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Elias Kazarian
European Central Bank
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Germany

25th June 2004

Dear Mr Kazarian, Mr Moeliker,

Barclays is a UK-based financial services group engaged primarily in banking, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the United Kingdom.

The Group also operates in many other countries in the EU and around the world.

We welcome the CESR-ESCB initiative to amend their proposed standards for clearing and settlement in light of industry comments to its earlier consultation and also to consult on these changes.

We have seen the response prepared by the London Investment Banking Association (LIBA) and support the views expressed in it. In addition, we would like to emphasise the following points.

In relation to Objective 4, we very much agree with the focus on fostering efficient structures and looking for market-led responses to developments and support continued adherence to this principle.

On the standards themselves, we would make the following remarks:

Standard 1: Legal Framework

Securities clearing and settlement systems and links between them should have a well-founded, clear and transparent legal basis in the relevant jurisdictions.

To this end, we would recommend the harmonisation of laws relating to the proprietary rights relating to financial securities. At the moment they are treated differently. In particular, in some countries account entries establish ownership; in others they do not.

Without this common framework, cross-border usage of securities, both in trading and in settlement, is not efficient, which adds costs and restricts the market's ability to consolidate.

In a modern market, securities are held through intermediaries: they are recorded in electronic accounts. There needs to be a legal framework across the EU under which, whenever securities have been entered into a book-entry system, it is the accounts that establish ownership of those securities. Ownership and the record of ownership would then be legally identical.

The recent conflicts of laws measures (EC Directive on Financial Collateral Arrangements and Hague Convention on the law applicable to certain rights relating to securities held with an intermediary) are a huge step towards this, but they do not go all the way.

Standard 9: Credit and Liquidity Risk Controls
and

Standard 17: Transparency

We would question the need to identify custodians operating systemically important systems as they do not fulfil the same function as infrastructure providers. Rather, the Standards should be focused upon financial institutions performing settlement-like functions such as transferring securities between two customer accounts and not on providing safekeeping and asset-servicing functions (i.e. the role of custodians).

Standard 9: Credit and Liquidity Risk Controls
and

Standard 18: Regulation, Supervision and Oversight

It is our view that systems identified as systemically important should be regulated by their prudential regulator only. As banks they are already regulated comprehensively at an EU and national level and employ risk management processes to their custody risks. If regulators have concerns about risks taken by the custody businesses of banks they should address them in the Pillar 2 supervisory review process.

Standard 18: Regulation, Supervision and Oversight

We welcome the harmonisation of the EU regulatory environment for clearing and settlement. The creation of a framework for a level playing field in this area would avoid regulatory arbitrage and the risk of cherry picking across different systems with differing rules. It would also provide clarity to all users and allow the industry to decide the pace and direction of the consolidation and rationalisation of the providers of clearing and settlement services.

If you have any questions relating to any of the points made in this letter, please do not hesitate to contact me or my colleague, Laura Mowbray (laura.mowbray@barclays.co.uk).

Yours sincerely,

Bill Eldridge
EU Public Policy Director