

CESR



The Secretary
General

THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

RECEIVED
C.F.T.C.

06-2
45

2006 AUG 11 AM 6:36

COMMENT

RECORDS SECTION

C.F.T.C. OF THE SECRETARIAT

2006 AUG 10 AM 9:48

RECEIVED
C.F.T.C.

Ref.: CESR/06-430

Paris, 10th August 2006

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C 20581
Attn: Office of the Secretariat

Re: Boards of trade located outside the United States and the Requirements to become a Designated Contract Market or Derivatives Transaction Execution Facility

To whom it may concern,

CESR would like to take this opportunity to formally respond to the CFTC's release on what constitutes a foreign board of trade located outside the United States, following the hearing that took place on the 27th June, 2006 and the extended period for comment.

We have reviewed in detail the transcript of the hearing and the comments that you have received to date, and fully support the opinions directly expressed by some CESR members: both the oral comments that were made by the UK FSA during the hearing and the written comments made by BaFin.

In relation to the specific proposals that you have set out for comment, we strongly support and agree with the difficulties that have been very well articulated by those commenting on the proposals to review the "no action letters".

In an era of cross-border markets and the rapid change and diversification that exists in today's financial markets, CESR strongly believes that a flexible approach that relies on regulatory co-operation and information exchange between securities regulators is the answer to your concerns, as opposed to the development of a regulatory system that may result in the imposition of potentially duplicative regulatory supervision of those seeking access to US and EU markets, which could result in a negative impact on the interest of those that the CFTC is trying to address, namely investors.

As you know, CESR speaks with the benefit of a number of years of successful experience by several of its members with the process and the ongoing cooperation permitted by the "no action letters". The terminal placement no-action process coupled with specific bilateral cooperative Memorandum of Understanding between the CFTC and the relevant EU supervisor has proved to be an effective supervisory framework to allow cross Atlantic trading in derivatives contracts. No supervisory failure has been recorded and investors both in the US and the EU have benefited from a high degree of investor protection. In addition, the supervisory cooperation between supervisors under this framework has not been lacking in any way.



It is in this spirit that CESR has agreed with the CFTC that the development of enhanced co-operation between US and EU supervisors ought to be used more widely and in an ever more refined manner also in the trans-Atlantic cooperation, and has established a Joint Task Force on trans-Atlantic derivatives business last year. Quoting from the communiqué to its establishment, CESR and the CFTC have already set out to do this “believing such operational and cooperative dialogues must support increased reliance on each others regulatory systems.”

In relation to the issues at hand, we have already agreed to work together and look at what criteria should apply for electronic markets accessing the respective different markets with a view to possibly creating a common application for simplified access to the derivatives markets on the respective sides of the Atlantic¹.

In addition, to the extent that the CFTC may consider that further work needs to be done in order to renew or enhance the already very well functioning information sharing arrangements between many EU regulators and the CFTC that are already in place following the rigorous and detailed work that was performed in cooperation with non-US regulators before establishing the 30.10 exemptions, CESR would be very willing to incorporate this work into the existing CFTC/CESR work plan.

We look forward to the already well established dialogue that exists amongst our organisations in the future, and continuing to do the work that we have already agreed to do.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fabrice Demarigny'.

Fabrice Demarigny

c.c Chairman Reuben Jeffery III
Commissioner Walter L. Lukken
Jacqueline Mesa

¹ See the common work programme where we have agreed to: “reviewing the information required by CESR members and CFTC to be submitted by markets and intermediaries to support application to commence and operate cross border business and explore practicable ways to simplify the same by identifying commonalities and differences”.