



## Feedback Statement on the Proposed Work Program to Facilitate Trans-Atlantic Derivatives Business

On 31 March 2005, the Committee of European Securities Regulators (CESR) and the U.S. Commodity Futures Trading Commission (CFTC) published a Communiqué requesting comment on a proposed work program to facilitate the conduct and supervision of a trans-Atlantic derivatives business. Under the terms set forth in the proposed work program, a task force drawn from CESR and the CFTC would be established to review issues relating to enhanced transparency and clarity of regulatory developments, simplified access or recognition procedures, and targeted consultation on cross-border issues.

The period for comments expired on 15 May 2005 (however, all letters that were submitted have been considered).

During the consultation period 13 letters were sent by 2 intermediaries, 7 derivatives exchanges and 4 trade associations (3 representing intermediaries and 1 representing swap dealers). We have placed all of the letters that we received on the CESR and CFTC web-sites. See list of submissions at the end of this publication.

CESR and the CFTC, which jointly reviewed the comments, take this opportunity to thank all respondents as well as the participants in the Round-Table for their very constructive comments and to encourage ongoing participation and interest from affected stakeholders.

**General:** We observe that the draft work plan received strong support from the respondents, with many emphasising both the critical need for the type of improvements suggested in the work plan and the desire to move quickly to achieve them (for example by setting intermediate goals.) In this regard we note that the 3 year time-table was not intended to inhibit the speed of the work. Rather, the 3 year period was selected to emphasise the commitment of CESR and the CFTC to this project and to specified deliverables. We note in that regard that this project is not a formal rulemaking in either the EU or the US, which fact provides added flexibility to the process.

**Industry Input:** Many respondents emphasised the need to maintain the ongoing involvement of the industry in the execution of the work program, to ensure that the issues being considered and the suggested practical solutions represent a transparent, collaborative process between regulators and the industry and market users. We endorse these sentiments.

This project has been conceived to establish an informal ongoing dialogue with the derivatives industry and market users. We recognize the importance of structuring our work in a manner that provides meaningful involvement by the derivatives industry and market participants and users. Our intent is not to establish a rigid structure but to remain sufficiently flexible as we proceed with the program in order to choose the best mechanism for meaningful ongoing industry and end user involvement.

Accordingly, we have modified the work plan to establish an initial informal mechanism pursuant to which CESR and the CFTC would each undertake to ensure by a variety of means the ongoing involvement of industry and end users in the EU and the U.S., both for the identification of issues and the crafting of possible solutions. As we proceed in this regard we remain open to using a variety of methods on an as needed basis, such as holding round-tables, teleconferences with industry representatives, trade associations and end users, establishing representative sub-groups or committees in the EU and the U.S. and inviting informal contacts with any interested parties.



## Summary of Comments:

### Topic I. Enhanced Transparency and Clarity of Regulatory Goals

Respondents agreed on the work plan's proposal to review the accessibility and clarity of regulatory and related legal information that will permit market professionals and end-users located outside a national jurisdiction to understand the types of conduct that may require registration, licensing or authorization, the permissible products that may be traded, the relevant rules and regulations and whom to contact for additional information and guidance.

Respondents made a number of suggestions:

- That the focus of inquiry not be limited to regulatory requirements that apply uniquely to derivatives trading;
- That agreed specific core information be included;
- That asymmetrical disclosure requirements be identified and examined;
- That information produced enhance the ability to obtain identity and disciplinary history;
- That the product identify and analyse customer protection, treatment of customer funds, standards of production and information handling, variations in and the applicability of bankruptcy and settlement finality laws and accessibility of default rules.

All of these suggestions fall within the scope of the enumerated areas of inquiry. Although no further modifications of the published work plan have been made, it is intended that each of these issues be considered by the initial Task Force established under the work program and through subsequent consultations on potential outputs. In this regard it should be noted that the focus will be to areas within the competences of the respective Authorities.

### Topic II. Simplified Access or Recognition Procedures

Respondents also generally agreed with the Task Force objective to review the information that is required by CESR members and the CFTC to be submitted by markets and intermediaries to support application to commence and operate cross border business and will explore practicable ways to simplify the same by identifying commonalities and differences.

One respondent agreed with this goal but cautioned that any solutions should ensure market integrity and avoid the possibility for regulatory arbitrage. We share this goal.

Respondents made a number of suggestions that the following topics specifically be considered:

- Make clear that substituted compliance or reliance may also be a practical arrangement for recognised persons or markets;
- Provide for mutual recognition of firms on EU- wide basis;
- Reduce approval times;
- Examine impediments to remote membership and direct clearing membership;
- Standardise pre- and post- recognition reporting requirements for recognized exchanges, allowing compliance by posting information on exchange web sites; and
- Distinguish between retail and institutional clients when crafting solutions.

As all of these suggestions potentially fall within the scope of the enumerated areas of inquiry, no further modifications of the published work plan have been made. These issues will be considered by the initial Task Force established under the work program in assessing the practicability of various solutions and all respondents will have the opportunity to participate, and/ or react to, the conclusions on these issues in the subsequent proceedings.

### Topic III. Targeted Consultation on Cross-Border Issues

Respondents also agreed that the Task Force should take steps to assure that expert inquiries, Advisory Committees, and consultations with substantial cross-border impact are specifically



identified by CESR and the CFTC and that specific consultation occur on issues of common concern, such as:

- Acceptable market practice under US and EU laws;
- Responsibility of markets with respect to proprietary trading; and
- Protection of customer funds.

As noted previously, many respondents were concerned that the work plans continue to evolve and continue to involve the industry and end users in a meaningful and ongoing manner. We agree with this concept of future work and have modified the work plan to make clear that such involvement is contemplated.

### **Additional Views**

One respondent suggested that the Task Force more broadly review and address some important differences between the regulatory regimes of Europe and the U.S. (e.g., in the U.S. one registration allows solicitation of business throughout the U.S. but separate registrations are required for each EU member).

Several respondents highlighted the need to examine differences in information collection requirements (e.g., large trader reporting, person-specific IDs and underlying account numbers) and to develop consistent standards for customer account identification programs that would permit reasonable reliance across jurisdictions. Several respondents also suggested the following goals:

- Promote cross-margining/multilateral netting of margin payments;
- Standardize order types and the rules applying to them;
- Examine differences in exchange membership requirements;
- Encourage more time for market participants to trade electronically outside market hours;
- Promote local clearing and the establishment of a common order book; and
- Address differences between European and U.S. practices in clearing.

These topics will be provided to the Task Force for consideration as to possible means to address them. It is possible that some matters might be assigned to industry working groups for further elaboration of possible solutions.

One respondent suggested that the Task Force consider providing more detail as to the anticipated “deliverables.” It is expected that specific deliverables will be noted based on the work undertaken by the Task Force. However, it was not intended to identify specific solutions before there was adequate discussion among the authorities and with the industry as appropriate. We will be in a better position to discuss deliverables once the Task Force convenes and moves forward with discussions from the industry and end users.

One respondent suggested changes to the introductory text to clarify the usefulness of transparency and to make clear the resulting benefits of a reduction in costs and greater operational efficiency. Another suggested adding market operators to the first sentence of Section I. The text has been changed accordingly.

One respondent reiterated comments that were made by several participants at the Round Table, namely that progress on trans-Atlantic access issues could be accelerated by involving the United States Securities and Exchange Commission (SEC) in this work plan. We note that the SEC and CESR have entered into a similar but separate plan for cooperation. As work progresses on the CESR-CFTC initiative the Task Force will examine possibilities for collaboration with the SEC.

One respondent suggested that the work plan consider disaster recovery procedures that would allow emergency conduct of business from affiliates on a temporary basis. This idea has great merit and is specifically identified.



One respondent suggested that the work program exclude OTC instruments from the program. The work plan makes clear that our intention is to address only matters within our respective jurisdictional competencies.

#### List of Respondents

<b>Intermediaries</b>
Merrill Lynch International, London Great Britain
ABN AMRO
<b>Exchanges</b>
U.S. Futures Exchange, L.L.C.
Eurex
MEFF
New York Board of Trade
Chicago Mercantile Exchange
Chicago Board of Trade
New York Mercantile Exchange
<b>Trade Associations</b>
French Association of Investment Firms (AFEI)
Futures and Options Association (FOA)
Futures Industry Association
International Swaps and Derivatives Association (ISDA)