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Plenary 1

**Regulation and Supervision in the Context of a Global
Financial Environment**

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and

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Arthur W.H. Docters van Leeuwen, Chairman, CESR

I am very pleased to be able to speak to you today. I was invited to speak to you in my capacity as Chairman of CESR.

In my role today, I have set myself 2 aims:

1. to tell you about CESR and explain the role of CESR within the so called ‘Lamfalussy approach’;
2. to say a little more about the current activities of CESR.

Ad 1

Let me start with the origin of CESR and it’s role in the Lamfalussy approach.

CESR emerged from the former FESCO, the Forum of European Securities Commissions. FESCO was set up by Charter in December 1997 by 17 European securities regulators, namely the 15 EU countries plus Norway and Iceland. This “club” of regulators has now been transformed into the Committee of European Securities Regulators, also known as CESR. We met for the first time in Paris in September last year.

We set up a new Charter, overhauled our working practices and made a collective commitment to good practice in transparency and consultation. In September last year we were ready for action.

Four months ago the European Parliament took a decisive step by accepting the Lamfalussy plan for speeding the reform of European Union securities market regulation.

As chairman of CESR, I can assure you, that we are very pleased with this development.

Maybe not all of you are familiar with the main recommendations of the Committee of Wise Men, chaired by Alexandre Lamfalussy in 2000/2001, which, among other recommended changes, resulted in the establishment of CESR. Essentially, Lamfalussy proposed change the state of integration and regulation in Europe. The main reason for this proposed change was that European directives were coming about much too slowly. Market participants were urgently requesting the harmonisation of regulations. They also requested the possibility of a quick respond to changes in the market.

The practical implications of the Lamfalussy plan are set out in a four level regulatory approach intended to speed up the regulatory process and make it more flexible and efficient. The four level approach is as follows:

In Level 1, broad framework principles of securities legislation are decided upon.

Then, in Level 2, two new committees assist and advise the European Commission in determining how to implement the details of the Level 1 framework.

Level 3 involves enhanced cooperation and networking among EU securities regulators to ensure consistent and equivalent transposition of Level 1 & 2 legislation.

And, finally, Level 4 addresses strengthened enforcement.

How does CESR fit into this 4 Level Approach, and why was CESR chosen?

CESR's tasks are:

- to advise the EC on securities policy issues either at the EC's request, or on its own initiative;
- to respond within such time limits to the mandates given by the EC in respect of the preparation of implementing measures (this new CESR task was not previously a FESCO responsibility);
- to foster and review implementation and application of Community legislation;

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- to develop network mechanisms to enhance day-to-day consistent supervision and enforcement of the Single Market for financial services;
- to monitor financial markets and any possible impact on the regulation of the Single Market for financial services.

Why was CESR chosen to undertake these tasks?

Why not outside consultants, academics, or industry experts?

CESR was chosen to undertake these tasks because we, as the regulators, have the expertise, and perhaps even more importantly, are responsible for the enforcement of Community legislation. Because CESR is involved in the formulation of this legislation (e.g. advising the Commission in its preparation of implementing measures), there is a clear boomerang effect: we must live with the consequences of our own recommendations. The responsibility for the enforcement makes us different from all other advisors.

Additionally, I strongly believe that CESR's responsibilities cannot be carried out without independence.

I would like to illustrate this with an anecdote, which I have told several times, but which I don't want to withhold from this audience.

One month before the publication of the final Lamfalussy report, we (the former members of FESCO) met with the Committee of Wise Men. At this point the subject of independence for the future Securities Regulators Committee was still unclear. I asked the Committee, "if a European Regulator was to be established, would they grant that Regulator independence?" They responded, "of course the regulator would be given independence." I then asked why wouldn't you grant the Securities Regulators Committee the same independence? The members laughed, but the point was made, and accepted.

I refer to this anecdote to stress how important the concept of independence is to CESR.

Another reason why independence is important can be found within CESR's role as advisor to the European Commission, as well as advising on securities policy issues and on

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implementing measures: in this role, CESR's advice is only valuable if it is independent, and accordingly, independent advice can only be given by an independent institution.

But Independence is only workable if we operate in a transparent and accountable manner, thereby establishing strong institutional links with the European Parliament, the Commission, and the Council.

It also involves consultation carried out in an open and consistent manner.

Therefore "*Thou shall consult*," is the new eleventh commandment in European regulation.

In this regard, CESR consults in three ways, while advising the EU Commission on preparing the implementation measures of EU directives:

1. First, CESR consults with all interested parties at a sufficiently early stage to enable the Committee to take responses into account, for example by consultative papers, public hearings and roundtables. If the response to the first consultation reveals significant problems, or when revised proposals are radically different from the original proposals on which the first consultation was made, CESR consults for a second time.
2. Second, where appropriate CESR establishes advisory, consultative groups of experts (consultative groups were established for Market Abuse and Prospectuses recently) and
3. Thirdly, a market participants consultative panel was established this year to assist CESR in the performance of its functions and in particular to ensure that the consultation process functions effectively. The composition of this panel will soon be finalized.

Ad 2

I would like to say a little about the ongoing work of CESR. However, I won't discuss this in depth, for more detailed information I refer you to our Interim Report to the Commission, which we have also sent to the European Parliament and the European Securities Committee.

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In general CESR has taken over all of FESCO's activities. In practice, CESR's work is prepared by Expert Groups, either chaired or supervised by a committee Member. The working in Expert Groups allows also other relevant authorities and technical experts to be involved when necessary. An example of an expert group is the group on standards for Investor Protection. This expert group is chaired by Jacob Kaptein, my colleague, and a board member at the Netherlands Authority for the Financial Markets. This expert group has undertaken efforts to harmonise the conduct of business rules under the investment services directive and is now reaching its conclusive phase. CESR has recently approved a set of standards and rules that provide for harmonised core conduct of business rules for retail investors. This implicates (among others) harmonised rules for information to be provided to customers, for the "know your customer" standards, the duty of care standards, and rules for customers agreements.

There are also expert groups established for 'Primary Market Practices', 'Alternative Trading Systems' and 'Clearing and Settlement'. Recently an expert group has been established on Market Transparency and Efficiency. I will come back to their mandate in my conclusion.

In accordance with the Lamfalussy approach CESR has also been asked recently by the European commission to give advice on the preparation for implementing measures of the future Directives on Market Abuse and Prospectuses. In order to carry out this work, we have established two working groups.

In addition to these expert groups, we have established two permanent groups, with a more permanent mandate. In these groups there is a strong emphasis on enforcement.

CESRpol

The first of these permanent groups is CESRpol. CESRpol was created upon the signing of the CESR Multilateral Memorandum.

The purpose of this memorandum is to establish a general framework for co-operation and consultation between CESR-members, in order to facilitate the fulfilling of their supervisory responsibilities.

The purpose of CESRpol is to facilitate effective, efficient and pro-active sharing of information, in order to enhance the co-operation and the co-ordination of surveillance and enforcement activities between CESR-members.

The overall objective is to enhance transparency, fairness and integrity of the European markets as a whole.

CESRfin

The second group is CESRfin. CESRfin's main task lies in the context of the EU's financial reporting strategy: CESRfin coordinates the work of CESR members in the area of endorsement and enforcement of International Accounting Standards and the other financial disclosure requirements in the European Union.

4. Conclusion

To conclude:

The Investment Services Directive (hereafter referred to as the ISD), dates from 1993.

It is considered to be the cornerstone in the process of achieving an integrated European financial market: it's goal is to make a single authorisation valid throughout the Community. The requirements in the ISD gave an important impulse for regulation of the market by the government in the Member States.

The same ISD is now being updated. The revision of this Directive is a crucial part in the Financial Services Action Plan, which was presented by the European Commission. In light of this revision, a CESR-expert group is set up on Market Transparency and Efficiency. CESR has identified four elements and their interaction as important to this process. They are as follows:

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- transparency
- the price formation process
- different market structures
- best execution (and other aspects of investor protection)

On a personal note and not in my capacity as chairman of CESR, I feel that in updating the ISD we should be prepared to consider giving up -what I refer to as- ‘the institutional approach’ in favour of a more ‘functional approach’, which makes the transactions more direct an object of regulation. While I realize that a change of this impact demands courage, the dividends it will pay in the long run will be well worth the effort. !

With this said, I, as chairman of CESR, would like to emphasize that we are proud of the role we as CESR are entrusted with, and we will do our best accordingly.