



## CESR-CFTC Common Work Program to Facilitate Transatlantic Derivatives Business

By this Communiqué, the Committee of European Securities Regulators (CESR) and the United States Commodity Futures Trading Commission (CFTC) (the Authorities), consistent with their respective areas of competence and without prejudice to bi-lateral or national initiatives, are publishing their joint commitment to a work program to facilitate the conduct and supervision of transatlantic derivatives business.

The development of this work program reflects input from organized derivatives markets, intermediaries and market users from the United States and the European Union on the practical operational issues that most affect their conduct of transatlantic business in exchange-traded derivatives and related transactions and on potential cooperative strategies to further a compatible business and regulatory environment.

It also reflects the maturity of the cooperative relationships between the CFTC and CESR members, and the increasing interest in elaborating efficient means of conducting transatlantic derivatives business and growing US-EU business relationships.

### *Whereas :*

- The derivatives markets in Europe and the United States have grown exponentially in size and interdependence.
- The markets, and the relationship between markets and market participants, are evolving rapidly due to technological developments and the changes in the market model. The markets for financial services today, which include local and distant customers and intermediaries, increasingly perform portions of their operational and supervisory functions in different jurisdictions.
- The ability to ascertain the components of a jurisdiction's regulatory and market requirements is critical to the conduct of transatlantic business as the accessibility and clarity of requirements facilitates full compliance with applicable rules, and the design of effective due diligence reviews and appropriate supervisory controls.
- Market users will be able to make more informed choices and to more effectively manage their risks if they have readily available access to regulatory and market information including information concerning the licensing status of markets and intermediaries and the permissibility of trading specific products;
- Markets, intermediaries and market users support the elimination of inappropriate or unnecessary barriers that could impose unnecessary trading costs and unduly



constrain the structure of their global operations or limit their transactional preferences (*i.e.*, which markets, products or firms) in the US and EU.

- The electronic integration of global markets and the demand by market users for open and efficient access to such markets challenge market authorities to explore cooperatively practical measures to facilitate such access while maintaining appropriate customer and market protections.
- Market authorities recognize the economic benefits of creating a regulatory environment that fosters the seamless transaction of trans-Atlantic exchange-traded derivatives business within the context of maintaining appropriate customer and market protections; and
- The need to adapt regulatory approaches in light of ongoing change in the US and the EU makes this an opportune time to consider these developments.

*Accordingly, the Authorities through their respective memberships, have:* designated a Task Force which will examine the areas set forth herein. The Task Force will refine and develop how best to execute the work program in accordance with a three-year timetable\*, taking into account the existing legislative framework and the desire of all parties for expedition.

The Task Force will be co-chaired by CESR and the CFTC. Members of the Task Force will be drawn from the CFTC and from the securities supervisors of CESR member jurisdictions where there is a derivatives markets.

**I. Enhanced Transparency and Clarity of Regulatory Requirements** - [*Time table-- preliminary work within nine months.*]

The Task Force will review the accessibility and clarity of regulatory and related legal information that permit market professionals, market operators and end-users located outside a national jurisdiction to understand the types of conduct that may require registration, licensing or authorization, the permissible products that may be traded, the relevant rules and regulations and whom to contact for additional information and guidance. Without limiting the scope of inquiry, the Task Force intends to consider:

- The relative availability of market information, including facts concerning trading rules, contract specifications, clearing and settlement procedures, customer funds protections, default provisions and dispute resolution requirements;
- The accessibility of rules and procedures relating to intermediated and direct access to foreign markets and customers, including recognition procedures and account opening requirements; and
- The scope and ease of access to publicly available information concerning the authorization and current recognition status of intermediaries and markets, respectively and the practicality of developing or linking electronic means for timely providing such information to regulators and the public.

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\* CESR members will determine how best to schedule how, and when, deliverables would affect individual national members.



*With a view to:* developing a common template of core information that could be used to structure the provision of needed regulatory information on national and/or CESR and CFTC internet sites, including information on regulatory structure.

**II. Simplified Access or Recognition Procedures** – [Time table-within two years per a schedule set by the Task Force]

The Task Force will review the information that is required by CESR members and the 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. Without limiting the scope of inquiry, the Task Force intends to review issues such as whether:

- A common template of “core information” concerning applicants for intermediary access or market recognition could be developed for use by CESR members and the CFTC (including provision for any add-on information required by individual national jurisdictions);
- Regulatory information developed for other purposes, such as surveys and self-assessments under the IOSCO Objectives and Principles of Securities Regulation could be used as a basis to support recognition applications;
- Through practical arrangements, broader use of substituted compliance, reliance or recognition-like procedures could be used by regulatory authorities in addressing EU and US financial institutions (including clearing and settlement arrangements);
- On-going requirements for licensed and recognized persons or markets that operate on a trans-Atlantic basis could be mapped with, to the extent possible, the objective of avoiding duplication of requirements (including, *e.g.*, recognition-related disclosure and reporting to the Authorities, account opening and documentation including customer identification, retail/wholesale definitions, temporary use of cross-Atlantic back-up business continuity solutions, and other matters identified through targeted consultations); and
- Recognition (and ongoing supervision) could be facilitated through the development of common/linked data-bases to share publicly-available information.

*With a view to:* a better understanding of the level of customer and market protections accorded by regulatory regimes of national jurisdictions within the EU and the US and on such basis simplifying and rendering more reciprocal existing recognition procedures.

**III. Targeted consultation on cross-border issues** – [Time table-to commence immediately]

The Task Force will take steps to assure the meaningful and ongoing involvement of the derivatives industry and end-users throughout this work program. Accordingly, commencing with the first Task Force meeting, the CFTC and CESR as co-chairs of the Task Force will each undertake to ensure by a variety of means the ongoing and meaningful



involvement of organized derivatives markets, intermediaries and end-users in the US and the EU, both for the purpose of identifying issues to be addressed and the crafting of possible solutions.

The Task Force will remain open throughout its work program to using a variety of methods on an as needed basis to involve the industry and end-users, such as holding additional round-tables, teleconferences with industry representatives, trade associations and end users, establishing representative sub-groups or committees in the US and the EU and inviting informal contacts with any interested parties.

The Task Force will take steps to assure that expert inquiries and consultations with substantial cross-border impact are specifically identified by CESR and CFTC and that specific consultation occur on issues of common concern such as the topics identified above and during the initial and any subsequent comment process..

#### **The Authorities further commit to institute periodic operational discussions**

The Authorities are now in the process of scheduling regular CESR-CFTC meetings at the senior staff or higher level. The purpose of these meetings is to provide an opportunity to share:

- Current common regulatory and supervisory concerns, if any, with respect to enforcement, market and intermediary oversight issues in the context of trans-Atlantic business activities; and
- Current regulatory initiatives of common concern.

The Authorities encourage market authorities/operators in both the US and the EU similarly to explore enhanced operational working relationships.

*Believing such operational and cooperative dialogues must support increased reliance on each others regulatory systems.*

As appropriate this work program may result in approaches to other Authorities where necessary to achieve the best results consistent with an integrated trans-Atlantic market.

**By Order of: CESR Member Jurisdictions and the US CFTC**