

CNMV'S ANSWER TO CONSULTATION ON THE FUTURE OF FINANCIAL SERVICES SUPERVISION IN THE EU

7 April 2009

The CNMV appreciates and thanks the EU Commission for its effort to enhance the financial services supervision in the EU.

The CNMV welcomes the Larosière report and thinks that it represents a good balance between pragmatism and ambition. The CNMV wants to point out the following observations:

1. General remark

The CNMV broadly agrees with the assessment made of the roots of the current crisis. However the report is somewhat unbalanced as it underscores issues regarding conduct of business. Moreover, in some instances (e.g. accounting), proposals are only geared by prudential concerns and neglect possible adverse effects on good market functioning. The failures in conduct regulation (mostly those related to transparency of issuers, products and markets), the limited scope of its supervision, and the regulatory arbitrage across countries and sectors has helped amplifying the effects of the current crisis. Therefore, without a remedy to those failures it will be hard to restore the overall confidence on the financial sector. The conduct of business is of paramount importance and requires to be tackled in parallel to prudential issues.

Finally, the CNMV would like to express its preference for a twin peaks approach although it considers that the time is not ripe yet to make a decision about the third phase.

2. Further harmonisation of the current regulatory framework is a precondition

The current regulatory framework requires to be modified to avoid the regulatory arbitrage and the regulatory competition to defend or gain ground on the financial industry among EU Member States. It is necessary to reduce at maximum the discretionary capacities, golden plating, etc., from the level 1 and 2 regulation. Without these changes it would be impossible to reach a real convergence in technical matters and a true level playing field. Also, without homogeneous high-level regulation, the scope of action of newly created Authorities will remain limited.

Moreover, there are at least four areas in which new legislative action is absolutely necessary:

- 1) Clearing, Settlement and Registration of Securities: The Code of Conduct on market infrastructures has reached its limit and should be replaced by a level 1 regulation.
- 2) Bankruptcy rules: The Bankruptcy laws applicable to financial entities should be identical all over Europe so that cash or securities depositors will be assured in the same way in case of collapse of their Depository entity (Lehman case)¹.
- 3) Sanction regime: The CESR mapping on Sanctions shows a variety of penalties

¹ Lehman's securities depositors have not received yet their securities or collaterals.

for the same breach of the regulation. Regimes for sanctions should be strengthened and, to the maximum extent possible, harmonised.

- 4) Regulation of depositaries of investment funds: The CNMV supports the need for further common regulation of depositaries of investment funds.

Finally, the CNMV considers that it is also necessary to ensure that all Competent local Authorities have the same or similar capacities. Otherwise it will be difficult to implement the rules or to apply them in the same way all over Europe.

3. ESRC

The CNMV supports the creation of the ESRC. There are, however, two interconnected issues that the CNMV would like to comment on:

- The CNMV believes that risks having a systemic effect do not appear exclusively in one area but can be developed in any area of the financial sector: banking, securities or insurance. Therefore, the ESRC, to be able to set an effective risk warning system, should have appropriate input from the three sectors. Then, it is crucial to ensure an adequate and fluid flow of information to be able to prepare a complete early warning system but at the same time, mechanisms should be in place to avoid reporting duplication. In this respect, the current level 3 committees can provide their expertise and systems to prevent duplicities.
- The CNMV suggests balancing the composition of the ESCR by including, together with central bankers, also representatives of the competent authorities of the three sectors while keeping its size at manageable level. As mentioned before, risks having a potential systemic effect might appear in a particular sector and then be quickly spread to the others. However, the detection of the symptoms and the establishment of proper solutions needs the involvement of experts of the three financial areas.

4. ESFS: centralised rule-making and decentralised supervision

The central Authorities should issue binding rules to be implemented by the national authorities at the local level. In addition, the new Authorities should be empowered to issue binding guidelines on authorisation and supervision procedures on passports for products and entities (Prospectus; Investment Firms; UCITs). Besides, the CNMV considers that the new Authorities should have capacities to supervise how the national authorities conduct the supervisory functions and the authorisation procedures on passport for products and entities. This would help to avoid the current regulatory arbitrage on passport that hinders the investor protection.

5. Financial independence

The CNMV believes that the new Authorities should be financially independent of the EU Commission. That implies that Commission funds should only be accepted for clearly specified projects.

6. Governance and accountability

The new Authorities themselves should be given an active participation in the

appointment process of the Chair and top executives.

The day-to-day governance of the Authorities should be more robust. The CNMV proposes replacing the figure of a single General Director in each Authority by three top-executives. Together with the Chair that would make it possible to constitute an executive committee, this will carry out all responsibilities that the Board of national authorities could delegate.

7. Supervision of the cross border entities

It is important that the new Authority in the securities field is in charge of the supervision of cross border entities such as CRAs and Post-trading infrastructures. The centralization of the supervision in these areas is much more efficient (as decisions will be taken by an executive organisation) and easily manageable than the establishment of large colleges of supervisors (with up to 27 competent authorities). The new Authority will perform its supervision in a more technical way and would respect the global nature of the activities being supervised. Finally, it would create a “one-stop shop” in the EU for entities being supervised, facilitating also the coordination at international level.

8. Speed's process

The CNMV would support the proposal to integrate phases 1 and 2.

9. Investors

Finally, the CNMV shares the EU Commission's concerns about increasing the role of the European investors and considers that it is of extreme importance to ensure that the interests of European investors on all financial issues are adequately defended. The CNMV remains at the EU Commission's disposal to collaborate in the field of investors' education and would be willing to collaborate with investors' associations if needed.