



VERBAND DER AUSLANDSBANKEN IN DEUTSCHLAND E. V.
ASSOCIATION OF FOREIGN BANKS IN GERMANY

INTERESSENVERTRETUNG AUSLÄNDISCHER BANKEN, KAPITALANLAGEGESELLSCHAFTEN, FINANZDIENSTLEISTUNGSPINSTITUTE UND REPRÄSENTANZEN
REPRESENTATION OF INTERESTS OF FOREIGN BANKS, INVESTMENT MANAGEMENT COMPANIES, FINANCIAL SERVICES INSTITUTIONS AND REPRESENTATIVE OFFICES

CESR and ESCB Secretariat
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Comments on the second CESR-ESCB Draft Standards on Clearing and Settlement (May 2004)

Dear Mr Moeliker,
Dear Mr Kazarian,

We would like to thank you for the possibility to comment on the second Draft of the ESCB-CESR Standards on Clearing and Settlement, published on May 5, 2004 (in the following "Standards") and would also like to refer to our comments in our letter of September 30, 2003.

The foreign banks in Germany as users of the systems for clearing and settlement of securities, as intermediaries providing services to investors and as participants in an industry-led initiative to increase efficiency and integration of these systems in the EU, are especially interested in achieving a regulatory framework that ultimately contributes to a competitive, efficient and safe clearing and settlement system. We welcome in principle the revised Standards but in our opinion a number of Standards need further clarification. Please find below our proposals on the draft Standards.

I. General comments

1. Proposals for a timetable of the consultation

Proposals:

- **Ahead of an open public hearing, there should be an adequate period e.g. at least 6 weeks to examine the (revised) document.**
- **In addition, the industry should be given at least 4 weeks after the oral hearing, i.e. until the beginning of July to submit their written comments.**



We would ask for a timetable of the consultation that will allow market participants sufficient time to prepare detailed remarks on the revised draft. We propose an adequate period of at least 6 weeks after publication of the document. In this case, there were 13 working days between the publication of the revised paper and the hearing, of which one day was a public holiday in many EU countries, providing a very tight deadline.

Furthermore, there should be an adequate period of time for the market participants to submit written comments, well after the oral hearing since main concerns of the market will relate to the specific wording of the paper and the exchange of views in the hearing will influence the final views of the market. The adequate period could be shorter than the period allocated in the first round of consultation, but not less than 4 weeks after the hearing in Paris.

2. Proposals for the co-ordination and coherence with other initiatives

Proposal:

The CESR-ESCB working group should take all relevant initiatives concerning clearing and settlement into account before proceeding with its work.

Currently, there are a lot of changes in the field of clearing and settlement of securities. The following important documents are being discussed at the moment: the European Commission's Communication on Clearing and Settlement (April 2004), the Consultative Report for Recommendations for CCP by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO) (March 2004) as well as the Publication of the TARGET2 Specifications (April 2004).

The working group should take into account before proceeding with its work to review the draft of the Standards, e.g. the definitions in the new glossary of the revised CESR-ESCB Standards should be brought in line with the proposals of the European Commission's Communication on different aspects. We would see a benefit in delaying the finalisation of the revised Standards until the Commission at least has had a chance to analyse the feedback to the EU-Communication dated April 2004 and reach a preliminary view on the definitions proposed. In determining a timetable for the finalisation of its work, we propose that the CESR-ESCB working group takes into account the need to create a coherent framework in line with all developments mentioned.

II. Core comments

Proposal:

Once again, we plead that the Standards should not apply the concepts of “systematically important systems” and “dominant provider” relative to custodians for any of the purposes alluded to in the Standards and should not be addressed to custodians engaged in settlement of client transactions in the EU.

The proposed Standards should not apply to custodian banks, because custodian banks are already subject to banking supervision rules that address any risks that might arise from their activities in clearing and settlement. Furthermore, banks do not carry out infrastructure functions that make the Standards unsuitable for them. The proposed Standards should only apply to market infrastructure, i.e. especially to CSDs. CSDs are connected with market infrastructure, e.g. CCPs and the stock exchange, other CSDs for international transfers as well as national central banks. CSDs – that are typically not banks – impose



rules on their members and market participants, have a certain governance and are subject to a specific regulation as well as often having a dominant position (often monopolists).

In contrast to CSDs, custodian banks do not carry out clearing and settlement activities comparable to those of CSDs. Custodian banks are members of the CSD infrastructure and serve their clients (retail and institutional investors) – and not the markets – in operating clients' securities and cash accounts. In general, custodian banks provide services that are part of the settlement process and not infrastructure for clearing and settlement. In addition, banks are not subject to the Settlement Finality Directive (98/26/EC) of May 19, 1998 as they do not provide finality. Custodian banks compete with other banks and brokers and have to manage their banking risks e.g. credit, liquidity and operational risks. The interposition of custodian banks between the client and the CSDs does not give rise to any risk for the global system.

There is a great risk of double regulation if custodians are subject to a second set of rules, e.g. standard 9 which requires reporting of liquidity positions. These requirements would be fully inappropriate for banks which are already regulated for their lending activities.

As we had also highlighted in our first response, because of the inappropriate Standards for custodian banks, virtually all Standards should be addressed exclusively to CSDs, ICSDs and CCPs and not to custodians engaged in settlement of client transactions in the EU.

In event you have any further questions, please do not hesitate to contact us.

Yours sincerely

Jens Tolckmitt

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cc. Mr. Neuschwander, Deutsche Bundesbank
Mr. Sigmundt, BaFin