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## Public Statement of Consultation Practices

**Having regard** to the decision of the EU Commission establishing the Committee (2001/1501/EC) and, in particular, its article 5;

**Having regard** to the Charter of the Committee of European Securities Regulators ('the Charter'), which commits the Committee to make a Public Statement of its consultation practices;

**Considering** the Final Report of the Committee of Wise Men on the Regulation of European Securities Markets (15 February 2001) ("the Report") and its recommendations on the consultation procedures and transparency for the Committee;

**Considering** Article 5.7 of the Charter, which commits the Committee and its expert groups to working in an open and transparent manner;

**Considering** Article 5.10 and 5.11 of the Charter, which commits the Committee to using appropriate processes to consult (both *ex ante* and *ex post*) market participants, market operators, consumers and end-users;

**The Committee of European Securities Regulators has approved the following statement** for all its work including levels two and three as set out in the Report:

1. **The aim of consultation** is to build consensus where possible between all interested and affected parties on what legislation or regulation is appropriate and to improve the decision making process of the Committee by:
  - a) Benefiting from the expertise of market participants and operators, consumers and end-users, notably in assessing and analysing regulatory issues and possible solutions;
  - b) Assisting determination of whether a problem exists which requires a regulatory action, and if so, what form of regulatory actions is appropriate;
  - c) Providing opportunities for alternative approaches to a given issue to be considered;
  - d) Obtaining information and views on the potential impact of proposals;
  - e) Obtaining feedback on the Committee's work;
  - f) Promoting understanding of the work of the Committee and its role.
2. **To deliver this aim, the Committee emphasises,**
  - (i) **the need for all involved to "play a co-operative game"** (page 42 of the Report). This places mutual obligations on the Committee and those consulted to work in a manner that promotes the success of the process. This has particular significance at Level Two, where the scope and timetable of the Committee's work will be determined by mandates from the European Commission.
  - (ii) **the need for a flexible and proportionate approach to consultation** that can be adapted according to the significance of an issue.
3. **Notwithstanding the need for flexibility, the Committee will be guided by the following principles:**
  - a) On **who** it consults, the Committee will:
    - i) Target the full range of interested parties, including market participants, consumers and end-users;

- ii) Make consultation proposals widely known and available through all appropriate means, in particular the Internet;
  - iii) Consult at national, european and international levels.
  - b) On **when** it consults, the Committee will:
    - i) Publish an anticipated annual work programme so that all interested parties know when to expect output from the Committee;
    - ii) Publish any mandate received form the European Commission as soon as practical after receipt;
    - iii) Organise upon request informal discussions at an early stage with those most likely to be directly affected;
    - iv) Consult at a sufficiently early stage to enable the Committee to take the responses into account;
    - v) Allow those consulted adequate time to respond, given the complexity of the issue and the time available. For significant issues, the Committee will aim to allow a three month consultation period.
  - c) On **how it consults**, the Committee will:
    - i) Provide an opportunity for interested parties to make submissions on receipt and publication by the Committee of a mandate from the European Commission;
    - ii) When necessary, release its thinking at various stages, including via concept releases;
    - iii) Produce reasoned consultative proposals, based on thorough analysis of the issues and objectives of the proposal and, where possible, on statistical information, expressed in concise and clear language, and, if possible, include in proposals preliminary information on their impact;
    - iv) Establish working consultative groups of experts where appropriate;
    - v) Consult using a variety of media, including public hearings/roundtables, written and Internet consultations. In the interests of efficiency, use of the Internet will be encouraged and facilitated;
    - vi) Use appropriate processes when necessary to target consultations better to particular affected parties (such as face to face meetings).
  - d) On **how it responds** to consultation, the Committee will:
    - i) Give due consideration to responses received;
    - ii) Make public all responses to formal European consultations, unless the respondent requests otherwise, or make public a summary of the responses received;
    - iii) Publish a reasoned explanation addressing all major points raised;
    - iv) Consult for a second time if the response to the first consultation reveals significant problems, or where revised proposals are radically different from the original proposals on which consultation was based.
    - v) Publish all formal proposals and advice, including advice to the European Commission given under Level Two.
4. If it is not possible for the Committee to follow the principles described above, the Committee will publish its reasons.
5. When necessary, the Committee will review this statement of consultation practices.

## Annex: CESR's Consultation Process

