JOINT WORK OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS IN THE FIELD OF CLEARING AND SETTLEMENT

A CALL FOR CONTRIBUTIONS FROM INTERESTED PARTIES

IBERCLEAR, as a member of the European Central Securities Depositories Association (ECSDA), welcomes and adheres to the answers given by the ECSDA to the call for contributions from interested parties carried out by the European System of Central Banks and the Committee of European Securities Regulators in the framework of the joint work in the field of clearing and settlement to actively promote a regulatory framework for these activities within the common objective of getting a more integrated European financial market.

Additionally, we include below some additional nuances to the views expressed by the ECSDA, and some other remarks on issues not dealt with by ECSDA and which are of particular interest to IBERCLEAR.

2. Issues for further consideration

2.1 Nature of the recommendations:

There are areas where recommendations and standards as such, without the form of a European legal instrument are enough, i.e., access conditions, risk and weakness coverage, or settlement cycles. This does not mean that these matters are left simply to the discretionary will to be applied by the different entities, but that Supervisors should impose at national level similar standards with a similar degree of binding character, and that these measures could be supplemented with the publication of disclosure frameworks to impose discipline.

However, there are other areas where a European legal instrument seems to be needed.

Firstly, we agree with the ECSDA approach as to the regulation of a set of very high level principles in order to promote a level playing field and to remove obstacles and barriers to a full and open access to European clearing and settlement services.

Secondly, we understand that settlement and registration systems are most closely linked to one another. When speaking of a financial world where dematerialisation of securities is a reality, settlement is a process which implies an alteration in the entries contained in a register. Accordingly, a minimum level of homogeneity in the fundamentals of the registration systems which support clearing and settlement activities is needed. In this sense, harmonization is required in the following aspects: **1) Basic functions of CSDs** (like relations to issuers, balancing and realignment of securities -specially for international transactions- and control and supervisory activities vis à vis institutions enabled to clear, settle and register); **2) Basic principles for the registration system** (requirements as to the identification of the real owner, the last in the ownership chain), and minimum common standards as to the legal content of actual entries in the register of securities or interest on securities, including the recognition in favour of the entitled person or entity of an autonomous position vis à vis the issuer or the registrar, or a third party, and the degree of protection of a "bona fide" purchaser; **3) Supervisory or oversight regime** to control registration, clearing and settlement activities of those entities enabled to provide these services either separately or together with the CSD.

2.2 Addressee:

As can be deducted from the answer to the question above, there are recommendations, and rules that could be contained in a European Regulatory instrument that could be addressed to all entities enabled to provide registration, clearing and/or settlement services, including rules relating to CSDs functionalities. From a formal point of view, the basic concepts of the registration, clearing and settlement architecture should be dealt with by the national regulators, and a certain harmonization addressed to themselves is needed at a European level. As regards users, aspects like segregation of customers' assets and maybe some topics relating to insolvency matters should be the object of European regulation.

Finally, where standards and/or recommendations are addressed neither to regulators nor to legislators, appropriate incentives for their implementation and compliance

could be the publication of disclosure frameworks whose quality and reliability should be vetted by competent authorities.

2.3 Scope:

There is no doubt that differences between markets, intermediaries, global custodians, ICSDs and NCSDs have blurred lately. But we understand it is basic to regulate adequately some high level aspects of the provision of central securities depositories and settlement services, like the ones mentioned in answer to question 2 above as addressed to some kind of specialized institutions only, notwithstanding the fact that these provide common global custody or other activities. In any case, additional measures should be taken to avoid the contamination of business risks where both domestic CSDs activities and custodian-related activities (mostly cross border) are carried out by the same entity.

We understand within the "functional approach" (where activities and services, rather than institutions are taken into account), there are services and activities such as the ones mentioned in answer nª 2.1 above, that require a specific and cautious approach, to the extent they deal with tasks, such as guaranteeing vis à vis third parties the actual content of a register (which can be seen as a "public service") that justify a differentiated regulatory treatment in whatever recommendation or regulatory rule to be fostered.

There is no doubt that the joint work of both the European System of Central Banks and the Committee of European Securities Regulators is of the utmost importance to prevent risks associated to registration, clearing and settlement activities, and that regulators will have to carry out immediately the task of providing detailed rules to prevent those risks, leaving the operators an adequate degree of freedom to choose the tools that best fit their business.

2.4 Objectives: See answer n 10 from the ECSDA.

2.6 Risks and weaknesses:

See answer to question n 2 on this document.

2.7 Settlement cycles:

Harmonisation of settlement cycles "per se" can only result in an improvement of the efficiency of settlement . Nevertheless, to shortening current cycles mostly when speaking of equity markets, can be the cause of further failures given the complexity of the processes to be served.

2.8 Structural issues: See answer n 14 from the ECSDA.