Paris, 1st March 2011

Consultation paper of the European Commission on CSDs regulation

French market contribution

The Association Française des Professionnels des Titres ("AFTI") is the leading association in France and within the European Union representing the post- trade industry.

AFTI has over more than 100 members, all actors in the securities market and back office businesses: banks, investment firms, market infrastructures, issuers.

EC – Register of interest representatives: request ID being processed.

The Association Française des Marchés financiers ("AMAFI") has more than 120 members employing over 10,000 people which operate in equity and debt securities markets, equity and debt derivatives markets and commodity derivatives markets.

They act on behalf of clients or on their own account, and deliver the investment and ancillary services provided for under MiFID. Some members also operate market infrastructure, such as the regulated market and MTFs, as well as clearing and settlement systems.

EC – Register of interest representatives – AMAFI's Number: Assoc 97498144.

The French Banking Federation ("FBF") represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks.

They employ 500,000 people in France and around the world, and serve 48 million customers.

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1 KEY MESSAGES

CSDs regulation must be approached having in mind the important role they play in the securities market structure and their specificities. They are in most Member States systematically important post trading infrastructures being the cornerstone of the securities holding system for dematerialized and immobilized securities. **They ensure the registration and integrity of issues on behalf of the issuers (notary function), central safekeeping and are the higher–tier entities for organizing the movement of securities between the accounts of their participants (central settlement function).** The central settlement function is the operation of a securities settlement system as under the Settlement Finality Directive.

In discharging these functions **CSDs play a specific and central role that guarantees the safety, soundness and efficiency of the securities market.** This specificity is recognized across Europe and even abroad and enshrined in dedicated national regulations. In this respect, **the CSD should be a "risk-free environment". Thus means that the CSD should not be allowed to take any other forms of risk that the ones that are inherent to their activity, i.e. operational risk.**

Moreover, the entity that fulfils these functions, should not, ipso facto, be authorised to fulfil any other functions (currently referred to as "ancillary functions"). Such other functions include banking functions. Even if those banking functions were limited to operations, which are related to infrastructure functions, they can amount to considerable credit exposure.

Where a CSD wants to enter into additional types of services, related to its CSD activities, it may do so on a strictly segregated basis. **Commercial services, such as credit functions or issuers' services must be incorporated distinctly from the legal entity, which provides the CSD functions. In addition, each entity must have it's own resources. We need to ensure that the CSD functions will be protected against any going concern occurring on those commercial services**.

There is in principle no obstacle to have within the same group an entity providing CSD functions and another entity offering those commercial activities, provided that those segregation rules are implemented. The participants to the infrastructure must not be obliged to pay for the development of a bank.

This, undoubtedly, calls for a dedicated regulatory instrument to CSDs. We therefore support the proposed initiative.

It is our strong view that prudential issues should determinate the future legislation and that the greatest clarity and enforceability of all the proposed measures should be achieved in this domain pertaining to the overall financial stability.

This principle should apply to the proposed legislation when defining CSDs as central infrastructures in the type of function they are authorized to perform.

In addition, **since the future regulation doesn't distinguish CSDs and ICSDs, we fear increased risk resulting from the uniform regulation, where CSDs are to develop custody services, thus creating new risks.**

As long as the CSDs are limited to infrastructure functions, they should be authorised in their home Member State and a full passporting regime should be applicable. **Authorisation and passporting apply to both functions together, not to each function distinctly.**

In practice, the passporting would not apply on the central settlement function. Not only is the central settlement in many cases out-sourced to T2S, but mainly: settlement in a given security will take place in a given CSD, only if the issuer of that security entered it into the intermediated holding system with that CSD.

Example: A CSD in country "A" will centrally settle securities created and issued in country "B", only if the issuer issued the securities with that CSD. If the issuer has issued the securities only with the CSD of country "B", settlement can take place with the CSD of country "A", only if that CSD acts as global custodian.

Passporting on the notary function (removal of barrier 9) means that issuers may elect to enter the issuance in any CSD in the EU and that CSD anywhere in the EU may accept issuances from any issuer. This still creates some problems related to corporate law, which should be dealt with in the CSD regulation.

Harmonisation is necessary in order to smoothly process cross-borders transactions. The main fields, which need an harmonisation are:

- **Market disciplines**: rights and duties of the participants have to be the same in all the European countries (i.e., best practices, same penalties to be applied...),
- **Fair access to the local markets:** in some European countries, as Spain, a foreign bank is not allowed to directly access the CSD. This is not compliant with a free access in all the T2S countries.

We also need to have a common definition of what a "settlement fail" is, in order to work on the same scope. The number of settlement fails needs to be reduced through appropriate measures, but these measures should not add risks or create non STP process.

We are in favour of a harmonised settlement cycle, which would facilitate corporate actions processing. **Harmonisation of settlement cycles should concern trades executed on a regulated market only. The introduction of a harmonised settlement cycle would take 12 to 18 months.**

2 DETAILED RESPONSE

PART I : APPROPRIATE REGULATORY FRAMEWORK FOR CSDS

1. What is your opinion on a functional definition of CSDs?

We agree to the approach proposed by the European Commission.

It is essential to give a clear definition of the concept of CSD. This can be best achieved by the provision of 'CSD Services' terminology that clearly identifies its direct link to the 'central' nature and purpose of the CSD in the overall system. As stated in the introduction of the consultation, the CSD is a central point of reference for the entire market.

As central infrastructure, the CSD is entrusted the performance, on an exclusive basis, of specific functions, that can be assimilated to those of a public utility and as such the CSD should be distinguished from other players. These exclusive and monopolistic services are the services that are centrally provided by the CSD to its participants, intermediaries and CCPs, and that cannot be provided by any other players.

A parallel can be made with the core services that are provided to the market by CCPs: This central role of CCPs that qualifies for the nature of market infrastructure is recognized in the proposed EMIR regulation.

Indeed when CSDs that offer their participants safekeeping and settlement services in relation to a security not centrally registered in their books, have the ability to do so by implementing an interoperable link with the CSD assuming the notary function on behalf of the issuer (the 'issuer CSD'). In this case the services provided by the non-issuer CSD (the 'investor CSD'), would no longer be considered as "central".

2. What is your opinion on the scope of the possible legislation and providing for any exemptions (such as for central banks, government debt management offices, transfer agents for UCITS, registrars, account operators)?

We agree with the proposed scope and with the possibility to provide exemptions. However, we are of the opinion that each exemption should be carefully analyzed and regulated in order to avoid situations where the exempted institutions could be in a position to compete with the CSDs on their core services, especially when these services are provided in connection with non CSDs actors (e.g.: securities registrars).

3. What is your opinion on the above description of the core functions of a CSD?

We agree with the approach proposed by the European Commission in the consultation.

A CSD typically undertakes a range of functions in order to provide the infrastructure to support the securities market(s) it serves. **These "core" functions combine some or all of the following services:**

(i) recording the amount of each issue held in the system in a specific account in the name of the issuer;

(ii) maintaining securities accounts for its participants;

(iii) facilitating the transfer of securities via book entry;

(iv) facilitating reconciliation with any external official register; and

(v) facilitating for its participants the exercise of securities holders' rights and corporate actions.

As suggested by the European Commission, these functions can be summarised into two core functions the exercise of which could be said broadly to define a CSD: (1) a notary function which includes the central safekeeping function, and (2) a central settlement function.

For the simplification of the conceptual approach of the definition of a CSD, tasks related to central safekeeping should be included in the notary function rather than considered as a third and distinct function. Indeed, central safekeeping is a consequence of an issuance via central book entry. In this perspective, recording of the corporate actions and processing of

the Corporate Actions on the CSD books is a component of the 'integrity of issue'service, and does not create a 'safekeeping function' as such.

More specifically we share the views of the European Commission when considering that "the central register does not necessarily correspond to a **unique** institution, as it is the case in certain Member States where the task is **shared** between registrars and SSS operators". We, however, underline that, whenever the task is shared between different actors, it should always involved the CSD as the integrity of the global issue amount of a security is the main feature of the notary function.

4. Which core functions should an entity perform at a minimum in order to be qualified as a CSD?

It is our view that a CSD should perform both functions: notary function and settlement function as settlement system operator to qualify as a CSD.

5. Should the definition of securities settlement systems be reviewed?

We do not support the proposal of the European Commission to widen the definition of SSS in order to enlarge the scope of the SFD (Settlement Finality Directive). The last version of the directive is currently being transposed and we suggest not to undergo, again and for the present, an additional revision. Moreover, no specific need in that area has been identified during the review of the directive.

We agree to the proposal to review the current definition of SSS in order to be as close as possible to the situations that actually exist in Europe. One of the main objectives of the regulations dedicated to post market infrastructures being simplification and European harmonization, a limitation of the types of arrangements SSS should comply with clearly goes in the right direction.

6. What is your opinion of the above description of ancillary services of a CSD? Is the list above comprehensive? Do you see particular issues as to including one or several of them?

We strongly dispute the concept of ancillary functions when applicable to CSDs. CSD's role should remain strictly limited to the core functions

As a central infrastructure, the CSD is traditionally entrusted to perform core functions on an exclusive basis, being assimilated to a public utility and as such distinguished from other players. These exclusive and monopolistic services, so-called core services, are centrally provided by the CSD to its participants, intermediaries and CCPs, and cannot be provided by any other players. A parallel can be introduced here with the core services that are provided to the market by CCPs and that qualify their role of market infrastructures and led to the proposed EMIR regulation for CCPs.

Note that central role of the core services does not impede any cross-border activity that could be performed by the CSDs.

CSDs may indeed wish to service their participants (for safekeeping and/or settlement services) on a security registered with another CSD. That could be done through connections with the CSD performing the notary function on behalf of the issuer (the 'issuer CSD'). In these circumstances, although, the services provided by the non-issuer CSD (the 'investor CSD'), would no longer be considered as central.

All other services than “CSD services” (e.g. banking services, such as credit or stock lending) are out of the scope of a CSD regulation. Prudential issues being the main objective of the proposed CSD regulation, it should provide for clear ring-fencing provisions against any credit or liquidity risk spillover (to name the major risks). CSD should exclusively face operational risk.

Banking activities should be supported by a banking license, distinct from a CSD license, and should not be granted to a CSD.

CSD functions, nevertheless, in order to be performed in a safe and efficient way, may include the provision of other but directly related services. These services do not qualify for “ancillary services”, but, when rendered should be integrated in the scope of the core services. They should comply with clear and stringent rules preventing any risk other than operational (e.g.: a CSD may only be a technical operator for securities lending services on behalf of intermediaries with a banking license. No counterparty (principal) risk should be borne by the CSD.

Consequently, a CSD would not be in a position to perform banking activities, a strict segregation of the CSD activities and those of the entities providing banking services that may belong to the same financial group should be ensured by the regulation.

As potential provider of central bank money, this segregation shall be clear to avoid potential weakness in the EU monetary system.

7. According to you, could the abovementioned cases impact a future regime of authorisation and supervision? Yes? No? No Opinion? Please explain why. Are there other cases which could have an influence on a future regime of authorisation and supervision?

We would like to make the following remark to the analysis led by the European Commission regarding the future regime of authorisation and supervision:

- It is of paramount importance to emphasize on the fact that “CSDs should be subject to an authorisation and supervision regime that ensures that they conform to high prudential standards when performing their activities”, because of their indisputable nature of infrastructures.
- We welcome a harmonized framework of conditions regarding authorisation and supervision to avoid regulatory arbitrage and to foster a level playing field between CSDs that are for the time being mainly domestic but will enter into competition at European level as a consequence of T2S and other likely harmonization initiatives.
- We welcome an involvement from National Central Banks, market authorities and ESMA in the authorisation and supervision process but insist on the need to clearly identify their respective role and responsibilities.
- Prima facie, the list of elements of externality appears to be exhaustive:
    - Nevertheless, not all business cases may have the same impact on the future regime of authorisation and supervision and therefore the regulation should define the respective regimes that will apply.
    - From our point of view, the participation of a member from a different jurisdiction to the settlement function operated by a CSD does not constitute per se a case of externality that should require a specific regime: remote access scheme refers to the membership of a participant not domiciled where

the CSD itself is domiciled. That does not alter any of the local features of the services provided by the CSD.

- Where a CSD offers custody services in relation to securities that are initially entered into an issuer CSD, it becomes a participant to the latter (if remote access is available) and may offer banking services which cannot; and should not, be assimilated to the infrastructure (core) functions of a CSD. These services should be provided by an entity different from the CSD itself, duly licensed for banking activities The situation is obviously different when a CCP accesses a foreign CSD, as this link involves 2 infrastructures.

8. What other elements should be submitted as part of the initial application procedure by a CSD?

The CSD should not have to specify the services it intends to provide as it should perform all core functions but only them (see above).

We agree that consequently, the designation as an SSS should be a condition for the authorisation of a CSD.

9. According to you should the authorisation procedure of a CSD be distinct from the designation and notification procedure under Art. 10 of the SFD? Yes? No? No opinion? Please explain why.

The authorisation procedure of a CSD should not be distinct from the designation and notification procedure under Art. 10 of the SFD: as a matter of fact, as a CSD has to perform the notary function **and** the settlement function, it must be designated as a Securities Settlement System.

10. What is your view on establishing a register for CSD?

We concur with the EC views.

11. What is your view on the above proposal for a temporary grandfathering rule for existing CSDs

We agree to the proposal of granting a grandfathering clause as far as the CSDs, but suggest that this clause sets an extinction period (to be determined).

12. According to you, does the above approach concerning capital requirements, suit the diversity of CSDs. Yes? No? No opinion? Please explain why.

We are of the opinion that the approach concerning capital requirements for CSDs should be in line with the specific nature of the CSD as systematically important infrastructure providing core services to the financial system.

We support a calculation methodology for capital requirements (even if a minimum capital requirement may be required). Acceptable parameters for this calculation should, however be in relation to the scope of securities and the volumes processed only. Indeed, no distinction can be made on services as CSD licensing will be fully harmonised in EU.

It is therefore essential that, as envisaged in the proposed EMIR regulation for CCPs, the future CSD regulation sets a clear and generic definition for CSDs, notwithstanding the diversity of situations that have developed across time in the Member States. Functions not pertaining to the CSD license should be performed by segregated entities that may belong to the same financial groups.

13. According to you, should the competent authorities have the above mentioned powers? Yes? No? No opinion? Explain why.

We agree with the proposal of the European Commission as it fits the specific nature of a CSD.

14. Would a special purpose banking license be appropriate for "banking type services"?

This question does not appear to be of relevance as CDS should only be licensed to provide CSD services.

15. Which of these three passporting options would you support? Full passporting? Limited passporting? Opt out regime? Please explain why.

We support a full passport regime but strictly limited to CSD (core) services. Should the provision of banking services be authorised, an opt out regime would have to be introduced.

16. What is your opinion about granting a right for market participants to access the CSD of their choice?

We support this proposal.

17. What is your opinion on the abolition of restrictions of access between issuers and CSDs?

We are of the opinion that barrier Giovannini 9 should be removed in order to allow competition between CSDs on security issues, competition which seems to us more coherent with the central role of a CSD and the need for uniqueness and integrity of an issue.

This objective will raise some consequences, which need to be addressed:

First, it must be clear that the relation between the issuer and the investor remains governed by the corporate law of the Member State where the company has its registered office; and the relation between the CSD and its participants by the law of the Member State where the CDS holds the relevant securities account for the participant.

Second, the split of an issue under a single ISIN code should not be permitted. The reason for this is that investors can (indirectly) invest via both CSD and concentrate their securities with a single account provider. This could create difficulties in the reconciliation process.

Third, since in some EU jurisdictions, securities are not issued in immobilised or dematerialised form, it is of utmost importance that dematerialisation is encouraged so to facilitate the removal of barrier 9.

18. According to you, should the removal of Barrier 9 be without prejudice to corporate law? Yes? No? No opinion? Please explain why.

The removal of barrier 9 should be without prejudice to corporate law. The CSD should adapt to the issuer's company law, i.e. the law of the Member State where the company has its registered office.

19. How could the integrity of an issue be ensured in the case of a split of an issue?

We strongly dispute the idea of a "split" of an issue. It seems by essence contradictory with the notary function that is entrusted to the CSD and which encompasses the responsibility for ensuring the integrity of the issue. The current infrastructural set up for securities is already complex and we do not see any interest in adding an additional level of potential burden due to further fragmentation for users and intermediaries

The only solution for an issuer to appoint two CSDs for the same issuance is to create 2 different securities identified by 2 different ISIN codes. The "split" of the issuance should not be imposed upon issuers by CSDs.

20. What is your opinion on granting a CSD rights to other CSDs and what should their scope be?

We agree to the proposal for implementing inter-linkage between CSDs, especially in the context of T2S, and subscribe to all principles that have been detailed in the consultation and that derive from the following initial statement:

"In any case such link arrangements create additional risks to the traditional risks identified under chapter 4 (see section 4.1 below). The combination between high volumes, involvement of foreign law and special procedures create specific liquidity, legal and operational risks. From a financial stability point of view, increased cross-border interconnection between CSDs would require special attention similar to cross border banking".

Assessment of each set up from an operational, risk and legal point of view is of paramount importance, considering the irrevocability of transactions, the finality of settlements and the overall financial stability. we therefore subscribe to the statement in section (4.2(1)).

"However this framework might be complemented by further rules specific to CSDs and SSS. It is essential that the legal environment of interoperability arrangements between CSDs be subject to stricter rules than the ones provided under the SFD. As a matter of fact, the SFD imposes interoperable systems to arrange for compatible rules for the moment of entry and of irrevocability of transfer orders stemming from one system into another system. The particular systemic nature of Securities Settlement Systems, as well as the recourse to DVP methods, should call for a strengthening of these compatibility requirements. One could therefore consider imposing identical interoperability rules concerning the definition of the moment of "entry" into the system and of the moment of "irrevocability".

Consequently we equally agree to the content of the following paragraph (2) regarding the involvement of competent authorities in assessing the arrangement for interoperability:

"However, the increasing complexity of interoperability arrangements between CSDs requires the supervisor and the overseer to permanently assess the legal framework in order to characterize the respective legal position of the infrastructures and of their participants …."

However, we are of the opinion that the level of service provided by the(so called) “investor CSD” is authorised to provide on the securities it holds and settles in the context of a link it has established with another CSD (“issuer CSD ”) should be strictly restricted to the level of service he actually provides itself in its capacity of “issuer CSD”.

We agree that one of the objectives of the regulation is to create a level playing field in order to allow a fair competition. From a regulation standpoint, it, nevertheless, is indisputable that the priority objective should be to ensure that CSDs operate in a low risk environment and that any risks associated with any service they offer is mitigated to the greatest possible extent.

Therefore, from a prudential point of view and, bearing in mind the approach detailed above for the definition of a CSD, it appears that competition among CSDs should be limited to their core services and authorised once the restriction on securities localisation has been lifted.

Indeed, “investor CSD” are not different from global custodians as they both neither ensure the integrity of the issue nor provide central settlement for that specific issue.

Nevertheless, the conditions under which an issuer CSD delegates to an investor CSD the core services, which it provides to the issuer, should be clarified so as to foster integration and consolidation and to ease the development of cross-border investment once T2S is operational. The CSD regulation should, similar to EMIR, set out the rules for interoperability applicable to CSDs. Once the CSDs will have been clearly identified, and regulated, and as such differentiated from the other players, then fair competition at all level of the value chain will be ensured.

As far as access by CSDs to transaction feeds is concerned, we think that the opening of an account by the investor CSD in the issuer CSD’s books should be mandatory in order to ensure that the issuer CSD is in a position to fulfil the notary function.

21. What is your opinion on a CCP's right of access to a CSD?

We agree in principle that CCPs should have a right of access to the CSD. However, this right should be conditional on:

- the CCP meeting the membership requirements of the CSD;
- the CCP having the approval of its users to request access;
- the CCP paying for any additional costs in establishing a link with the CSD;
- and the CSD granting the link on the basis of non-discrimination, with transparent membership criteria and explicit pricing.

A refusal of access should only be based on risk related criteria or exemptions to access rights as detailed in MiFID. In our opinion, detailed requirements relating to the data exchanged should be a matter for agreement between the CSDs and the CCPs and users where applicable.

It is essential that the CCP and the CSD make relevant arrangements for the flow of information to fulfil any regulatory obligations and that any link should not have a detrimental effect on risk management standards and settlement efficiency at either entity.

22. What is your opinion on access conditions by trading venues to CSDs? Should MiFID be complemented and clarified? Should requirements be introduced for access by MTFs and regulated markets to CSDs? Under what conditions?

A CCP must have the same rights than other CSDs' participants to access the CSDs of their choice in order to settle the transactions received from the trading venues on behalf of their participants. Nevertheless a CCP, when considering accessing a new CSD should only do so in order to meet the requirements of its members (i.e. enabling them an access to the infrastructure they have selected to settle the transactions).

We would like to state that, the transactions resulting from order matching do not "belong" to trading venues (i.e.contrary to what may be claimed by some actors) but to the clearing members acting for the non clearing members and /or the investors as Clearing members only do **take the eventual counterparty and market risks**, and are liable *vis- à -vis* the CCP as well as *vis- à- vis* their clients of the final settlement of said transactions. Consequently, they should be in a position to select the infrastructures (CCPs and CSDs) where they want to clear and settle their transactions. In practice this selection I will be made, in priority, on risk management criteria.

The investor should be the only other actor that may decide of the place of settlement.

MIFID should be reviewed adequately.

23. According to you, should a CSD have a right to access transactions feeds? Yes? No? No opinion? Please explain why.

We advocate user choice between competing CSDs and therefore agree in principle that CSDs should have a right of access to transaction feeds. However, this right should be conditional on: the CSD having the approval of its users to request access; the access-requesting CSD establishing a link with the incumbent CSD (and CCP where used); trading platform members authorizing the access-requesting CSD to accept instructions on their behalf; and the access-requesting CSD and trading platform making arrangements for the flow of information to fulfill regulatory obligations (e.g. on settlement status reports).

24. What kind of access rights would a CSD need to effectively compete with incumbent providers of CSD services? Should such access be defined in detail?

Please refer to above. As far as there is a request from by CSD's participants to settle their market transactions with another CSD, the latter should be granted corresponding transaction feeds from the trading venue and from the CCP.

25. Do you think that the legal framework applicable to the operations performed by CSDs needs to be further strengthened?

Further strengthening of the legal framework for operations performed by CSDs appears desirable for the purpose of achieving perfect interoperability and absolute compatibility (as notions such as 'timing of entry' and 'irrevocability of instructions' should be identical across the European Union, without any room for national variations).

26. In particular should all settlement systems operated by CSDs be subject to an obligation of designation and notification?

Yes, all systems should be notified.

27. What do you think of the general elements of these requirements, particularly with respect to the obligation for CSDs to facilitate securities lending and the obligation of counterparties to securities loans to put in place adequate risk controls?

Once the principle we highlight in our response to question 6 is agreed (ie. *... A CSD may only be a technical operator for securities lending services on behalf of intermediaries having been granted the relevant banking license. No counterparty (principal) risk should be borne by the CSD.")*, we can subscribe to the three key elements to prudential requirements in respect of securities lending reviewed as follow:

• CSDs should facilitate securities lending, whether central or bilateral;

• Securities lending facilities should be protected by adequate risk controls (see sections 4.11 and 4.12);

• Securities lending facilities should be freed by national legislators from any impediments (e.g. legal, tax and accounting).

As well as to the further principles of securities lending listed afterwards in the consultation.

28. What do you think about the requirement for issuers to pass their securities through a CSD into a book entry form? If such an obligation were considered, which securities should it concern? Only listed securities? All securities with an ISIN code?Only equities? Eligibility approach?

In order to ensure that EU legislation on CSDs is consistent and that it has a maximum impact in terms of harmonisation, efficiency and safety, it should cover as many financial instruments as possible. In particular, legislation should not be restricted to listed securities and should include, among others, equities, money market instruments, bonds, and possibly investment funds. Regarding investment funds, different EU countries have different settlement models ('transfer agent' versus 'CSD model'). The CSD model, in those countries where it is in place, has demonstrated that it provides a low-risk profile and well-controlled service to the benefit of investors.

We strongly supports the objective of the European harmonisation for CSDs and the legal framework applicable to CSDs and securities. This current initiative may be an opportunity to ensure that most of the securities benefit from the safety provided by the central recording ensured by a CSD. It is our view that CSD services should be mandatory for all types of securities, whether dematerialised, immobilised, listed on regulated markets, and encouraged for other classes.

29. What is your opinion with respect to grandfathering?

A reasonable delay should be granted to issuers in order to bring their eligible securities to CSDs and that should be given priority over the introduction of a grandfathering clause.

Delays may differ according to the different classes of assets.

30. What do you think about the requirements above for DVP? Do you see any issues in respect of the different DVP models?

DVP is already a reality within the CSDs for settlements against payment and should be encouraged. The principle should be that DvP is final when both securities delivery and cash payment are final.

Night time settlement is compatible with DvP principle; therefore CSD legislation should not prevent night time settlement, as this is more efficient and does not add more risk.

We take the view that reference to FoP is not relevant to a discussion on DVP. FOP is not an exception to DvP but a different transaction type and participants should have a right to settle FoP. We recommend to focus on principles in the CSD legislation and to deal with technical details at level 2 or 3.

31. What are your particular views on the grandfathering principle coupled with the requirement for the introduction of a guarantee fund?

This question raises the problem of the irrevocability in real time. Thus the concomitant of the cash settlement and of the security settlement should be strongly encouraged.

Moreover, most if not all European CSD already have a DVP model, so it's questionable whether a grandfathering is required at all. As DVP is a core principle in risk management, in our view there should be no grandfathering.

32.What do you think about a preference of settlement in central bank money? Should such a preference be applied equally to all types of securities?

We are strongly in favour of settlement of the cash leg in central bank money. This should be applied to the settlement of all transactions on securities that are admitted to the operations of a CSD.

33. Do you think that the principles outlined above could be transposed in future legislation?

Yes, some principles outlined under section 4.6 could be transposed in future legislation.

We are in favour of a system where settlement always takes place in central bank money, except if the securities, admitted to the operations of the issuer-CDS, are denominated in a currency other than the currency of the Member State where the CSD is located. Only in the latter case, settlement can take place in commercial bank money, whether in the books of that CSD of in the books of a payment bank.

It is important to stress in this context that so-called “investor-CSDs” are global custodians. They can internalise settlements of securities, which are primarily listed with another CDS. Since this is global custody, this should fall out side the scope of the CSD Regulation.

As a consequence, we find difficult to understand the 3rd bullet point of section 4.6 (“*where both central and commercial bank facilities are offered, ...*”). The reason for this is that there never is a choice between commercial bank settlement or central bank settlement. Settlement always takes place in central bank money, except when this is impossible and the conditions for settlement in commercial bank money are met.

34. What is your opinion about the extent of the requirements that should be imposed when commercial bank money is used?

This is not necessary as the use of commercial bank money is already subject to relevant banking regulations and that requirement should apply in principle only to the provision of those high-risk ancillary services that should not be part of the future legislation.

As infrastructures represent potential systemic risks, if it is decided to allow the access to commercial money, the future legislation should impose a strict separation of activities and the compliance with prudential ratios. ESMA should be the competent authority responsible for specifying and verifying compliance of these requirements.

35. What do you think about the rules above? Are further rules needed in order to ensure reconciliation and segregation?

We fully support these rules, which we believe reflect current standard market practices. Therefore, no further rules are needed.

36. Do you think that these six basic principles cover sufficiently operational risks?

Market participants should continue to benefit from CSDs providing sound and safe core functions. We believe that the principles outlined in the consultation document are necessary. We suggest adding the requirement for adequate insurance and risk transparency to its participants.

These principles and their more detailed specifications should also be made available to all CSD participants (in their capacity as users of that infrastructure) to ensure transparency in risk management. We also point out that the "*minimum operational requirements for its participants*" established by a CSD should be strictly confined to requirements relating to the interface with the CSD.

We are unclear of what is meant by 'heavy equipment' in the second paragraph of 4.8. and propose to replace "i*nformation*" by '*sensitive information'*. In the fifth bullet we suggest to specify '*operational risks'*.

37. What do you think about the eight principles above, particularly with respect to board composition and the need for a risk committee?

We fully agree with the first seven principles.

Concerning the risk committee, this should not be necessary for CSD that do not provide any banking services.

Considering the risk profile of the CSD (ie operational risk only), the risk committee does not appear necessary. However, should it be imposed, we welcome the idea of a risk committee involving market participants as this would enhance transparency towards the users of a CSD, but we believe that their role should be confined to an advisory capacity since management decisions are strictly a matter for the CSD itself.

38. According to you, should CSDs be subject to a principle of full responsibility and control on outsourced tasks? Yes? No? No opinion? Please explain why.

Yes, we are convinced that CSDs should refrain from outsourcing and should in any case retain full responsibility for, and control of, any outsourced tasks. In case some tasks are outsourced and have a significant impact on members (in terms of process or interface towards the CSD for instance), we consider that it could be appropriate that CSDs first require the consent of their members or at least consult them or an advisory board.

39. Should there be any other exemptions from the principle of responsibility and control of CSDs on outsourced tasks?

We believe that there should not be any other exemption than those that are described in the consultation document, which means the outsourcing to the T2S platform should be exempted from the principle of responsibility and control over outsourcing.

40. What is your opinion on the above prudential framework for risks directly incurred by CSDs?

As already mentioned in our response to the first section of the consultation, for the purpose of a future legislation, a CSD should be defined as an institution performing core services and operating a SSS according to Article 2 (a) of the SFD. Pursuant to this definition, a CSD bears limited, mainly operational, risks. We do not see the need to have specific provisions dealing with those limited risks other than the ones that are already envisaged. CSDs should be able to appropriately address those risks in their contractual arrangements.

Should a CSD offer additional services, these should be subject to distinct incorporation and that distinct legal entity is subject to existing authorization, regulation and supervision. In particular, on extension of credit point in (b), that distinct legal entity should be subject to banking rules.

41. What do you think about the principles above?

Pursuant to our answer to Q41, and linked to our comments to Q6, we do not consider that granting credit is a service a CSD should provide, even if acting as a facilitator.

42. What do you think about including these elements of the Code in legislation?

We support the inclusion of the elements of price transparency and service unbundling in future CSD legislation to provide for continued availability The same rationale makes us advocate the inclusion of these elements in EMIR and MiFID as trading venues and CCPs have also signed the Code.

PART II: HARMONISATION OF CERTAIN ASPECTS OF SECURITIES SETTLEMENT IN THE EUROPEAN UNION

43. According to you, is the above described harmonisation of key post trade processes important for the smooth functioning of cross-border investment? Yes?

No? No opinion? If yes, please provide some practical examples where the functioning of the internal market is hampered by absence of harmonisation of key post trading processes. If no, please explain your reasoning.

Yes, such a harmonisation would be useful.

In this situation, we consider that a harmonisation is necessary in order to smoothly process cross-borders transactions. The main fields which need a harmonisation are:

- **Market disciplines**: the right and duties of the markets' participants have to be the same in all the European countries (i.e. common best practices, common penalties to be applied…)
- **A fair access to the local markets**: currently some European countries do not accept foreign participants to open an account in their CSD (i.e. Spain). This is not compliant with a free access in all T2S countries, and does not create a level playing field.
- **The settlement finality of the transactions**: all European markets have to consider the irrevocability of the settlement transactions at the same time to avoid any discrepancy in the rights attached to the securities.
- **The settlement of registered shared.**
- **The Settlement cycles.**
- **Corporate Actions.**

44. Do you identify any other possible area where harmonisation of securities processing would be beneficial?

See our response to question 44.

45. According to you, is a common definition of settlement fails in the EU needed? Yes? No? No opinion? Please explain why. If yes, what should be the key elements of a definition?

Yes, a common definition of what is a "settlement fail" is needed in the EU, in order to work on the same basis. The implementation of common settlement disciplines can only be done should the countries have adopted the same definition of what is a settlement fail and what is not, and thus should not be impacted by the common settlement disciplines. For instance, in the case of a settlement chain, only the 1st defaulting participant should be penalised, as the other defaulting participants failed because of him (should they have been creditor (in securities or cash) with the incoming receipt).

46. According to you, should future legislation promote measures to reduce settlement fails? Yes? No? No opinion? If yes, how could these measures look like? Who should be responsible for putting them in place? If no, please explain.

Yes, the future legislation should promote measures to reduce settlement fails. The major reason for implementing market disciplines is indeed to reduce the settlement fails.

On another hand, such measures should not add risks in other fields as well as not create non STP process. The CSDs should be the ones responsible for their implementation and careful monitoring, in a STP manner.

47. What do you think about promoting and harmonising these ex-ante measures via legislation?

Yes, legislation has to promote and harmonise ex-ante measures. It is true for the use of the pre-matching procedures, the use of STP technology, the use of common ISO standards but it has to be carefully addressed when concerning the early settlement and early matching, as there is no common settlement cycle currently in Europe, and the differences in time zone have to be kept in mind. Most of the European participants have US or Asian clients, and these differences in time zones have to be taken into account in the definition of the early matching and early settlement.

48. What do you think about promoting and harmonising these ex-post measures via legislation?

We consider that a future legislation should be limited to high level rules on a harmonised penalty regime as well as harmonised enforcement rules such as buy-ins and cash-compensation rules (for instance the maximum number of days between the intended settlement date and the launch of a buy-in procedure) and should refrain from elaborating specific and detailed rules which would not fit market structures.

49. According to you, is there a need for the harmonisation of settlement periods? Yes? No? No opinion? Please explain why.

We support the harmonisation of settlement cycles in Europe. In this respect, the future legislation should provide a target date to achieve this harmonisation‘s objective.

50. In what markets do you see the most urgent need for harmonisation? Please explain giving concrete examples.

We believe the need for harmonisation is more urgent in the countries that wish to join T2S, as it will for example ease the corporate actions management. The exhaustive list of countries joining T2S is not known for the moment.

Furthermore, we estimate that the need for harmonisation should target the settlement of securities traded on trading venues authorised by MiFID (i.e. equities, bonds, warrants, certificates, ETFs). Parties to OTC transactions should remain free to agree their own terms and conditions.

51. What should be the length of a harmonised period? Please explain your reasoning.

We refer to the conclusions made by the HSC WG that a standard settlement cycle of T+2 is the right harmonised solution for European markets. We would like to warn the European Commission on the fact that a shorter period than T+2 is impractical in the cross-border business.

52. What types of trading venues should be covered by a harmonisation? Please explain your reasoning.

The harmonization should focus on the settlement of securities traded on trading venues authorised by MiFID (i.e. equities, bonds, warrants, certificates, ETFs). Parties to OTC transactions should remain free to agree their own terms and conditions.

53. What types of transactions should be covered by a harmonisation? Please explain your reasoning.

Please refer to our response to question 53.

55. What would be an appropriate time span for markets to adapt to a change? Please explain.

After a high level study, participants require a timeframe between 12 to 18 months in order to adapt to a new settlement cycle as a change would require reviewing the back-offices processes and procedures; the contracts with the clients; to potentially improve STP. All these aspects require sufficient time in order to be put in place effectively.

Regarding the harmonization of settlement cycles, we strongly support the definition of an implementation date in order to facilitate the awareness of all market participants.

55. According to you, how should the principles examined in the communication on sanctions apply in the CSD and securities settlement environment?

We support a harmonisation of the sanction regime to be defined by ESMA.

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