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CESR-CFTC Communiqué requesting comment on a common work programme to facilitate trans-Atlantic derivatives business

The Committee of European Securities Regulators (CESR) and the United States Commodity Futures Trading Commission (CFTC) (the Authorities) are publishing this request for comment on a proposed work programme to facilitate the conduct and supervision of trans-Atlantic derivatives business.

The proposal for further work follows a Round-Table that was held at CESR's headquarters in Paris, France on February 10 - 11, 2005: (1) to consider the views of organised derivatives markets, intermediaries and market users from the European Union and the United States (the participants) on the practical operational issues that most affect their conduct of trans-Atlantic business in exchange-traded derivatives and related transactions, and, (2) to explore potential cooperative strategies to further a compatible business and regulatory environment.

The Round-Table discussions, and this communiqué, reflect the maturity of the cooperative relationship between CESR members and the CFTC, and the increasing interest in elaborating efficient means of conducting trans-Atlantic derivatives business and growing EU-US business relationships.

WHEREAS the discussions elicited the following broad themes:

- The derivatives markets in Europe and the United States have grown exponentially in size and interdependence;
- The markets, and the relationship between markets and market participants, are evolving rapidly due to technological developments and the changes in the market model. The markets for financial services today, which include local and distant customers and intermediaries, increasingly perform portions of their operational and supervisory functions in different jurisdictions;
- The ability to ascertain the components of a jurisdiction's regulatory and market requirements is critical to the conduct of trans-Atlantic business as the accessibility and clarity of requirements facilitates full compliance with applicable rules, the choice of efficient risk management tools, and the design of effective due diligence reviews and appropriate supervisory controls;
- Market users will be able to make more informed choices and to better protect their interests if they have readily available access to regulatory and market information including information concerning the licensing status of markets and intermediaries and the permissibility of trading specific products;
- Markets, intermediaries and market users support the elimination of inappropriate or unnecessary barriers that could unduly constrain the structure of their global operations or limit their transactional preferences (*i.e.*, which markets, products or firms) in the EU and the US;



- The electronic integration of global markets and the demand by market users for open and efficient access to such markets challenge market authorities to explore cooperatively practical measures to facilitate such access while maintaining appropriate customer and market protections;
- Market authorities recognise the economic benefits of creating a regulatory environment that fosters the seamless transaction of trans-Atlantic exchange-traded derivatives business within the context of maintaining appropriate customer and market protections;
- The need to adapt regulatory approaches in light of ongoing change in the EU and the US makes this an opportune time to consider these developments.

ACCORDINGLY, THE AUTHORITIES COMMIT, THROUGH THEIR RESPECTIVE MEMBERSHIPS, TO: constitute a Task Force to be drawn from CESR and the CFTC which, subject to the results of this request for comments, will examine the areas set forth herein, based on key issues that emerged in each of the Round-Table discussions. The Task Force will refine and develop how best to execute the work programme in accordance with a three-year timetable,* taking into account the existing legislative framework.

I. Enhanced Transparency and Clarity of Regulatory Requirements – [*Time table-preliminary work within nine months.*]

The Task Force will review the accessibility and clarity of regulatory and related legal information that permit market professionals and end-users located outside a national jurisdiction to understand the types of conduct that may require registration, licensing or authorisation, the permissible products that may be traded, the relevant rules and regulations and whom to contact for additional information and guidance. Without limiting the scope of inquiry, the Task Force would consider:

- The relative availability of market information, including facts concerning trading rules, contract specifications, clearing and settlement procedures, customer funds protections, default provisions and dispute resolution requirements;
- The accessibility of rules and procedures relating to intermediated and direct access to foreign markets and customers, including recognition procedures and account opening requirements; and
- The scope and ease of access to publicly available information concerning the authorisation and current recognition status of intermediaries and markets, respectively and the practicality of developing or linking electronic means for timely providing such information to regulators and the public.

With a view to: developing a common template of core information that could be used to structure the provision of needed regulatory information on national and/or CESR and CFTC internet sites, including information on regulatory structure.

II. Simplified Access or Recognition Procedures – [*Time table-within two years per a schedule set by the Task Force*]

The Task Force will 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. Without limiting the scope of inquiry, the Task Force would review issues such as whether:

* CESR members will determine how best to schedule how, and when, deliverables would affect individual national members.



- A common template of “core information” concerning applicants for intermediary access or market recognition could be developed for use by CESR members and the CFTC (including provision for any add-on information required by individual national jurisdictions);
- Regulatory information developed for other purposes, such as surveys and self-assessments under the IOSCO *Objectives and Principles of Securities Regulation* could be used as a basis to support recognition applications;
- Through practical arrangements, broader use of substituted compliance, reliance or recognition-like procedures could be used by regulatory authorities to address access requirements for EU and US financial institutions (including clearing and settlement arrangements);
- On-going requirements for licensed and recognized persons or markets that operate on a trans-Atlantic basis could be mapped with, to the extent possible, the objective of avoiding duplication of requirements (including, e.g., recognition-related disclosure and reporting to the Authorities, account opening and documentation, retail/wholesale definitions, temporary use of cross-Atlantic back-up business continuity solutions); and
- Recognition (and ongoing supervision) could be facilitated through the development of common/linked databases to share publicly available information.

With a view to: a better understanding of the level of customer and market protections accorded by the regulatory regimes of national jurisdictions within the EU and the US and on such a basis simplifying and rendering more reciprocal existing application and recognition procedures.

III. Targeted consultation on cross-border issues—[Time table-to commence immediately]

The Task Force will take steps to assure that expert inquiries, Advisory Committees, and consultations with substantial cross-border impact are specifically identified by CESR and CFTC and that specific consultation occur on issues of common concern, such as:

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

With a view to: enhancing input from expected cross border market participants.

THE AUTHORITIES FURTHER COMMIT TO INSTITUTE PERIODIC OPERATIONAL DISCUSSIONS

The Authorities announce that as stated in October, in July the Authorities will schedule the first of regular annual CESR-CFTC meetings at the senior staff or higher level. The purpose of these meetings would be to provide an opportunity to share:

- Current common regulatory and supervisory concerns, if any, with respect to enforcement, market and intermediary oversight issues in the context of trans-Atlantic business activities; and
- Current regulatory initiatives of common concern.

The Authorities encourage market authorities in both the EU and the US similarly to explore enhanced operational working relationships.

Believing such operational and cooperative dialogues must support increased reliance on each others regulatory systems.

REQUEST FOR COMMENT



CESR and the CFTC are interested in exposing the above work programme to obtain any additional views. In particular the Authorities seek any additional views on the proposed plan's main areas of inquiry, the timetable and the issues that have been set out to illustrate the probable scope of joint work. Please feel free to suggest additional broad areas of inquiry or specific examples of the types of inquiries that should be made as part of the work programme.

COMMENT PROCEDURE

The foregoing work programme is being published today on CESR's website (www.cesr-eu.org under the section Consultations) and the CFTC website (www.cftc.gov), in order to offer an opportunity for input from all interested parties that engage in cross border business by 15 May 2005.

Respondents should submit any comments, labelled "CESR/CFTC work programme," either through CESR's website (in the section Consultations) or by sending it to the CFTC (secretary@cftc.gov). We would be grateful if responses identify the relevant paragraphs from the communiqué.

All the responses received by both authorities will then be published (unless specifically requested to remain confidential) on both the CESR website (*under the website area Consultations/past consultations*) and the CFTC's website (*under the heading CFTC/CESR Communiqué and Work Programme*).

By Order of: CESR Member Jurisdictions and the US CFTC