CFA INSTITUTE | Centre for Financial Market Integrity

European Commission
Directorate-General Internal Market and Services
Unit G1 – Financial Services policy
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Register of Interest Representatives
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Consultation on Commission Communication of 27 May 2009 on European Financial Supervision

The CFA Institute Centre for Financial Market Integrity (the "Centre") is pleased to comment on the Commission's Consultation on Commission Communication of 27 May 2009 on European Financial Supervision (the "Consultation"). The Centre promotes ethical conduct, professional standards and integrity in the financial markets on behalf of CFA Institute members around the world.

EXECUTIVE SUMMARY

We have reached the limits of what can be achieved with the present Lamfalussy framework. The financial crisis has revealed flaws in the regulatory and supervisory structure, which call for pan-European solutions that go beyond the current patchwork of level three committees, colleges of supervisors and national supervisors. Even before the financial crisis it was obvious that the Lamfalussy process had fallen victim of its own success. With an increasingly integrated financial market, a more harmonized supervision is needed. Inconsistencies in the national implementation of directives such as MiFID, MAD and Prospectus underline this problem.

Consequently, the Centre welcomes the Commissions' Communication of 27 May 2009. The conclusions drawn in this document are overall important steps forward. There is, however, much work left to be done. Many important details remain to be solved. The Centre intends to make an active contribution to this process.

In line with the de Larosière report and the communication for the spring European Council, the Commission proposes in its communication of 27 May 2009 on European Financial Supervision, a supervisory framework centred around two pillars. The first, macro-prudential pillar involves the creation of a European Systemic Risk Council (ESRC). The second, micro-prudential pillar entails a European System of Financial Supervisors (ESFS) based on three European Supervisory authorities (ESAs).

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The Centre supports the creation of the supervisory framework described above. More specifically, we strongly support the upgrading of the three level three committees to become three supervisory authorities: banking, insurance and securities markets respectively, rather than one single supervisor. The rationale for this is outlined in our response to the European Commission's "Communication for the spring European Council".[1]

Over the last thirty years the activity of the leading and overwhelming number of financial institutions has become increasingly transnational. Indeed this is an expected outcome for a 'single market' policy. Therefore by evolution of the single market in financial services the Centre believes that a pan-European supervisory structure is now required to effectively regulate these institutions within the European Union. We have come to this conclusion after careful consideration of the 'subsidiarity' principle. We see this as the only way to enact effective regulation of these institutions for the collective benefit of European citizens. Given the proposed legislation places continued reliance on colleges of supervisors it is paramount that the new authorities are equipped with the right tools to achieve a single set of harmonised rules and consistent application throughout the EU. This is necessary to achieve the ultimate goal, a single and stable market in financial services.

The Centre welcomes the proposal for a central European database of micro prudential information. We would, however, like to see, while respecting confidentiality, data made available to the market. This has the potential to considerably increase transparency and market efficiency.

Since the Centre already gave its general view on European financial supervision in our earlier comment letter on the same topic [2], this response will focus on the proposed role and responsibilities of the ESFS as proposed in the new communication.

We attach our response that addresses this issue. Please do not hesitate to contact us, should you wish to discuss any of the points raised.

Yours faithfully,

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[1] http://www.cfainstitute.org/centre/topics/comment/2009/pdf/090409.pdf
[2] Ibid. 1

The CFA Institute Centre[3] is part of CFA Institute[4]. With headquarters in Charlottesville, VA, and regional offices in New York, Hong Kong, London and Brussels, CFA Institute is a global, not-for-profit professional association with 95,000 investment analysts, portfolio managers, investment advisors, and other investment professionals in 131 countries, of whom nearly 87,000 are holders of the Chartered Financial Analyst® (CFA®) designation. CFA Institute membership also includes 136 member societies in 57 countries and territories. Currently we have over 12,000 members in the European Union.

Our responses to the Consultation's questions are set out below.

European System of Financial Supervisors

1. Ensure a single set of harmonised rules

The Centre supports the development of binding technical standards. Notwithstanding our acknowledgement of the subsidiarity principle, we believe that the large majority of dissimilarity in transposition of EU directives is not a result of cultural differences. Rather the outcome of 27 different interpretations by national supervisors, who to a greater or lesser extent are subject to the influence of local commercial interests. We therefore support the idea of a single rule book. This should not be limited to internal rules for the European Supervisory Authorities, or rules of procedure for supervisory colleges. Ultimately, the single rule book should be all-encompassing and have direct effect, replacing today's national implementation.

2. Ensure consistent application of EU rules

Even with a single rule book there will be discrepancies in the application of this single set of rules among competent authorities. The Centre takes the view that the European Supervisory Authorities must be equipped with the right tools to minimize those discrepancies. This is paramount if we want to obtain a true single market in financial services.

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[3] The CFA Institute Centre develops, promulgates, and maintains the highest ethical standards for the investment community, including the CFA Institute Code of Ethics and Standards of Professional Conduct, Global Investment Performance Standards ("GIPS®"), and the Asset Manager Code of Professional Conduct ("AMC"). It represents the views of investment professionals and investors before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and the transparency and integrity of global financial markets.

[4] CFA Institute is best known for developing and administrating the Chartered Financial Analyst curriculum and examinations and issuing the CFA Charter.

The current proposal, endorsed in its main form by the head of governments at the European Council's spring summit in Brussels 18-19 June, roughly preserves the current framework with supervisory colleges. The Centre would have liked to see more far reaching changes. Specifically, we believe that a more centralised supervisory structure is required to set the regulatory architecture of multinational financial institutions. Under the current political environment this position is ambitious. Therefore we support the Commission proposal, giving the ESAs the power to settle disagreements in colleges between national supervisors.

According to the current proposal the ESAs will also be empowered to take binding decisions directly applicable to financial institutions in case of inaction by the national authority. The Centre fully supports this proposal. Furthermore, while recognizing that there might be political and legal obstacles, we take the view that this should apply not only in case of inaction in relation to implementation but also in relation to the application and enforcement of Community law.

3. *Ensure a common supervisory culture and consistent supervisory practices*

The Centre supports any efforts to achieve a common supervisory culture and consistent supervisory practices.

4. *Full supervisory powers for some specific entities*

The Centre welcomes centralized supervision of credit rating agencies and central counterparty clearing houses. Concerning CRAs, we expressed our preferences for supervision by a central agency in our response to the Commission's "Proposal for a Regulatory Framework for Credit Rating Agencies".[5] With the current proposal for financial supervision it naturally falls that that central agency should be the new European Securities Authority.

5. *Ensure a coordinated response in crisis situations*

The Centre supports giving the new ESAs a coordinating role in a time of crisis. To fulfil this task it is paramount that the ESAs are given enough power and resources to do match this task. This is true under normal circumstances as well as in crisis situations; sharing information is the key factor for effective operation. The ESAs should not only facilitate the exchange of information between national authorities but manage a central repository. See below.

6. *Collect micro-prudential information*

The Centre has long been advocating for a central database managed at EU level. We are therefore very pleased to see that this has been added to the Commission's proposal. Such a repository will act as a central facility for the filing of regulatory information. This will facilitate the work of the new ESAs and the exchange of information between competent authorities. We would, however, like to see the information made available, but respecting confidentiality, not only to national

[5] http://www.cfainstitute.org/centre/topics/comment/2008/pdf/080926_02.pdf

authorities within colleges, but to the wider public. A central depository of this sort could, if access were given to the public, substantially increase transparency and enhance market efficiency.

7. Undertake an international role

We believe the European Supervisory Authorities can play an important role as a European voice in international organisations, such as IOSCO and the Basel Committee, They should also become legitimate representatives in bilateral dialogues, notably with the US and other key markets, and at least develop a common framework for the international action of national financial authorities, in order to avoid the proliferation of Memoranda of Understanding that now create an intricate and somehow opaque web of agreements between some Member states and extra-EU partners.

8. Safeguards

The Centre has no view on this. We leave it to the legal expertise and to the political process to ensure that the proposed changes will be in conformity with the Treaty and that the fiscal responsibilities of member states are not affected.

15th July 2009.