Comments of the Central Securites Depository of the Slovak Republic to the CESR´s Advice on Possible Implementing Measures of the Directive on Markets in Financial Instruments

Q. 5.1:Where the jurisdiction in which financial instruments have to be held regulates the holding and safekeeping of financial instruments, should investment firms be required to subdeposit their clients´ financial instruments with such institution in all cases or are there cases in which overriding considerations to the contrary mean that it would be permissible to use an unregulated depository?

In the Slovak Republic activities of depository in the meaning of the central securities depository are regulated by the Act on Securities and Investment Services No.566/2001 Coll. as amended („the Act"). Operation of the CSD is a licenced activity and only those companies which obtained licence from the Slovak regulator (Financial Market Authority) may provide services of the central depository. However, there is another type of depository defined by the slovak legislation in the meaning of depository of the unit trust. Activities of such depository are covered by the Act on Collective Investments No. 594/2003 Coll. and only commercial bank or foreign commercial bank can act as depository of the unit trust, which is again subject to regulation (in Slovakia executed by the National Bank of Slovakia).

All dematerialized securities must be held in the CSD (except for short term securities administered by the National Bank of Slovakia and units of the open-ended unit trusts registered by depository of the open-ended unit trust) therefore giving no decision-making power to the investment companies in terms of deciding whether to keep securities in regulated or non-regulated depository. If physical seucrities are included in the unit trust they must be deposited with depository of that unit trust. We strongly support the smilar approach to be taken by CESR and to require investment firms to deposit client´s financial instruments only with regulated entities.

Q. 5.3.: Should a requirement be imposed that the records of the investment firm must indicate for each client the depository with which the relevant client assets are held, or is it sufficient that the investment firm should maintain records of the amount of each type of asset held for each client and of the amount of each type of asset held with each depository and ensure the aggregate figures correspond with each other in accordance with paragraphs 11 (c) and 13 (b)?

The Act stipulates that negotiable physical securities are held in collective safecustody unless agreed otherwise. In this case securities are in collective holding of all owners and an individual owner owns an appropriate share on this collective holding. In the central securities depository where dematerialized securities are held segregation of accounts applies. In the Slovak Republic assets held with the central securities depository are not considered to be depository´s own assets and therefore in case of bankruptcy proceedings administered assets are not part of depository´s bankruptcy estate. The same applies to client assets administered by the investment company (§73 par.5 of the Act).

Q. 5.4.: If the client´s assets may be held by a depository on behalf of the investment firm, should:

a) the investment firm be (i) prohibited from purporting to exclude or limit its responsibility for losses directly arising from its failure to excercise all due skill, care and dilligence in the selection and periodic review of the depository; and (ii) required to accept the same responsibility for a depository that is a member of its group as it accepts for itself; or

b) *must the contract between the investment firm and the client state that the investment firm will: (i)in any event be wholly liable for any losses the client suffers where the investment firm is directly or indirectly linked to the deposiotry, and (ii) be liable in whole or in part, according to the circumstances, for any such losses unless the investment firm shows that it has excercised all due skill, care and dilligence in the selection and periodic review of the depository?*

From our point of view we would opt for b) in this question, but it is up to the investment firm what level of responsibility it will accept. To deposit clients´ assets with depository would need conclusion of a separate agreement between investment firm and depository.

In the Slovak Republic safecustody of physical securities is subject to provisions of §39-40, resp. §42 and §44 of the mentioned Act. If negotiable paper security is to be deposited, only the stockbroker, foreign stockbroker or securities depository might act as depositories. Depository is liable for loss of deposited paper security unless it could have not prevented it when excercising due care and dilligence.

As for dematerialized securities segregation of securities accounts applies. If the depository member (the stockbroker) keeps dematerialized securities with the central securities depository their relationship is ruled by standardized Membership agreement that covers liabilities.

Q. 13.3: Do consultees support the method of post-trade transparency (trade by trade information, should some other method be chosen (which)?

In case of trades executed outside regulated market (RM) and multilateral trading facility (MTF) the aggregate information on transferred securities should be considered adequate. Such information can also be published by securities depository which registered issue of transferred securities rather than an individual investment firms. Use of depository is more convenient for publishing such information as it is a natural centrepoint where also other information on securities is concentrated. In this regard we would support an inclusion of the central securities depository as data vendor for disclosing post-trade information on trades executed outside RM and MTF.

Q. 13.2. Do consultees support inclusion of „aggregated information" in paragraph 22 or should it be left for market forces to provide on the basis of the information disclosed under paragraph 21. If it is included what should the content be?

Aggregated information for off-RM and MTF trades should be sufficient. As for „trades" executed outside the RM and MTF that in fact are not regular trades, but DVP transfers of securities, the information should not include items referring to trading activity e.g. opening price, closing price, date and time of trade, etc. Information should include mainly:

a) name of the issuer, type of security, security identification code (ISIN)
b) number of transferred securities per each issue (ISIN)
c) (weighted) average price per each issue where transfers were registered.

Q. 13.3. Do consultees support the two week period for which the post-trade information should be available?

Yes, in case that information is published in an electronical form e.g. on the publisher´s website.

Q. 13.4. Should some minor trades be excluded from publication (and if so, what should be the determining factor?

No, all trades should be included. (Information is aggregated therefore no large-volume information will be published.)

Q. 13.5. Do consultees agree on the method of defining the time limit in paragraph 24 and is the one minute limit capable of meeting the needs of occasional off-market trades?
For off-market trades, we think that one minute limit is unnecessary. An aggregate information published by the central depository at the end of each day should be acceptable.

Q.13.6. Do consultees support the view that only intermediaries who have created a risk position to facilitate the trade of a third party should benefit from deferred publication or should all trades which are above the block size be eligible for deferred publication?
All off-market trades should be eligible for deferred publication.

Q. 13.7. Should the identifier of a security be harmonized and if so to what extent? What should be the applicable standard (ISIN code, other)?
We support the idea of harmonization of security identifier. ISIN code should be established as a standard due to its wide-spread use in Europe.

Q. 13.8. Should more information be available on stock lending? If so which should be content? Are there similar types of activities which should be covered?
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Q. 13.9. Should CESR intiate work, in collaboration with the industry and data publishers, to determine how best to ensure that post-trade transparency data be disseminated on a pan-European basis?
Yes.