



European Financial Services
Round Table

Professor Eddy Wymeersch
Chairman
Belgian Commission Bancaire et Financière

Jean-Michel Godeffroy
Director General
European Central Bank

Brussels, May 19, 2004

**Revised Standards for Securities Clearing & Settlement Systems in the
European Union, May 2004**

Dear Prof. Wymeersch, dear Mr. Godeffroy,

I am writing to you in my capacity as Manager of EU Affairs of the European Financial Services Round Table (EFR). The EFR is a voluntary association of chairmen and chief executives of leading banks and insurance companies in Europe. EFR's main focus is on supporting the completion of a single market in financial services.

The EFR very much welcomes the opportunity the ESCB-CESR has given to market participants to provide comments on the new draft released on May 5, 2004. By incorporating concerns raised by the industry, the new draft represents a great improvement. And yet the EFR believes the new draft still contains unresolved issues. It would be advantageous for all parties if finalisation of the standards by the Working Group, scheduled for after the hearing on May 25, 2004, could be given more time.

Our opinion has been formed on the basis of the following principal concerns:

- The main issue in the new draft concerns the regulation of CSDs (Standard 6) and the management of credit exposures (Standard 9). The EFR would like to point out that the fundamental question on the scope of application has not yet been clarified. The industry has to use highly granular definitions of functions to clearly identify the institutions falling under the scope of

application and thus to assess the standards' implications. The draft wording applies institutional terms, such as CSD, CCP, market participants, and custodian banks, which are not completely defined, or categorizes certain functions provided by both infrastructure providers *and* banks as solely CSD functions, for example, securities issuance management of the issue, safekeeping, etc. The functional approach to regulation embodied in the standards could lead to the undesired effect that certain providers would fall under the scope of the standards unintentionally.

- Consequently, the industry will face huge difficulties in assessing the implications of the standards for their business activity. This is further complicated by two factors: the timeframe of three weeks for providing comments is insufficient for the industry to involve the respective internal experts. Furthermore, the timeframe raises questions as to whether or not the ESCB-CESR Working Group will have sufficient time to consider the comments at all, seeing as there seems to be little reserved for the ESCB-CESR Working Group to analyse the substantial volume in responses the EFR expects.
- This problem becomes more apparent considering that the legal nature of the standards has not been disclosed to the industry. The fact that national authorities will individually determine whether or not a custodian operates a systemically important system could endanger the level playing for participants active in the field of clearing and settlement. Such a fundamental issue clearly deserves to be agreed on before finalising the standards.
- The approach to finalising the standards does not meet with the principles set by CESR for its role in connection with the Lamfalussy process, which would, for instance, require CESR to publish drafts with a sufficient amount of time for market participants to comment on them and for CESR to be able to judiciously take these comments into account. Even though the standards have obviously not been drafted under the Lamfalussy process, the industry is concerned that its well-meaning efforts aimed at creating an adequate and internally competitive regulatory framework are unwanted.

The EFR proposes that ESCB-CESR postpone the deadline for finalising the standards. This would also allow for a better alignment of the Commission's Communication with the ESCB-CESR standards. Consequently, the EFR proposes that the deadline is put back to the July 31, 2004.

The EFR and I trust you will understand our position in this issue.

Dr Breuer, Member of the EFR, has also sent a letter to Mr Trichet and Mr van Leeuwen regarding above mentioned issues.

Sincerely yours,

Sebastian A. Fairhurst