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CESR Public Consultation

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Draft Recommendations for SSSs and CCPs

French Market Position

1. Association française des marchés financiers, AMAFI, has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions.

The French Banking Federation, FBF, is the professional body that represents the banking sector in France, i.e. more than 500 cooperative, savings and commercial banking establishments.

The French Association of Securities Professionals, AFTI, brings together more than 500 players active in the post-trade industry and has for mission the promoting the industry and representing their interests in the Paris financial market place and throughout the European Union.

2. The three associations above welcome the opportunity to comment on the CESR consultation on draft recommendations for Securities Settlement Systems and Central Counterparties.

Before answering the specific questions raised by CESR in the call for evidence AMAFI, FBF and AFTI would like to emphasise some general issues, some of them being developed in more details in the answers.

I) General comments

➢ ***Ensuring safety and soundness of the Market Infrastructures is of the utmost importance and therefore a step forwards should be done in order to prevent CSDs from taking liquidity and credit risks.***

3. We welcome the strong emphasis put by the Recommendations on ensuring the safety and soundness of the post-trade infrastructures in the EU. This emphasis on safety is in line with the new post-crisis EU political direction established in the recent Conclusions on Clearing & Settlement adopted by the Council of the European Union at the December 2 ECOFIN meeting: "The Council FINDS that the on-going financial crisis confirms the importance of ensuring safe and sound post-trade infrastructures. Building a safer, more stable and efficient global financial system therefore requires to step up the EU ambitions for post-trade infrastructures with emphasis on safety and soundness."

4. We welcome as well the scope of the Recommendations, which encompass altogether Market Infrastructures (CSDs, CCPs) and ICSDs. Indeed, the mix of infrastructure services and banking services within ICSDs is a major source of systemic risk. Additionally, the CEBS confirmed that there is no use to include custodian banks in the scope of these Recommendations, their risks being of a different nature and already covered by existing regulations.

5. However, we regret that the Recommendations definitely lack stringency in the necessary ring-fencing of CSDs (and therefore of their participants) from liquidity and credit risk. As the EU Council recalls it in its ECOFIN Conclusions on Clearing & Settlement "The Council (…) Highlights the relevance of the current efforts to ensure that Central Securities Depositories (CSD) concentrate only operational risks and minimise liquidity and credit risks; Stresses the importance of promoting the use by CSDs of central bank money for the settlement of transactions".

6. Considering their central role to the market, CSDs should not be allowed to take credit risks and liquidity risk and the use of central bank money should be generalised. The CESR-ESCB Recommendations, concerned with encompassing all the existing national differences, do not make this necessary step towards the strengthening of safety and soundness of post-trade infrastructures.

➢ ***The Recommendations cannot form the base for a mutual recognition process, especially in the context of the interoperability between Market Infrastructures.***

7. The Recommendations cannot be the foundation of a Mutual Recognition process between Member States. The Recommendations are intended to be the absolute minimum to be respected, by European infrastructures, in order to ensure minimal conditions of safety and soundness of the post trade environment. However, national laws and rules often provide stronger requirements: an explicit or implicit Mutual Recognition process based on these Recommendations would therefore translate into a weakening of the level of safety and soundness of the post-trade infrastructures of each Member State.

8. This issue is of course of particular relevance in the context of the Markets infrastructures' interoperability, promoted by the European Commission. In particular, the compliance of linked infrastructures with the Recommendations 19 on linked SSS and 11 on linked CCPs, cannot be considered as sufficient to force national authorities to authorise such links.

9. The December 2008 CESR Preliminary Technical Advice on Access and Interoperability appears to confirm the risk that Mutual Recognition could be the final outcome of the adoption of the Recommendations. Indeed, we can read Page 5 of the Technical Advice: "(…) more CESR members expressed the opinion that the aim of the single European post trading market might be better served within a harmonised EU-framework. Notably, Germany and the United Kingdom are of the opinion that the draft CESR/ESCB Recommendations provide a common framework".

10. By all means, the compliance with these minimal obligations by a European infrastructure cannot be leveraged by it as a form of "European passport". If the compliance with these Recommendations allows the provision of cross-border infrastructure services throughout Europe, despite more stringent local regulations, then this set of Recommendations would reduce the level of safety and soundness and induce regulatory arbitrage.

- ***Target 2 Securities should be the European benchmark and paradoxically is not even quoted once in the entire document***

11. It is surprising and disturbing that the T2S project is not quoted once in the entire document, while the T2S project could be the chosen benchmark in terms of ensuring central bank money and DVP settlement. As the Council recalls it in its Conclusions on C&S: "In respect of TARGET 2-Securities (T2S), the Council: Fully SUPPORTS T2S in particular insofar as it contributes to the systemic safety of the post-trading environment". A description of the T2S project and its advantages should have been done by the drafters at least in the "Public Initiatives" in the introductory part. This is not the case, while other projects are quoted (like FISCO for instance), despite the fact that they are far less relevant for the issues at stake with the Recommendations than T2S.

12. T2S will bring Real Time DVP Settlement in Central Bank Money. Real time DVP settlement in central bank money allows participants and systems to benefit, in terms of safety and soundness, from the ability to immediately dispose, for any purpose, of cash and securities as soon as the settlement of a transaction has been declared final. This should be the ultimate benchmark and it cannot be understood that this is not explicit in the Recommendations.

In view of the above, we therefore recommend that settlement concept becomes more precise and we suggest to use the same perimeter than the one used by the Eurosystem, that considers that settlement encompasses 4 items that could not be segregated: format control of the instructions, matching, settlement (debit or credit) and finality.

➢ ***There should be only one system providing settlement finality for any transaction in order to avoid systemic risk.***

13. Regarding the issue of the links between CSDs: whatever the number of links or so-called "relayed links", there should be only one system providing settlement finality for any transaction.

14. Indeed, providing robust settlement finality is the keystone of the entire settlement process. The settlement process could be described as the following package of entangled steps: matching; settlement (exchange cash vs securities, preferably DVP and with central bank money); finality. Providing settlement finality ensures the certainty of the ability to dispose, for any possible purpose, of the cash and securities liberated by the finalisation of the settlement of the trade. Creating uncertainty on the finality of the settlement put the entire settlement at risk.

15. The circulation of conditional finality throughout linked systems is the most dramatic way to propagate systemic risk, by submitting all participants of several domestic markets to unexpected unwinding of settlement with systemic domino effects.

➢ ***The Role of a CCP***

16. The CPSS and the Technical Committee of IOSCO concluded in their report on CCP that **CCP contributes to the goal of financial stability**. A CCP has the potential to reduce significantly risks to market participants by imposing more robust risk controls on all participants and, in many cases, by achieving multilateral netting of trades. It also tends to enhance the liquidity of the markets it serves, because it tends to reduce risks to participants.

17. Because of the lessons of the financial crisis, **we are deeply convinced there is a strong consensus of the public authorities and the financial actors to incite, as soon as possible, to the implementation of solutions of clearing by a CCP.** The existence of a real CCP would indeed allow to mitigate the risk of contagion connected to the failing of a market participant and would contribute to encourage a greater standardization of products. The development of this type of services is also seen as a mattering element to restore the confidence on markets the functioning of which is partially surrounded by the strong aversion at the risk of counterpart of the agents since the bankruptcy of Lehman Brothers.

18. So we welcome the ambit of the ESCB-CESR Group and would have appreciated some strong recommendations or remind on the role of CCP. For example, we believe that it would have been interested to include a recommendation dedicated on the managing of fails (buy-in procedure and also shaping process would have deserved more than a few lines in a recommendation on physical deliveries).

19. But **the notion of CCP must be used with accuracy**. It must be reminded that a CCP interposes itself between counterparties to financial transactions, becoming the buyer to every seller and the seller to every buyer. In this view, as the recommendations have been designed for CCPs, the terms CCP cannot be used to designate also Clearing House or clearing arrangements. As far as in the core of the document such entities are termed "CCP", a potential confusion may arise and there could be a risk for the Market that CCPs define their requirements based on these sole recommendations. At the other hand our purpose is not to create a double level of "CCPs".

20. The paragraph 10 of Recommendation 5 of the Explanatory Memorandum states that "if a CCP serves multiples markets, the CCP's ability to use resources supplied by participants in one market to

cover losses from a default in another market should be clear to all participants". **Such statement is not admissible because the mutualisation of losses is over-extended and it would admit the case that non-default participants should participate to losses generated by a default-participant in another market or another jurisdiction in which the non-default participants are not members**.

➢ *Risk management procedures of CCP in case of defaulting participant*

21. As far as they use the services of a CCP, participants will have the capability to replace a set of individuals risks in front of various counterparties by a sole one vis-à-vis the CCP and, thanks to the rules that govern the CCP, **the maximum risk for a participant would logically be less than the sum of the individuals, sum that remains the maximum of the risk incurred by a single participant**. They expect the CCP to guarantee the operations whatever happens behind the CCP.

22. However by admitting that a CCP could also pass back its losses due to a defaulting participant to a non-defaulting one beyond its participation to the clearing fund, the ESCB-CESR Group admits that (i) participant actually has an unlimited risk against the CCP (versus an amount that could be determined); (ii) it may have to cover losses it will not have been faced with if there was no CCP (there might be no original contract between this participant and the defaulting one).

23. The better organisational model for a CCP in terms of efficiency and risk mitigation is the one where the CCP has a banking license and access as a direct participant both the CSDs and the National Central Banks of the markets on which it operates. Each delegation of function to a commercial entity adds operational complexity, lowers the efficiency and undermines the CCP from a risk point of view.

24. We understand that in some cases a CCP should use the private agent model. Beyond the additional risks due to the use of a private settlement agent, that are described in this document, we would like to draw your attention on the risks that a participant may incurred in case of the private agent defaulting. This point is particularly true for cash that have been posted as guarantee. **As for securities, these assets must be segregated and seen as what they are posted for (to guarantee operations) and not as simple commercial deposit**. As they are one of the key manners for a CCP to manage its risks, we are wondering if they should not be kept directly within the central bank.

➢ *linked CCP*

25. The recommendations do not constitute a sufficient basis for common rules for interoperability or passport for CCPs.

II) Specific comments

a) Introduction

Page 5

26. We can read Page 5 that one of the objectives of the CESR-ESCB Working Group is “to provide a single set of Recommendations for CCPs, CSDs and other relevant securities services providers in the EU, applied in a consistent manner without the imposition of undue costs”. Such a minimal “Set” would not by itself ensure the safety of European infrastructure and is often less stringent than domestic requirements. Therefore it should not be the basis of a Mutual Recognition process.

The sentence presents two additional problems:
i/ the term “securities services providers” is too general and should read “infrastructures securities services providers”;
ii/ the issue of costs is not relevant in the context of ensuring the safety of Markets infrastructures.

Page 8

27. The title "guarantee arrangements and Clearing intermediaries" seems inappropriate and should be drafted "Guarantee arrangements", since intermediaries are not in the scope of the Recommendations.

Page 10

28. Such sentences as “an institution subject to those [EU] regulations will be considered compliant with these provisions of the Recommendations. This principle would also apply to national regulation as far as the equivalence and the effectiveness of this provision can be demonstrated” (Page 6, paragraph 10) seem to lay the ground for a Mutual Recognition process and put a burden of proof on national legislations.

Page 11 paragraph 27

29. It is inexact to qualify the UNIDROIT project on intermediated securities as dealing with "cross border holding and transfer of securities". The UNIDROIT project deals with all aspects of the holding and transfer of securities and especially is deemed to be imposed on or either replaces the domestic regimes of Contracting States to the Convention.

Page 13 paragraph 37

30. The sentence "In addition, each of the relevant authorities will encourage providers of securities services" should be completed with the word "infrastructures" (“In addition, each of the relevant authorities will encourage providers of infrastructure securities services") in order to avoid confusion with a larger scope encompassing the custodian bank services.

b) Part 1 : draft Recommendations for Securities Settlement Systems

Recommendation 1: Legal Framework - Page 17.

31. The wording used for the Explanatory memorandum of the Recommendation 1 is not appropriate in the European context. Like all Recommendation, the original drafting of Recommendation 1 is taken from the CPSS-IOSCO Recommendations. As a principle, the CESR-ESCB drafters try not to depart from the structure of the original CPSS-IOSCO Recommendations, including not from their wording, in order to ensure automatic compliance with the latter if there is compliance with the European Recommendations. Only where there is an additional existing EU rule then the wording can change.

32. Thus, the concept of "chosen law", which is used all along the explanatory memorandum of the Recommendation, including for proprietary aspects of the holding of securities, is inappropriate. While the choice of law is the norm in US conflict of law rules (as well as in the stalled Hague Securities Convention), this is not the case in the EU, where the objective criteria of the localisation of the securities account is the basic rule in the Financial Collateral, Settlement Finality and Winding Up of Credit Institutions Directives.

33. Therefore, we strongly advice to systematically replace the words "chosen law" with "relevant law" or "applicable law", in the entire explanatory memorandum of Recommendation 1 (in particular in Page 20 and 21, paragraphs 7 and 8).

Recommendation 2: Trade Confirmation and Settlement Matching - Page 22

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34. First of all, the first paragraph of Recommendation 2 applies for the execution of a trade and not for the clearing and settlement of it. We fully agree with the principle that trades should be confirmed without delay after the trade execution. However, this paragraph does not seem entirely relevant to the scope of these CESR-ESCB Recommendations on post-trade. This process of confirmation of a trade is critical but can be realised in complete separation from the downstream settlement process, and through different centralising entities (it has not to go through a CSD).

35. Additionally, the term of "affirmation" of a trade, used in the key issues, appears to have no meaning in the European context and should be deleted.

36. The European area uses in its very vast majority the matching concept, whereby the matching concept is binding and implies bilateral modification or cancellation if required. The CESR-ESCB Recommendations should therefore promote the use of matching in the settlement systems.

Recommendation 5: Securities Lending - p. 31.

37. We agree with the imperious necessity to reduce failed settlement at the lowest level possible.

38. However we do not consider that securities lending should be promoted for fail coverage at the CSDs level. Indeed, CSDs are too much downstream in the settlement process for securities lending to be a timely and useful tool. Settlement efficiency could be enhanced through an automatic centralised lending mechanism, but at an earlier stage than the CSD. Not only CSDs are too late in the process for any lending mechanism to be efficient at their level, but the existence of such a

mechanism would create a moral hazard by encouraging careless behaviour from some market participants.

39. Additionally, it is not in the role of CSDs to engage in risk-taking principal or bilateral lending and the text of the Recommendation itself should discourage them to do so. For instance the following wording could be adopted: "CSDs should be discouraged to develop other risk-taking activities related to securities lending like acting as principal in securities lending agreements". This proposed drafting is in line with the December 2 2008 ECOFIN Conclusions and is also in line with the URD (User Requirements Detailed) of T2S, which excludes any mechanism of securities lending.

Recommendation 7: Delivery Versus Payment (DVP) – Page 39.

40. It is not understandable that T2S and participation to T2S is not presented, in particular in the context of this Recommendation. DVP process is central to ensure the safety of the post-trade environment, by allowing participants the immediate ability to dispose of cash and securities as soon as the DVP settlement as been pronounced as final. One of the main progresses brought by T2S will be the access to cross-border DVP for all participants, and its system should therefore be described and used as a benchmark.

Recommendation 8: Timing of Settlement Finality - Page 41.

41. The Recommendation quotes both Real-time and multiple batch processing as different ways to achieve finality. Those two types of processing are complementary and provide different benefits; for different type of users of the systems. Wholesale institutions will focus on real time systems whereas retail banks will prefer multiple batch systems.

42. However, the Recommendations should state that Real-time processing is more secure if achieved in Central Bank Money. This is the case, of course, with T2S. The Recommendations should underline it.

Page 42 – Paragraph 6

43. The prohibition of unilateral revocation of the settlement of a trade is a good principle; however this prohibition has to be reserved for matched transaction. Non-matched transactions could be automatically cancelled/recycled by the system of by participants.

Recommendation 9: CSD Risk Control to Address Participants' Failures To Settle - Page 44.

44. This Recommendation is intended to address the specific issues of mixed banking/infrastructures systems. We believe that the financial market would be better protected against systemic risk by ring-fencing the CSD infrastructures from any commercial banking activity.

45. Regarding the proposed method of full collateralisation, we believe that this method would actually increase the cost of collateral and hence the cost of transactions for custodian banks' clients. It would also reduce dramatically the liquidity of the market, while liquidity is factor of safety.

Recommendation 10: Cash Settlement Assets – Page 47.

46. The use of the central Bank as settlement agent is the only real safeguard against the failure of the settlement agent. According to the principle that a CSD should take no risk (credit or liquidity) we believe that the CSD should always use the central bank as the cash settlement agent. The use of central bank money at the CSD level ideally should not be an option but should be mandatory.

47. Indeed authorising commercial money to settle securities transactions at the CSD increase the level of risk for the CSD and hence for the whole financial market, which is in contradiction with the prime objective of the CESR-ESCB Recommendations to reduce systemic risk and is in contradiction as well with the ECOFIN Council Conclusions of December 2nd.

48. It should be underlined as well that the mixed use of commercial and central bank money settlement is impeding the benefits, for market participants, of the safety of central bank money settlement, by creating uncertainty on the timing and validity of the finality delivered by the system. The certainty of the timing of finality is the keystone of the settlement process and of the safety it brings to the market.

Recommendation 12: Protection of Customer's Securities - Page 56

49. We consider that the concept of "Investor CSD" used in the Key Issue 2 of "Issuer CSD, Investor CSD or a custodian bank" is confusing and potentially introducing risks for the integrity of the issue. There is only one CSD (the one used by the Issuer) which is the only central place able to proceed to the reconciliation between the securities registered in the issuer account and the aggregated number of the securities in circulation held by the final investors.

50. The so-called "Investor CSDs" act indeed as global custodians when they access to the Issuer CSD but they are not able to fulfil a specific infrastructure role in ensuring the integrity of the issue.

51. We propose to delete the words "Investor CSD".

Recommendation 14: Access - Paragraph 4 - Page 65

52. We do not understand the sentence "Some CSDs may establish more stringent criteria for members that act as a custodian" and we propose to delete it.

Recommendation 19: Risks in Cross-Systems Links or Interoperable Systems - Page 76.

53. The Key Issue 3 "Any credit extension between CSDs should be fully secured and subject to limits. etc" is providing a remedy to a situation which itself, by principle, generates systemic risks and ensures its propagation from one system to another. At the first place, such a situation should be avoided or discouraged.

54. The key issue should first state "CSDs should not engage into credit extensions through cross-systems links".

Page 76 (RSS 19 Links) - Paragraphs 1 and 2 of the explanatory memorandum.

55. CSDs are in these paragraphs described in purely intermediary functions, which are irrelevant to their infrastructure role and has no relation with safety and soundness of the system. The final sentence of par. 2 "Finally links can, in certain circumstances, reduce the number of intermediaries involved in cross-system settlements which reduce legal, operationnal and custody risks" does not make sense, since it was amply shown in the precedent sentences that the accessing CSDs clearly provide (not for free) these intermediary services.

56. It has to be proven that the replacement of intermediaries by CSDs acting as intermediaries is less costly for investors, while on the other hand it is already clear that the CSD involvement in these

processes, due to their central role to the markets, transform the risk they are taking in these intermediary functions into a systemic risk.

Page 78 (RSS 19 Links) - Paragraph 5.

57. "Relayed links" are described in this paragraph. The description is the one of a "spaghetti model", in which some CSDs act as intermediaries between other CSDs. Such a model generates potentially an exponential multiplication of links. Not only it is difficult to see what could be the benefit of such relayed links for the investors (notably in terms of cost and efficiency) but due to the multiplication of cross-border links between infrastructures acting as intermediaries the systemic risks increases exponentially in this scenario of relayed links.

58. Such "relayed links" does not correspond to any sustainable business model and generate exponential systemic risk: they should be discouraged at the first place by the key issues of the Recommendations.

c) Part 2 : draft Recommendations for Central Counterparties

Recommendation 1: Legal Risk - Page 81

59. We have the same comment and proposal than regarding Recommendation 1 for SSS: the use of the words "chosen law" is inappropriate in the European context, especially regarding the proprietary aspects of holding of securities and law governing collateral. The words **"chosen law"** should be systematically replaced with "applicable law" or **"relevant law".**

60. Moreover, the mere statement of the existence of a legal framework is not sufficient to evaluate the robustness of CCPs, particularly when CCPs are operating in several markets or in several jurisdictions. In this respect, the legal framework of CCPs must be clear and complete in order to avoid any systemic risks.

61. The recommendations allow the possibility for CCPs to have several agents, which are not necessarily regulated as CCPs but are agents such as commercial banks. In such a case, to what extend rights and assets of participants are protected? From a legal point of view, it must be reminded that if the CCP has agents such as commercial banks, the activity of clearing must be clearly segregated from commercial activities conducted by CCP's agents.

Recommendation 2: participation requirements - Page 86

62. In regard to what is exposed in this recommendation, it sounds a little bit strange to foresee the case where the participant is not a regulated entity. We think that it should be requirement as well as the others.

63. A participant should be able as a CCP to evaluate risks generated by open positions of its customers and to proceed to margin calls. In other words, the participant should apply the same rules that a CCP applies to its participants. Moreover for several existing CCPs, it is the obligation for a participant to call margins to its own clients. We believe that this point should be part of the recommendations as far as it represents a manner to reduce the risk

64. In the same way, wouldn't it be interesting to define precisely how a participant of the CCP acting as GCM (non member of the Market) could ask the Market to suspend a Trading Member Firm as far as this TMF seems to meet difficulties ?

Recommendation 3: measurement and management of credit exposure - Page 89

65. The key issue 2 states as principle that CCP should ensure that any closing out any participation's positions would not expose non-defaulting participants to losses that they cannot anticipate or control. However this principle is undermined by the paragraph 3 of the Explanatory Memorandum. This paragraph states that in the case of mutualisation of losses in CCPs, the non-defaulting participants could be exposed to significant losses that they themselves cannot control.

66. Another very important point is the validity of the model of calculation of risks and evaluation of the margins to be called, as well as the capacity to anticipate a possible default of a participant by making a regular follow-up of the financial situation of this last one and by modifying parameter of management of the risks concerning it as of need.

67. Besides, it is important that the procedures aiming at taking into account the consequences of a failing are beforehand and clearly established to react quickly to close the positions opened by the failing as soon as possible and conditions of market. It is the reason why no competition between CCP should be based on offering vague or flexible management of risks.

68. Regarding risk coverage, we would suggest including in these recommendations the idea for the CCP to ask the Market for some rules that could wind-up the activity. For example, we believe that when the Market is able to put limit on the trading activity whatever the reason (focused on a specific security or on a specific participant), risks incurred by the CCP would be inferior.

69. Concerning the model of calculation of risks: besides specifying one method of valuation of the become assets illiquid, it would be good also to integrate the criterion of liquidity of assets into the algorithm of calculation of risks, besides the evaluation of the level of concentration and before they become effectively illiquid.

Recommendation 4: margin requirements – Page 92

70. For key issue 1 and §3 of Explanatory Memorandum, why the threshold of 99% is retained? This threshold is quite too accurate, how does it work?

71. Paragraph 1: how can margin calculation and collection be impossible? The risk coverage could be done through several manners but the main one remains doing margin calls to the participants. So it is difficult to imagine that it could be acted that a CCP won't collect margins as it is impossible or inappropriate to calculate or collect them. Could a CCP exist without such requirements?

72. Paragraph 2: "the margin setting process should be approved by a CCP's senior". The way this measurement should be done is clearly explained and particularly the point for the CCP to recalculate its risk during the day in case of high volatility or exceptional events. So it is a little bit surprising that the build of the model as well as its changes or simply its regular review seem to be under the sole responsibility of the CCP. Due to the role of a CCP, such points were expected to be submitted to external entities (auditors, supervisors) even under the validation of a regulator.

Recommendation 5: other risks control – Page 95

73. In paragraph 2 of the Explanatory Memorandum, the exclusion of linked CCPs from the scope should not be admitted. Linked CCPs are a category of participants.

74. In paragraph 4 of the Explanatory Memorandum, in the context of harmonization, it would be relevant to provide common criteria for stress tests.

75. Paragraph 6: regarding the role of a CCP, admitting that CCP may require non-defaulting participants to provide additional funds is not acceptable.

76. The paragraph 10 of the Explanatory Memorandum states that "if a CCP serves multiples markets, the CCP's ability to use resources supplied by participants in one market to cover losses from a default in another market should be clear to all participants". Such statement is not admissible because the mutualisation of losses is over-extended and it would admit the case that non-default participants should participate to losses generated by a default-participant in another market or another jurisdiction in which the non-default participants are not members.

77. In paragraph 12 of the Explanatory Memorandum, it must be reminded that if the CCP has agents such as commercial banks, the activity of clearing must be cleared segregated from commercial activities conducted by CCP's agents. Therefore, the participants' contributions to financial resources of CCP must cover only the activity of CCP, not other activities conducted by its agents.

78. Even within a group, segregation between CCPs should be done according assets cleared, or guarantee funds should be segregated to avoid participant on cash market to be called for a default participant on derivatives market.

Recommendation 6: default procedures – Page 100

79. Paragraph 6 recommends the CCP to explain clearly in its rules the order in which different types of resources will be used. We believe that this recommendation should be stronger and that the order should be the same whatever the CCP :

Margin deposit of the defaulting participant
The contribution to the clearing fund of the defaulting participant
Contributions to the clearing fund of the non-defaulting participants
Insurances given to the CCP
…
CCP's own capital

80. paragraph 9: the point (iv)is not adequate with the role of a CCP

Recommendation 7: custody and investment risk – Page 104

81. Paragraph 2 of the Explanatory Memorandum opens the possibility for CCPs to have a CSD or a custodian non-incorporated in the European Union. As principle, CSDs should be used by CCPs for settlement and collateral management and the recourse to custodians should not be admitted in order to limit systemic risks. If the CCP had a custodian, this custodian should be incorporated in the European Union in order to permit efficient supervision in Europe.

82. In paragraph 3 of the Explanatory Memorandum, we do not understand why investments in physical assets such as computers and buildings are not subject to the recommendation. Furthermore, we think proper to prohibit strongly any investments in illiquid or volatile instruments. What is the sanction is case of breach of paragraph 3?

Recommendation 8: operational risk – Page 107

83. The key issue 1 refers to « other activities », what is the scope of these terms?

84. The operational or technical default of a CCP (or of its agents) should be supported by the CCP. In such a case, the participants are non defaulting participants and should not pay financial consequences of operational or technical disruption caused by the CCP. Is it correct?

Recommendation 9: money settlement – Page 112

85. The better organisational model for a CCP in terms of efficiency and risk mitigation is the one where the CCP has a banking license and access as a direct participant both the CSDs and the National Central Banks of the markets on which it operates. Each delegation of function to a commercial entity adds operational complexity, lower the efficiency and undermine the CCP from a risk point of view.

86. Beyond the additional risks due to the use of a private settlement agent, that are described in this recommendation, we would like to draw your attention on the risks that a participant may incurred in case of the private agent defaulting. This point is particularly true for cash that have been posted as guarantee. As for securities, these assets must be segregated.

Recommendation 10: physical deliveries – Page 117

87. Is indemnities payment or shaping only suggested for physical deliveries? Is there a specific reason for that? If they weren't limited to this kind of securities, why should they not have their own recommendation? As such practices aim to limit old open positions for the CCP; we believe that they are a manner to reduce risks.

88. Paragraph 3: we welcome the idea of having DVP settlements even for physical deliveries but are not sure that it could be applied in every country.

89. Paragraph 6: is there something particular with physical deliveries in terms of sell-our procedures? Should this principle not be valid whatever the type of the delivery?

Recommendation 11: risk in links between CCPs – Page 121

90. As stated above, we do believe that these recommendations are not sufficient for linking CCPs (whatever the form of the link). These recommendations raise issues in the case of a single CCP (with no link) that should be addressed before working on linked CCP.

91. Paragraph 3: the evaluation conducted by the CCP should include a comparison between the guarantees offered by each CCP to its participants. It may be interesting for a participant to know what level of guarantee it would have for its activity on the linked CCP.

92. More generally, couldn't it be envisaged to have a kind of set of criteria that have to be "matched", unless the link between two CCPs would not be viable?

93. Paragraph 5 : as far as there will be differences between the two CCPs as that those ones would have to be defined in an agreement, we deeply believe that the terms of the contract has to be disclosed to participants.

Recommendation 12: efficiency – Page 126

94. We do agree

Recommendation 13: governance – Page 128

95. We do agree

Recommendation 14: transparency – Page 131

96. Agreements signed by a CCP with another one are part of the information which is necessary for a participant to identify and evaluate accurately the risks and costs associated with using the services of the CCP.

Recommendation 15: regulation, supervision and oversight – Page 133

97. We do agree

d) Annexes : assessment methodology

RSS 1 (Legal Framework) - page 139

98. The compliance with choice of law is not acceptable in the EU regarding proprietary aspects for holding of securities. In particular, the choice of law contradicts the provisions of the Financial Collateral, Settlement Finality and Winding Up of Credit Institutions Directives, based on the objective criteria of the localisation of the securities account. **Therefore, the sentence "b. Which law is applicable/chosen in respect of:" should be replaced with "b. Which law is applicable in respect of"**

99. **On Page 140, in "c. Are system operators and participants aware of applicable constraints on their ability to choose (…) the law that governs the proprietary aspects of securities held on a participant's account with the system", the words "their ability to choose" should be deleted**, since either it contradicts the ability of one system to enforce one unique applicable law on participants or it contradicts the applicability of the objective criteria of the existing directive.

100. In case a European way forward is proposed regarding a common conflict of law rule for transfer and holding of securities, such a forward putting the emphasis on the "choice" is definitely pre-empting the future works on the issue.

RSS 3 (Settlement Cycles and Operating Times) - page 146

101. "Fails should not exceed 5pc by value": we consider 5pc an extremely high rate. 1pc seems more appropriate as a benchmark.

RSS 19 (Risks in Cross System Links or Interoperable Systems) - page 175

102. Key Question 3 and E2– The wording of these paragraphs could be interpreted as putting down some conditions for an authorisation for CSD to extend credit to another CSD through a link.

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