



**Asociación
de Mercados
Financieros**

Carlo Comporti
Secretary General
Committee of European Securities Regulators
11 – 30 Avenue de Friedland
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France

23 January 2009

Dear Sirs

Response by the Asociación de Mercados Financieros to Consultation on CESR/ESCB draft recommendations for securities settlement systems, and draft recommendations for central counterparties.

The Asociación de Mercados Financieros (AMF) of Spain welcomes the opportunity to express its views in relation to the ESCB – CESR Recommendations.

The AMF is a Spanish Association composed of the main commercial banks, savings banks, cooperative credit institutions, brokers, dealers and central bank among others. In total 95 financial institutions covering all financial products, are part of the Association.

The objectives of AMF are, among others, establishing relationships among institutions related to the financial markets; studying and promoting initiatives in order to foster and improve the running of financial markets and spreading education and knowledge of financial markets.

AMF is closely following the developments in the clearing and settlement securities industry. Reliable, sound and efficient clearing and settlement infrastructures are paramount to the securities markets.

This industry is receiving the suitable focus it deserves due to its importance. The recent public efforts and developments concentrate their attention on the necessity for achieving a pan-european solution in order to obtain cross-border clearing and settlement as economical and efficient as the domestic one is.

CESAME and CESAME2 aim to dismantle the so called Giovannini Barriers with a view to achieving a significant reduction in the cross-border settlement costs.

MiFID and the Code of Conduct seek to establish links among the different infrastructures, which will allow competition among them.

Finally, TARGET2 Securities intends to bring about large cost savings, particularly in the field of cross-border business.

The ESCB – CESR Recommendations for securities settlement systems and for central counterparties are the necessary complementary public action for the abovementioned measures aiming to promote competition based on a level playing field as well as limiting systemic risks.

AMF believes that the abovementioned issues i.e. level playing field and systemic risks, are two essential and vital aspects for the securities clearing and settlement infrastructures. As a matter of fact, both issues are interlinked when we think about opening this industry to free competition.

AMF's comments to the ESCB – CESR Recommendations are very much related to these aspects. The current financial crisis clearly demonstrates the importance of reliable and secure securities clearing and settlement infrastructures. Our associated members are concerned about the possible risk of achieving a reduction of the cross-border securities settlement cost but at the same time increasing systemic risks for domestic business, if not also costs.

Our first concern is related to the non-binding nature of the Recommendations. We wonder whether this characteristic is sufficient to fully respect a level playing field as well as to limit systemic risks at the same time.

Secondly, after reading the 19 Recommendations for securities settlement systems, AMF has the impression that some recommended rules are not tough enough in prescribing the best practices for the industry. For example, we can cite the following cases:

❖ **Recommendation 2 (cfr. B3, page 22):**

The recommendation to match settlement instructions is not applicable to “free-of-payment transfers in those systems where matching is not required”.

Should matching instructions be a best practice to be achieved, we consider that FoP transactions must be subject to matching requirements as well.

❖ **Recommendation 6 (cfr. B1, page 35):**

“Immobilisation or dematerialisation and transfer by book entry in CSDs should be implemented to the greatest possible extent”.

AMF believes that full dematerialisation is obviously the best practice.

❖ **Recommendation 8 (cfr. C6, page 42):**

“Settlement systems should prohibit the unilateral revocation of unsettled transfer instructions after a certain point in time on the settlement day, so as to avoid the liquidity risks that such actions create”.

In AMF's opinion, unilateral cancellation of matched instructions should not be allowed from the moment of matching.

❖ **Recommendation 12 (cfr. C2, page 57):**

It should be clearly recommended separating into different accounts own securities holdings and customer's securities.

Thirdly, other comments are more fundamental and directly related to the real fulfilment of a true level playing field as well as limiting systemic risks:

❖ **Recommendation 5 (cfr. C5, page 33):**

“Access to securities lending facilities should not be compulsory”.

AMF believes that a centralised securities lending facility should be compulsory in case bilateral lending has not succeeded in covering securities failure.

❖ **Recommendation 6 (cfr. C4, page 36):**

“CSDs should avoid credit and liquidity risks to the greatest possible extent. Indeed, most CSDs in Europe are prevented by their status from doing so”.

Once again, should avoiding credit and liquidity risks be the best practice for CSDs, it must be clearly recommended for all CSDs. It is an important issue in order to fully respect the level playing field principle.

Additionally,

- 1) We stress the importance of promoting the use by CSDs of Central Bank money
- 2) We welcome the fact that CEBS has confirmed that custodian banks would not be included in the scope of these recommendations, their risk being of a different nature to that of the clearing and settlement infrastructures and in any case, already covered by existing regulations

We very much hope that our comments are taken into account.

Yours sincerely



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Chairman
Asociación de Mercados Financieros