B1576a/4 (final)

Annex to the

**Comments by the Federation of European Securities Exchanges (FESE) on the CESR-ECB Consultative Report:
Standards for Securities Clearing and Settlement Systems in the European Union
(Document B1576/3, dated 4th November 2003)**

Standard 1, we can support but we would like to point out that the combination of paragraph 29 with standard 17 may impose a rather heavy regulatory and business burden, which we are not quite sure should be imposed in view of the current quality of clearing and settlement services in the EU.

On Standard 2, we would like to know whose responsibility would be the duties imposed upon indirect market participants. Under key elements here, we believe that element 5 of automation is already a given; we therefore "support" this principle but wonder whether it actually needs much encouragement at this moment. Inter-operability, which also applies to trading systems, is indeed important and finds our support. The term in paragraph 43 "without delay" is open for interpretation and we may refer to the ISD discussion on a similar term that has created confusion.

Standard 3, we can support including a cost-benefit study for a shorter cycle. As we put to the Giovannini Group on this issue and underlined again at the hearing in Paris, we believe that shorter cycles are only one alternative in making further progress in terms of quality of the process. We are not quite sure that harmonisation of operating days and hours is a matter that should be regulated. We would also like to refer to the work done by a working party of ECSDA on operating hours and settlement deadlines.

On Standard 4, we would like to argue that it is up to market participants whether or not to set up a CCP and obviously in such circumstances the costs and benefits would be evaluated. We agree that a CCP should rigorously control the risks it assumes, which is current practice. Even more so: CCPs offer a superior risk reduction. Under key element 2, we believe that is not a standard.

On Standard 5, we would like again to argue that this is not a standard. If there are arrangements for securities lending, they should as a matter of course be sound, safe and efficient. The discussion under key element 7 is one that needs further elaboration. There are some who would argue that a CCP should not and never be a principal to securities lending that is to run various risks but only as an agent. Others may argue that a CCP should remain far from this and leave lending and borrowing to market participants. The same may apply even more to a CSD. We find interesting key element 8 about debit balances and securities creation. Some of us believe however that securities creation needs not necessarily be so categorically excluded, always of course under appropriate risk policies. In paragraph 75, mention is made of a principal who also operates the securities settlement system. This would also apply if the principal were to run a clearing system.

Standard 6, we believe here that the lines about minimising systemic risks for CSDs should be elaborated in terms of distinction between the various risks (financial, operating, credit, reputation etc.). With reference to paragraph 79, we believe there should be no forced segregation of services (see point 33 of EACH White Paper).

Standard 7, we can generally support the proposals.

Standard 8, we can support.

Standard 9, we believe that the formulation here may create a discriminatory situation between CSDs and custodians (see also Standard 6). After the term whenever 'practical' we would suggest to add the words "and necessary". The three lines at the end of these Standards "operations of settlement systems" to "unable to settle", we believe is an illustration of a specific situation and not part of a standard and could therefore be deleted. We believe on key element 1 that this standard is also addressed to CCPs. We question whether "who" in the second line applies to the custodians only or to the CSDs and custodians.

Standard 10, we can generally support.

Standard 11, these standards also find a place in current banking regulation, but currently only to a limited extent. They will in all likelihood form part of the new Basle Capital Accord. The sometimes excessive detailedness of US prescriptions in this area ought to be avoided. We note in this context with concern the high level of detail in the Explanatory Memorandum to this Standard (e.g. par. 130 on, among other detailed issues, the geographical distance of back-up facilities). We also recall the questions raised at the hearing in Paris on the necessity of having back-up facilities within the EU.

Standard 12, we do not see that these standards should be limited to the protection of the customer's securities only; customer's money should also be appropriately protected. This protection by the way should also apply to derivatives clearing. We note that it is not in the first place accounting practices and safe keeping procedures that protect customers' securities but current national formal legislation and rules and that is we believe how it should be. We note that CCPs are not custodians and that any customer securities that they may hold represent collateral.

Standard 13, all financial services providers of any relevance also fulfil public interest requirements. Any organisation automatically promotes the objective of its owners; that is not a standard. On the other hand, what is or could indeed be a standard is also to protect the objectives of users and possibly other groups or stakeholders. We also add the comment that this Standard, as drafted, assumes a single-board company structure. Flexibility has to be introduced in its wording to reflect the coexistence (as underlined and reinforced in the European Commission's Corporate Governance Action Plan) of single-board and two-tier board structures in Europe.

Standard 14, it should be not only rules and requirements but also fees and margins and so and so forth. That they should be aimed exclusively at control and risk might be better phrased in saying

they should be part of overall risk and commercial policies. We note under paragraph 56 the reference to EU competition rules.

Standard 15, we do not have objections against this standard but we believe that the first part of it is not a standard appropriate for regulators to impose, whereas inter-operability is an important objective and an important standard to be met in due time.

Standard 16, we do not have problems, although the call for timetables and deadlines in key element 2 can be seen as too prescriptive.

Standard 17, we wonder whether the limitation "with a dominant position in a particular market" should be part of this standard. With reference to earlier comments, we put a question mark at key element 3 about publicly accessible information. This will need further discussion.

Standard 18, a obvious question here is whether any measures by regulators vis-à-vis services providers should come in the public domain or remain under all circumstances with this specific regulator and the specific institution. This is an area that needs further private and public discussion. It was noted that there was no explicit reference to home country primacy or lead regulation in the "key elements".

Standard 19, we may refer here to the issue whether passporting and cross-system cross-border arrangements should be limited to the EU or under appropriate criteria also beyond the EU. While agreeing with key element 3, we believe that term 'if feasible' should be added.