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Kaarlo Jännäri, Vice Chairman of the Committee of European Securities Regulators

Ladies and Gentlemen,

I am very honoured and privileged to be able to address this distinguished audience this morning. The European Compliance Conference is an important event and it is to be highly welcomed also by the regulators and market supervisors that the compliance officers have organised themselves in this manner.

Indeed it is in the interest of the securities market and the whole financial system that in the field of compliance, people with responsibility and competence in the area meet to exchange views and interact with each other and other interested parties like regulators and supervisors. This is in order to foster not only common understanding but also common interpretations and methodologies. In the highly integrated global financial markets it is no longer possible to stick only to old national traditions and practices. Harmonisation and convergence in regulatory frameworks and practices has become a necessity.

Particularly in the European context within the European Union or the European Economic Area (EEA) it has become vital to seek common solutions to common problems and challenges. In the EU our political masters have declared that it is in the interest of our peoples to create a single European market in financial services. And I fully agree with that. In order to achieve this a Financial Services Action Plan (FSAP) has been adopted and concrete measures to fulfil its goals have already been undertaken and are in the process of being implemented.

The overall aim is, of course, to improve the access of European firm and enterprises to fund their investments and operations and on the other hand to offer households and institutional investors more efficient and secure channels to invest their excess liquidity and savings and to let them take calculated risks in a transparent market place. Consequently the benefits would be intermediated to the whole economy through higher employment, income and prosperity.

Transparent free market place is the key to the road to economic development. It is perhaps paradoxical that in order for us to achieve a transparent, efficient financial market we, however,

need regulation and public supervision. Free competition can only maximise welfare if there is enough trust and confidence that the markets function is an honest and transparent way.

That is where we, the regulators and supervisors, come into the picture. Our goal is to create an environment of confidence and stability in the market and to make sure that all play with the same rules. In this effort the role of compliance officers as collaborators and partners to the regulators is of extreme importance. Your contribution is vital in keeping the play fair. Some, not so nice people, sometimes say the compliance officer's task is to find ways to legally circumvent the underlining purpose of regulation. They, I am sure, are all wrong. I think our goals are the same; to have firm, but flexible regulation that lives with the times and can adapt to the market developments and innovation and not vice versa.

With these introductory remarks I am approaching the subject matter of my speech. The Role of the Committee of European Securities Regulators in all this:

Most of you know from your last year conference what CESR is all about, as the chairman of CESR Arthur Docteurs van Leeuwen spoke to you about our work then. So it suffices for me here only briefly to summarise that CESR is a product of the so-called Lamfalussy Group of wise men's proposals to bring more flexibility and efficiency into the EU regulatory framework. CESR was, however, not borne empty-handed, it is in effect the incarnation in a more official form of the informal Forum of European Securities Commissions or FESCO. The experience with Fesco gave CESR a good starting point to deepen the mutual co-operation between the EEA regulators in an already established and pragmatic way.

I will now turn to the subject matter as mentioned in the agenda for this morning. As my speech will hopefully not last for 45 minutes, but rather less I hope I can get a few questions from the floor at the end so as to get some dialogue going on with you.

The three issues in the agenda are:

- The events since the TECC conference in April 2002
- The success of the CESR consultation process
- Likely developments in the next twelve months, (particularly in the areas of market abuse and research)

Additionally I will touch in the end on the issue of the future of the European regulatory system - can Lamfalussy process deliver the desired products and will it even be spread into banking and insurance.

Before going further into the topics, I would like to remind you of the main features of the Lamfalussy process and the institutional framework in which the CESR is operating.

The Lamfalussy four level approach contains in **Level 1** the adoption of the Commissions formal proposal for a Directive or Regulation which should involve a full consultation process. Once the parliament and the Council reach agreement on the framework principles and the definitions of implementing powers contained in the proposal, the detailed implementing measures are developed in level 2.

In **Level 2**, the Commission, after consulting the ESC (European Securities Committee), requests advice from CESR on technical implementing measures. CESR prepares advice in consultation with the market participants, end-users and consumers, and submits its advice to the Commission. The commission sets out the measures in a proposal to the ESC that will then make a decision on the proposal (by voting if needed) within a maximum of three months. The Commission then adopts the measure. During the level 2 process, the Parliament is kept fully informed and equivalent treatment is given to its view.

In **level 3**, CESR works on joint interpretation recommendations, consistent guidelines and common standards. Additionally CESR is to undertake peer reviews and compare regulatory practice in its member countries to ensure consistent implementation and application.

In **level 4**, the Commission checks Member States compliance with EU legislation and may take legal action against Member States suspected of breaching Community Law.

The events since the TECC conference in April 2002

I would like to start with events concerning substance proposals and standards and after that follow with some changes concerning the way how CESR works.

In spring and early summer 2002 several pieces of work were finalised. Most of that work originated from FESCO, the predecessor of CESR. That includes standards for Stabilisation and Allotment, Standards for Investor Protection and Standards for Alternative Trading Systems. They all are in Level 3 of the Lamfalussy process – that means that CESR members have committed themselves to implement them on the best efforts basis. Additionally several parts of those papers have been taken into account when drafting the proposal for the revision of the ISD.

CESR-ECB Expert group on Clearing and Settlement is a joint group between CESR and the European Central Bank. The task of the group is twofold. It involves the adaptation of the CPSS/IOSCO recommendations for securities settlement systems to the European environment. The second area of work relates to the analysis of central counterparties (CCPs) clearing activities in Europe with a view to identifying a suitable regulatory approach. A call for evidence was published in summer 2002 and contributions received are publicly available on the CESR web site. The group is expected to publish a consultation paper during the first half of this year.

Accounting issues are handled by a permanent sub-group called CESR-Fin. CESR-Fin has focussed its attention on issues arising from the EU regulation on the application of international accounting standards. Major contribution in that field is first CESR standard on Financial Information: "Enforcement of standards on financial information in Europe". The standard, which was published on Tuesday this week, represents a significant part of CESR's contribution to the task of developing and implementing a common approach to the enforcement of International Financial Reporting Standards (IFRS) in Europe. The document sets out 21 high level principles which address various enforcement areas.

CESR-Pol is another permanent group consisting of senior enforcement officials from CESR members. The group is designed to enhance the sharing of information, co-operation and co-ordination of surveillance and enforcement activities between CESR members. The areas of work either completed or currently being undertaken include:

- issues arising from the investigation of terrorist financing
- the means for improving co-operation under the ISD particularly in relation to the powers available to supervisors and the supervision of remote members
- relations with uncooperative jurisdictions; and
- the European Convention of Human Rights

Despite of all the above mentioned work the main public interest in the activities of CESR has focused on the work on first two sets of level 2 work.

The first provisional mandates concerning the Market Abuse directive were received in March 2002. After two rounds of consultation and several open or bilateral hearings the first CESR advice

was sent to the Commission at the end of last year. Based on that CESR advice the Commission has this spring made their first drafts for the final implementing measures.

Similarly the first set of mandates concerning the Prospectus directive were received in March 2002. The first set of CESR advice is going to be finalised rather soon. In the case of Prospectus directive we must bear in mind that the negotiations on the content of the directive have not yet been finalised.

I am now moving to structural issues which have an impact on CESR's work.

So far CESR has already been successful in promoting regulatory harmonisation. It is however not enough that the common rules are adopted – they have to be implemented. Although the implementation of the EU legislation is the responsibility of national ministries and parliaments CESR has a role here too. In order to promote timely and uniform implementation of especially level 3 regulation CESR has a three step process. It starts with a self assessment by the members. That assessment will be reviewed by CESR and finally results are published. In order to enhance that process CESR has established a "Review Panel". The panel chaired by myself as the vice-chair of CESR and consisting of senior officers of members will give its opinion on the overall process of implementation, provides common understanding and expresses views on specific problems encountered by individual members. This process has just only begun and first results are not to be expected until late in 2003.

CESR is also expanding its network with other regulators. Representatives from ten applicant countries have been invited to join CESR as observers. Representatives from eight applicant countries have accepted the invitation and will participate in the work of CESR, including the Expert groups. In 2004 when these countries will become full EU-members, they will have the same status as our present seventeen CESR-members (EU-members plus Norway and Iceland). Expansion of the CESR-network with observers/new members on this scale will certainly create new challenges for the CESR-organisation as a whole.

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. I may add here that I met yesterday with Swiss Banking Commission in Bern and we discussed the possibilities to intensify our contacts with them.

The success of the consultation process

Before touching on the actual consultation process, 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.

The CESR consultation process consists of several building blocks.

Firstly, CESR publishes a mandate from the Commission, puts out a call for evidence and establishes an Expert group to work on the advice on the level 2 technical implementing measures. If necessary, an expert group can be assisted by a consultative working group of market participants. Indeed that has been the case for groups on Market abuse, Prospectus and Clearing and Settlement.

Secondly, consultation documents produced by Expert groups are then distributed for wider consultation, primarily by means of CESR website. During this phase of consultation, responses are invited from all interested parties including practitioners, end-users and consumers. Once the consultation period has closed, CESR considers and takes into account the responses received. All responses to formal consultations will eventually be made public by CESR, unless respondent requests otherwise or alternatively a summary of responses will be published. A subsequent consultation may take place if the response to the first consultation reveals significant problems, or where revised proposals differ considerably from those outlined in the first consultation document. Several open hearings and bilateral meetings may also take place, as has been the case for the Level 2 work on Market Abuse and Prospectuses. After the consideration of the responses and when the choices have been made CESR also publishes a feedback statement where we try to explain why we have chosen to accept some responses while having decided to ignore or not to include some others.

Third stage of the process is the high level Market Participants Consultative Panel, which was established at the suggestion of the European Parliament and the Lamfalussy committee to assist CESR in the performance of its functions. The Panel is comprised of 11 members, including end-users and consumers, who are appointed in their personal capacity. The Panel will act as a "sounding" board for CESR and will comment on the way in which CESR exercises its functions, in particular the manner in which CESR consults. The panel has held two meetings and summaries of the discussions have been published on the CESR website.

While commenting on the success of the consultation process, let me underline that the focus of our 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.

One important point to bear in mind is that the CESR work in level 2 is based on mandates received from the commission. 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. It sets clear limits on what CESR can propose. That was not fully understood by respondents in the first rounds of

consultation (and to be honest also in the expert groups). Even if there is a sense that some provisions in the level 1 are not adequate it is not possible to "correct" or change those provisions in the level 2 implementing measures.

Finally the most often expressed criticism concerns the time allowed for consultations. It is stated in the CESR Public Statement of Consultation Practices that we intend to provide a three months period if possible. The mandates from the commission involve a time limit, in some cases a very strict one. Due to these constrains it has not always been possible to follow our three months rule.

Likely developments in the next twelve months, (particularly in the areas of market abuse and research)

What kind of activities is 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 for securities regulation. 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. 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.

CESR is expected to focus in the forthcoming months on five key draft EU-directives in the Financial Services Action Plan, these 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 very heavy 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. For some of these measures it is essential that they are in place right from the moment a Directive enters into force. For other measures it makes more sense to acquire practical 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 prioritisation. 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 we 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 any 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. 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: to deliver high quality advice and to do it 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

What comes to the work relating especially to Market Abuse and research? The Expert group on Market Abuse will continue its work based on the second mandates. It published a call for contributions early this year. The responses have now been analysed and the group is expected to publish a consultation paper in April. The deadline for the advice is the end of August.

Regulation of research was already partly covered by the previous advice on Market Abuse. It will be covered also partly by the ISD where investment research and financial analysis are regulated as an ancillary service which means that when undertaken by an investment firm the conduct of business rules must be followed. The exact content of CESR work will be determined by the subsequent discussions in the decision making process and in the future mandates.

Additionally, there is a third forum where the matter is discussed. The Commission has set up a Forum group on analysts. Although CESR has an observer in that group it is established and organised by the Commission. It is at this stage unclear whether that group will propose any regulatory action.

Before closing let us now turn to the larger question of the future of EU regulation and supervision in the financial field. The Lamfalussy group of wise men concentrated on securities markets as does this conference. The wise men also concluded that if the new arrangements do not work sufficiently well then the issue of an European SEC might be worth considering. They also concluded that the new framework should be reviewed in 2004 to determine whether it has functioned as well as hoped for. To do that an Inter-institutional Monitoring Group of six persons was established. As the new process is also a power balancing act between the European Parliament, the European Council (of ministers) and the EU commission, each of these institutions nominated two members to this group. This group has met twice, but obviously at this stage they have nor yet been in a position to draw any definitive conclusions. In any case considering the fact that CESR has only very recently given its first formal advice to the Commission it seems to me that 2004 is quite an early date to draw definitive conclusions about the Lamfalussy framework. On the other hand one would hope that the much awaited Inter Governmental Conference in 2004 could also put forward and agree on some firmer, and if I may say so on purely personal basis, more federalistic structure for regulation and supervision. And if so, not only in the securities field, but also in banking and insurance.

As you know the Lamfalussy structures with level 2 and lever 3 committees are now being extended to banking and insurance conditional on the European Parliament dropping its opposition to the

plan. I have the feeling that consensus with the parliament can be found and the extension will take place. I am in no way competent to say much about how the Lamfalussy structure fits into insurance. I hope it does, but as I am in addition to securities also a banking supervisor I do feel competent to say that in banking regulation and supervision the Lamfalussy approach would be an improvement over the present situation. Particularly I see potential benefits from the level 2/level 3 structures in implementing and enforcing the new Basel II capital adequacy requirements, which as you know in Europe would not apply only to internationally active large banks but to all banks and also to all investment service firms. That is going to be a major regulatory and compliance headache. I have noticed with satisfaction that the Basel II regime and the fact that it introduces Operational Risk into the framework is the topic of a panel and workshops this afternoon. How does the new capital accord and in particular the operational risk aspect of it affect the securities industry in Europe is indeed a major topic for discussion. I hope your workshops can come up with some answers which you can share with the regulators.

In Adam Smith's opinion it was the invisible hand of the free market that maximises economic growth and welfare. Today we all believe in the free market, but we say it needs transparency and disclosure to function properly. My ability to sense the nuances of the English language is not the best, but I wonder how transparent and disclosed an invisible hand can be without becoming visible. That was the sort of philosophical thought that I had before falling asleep last night when I was thinking about our common objectives. To solve that riddle we need to see beyond semantics and work pragmatically for workable solutions even if it requires consultation after consultation.

Thank you very much for your attention.