



Hessian Ministry of Economics, Transport and Regional Development

- Exchange Supervisory Authority -

Comment on the ESCB-CESR-Standards for Securities Clearing and Settlement Systems in the European Union

As the exchange supervisory authority for Eurex Germany, the Ministry of Economics, Transport and Regional Development of the State of Hesse welcomes the approach taken by the ESCB/CESR Working Group to develop standards designed to enhance and strengthen the security, viability and efficiency of securities settlement systems throughout Europe. Although it is worth noting that, to have final and binding effect, any steps to achieve harmonisation across Europe will need to be embedded in European law, the standards developed by the ESCB/CESR Working Group for securities clearing and settlement systems will be useful to develop a broad foundation for the subsequent legislative process.

We would like to submit the brief comments summarised below, which are based on our relevant experience and perspective:

1. Given their title “ESCB/CESR Standards for Securities Clearing and Settlement Systems in the European Union”, under German law the scope of these Standards is restricted to the clearing and settlement of *securities* as defined in section 2(1) of the German Securities Trading Act (“WpHG”).
2. In contrast, the Standards contain comprehensive provisions regarding central counterparties (CCPs), for instance in Standard No. 4. The clearing operations for Eurex Germany, which (as a derivatives exchange under public law) is subject to supervision by ourselves, are carried out by Eurex Clearing AG. As a wholly-owned subsidiary of Eurex Frankfurt AG – which itself is the operating company of Eurex Deutschland – Eurex Clearing AG has assumed the function of central counterparty for Eurex Germany. Accordingly, Eurex Clearing AG falls within the scope of the Standards by virtue of its CCP function, pursuant to Standard No. 4. We would like to emphasise that this coverage has our full support. Clearing derivatives business certainly requires qualified risk management structures and thus requires appropriate supervision. From a German legal perspective, however, the instruments traded at Eurex Germany are *derivatives* as defined by section 2 (2) of the WpHG, which is why the concept of *securities* in the title of the Standards might lead to misunderstandings. We would therefore suggest to add a clarification regarding the scope of the Standards.

3. Bearing in mind that the CPSS/IOSCO Working Group is currently working on more specific standards governing the risk management of CCPs, there may be scope for a clarification of the issues set out under 2. above in the context of a subsequent extension of the ESCB/CESR Standards, that is already being discussed.
4. At the same time, Eurex Clearing AG acts as central counterparty for cash market trades entered into at the Frankfurt Stock Exchange. These trades fall within the scope of *securities trading* pursuant to section 2 (1) of the WpHG. Therefore, the clearing and settlement of trades entered into at the Frankfurt Stock Exchange clearly fall within the scope of the Standards. The relevant clearing and settlement operations are performed by Clearstream Banking AG, and supervised by the German Federal Financial Services Supervisory Authority (BAFin). Moreover, Eurex Clearing AG is subject to the Standards by virtue of its function as a central counterparty for trades entered into at the Frankfurt Stock Exchange.