Comments of BORSA ITALIANA GROUP -

ESCB CESR consultative report on "Standards for Securities Clearing and Settlement Systems in the European Union"

Milan 14 november 2003

Contents

First of all, we would like to thank ESCB CESR for having the opportunity to comment on the ESCB CESR consultative report on "Standards for Securities Clearing and Settlement Systems in the European Union". For the sake of clearness, we divided our response in three parts:

- the scope of application of the ESCB CESR standards
- the single standards themselves
- the implementation of the standards.

1. Scope of the application of the ESCB CESR standards

We welcome the envisaged application of the standards to "systemically important systems" which is an important step to adopt the CPSS IOSCO Recommendations to the European Environment. An application of the ESCB CESR Standards to all systemically important systems (CSDs, ICSDs, CCPs and local/global custodians) is consistent with the risk based functional approach we have always supported and is the essential pre-requisite for a safe and sound European clearing and settlement infrastructure and fosters the protection of the investor. A partial application of the standards only to CSDs, ICSDs and CCPs would not lead to reach the aims of "enhancing safety, soundness and efficiency of securities clearing and settlement"[1] and to "avoid systemic risk"[2] as some of the custodian banks currently clear and settle so considerably high volumes that they might "present a systemic risk in the event of their sudden failure to carry on clearing and settlement activities"[3].

Current banking regulation does, due to our knowledge not cover the risks deriving from clearings and settlement. Also in the new Basel Capital Accord, operational risks are covered only with regard to capital adequacy and not by stating principles to grant the smooth functioning of the financial system. In the case of operational risk, for example, the required capital is calculated in the standardised approach based on a percentage of the gross income of the business line clearing & settlement, which in our opinion will not be sufficient to properly address systemic risks arising from high volumes in clearing and settlement[4]. We would also like to point out that Basel II will only be implemented by the end of the year-2006 and that, the ESCB CESR standards and Basel II adequacy requirements could be considered as rather complementary.

The proposed functional approach of ESCB CESR is also in line with the approach of three US regulatory agencies (Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission) as it is illustrated in their "Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System", issued on April 8, 2003. Driven by the post-Sept 11 risk environment, the paper identifies sound practices to strengthen the resilience of critical U.S. financial markets and to

[1] See ESCB CESR consultative report on "Standards for Securities Clearing and Settlement Systems in the European Union", page 3
[2] See ESCB CESR consultative report on "Standards for Securities Clearing and Settlement Systems in the European Union", page 3
[3] See Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency; and Securities and Exchange Commission: Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, page 7
[4] See Basel Committee on Banking Supervision: The new Basel Capital Accord, p.122/123

minimize the immediate systemic effects of a wide-scale disruption. These practices have to be adopted by core clearing and settlement organizations, including private sector firms that play "significant roles in critical financial markets"[5].

For ensuring the correct application of the standards to all systemically important systems, we believe that the following issues should be clarified in more depth:

1. **Do you agree that some of the scope of the standards should be extended to systemically important providers of securities clearing and settlement services other than CSDs and CCPs?**

   As roles between the providers got blurred, we welcome the adoption of a functional approach. The ESCB CESR standards should be applied to all relevant functions related to Clearing, Settlement and Custody, without regarding the legal status of the entity providing these service, i.e. to CSDs, ICSDs, Custodians, Registrars.

   As mentioned in the current version of the standards, some of them may also be applied to network providers and providers of trade confirmation and messaging services (however, we assume that the enforcement of the standards within this type of providers will probably be more difficult).

   Regarding the entities to which the single standards apply, it has also to be more clearly defined which type of entity falls under which category (i.e. why are registrars not covered by the standard regarding governance or which entities are meant by "etc." on page 1 under No. 3 (1) of the scope of application?).

   Some of the standards could also be extended to National Central Banks and to National Governments (see single standards).

2. **Should the extension be to all custodians, or should it be limited to systemically important providers of securities clearing and settlement services?**

   The size of post trading activities effected by some players may be marginal, therefore, the extension could be limited to systemically important systems for addressing the major part of the risks. However, the definition of systemically important systems must be clear and unambiguous. Some open issues are:

   - How is the "value" of the transactions defined (which prices, how will the conversion of foreign currency in Euro be effected, i.e. buying rate/selling rate; will the calculation basis be based on gross or net transactions, on settlement or pre-settlement?). The definition on page 3 No. 9 (1) should be clearer: it is not mentioned to what the thresholds really refer (share of clearing/settlement?)
   - How will it be ensured that internalised transactions are included in the value?

[5] See Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency; and Securities and Exchange Commission: Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, page 7

- How could data be collected from a practical point of view in order to define the total volumes and the single volumes? Who will collect the data (i.e. national regulators ?)
- When (at what time: daily, monthly, average) will the relevant values be defined?
- What happens if changes occur? Who monitors and at what interval?

3. **Do you agree that systemically important providers could be defined as institutions with a business share of [5%] at EU level or [25%] at domestic level (or lower, at the discretion of the national authorities) in each relevant market?**

   As mentioned above, it should be clearly defined what is meant with "business share". We propose to take the daily average of value as calculation basis. The daily average should be expressed in EURO (selling rates) - foreign values to be converted into EURO - and refer to the countervalue of all single gross transactions (pre-netting) processed by the custodian, whether internalised or not, including the buy and sell sides. The daily average value could be computed over a period of at least 6 months. Verification and updates could be done on a half year / yearly basis or immediately when significant changes occur.

   We were also wondering whether the mentioned thresholds of 5 % at EU level and 25% of domestic level are expressive and whether some statistical analysis has been conducted in the European area prior to the proposal of the thresholds.

   The threshold of 25% per security's category for the domestic environment seems too high; if e.g. a custodian bank processes a total value of 20% in equities, 20% in bonds, 15 % in derivatives, it already would already cover more than the half of the whole domestic market, without being considered systemically important. As mentioned in your consultation, it would therefore make sense to set thresholds but to give the national supervisors the choice to decide on the application of a lower percentage (each market has its own character, generalizing the threshold might be too simplistic). National supervisory authorities should also be aware not to exclude any institution from the application of the standards if its value is closely below the threshold.

4. **What are the criteria along which – according to your opinion – the systemically important system could be defined? What would you consider to be the essential elements that should be apart of such definition?**

   See above.

   If an entity falls below the thresholds, three additional criteria (number of links with other systems, nature and number of clients, replacement possibility in case of failure; see No.7 on page 2/3 of the "Scope of application") could be applied by the national authorities. Regarding the nature and number of clients and the replacement of the custodian in crisis situations, further details should be worked out, i.e. how can "large financial institutions" be defined (maybe a look should be taken also on the entire portfolio of the custodian, i.e. has the custodian only one big client or several small etc.).

   Regarding the number of systems to which the custodian is linked, it may make sense not only consider the links to CSDs, but also the custodians' links to payment or FX systems

because of the systemic factor. If a custodian conducts high volumes of FX business, a systemic disruption in this field may spread over to the securities markets. Another approach for covering this risk would be to include the FX and money market business in the three categories of relevant markets (conform to the approach proposed by the U.S. Interagency Paper).

5. **Do you agree that three relevant markets can be considered - bonds (public e private), equities and derivatives - or would a different categorisation be helpful?**

   There are types of securities, like. i.e. short term securities or investment funds which seem not to be covered by these three categories. The Interagency Paper of the Federal Reserve makes the following distinction and includes also the FX and money market business:

   - Federal Funds, FX and commercial papers;
   - US Government and agency securities;
   - Corporate debt and equity securities.

   However, we wonder whether it makes sense to divide the markets in three categories as the entire settlement (risk) exposure of the custodian should be considered. In case of systemic disruptions or failure it makes no difference whether the disruption results from equities, bond or even from the FX business. Because of the consolidation of settlement activity over the last five years, regulators might apply one threshold across all securities markets and, separately, across the derivatives market.

6. **Which of the ESCB-CESR standards should apply to all systemically important custodians?**

   We would recommend to apply all standards except those regarding CCPs (S4) and CSDs (S6) to systemically important custodians. Where this is not viable, at least the following standards should be applied to systemically important custodians in order to avoid systemic risk and to enhance the safety, soundness and efficiency of securities clearing and settlement in Europe: Standard 1, Standard 2, Standard 3, Standard 5, Standard 9, Standard 10, Standard 11, Standard 12, Standard 15 and Standard 16.

7. **What would be the implications of extending the scope of the standards to cover systemically important providers of securities clearing and settlement services?**

   The adoption of a functional approach will:

   - properly address different types of risks involved in clearing and settlement and enhance the safety;
   - ensure a level playing field between different providers,
   - increase the level of transparency.

8. **Do you agree that standards 13,14,15 and 17 should apply to custodians with a dominant position in one market? If yes, how would you define a dominant position?**

The main aim of the standards should be to address current risk, therefore, it should be avoided using competition-style language (such as “dominant position”) and no standards should be set for institutions which may occupy such a position, since to do so might have specific national and European competition law implications. Such issues should be left to national and European competition authorities.

2. Single standards

Standard 1: Legal Framework

The standard seems to state too general principles. We believe that this approach, surely suitable for CPSS-IOSCO Recommendations considering the differences of their addressees, is not sufficient if applied to the European context. The standard should be more detailed trying to give contribution to the creation of a safer environment for clearing and settlement in Europe. To meet this goal we suggest that the explanatory memorandum enters into further details clearly addressing very controversial legal points in order to avoid uncertainties and promote the aforementioned harmonisation of the legal framework in Europe:

- the legal status of book entries in securities accounts held by an intermediary: they should have constitutive effects, as recently envisaged by the Second Report of the Giovannini Group, when proposing its "Securities Account Certainty Project";
- the interaction between CCPs an CSDs as regards the settlement finality: the transaction be deemed final at the entrance into the CCPs' systems or into the SSSs' ones.Both systems must be able to state settlement finality according to their own rules but for different purposes.

We think that the standard should be a mean of encouraging harmonization of laws regarding securities all over Europe and an encouragement for the European legislator to do so, coming from authoritative entities. This would also be consistent with recent initiatives such the Settlement Finality Directive, the Directive on Financial Collateral Arrangements, The Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary and the on going UNIDROIT project, aimed at the harmonization of substantive rules regarding securities held with an intermediary.

Considering that the aforementioned efforts are aimed at reaching the highest level of harmonization of the European legal environment, the requested identification of the "relevant jurisdiction for each aspect of the clearing and settlement process" and of the conflict of law issues should be confined only to non - European cross-border systems. Point 5 of the "Key Elements" and par. 33 should then be amended as such.

Regarding the information to be provided to market participants, we would like to stress that most of the issues listed in par. 29 do not depend on the present addressees of the standard but on the legal framework in which they perform their activity. For this reason it would be crucial to address the standard also to national legislators on whom stands the responsibility to provide for a safer framework This is true also for legal risks in cross-border environment that standard 19 is aimed to prevent.

We share the opinion expressed in par. 31 that some of the legal issues listed in the standard are addressed by Settlement Finality Directive and we welcome the designation of CSDs and CCPs as systems under the Directive. However, we note that such designation is a commitment of national authorities. In addition, it could be useful to recommend the implementation as adherent as it can be to the rules of the directive that aims at covering the transfer orders from

the moment they enter into a system thus providing the same protection once granted to the conclusion of the settlement process.

As regards par. 29, point 7, we note that The Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary may be the answer to this issue because it states that the law applicable to these aspects is the law of the State expressly agreed in the account agreement (see art. 4 Hague Convention). In this context, conflict of law rules i.e. between Settlement Finality Directive/ Directive on Financial Collateral Arrangements and Hague Convention should be solved by the European Authorities.

Finally, par. 29 point 12 refers to "rules for unwinding procedures": but, according to our understanding of Settlement Finality Directive whereas n. 13 ("…*as long as this leads neither to the unwinding of netting nor to the revocation of the transfer order in the system*") and art. 3, par. 2 ("*No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as defined in Article 6(1) shall lead to the unwinding of a netting*"), unwinding should not be allowed. A recommendation of not allowing unwinding is also mentioned in the ESCB CESR standard no. 9 (par. 107, page 48: "…*unwinding procedures should be avoided*…").

Standard 2: Trade Confirmation and settlement matching

We note that the standards should also be addressed to entities providing matching services (i.e. stock exchanges) and to market participants.

We believe that trade confirmation on T+0 would not be feasible for those institutional investors active outside Europe in different time zones. For this reason we suggest to provide for at least a T+1 trade confirmation period for such investors.

We were wondering how the difference between "without delay" for direct participants and "as soon as possible" for indirect participants could be measured in terms of time (seconds/ minutes).

Standard 3: Settlement Cycles

The addresse of this Standard should be the regulated Markets since it is the responsability of the exchanges to set the lenght of settlement cycle. Furthermore, if the exchange adopts a CCP guaranty system the shortening of the cycle is not a goal as the counterparty risk and the credit risk are managed by CCP itself.

As regard of SSS, we think that sysitem should be able to accept and process settlement instrucions for the same day value (T+0)

As regards rolling settlement requested by point 2 of the "Key Elements", we note that almost everywhere in Europe rolling settlement cycles are adopted. The standards could be referred to those countries that will join Europe in the following months if they do not provide for this.

We suggest also to modify the annex 1 to the standard according to the fact that in Italy Repos on governments debts instruments are performed with the following intervals: T+0; T+1; T+2; T+3.

Standard 4: Central Counterparties (CCPs)

The contents of the standard can be shared. However, we deem that they could be insufficient to properly address all the complex issues connected to the function of a CCP. We would welcome the envisaged further detailed work based on the forthcoming publication of CPSS IOSCO standards on CCPs and therefore this Standard could be embeded in the forthcoming CCP standards.

We would like to stress that novation can not be considered as netting agreement as it appears from paragraph 58 ("…*inter alia, the netting arrangement whether by novation or otherwise*"…).

Standard 5: Securities lending

The standard states that securities lending should be encouraged as a mean for expediting settlement. Of course CSDs, CCPs and custodians can do so by providing efficient securities lending services and procedures but a wider use of securities lending could only be possible within an adequate legal framework. This is the reason why we would suggest that this standard is addressed also to national legislators that should work in order to solve problems connected to the fiscal and legal treatment of securities lending operations.

The ESCB-CESR's summary on page 35, par. 75 seems not clearly formulated: "*In particular, such an entity* [centralised securities lending facility] *should fully collateralise its securities lending exposures*". It should be added "if acting as principle" as otherwise no full collateralisation is required (see par. 74).

Standard 6: CSDs

The issues in this standard are blurred. The original CPSS-IOSCO Recommendation was aimed at describing advantages of immobilization and dematerialization of securities. The proposed new wording has put together completely different issues. For example, in the effort "*to safeguard the integrity of securities issues and the interest of the investors*" the standard refers mainly to operational issues (adequate and proper conduction of the issue, holding and transfer of securities) that should be better addressed in Standard 11 "Operational Reliability".

In particular, Monte Titoli is concerned on three main issues:

- first, the specific application of institutional requirements runs counter to the philosophy of functional regulation;
- secondly, we note that recommending "*avoiding risk to the greatest practicable extent*" (see the standard itself and Point 4 of the Key Elements) doesn't make great sense: the aim of the standards should not be discouraging from taking risks but providing criteria to properly address the different types of risks. The need to mitigate risks should then replace the present warning not to take them. We do not believe that it is appropriate for regulators to hamper the evolution of CSDs by defining which activities are regarded as so-called

"core" and which are "non-core". Therefore, we suggest to anticipate directly in Point 4 of the Key Elements the present wording of par. 79: "When a CSD carries out activities combined with credit risk (such as credit extension, securities lending) the associated risks should be mitigated in accordance with the requirements set out in Standard 5 (securities lending), Standard 9 (risk controls) and Standard 10 (cash settlement assets)". To conclude, we believe that the regulators should work with each CSD to ensure that the risks of any existing or potential business opportunity are adequately controlled and mitigated;

- thirdly, we note that paragraph 78 requires CSDs to have plans prepared to allow market participants access to CSD services even if the CSD becomes insolvent. It is worth to remember that insolvency procedures often imply the impossibility to conduct business. A more feasible approach would be that of asking the national authorities (by reviewing or changing national insolvency laws) to directly replace the operator of the settlement system in case of insolvency or to choose another company as the provider of the services (for example, Italian "Consolidated law on financial Intermediation" – legislative decree n.58/98 - states that the authorities can replace the company managing the market in cases of serious irregularities. Moreover, a general provision of this kind is provided for in art. 5, par. 2 of Regulation 8 September 2000 adopted by Bank of Italy, in agreement with Consob, regarding the Italian settlement system. It states that: "*The Bank of Italy, in agreement with Consob, shall adopt the necessary measures to ensure continuity of the settlement services*"). A wide adoption of such provision would assure business continuity at the European level. For all the above mentioned reasons, this standard should also be addressed to national regulators and legislators.

Finally, we do not understand why matching services provided by a CSD (included in par 79 under the list of non-core activities) fall in this category. Of course, measures against operational risk must be in place for matching procedures, but a full collateralisation is not necessary. On the contrary, centralized matching, also on a cross-border basis, should be encouraged as it would minimize the risks.

For a clear and sound risk allocation, we believe that CCP services should be performed by a distinct legal entity.

Standard 7: DVP

Reaching DVP in cross-border settlement is not so easy considering the obstacles to settle the cash leg of the transaction. Especially for smaller CSDs it might be also a considerable financial effort to replace each FOP link with a DVP link.

Additional functionality offered by TARGET II - like mandated payments - may also be a way to overcome the need to replace FOP links through DVP links (if the CSD is authorized to effect direct debits on behalf of the foreign investor from his account at a foreign national bank, a DVP link between both CSDs would not be explicitly necessary).

In par. 89, we suggest to consider the “asset commitment risk” not as a risk but rather as an issue of efficiency. Reducing it would be advisable considering it is an opportunity cost: the longest the period the lowest the possibility to use cash and securities for other transactions.

Finally, the word “actual” in point 2 of the “Key Elements” seems not to add much to the contents.

Standard 8: Timing of settlement finality

We welcome the introduction in the standard of the intraday finality that we deem necessary in European context. As the intraday finality depends on the settlement of the cash leg, we believe that this standard needs to be addressed also to the National Central Banks.

It would be useful to stress, directly in the explanatory memorandum (not only in the footnote), that the settlement finality the standard refers to is a different concept from the finality of a transfer order entered into a system, provided for in the Settlement Finality Directive, so that it becomes clear that granting the former does not mean that the provisions of the Directive are fulfilled.

Standard 9: Risk controls

Standard 9 and 6 create an unjustified discrimination between CSDs and other entities: the former should avoid taking risks to the greatest practicable extent; the latter can take risks provided that they are properly addressed. This runs against the level playing field that the standards are aimed at promoting. Again, the crucial issue is not avoiding risks (in fact, even the “core” activity of CSD carries risks) but to mitigate them.

The proposed full collateralisation is a good measure for addressing counterparty risks, but could not be always feasible. In such circumstances, the ESCB CESR standards should consider additional measures to manage those risks.

On page 47, Point 3 of the Key Elements should be clearer: “In certain circumstances, e.g. to support the orderly functioning of the markets, operators may offer a marginal amount of uncollateralised credit, but only to participants with a high rating”. How will “marginal” and “high rating” be defined?

We were wondering whether it would make sense to require risk management measures not only for net systems (see par. 2 of the Key Elements) but also for gross settlement systems, even if a default event in this case could be systemically less dangerous (also within gross systems, a transaction with a high amount of one participant could create problems or delay the settlement of other transactions).

Standard 10: Cash settlement assets

We support the settlement of the cash leg in central bank money for ensuring risk minimization. However, we would like to point out that the cross-border settlement of the cash leg is one of the major obstacles to cross border DVP settlement. Therefore, unless the rules of the Eurosystem have changed and unless the new TARGET 2 payment platform has been introduced, commercial bank money should be considered as a viable way to settle cross-border trades.

Enhancements of the mechanisms for provision of central bank money by the central banks are very much appreciated (i.e. extension of opening hours of payment systems, facilitated access to central bank cash accounts, remote access to foreign payment systems, mandated payments). We believe that to address the issue of security of cash transfer adequately requires the active participation and support of each national central bank. We would therefore, encourage ESCB CESR also to address this standard to all NCBs.

Standard 11: Operational reliability

Monte Titoli recommends the extension of this standard to custodians that operate systemically important systems as the greatest risk to financial stability results not only from legal or credit risks, but mainly from operational incidents caused either by internal or external threats. Consequently, ESCB CESR should focus on the consistent application of Standard 11 across the market for settlement services. This also because Basel II covers operational risks mainly as regards capital adequacy and not by stating principles to run continuity of operation of settlement systems which is key for the smooth functioning of the financial system. In the case of operational risk, for example, the required capital is calculated in the standardised approach based on a percentage of the gross income of the business line clearing & settlement, which in our opinion will not be sufficient to properly address systemic risks arising from high volumes in clearing and settlement[6]. We would also like to point out that Basel II will only be implemented by the end of the year-2006 and that, the ESCB CESR standards and Basel II adequacy requirements could, after a first analysis, be considered, as compatible and complementary.

We welcome the proposed application of the standard to “messaging services and network providers” but we have some doubts regarding its enforceability towards them because they usually are non regulated entities. The same comments also to Standards 14, 15, 16, 17.

In the Key Elements point 6 on page 55, asking for a prior approval from the authorities of the outsourcing “where applicable” makes little sense: it will have no impact on those legislations already providing for that approval nor in those that don’t ask for it. We suggest to delete the entire Point 6. The statement in the following Point 7 is appreciated: once the clearing and settlement operations have been outsourced, the outsourcer remains fully responsible towards the national authorities and must ensure that the external provider meets the standard.

[6] See Basel Committee on Banking Supervision: The new Basel Capital Accord, p.122/123

Standard 12: Protection of customers' securities

It is not completely clear what impact the ESCB CESR's statement "*it is important to enforce effective segregation of customer assets at all appropriate levels*" (see par. 139) will have on the relayed link model of ECSDA (ECSDA has previously analysed that segregation of the holdings of the relayed investor SSS from those of the middle SSS within the system of the issuer SSS would require high additional costs and not contribute to more safety).[7] See also comment on standard 19.

Moreover we think it is very important to make clear that the scope of segregation is the distinction between assets belonging to the CSD and assets belonging to clients. The wording of the standard could lead to the wrong belief that segregation is needed between each clients' assets.

As a general comment segregation at all levels is not necessary because the different national laws may already have provisions regarding the protection of investors' securities.

A specific standard should address the reconciliation practice. Reconciliation should occur at least once a day between entities holding securities in custody – considering their own securities and those held in the name of their clients – and the accounts open in the name of the issuers in a CSD.

As a general comment, national legislators should be encouraged to introduce, directly in the national law, the prohibition for intermediaries to use customers' securities for their own business without explicit consent. However, provided that we recognize the importance of such consent we note that it would be hard for intermediaries to fulfil this requirement on a case by case basis.

Standard 14: Access

The standard is also addressed to custodians with a dominant position in a particular market. Although we deem such extension advisable, we think that the effective application would be difficult to achieve considering that these are mainly entities performing commercial activities.

Due to this standard, access to an SSS can be limited exclusively to control risk. The current proposal of the ISD (art. 32, par.3) on the other hand, states that access can be refused on "legitimate commercial grounds".

For the envisaged application to "messaging services and network providers" please see previous comment (second paragraph of Standard 11).

Standard 15: Efficiency

We welcome the described approach of interoperability and standardisation of interfaces as they would lead to greater efficiency of cross-border settlement.

[7] see ECSDA: Cross Border settlement through "Relayed links", Annex (details on the cost analysis)

For the envisaged application to "messaging services and network providers" please see previous comment (second paragraph of Standard 11).

Standard 16: Communication procedures, messaging standards and straight-through processing

For the envisaged application to "messaging services and network providers" please see previous comment (second paragraph of Standard 11).

Standard 17: Transparency

It is planned to introduce an ESCB CESR assessment methodology which should be then disclosed to the public. We would like to point out that this should not further increase the CSDs' regulatory obligations and, in particular, we propose that the envisaged assessment methodology should substitute the completion of the CPSS IOSCO Disclosure Framework. It should also be considered by the ESCB to promote this assessment methodology for compliance with SEC rule 17f.

Moreover, a cooperation of ESCB CESR and the European (I)CSDs would be useful when drawing the questionnaire.

Standard 18: Supervision and Oversight

We support the idea of a "lead supervisor /overseer" for those entities active in several Member States. This would surely facilitate the exchange of information between the different national authorities enhancing efficiency in this field, with great savings in terms of time and costs.

We suggest to complete the standard adding the goals of the required cooperation between central banks and securities regulators/supervisors/overseers. We suggest to add the following wording at the end of the Standard: "… in order to avoid unnecessary costs of supervision".

Standard 19: Cross border links

To the extent that every CSD in a link applies the standards, maybe a specific standard on cross border links is not needed and can lead to confusion. Thus, it could be deleted.

However, we note that if links are connections between CSDs aimed at settling cross-border trades ("CSDs that establish links to settle…"), as we deem they are, the proposed application of the standard to custodian operating systemically important systems in point 1 of "Key Elements" is not correct: the standard should only refer to CSDs, considering also that cross system links between (I)CSDs are one suitable way to conduct monetary operations.

Regarding segregation it is mentioned in par. 204 that "*for the protection against custody risk, appropriate risk management procedures like reconciliation and realignment are needed*" (segregation is not explicitly mentioned); furthermore, it is mentioned that "*Relayed links*

should be designed and operated in a way that does not increase the level of risks or reduce efficiency". We were wondering whether this "efficiency" be considered as an argument for not effecting segregation at the level of the issuer SSS as efficiency of a relayed link will be reduced by segregation at the issuer SSS level as it was shown by an analysis of ECSDA.[8]

On the other hand, it is stated that "Relayed links are subject to the ESCB CESR standards": in this case, the consequence would be that segregation at each level (as stated under Standard 12, par. 139), also at the issuer SSS, is required. We would like to ask you which approach will prevail for relayed links.

3. Implementation of the ESCB CESR standards

Even if the standards are a more binding instrument compared to recommendations, this does not solve the problems connected to their application and enforcement. Maybe the best way to grant the application is to recommend that national regulators to include such principles in the regulation relating to clearing and settlement and, in the case they haven't this power according to national law, it would be necessary to sensitise the national legislator on the importance that these standards are implemented in order to grant the smooth functioning of the entire financial system. This approach could grant more successful results but, of course, could be a difficult and time spending process.

It should also be assured that the standards are implemented consistently and at the same time in all legislations. We would encourage the ESCB CESR to use these standards also for the assessment of EU securities settlement systems for ESCB credit operations; furthermore, for avoiding duplication of efforts, the standards should replace the existing CPSS IOSCO standards and the relative CPSS IOSCO disclosure framework.

We welcome the envisaged assessment methodology as proposed by ESCB CESR and would be glad to provide our input to such a questionnaire.

[8] see ECSDA: Cross Border settlement through "Relayed links", Annex (details on the cost analysis)