

Comments on the Consultative Report “Standards for Securities Clearing and Settlement Systems in the European Union” - CESR – ECB – July 2003.

Banca Intesa is the leading Italian banking group and one of the protagonists in the European financial arena.

Banca Intesa is the most important Italian securities services' provider, offering a full range of transaction products to support the activities of a diversified client base world wide.

Within the field of post-trading services, Banca Intesa provides an extensive array of products ranging from custody, clearing and settlement, in sourcing and clearing services for remote traders accessing the Italian market, derivatives clearing, “Banca Depositaria and Banca Corrispondente”.

Banca Intesa welcomes the opportunity to comment on the CESR – ECB consultative report and submits to your attention the following observations.

1. Banca Intesa supports the overall objective of the Working Group to adapt the IOSCO principles to the European environment, in order to ensure, among others, the safety, soundness and efficiency of the securities settlement systems in the Europe. These are general goods, and as such they need to be protected in the interest of the European financial markets.
2. Nevertheless, Banca Intesa wishes to signal its strong discontent about the risk-based functional approach chosen by the Group. This approach has the following consequences:
 - a) It disregards the legal status and the nature of the institutions to which standards are applied and places on an equal footing the infrastructures and custodian banks. We think this approach is not appropriate. Banks perform substantially different services than the infrastructures and operate in a different environment. In particular, banks serve clients and operate in a competitive context, whereas infrastructures are essential utilities, performing essential services for the markets. They mainly pursue a general interest service, and systems do not have clients, but users. These substantial differences should be taken in duly consideration in determining the scope of these standards.

- b) Custodian banks are already regulated by banking regulations and are adequately supervised by national authorities. Extending these standards to banks would duplicate the legislation applied to them and would put them at a competitive disadvantage against other institutions which combine both roles of infrastructure and bank. Moreover, should this approach be applied, credit risks could be treated differently whether provided by the same entity as a custodian or in the framework of its normal credit activity. We do not think this is desirable. Managing credit risks is an activity inherent to banking.
 - c) Such an extension would have an impact on post-trading costs, thus contradicting one of the aims of the European Union, which is to create the conditions for costs' decrease of cross-border transactions.
- 3. Banca Intesa has also reservations about the nature of the standards, which are soft laws. They could entail compliance problems if they are differently appreciated and enforced by the supervisory authorities (for instance in case of standard 9). An asymmetric enforcement of these standards throughout Europe could create an undesirable unlevelled playing field, distorting the competitive conditions for banks in the internal market. Banca Intesa would rather prefer having clear-cut rules applicable across Europe.
- 4. Banca Intesa does not support the one-size fits all approach that was used by the Working Group, as one can infer from reading for instance standards 9 (par.107),13, 14, 17, which are clearly applicable to infrastructures.

Although Banca Intesa's positions about the present consultative report are critical, it nevertheless understands the Working Group's ultimate aim, which is to preserve the stability of the European financial markets. We therefore suggest that a possible solution to the Working Group's concerns is strengthening the supervision on custodian banks by the competent authorities. Further obligations on banks might be envisaged only if their risk management tools were not able to manage correctly risks involved in the clearing and settlement activities.

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