from a consultation on “The role of CESR in the regulation and supervision of UCITS and asset management in the EU”, and the needs expressed by market stakeholders, it was decided that the short-term priority of the group would be to focus on ensuring that the single market on investment funds is fully functional. The Expert Group would therefore concentrate initially on two aspects related to the harmonised implementation of the UCITS Directives, namely the application of the transitional provisions of the amending UCITS Directives and clarification of some key definitions in the Directives.

CESR delivered its final advice on the clarifications of definitions concerning the eligible assets for UCITS on 26 January to the European Commission after two rounds of



consultation (Ref. CESR/06-006). The advice aims to provide fund managers and competent authorities with more certainty as to whether certain financial products are an eligible asset for UCITS. The advice seeks to provide the necessary product innovation within UCITS whilst ensuring a high and consistent level of investor protection across the EU.

In order to simplify access by investors to investment funds created under the UCITS Directive in the EU single market, CESR issued on 29 June 2006 guidelines to facilitate cross border notification of UCITS (Ref. CESR/06-120b), together with a feedback statement (Ref. CESR/06-301).

Within the boundaries of the existing legal framework of the *acquis communautaire* of the UCITS Directive, the guidelines have tried to address several of the requests for simplification of the cross border notification process, proposed by markets participants.

The following key issues were raised during the second consultation and the improvements to the text of the guidelines made, are highlighted below:

- UCITS can submit the notification letter in a language common in the sphere of international finance to the Host competent Authority where this is not contrary to the domestic legislation or regulations;
- Once a complete notification has been filed, the notification procedure should not exceed the two-month period and possibly reduced as an average to a shorter period. The Host Member State Authority shall inform the UCITS about the incompleteness and missing information and documents as soon as possible and in any case, within one month from the date of the receipt of the incomplete notification;
- As suggested by the respondents during the second consultation, in order to simplify the practices and reduce costs, Competent

Authorities will rely on self-certification of copies of original attestations by the notifying UCITS, the original attestation should include an English version to be provided by the UCITS.

- Regarding new sub-funds, which are added to the umbrella fund with the intention to be marketed in the Host Member State, where the marketing arrangements are already familiar to the Host country Competent Authority, CESR has agreed that the necessary time for the Host Authority to check should be significantly less than the two-month period. To simplify the processing by the Host Competent Authority of the notification of umbrella funds with a large numbers of sub-funds to be marketed, CESR recommends that umbrella funds with a large number of sub-funds should have one full prospectus.

Next steps

Following its Green Paper on the enhancement of the EU framework for investment funds, the European Commission will adopt its White Paper in November. The White Paper shall contain actions for future developments in the area of investment management. The CESR Expert Group on Investment Management is preparing CESR's contribution to the Commission White paper as well as a reaction to the European Commission's industry reports.

When publishing CESR's advice to the European Commission on clarification of the definition concerning eligible assets for investments by UCITS (Ref. CESR/06-005), CESR concluded that it wished to monitor further the issue of whether derivatives of hedge fund indices can be deemed as eligible investments for UCITS. The reason was that the impact of such derivatives raised questions about the risk profile of the UCITS, and the retail investors might not be able to assess this impact. CESR delivered its views on this issue in October 2006 in the form of an issues paper, in order to gather relevant views from all interested parties, as it is necessary at this stage to get more information. Responses are welcomed by 30 November 2006, and on the basis of responses received, CESR will publish a consultation paper in February 2007.

Finally, the Expert Group on Investment Management has prepared a new draft of its Work Programme for 2007. The key tasks for the near future, without prejudice to the work areas included in the original



Work Programme (Ref. CESR/04-160) are finalising Level 3 measures on eligible assets, analysing hedge funds indices, developing conduct of business rules for collective asset management and mapping exercise of the means and methods used by regulators to supervise asset management companies, possible follow-up of the White Paper, and possible input to the European Commission for the revision of the simplified prospectus. The Work Programme may be revised in January 2007 with respect to publishing of the White Paper.

5.4.5 Mediation Task Force

Mandate of the Mediation Task Force

CESR has established a Task Force on Mediation, chaired by Mr Manuel Conthe, Chairman of the Spanish Securities Commission (Comisión Nacional del Mercado de Valores), which was mandated to develop a proposal for a general CESR mediation mechanism. The Task Force was composed of representatives of CESR Members and the European Commission.

During the course of 2006 and in line with the ECOFIN conclusions, CESR has finalised its mediation mechanism which is in the process of being put in place following the change to the CESR Charter. The development of the mechanism by CESR was led by Manuel Conthe, Chairman of the Spanish CNMV. It is anticipated that this mechanism will be up and running by September 2006. The general mechanism is based on, and incorporates, the specific mediation mechanism which CESR-Pol had developed for market abuse enforcement cases as stipulated in Article 16 (4) of the Market Abuse Directive in March 2005.

The finalisation of the mechanism follows a consultation paper that was published in the autumn of last year (Ref. CESR/05-483c), an open hearing and followed a meeting with mediation experts. The final mediation protocol and Feedback Statement (Ref. CESR/06-287b) was published in August. The mechanism will enable the network of regulators to deal with potential disputes in an efficient, fair and confidential manner.

Key features of the mechanism are set out in the Protocol on CESR's mediation mechanism (Ref. CESR/06-286b), and include:

- a comply or explain approach by members to both a request for mediation and its outcome;

- market participants' ability to bring issues for mediation to the attention of the relevant competent authority;
- a flexible approach to dispute resolution through the use of either an evaluative or facilitative procedure depending on the preferences of the parties;
- confidentiality;
- speed and efficiency.

The mechanism includes a number of procedures through which:

- the appropriateness of an issue for mediation can be assessed;
- potential disagreements of the parties to either the initial assessment of the suitability of the case for mediation or its outcome can be dealt with in a speedy, fair and efficient manner;
- conflicts of interests of gatekeepers, panel members and mediators are dealt with;
- the European Commission is consulted for their views on conflicts of interpretation of EU legislation;
- publication of outcomes in the form of reports and summaries to enhance supervisory convergence or provide guidance to authorities or market participants has been introduced.

Strict timeframes have been introduced into all aspects of the procedure to ensure that cases do not take any longer than 6 months maximum, but can be completed within 6 weeks. It is anticipated that a case will normally take around 3-4 months depending on its complexity and the number of embedded appeal procedures that get used.

Next steps

In accordance with the Mediation Protocol, a list of mediation experts will be made, from which the gatekeepers will select panellists/mediators as and when the need to do so arises.



5.4.6 ECONET

Mandate of the ECONET

ECONET was established in June 2006 in order to facilitate the ability of CESR to meet an increasing number of reporting commitments to European bodies that require the input of financial economists and to evaluate and, as appropriate, develop CESR's approach to the use of impact analysis. This group is chaired by Alexis Pilavios, Chairman of the Hellenic Capital Markets Commission, and assisted by a permanent member of the Secretariat, Alexandra Berketi.

The objectives of ECONET are to:

- enhance CESR's capability to undertake economic analysis of market trends and key risks in the securities markets that are, or may become, of particular significance for its Members;
- review existing impact analysis methodologies regarding financial regulation and supervision, evaluate the feasibility of developing such a methodology for use in CESR's work, and if considered useful and necessary to develop practical impact analysis principles for use on a case by case basis by CESR.

ECONET has met twice since its establishment in June 2006. ECONET's report on "*Financial stability issues related to key financial market infrastructures in the Credit Derivatives market and other EU wholesale markets and risk update*" was delivered on time, at the beginning of August 2006, for the purposes of CESR's contribution to the September 2006 Financial Stability Table (FST) meeting of the European Financial Committee.

A subgroup on impact assessment (IA) has been set up. The subgroup consists of members of ECONET, experts in the field of IA in their national authorities. The subgroup met twice during the period July-September 2006 in order to (a) conduct a survey on existing impact assessment methodologies for financial regulation among CESR members and (b) evaluate the feasibility of developing such a methodology for use in CESR's work.

CEBS and CEIOPS nominated representatives to the ECONET who participate in both the Plenary and the IA subgroup meetings. CEBS and CEIOPS follow closely ECONET's work in the IA area.

Next steps

Reporting to European financial institutions:

ECONET is expected to submit three reports to the Financial Stability Table (FST) of the European Financial Committee (EFC) on topics yet to be mandated by FST. Two of these reports will mainly deal with current market trends and risks in the financial markets. These reports are expected to be delivered in March and August 2007 respectively.

ECONET is also expected to deliver a Joint Level 3 report on an issue mandated by the FST and which will probably be related to the functioning of the financial markets. This report should be delivered in early March 2007.

In addition, ECONET will contribute to CESR's annual report with an assessment of the situation and risks in the financial markets during 2006.

ECONET's work on impact analysis

ECONET will conduct a survey on existing impact assessment (IA) methodologies and evaluate the feasibility of developing such a methodology for use in CESR's work. CESR Chairs asked ECONET to develop a methodology on IA for CESR's work and possibly apply it in practice via a pilot study.

5.4.7 CESR-Tech

Mandate of the CESR-Tech

CESR established CESR-Tech in May 2006 in order to strengthen its information technology governance structure. This working group will enable CESR to work on IT related issues quickly, efficiently and in a manner that allows for necessary IT project management to be used for IT projects that CESR undertakes in conjunction with its Members. CESR-Tech is chaired by Hector Sants, Managing Director, Wholesale and Institutional Markets at the UK FSA, and a full-time member of the Secretariat, Ari Voipio, IT Project Manager, acts as the rapporteur.

CESR-Tech is established to deal with any form of pan-EU IT project stemming from EU legislation (either current or future) and any other area where CESR Members consider it necessary or useful to work together on IT issues.

CESR-Tech is composed of senior CESR representatives who have experience, knowledge and expertise in IT project management, financial markets, and supervisory related issues.

The main tasks of CESR-Tech are:

- Allocation and use of IT budget on a project by project basis;
- Operational issues related to the management and running of IT projects;



- Technical issues that arise during the course of specific projects;
- Setting up of operational working method necessary to achieve its objectives.

The first major IT project for CESR-Tech is a project for the exchange of transaction reporting between CESR members in accordance with article 25 of the MiFID. This project started in June 2006 and the exchange mechanism will be up and running in autumn 2007.

CESR-Tech has met four times since its establishment. The main item in all meetings has been the project for the exchange of the transaction reporting between CESR members.

CESR-Tech established the project for the transaction reporting and has acted as the steering group for the project.

CESR-Tech drafted an IT working programme for CESR for 2007. The main focus in the programme is on transaction reporting. Other work will be undertaken by the secretariat to develop new operational databases and to adapt existing databases for CESR members. CESR will also undertake a significant redesign of the CESR website to reflect the nature of the focus on 'Level 3' work.

Next Steps

CESR-Tech will continue its work on transaction reporting and other IT related issue involving CESR.

5.5 Supervisory convergence beyond CESR

5.5.1 Contacts with other Level 3 Committees

On 6 February 2006, the '3 Level 3 (3L3) Committees', consisting of the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), published a common cross-sector work program for 2006. This work programme builds further on the Joint Protocol signed by the three Committees on 24 November 2005.

The work programme makes supervisory cooperation transparent across financial sectors and the Committees aim to enhance

consistency so that work done in one sector is coherent with the work developed in the other financial sectors. The main objective of each of the '3L3 Committees' work is to ensure a successful implementation and convergence in day-to-day application of EU legislation within its sector. However, in addition to supervisory convergence in Europe amongst the respective sectoral supervisors, there is also a need for convergence to take place across sectors wherever possible and appropriate, given the increasing importance of market integration and cross-sector business activities within the EU.

The **3L3 Work Programme** therefore sets out in more detail the work that the 3L3 Committees intend to do together during 2006, in accordance with the Joint Protocol. In particular it **divides the work into four work streams** which reflects the type of work and outcome of the work that will be expected.

In summary, during 2006, the three committees will perform joint work on e.g. **Financial Conglomerates**, which will be carried out by CEBS and CEIOPS (in which CESR will participate as an observer). Regarding **outsourcing and internal governance**, the 3L3 work will be taken forward mainly by CESR and CEBS, with CEIOPS sharing experience from its work in the Solvency II project. The '3L3 Committees' will also undertake an inventory of **reporting requirements** which will involve all three committees. Based on this inventory the Committees will then decide if further work should be undertaken. In addition, during the course of the year, the three committees will continue to share information on a regular basis, for example to maintain consistency in approaches to capital requirements developed under the 'Solvency II' and the 'Basel II' regimes. Further, the committees will work together on the development of a number of cross-sector reports to the FSC and the EFC/FST.

The objectives of the cooperation between the three committees are set out in **the Joint Protocol** and include (i) sharing information in order to ensure compatible sector approaches are developed; (ii) exchanging experiences which can facilitate supervisors' ability to cooperate; (iii) producing joint work or



reports to relevant EU Institutions and Committees; (iv) reducing supervisory burdens and streamlining processes; and (v) ensuring the basic functioning of the three Committees develops along parallel lines.

Next steps

The 3L3 Committees will continue to work according to the current work programme. During the fourth quarter some of the work streams will result in reports including suggestions for future work. The three Committees have started preparations for establishing a work a programme for 2007.

5.5.2 EU/US dialogue

CESR-CFTC Task Force

To enhance transparency in the transatlantic derivatives business, a joint task force of regulators from the Committee of European Securities Regulators (CESR) and the U.S. Commodity Futures Trading Commission (CFTC) has published 'Frequently Asked Questions' in the form of "online guides" for conducting derivatives business in the U.S. and the European Union (EU). These guides include country specific information regarding regulation and supervision in the U.S. and in Europe, with information provided by CESR members in Germany, Ireland, Luxembourg, the Netherlands, Poland, Sweden and the UK. Further country profiles have been added since the first publication, and profiles for other European countries will continue to be added in the coming months.

The publication of these guides marks the first step in addressing the proposals articulated in the joint work program and announced on 28 June 2005, by the CFTC and CESR. The joint task force from the CFTC and CESR was established in June 2005 to implement the proposals set out in the work program. The priorities identified are intended to enhance transparency and clarity of regulatory developments in the U.S. and Europe, and to simplify access and recognition procedures.

The online guides are intended to be practical in nature and are divided into sections for each category of user: exchanges, investment

services and end-users. In addition, the guides provide useful contact details for specialists within the authorities and links to detailed information (including rules) applicable in the U.S. and in each Member State, and general information on the regulators, exchanges, clearing organisations, investment services, and how to find information about the end-users in each jurisdiction.

The country profiles may be accessed through the CFTC's and CESR's websites or via the web pages of the individual EU national supervisors.

The initiatives proposed under the joint work program, of which country profiles form a part, and are intended to facilitate transatlantic derivatives business, and they reflect considerable industry input. In particular, the work program was developed after a Roundtable with U.S. and EU practitioners and a public comment period which took place in early 2005. As such, the work program incorporates the views and priorities identified by organised derivatives markets, intermediaries and end-users from the United States and the European Union concerning practical operational issues that they encounter when conducting transatlantic business in exchange-traded derivatives and related transactions. The objective of this dialogue has been to promote the establishment of a transatlantic business environment that will ensure, to the extent possible, that compatible business and regulatory initiatives can be developed and adopted.

CESR- SEC Work Plan

The Committee of European Securities Regulators (CESR) and the US Securities and Exchanges Commission (SEC) have established a joint work plan which will be implemented immediately. The work plan is a direct output from the December 2005 meeting between CESR's Chairman, Arthur Docters van Leeuwen and Christopher Cox, Chairman of the US SEC, at which they emphasised their desire to build on the dialogue between CESR and the SEC in a concrete and practical manner.



The work plan will serve to guide the CESR-SEC Dialogue in the immediate future. (See previous announcement relating to the CESR-SEC Dialogue at

<http://www.cesr.eu/index.php?docid=2092>.)

The main focus of the work plan is the application by internationally-active companies of US Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) in the European Union and the United States, respectively. In addition, the staff of CESR and the SEC will forge a closer dialogue on the modernisation of financial reporting and disclosure information technology, and regulatory platforms for risk management.

It is expected that the close co-operation between the staff of CESR and the SEC on the application of US GAAP in the European Union and IFRS in the United States will promote:

- the development of high quality accounting standards;
- the high quality and consistent application of IFRS around the world;
- full consideration of international counterparts' positions regarding application and enforcement; and
- the avoidance of conflicting regulatory decisions on the application of IFRS and US GAAP.

In practical terms, as part of its regular review of corporate filings, the staff of the SEC will review issuers' implementation of IFRS in the United States. Staff of CESR Members will also continue to review US GAAP implementation by US issuers in the European Union. Under the work plan, the output of these reviews will be used in the following ways:

- The staff of CESR-Fin, the expert group within CESR focused on financial reporting, and the staff of the SEC, will share information about areas of IFRS and US GAAP that raise questions in terms of high-quality and consistent application.

- Where appropriate, the staff of CESR Members and the staff of the SEC will consult on issuer-specific matters regarding the application of US GAAP and IFRS in order to facilitate a solution that contributes to the consistent application of US GAAP or IFRS by companies that are both listed in the EU and registered with the SEC.

These two levels of discussion will help ensure that high standards are maintained and consistent financial reporting is achieved.

The first meeting between the SEC and CESR-Fin representatives took place in Washington on 25 October. Paul Koster, Chair of CESR-Fin, led a delegation of CESR-Fin representatives to discuss with the SEC the practical arrangements necessary to start sharing the information at the two levels described above.

Next steps

Protocols for the sharing of confidential information between the staff of CESR members and the staff of the SEC will be established.

Meetings between CESR and SEC will continue in accordance with the provisions of the work programme. Staff from the Office of the Chief Accountant of the SEC will meet with CESR-Fin in December 2006.



6. Accountability

6.1 Contribution to the Financial Stability Table of the EFC

In March 2006, CESR submitted its half-yearly advice to the FSC and the EFC on macro-trends and developments in securities markets. This report presents CESR's view on the situation on wholesale markets, primary market activities and trading of bonds and derivatives, as well as retail markets: investment funds; trading of shares and distribution of products. The advice also identified the main risks for the current economic developments. In August CESR provided a report to the EFC's Financial Stability Table (FST) report on stability issues related to financial market infrastructures including a risk update for the second half of 2006.

Next steps

CESR will continue to report to the EFC twice every year in March and August. Following reports delivered to the EFC in August, the next reporting will be done for the Spring Financial Stability Table held by EFC. (See ECONET above). In addition, CESR's Chairman Arthur Docters Van Leeuwen will present the half yearly annual report to the European Parliament's ECON Committee in December.

6.2 ECOFIN

EU's Finance Ministers adopted in the ECOFIN on 5 May a set of conclusions on supervisory convergence, which are of high importance, in its support for the work of CESR. CESR has welcomed and accepted the reconfirmed mandate on supervisory convergence amongst Europe's securities regulators, which the conclusions represent.

The conclusions form an explicit support for the work of CESR, and the key list of recommendations for further supervisory convergence, represent an important political step forward by EU Member States, following on from the adoption of the Stockholm Resolution which introduced the 'Lamfalussy' legislative approach for financial services in March 2001 and established CESR. In particular, CESR acknowledges the commitment by Ministers to monitor the

convergence of supervisory powers of EU securities supervisors and welcomes the recognition that equivalence of powers amongst national supervisors is the necessary precondition to any form of cooperation between authorities. The effective convergence of supervisory powers will contribute to greater investor protection by ensuring that investors can enjoy the same protections when investing cross border in the EU.



7. Annexes

7.1 An enhanced capacity embedded in the founding Charter

Following successful finalisation of the legislative and regulatory phase of the Financial Services Action Plan (FSAP), CESR has decided to shift its priorities to more operational tasks so as to deliver effective supervisory convergence across the EU. This policy orientation was confirmed in the Commission's White Paper (White Paper on Financial Services Policy 2005-2010, December 2005) and by the recent ECOFIN Conclusions of 5 May 2006 (8500/06). The EU Institutions and CESR recognise that the continued success of the FSAP is now dependent upon an intensification of supervisory convergence. CESR has responded with a number of changes to the way that it now works in order to become more operational in nature and to function as a cohesive network of supervisors who act in a convergent manner. The key rationale of the change in CESR's profile is developed in its recent supervisory convergence report to the FSC (Ref. CESR/06-259b).

In order to further embed this new dimension, for the first time since its creation in 2001, CESR is amending its charter (Ref. CESR/06-289c) to include:

- a more straightforward decision making procedure, including the possibility to vote; (Art 5.5, 5.6 and 5.7);
- a mediation mechanism between members to facilitate a rapid outcome (Art 4.4 and specific protocol);
- the integration of the Review Panel into the Charter, which will permit a more thorough cross examination on the way in which members apply the new legal framework (Art 4.3. A specific protocol will be published in the next months);
- a commitment to respect data protection rules when developing databases (Art 5.2);

- greater legal certainty of confidentiality to allow the secretariat to fully assist the members on operational issues (Art 7.4).

7.2 New Website address

Following the launch of '.eu' as a web domain name, CESR has chosen to modify its website address in order to adopt a format which better reflects its European character and role. CESR's website can now be found under the new address: www.cesr.eu.

Email addresses for members of the secretariat have also changed in line with the change of the domain name and are now for example: secretariat@cesr.eu. Emails sent to the old addresses will be automatically forwarded until 31 December 2006.

All documents are available on the CESR Website www.cesr.eu