

Comments Re: CFTC/CESR Communiqué Work Program

-----Original Message-----

From: Mathias, John (London) [mailto:john_mathias@ml.com]

Sent: Wednesday, April 20, 2005 5:38 AM

To: secretary

Cc: Coen, Mitchell (London); Dye, Jon (GMI); Guilfoile, Maureen (OGC); Kapustiak, Wendell (TCS, Ff&o Chcgo Ops); Fullick, John (MLCE)

Subject: CESR/CFTC Work Programme

Dear Sir or Madam,

I am responding on behalf of Merrill Lynch International to the request for comment on the joint CESR-CFTC communiqué dated 31st. March 2005 relating to the proposed common regulatory work programme.

I feel that the scope of the communiqué reflects well the issues discussed at the two day round table in Paris in April 2005. Nevertheless, the project, as set out in the communiqué, does not explicitly include consultation with industry practitioners, let alone set out a preliminary frequency for such consultation. One of the strengths of the recent round table was that it unified regulators and practitioners. Without explicit provision for discussion with industry practitioners, the proposed project might result in decisions formulated first by the joint Task Force, and only subsequently presented to industry practitioners such as the firm which I represent.

Yours faithfully,

John Mathias

Director of Financial Futures & Options

Merrill Lynch International

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Great Britain.

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Ms. Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

May 12, 2005

**Response to CESR/ 05-245;
CESR-CFTC Communiqué requesting comment on a common work
programme to facilitate trans-Atlantic derivatives business**

Dear Ms. Webb:

U.S. Futures Exchange, L.L.C. (USFE) and Eurex (together, "the Exchanges"), appreciate the opportunity to comment on the Committee of European Securities Regulators (CESR)--Commodity Futures Trading Commission (CFTC) Communiqué requesting comment on a common work programme to facilitate trans-Atlantic derivatives business (the "Communiqué").

USFE is an all-electronic futures and options exchange which on February 4, 2004, was designated by the CFTC as a U.S. contract market. USFE is 80% owned by a U.S. subsidiary of Eurex Frankfurt, AG, and 20% by a Delaware limited partnership. USFE is recognized to do business in fourteen jurisdictions.

Eurex, an all-electronic market, is the world's largest futures and options exchange. Eurex was created in 1998 with the merger of DTB (Deutsche Terminbörse) and SOFFEX (Swiss Options and Financial Futures Exchange). Eurex is a public company, jointly operated by Deutsche Börse AG and SWX Swiss Exchange. Eurex is approved to conduct business in twenty-eight jurisdictions.

All USFE transactions are cleared by The Clearing Corporation, an independent clearing house which is registered by the CFTC as a Derivatives Clearing Organization. Transactions executed on Eurex are cleared by Eurex Clearing, AG. Currently, as the result of a link agreement between CCorp and Eurex Clearing, transactions in futures contracts executed on Eurex can be carried by CCorp Clearing participants. USFE has asked the CFTC's permission to use the clearing link to enable transactions executed on USFE to be carried by Eurex Clearing members. Upon the CFTC granting its permission to use the clearing link, USFE will list for trading, and treat as fungible, a number of Euro-denominated contracts that are currently listed for trading on Eurex. Accordingly, the Exchanges have a profound interest in the issues on which CESR and the CFTC are seeking comment.

▪ **General comments**

The Exchanges applaud the CESR and the CFTC for their foresight in raising for discussion and consideration issues related to trans-Atlantic access, and commend this initiative to facilitate trans-Atlantic derivatives business.

Clearly, the derivatives business in Europe and the United States is more inter-dependent than ever before. As described generally in the Communiqué, the Exchanges include among their participants, both “local and distant customers and intermediaries.” The CESR-CFTC plan to enhance transparency of the relevant regulatory requirements regarding intermediated and direct access to foreign markets will benefit our respective members greatly.

Moreover, the plan’s focus on simplifying access or recognition procedures for markets and intermediaries is vitally important to the derivatives industry. The enhanced competition occasioned by Eurex’s recent initiative to launch a U.S. designated contract market has resulted in dramatically lower transaction costs and substantial growth in overall trading activity. Despite the predictable benefits to market users which come from enhanced competition, entering a new market can be a difficult, if not a daunting undertaking. Greater transparency in, and any easing of, the application process to commence and operate cross-border business would encourage greater competition in these markets. In this regard, the Communiqué’s inclusion of “substituted compliance, reliance or recognition-like procedures,” for consideration by the Task Force is likely to be especially helpful.

▪ **Some considerations**

With respect to the request for comment on the issues set forth in the work programme, the Exchanges recommend the following for consideration:

1. The work programme make clear that its focus is not limited to regulatory requirements that apply uniquely to derivatives trading or derivatives businesses and that it include, as relevant, requirements which may apply more generally to financial services companies or markets. Thus, for example, it would be understood that “account opening procedures” would include a comparison of applicable anti-money laundering (AML) requirements, whether or not these requirements apply to derivatives firms as a consequence of an authority’s oversight generally of financial services firms or as a direct requirement applicable to derivatives firms.
2. The work programme make clear that substituted compliance or reliance may also be a practical arrangement applicable to on-going requirements for recognized persons or markets, specifically as a means of addressing duplicative or inconsistent requirements. For example, one way of avoiding duplicative or inconsistent record-keeping requirements would be for the authorities to agree on a system whereby an entity which operates in multiple jurisdictions could, based on concepts of substituted compliance, adhere to a single standard.
3. The work programme sets forth a very ambitious timetable. It might be conducive to accomplishment of these goals to also set forth intermediate targets and to make clear that the authorities will take steps to make final the intermediate goals as they are reached.

▪ **Conclusion**

The CESR-CFTC Communiqué is an important and valuable step in reducing regulatory duplication, lowering regulatory barriers and enhancing the transparency of the requirements of the national regulatory authorities. This consultative process between the CESR and the CFTC holds a great deal of promise in facilitating trans-Atlantic derivatives business to the benefit of customers, market users and the markets themselves. Insofar as this important CESR-CFTC initiative necessarily will also affect the European national regulatory authorities, we hope that the Task Force will consult, and closely coordinate its work, with those regulatory authorities. Through such consultation and cooperation CESR and the CFTC will ensure that the Task Force considers the views and interests of all European national regulatory authorities in its deliberations regarding these important issues. We hope that you find our comments useful in implementing the work programme, and the Exchanges look forward to continue working with CESR and the CFTC on successfully reaching the goals set forth in the Communiqué.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Satish Nandapurkar', written in a cursive style.

Satish Nandapurkar
CEO

Cc: Acting Chairman Sharon Brown-Hruska
Commissioner Walter L. Lukken
Commissioner Fred Hatfield
Commissioner Michael V. Dunn

Comments of MEFF on a common CESR-CFTC work programme to facilitate trans-Atlantic derivatives business

MEFF welcomes the initiative of the CESR and the CFTC to facilitate trans-Atlantic derivatives business and is ready to cooperate with the Task Force in the way the Task Force finds appropriate.

If anything, we have to regret that the United States S.E.C. is not involved in the initiative at this point in time. From our perspective, equity options are also derivatives and should not be left out of the scope of the initiative. For the same reason, we hope that the dual supervision of single-stock futures and narrow-based index products in the U.S. will not be a discriminating factor in respect of this work programme.

With respect to the issues affecting the conduct of trans-Atlantic business, we certainly agree with the goal to enhance transparency and clarity of regulatory requirements, but being this an undisputable objective, we think that the end goal should be to find a shortcut so that registered companies on one side of the Atlantic easily access approved products and exchanges on the other side.

From the point of view of an investor, a U.S. investor should be able to use any derivative product listed on E.U. Exchanges with only the restrictions and disclosures applicable to comparable activity in the U.S.; and of course viceversa.

The current time it takes to get approval for a firm to operate in a trans-Atlantic market is too long. Any effort to shorten that time is welcome.

The creation of a template of core information should focus on identifying differences in the areas of:

- legislation applicable to investment services companies.
- market practices.
- protection of customer funds.
- recognition of members firms, products, exchanges and clearing houses.

Identifying differences should help investors and investment services companies to comply with requirements different from those in their home countries.



May 13, 2005

Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

CFTC/CESR work program

Gentlemen:

The Board of Trade of the City of New York, Inc. ("NYBOT") is pleased to submit this letter with respect to the proposed work program (the "Work Program") outlined in the CFTC-CESR Communique on a Common Work Program to Facilitate Trans-Atlantic Derivatives Business, issued on March 31, 2005. NYBOT is a CFTC designated contract market that offers futures and options trading in both agricultural and financial products. Transactions effected on NYBOT are cleared by its subsidiary, the New York Clearing Corporation ("NYCC"), which acts as a central counterparty.

The Communique references, as one of the broad themes elicited from the discussions held during the Round – Table conducted on February 10-11, 2005, that

"markets, intermediaries and market users support elimination of inappropriate or unnecessary barriers that could unduly constrain the structure of their global operations or limit their transactional preferences (*i.e.* which markets, products or firms) in the US and the EU."

We believe that one such barrier which should be addressed by the Work Program is the ability of EU firms to become direct members of US clearing corporations.

As a case in point, NYBOT's coffee and sugar futures contracts are not only traded internationally, but are delivered outside of the US. In the case of sugar (which is loaded on boats) delivery is made at seller's election from various international ports, whereas coffee is delivered by warehouse receipts issued by warehouses located in several European cities. Deliveries can only be made through firms that are members of NYCC, referred to as "clearing members". Firms located in EU countries who actively

trade NYBOT products for their own accounts have expressed a desire to become such clearing members of NYCC in order to avoid the cost and inconvenience of establishing an account with a US entity that is a clearing member. However, NYCC has not been able to grant these requests because of the risk that, if the firm were to become insolvent, an administrator or liquidator exercising powers under the jurisdiction in which the firm was organized might be able to disregard the terms of the NYCC default rules and procedures and thereby destabilize the financial security of the clearing house. Such a threat clearly hinders the transacting of transatlantic business and needlessly forces EU firms to either establish relationships with US intermediaries or set up US operations themselves. Thus, while NYCC might be eligible for recognition by EU authorities as a clearing house, it cannot function as such vis-à-vis EU firms that desire to transact directly with it.

There are no obvious policy reasons why a clearinghouse organized overseas, which is authorized to provide services in an EU country, should not be afforded the same protections from insolvency laws as are clearing houses located in the home country. The most efficient way to manifest this protection, —i.e., settlement finality directive or legislation, may be open to discussion but the approach agreed upon should be consistently applied.

If we can be of any assistance in your consideration of this issue please contact the undersigned at (212) 748-4083 or at ahirschfeld@nybot.com.

Very Truly Yours,

Audrey R. Hirschfeld
Senior Vice President & General Counsel
New York Board of Trade

Craig S. Donohue
Chief Executive Officer

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May 16, 2005

VIA ELECTRONIC DELIVERY

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed CESR/CFTC Work Programme

Dear Ms. Webb:

The Chicago Mercantile Exchange Inc. ("CME" or "Exchange") welcomes the opportunity to comment upon the Committee of European Securities Regulators' ("CESR") and the Commodity Futures Trading Commission's (the "Commission") proposed work program to facilitate trans-Atlantic derivatives business. (the "Rule"). CME is currently the largest futures exchange in the United States and the largest derivatives clearing organization in the world. As an international marketplace, CME brings together buyers and sellers on its CME® Globex® electronic trading platform and trading floors. CME offers futures and options on futures primarily in four product areas: interest rates, stock indexes, foreign exchange and commodities. As a pioneer in the globalization of the futures markets, CME has helped to expand the customer base for futures products beyond traditional boundaries. CME Globex, for example, is available to users around the world for more than 23 hours a day and five days a week. To satisfy the increasing demands of the international marketplace, CME has established and operates Globex trading hubs in seven foreign jurisdictions: Amsterdam, Dublin, Frankfurt, Gibraltar, London, Milan and Paris. CME believes that its significant global expertise and experience will provide the CESR and the CFTC with a unique and valuable perspective on the matters discussed herein.

According to the Communiqué, the CESR and the CFTC desire to constitute a task force, drawn from the CESR and CFTC (the "Task Force"), to examine three areas. First, the Task Force intends to review the availability and clarity of the regulatory information that permits market professionals and end-users located outside of a jurisdiction to know when registration is required, the types of products that may be traded, the rules that govern trading, and whom to contact for additional information and guidance.

CME supports the effort to enhance the transparency of a jurisdiction's regulatory requirements. When market participants have easier access and a better understanding of a jurisdiction's requirements, we believe that the pace of access will be increased and market access costs will be reduced. Moreover, in seeking to promote transparency, we believe that the Task Force should examine asymmetrical disclosure requirements. For example, in the

United States, an individual can obtain the identity and disciplinary history of any registered entity (through the National Futures Association). In the European Union, however, such a mechanism does not exist. Ensuring that transparency is both adequate to protect market integrity and consistent across jurisdictions will benefit customers, intermediaries and markets alike.

Second, the Task Force proposes to review, with an eye to simplifying, the information that CESR members and the CFTC require markets and intermediaries to submit to the agencies in order to commence and operate cross border business.

CME supports the Task Force's desire to explore ways to simplify the process for obtaining the authority to operate a cross-border business. In simplifying any such process, however, the CESR and the CFTC should closely guard market integrity and seek best-practice solutions that discourage regulatory arbitrage. While simplification is a laudable and important goal, it should not be used to justify reducing customer protection or market integrity.

Finally, the Task Force proposes to take steps to ensure that CESR and CFTC are aware of matters that may have substantial cross-border impact, and that the agencies consult with each other about such matters.

CME agrees that the CESR and the CFTC should coordinate efforts with respect to significant cross-border issues. We believe, however, that the industry should have the opportunity to participate in all such matters, as well as the major initiatives of the Task Force. Agency consultation without adequate input from markets and intermediaries is likely to result in non-optimal solutions.

Although not specifically discussed in the Communiqué, but in response to the CESR's and the CFTC's request for additional views on the proposed plans of the Task Force, CME believes that the Task Force should more broadly review some important differences between the regulatory regimes of the U.S. and the EU. For example, a non-U.S. market seeking to register and operate as a designated or exempt contract market in the U.S. is only required to obtain regulatory approval from a single governmental agency, the CFTC. After receiving regulatory approval from the CFTC to operate in the U.S., the non-U.S. market is then able to transact business throughout the U.S. in all fifty states. However, the process of registering and operating a market in the EU member states requires multiple approvals from multiple regulatory agencies. Although the EU's Intermarket Services Directive ("ISD") seeks to allow an entity to register in one EU member state and then "pass-port" throughout the other EU member states, the entity is still required to register in each EU member state that it seeks to conduct business, as well as maintain compliance with the various member states' prudential standards, which may relate to issues of fitness, authorization, capital requirements and the protection of client assets. Moreover, because the ISD is merely a directive—and not the law of the EU—the member states have broad discretion with respect to the implementation and enforcement of the ISD's provisions. Registering and operating a non-EU entity can thus be time-consuming and costly.

Moreover, in contrast to the U.S., the EU's regulatory regime does not impose certain information collection requirements, such as large trader reporting, person-specific user IDs,

Ms. Jean Webb
May 16, 2005
Page 3

and underlying account numbers. In the U.S., these data elements help exchanges to detect various types of violative conduct, including front-running, trading ahead and wash trades. To the extent that exchanges in both the U.S. and the EU have access to such data elements, we believe that such access would promote the detection of inter-exchange cross-border misconduct. We thus believe that ascertaining the comparability of such requirements should be a focus of the Task Force.

Conclusion

CME appreciates the opportunity to comment upon the proposal. If you have any questions or comments, please do not hesitate to contact me, Matthew F. Kluchenek, Director and Associate General Counsel, at (312) 338-2861, or Eric Wolff, Managing Director, Market Regulation, at (312) 930-3255.

Sincerely,



Craig S. Donohue

Bernard W. Dan
President and
Chief Executive Officer

May 17, 2005

Jean A. Webb
Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington DC 20581

Dear Ms. Webb:

The Board of Trade of the City of Chicago, Inc. ("CBOT") welcomes the opportunity to comment on a proposed work program to facilitate the conduct and supervision of trans-Atlantic derivatives business.

We applaud the initiative shown by the CFTC and CESR and share your view that much can be done to minimize the regulatory costs that discourage trans-Atlantic commerce without compromising the protections that your regulatory regimes provide.

As its electronic trading system has grown, the CBOT has secured the regulatory approvals necessary to allow its electronic trading system to be accessed from a number of jurisdictions, including many of those included in CESR. In the course of this process, we have gained experience as a consumer, if you will, of recognition services. We are happy to share our observations with you and hope that you find them helpful.

I. Enhanced Transparency and Regulatory Requirements

We encourage the Task Force to promote the transparency of applicable laws, rules and regulations that apply to financial market activities conducted across jurisdictions represented on the Task Force. This review should include not just the relatively simple matter of identifying the particular agencies with responsibility for licensing and regulating markets, clearinghouses, intermediaries and other persons, but should also extend to the identification and analysis of customer protection standards and information handling. In addition to market-specific laws and regulations, transparency of matters such as variation and applicability of bankruptcy laws should be considered as well since they are integral components of effective customer protection regimes. .

As markets become truly transnational, remote clearing memberships and cross-border clearing links could give rise to latent risks that need to be identified and evaluated in advance. We respect the right of each jurisdiction to make its own judgments about the

proper means of ensuring market integrity and customer protection, but, the establishment of the Task Force indicates that the CFTC and CESR already recognize that markets operate more efficiently where regulatory standards are uniform. To the extent that such standardization is not feasible, the Task Force would perform a substantial service by shining light on the differences, giving market participants a complete picture of the regulatory landscape, and a way to assess the attendant risks accurately. Disclosures to customers about variances in how their funds and activities are handled and protected will likely be an important part of creating meaningful transparency about the varying systems in place across U.S. and CESR jurisdictions.

II. Simplified Access or Recognition Procedures

The CBOT has dedicated considerable resources toward the completion of various requests and applications in a number of jurisdictions. We have been frustrated by forms that require the same information to be presented in different formats, and have watched our foreign legal fees increase without any reasonable prospect of generating equivalent revenue from those jurisdictions. We have two observations.

First, we commend the members of CESR for handling our requests for recognition promptly and professionally. We have had experiences elsewhere that have increased our appreciation in this regard.

Second, we endorse the view that a standardized application for recognition, which requests the same information in the same format, is a laudable goal. We believe, however, that it is a highly ambitious goal, and one that may require the deployment of significant resources to achieve.

We would be pleased to be proven wrong on this point, but we would also be pleased if you were to consider a less ambitious goal that would have the prospect of benefiting the current generation of market participants: the standardization of reporting requirements for recognized exchanges.

Each jurisdiction has its own rules regarding electronic access to foreign derivatives markets. In some European nations, no regulatory approval is required at all. In others, no regulatory approval is required for institutions to have electronic access. In a third category, an exemption from the exchange registration requirement is required. In another, a license is required. In still others, formal recognition must be secured.

When some form of formal action is required, the regulator typically imposes reporting requirements. Generally speaking, these requirements call for similar kinds of information, but in formats that require the reports to be customized for each regulator. In virtually every instance (e.g., rule changes, volume information, significant developments), the information is or could easily be made available on exchange websites.

We ask the members of CESR to permit a foreign exchange to satisfy its reporting requirements by posting the required information on its web site, or by making it available via a third party site, such as www.exchange-handbook.co.uk.

III. Targeted consultation on cross-border issues

The three issues raised in the communiqué for targeted consultation are: acceptable market practice under U.S. and EU laws; responsibility of markets with respect to proprietary trading; and protection of customer funds. The CBOT agrees that these are important issues that deserve attention. It is clear that there are differences in systems among the participating countries that should be made clear to market participants and customers alike.

Conclusion

As we have stated before, decisions being made now with regard to policies and protocols for cross-border business are setting critically important and influential precedents that will impact the global derivatives industry for years to come. Thank you for the opportunity to comment. We are available to assist the Task Force in its efforts and look forward to the successful completion of its work.

Sincerely,

A handwritten signature in black ink that reads "Bernard W. Dan". The signature is written in a cursive style with a large, stylized "D" at the end.

Bernard W. Dan

Une version française de ce document est disponible en page 3.

CESR REQUEST FOR COMMENTS

(Ref: CESR/05-245)

CESR-CFTC common work programme to facilitate trans-Atlantic derivatives business

Answer by the French Association of Investment Firms (AFEI)

1. The French Association of Investment Firms (AFEI) comprises some 130 investment service providers, most of them investment firms, as well as credit institutions authorised to provide investment services. The majority of our members operate in the derivatives markets, both in Europe and in the USA. AFEI is therefore attentive to developments in these markets and, in particular, to plans for the expansion of European markets in the USA.

2. **AFEI welcomes the joint CESR-CFTC initiative** to facilitate trans-Atlantic business in derivatives. These fast-growing markets are, by nature, global; and clients are increasingly demanding open access to all of them. **Reducing barriers** to trans-Atlantic business will therefore respond to the growing expectations of market participants.

3. The work programme, based on (1) enhancing the transparency and clarity of regulatory requirements, (2) simplifying access and recognition procedures, and (3) solving specific cross-border issues, is an ambitious one. And while AFEI applauds that ambition, we feel that **not enough detail has been provided about the execution of the programme and, in particular, the expected deliverables**. The joint programme undertaken by the CFTC and CESR should seek **to quickly achieve substantive progress in the way that market participants carry on their trans-Atlantic business**, with particular emphasis on mutual recognition procedures, harmonised regulatory requirements, and the elimination of overlaps.

4. Furthermore, insofar as the main hindrances to trans-Atlantic activity were identified several years ago, AFEI is disappointed that the **three-year timetable** planned by CESR-CFTC is so lengthy. The proposed time horizon must not impede significant progress in reducing barriers to trans-Atlantic derivatives business.

5. To expedite trans-Atlantic dialogue on derivatives markets, AFEI suggests making a **distinction between retail and institutional clients**, since the requisite levels of protection are not necessarily the same in both cases. Accordingly, it should be possible to make faster progress in opening up the institutional market, which requires fewer regulatory safeguards.

6. AFEI also wants the CESR-CFTC Task Force to address differences between European and US practices and supervisory procedures in the field of **clearing**.

7. AFEI will pay close attention to the initial work of the CESR-CFTC Task Force. We urge the Task Force to ensure a high level of transparency in its operations and to consult proactively with market participants. We wish to know whether the membership of the Advisory Committees has been decided upon and we propose that a representative of French investment firms be included on one or more of those committees.

☉

CESR REQUEST FOR COMMENT

(Ref: CESR/05-245)

CESR-CFTC common work programme to facilitate trans-Atlantic derivatives business**Observations de l'AFEI**

1. L'Association Française des Entreprises d'Investissement représente les prestataires de services d'investissement actifs en France, soit plus de 130 entreprises d'investissement et établissements de crédit agréés pour fournir des services d'investissement. La plupart des membres de l'AFEI sont actifs sur les marchés de dérivés, à la fois en Europe et aux Etats-Unis et l'AFEI suit donc attentivement les évolutions des marchés, et, notamment, les projets de développement aux Etats-Unis des marchés européens.

2. **L'AFEI accueille très favorable l'initiative conjointe de CESR et de la CFTC** visant à faciliter les activités trans-atlantiques sur les produits dérivés. Ce sont des marchés à croissance forte, par nature globaux, et pour lesquels les clients exigent de plus en plus d'avoir accès de manière indifférenciée à l'ensemble des marchés. **La réduction des barrières** aux activités trans-atlantiques correspond donc à des attentes fortes des participants de marché.

3. Le programme de travail, articulé autour de (1) le renforcement de la transparence et de la clarté des obligations réglementaires, (2) la simplification des accès et des procédures de reconnaissance et (3) la résolution de problématiques transfrontières spécifiques, est ambitieux. L'AFEI souscrit à cette ambition mais estime que **les détails de réalisation et, en particulier, les deliverables attendus, ne sont pas assez explicites**. L'exercice commun lancé par la CFTC et CESR doit être appréhendé de manière à **améliorer significativement et rapidement les conditions d'exercice** des activités trans-atlantiques des participants de marché, notamment via les reconnaissances mutuelles, l'harmonisation des obligations réglementaires, et la suppression des duplications.

4. En outre, alors que les principales difficultés rencontrées sont identifiées depuis plusieurs années, l'AFEI regrette que le **calendrier de travail** de CESR et de la CFTC, prévu sur une période de trois ans, soit très long. L'horizon proposé par la CFTC et CESR ne doit ainsi pas empêcher des progrès significatifs dans la réduction des obstacles aux activités transatlantiques sur produits dérivés.

5. Pour accélérer les progrès dans le dialogue transatlantique pour les marchés de produits dérivés, l'AFEI suggère une **distinction entre les clients retail et institutionnels**, puisque les niveaux de protection ne sont pas nécessairement les mêmes dans les deux cas. L'ouverture du marché institutionnel, qui nécessite un degré de protection moins important de la part des régulateurs, pourrait donc faire l'objet d'avancées plus rapides.

6. Par ailleurs, l'AFEI souhaite que la Task Force CESR-CFTC inclut dans ses analyses les différences de pratiques et de supervision entre l'Europe et les Etats-Unis pour les fonctions de **clearing**.

7. L'AFEI suivra avec attention les résultats des premiers travaux conduits par la Task Force commune CESR-CFTC. Elle engage la Task Force à assurer une grande transparence dans son mode de fonctionnement et à consulter activement les participants de marché. L'AFEI souhaite savoir si la composition des Comités Consultatifs a été arrêtée et propose d'inclure un représentant des entreprises d'investissement françaises.



Email Fabrice Demarigny / CESR 190405

From Anthony Belchambers, CEO, FOA

CESR/CFTC Communiqué (CESR/05-245): 31st March 2005

Further to your request for input regarding the forward work programme set out in the above-mentioned communiqué, I have set out below a few brief observations. In general terms, however, we strongly welcome this initiative and are very supportive of the objectives of introducing greater clarity and simplification of US/EU regulatory requirements and recognition procedures and the parallel programme of work regarding targeted cross-border issues.

- In the third indent on page one, the FOA is not entirely convinced that the ability to ascertain a jurisdiction's regulatory and market requirements is critical to the choice of "efficient" risk management tools. The FOA would argue that while it may go to the need to better understand the regulatory risk and the rights of access to such "tools", the question of their "efficiency" is more a matter of exercising informed choices and in being able to access appropriate market mechanisms and products rather than just the requirements that attach to them.
- In the fourth indent on page one, we would hope that the theme of being able to make more informed choices would be coupled with the need to ensure that market users are able to make "wider" choices and that ready access to regulatory and market information would enable them not only to "better protect their interests", but, bearing in mind the critical risk management role of derivatives, they would be able to effectively manage their risks rather better.
- In the fifth indent on page one, the FOA would wholly support this objective, but is disappointed that the benefits of greater operational efficiency, and the need to avoid the imposition of unnecessary trading costs (for both intermediaries and market users) are not perceived as objectives of equivalent importance alongside those of wider choice as well as improvements in the structure of firms' global operations.
- In Part III (Targeted consultation on cross-border issues), the FOA, perhaps not surprisingly, is very supportive of the proposal to enhance input from cross-border market participants. In this context, both CESR and the CFTC are familiar with the Transatlantic industry initiative to provide an industry "wish list" prioritising areas for better regulatory coherence and simplification. Actually, we would hope that "wish list" would be eligible to be considered for the purposes of incorporation within the forward work programme envisaged by CESR and the CFTC provided subject, of course, to their relevance to derivatives and the issue of practical deliverability.

As an aside, we believe that CESR and the CFTC should give serious consideration to setting up industry committees on each side of the Atlantic for the purpose of providing consultative bodies (but recognising that the final arbiters will always be CESR/CFTC in determining priority areas). In our view, this would be a key part of, to use the words in the Communiqué, "enhancing" industry input. Consideration might also be given to including within those groups representatives from the institutional and corporate "buy side" to provide counterparty/professional customer input.

The Communiqué makes reference to the need to suggest "additional broad areas of inquiry or specific examples of the types of inquiries that should be made as part of

the work programme". It is anticipated that this project and the parallel consultation with member firms should provide precisely this kind of information by the end of May/early June.

I hope these few comments are of interest.

Regards
Anthony

Anthony Belchambers
Chief Executive
Futures and Options Association

P.S. As an aside, we have tried to identify the relevant paragraphs from the Communique as requested, but it might be helpful if the indents could be notated for this purpose in future.

X-pand into the Future



Mr. Fabrice Demarigny
Secretary General CESR
11-13, Avenue Friedland
75008 Paris
France

May 12, 2005

**Response to CESR/ 05-245;
CESR-CFTC Communiqué requesting comment on a common work
programme to facilitate trans-Atlantic derivatives business**

Dear Mr. Demarigny,

Eurex and U.S. Futures Exchange, L.L.C. (USFE) (together, "the Exchanges"), appreciate the opportunity to comment on the Committee of European Securities Regulators (CESR)--Commodity Futures Trading Commission (CFTC) Communiqué requesting comment on a common work programme to facilitate trans-Atlantic derivatives business (the "Communiqué").

Eurex, an all-electronic market, is the world's largest futures and options exchange. Eurex was created in 1998 with the merger of DTB (Deutsche Terminbörse) and SOFFEX (Swiss Options and Financial Futures Exchange). Eurex is a public company, jointly operated by Deutsche Börse AG and SWX Swiss Exchange. Eurex is approved to conduct business in twenty-eight jurisdictions.

USFE is an all-electronic futures and options exchange which on February 4, 2003, was designated by the CFTC as a U.S. contract market. USFE is 80% owned by a U.S. subsidiary of Eurex Frankfurt, AG, and 20% by a Delaware limited partnership. USFE is recognized to do business in fourteen jurisdictions.

All USFE transactions are cleared by The Clearing Corporation, an independent clearing house which is registered by the CFTC as a Derivatives Clearing Organization. Transactions executed on Eurex are cleared by Eurex Clearing, AG. Currently, as the result of a link agreement between CCorp and Eurex Clearing, transactions in futures contracts executed on Eurex can be carried by CCorp Clearing participants. USFE has asked the CFTC's permission to use the clearing link to enable transactions executed on USFE to be carried by Eurex Clearing members. Upon the CFTC granting its permission to use the clearing link, USFE will list for trading, and treat as fungible, a number of Euro-denominated contracts that are currently listed for trading on Eurex. Accordingly, the Exchanges have a profound interest in the issues on which CESR and the CFTC are seeking comment.



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▪ **General comments**

The Exchanges applaud the CESR and the CFTC for their foresight in raising for discussion and consideration issues related to trans-Atlantic access, and commend this initiative to facilitate trans-Atlantic derivatives business.

Clearly, the derivatives business in Europe and the United States is more inter-dependent than ever before. As described generally in the Communiqué, the Exchanges include among their participants, both “local and distant customers and intermediaries.” The CESR-CFTC plan to enhance transparency of the relevant regulatory requirements regarding intermediated and direct access to foreign markets will benefit our respective members greatly.

Moreover, the plan’s focus on simplifying access or recognition procedures for markets and intermediaries is vitally important to the derivatives industry. The enhanced competition occasioned by Eurex’s recent initiative to launch a U.S. designated contract market has resulted in dramatically lower transaction costs and substantial growth in overall trading activity. Despite the predictable benefits to market users which come from enhanced competition, entering a new market can be a difficult, if not a daunting undertaking. Greater transparency in, and any easing of, the application process to commence and operate cross-border business would encourage greater competition in these markets. In this regard, the Communiqué’s inclusion of “substituted compliance, reliance or recognition-like procedures,” for consideration by the Task Force is likely to be especially helpful.

▪ **Some considerations**

With respect to the request for comment on the issues set forth in the work programme, the Exchanges recommend the following for consideration:

1. The work programme make clear that its focus is not limited to regulatory requirements that apply uniquely to derivatives trading or derivatives businesses and that it include, as relevant, requirements which may apply more generally to financial services companies or markets. Thus, for example, it would be understood that “account opening procedures” would include a comparison of applicable anti-money laundering (AML) requirements, whether or not these requirements apply to derivatives firms as a consequence of an authority’s oversight generally of financial services firms or as a direct requirement applicable to derivatives firms.
2. The work programme make clear that substituted compliance or reliance may also be a practical arrangement applicable to on-going requirements for recognized persons or markets, specifically as a means of addressing duplicative or inconsistent requirements. For example, one way of avoiding duplicative or inconsistent record-keeping requirements would be for the authorities to agree on a system whereby an entity which operates in multiple jurisdictions could, based on concepts of substituted compliance, adhere to a single standard.
3. The work programme sets forth a very ambitious timetable. It might be conducive to accomplishment of these goals to also set forth intermediate targets and to make clear that the authorities will take steps to make final the intermediate goals as they are reached.

▪ **Conclusion**

The CESR-CFTC Communiqué is an important and valuable step in reducing regulatory duplication, lowering regulatory barriers and enhancing the transparency of the requirements of the national regulatory authorities. This consultative process between the CESR and the CFTC holds a great deal of promise in facilitating trans-Atlantic derivatives business to the benefit of customers, market users and the markets themselves. Insofar as this important CESR-CFTC initiative necessarily will also affect the European national regulatory authorities, we hope that the Task Force will consult, and closely coordinate its work, with those regulatory authorities. Through such consultation and cooperation CESR and the CFTC will ensure that the Task Force considers the views and interests of all European national regulatory authorities in its deliberations regarding these important issues. We hope that you find our comments useful in implementing the work programme, and the Exchanges look forward to continue working with CESR and the CFTC on successfully reaching the goals set forth in the Communiqué.

Yours faithfully,

Signed

Daniel Gisler
Member of the Executive Board

Signed

Peter Reitz
Member of the Executive Board



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Lie JUNIUS

18/05/05

**CESR-CFTC Communiqué requesting comment on a common work programme to
facilitate trans-Atlantic derivatives business
Comments to Consultation Paper**

ABN AMRO welcomes the opportunity to provide comments to CESR-CFTC Communiqué requesting comment on a common work programme to facilitate trans-Atlantic derivatives business.

As a financial institution with derivatives operations in Europe and in the United States, we strongly support the elimination of unnecessary barriers constraining the flexibility of our global derivatives operations and limit the benefits for the market users in the EU and in the US.

As well as Market authorities, we recognise the economic benefits of creating a regulatory environment that fosters trans-Atlantic exchange-traded derivatives business. We also fully join the demand by intermediaries and market users for open and efficient access to such derivatives trans-Atlantic markets. We also fully agree that the improvement of the regulatory trans-Atlantic derivatives environment should take place in the context of maintaining appropriate customer and market protections.

Therefore, we decided to share with CESR the following practical issues explored together with our experts on which, we think the discussion between the EU and the US authorities should focus in order to foster and to improve the trans-Atlantic derivatives business.

I. Preliminary comment: execution of the program within a three-year timetable

We noted that the Task Force drawn from CESR and the CFTC will refine and develop how best to execute the work programme in accordance with a three-year timetable, taking into account the existing legislative framework.

In our point of view, a three-year timetable is still a too long period. Given the characteristics of the derivatives' business on the both sides of the Atlantic, a one-year period is likely to be sufficient to appropriately implement the work programme. Our assessment is based on the fact that derivatives' world is a community with a limited number of market participants. The number of persons within banks, brokerage houses and other financial institutions dealing with derivatives is very limited. Therefore, we think that it is reachable for all interested parties to come to an agreement and to put it into operation faster than within a three- years timetable.

II. Suggested areas of inquiry and proposals

1. Option and Future contracts should be standardized/made interchangeable

We noted that currently it is still not possible to trade a Euronext.Liffe option contract outside Euronext.Liffe, even though this specific option contract is also listed on the other exchange(s). In other words, for example a Euronext.Liffe contract can only be traded at Euronext.Liffe only because the Euronext.Liffe issued the option contract. As result, derivatives' contracts are connected and strictly dependent on their original marketplace. In contrast to derivatives, as far as a share is listed, one can buy it and sell on the other exchanges or even off-exchange. Therefore, Option and Future contracts, which are currently still specific per market should be standardized/made interchangeable and 'disconnected' from 'their' initial market place.

In our opinion, it should be made possible to trade a derivative contract in any exchange where it is listed, not only on the venue where the contract was made.

2. Remote membership set up should be introduced and accepted around the globe (NB Non-US residents are currently still treated differently from US residents)

We identified two problematic aspects regarding the remote membership rights as emerging in the US exchanges.

Firstly, some of the US exchanges still do not allow non-US residents to access their systems thus discriminating against them.

Secondly, even though some of the US exchanges allow non-US residents to access their systems and thus become their members, the non-US residents still have less advantageous membership rights than those applying to the US residents. In Europe, as far as the big exchanges are concerned, this discriminatory situation does not exist. Thus, the US situation clearly requires appropriate action from the US authorities.

3. Cross-Margining/Multilateral netting of margin payments should be made possible

The margining system is the means by which a certain clearing house controls the risk associated with a clearing member's position on a daily basis. To achieve this, clearing members deposit cash or collateral with the clearing house in the form of initial and variation margin. Initial margin is the deposit required by the clearing house from clearing members as protection against default of a futures or options contract on all open positions (long or short) to cover short term price movements. The exchange requires the level of initial margin set by the clearing house to be the minimum required by (clearing) members from their clients. The level is subject to changes in line with market conditions. Deposits are returned by the clearing house to members when the position is closed.

Variation margin is the members' profits or losses, which are calculated daily from the market-to-market-close value of their open position. These amounts are credited to, or debited from their accounts. In the event of a shortfall, as a result of an adverse price move, a call will be made on clearing members for additional funds to cover the realised loss. Conversely, realised profits may be called from the clearing house.

We think that if it is made possible to combine (i.e. nett) positions held at various exchanges, the actual margin requirement will most likely go down with a clear profit for the investors.

4. Clearing should happen locally (removes cross-border risk and makes multilateral netting possible)

Referring to the point mentioned above, if clearing happens locally, then cross-margining is made possible and one clearer has control over the total position.

5. One common orderbook across different markets should be set up. In this way, this traders will have access to all markets in one go

Currently different markets have their own different orderbooks with their own prices and conditions. Consequently, if an entity wants to have access to different orderbooks to know and compare their prices, it is required to become member of these different venues. In other words, being member of only one venue enables a firm to have access to only one orderbook. With one common orderbook set up across different markets, a trader could easily access the best prices and market conditions. Consequently, one common orderbook would provide greater cross-Atlantic-liquidity and transparency.

6. Prof trades (professional trades agreed off exchange between two parties but matched in the exchange system and therefore seen as an on exchange trade), Give Ups and Block Crosses should be introduced/standardized across all markets

Currently, each exchange has different order types as for example Prof trades, Give Ups and Block Crosses. To establish transparency and mutual recognition, order types and rules applying to them (definition, minimum numbers) should be harmonized across the Atlantic.

7. Membership to exchanges should not be restricted to dedicated futures subsidiaries

Some exchanges still require companies to set up a separate subsidiary for the only purpose of trading futures. Strangely, this requirement does not apply if a company wants to trade options. Therefore, a company (NV) can trade options as such via an exchange of which it is member, whereas companies have to create a special subsidiary specifically dedicated to trading futures. We do not see any reason to maintain this restrictive obligation in place. Therefore, we strongly believe that it should disappear.

8. Electronic trading outside market hours should be extended to allow trading across time zones

The market participants in the EU and US should be allowed more time to trade electronically outside market hours. This extension is still not sufficient as far as cross-Atlantic trading is concerned. Moreover, trading outside market hours would anyway take place at closing-price with no impact on markets. Therefore, the above proposed extension would make the cross-Atlantic trading more easily accessible for the investors.



New York Mercantile Exchange

NYMEX/COMEX. Two divisions, one marketplace

May 18, 2005

Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: CESR/CFTC Work Programme

Dear Ms. Webb:

The New York Mercantile Exchange (“NYMEX” or the “Exchange”) is pleased to have the opportunity to comment upon the proposed work plan of the Committee of European Securities Regulators and the Commodity Futures Trading Commission that is intended to facilitate the conduct and supervision of trans-Atlantic derivatives business (the “Plan”).

NYMEX is a premier global exchange for the trading of physical commodities. Our flagship energy and metals contracts serve as global benchmarks in their respective industries and consequently trading on the Exchange plays an important role in the global economy. NYMEX has been an important product innovator in the energy industry with its successful introduction of NYMEX ClearPortsm Clearing, a mechanism whereby contracts executed off-exchange are cleared by the NYMEX clearinghouse. NYMEX has also taken great strides to create a global footprint. Our electronic trading systems provide access to our products from numerous foreign jurisdictions, including the United Kingdom, Singapore, and Japan. NYMEX currently operates a branch in Dublin, Ireland and an affiliate, NYMEX Europe Limited, has applied to the U.K. Financial Services Authority for recognition as a Recognised Investment Exchange in London. We also continue to explore additional ways in which to expand the ability of our clearinghouse on a global level.

In performing these endeavors, the Exchange has had a valuable opportunity to review the trans-Atlantic regulatory processes and procedures from the perspective of an operator of an exchange on both sides of the Atlantic. Consequently, we believe that the dialogue being conducted is crucial to both our growth and the growth of the derivatives industry in general.

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The New York Mercantile Exchange, Inc., is composed of two divisions. The NYMEX Division offers trading in crude oil, heating oil, unleaded gasoline, natural gas, electricity, propane, platinum and palladium. The COMEX Division offers trading in gold, silver, copper, aluminum, and the FTSE Eurotop 100[®] index, and the FTSE Eurotop 300[®] index.

In general, NYMEX agrees with the substantive issues identified in and the proposed timelines set forth in the proposed Plan. We do, however, have certain specific comments on the Plan.

The Plan must emphasize the continuing need to engage all participants in an ongoing active dialogue. As noted above, as a market operator with experience in both the U.S. and Europe, NYMEX believes that it, as well as the other exchanges, have valuable insights and will assist both CESR and the CFTC in achieving workable, practical solutions. An approach that does not fully incorporate views of those affected risks not accomplishing the desired goals.

The most relevant discussion to market operators relates to simplified access or recognition procedures. We believe that all of the discussion points presented in the Plan encompass those issues that are essential to an exchange, namely a review of scope and uniformity of information to be provided both pre- and post-recognition as well as an examination of the applicability of substituted compliance. A thorough vetting of these principles could have significant impact on the ability of NYMEX, as well as other market operators, to operate more expeditiously and efficiently on a global level.

On a smaller point, we believe that the first sentence of Section I should also include "market operators." While obviously the intent of the Plan, it should be clarified that enhanced transparency and clarity of regulatory requirements should also be provided to potential market operators who wish to do business in various jurisdictions.

NYMEX commends CESR and the CFTC for taking on these important issues and for issuing its communiqué. NYMEX very much appreciates the opportunity to comment on this critical proposal. As always, should you have any questions or require additional follow-up information, please do not hesitate to contact me.

Very truly yours,



Christopher K. Bowen
General Counsel and
Chief Administrative Officer



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May 25, 2005

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

**Re: CESR-CFTC Communiqué Requesting Comment on a Common
Work Program to Facilitate Trans-Atlantic Derivatives Business**

Dear Ms. Webb:

The Futures Industry Association (“FIA”)¹ submits this letter in response to the Communiqué that the Commodity Futures Trading Commission (“CFTC”) and the Committee of European Securities Regulators (“CESR”) have issued requesting comments on the proposed work program that the CFTC and CESR have proposed to facilitate trans-Atlantic derivatives business (“Communiqué”). FIA welcomes and strongly endorses this initiative, and we commend the CFTC and CESR for undertaking this project. Successful achievement of the goals set forth in the Communiqué is essential to assure efficient access to the international derivatives markets. We are especially pleased that the CFTC and CESR have identified greater transparency of the applicable laws and regulations as a primary task.

We also commend the CFTC and CESR for hosting the Roundtable in February to solicit the views of the industry. Several FIA member firms or their European affiliates took part in the Roundtable and found it to be a useful forum for the exchange of ideas. We encourage the CFTC and CESR to continue to hold such roundtables or otherwise solicit the views of the industry as they move forward with the work program, and we pledge our continued support.

We would also encourage the CFTC and CESR to invite the US Securities and Exchange Commission (“SEC”) to participate in the work program. The SEC, of course, has jurisdiction over equity options and shares jurisdiction with the CFTC over security futures products. Moreover, many US futures commission merchants are also registered with the SEC as broker-dealers. Therefore, the benefits sought to be achieved through the proposed work program will be more complete with the participation of the SEC.

¹ FIA is a principal spokesman for the commodity futures and options industry. Our regular membership is comprised of approximately 40 of the largest futures commission merchants (“FCMs”) in the United States. Among our approximately 150 associate members are representatives of virtually all other segments of the futures industry, both national and international, including US and international exchanges, banks, legal and accounting firms, introducing brokers, commodity trading advisors, commodity pool operators and other market participants, and information and equipment providers. Reflecting the scope and diversity of our membership, FIA estimates that our members effect more than 90 percent of all customer transactions executed on US contract markets.

FIA has identified three issues that it recommends that the CFTC and CESR include in the work program: (1) consistent standards for customer identification programs under applicable anti-money laundering statutes; (2) reciprocal recognition; and (3) temporary recognition in the event of a disaster.

Customer Identification Programs

All US and European financial institutions are required under applicable anti-money laundering statutes to implement customer identification programs. However, financial institutions in one jurisdiction are not permitted to rely on the identification programs of financial institutions in another jurisdiction, even where reliance is otherwise reasonable, *e.g.*, where the financial institutions are affiliates and the customer identification programs are essentially identical.

FIA member firms have found that that their institutional customers frequently have the need to open accounts directly with their US FCMs' European affiliates. Similarly, institutional customers of European affiliates need to open accounts directly with US FCMs. Because this implicates the customer identification requirements in each jurisdiction, these customers must submit to a second customer identification procedure. These procedures are disruptive to customers and divert resources of the financial institution. We encourage the CFTC and CESR to develop consistent standards for customer identification programs and permit reasonable reliance across jurisdictions. At a minimum, CFTC and CESR should make it unambiguous that US companies may rely on the identification programs of their European affiliated companies and that European companies may rely on the identification programs of their US affiliates.

Reciprocal Recognition

Pursuant to Rule 30.10 of its rules governing foreign futures and options transactions, the CFTC has exempted foreign firms from having to comply with applicable CFTC rules in connection with the offer and sale of foreign futures and option contracts to US customers where the CFTC has found that the foreign firm is subject to a comparable regulatory scheme. Although the CFTC has granted exemptions to firms located in several European countries, including France, Germany, Spain and the United Kingdom, only France has granted reciprocal exemptions to US firms.

We urge the CFTC and CESR to build upon the progress that has already been made in the area and develop procedures that would provide for mutual recognition of firms subject to regulation by the CFTC or one of the CESR countries. For US FCMs, such procedures would also allow a firm that is recognized in one European jurisdiction to conduct business throughout the CESR countries.²

² We understand that futures and options on commodities are not considered financial instruments and, therefore, a firm qualified to do business in commodities in one member country currently is not permitted to "passport" to another member country within the European Union. FIA strongly encourages CESR to work with the appropriate bodies within the European Union to permit firms that are engaged in commodities to passport.

Ms. Jean A. Webb
May 25, 2005
Page 3

Temporary Recognition

The terrorist attacks of September 11, 2001 emphasized to all financial institutions the importance of developing disaster recovery plans which assure that the financial institution can continue to operate with minimal customer disruption in the event of an emergency or significant business interruption. For a US FCM with one or more European affiliates, it could well be more efficient in the event of a disaster to shift its business activities to a European affiliate, which has an established staff and infrastructure rather than attempt to establish one or more backup locations in the US. In these circumstances, however, the FCM must know that it will be able to conduct business temporarily from that European location without being in violation of applicable law. Similarly, it may be more efficient for a European affiliate of a US FCM to shift its business to the US.

FIA requests the CFTC and CESR to consider adopting procedures that would permit a firm registered in one jurisdiction to conduct business temporarily from another jurisdiction in the event of a disaster. For a US FCM, such procedures would allow a firm that is temporarily recognized in one European jurisdiction to conduct business throughout the CESR countries.

Conclusion

FIA appreciates the opportunity to submit these comments and again applauds the CFTC and CESR for undertaking this project. If you have any questions regarding this letter, please contact Barbara Wierzynski, FIA's General Counsel, at (202) 466-5460.

Sincerely,

John M. Damgard
President

cc: Honorable Sharon Brown-Hruska, Acting Chairman
Honorable Walter L. Lukken, Commissioner
Honorable Fred Hatfield, Commissioner
Honorable Michael V. Dunn, Commissioner

Andrea M. Corcoran, Director
Office of International Affairs

ISDA

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Dear Mr. Demarigny,

RE: CESR-CFTC Communiqué Requesting Comment on a Common Work Programme to Facilitate Transatlantic Derivatives Business

This Association would like to express its support for this CESR/CFTC joint initiative which is aimed at providing clarity over the practical operational issues that affect the conduct of trans-Atlantic business of organized derivatives markets, intermediaries and market users from the European Union and the United States.

This Association is particularly supportive of the goal stated in the Communiqué to provide legal certainty as to the statutory and market requirements in force in the EU and US, including the permissibility of trading of specific products. Legal uncertainty is one of the major challenges to financial markets as a whole and, in the derivatives business, reduces substantially the ability to maximize the risk management benefits that these products can provide.

This Association believes that it would be appropriate to focus the scope of the work program on those trades which fall within the supervisory responsibilities of both the US CFTC and the EU competent authorities which are members of CESR. We would support an exercise along these lines being concentrated on exchange traded derivatives. We would suppose, accordingly, that OTC derivatives, which are excluded from the scope of the regulatory authority of the CFTC, be left outside the scope of the exercise.

One of ISDA's principal goals is to promote legal certainty for derivatives transactions. Drawing from its experience in the field, this Association would welcome the opportunity to contribute as relevant to the above project. We very much appreciate the level of transparency in this work.

The same letter is being submitted at the same time to the Commodities Futures Trading Commission by ISDA CEO, Mr. Robert Pickel.

Yours sincerely,

Jonathan Taylor
Chairman of the European Regulatory Committee
International Swaps and Derivatives Association