

Brussels, 17 August 2007

Mr. Christopher Cox
Chairman
U.S. Securities and Exchange Commission (SEC)
100 F Street, N.E.
Washington, DC 20549-0213

Re: Mutual Recognition on the Basis of Substituted Compliance

Dear Chairman Cox,

On behalf of the **Federation of European Securities Exchanges (FESE)**, I am writing to you to express the support of our members for the concept of **mutual recognition on the basis of substituted compliance**, which we understand you are currently deliberating on and which could be the subject of a concept paper in the fall.

FESE represents the operators of the European “regulated markets” and other market segments, for not only stocks and bonds but also financial, energy and commodity derivatives. Through our 24 full members, we represent close to 40 securities exchanges from all the countries of the European Union (EU) and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.

Our member exchanges have very positive experiences with mutual recognition in those markets around the world where the practice exists. Therefore, we have followed with great interest the public debate on this issue emerging in the US over the last few months. We had the pleasure of hosting a panel discussion on the subject at the annual FESE Convention on 26 June 2007, where Ethiopia Tafara was one of our panellists. This discussion confirmed that there is a significant degree of interest within Europe in the subject and a willingness to cooperate with the US counterparts to turn it into a reality. Given the direct relevance of this subject to our members, we would like to take this opportunity to share with you some **preliminary views** on this subject. We will respond formally to any future concept paper to be published by the SEC.

Let me start by saying that Europe’s exchanges **warmly welcome** this initiative. It has long been the view of our Federation that a mutual recognition regime that allows European and American exchanges to offer access to their services in each other’s markets without having to comply with duplicative rules will benefit the investors, market participants and economy as a whole in both jurisdictions. Moreover, we believe that the time is ripe to build such a regime. With the completion of the EU’s Financial Services Action Plan (FSAP), Europe has built a unified regulatory framework which is enforced by a robust supervisory framework coordinated by the Committee of European Securities Regulators (CESR). Furthermore, as the EU-US Financial Markets Regulatory Dialogue enters its 5th year, there is sufficient knowledge of each other’s market structures and regulatory approaches, accompanied by trust, to establish the system of cooperation that would be needed to bring this concept to reality.

Above all, I must stress that a future mutual recognition system should avert the burden of **duplicative supervision of exchanges** by domestic and foreign supervisory authorities. Avoiding additional costs for exchanges, market participants and investors in ensuring adequate regulatory compliance should be at the heart of the design of the regime being contemplated.

We believe that this project can be of greatest benefit to both sides if it is guided by a number of overarching principles:

- **We should build the regime on the basis of similar principles that will ensure a level playing field, rather than seeking to align existing rules in detail.** To offer the true benefits of mutual recognition, rather than regulatory adjustment, the regime should be built on **common regulatory principles**, and not on a bottom-up comparison of rules. Not only would the latter approach bog the process down in a lengthy and impractical exercise, it would be inappropriate to seek alignment of rules for two marketplaces that have over the years developed approaches that suit their structures and users the best. Therefore, we fully agree with your recent statement that it will be important to “respect our differences as we build on common ground” and your call for a top-down approach based on broad principles. Moreover, we believe that the existing principles on which the EU framework is built are sufficiently close to the principles on which the US rules are based. Importantly, given the high level of development of the regulatory frameworks on either side, “regulatory adjustment,” as may be contemplated by the SEC for some other jurisdictions, is not necessary before establishing mutual recognition between the EU and the US. On the other hand, we espouse, as a long-term goal, **principle-based regulatory convergence** at the global level and find immediate mutual recognition between the EU and US marketplaces and long-term regulatory convergence fully complementary.
- **The regime should envisage access between the US market and the European market as a whole.** We believe that it is very important that the assessment of regulatory and supervisory compatibility be carried out between the US and the EU market **as a whole**. FESE has been closely involved in the design and implementation of the FSAP and strongly believes that the high standards for market integrity, investor protection and transparency set up by the EU legislation will serve to qualify all exchanges (and banks) from the entire EU Single Market for the mutual recognition regime contemplated. Similarly, the supervisory and enforcement practices are being brought in line via CESR, which has a number of dedicated mechanisms (including the Review Panel) to strengthen the consistency of approach. The regulatory and supervisory assessment should apply to the EU as a whole, and EU markets small and large should have an equal chance in being recognised as eligible jurisdictions as long as they fulfil the agreed criteria for access based on mutual recognition.
- **The process should be efficient and unbureaucratic.** In line with the above principle, it will be very important to put in place a process that can lead to quick results. The EU-level analysis and coordination will save all parties time and resources. At the same time, the evaluation will need to take into account a number of issues that can only be studied and discussed at the level of individual countries. We suggest that the European Commission work closely with the SEC to agree on a smooth, quick and efficient process that would bring these elements together in a coherent framework. This process, essentially of a technical nature, should nonetheless proceed with political endorsement and oversight on both sides.
- **All investors should benefit from mutual recognition.** As a general principle, we very much believe that the mutual recognition regime introduced should benefit the end investors on either side of the Atlantic. Given that the retail investors in both markets stand to gain the most from lowering transaction costs, it would be in the best interest of both the US and EU investors to include ultimately both institutional and retail investors in the scope of mutual recognition. The EU’s FSAP is built on a comprehensive regime of client classification and investor protection rules tailored to the type of client. We are confident in the ability of European and US laws to protect retail investors through comprehensive conduct of business, transparency and reporting rules. Thus, we firmly believe that retail investors must be considered for inclusion in the scope of mutual recognition. However, if, as a first

step, it is deemed more appropriate to limit the scope to professional investors, then retail investors must be included as soon as practicable.

- **While the mutual recognition of exchanges is consistent with the goals of other US-EU work streams on cross-border investment, we believe it should proceed as a discrete project, with its own timeline.** There is real potential for progress in a relatively short time frame once the key criteria for recognition are established. Other issues affecting access to financial markets, such as accounting and primary market registration rules, are important and must not be ignored, but we encourage the SEC to focus on the issues that really matter for US investors with respect to the recognition of exchanges in order to achieve an efficient and effective result.

We hope that you will find these views of interest as you continue your deliberations on this important subject. We are at your disposal for any questions or comments you may have and would be happy to meet with you to discuss this issue further, before or after you finalise your draft concept paper.

Yours sincerely,



Jukka Ruuska

President

cc:

European Commission:

David Wright, Director, Financial Services Policy and Financial Markets

Nathalie De Basaldua, Head of Unit, Securities Markets

European Parliament:

Pervenche Berès, Chairwoman, Committee on Economic and Monetary Affairs

Presidency of the EU:

Céu Pereira, Financial Attaché, Portuguese Permanent Representation to the EU

CESR:

Eddy Wymeersch, Chairman

Fabrice Demarigny, Secretary General