Nordic Central Securities Depository

Committee of European Securities Regulators (CESR)

NCSD Sweden response to CESR´s call for evidence on the identification of regulatory arrangements for post-trading infrastructures

NCSD Sweden is a strong supporter of the Code of Conduct on Clearing and Settlement (the Code) and the Access and Interoperability Guidelines. Furthermore we are committed to ensuring that the Code can deliver a more competitive and lower cost post-trade industry which offers a real choice of post trade service providers to all users of European securities markets.

Possible ways to solve regulatory barriers
NCSD Sweden believes that the following steps by CESR would help to remove the regulatory barriers:

1) Securities regulators (CESR) should set and use common standards for the efficient and sound operation of post-trade infrastructures across EU, applicable to both domestic and cross-border activity. In this respect, we would advise CESR to proceed in the following way:
    - First, finalise the ESCB/CESR Recommendations (after market consultation) based on the draft of September 2004 and according to the ECOFIN conclusions of June 2008, by year-end 2008.
    - Secondly, once CESR has finalised the mapping exercise of national regulatory requirements, it should perform a gap analysis to see which national regulatory requirements are not covered by the agreed ESCB/CESR Recommendations after which the Recommendations could either be adapted or completed (after due market consultation).
    - Thirdly, CESR should consider how effective mutual recognition of CCPs and (I)CSDs could be delivered across the EU, using ESCB/CESR Recommendations as the baseline for national regulatory standards.

    The result of such an exercise should be that EU securities regulators have a single set of "Standards" for post-trade service providers.

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2) We believe that ESCB/CESR Recommendation 18 on Regulation, Supervision and Oversight should be reviewed to ensure the following principles are included:
   - Member States should ensure that the national securities regulator is given the authority to set and check compliance against criteria on post-trade infrastructures with regard to safety and soundness of post-trade activities, and financial stability in general. Member States should ensure that such authority is not delegated to private sector infrastructures such as Stock Exchanges or CCPs. First, because these entities may not be best equipped to set and check compliance with criteria that are designed to minimise systemic risk. Secondly, because such private sector infrastructures would potentially be able to use such authority to establish barriers in favour of the incumbent providers of post-trade services, thereby hindering the successful implementation of the Code.
   - With regard to the Access and Interoperability requests, relevant securities regulators and national central banks (in their oversight capacity) should enter into bi-lateral or multi-lateral MoUs which state how they will apply the ESCB/CESR recommendations to the link.

3) If the above is achieved, we believe that ESCB/CESR could effectively become "binding" standards for post-trade infrastructures. This would not only ensure quick and effective removal of regulatory barriers but also install the long-awaited common supervisory framework for post-trade activities.

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