Date: January 2007
Ref: 07-055

The regulatory regimes in the EU and in the US,
Athens, 17 January 2007
CESR Chairman Arthur Docters van Leeuwen
Delivered by Wim Moeliker

CHECK AGAINST DELIVERY

INTRODUCTION

Ladies and Gentlemen,

Before sharing some thoughts with you on the regulatory regimes in the EU and the US, let me first thank Alexis Pilavios, Chairman of the Hellenic Capital Market Commission for inviting me to this conference. The well chosen conference theme of 'competitiveness of markets' goes to the heart of our work in CESR. Although regulatory differences still exist across jurisdictions in the EU (and certainly across the Atlantic), I do believe we all have a common interest in deep, liquid and innovative financial markets. If even mayor Bloomberg of New York admits in public that the US financial markets could learn something from London, the EU must be doing something right here.

This morning, I will refrain – with some hesitation – from painting a general overview of all CESR-activities. I take into account here that Greece is already an active member of the EU for many years and CESR is also in existence for quite some years now. Instead, I will elaborate on three themes, currently being handled within CESR, which fit best within today's conference theme of the competitiveness of markets. These themes are: **the mapping of powers**, **3L3 cooperation** and finally, the **Transatlantic Dialogue between the EU and the US**.

THE MAPPING OF POWERS

After the completion of the FSAP at EU-level, CESR is shifting its focus from the so-called Level 2 to Level 3 work, or in other words, from a regulatory into a much more operational mode. In retrospect of our recent fifth anniversary, the political backing CESR received from the EU institutions in May of last year, enables us to push harder for the objective of greater supervisory convergence.

If you want to compare regimes across the Atlantic, it is crucial to know what our position is. As you may know, CESR's Review Panel is mandated to review the implementation by all CESR Members of EU legislation and CESR standards and guidelines into national rules. This Panel operates as our Peer Pressure Group and will play a more important role, given the shift in emphasis to Level 3. The recent integration of the Review Panel into our Charter, will permit a more thorough cross examination on the way in which members apply the new legal framework. The publication of the Protocol of the Review Panel will be decided at the next CESR meeting.

One of the key activities – in the context of supervisory convergence - currently conducted by the Review Panel is a **mapping exercise** among CESR members of supervisory powers for the Market Abuse Directive and the Prospectus Directive, as the first Directives created on the basis of the Lamfalussy approach. In case of the **Market Abuse Directive** it appears that in most of the cases almost all the authorities have the powers provided for in the directive and its implementing measures with some exceptions (for example, the publication and dissemination of statistics, the power to request the freezing and/or sequestering of assets, cooperation in investigations, disclosing measures and sanctions to the public) where a distinction can be drawn between those who have and those who do not have the relevant power. In most of the cases for the **Prospectus Directive** almost all the authorities have the relevant powers. In many cases, the powers are exercised in collaboration with the regulated market/stock exchange where the admission to trading is being sought. Although these observations are preliminary, I nevertheless consider this provisional outcome as promising. The exercise will be completed soon and may include recommendations which can assist as an indicator of where further work might be possible or beneficial to promote an integrated capital market. Once the work is completed, the findings will be reported to the FSC in spring of 2007 as part of CESR's regular update on supervisory convergence.

3L3 COOPERATION

Another aspect of a stronger EU position, is the cooperation between the three Level 3 committees (CESR, CEBS, CEIOPS) which is progressing well, with frequent contacts at all levels of the Committees. We have recently voiced our joint concerns on the Commission's proposal for a directive amending several sectoral directives regarding the procedures and criteria to assess cases of cross-border consolidation. Our concerns include: the time limits for assessing a case, the assessment criteria and the EU Commission's access to confidential, supervisory information. The proposal has now moved on to the co-decision stage between the EU institutions and the (relevant committee of the) European Parliament is taking our concerns very seriously.

The 3L3 committees also consider starting work in the area of Anti-Money Laundering issues, organised in a Task Force. This Task Force on AML issues will assist CEBS, CESR and CEIOPS in providing a supervisory contribution to the work to be developed in relation to the implementation of the Third Anti-Money Laundering Directive. The focus of our joint contribution will concentrate on the development of risk based approaches to customer due diligence (CDD) – Know Your Customer (KYC).

On the basis of the Joint Protocol of November 2005, a 3L3 work programme needs to be agreed and published each year. We published our 3L3 work programme last week. The objectives of our cooperation as set out in the Protocol, include: (1) sharing of information in order to ensure the development of compatible sector approaches (2) exchanging experiences which can facilitate supervisors' ability to cooperate (3) producing joint work or reports to relevant EU Institutions and Committees (4) reducing supervisory burdens and streamlining processes, such as our cross-sector project on reporting requirements and (5) ensuring the basic functioning of the three Committees develops along parallel lines. In a meeting of the 3L3 chairmen in Frankfurt in early November, we discussed how to structure our joint work programme and what items could and should be given top priority for 2007. These include among others: financial conglomerates, the follow-up of the ECOFIN conclusions (and Francq report recommendations) on supervisory convergence, IT data sharing, supervisory culture (for example: exchange of staff as a way to foster a common supervisory culture, taking into account the experience of supervisory approaches on other continents), better

regulation support, reports to EU institutions and the IIMG. You will understand that this promises to be a full agenda for this year.

Upon my personal request - and endorsed at the last 3L3 meeting – the cooperation by the three 3L3 committees will also devote specific attention to longer term issues, relevant for all areas of supervision, such as: level playing field (substitute products), the position of the consumer, the importance of a functional approach in supervision and last, but certainly not least, the administrative burden of supervision. This is in alignment with a future discussion in the FSC on long-term supervisory issues. At a recent FSC meeting, a mandate was discussed for a sub-group that will conduct an analysis with a focus on: (1) the ability of the current system to ensure prudential effectiveness on a cross border basis, (2) the challenges posed by the emergence of a few pan-European players in securities markets' infrastructure for trading, clearing and settlement and (3), the ability of the Lamfalussy framework to deliver supervisory efficiency. A progress report is expected by June 2007 and a final report by November 2007. With the agreed longer term forward looking approach of 3L3, I trust that the cooperation between CEBS, CEIOPS and CESR will be able to contribute to this analysis.

TRANSATLANTIC DIALOGUE

So far, I have focused on our activities within the European Union, but in the global competition of financial markets we live in, the question is: what about the rest of the world? The dialogue between the EU and the US, going on at various levels, is well known. The European Commission has a dialogue at the political level, CESR is having its dialogue at the supervisory level with both the CFTC and the SEC. Where are we in these dialogues and what have we achieved so far?

Before doing that, I take the freedom to reflect, as an interested outsider, on some recent developments within the US financial world which are quite relevant in a comparison of regimes between the EU and the US. I refer here to a statement by US Treasury Secretary Paulson in New York and the publication of the interim report of the committee on capital markets regulation, co-chaired by Glenn Hubbard and John Thornton, late last November. The common denominator in both statements is a concern about the competitiveness of US capital markets. Treasury Secretary Paulson underlined the need for the US capital markets "to take a global view, to have a regulatory structure which is agile and responsive to changes, to embed rules in sound principles, to take a risk-based approach to regulation, to

balance enforcement and to exert moral leadership". In my view, these are all cases in point, but from a European point of view, I feel a sort of déjà-vu.

The Hubbard/Thornton report continues in the same vein. This report recommends changes to improve the US regulatory system in the areas of shareholder rights, section 404 of Sarbanes Oxley, the regulatory process and (public and private) enforcement. Irrespective whether these recommendations will fly in US Congress, it is worthwhile taking a closer look at it and to consider where the EU is in these areas. The report states:

- Firstly, that further expanding **shareholder rights** will improve corporate governance and corporate efficiency. In the EU context, the area of shareholder rights is so far not within the remit of CESR, but certainly on the agenda of the European Commission;
- Secondly, to change the implementation of **Section 404 of Sarbanes Oxley.** This area is in fact about the balance between the protection of investors at reasonable costs for the institutions involved and the market at large. This issue could also be understood as a call for flexibility within a regulatory system; an issue which has been recognized in the financial sector of the EU with the introduction of the Lamfalussy approach in 2001;
- Thirdly, adjustment of the **regulatory process** should create a hospitable climate for both investors and companies seeking to raise capital in the US. In the EU, we have addressed this issue with the implementation of the Prospectus Directive. In general, when considering whether or not to introduce new legislation, I also have to mention here the efforts of ECONET, the CESR group of economic experts, chaired by my colleague Alexis Pilavios, to review different systems for the assessment of regulatory impact. This work is key for creating a balanced, effective and efficient regulatory structure;
- And fourthly, calls to review the ways of **public and private enforcement,** in particular the role of private litigation. The US legal system differs in many ways from the systems we have in the EU. Yes, CESR members are also 'licensed to kill' (i.e. empowered to revoke licenses), but we will only do so as a last resort. Additionally, I am glad to point out that CESR has recently established a mediation

process. It has not been tested yet, but it offers a quick out-of-court solution for differences of opinions between regulators in cross-border cases.

Back to the transatlantic dialogues with our CFTC and SEC-colleagues; the dialogue with the **CFTC** has recently resulted in an update of our online guides. These online guides - accessible through the CESR and the CFTC websites or the website of the relevant supervisor - are intended to provide practical information for conducting derivatives business in the US and the EU. The guides include country specific information regarding regulation and supervision in the US and in Europe and so far cover information provided by CESR members from: Finland, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Sweden and the UK. Profiles for other EU countries will continue to be added in the coming months. The general objective of this dialogue has been to promote the establishment of a transatlantic business environment that will ensure, to the best possible extent, that compatible business and regulatory initiatives can be developed and adopted. I trust that these online guides contribute to this objective.

The dialogue with the **SEC** proved to be more complex, but last August we managed to publish a work plan which will be implemented immediately. I have personally discussed with SEC Chairman Cox that we should only list those issues in the work plan which would produce tangible results in the not too distant future. Chairman Cox agreed with this starting point. Let me explain some of the components of this work plan.

The main focus of the work plan is the application by internationally active companies of US Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) in the European Union and the United States respectively. In practical terms, as part of its regular review of corporate filings, the staff of the SEC will review issuers' implementation of IFRS in the United States. Staff of CESR Members will also continue to review US GAAP implementation by US issuers in the European Union. In addition, the staff of CESR and the SEC will forge a closer dialogue on the modernisation of financial reporting, disclosure information technology and regulatory platforms for risk management. The staff of CESR-Fin, the operational group within CESR focused on financial reporting, and the staff of the SEC, will share information about areas of IFRS and US GAAP

that raise questions in terms of high-quality and consistent application. With this process in place, I am sure we will be able to promote:

- the development of high quality accounting standards;
- the high quality and consistent application of IFRS around the world;
- full consideration of international counterparts' positions regarding application and enforcement; and
- the avoidance of conflicting regulatory decisions on the application of IFRS and US GAAP.

CONCLUSION

Chairman, I will conclude. Thank you for having me here. I hope that I have used the allotted time properly, to give you at least a feel of what CESR is, where we are and what our main concerns are. I was not comprehensive, for that I recommend you read our yearly and half-yearly reports which can be read from Athens to any other place in Europe. I would personally prefer – had I been able to be more comprehensive – to dig deeper in the need to improve on deepening the analysis of developments in the markets and to create proper formats for costs & benefits and impact analysis. CESR has found a good check to lead the way here, in the person of Alexis Pilavios. I thank him and his predecessor Stavros Thomadakis for their constant and firm support of CESR as I have personally experienced. Thank you for your attention.
