

To : Mr. Wim Moeliker, CESR rapporteur  
From : Henny Kapteijn  
Regarding : comments on draft Report on ESCB-CESR standards for Clearing & Settlement  
C.c. : Ms. Chris Verhaegen, secretary general European Federation for Retirement Provision  
Mr. Joos Nijtmans, secretary general Vereniging Bedrijfstakpensioenfondsen  
Date : 7 november 2003

Also on behalf of the EFRP, please find below some comments on the draft report.

### General

We would like to express our support for all initiatives leading to better investor protection in the EU. The investor is at the centre of clearing and settlement: looking for more efficiency, lower costs, reduction of risk and more stability when investing cross-borderly.

It is in the interest of the investors, be it citizens, pensionfunds or brokers, that improvements are implemented without any delay. In that sense the expected timelines for improving the situation in clearing and settlement is far too long.

It is in the interest of the investors to describe how they are being served in the present and future clearing and settlement world. Until now, investors can never be a direct member of clearing bodies and settlement institutes and this gives them a basically vulnerable position. They have to depend on services rendered by (global) custodians. These services range from securities administration to providing liquidity (against collateral), offering securities lending (and sharing the proceeds) and offering interest compensation (because intra-day liquidity positions are not reported by these banks). As a matter of fact, by not offering direct access to investors, banks are able to monopolise some other related services with which they earn their money (opportunity costs for institutional investors).

The quality of the settlement as offered by custodians is in this respect quite important. The essence is: which type of settlement quality will be offered, i.e. which settlement finality: is it intraday or not, is it in central bank money or not.

We subscribe to the summary of the meeting of CESR with the consultative group and will only mention here some additional issues (per standard).

Standard 2: trade confirmation and settlement matching

It is difficult for institutional investors to confirm every trade on T+0, since this requires changes at broker dealers who inform us on the exact prices at end of day.

Standard 5: securities lending

It is correct that securities lending arrangements help in expediting settlements. However, it should be noted that large economic interests are at stake for securities lenders; it may be worthwhile to investigate the potential financial consequences in Europe. Furthermore, there is a relation between corporate governance issues (shareholder voting rights, proxy voting) and securities lent. This may also require some further investigation.

Standard 9: risk controls in systemically important systems

Institutional investors may like alternative techniques better above full collateralisation, since this is very costly for them. It would be helpful if the potential (opportunity) costs for the European market be quantified.

Standard 10: cash settlement assets

Large institutional investors are looking forward to a guaranteed intra-day settlement finality in central bank money. This would clearly reduce systemic risk in European systems in a significant way and also reduce the need for collateral.

Standard 12: protection of customers' securities

The standard addresses rather practical techniques to protect customer's securities. We would like to stretch the issue a bit further. Clarity on legal ownership is important and solving the problem of lack of harmonisation of ownership law in Europe is a critical success factor. The fact that institutional investors do not have direct access to clearing and settlement institutions may also influence their legal ownership position. Especially when making use of a global custodian, with many links in the chain of administration, it is not clear how far the protection of ownership will stretch out. Even when complex, this is reality today: many large capital market institutions hold their securities through a global custodian. Even with the adoption of the Collateral Directive and the proposals for freedom of choice of legal system a, risks in legal ownership remain, which might entail systemic risk.

Our last point also addresses risk mitigation: we have a concern for the transition period to a more consolidated clearing- and settlement landscape: what will be done to prevent market parties from taking too much risk when safeguarding their position? Can prudential supervision secure systemic risk in a situation of increased competition in the coming three to four years?