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Monsieur Fabrice Demarigny
Secretary General
Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, February 15th 2005

AFG RESPONSE TO CESR'S ANALYTICAL PAPER 'WHICH SUPERVISORY TOOLS FOR THE EU SECURITIES MARKETS?' (HIMALAYA REPORT)

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG) is the French trade association representing the industry of investment management (collective and mandate based individual portfolio management). Assets managed by AFG members amount to 1800 billion euros, making the French industry the leader in Europe in collective management and one of the biggest at global level. We are also a member of the Fédération Européenne des Fonds et Sociétés d'Investissement (FEFSI/EFAMA).

We welcome the opportunity to comment on CESR's paper.

Through its paper, CESR brings an important contribution to the debate on the current and future ways of functioning of supervisors/regulators in Europe. Moreover, AFG appreciates the approach followed by CESR to get input from market participants in order to help building its own opinion and to get the best consensus for the future.

We share CESR's view that the two main areas identified in the paper (i.e. the definition and functioning of additional supervisory tools to improve the network of securities regulators, as well as the home/host relationship between competent authorities) require significant improvements. CESR gives a comprehensive analysis of the current difficulties in these two areas, and lists possible solutions to solve them in the short term or in the longer term. AFG agrees with CESR on these proposed solutions to a very large extent, as shown through our attached detailed comments.

However, AFG feels that some solutions for further convergence and functioning of CESR might be more stressed in the paper.

First, AFG feels that regarding improvement of convergence in methods, there should be in CESR's paper a clearer reference to regulatory impact analysis, especially in the form of cost/benefit analysis and risk-based approach. As you know, in the context of its Better Regulation policy (endorsed by Heads of State and government in the European Council of Laeken in 2001), the European Commission has already to carry out impact assessments when examining the possible need for regulatory action at European level. Moreover, some national securities regulators have already put in place some cost/benefit analysis (CBA) and risk-based approach (RBA) methods. We think that these methods should now become common tools for all securities/investment management regulators in Europe, in order to ensure that any regulators' action (in particular regulation and supervision) fits with the existing and developing situations of the markets – in line with CESR's objectives. At CESR's level too, CBA and RBA should be introduced as a systematic approach.

In particular, CESR's paper should stress that these analytical tools should be used by CESR with keeping in mind the need for developing the competitiveness of the European industry vis-à-vis non-European competitors

Second, AFG considers that regarding the way of functioning of CESR as such, the involvement of market participants in the process might be still improved. At national level, many Boards of securities/investment management regulators already include market professionals beside representatives of public bodies. Regulators started including professionals in their boards when – beyond the adoption of new analytical methods such as CBA or RBA – they considered that a better efficiency would be reached in regulatory/supervisory actions if professionals were involved from the first stage to the last stage in the process of decision. On this basis, we want to suggest a similar approach, through the appointment of professionals at the Board of CESR, in order to get further improvements in the way of functioning and outputs of the Committee. Such a decision would no doubt greatly help to defuse the fear that CESR could become in the future a bureaucratic organisation, adding supplementary layers of unnecessary regulation/supervision.

Third, in order to avoid as much as possible to have to wonder about the best tools for making the functioning of the network of regulators more efficient, CESR should insist more on the use of European Regulations (rather than Directives) as often as possible. Let us recall that the Lamfalussy report (which led to the European institutional existence of CESR) was built on the principle that Regulations (instead of Directives) should be used more often in order to get the best result in terms of harmonisation. Even if trust between regulators can also lead to convergence, the adoption of European directly binding legislative texts prove a safer way to proceed. Even though we are aware that the decision for the legal format of European legislative texts is not part of CESR's powers, this principle could be recalled in CESR's paper as an efficient tool for getting better convergence in the functioning of regulators and better efficiency of its network.

Fourth, in line with CESR's views, we agree that the role of CESR as “*supervisor of national supervisors*” should be reinforced as the current home/host arrangements are testing the limits of a proper supervisory convergence. Considering the current limits for functioning of the network and home/host arrangements, we think that CESR's paper should mention more clearly the possibility of a progressive shift of powers from the current national regulators to a European securities/investment management regulator – starting from mediation to reach registration, regulatory and even enforcement powers at latter stages. In particular, this

progressive shift of powers is necessary not only to monitor cross-border activity of market players but also to reinforce the European position vis-à-vis non-European regulators.

If you would like to discuss this letter and its contents with us please contact myself on 00 33 1 44 94 94 14 or by e-mail: p.bollon@afg.asso.fr, or Stéphane Janin on 00 33 1 44 94 94 04 or by e-mail: s.janin@afg.asso.fr

Yours sincerely.

Pierre Bollon

Annex: detailed comments on CESR's paper

**ANNEX: DETAILED AFG COMMENTS TO CESR'S ANALYTICAL PAPER
'WHICH SUPERVISORY TOOLS FOR THE EU SECURITIES MARKETS?'**
(HIMALAYA REPORT)

I. How integrated is the EU Securities market?

Page 5:

- The elaboration of a more detailed and structured agenda for the next five years, as suggested by CESR, should be carefully done in order to ensure full consistency with the own agenda of European institutions and avoid any possible mismatch.

Page 6:

- AFG supports CESR's view that it is too early to conclude as to whether the market players will take advantage, or not, of the new framework built through the FSAP to act as players in the Single Market.
- Regarding investment firms, we share CESR's view that within Europe there is as yet little sign of cross border mergers/takeovers of investment firms (whether it be brokers or funds managers except when it is needed for access to the EU's wholesale markets) and that the overwhelming majority of firms are still national in terms of management and strategy. However, many prominent European asset managers, including French ones, are now players on at least three continents

Page 7:

- AFG supports CESR's view that retail markets are not integrated yet, even though investment funds (in particular equity mutual funds) contributed to the rapid increase since 1999 in the share of foreign assets in balance sheets. It must be admitted that fiscal and regulatory barriers are, although important, not the only hurdles in that matter, as savings habits are playing a prominent role

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- AFG agrees with CESR that obstacles to the integration of securities/asset management markets will need to be systematically identified and subjected to careful analysis before deciding that further changes to the legal framework is necessary, including fund management
- However, AFG wants to stress that asset management in general should be examined
- Moreover, regarding such "careful analysis", CESR should be more precise, mentioning explicitly and applying existing methods of analysis, i.e. cost-benefit analysis, risk-based approach and impact assessment (already followed today by some national regulators as well as the European Commission)

II. The network of the EU Securities regulator: challenges and improvements

Page 10:

- AFG agrees that CESR has been entrusted with a role to ensure more consistent and convergent application of EU laws in the securities field
- However, AFG considers that in order to reduce the scope for difficulties in the practical application of EU laws, CESR's paper should recall here the need for more frequent use of European Regulations (rather than Directives), as requested by the Lamfalussy Report which was endorsed by Heads of State and Government in Stockholm Council in 2001. We agree with CESR on improvements which can be found through widening the scope of supervisory tools (role of CESR at level 3, peer pressure, efficient mediation mechanism); but in order to be really effective, better legal harmonisation of national laws are necessary ahead of this battery of practical solutions

Page 12:

- AFG shares CESR's view on the analysis of the current lack of harmonisation of powers among securities/investment management regulators both in terms of scope and in terms of rule making, supervisory and investigative means.
- AFG agrees that the resources devoted by regulators to supervision, and how they are deployed, vary widely in the EU. This fact should lead to the conclusion that in the longer term, a single European regulator should be considered as necessary – at least for some supervisory functions

Page 14:

- On supervisory convergence, the principle of a 'coordinating' supervisor seems interesting but might become dangerous if applied improperly: in particular for market abuse, coordination should not prevent a non-coordinating supervisor from acting if it the most appropriate supervisor for getting some specific pieces of information (as long as it behaves in line with the territorial provisions of the Market Abuse Directive of course)
- On enforcement coordination, we agree with a more active use of joint investigations by the supervisors involved, as we think that existing pieces of European legislation already deal with this topic (e.g. the Market Abuse Directive). We also agree that the creation of databases of sanctions might be helpful for supervisors, but AFG thinks that this action should go further, by making public such decisions through a European database (as long as these sanctions can be made public legally). Such a public database could be helpful for market participants, by guiding them on what can be done or not in Europe, and could help spontaneous convergence of market participants behaviours at European level – without any need for additional action by the domestic supervisor
- On decision making convergence, reference to the mandatory use (both by national regulators and CESR) of cost-benefit analysis (CBA), risk-based approach (RBA) and impact assessments should be made clearly

Page 15:

- Regarding the need for more active and systematic role for the markets participants, AFG wants to stress that a major improvement would be to apply at the level of CESR's Board what is already done today at the level of some national securities regulators' boards : appointment of markets participants in CESR's Board would ease the way of functioning of CESR not only for rising any discrepancies in the application of directives, but also for ensuring that, more widely, actions of CESR fit with the reality and developments of the market, thus defusing the fear that CESR could become in the future a bureaucratic organisation, adding supplementary layers of unnecessary regulation/supervision
- On the definition of a Mission Statement for EU securities/investment regulators, AFG agrees on the necessity to better define in detail the content of their general objectives. CESR's paper should add that this approach would fit with the application of RBA in particular. However, among the missions of regulators quoted in CESR's paper, there is no mention of another mission which is officially assigned to some national regulators, i.e. to ensure the competitiveness of the national marketplace. We think that, in order to reinforce the European competitiveness vis-à-vis non-European marketplaces, this mission should be included at least in CESR's own Mission Statement.

Page 16:

- AFG supports the principle for the Network (rather than an individual member through mutual recognition) to take single EU decisions, as more and more market activities and players (e.g. exchanges, credit rating agencies) have developed cross-border activities
- However, for AFG, there is a precondition for getting the maximum efficiency in exercising single EU decisions: to favour adoption of European Regulations (rather than Directives) – as already mentioned above

Page 17:

- On credit rating agencies (CRAs), AFG acknowledges that the question raised by CESR makes sense: some further thinking should be developed if home/host supervisory tools do not answer all the questions on recognition of CRAs in Europe

III. Mutual recognition: the challenges posed by multi-jurisdictional market players

Page 20:

- Once again, and even though the decision on the legislative format of European legal texts is not in the hands of CESR, AFG wishes CESR's paper to mention the use of European Regulations (rather than Directives) as an important tool for

making improve supervision of multi-jurisdictional market players (both for further harmonising the regulations applied to them and the powers of supervisors)

Page 21:

- According to AFG, the analysis of CESR's paper on pros and cons on consistent supervisory powers should lead to a rather clear conclusion: rather than trying to make more consistent the powers of competent authorities, a single EU regulator would probably ease the functioning of the Single Market in the field of financial markets

Page 23:

- AFG agrees with CESR's paper that the need to consider supervisory tools carrying a trans-national dimension is closer than it was four years ago when the Committee of Wise Men was set up. According to AFG, the principle of a single securities/investment management regulator in Europe should be the natural conclusion for maximum efficiency.