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**A Network of regulators to meet the challenges of regulating European Capital Markets**

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Ladies and Gentlemen,

I am pleased to speak to you today from this historical location in the presence of distinguished speakers coming from regulators, exchanges and other areas of the financial services industry. In order to meet the demands of the conference organizers and in using the allocated twenty minutes as usefully as possible, I will focus this morning on the following three issues:

- The importance for CESR to act as an independent adviser to the Commission
- The working program 2003/2004 for CESR
- The Financial Services Action Plan and beyond

**The importance for CESR to act as an independent adviser**

Since all of you are well-informed parties, active in financial services, I assume a certain degree of inside knowledge. I will not explain the acronym of CESR, nor the role of CESR in the Lamfalussy structure with its four-levels-approach of framework principles, implementing measures, cooperation and enforcement. This morning, I want to focus on a specific aspect which is of the utmost relevance for CESR doing its job properly and key to its credibility: “independence”.

Why is it that CESR was chosen by the EU institutions to undertake the role of advising the EU on securities policy issues? Why not outside consultants, academics, or industry experts? CESR was chosen to fulfil this role because we, as regulators, have the expertise. True, I hear you thinking, there are other candidates in the market place who qualify with



top-of-the-market experience. There is however, one essential difference between CESR and those other candidates. The compelling argument here is: responsibility for enforcement. We, members of CESR, are responsible for enforcement. We must, therefore, live with the consequences of our own recommendations. We create our own “boomerang effect”.

Additionally, I strongly believe that CESR’s responsibilities cannot be carried out without independence. If we were dependent, how could we distinguish our advice from advice given to the Commission everyday by numerous other advisory bodies which are driven by self interest? CESR’s advice is only valuable if it is independent, and accordingly, independent advice can only be given by an independent body. Being independent, however, does not mean that we can act ‘on our own’; on the contrary, independence has two important consequences for CESR. We need strong institutional links with EU-institutions and we need strong links with the market (market participants, consumers and end-users) by consulting in an open and consistent manner. As you may know from our activities in the areas of Market Abuse and Prospectus, we take our assignment “to consult extensively and at an early stage”, very seriously.

Let it be understood that the focus of this consultation is not to balance interests. This should be done by the Commission, the Council and the parliament. CESR is supposed to find the best possible ‘technical’ way to regulate on a European level. Again, to listen in an independent manner, without bias, is essential for CESR.

Are those links of CESR with EU-institutions and market participants all there is, in terms of networking? This is certainly not the case. As illustrated in our activities for Market Abuse and Prospectus, both CESR-expert groups in these areas have created specific consultative groups, in addition to the regular consultative process. Furthermore, a Market Participants Consultative Panel, composed of key-players in the market place, was established by CESR last year to function, among others, as a sounding board for CESR on trends in the sector.

CESR will also expand its network with other regulators very soon. Representatives from ten applicant countries have been invited to join CESR as observers, starting from our first 2003-meeting later this month. In 2004 when these countries will become full EU-members, they will have the same status as our present fifteen CESR-members. Expansion



of the CESR-network with observers/new members on this scale will certainly create new challenges for the CESR-organization as a whole. In conclusion, CESR is a network of regulators with a primary focus on providing regulatory solutions in the best interest of the EU on the basis of extensive consultations. Balancing the interests of individual member-states is not the primary focus for CESR.

The contacts of CESR, however, are not limited to the network itself. Encouraged by the Commission, CESR started a dialogue, with representatives of the SEC, last year with a view to various developments on the global capital markets (for instance on accountancy and on corporate governance-issues). Some of the objectives of this dialogue are:

- to compare agendas on regulatory initiatives;
- to identify areas where difficulties may emerge;
- to develop a benchmark of good regulation and supervision, particularly in the area of financial reporting.

I have every confidence that this dialogue will resume soon, after the recent inauguration of William Donaldson as the new SEC-chairman.

### **Working program of CESR**

What kind of activities are CESR going to develop in the near future, given the independence and the network, as I just have explained? Thirteen months and one day ago the European Parliament accepted the Lamfalussy structure and see what CESR has accomplished. On the last day of 2002 CESR sent its first advice, based on the Lamfalussy structure, to the European Commission, Council and Parliament regarding the first Market Abuse-mandate. Preparations by CESR for giving advice on the first Prospectus-mandate are also well under way. What exactly is a mandate? How many mandates can we expect in the next eighteen months or so? At what stage in the legislative procedure will CESR receive a mandate? What are the challenges and bottlenecks in handling such a workload? Let me try to answer these questions for you.

A mandate is a request from the European Commission to CESR to give advice on implementing measures concerning a specific topic in a draft EU-directive. CESR is



expected to focus in the forthcoming months on five key draft EU-directives in the Financial Services Action Plan, being; Market Abuse, Prospectus, ISD, Transparency and Take-overs. Each of these five directives or draft-directives has several possibilities for implementing measures. Based on the texts as they stand now, we have counted in total FIFTY possibilities for implementing measures. The ‘winner’ among these draft-directives is the proposal for the new ISD with twenty single possibilities for implementing measures. Remember, it took CESR - together with contributions by market participants - nine months to formulate an advice on three possibilities for implementing measures in the draft Market Abuse directive. If you compare the work on these three possibilities with the total of fifty possibilities for implementing measures in all five (draft-) directives, you will have no doubt that the workload for CESR is guaranteed for the near future.

In general, the content of implementing measures can vary from: explaining a specific definition (as we just did for some Market Abuse definitions), specific information which must be included in a prospectus, to implementing measures to ensure that investment firms comply with principles when providing investment or ancillary services (in the ISD). All these different implementing measures can also vary in terms of timing. Some of these measures are essential to have available right from the moment a Directive enters into force. For other measures it makes more sense to acquire practicable experience by the regulators after a Directive has entered into force. Clearly, the amount of forthcoming work to be carried out by CESR and variations in content of the different implementing measures, calls for prioritization. It is for this reason that we are currently in an intensive dialogue with the Commission to discuss those priorities. I hope an official announcement concerning a more detailed working program of CESR for 2003/2004 can be made in the near future.

When will CESR receive a mandate from the Commission? At an early stage (after the first reading of a draft directive by the Council and Parliament) CESR receives a ‘provisional request for technical advice’, that over time will transform into a formal mandate once the proposal for that specific directive has been adopted by the European Parliament and the Council. It is obvious that the Commission does not want to prejudice in any way the discussions in the Council and Parliament. This is one of the realities of CESR, and also you as market practitioners, eager to participate in CESR’s consultation process, have to live with.



This broadly sets the scene for the mandates CESR can expect in the future. If we talk about challenges and bottlenecks for CESR, I would like to spend a few minutes on our consultation process. Based on our first experience with Market Abuse, we know that at least 50% of the time, allocated by the Commission to CESR for providing advice on implementing measures, is used for the (preparation of) consultations, open hearings, reviewing input from market participants and finally in drafting CESR's advice and a statement with feedback on our position. Given the constraints on the consultation process is it wise to invest so much time and energy in consultation? My answer is affirmative. Not only because we are obliged to do so, but also – as we stated in our Public Statement of Consultation Practices - because we truly believe in building consensus, where possible between all interested and affected parties, on what legislation or regulation is appropriate. Can we do better? Can we, CESR and market participants alike, consult more efficiently and operationally? This question not only applies to CESR, but also to you as market practitioners, united in your representative organizations. I hope you will take this away from this conference as “food for thought”. The burden of proof is on both of us. As far as CESR is concerned, the challenge is obvious: deliver quality-advice and do this on time. If and when we can consult more efficiently, we should do so. The deadlines for future mandates, set by the Commission, as always, need to fit within the political agreements on the completion of the Financial Services Action Plan. This is the third and final part of my presentation.

### **The Financial Services Action Plan and beyond**

In the Stockholm-resolution of March 2001 on more effective securities market regulation, the European Council considered that “every effort should be made by all parties concerned, to implement key steps for achieving an integrated securities market by the end of 2003, including notably the priorities set out in the report by the Committee of Wise Men on the Regulation of European Securities Markets, and recognising also the need for further convergence of supervisory practices and regulatory standards”. Firstly, CESR has already contributed extensively in many areas (ISD, transparency). Secondly, CESR is aware of the fact that we are short of time, but this will help to keep the pressure high to achieve commitment and to respect deadlines. Thirdly, we should distinguish between the legislative phase (which will see its peak in 2003) from the implementing phase (level ¾), for which CESR has already started to work with the establishment of its Review Panel.



More broadly, the full completion of the Financial Services Action Plan is envisaged for 2005. This time constraint should not prevent us from striving for the goal of the integrated securities market. Whilst preparing for new regulation, we have to bear in mind that our approach should be functional and goal-oriented and not institutional and based on dogmatics. What do I mean by goal-orientation? In my view it means: are we – after completion of the Financial Services Action Plan – able to offer institutions (and investors alike) enough legal certainty to operate in other jurisdictions? Do not forget that harmonization is never a goal in itself and is never meant to take away all business risks. As for any other business, undertaking means: an assessment by the individual business man/woman as to what level of risk is acceptable to him/her. This also applies to the financial services industry. Otherwise, harmonization would require a very high level of detailed regulation! You, as market practitioners, should keep this in mind, when responding to our consultations. Based on our experience with consultations so far, feedback received by CESR on its detailed proposals, called for even more details.

Allow me some final remarks, not on the content, but on the process. Can we now say that the regulatory machinery works? Not yet. In the first place it remains to be seen what the Commission, the Council and the parliament are going to do with CESR's advice. The worst thing that could happen is doing everything all over again. If the three institutions go that way, unable to contain the decision process, we must not hesitate to conclude that the Lamfalussy process has failed.

In the second place: how about the implementation process? The Lamfalussy report was sketchy about this, in particular about level 3. It starts above the heads of the regulators, with the adoption of laws and decrees. It is then followed by regulators' regulations, and finally by individual decisions that sometimes should be coordinated by a common European standard. After that we have level four. This level pertains to the answer: did it all become reality? Did for instance the regulatory behaviour really change, and did this change produce the expected results in the markets?

So my answer seems very cautious. The European regulatory machine makes promising sounds, produces promising results, but is not yet finished, finalised nor thoroughly tested.



But, as we Dutch people say: a good beginning is half the work. That's how I feel, as chairman of CESR, confident that if the will is there, we will succeed with the other half.

Thank you.