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Berlin, 18 June 2004

The Committee of
European Securities Regulators
Mr. Moeliker

European Central Bank
Mr. Kazarian

By e-mail

Response of the *Federal Association of the German Cooperative Banks*
to the CESR-ESCB Draft Standards for Securities Clearing and Settlement Systems in the European Union
(Ref.: CESR/04-226); May 2004

Dear Mr Kazarian, dear Mr Moeliker,

We warmly welcome the second round of consultation for the new Standards Draft for Securities Clearing and Settlement Systems in the European Union which is in our view indeed necessary with regard to the complex nature of international securities transactions and the value chain of securities clearing and settlement.

May we introduce our association: As the central organization of the cooperative banking group Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR) functions as promotor, representative and strategy partner of its members. 1500 German Volksbanken and Raiffeisenbanken with over 15 million members and some 30 million customers, are a pillar of German banking and a major force in the German economy.

No implementation before the Directive

First of all let us stress that we would prefer an implementation of the Standards within the framework of a European Directive which is underway as far as we know standing on top of the post FSAP list of high priority projects. We fully agree that your valuable Standards Draft should deliver an important input to the relevant parts of the Directive as it is announced in item 20 of your paper. But the standards should be limited to this use because a legal basis for implementation as an obligatory is still missing without a European Directive.

Even after reading the second draft uncertainty remains about the consequences and the involved undertakings as well as relating to the main question what kind of risks are exactly the target of the Standards. There is no clear classification or determination of the specific risks within the various steps of the value chain of securities transactions. This is the background for a widespread fear within the banking community to be involved in what seems as a double or triple regulation of risks which are in the case of banks already regulated by banking law.

And the prospect for the involved industry is not welcome to have two presumably different kinds of standards for clearing and settlement for securities transactions to adopt in the timeframe of let us say two or three years. This is the further reason for not implementing the standards on your own before the Directive will be forthcoming. European law for the financial markets should be clear, transparent and simple instead of forming an opaque network of “standards” with an unclear juridical meaning but a binding effect for the banks because of supervision rules.

The third reason is that there is a fear of disadvantages in the international competition with non-EU residents being not obliged to the standards. This argument relates to those standards of the IOSCO-Recommendation which are “sharpened” in the CESR/ ECB-approach.

Custodian banks

Our main concern relates to the involvement of custodian banks which is in fact left open to decisions on the national level as mentioned in item 14. This is a way of solving the main problem of the standards which we support by adding that an intense cooperation between the regulators is necessary therefore as well as clear criteria.

No additional Conduct of Business Rules

What is also of general importance for us is the attempt of CESR/ ECB to add new obligations with respect to conduct of business rules. This is finally set out in the Financial Instruments Market Directive (FIM) and should in no way be supplemented by additional rules in the Standards which are definitely the wrong place to address this theme. A special solution should be found relating to non-banks acting as custodians not being subject to the mentioned Directive.

Comments on the Standards in detail

Standard 3

We share the CESR/ESCB working group's view that a harmonisation of the settlement cycles is, on principle, advantageous. Yet, we only see a need for harmonisation through the supervisor in the field of stock exchange trading; a freely negotiable settlement period is and remains appropriate and fit for purpose as far as the OTC area is concerned. We also suggest covering only certain product groups (shares, bonds, derivatives) in the harmonisation efforts. What is essential here, however, is the fact that a harmonisation must not be carried out at all costs, but that, instead, there is a meaningful cost/benefit ratio for all stakeholders involved. It is particularly necessary to ensure that a harmonisation does not mean a mere adjustment at a lower level, but that such adjustment is generally conducive to the envisaged trend towards shorter settlement cycles

(with regard to shares, the T+2 regime, e.g., is indicative of such a trend in Germany).

Concerning this standard's scope of application, we see no need to cover "market participants". Along with the operators of the trading systems, the responsibility for compliance with the settlement cycles primarily also lies with the clearing agency (CCP) and with the central settlement agency assigned by the market. The system users, regardless of their relevance for the overall market, need to comply with the market rules laid down by the system operators and therefore do not need to be made subject to any special standard.

Standard 15

It is sufficient to limit the group of addressees to CSDs (and CCPs). For custodian banks competing with each other, this will be redundant.. Yet, this may not be the case for monopoly providers like CSDs, on whose services all market players are dependent. In our view, this aspect should not only refer to the securities side – and therefore to the CSDs as depositories of the units – but it ought to equally refer to the money side. Hence, it may be worth considering expanding the group of addressees to include the European system of Central Banks (ESCB).

Standard 17

This standard obliges not only CSDs and CCPs but also custodians to offer information to identify accurately the risks of the settlement process. This is a too far reaching obligation which cannot be implemented by standards but only by European law. And one should add that the information about the details of settlement procedures as mentioned in item 190, namely "publicly and clearly disclose their risk exposure policy and risk management methodology", is not an object to inform the public about.

Standard 19

The meaning of the expression cross-system trades is unclear.

Yours sincerely
Federal Association of German Cooperative Banks/
Bundesverband der Deutschen
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by proxy

sgd. Dr. Möller sgd. Dr.Lange
(Dr. Klaus Möller) (Dr. Diedrich Lange)