

**AMERICAN BANKERS ASSOCIATION SECURITIES ASSOCIATION  
BANKERS' ASSOCIATION FOR FINANCE AND TRADE  
BRITISH BANKERS' ASSOCIATION  
FUTURES INDUSTRY ASSOCIATION  
FUTURES AND OPTIONS ASSOCIATION  
SECURITIES INDUSTRY ASSOCIATION**

**Project to analyse and compare EU and US licensing  
and business conduct rules governing the carrying on  
of transatlantic business in equities and exchange-traded  
and OTC equity derivative contracts**

**March 2005**

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*What is the project?*

A number of leading EU and US financial service industry associations have agreed to work together to address the urgent need to simplify the regulation of wholesale transatlantic business in equities and exchange-traded and OTC equity derivative contracts (recognising that the agenda will also be relevant to business carried on in other market instruments). For clarification, the objective is not to undermine acceptable standards of market integrity or investor protection, but to increase the efficiency and coherence of applicable regulation and rules. To this end, they have retained the international law firm Clifford Chance to undertake, through its UK, US, Spanish and German branches, a legal analysis of EU and US licensing and business conduct rules governing the carrying on of transatlantic business in the equity asset classes described above. Oversight steering groups of banks and brokerage houses have been established in London and New York to review the analysis for the purpose of putting forward a "business case" as to how identified regulatory inefficiencies, complexity, duplication, conflict or unnecessary cost could be addressed in order to establish a more coherent, effective and cost-efficient regulatory framework for that business.

- The "*legal analysis*" will address all relevant US legislative requirements (including applicable rules of the SEC and CFTC) and EU directives, CESR business conduct principles and the implementing rules, as selected specimen member states, of Germany, Spain and the UK. More specifically, the analysis will cover licensing and business conduct rules dealing with corporate legal structures, financial promotion and solicitation, customer documentation, execution, order handling, know-your-customer rules, anti-money laundering requirements, market abuse, the handling of customer assets, recognition of qualifications and licensing requirements for key employees.
- The "*business case*" will be developed by the oversight practitioner steering groups and be founded on the day-to-day regulatory experiences encountered by regulated firms when carrying on their transatlantic business in equities and exchange-traded and OTC equity derivative contracts. Their work will be supported by the findings of a survey of the principal EU and US institutions carrying on the business in question. This survey will be distributed by participating associations by the end of March.

*Who is undertaking the work?*

The project is being undertaken on an equal partnership basis by the two affiliate associations of the American Bankers Association, namely, ABA Securities Association (ABASA) and the Bankers' Association for Finance and Trade (BAFT), the British Bankers' Association (BBA), the Futures Industry Association (FIA), the Futures and Options Association (FOA) and the Securities Industry Association (SIA), together with a number of US and EU exchanges acting as observers to the work. The participating associations are in close discussion with participants in the French financial services industry to ascertain if and how they might wish to be involved in the project.

*Why is the project being undertaken?*

The dialogue between the European Commission and the SEC some two years ago over the viability, advantages and disadvantages of mutual regulatory recognition was rather like debating a solution before analysing the underlying problem ie the appropriate regulatory response to regulatory simplification can only be determined after and not before the identification of regulatory inefficiencies. Once identified, the question of whether that regulatory simplification is best achieved through unilateral or mutual recognition or through rules' convergence or the development of new rules or by the observance of certain add-on "host state" rules can then be determined.

Other factors that point to the need for the proposed work to be undertaken are:

- on the US side, the unusual situation whereby two regulatory authorities, namely, the SEC and the CFTC, are able to adopt fundamentally very different policies towards the conduct of US business by non-US licensed entities, notwithstanding that they are carrying on a complementary and overlapping regulatory role in the same jurisdiction; are operating under the same overarching legislation; and are regulating business lines which are heavily integrated;
- on the EU side, the inherent conflict between, on the one hand, Commission policy which expects that countries should deal with the EU as a single state and, on the other hand, the reality that the EU is, at present, a federation of nation states with different laws and regulatory authorities, whose standards of rules' implementation, powers, resources and enforcement are often at significant variance - all of which militates against EU regulatory recognition by third countries on a collective basis.

*What is the process by which this project is to be undertaken and when will it be delivered?*

1. Stage One (due to be completed by mid-April) involves a significant amount of regulatory "desk work" by Clifford Chance for the purpose of analysing US and EU legislative and regulatory requirements falling within the scope of the project.
2. Stage Two (due to be completed by mid-April) will involve the distribution, completion and return of a "business" questionnaire seeking firms' views on what they regard as the priority areas for regulatory simplification. The findings of the questionnaire will then be measured against the legal analysis and against any known regulatory differences and incorporated into a "practical steps" report.
3. Stage Three (due to be completed by end April/early May) will comprise distribution to firms of the final report in draft form for comment and review.
4. Stage Four (due to be completed by the end May/early June) will be the discreet publication and issuance of the report in final or, at the very least, very near final draft form to selected organisations such as government departments, regulatory bodies and parliamentary committees.

5. Stage Five (due to be completed by mid-June) will be the formal publication and launch of the report.