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Mr Eddy Wymeersch
Committee of European
Securities Regulators (CESR)
17 place de la Bourse
75082 Paris Cedex 02
FRANCE

18 May 2004

Dear Mr Wymeersch,

With reference to our letter of 24 February 2004, requesting the application of an appropriate consultation process for the Standards for Securities Clearing and Settlement Systems in the European Union, we were pleased to note that a hearing on the new draft standards of 5 May 2004 will be held on 25 May 2004.

Nevertheless, in view of the continuing lack of clarity particularly with regard to the scope of the standards, the process does not appear transparent and open enough to us. For this reason, our chief executive officer has written to the presidents of the Bundesbank and the Federal Financial Supervisory Authority (BaFin), asking that the process be modified accordingly.

We enclose a copy of this letter for your information.

Yours sincerely,

Thomas Weisgerber Georg Baur

Enclosure

PROF. DR. MANFRED WEBER

HAUPTGESCHAFTSFUHRER UND MITGLIED DES VORSTANDES
BUNDESVERBAND DEUTSCHER BANKEN

BURGSTRASSE 28
D 10178 BERLIN
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18 May 2004

Professor Dr. Axel Weber
President and Chairman
of the Board
Deutsche Bundesbank
Wilhelm-Epstein-Straße 14
60431 Frankfurt am Main

Dear Dr. Weber,

The single European financial market is taking concrete shape. In the process, new aspects, such as the clearing and settlement of securities, are increasingly becoming a focus of attention. This development is being actively supported by the supervisory authorities, which I greatly welcome. Efficient clearing and settlement of securities is of prime importance for a functioning single market.

At the same time, however, the work of the working group set up jointly by the ESCB and the Committee of European Securities Regulators (CESR) is a source of great concern to me. The aim of this working group is to draft standards for the European market as a whole on the basis of the recommendations for securities settlement systems submitted by CPSS/IOSCO in November 2001. This is to be done by expanding the scope and contents of these recommendations and strengthening their binding effect. My concern relates to two aspects in particular:

- **Inclusion of market participants**

The experience that market participants have gathered in European legislation since the introduction of the Lamfalussy procedure shows that only a transparent, multi-phase consultation process produces first-class results. In this connection, the importance of appropriate deadlines should not be underestimated, as otherwise those concerned cannot assess proposals properly. The opportunities provided by CESR for commenting orally and in writing have proved extremely helpful here.
The procedure adopted by the joint working group unfortunately fails to satisfy these criteria. For example, a mere three weeks is allowed between the circulation of the revised, 92-page document on 5 May 2004 and the hearing on 25 May 2004. What is

more, written comments are to be submitted as quickly as possible. This leads me to suspect that comments submitted after the hearing may no longer be taken into account. It remains unclear when the standards are to be finally adopted.

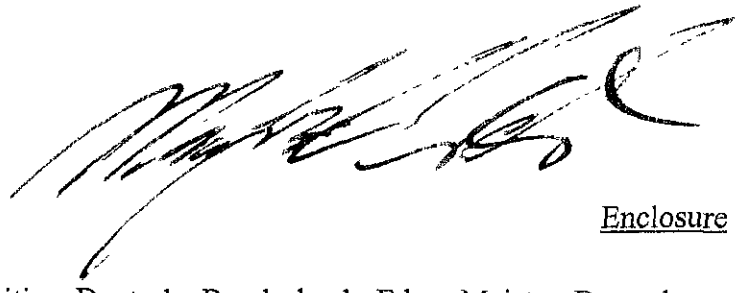
- **Unclear scope**

The key question of the scope of the standards has been left unanswered in the entire procedure so far. The only thing that appears certain to me is that the standards will apply to central depositories and central counterparties. What is of crucial importance to our association's members, however, is whether and, if so, which banks are affected by the standards. The new draft transfers the answer to this question – in some areas at any rate – to national level, although a decision with such far-reaching implications must, I believe, be made at European level, not least to create a level playing field. Otherwise it is to be feared that banks in some member states will be given poorer operating conditions and thus be put at a competitive disadvantage.

These aspects are of central importance to me. At the same time, there are many other points that are unclear in the standards. Moreover, although it is pleasing to note that the new text contains references to existing and future rules, particularly to Basel II, it remains unclear whether this will actually prevent dual regulation. I enclose a list of criticisms by way of example.

In my view, the aim of creating a level playing field in Europe in the area of clearing and settlement as well can only be achieved if the standards are not adopted at the present time. Instead, the consultation process should be conducted within a reasonable timeframe. In this context, it would make sense in such an extended process for the working group to also specify the assessment methodology that has to be determined in any case and to remove the lack of clarity that currently exists. This integrated approach ought to meet both the aims of supervisors and the legitimate interests of market participants.

Yours sincerely,



Enclosure

cc to: Dr. Hans Georg Fabritius, Deutsche Bundesbank; Edgar Meister, Deutsche Bundesbank; Gertrude Tumpel-Gugerell, European Central Bank; Dr. Jean-Michel Godeffroy, European Central Bank; Arthur Docters van Leeuwen, Committee of European Securities Regulators; Eddy Wymeersch, Committee of European Securities Regulators.

NOTE

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ESCB/CESR "Draft Standards for Securities Clearing and Settlement Systems in the European Union" of 5 May 2004
– Examples of criticisms

The draft standards of 5 May 2004 give rise to numerous criticisms. Some of these are outlined in the following. They should be seen merely as examples designed to show that the standards are still too unclear to be adopted in their present form. An exhaustive list would require a more detailed examination, something which is not possible in a reliable manner in the short time available.

- **Scope (e.g. paragraphs 14, 16 and 17)**

The scope of the standards has not been defined adequately and is inconsistent in many cases. For example, custodian banks exceeding a certain size are to fall under the scope along with registrars or certain providers of other securities services. Additional terms such as "settlement agent banks" or "market participants" then crop up later in the draft. It should also be noted that these terms are not used consistently throughout the individual sections on each standard, many of which are accompanied by an *Explanatory Memorandum* and *Key Elements*.

- **Standard 9**

Key Element 5 requires custodian banks to regularly report large settlement-related exposures to the relevant supervisory authorities. However, no further details of the scope and frequency of these reports are given. It therefore remains unclear whether already existing reporting requirements for banks, e.g. those under the Regulation on Large Exposures and Loans of € 1.5 Million and More, could cover this area. The introduction of further reporting requirements would be likely to involve enormous costs for supervised entities.

- **Standard 11**

Systems are to be able to resume operation no later than two hours after the occurrence of a disruption. In addition, banks too are required to operate a second processing site which undertakes immediate processing and is located at an appropriate geographical distance. These requirements appear not only unreasonable but also contradictory. Physical reality already dictates that the distance between systems that meet these requirements should not exceed a maximum distance. Moreover, the period of two hours would appear to be

too short if the standards were also to apply to banks, since in other jurisdictions (e.g. the USA) this period applies only to core clearing and settlement organisations, while other market participants are explicitly allowed more generous periods.

- **Standard 17**

All entities performing clearing and settlement services which offer certain value-added services are to be required to price specific services and functions separately. While such regulatory interference in the freedom to provide services may be justified under EU competition rules with regard to monopolistic service providers, they appear inappropriate for undertakings competing in the marketplace.