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CHARTER OF THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Having regard to:

- (1) the work achieved by the Forum of European Securities Commissions (FESCO) since its creation in December 1997;
- (2) the mandate given by the Ecofin Council to the Committee of Wise Men on the Regulation of European Securities Markets (17 July 2000)
- (3) the Final Report of the Committee of Wise Men on the Regulation of European Securities Markets (15 February 2001);
- (4) the resolution of the European Council on a more effective securities market regulation in the European Union (Stockholm, 23 March 2001);
- (5) the Commission decision of (6 June 2001) establishing the European Securities Committee (2001/528/EC), amended by decision 2004/8/EC of 5 November 2003;
- (6) the Commission decision of (6 June 2001) establishing the Committee of European Securities Regulators (2001/527/EC), amended by decision 2004/7/EC of 5 November 2003;
- (7) the resolution of the European Parliament on the Final Report of the Committee of Wise Men on the regulation of European Securities Markets (15 March 2001), the resolution of the European Parliament on the Implementation of the Financial Services Legislation (5 February 2002) and the solemn declaration of the President of the Commission in response, and the statement of the Chair of CESR agreed by the Committee on Economic and Monetary Affairs (ECON) of the European Parliament on the 13th of September 2005;
- (8) the Council (ECOFIN) conclusions and especially those on 20th January 2004, on 5th May 2006 on Financial Supervision, on 4 December 2007 and 14 May 2008 with the attached roadmap;
- (9) The Joint Protocol signed with the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Supervisors (CEIOPS) on the 24 of November 2005;
- (10) The explanatory note to the first amendments of the Charter of July 2006 (Ref. CESR/06-289);

considering that the growth of efficient, competitive and sound financial markets, at the national, European and international levels, is necessary for the proper allocation of resources and the cost-effective financing of the economies of the Member States of the European Economic Area (EEA);

considering that the objectives of protecting investors, ensuring the integrity and transparency of markets and securing the proper functioning of the financial system are fundamental to achieving and maintaining sound and stable financial markets;



considering that close cooperation and information exchange between regulatory authorities are essential for the successful oversight of the European financial markets;

having regard to the importance of greater supervisory and regulatory convergence for the achievement of an integrated internal capital markets in Europe;

having regard to the need to base all its actions around a common conceptual framework of overarching principles for the regulation of the European securities markets to be established by the European Union;

having regard to the importance of involving all market participants in the regulatory process;

considering that the role of the Committee of the European Securities Regulators is to :

- (i) improve coordination and cooperation among European Securities Regulators;
- (ii) act as an advisory group to assist the European Commission, in particular in its preparation of draft implementing measures in the field of securities;
- (iii) work to ensure more consistent and timely, day to day implementation and application of community legislation in the Member States;

The members of the Committee resolve to adhere, both in principle and in practice, to this Charter and to the following provisions:

ARTICLE 1 – MEMBERS OF THE COMMITTEE

- 1.1 Each Member State of the European Union will designate a senior representative from the competent authorities in the securities field to participate in the meetings of the Committee. One seat per Member State will be allowed in the meetings of the Committee. The members of the Committee may be accompanied by appropriate experts.
- 1.2 The competent authorities in the securities field from countries of the European Economic Area, who are not members of the European Union, will designate a senior representative to participate fully in the meetings without, however, participating in decision making.
- 1.3 The members of the Committee should keep the national members of the European Securities Committee informed about its discussions and, where necessary, make all appropriate national arrangements to be in a position to speak for the national competent authorities as a whole in the event that other national regulators have an interest in the matter discussed.
- 1.4 Where a common interest to work together appears, the Committee may accept observers to participate in meetings.
- 1.5 Where relevant to its work, the Committee may invite external experts.

ARTICLE 2 – CHAIR

- 2.1 The Committee will be chaired, in a personal capacity, by one of the members as set forth in article 1.1. The Chair will be elected by secret ballot by the Committee for a period of two years.
- 2.2 To assist the Chair, the Committee may also elect one or two Vice Chairs on the same terms. The Vice Chair(s) may replace and represent the Chair in case of absence or impediment.
- 2.3 The Chair and the Vice Chair(s) will be elected in accordance with the provisions of the Protocol for the election of the Chair and the Vice Chair(s) attached to this Charter.
- 2.4 The Chair organises and chairs the meeting of the Committee and executes all other functions delegated to the Chair by the Committee. The Chair decides on the agenda of the meetings. The Chair is responsible for public relations and represents the Committee externally. The Chair is responsible for the supervision of the Secretariat.



ARTICLE 3 – OPERATIONAL LINKS WITH THE EUROPEAN COMMISSION

- 3.1 The representative of the European Commission will be entitled to participate actively in all debates, except when the Committee discusses confidential matters relating to individuals and firms in the context of improving cooperation among European Regulators.
- 3.2 Representatives from the European Commission will be entitled to actively participate in meetings of groups, under the same conditions as set out in 3.1.
- 3.3 The Secretariat of the Committee should liaise with a contact person that may be designated by the European Commission.

ARTICLE 4 – TASKS

- 4.1 The Committee will advise the European Commission on securities policy issues either at the European Commission's request, within a time-limit which the European Commission may lay down according to the urgency of the matter, or on its own initiative.
- 4.2 The Committee will respond within such time limits to the mandates given by the European Commission in respect of the preparation of implementing measures.
- 4.3 The Committee will foster common, uniform and timely day to day implementation and application of Community legislation. On this purpose the Committee will mainly:
 - a) Take decisions such as CESR guidelines, recommendations and standards that the members will introduce in their regulatory practices on a voluntary basis;
 - b) Undertake reviews and mapping exercises of the regulatory and supervisory practices within the single market; for that purpose a Review Panel is established and functions under the terms specified in a protocol attached to this Charter. Moreover, it will contribute to supervisory convergence through a Mediation Mechanism established under the terms specified in a protocol attached to this Charter; and
 - c) Develop effective operational network and information exchange mechanisms to enhance day-to-day consistent supervision and enforcement of the Single Market for financial services and promote a common supervisory culture throughout the EU.
- 4.4 The Committee will enhance the cooperation between its members including, where appropriate, the development of colleges of supervisors and the voluntary delegation by one authority and the voluntary acceptance by another of supervisory tasks. For that purpose CESR may establish framework agreements or templates. In establishing the above agreements or templates, the Committee will coordinate with the other two level 3 Committees (CEBS and CEIOPS).
- 4.5 The Committee will enhance efficient cross-sectoral cooperation with the other two Level 3 Committees (CEBS and CEIOPS).
- 4.6 The Committee will foster the dialogue and cooperation with authorities of non-EU countries with the view to exchange information and views on supervisory practices and to facilitate the supervisory convergence and eventually the mutual recognition of supervisory regimes.
- 4.7 The Committee will observe and assess the evolution of financial markets and the global tendencies in securities regulation and their impact on the regulation of the Single Market for financial services. It will also assess the developments, risks and vulnerabilities in financial systems that could affect the stability of EU securities markets and regularly report to the competent European committees.

ARTICLE 5 – WORKING PROCEDURES



- 5.1 The Committee will meet at least four times a year. Additional meetings may be convened if and when appropriate. All decisions will be taken by the members of the Committee (or delegated to the Chair, the Vice Chair(s) or the Chair of a permanent group by the Committee, when appropriate).
- 5.2 In its working and/or deliberation and/or decisions, the Committee will respect the national and Community legislation regarding secrecy, confidentiality and data protection.
- 5.3 The Committee may establish expert groups, chaired by a Committee member (or under its supervision) or by another high level representative of a competent authority, working with a given mandate and general terms of reference and to be disbanded upon completion of the mandated work. The composition of the expert groups should be flexible in order to involve other relevant authorities where necessary.
- 5.4 The Committee may establish permanent/ operational groups or networks, chaired by a Committee member (or under his/her authority) or a high level representative of a competent authority, working with given terms of reference, to carry out operational functions.
- 5.5 The Committee will ensure that in undertaking its work, it acts in conformity with the conceptual framework of overarching principles identified in the Stockholm European Council Resolution.
- 5.6 The Committee and its groups will work in an open and transparent manner.
- 5.7 Once a year, the Committee will publish an annual programme of its work. Generally, the Committee will publish the result of its meetings.
- 5.8 The Committee will use the appropriate processes to consult (both ex-ante and ex-post) market participants, consumers and end users which may include *inter alia*: concept releases, consultative papers, public hearings and roundtables, written and Internet consultations, public disclosure and summary of comments, national and/or European focused consultations. The Committee will make a public statement of its consultation practices.
- 5.9 For the purpose of facilitating the dialogue with market participants, consumers and other end users of financial services, the Committee will establish working consultative groups, whenever appropriate.
- 5.10 The Committee may adopt further rules to facilitate its functioning.

ARTICLE 6- DECISIONS OF THE COMMITTEE

- 6.1. Decisions by the Committee are not legally binding and are taken either by consensus or by qualified majority in accordance with the following paragraphs.
- 6.2. Decisions by the Committee are taken by consensus, consensus being understood as all members concurring, with one or two exceptions. If consensus cannot be reached, decisions are taken by qualified majority as specified in paragraphs 6.3, 6.4 and 6.5 below. Qualified majority is understood as the majority at which decisions can be taken according to the then applicable rules of the European Treaty.
- 6.3 The following decisions are taken by qualified majority:
 - a) When delivering advice to the European Commission in the field of securities regulation, in particular for the preparation of draft implementing measures. In this case, the Committee should identify and elaborate any dissenting opinion of individual members in the final advice if they so wish. If there is a vote, the outcome of the vote shall be included in the final advice;
 - b) Decisions in the framework of the peer pressure mechanisms referred to in Article 4.3.b) of this Charter;



- c) Decisions concerning the internal functioning of the Committee.
However, the amendments to the Charter are decided by unanimity and the elections of the Chair and the Vice-Chair of CESR are decided by absolute majority of the members;
- d) Other decisions than those referred in paragraphs a, b and c above, for which the lack of consensus should first be established at the group level. Members of the relevant group opposing to a proposal, should expose their reasons for not concurring and submit alternative proposals. If no agreement can be reached, the chair of the group will report on the proposed decision to the CESR meeting. The view(s) of the opposing members of the group will be stated in the report to the CESR meeting. At the CESR meeting, the opposing member(s) will first expose their arguments, after which the CESR Chair will attempt to find a solution based on consensus. If no consensus can be reached, the Chair will submit the report of the group for approval by qualified majority. Any dissenting opinion shall at the request of the member(s) concerned be included in the document being approved.

6.4 Members may not apply a decision:

- a. For reasons of incompatibility of a decision with their national law or lack of competence due to legal impediments, or
- b. In the case of a decision for which they expect vital political or technical impediments to exist, or
- c. Where the objectives of the decision are met through other means.

Subject to the above mentioned limits all members will endeavor to comply with the decisions adopted.

Members that do not intend to apply the decisions in such a case will state their reasons in full, clarifying in detail the legal, political or technical impediment or the regulatory measures through which the objectives of the decision are met. This statement will be made public for example by attaching it to the approved document and will be included in the Level 3 reports to the EU Institutions. Moreover, the members' meeting may invite that member to endeavor to adapt accordingly its legal or regulatory framework and report on progress.

- 6.5. If there are reasonable doubts, as to whether a member has within a reasonable time effectively complied with a CESR measure or as to whether the explanation given by the member can justify its non compliance, the Committee will launch a selective review procedure regarding this particular member. Based on the recommendations of the Review Panel, CESR will, deciding according to 6.3 above, deliver an opinion specifying why the member in its view did not effectively comply with the measure and why the explanation given by the member cannot justify the non compliance. Before stating its opinion, CESR will allow the member concerned to make observations on the proposed opinion. CESR's opinion together with the observations of the member will be made public and reported to the EU institutions.

ARTICLE 7 – ACCOUNTABILITY AND INSTITUTIONAL LINKS

- 7.1 The Committee will submit an Annual Report to the European Commission which will also be sent to the European Parliament and the Council.
- 7.2 The Chair of the Committee will report periodically to the European Parliament and/or when requested, and shall maintain strong links with the European Securities' Committee.
- 7.3 The Committee may participate in other committees and groups both at the European and international levels, when necessary for the work of the Committee.



7.4 In the course of the second semester of every year, the Committee will transmit to the European Parliament, the Council and the European Commission its draft future work program. The Committee will report on an annual basis on the progress achieved on this program.

ARTICLE 8 – SECRETARIAT

8.1 The Secretary General shall be appointed by the Committee after being proposed by the Chair and the Vice Chair(s) for a period of three years. This contract is renewable. Other permanent or seconded members of the staff are appointed on a personal basis, by the Chairman after consulting with the Vice Chair(s) and the Secretary General.

8.2 The Secretariat of the Committee will work under the responsibility of the Chair. The Secretariat shall prepare and maintain the minutes of the meetings, assist the Committee and the groups in their functions and finally, execute all other functions assigned to it by the Committee or the Chair.

8.3 The Secretariat will act as a co-ordinator for the consultation and assist the Chair and the Vice Chair(s) in their public relations activities and representation functions.

8.4 All members of the secretariat are obliged by professional secrecy, in particular, as referred in the EU directives or regulations in the securities field. Members of the secretariat who work for and are seconded by a competent authority are at least obliged by confidentiality rules according to their national law. For all other members of the secretariat, the employment contract with the Committee shall include a clause stating the obligation of professional secrecy. Those members of the secretariat shall be considered as experts instructed by the Chair of CESR, acting as chair of its national competent authority.

ARTICLE 9 – BUDGET

9.1 The Committee will function with an annual budget. The Chair shall present a proposal for this budget to the Committee no later than the last meeting of the year preceding the budget year. If the Committee receives financing from the European institutions, as provided in Article 9.3, the timeframe and procedure for the proposal and the voting of the budget as a whole or at least for the specific projects to be financed by the European institutions should be consistent with the timeframes and procedures applicable to the EU budget.

9.2 The members of the Committee will contribute annually to the budget. An internal rule will fix the amount of the annual individual contributions and the modalities of the payment.

9.3 The Committee may receive external contributions or financing for specific projects, notably by the European institutions.

ARTICLE 10 – FINAL PROVISIONS

10.1 All understandings, standards, commitments and work agreed within the Forum of European Securities Commissions (FESCO) will be taken over by the Committee with the same consequences for the present and future members.

10.2 This Charter will take effect on 11 September 2001, and for any subsequent amendment, on the day after the amendment is approved by the members in accordance with the provisions of Article 6.3 c) of this Charter.