



20 June 2004

ESF's comments on the ESCB-CESR Standards for Securities Clearing and Settlement Systems in the European Union

Responding to the invitation extended by the ESCB-CESR Working Group on 5 May 2004, we set out our comments on the Draft Standards for Securities Clearing and Settlements Systems in the European Union as follows:

- We welcome the differentiated adoption of the risk based functional approach – *“However certain functions are currently subject to different regulation depending on the institutional status of the entity that performs them and the Group has therefore applied the functional approach in a way that recognises those differences.” (p. 3, paragraph 7)* – this differentiation concurring with the proposal made in our consultation contribution of 6 November 2003.
- ESF is pleased to note that one of our main points has been accounted for in the revised draft, i.e. the request to avoid duplication of regulatory burdens for banks by regulatory activities to take place within the existing framework of banking regulatory and supervisory structures: *“After consulting the Banking Supervisors (BSC), the Group concluded that the new Basle II framework is likely to provide the most convenient vehicle to address risks associated with the settlement activities of custodian banks operating systemically important systems.” (p.6 paragraph 15).*
- Furthermore, we welcome the clarification regarding the separation of regulatory activities from the realm of competition authorities in the revised draft by the elimination of the term ‘custodians that have a dominant position in their market’ and by the specific statement in paragraph 8 on p.4.

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- However, we deem the considerations dealing with the ambit of the Standards contained in paragraph 14 on p.5 falling short of the required functional risk based specifications in general and the differentiation between custody services on the one hand and clearing & settlement activities on the other:

As outlined in our consultation contribution of 6 November 2003, the essential role of a custodian bank is to provide safekeeping and asset servicing functions. With the exception of Standard 11: Operational reliability and Standard 12: Protection of customers' securities, it is therefore unsound to subject custodians providing primarily safekeeping and asset servicing functions to the Standards.

Moreover, in our view an adequately detailed list of criteria should be established for the risk based assessment of whether or not a bank operates a systemically important clearing and settlement system – at national and at European level –, taking into account risk mitigating elements like for example the use of a CCP. In this context we strongly suggest an intense dialogue with the market when defining these criteria and developing the assessment methodology mentioned in paragraph 26 on p.7.

- We welcome the newly introduced Glossary although certain definitions will require more detailed considerations. As a clear and coherent terminology is of the essence to avoid uncertainties and misinterpretations, we deem it particularly important that definitions used by public authorities – e.g. the EU Commission in its recently published Communication – but also those used by private sector bodies, e.g. ECSDA, are congruent.

In essence: The European Securities Forum endorses the objectives of the Standards as the safety, soundness and efficiency of the European securities clearing and settlement is of utmost importance to its members. It also acknowledges and welcomes the differentiations and changes made as a result of the consultation of last year. However, it urges the ESCB-CESR Working Group to focus on clearing and settlement activities – as opposed to custody services – and to define in close cooperation with the market in greater detail the relevant elements for the determination of a systemically important system. Moreover, a coherent set of definitions will require further considerations.

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