



Date: January, 2007  
Ref: CESR/07-070b

**PROTOCOL ON REVIEW PANEL OF THE COMMITTEE OF EUROPEAN SECURITIES  
REGULATORS**

Having regard to:

- (1) The Charter of the Committee of European Securities' Regulators ("CESR Charter") and more specifically article 4.3 of this Charter.
- (2) The Ecofin conclusions of the 5<sup>th</sup> May 2006.
- (3) The FSC Report on Financial Supervision (the so called "Francq Report")
- (4) The White Paper on Financial Services' Policy 2005-2010
- (5) The Final Report of the Priorities Task Force of CESR (Ref: 05-780d)

Considering the need to mainly set out the role of the Review panel, the purpose of its work, its tools and working procedures as well as the commitment of the authorities which are members of CESR ("CESR authorities") to actively ensure that the Review Panel fulfils its role,

Considering the role of the European Commission as set out in the Treaty establishing the European Community and as described in the Final Report of the Committee of the Wise Men on the Regulation of European Securities' Markets (15<sup>th</sup> of February 2001).

The members of the Committee of European Securities' Regulators ("CESR") have agreed:

**SECTION I  
GENERAL PROVISIONS**

**Article 1  
Scope**

This Protocol sets out the principles of the Review Panel provided for in Article 4.3 of the Charter of the Committee of European Securities' Regulators ("CESR Charter") and more specifically sets out the role of the Review Panel, the purpose of its work, its tools and working procedures as well as the commitments of CESR authorities to actively ensure that the Review Panel fulfils its role.



## **Article 2**

### **Purpose and role of the Review Panel**

1. The Review Panel is established by CESR to monitor the consistent and timely implementation of supervisory provisions set out in Community Legislation and CESR measures with the purpose of fostering a common and uniform day to day application of all the above and of enhancing supervisory convergence within the European Economic Area.
2. To achieve the objectives set out in this Protocol, the Review Panel shall use a number of different tools such as self assessment and Peer Reviews, mappings, surveys and upon a specific mandate from CESR, selective reviews involving one or more CESR authorities. CESR may ask the Review Panel to develop and use other specific tools when needed.
3. The Review Panel will conduct reviews of the way in which specific aspects of the regulation of financial markets are conducted and supervised in the European Economic Area and also examine whether the enforcement of the relevant framework is effective.
4. The exercises are conducted in a manner that allows assessment by the Review Panel of the way CESR authorities apply supervisory provisions.
5. The Review Panel will update CESR on the progress of its work and will submit periodically to CESR a report setting out the progress of its work.
6. The Review Panel shall report its findings to CESR. When doing so, the Review Panel shall as appropriate:
  - a. Signal the extent to which CESR authorities apply specific supervisory provisions.
  - b. Present the measures that CESR authorities not applying specific supervisory provisions intend to take to correct the situation.
  - c. Express views on specific problems encountered by individual CESR authorities and recommend ways for achieving full application by the relevant jurisdictions, where necessary.
  - d. Include an assessment of the level of convergence (generally and provision by provision) achieved.
  - e. Signal inconsistencies or general problems in the implementation of community legislation and/ or CESR measures and identify the reasons.
  - f. Recommend that work is undertaken to amend a specific supervisory provision that raises significant problems in relation to the operation of the Single Market.
  - g. Describe possible good practices developed by some CESR authorities which might be of interest for other CESR authorities.
7. When conducting a self assessment and peer review exercise, the Review Panel shall report on points/ *issues* 6 (a) to (d) above and explain the reasons for not including points/ *issues* 6 (e) to (g).



8. For all other exercises, when reporting its findings to CESR, the Review Panel shall explain the reasons for leaving out certain aspects of paragraph 6 above.

### **Article 3**

#### **Chair, members and sub-groups of the Review Panel**

1. The Chair of the Review Panel is one of the Vice-Chairs of CESR.
2. The members of the Review Panel should have the necessary seniority, knowledge of the community legislation and CESR measures and expertise in supervisory practices in order to ensure that the Review Panel is able to fulfill its role under this Protocol.
3. The Review Panel may create sub-groups if this is deemed necessary for the purpose of its work. The members of the sub-group can be different to the members of the Review Panel.
4. Sub groups will be chaired by a member of the Review Panel.
5. Sub groups will keep the Chair and the Review Panel regularly updated on the progress of their work, and highlight any issues or problems that may arise during the course of the work.

### **Article 4**

#### **Commitments by CESR authorities**

1. CESR authorities are required to participate in the work of the Review Panel and provide it with experts and the necessary information and input. It is the responsibility of each CESR authority to confirm the accuracy of the information provided.
2. CESR authorities shall describe how their jurisdiction has implemented specific supervisory provisions. Otherwise, they shall explain the actions to be taken for full implementation.
3. CESR authorities shall provide their contributions within maximum timeframes to be determined on a case by case basis.
4. If a CESR authority does not cooperate or does not meet the timeframes, the Chair of the Review panel will ask the Chair of the relevant CESR authority to explain the reasons of this non cooperation and will set a deadline for compliance. If said deadline expires, the exercise will continue without the input of this member and the outcome will be published and/ or communicated with a statement that the particular authority has been classified as “Not contributing”.

## **SECTION II PROCEDURAL RULES**

### **Article 5 Methodologies of the Review Panel**

The tools used by the Review Panel to conduct its exercises as set out in Art. 2 will be described in separate documents on methodology to be approved by CESR upon the proposal of the Review Panel.

### **Article 6 Identification of the subjects**

1. The areas of activity of the Review Panel are decided at least once a year by CESR after discussion on the possible priorities.
2. To facilitate this discussion, the Review Panel shall prepare a work program identifying the areas, describing the issues, and proposing the exercises to be undertaken.
3. The Review Panel may take into consideration the suggestions of other CESR groups as well as of the Market Participants Consultative Panel both for the purpose of establishing the work program, or during the course of the year.

### **Article 7 Cooperation with the European Commission**

In the discharge of its duties, the Review Panel should seek clarifications relating to interpretation of specific provisions of community legislation from the European Commission.

### **Article 8 Interaction/ cooperation with other CESR groups**

1. Where appropriate, the Review Panel may ask other CESR groups to cooperate in the exercise it conducts.
2. The Review Panel can seek clarifications relating to interpretation of specific provisions of community legislation or CESR measures from the specialised CESR groups through their Chairs.
3. In providing the interpretation according to par. 2, it is a matter for the Chair in question to decide whether or not consultation with the relevant expert group is necessary.

## **Article 9**

### **Interaction/ cooperation with Market Participants**

1. The Review Panel may seek the views of the Market Participants Consultative Panel before submission of its final report to CESR. In conducting an exercise, the Review Panel might seek input from other market participants on specific technical issues.
2. Publications of final reports of the Review Panel are open to comments by market participants.

## **Article 10**

### **Process of approval of the Review Panel final reports**

1. The Review Panel prepares its reports that are submitted to CESR. The Chair of the Review Panel shall highlight any significant difficulty encountered.
2. Any member who objects on a specific issue related to its own situation will not block the submission of the final report to CESR and may provide explanations to be annexed to the report before its submission to CESR. Such dissenting opinion is presented in the CESR meeting by the Chair of the CESR authority which drafted it.
3. Conclusions by the Review Panel at the different stages of the process of the exercise should be considered final and should not be questioned at a later stage.
4. The final report will be prepared in a timely fashion to allow for the necessary preparation by CESR members.
5. CESR approves the final report of the Review Panel. CESR may ask the Review Panel to modify the final report should it find for example that a dissenting opinion is well grounded or justified.

## **Article 11**

### **Publication and communication of the outcome**

1. Any final report of the Review Panel, once approved by CESR, with any other accompanying documents CESR considers necessary for information purposes, shall be published on CESR's website in full on a named basis together with the individual responses of CESR authorities. CESR may after discussing the reasons decide a selective publication of an outcome of the Review Panel by way of exception for example for reasons of confidentiality.
2. All self-assessments shall be published on CESR's website on a named basis together with individual responses of CESR authorities and any other accompanying document that the Review Panel would consider necessary to publish at that time without the approval by CESR. If the Review Panel agrees, for confidentiality reasons, such publications may exclude certain information.



3. The publication of possible good practices can only be effected following agreement by CESR and CESR can decide that further work in relation to them should be undertaken by the relevant expert group to develop them into best practices.

4. The final reports of the Review Panel may be communicated to EU institutions within the framework of CESR's accountability towards the EU institutions.

5. The Review Panel will establish a separate document setting out its communication policy and press release strategy in relation to the exercise it conducts.

### **Article 12**

#### **Updating of the outcome**

The outcome of the Review Panel may be updated on a regular basis to take into consideration subsequent changes. The Review Panel will assess the updated responses and publish the results.

## **SECTION III**

### **OTHER PROVISIONS**

#### **Article 13**

#### **Administrative Support**

The Review Panel will be fully supported by CESR Secretariat which will provide any necessary assistance to the Chair and the members of the Review Panel with the view of facilitating the role, the purpose and the work of the Review Panel.

#### **Article 14**

#### **Entry into force of the Protocol**

This Protocol shall enter into force immediately after its approval by CESR and from its entry into force it shall supersede the Terms of reference for the Review Panel (Ref. CESR/ 03-061) and the General methodology for implementation reviews undertaken by CESR (Ref. CESR/ 04-711b).

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