



21 June 2004

M. F Demarigny
Secretary General
CESR
11-13 Avenue de Friedland
75008 Paris
FRANCE

Dear M. Demarigny

**RESPONSE TO CESR/ESCB DRAFT STANDARDS FOR SECURITIES
CLEARING AND SETTLEMENT SYSTEMS IN THE EUROPEAN UNION**

Thank you for the opportunity to comment on the CESR/ESCB joint consultation paper on draft standards for securities clearing and settlement systems ("the draft standards"). Our comments are limited to our key observations in relation to the draft standards.

We are aware that CESR and ESCB's proposals follow closely on from the work of the Giovannini Group and the European Commission's Communication. We are fully supportive of these initiatives, and believe they are complementary to the work of CESR and ESCB. As such, we welcome the draft standards and believe that, following appropriate consultation with the market, they should be progressed regardless of developments in other areas - the timing of which remains unclear.

A key benefit of the draft standards will be a move to common supervisory standards – this is an important measure to enhance efficiency and reliability and to promote mutual recognition across EU markets. It is important that the draft standards are implemented as soon as possible as delay risks hindering the development of genuine competition across the European Union and with it, the creation of a truly integrated market for financial services.

Governance

Given the current structure of European clearing and settlement providers, governance arrangements are critical. The control exercised by exchanges, the fact that most clearing and settlement providers are still effectively monopolies within the markets they serve, and the increasing trend towards a "for profit" structure by clearing and settlement providers could lead to higher prices, less innovation, and more barriers to entry being created. Strong user governance and a public and transparent commitment to fair treatment of all users would counter this.

We believe that Standard 13 on governance arrangements should be robustly implemented across Europe so that governance of CSDs and CCPs fulfils public interest requirements as well as promoting the objectives of owners and users.

Access

It is important that there are no arbitrary access barriers put in place by clearing and settlement providers or by legislation governing them. In particular, users should not be inhibited from access except on objective and transparent grounds.

We support Standard 14 which requires CSDs and CCPs to permit fair and open access to their services with publicly disclosed criteria for participation. We also note the objectives of the standards are to promote the competitiveness of European markets and promote and sustain integration. In order to ensure effective competition, not only must all access issues be addressed but full fungibility between trades dealt on different exchanges must be achieved. This fungibility must exist within the central counterparty serving exchanges and we would welcome a requirement for this under Standard 14.

We would also strongly urge CESR/ESCB to include in the standard a requirement that access should be provided on a non-discriminatory basis. To enable European exchanges to compete on a level playing field to provide cost-effective trading services there must be equitable and non-discriminatory access to clearing and settlement providers.

Legal framework and Regulatory oversight

Standard 1 requires a well founded, clear and transparent legal basis for securities clearing and settlement systems, and links between them. We believe this is very important for effective integration.

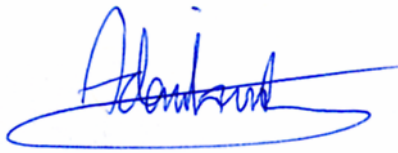
Standard 18 regarding transparent, consistent and effective regulation by EU regulators, in co-operation with one another, is also vital if the standards are going to be successful in increasing mutual recognition and ensuring a level playing field.

Application

As regulators adopt the standards into their regulatory frameworks we believe it is important that they uphold the principles of functional regulation. This will require the standards to be applied in a pragmatic and bespoke manner, particularly with respect to custodians. The standards should apply only where custodians are genuinely operating systemically important systems.

I hope our views are helpful to the CESR/ESCB work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Adam Kinsley', with a large, sweeping underline.

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