1 MARCH 2011

REPLIES TO THE CONSULTATION DOCUMENT OF THE SERVICES OF THE DIRECTORATE-GENERAL INTERNAL MARKET AND SERVICES

ON CENTRAL SECURITIES DEPOSITORIES (CSDS) AND ON THE HARMONISATION OF CERTAIN ASPECTS OF SECURITIES SETTLEMENT IN THE EUROPEAN UNION

The Association for Financial Markets in Europe (AFME) through its Post Trade Division[1] is pleased to respond to the consultation of the Services of the Directorate-General Internal Market and Services of the European Commission on Central Securities Depositories (CSDs) and on the harmonisation of certain aspects of Securities Settlement in the European Union.

1. Information about the respondent

- *Name and address of the respondent:*
  Association for Financial Markets in Europe (AFME)
  St. Michael's House
  1 George Yard
  London
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- *Field of activity of the respondent's members:*
  The respondent's members conduct domestic and cross-border securities operations in the EU/EEA area in their capacity as financial institutions in a wide range of banking activities for their customers and for their own account.
  The respondent's members are securities account providers in the context of European and national regulated activities.

[1] The Post Trade Division is the European post trading centre of competence of the Association for Financial Markets in Europe (AFME). Its members are the major users of international securities markets. Representing its members towards market infrastructure organisations and public authorities, the Post Trade Division acts as an agent for change providing and supporting solutions in the securities clearing, settlement and custody space to reduce risks and costs to market participants.
The AFME Post Trade Division was preceded by the European Securities Services Forum, previously the European Securities Forum (ESF).

- *AFME's members and membership structure*
  Of the broader AFME membership (see www. afme.eu) the following members – investment banks, regional and global custodians and wealth management / private banking – actively participate in the Post Trade Division:
  Bank of America Merrill Lynch
  Barclays
  BNP Paribas
  BNY Mellon
  Citi
  Credit Suisse
  Deutsche Bank
  Goldman Sachs
  HSBC
  J.P.Morgan
  Morgan Stanley
  Nordea
  RBS
  UBS
  UniCredit

2. Key points of our consultation response

In consideration of

- the need to minimize risks to the core functions of CSDs as systemically important market infrastructures,
- the scope for innovative and competitive development CSDs should have,
- current market structures and the likelihood of profound changes in a T2S environment,
- the fact that future CSD legislation is part of a broader existing or evolving regulatory landscape,

it is in essence our view that

- the stability and resilience of the core functions performed by CSDs need to be maintained and, together with ancillary services that do not attract any other risks than operational risks, should be ring-fenced ('ring-fenced functions');
- that the provision of risk-taking ancillary services should not be constrained but be separated functions performed through a separate legal entity;
- only the ring-fenced functions should be in scope of future CSD legislation;
- CSDs, however, should not be subject to limitations in offering ancillary services to allow innovation and competition; for such ancillary

services existing authorization, regulation and supervision (e.g. MiFID, CRD, SLD) should apply;
- Barrier 9 should be removed;
- key post trading processes need to be harmonised, such as processes that provide for smooth cross CSD settlement, corporate actions processing, ETF processing, CSD account structures, settlement of registered shares and shareholder registration as well as the harmonisation of settlement cycles at T+2 by 30 June 2013, whereby the required settlement discipline should be a matter of best market practices not legislation;
- level 1 legislation could be restrictive for the development of the European capital markets, reducing global competitiveness.
  We believe that legislative means to require market participants to carry out certain specific pre-settlement processes is very largely inappropriate. Many market participants, namely those located outside of the European Union, will not fall under the obligations set out in legislation. Market participants (for example, broker-dealers) who are located within the European Union, and who have clients located outside of the European Union, may be dependent for their own compliance with, for example, trade verification requirements on the compliance of their clients. Too specific legislative requirements may impose, and freeze, specific market models, and specific technical solutions, and thereby impede competition and innovation;
- flexibility is required to support market development and we do see a role for legislation setting out certain high level rules and minimum requirements

3. Responses to the questionnaire

1. Scope and definitions

Q1: What is your view on a functional definition of CSDs

We agree with a functional definition of CSDs, as there is no feasible alternative in our view. It will, however, be important to warrant coherence with regulations (e.g. Settlement Finality Directive, ECB Collateral Management) where an institutional approach has been chosen.

Q2: What is your opinion on the scope of the possible legislation and providing for any exemptions (such as for central banks, government debt offices, transfer agents for UCITS, account operators)?

We agree to narrowly defined exemptions, essentially for central banks and government agencies.

This opinion is based on the approach taken in our response to Question 4 in which we state that an entity needs to provide all core functions in order to be qualified as a CSD. This tight definition excludes the possibility that transfer agents or account operators would fall under the definition of a CSD.

If this approach is not accepted, and a broader definition of a CSD is put forward, then there will be considerable complexity and uncertainty as to whether certain entities will fall within the definition of a CSD. In such a case, it would very probably be necessary for the legislation to include certain exemptions, so that it is clear that entities such as transfer agents for UCITS and account operators do not fall within the scope of the legislation.

Q3: What is your opinion on the above description of the core functions of a CSD?

We share the view of the Commission services that these are the core functions of a CSD. However, a clear distinction between an Issuer CSD and an Investor CSD is required as these core functions characterise an Issuer CSD only. In our view the notary function and the central safekeeping function could be combined in one core function as they are inextricably intertwined.

Q4: Which core functions should an entity perform at a minimum in order to be qualified as a CSD?

In our opinion all core functions have to be performed for an entity to be qualified as an Issuer CSD.
See our response to Question 2 for reasons as to why a tight definition of a CSD is necessary.

Q5: Should the definition of securities settlement systems be reviewed?

Yes, in order to warrant consistency between the CSD legislation and the Settlement Finality Directive. All CSDs have to qualify as a SSS (while obviously not all SSS do qualify as a CSD).

Q6: 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?

As outlined in the above key points of our consultation response, it is our principal position that the core functions and ancillary services that do not attract other risks than operational risks should be ring-fenced ('ring-fenced functions') from risk-taking ancillary services.
Ancillary services that do not attract other risks than operational risks typically include

- services by an Issuer CSD (i) facilitating the processing of corporate actions[2] and (ii) to issuers, both closely related to the core function of central safekeeping / notary function; and
- services by an Investor CSD (i) facilitating the processing of corporate actions and (ii) settlements and corporate actions related payments services executed in Central Bank Money.

Only the ring-fenced functions should be in scope of future CSD legislation.

CSDs, however, should not be subject to limitations in offering risk-taking ancillary services to allow innovation and competition; for such ancillary services existing authorization, e.g a banking license, regulation and supervision (e.g. MiFID, CRD, SLD) should apply.

Risk-taking ancillary services, i.e. non-ring-fenced functions have to be performed through a separate legal entity.

Q7: According to you, could the above mentioned 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 support a harmonised, efficient and effective, pan-European regime of authorisation and supervision. We are concerned the proposed approach will be overly complex. It is by no means clear, for example, that the fact that a CSD has participants from other countries, or acts as issuer CSD for issuers from other countries, justifies in itself the creation of a college of supervisors.

Q8: What other elements could be submitted as part of the initial application procedure by a CSD?

None. However, the application procedure should be harmonised across the European Union.

[2] For Market Standards for Corporate Actions Processing see: http://www.afme.eu/document.aspx?id=3182; for Market Standards for General Meetings see: http://www.europeanissuers.eu/en/?inc=page&pageid=topic&id=3
Reference is also made to regulation re. passing on information in the proposed Securities Law Directive

Q9: 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.

See our reply to Question 7

Q10: What is your view on establishing a register for CSDs?

We would support the establishment of a single, simple and transparent register.

Q11: What is your view on the above proposal for a temporary grandfathering rule for existing CSDs?

We agree with the proposal for a temporary grandfathering rule for existing CSDs to adapt to future CSD legislation. However, such a grandfathering rule should not jeopardise pan-European harmonisation as outlined in our reply to Question 7 and should be limited to a period of one year after entry into force of future legislation.

Q12: According to you, does the above approach concerning capital requirements suit the diversity of CSDs? Yes? No? No opinion? Please explain why.

Yes, we agree to the proposed approach. However, this should apply to the ring-fenced functions only (see our reply to Question 6).

Q13: According to you, should the competent authorities have the above mentioned powers? Yes? No? No opinion? Please explain why.

Yes, we strive for a harmonised cost efficient supervisory regime.

Q14: Would a special purpose banking license be appropriate for 'banking type services'?

No. In our view, as outlined in our reply to Question 6, given the case, existing license and authorisation structures, e.g. a banking license, should apply.

Q15: Which of the three passporting options would you support? Full passporting? Limited passporting? Opt out regime? Please explain why.

We support a full passport for all ring-fenced functions without which Barrier 9 could not be fully dismantled. A full passport is in our view essential to create a competitive environment and it is conducive to the single market concept.

Such a passporting regime should be extended to CSDs from non-EU countries that participate in T2S.

Q16: What is your opinion about granting a right for market participants to access the CSD of their choice?

We are highly supportive of this right, which is part of the core concept of T2S, subject to meeting the CSD's membership criteria which must be fair, publicly disclosed and non-discriminatory. The highest possible degree of harmonisation in the post trade space is a condition precedent to this right being exercised in practice. Any right of access should be tempered by the need to meet membership risk thresholds.

Q17: What is your opinion on the abolition of restrictions of access between issuers and CSDs?

Giovannini Barrier 9 deals with national restrictions on the location of securities that should be removed. Issuers should be free to issue their securities into a CSD other than their home CSD. The assessment of Barrier 9 was part of the mandate of the Legal Certainty Group, which has confirmed the existence of such barrier with a focus on dematerialised equity and issued a Recommendation (nr 15) pertaining to this issue in its Second Advice (August 2008).

Consistent with our Consultation response of 11 June 2009, we endorse Recommendation 15 and the principle laid down therein of full exportability (free choice for the issuer) and importability (open CSDs).

Consequently we believe that the principles outlined in Section 3.3 of Part I of the Public Consultation document should be adhered to.

It is to be noted that, e.g. for regulatory reasons, certain CSDs might consider achieving "importability" by means of opening branches throughout the European Union. That would clearly be an unintended consequence of the removal of Barrier 9 (which we hope would aim at reducing the number of CSDs), and is therefore to be strongly dissuaded.

Q18: According to you, should the removal of Barrier 9 be without prejudice to corporate law? Yes? No? No opinion? Please explain why.

In line with the functional approach followed in the proposed legislation on legal certainty of securities holding and dispositions, and in view of the desirability of a swift implementation of any legislation in the CSD area, it appears indeed appropriate to remove Barrier 9 "without prejudice to corporate law".

Attention is to be given that no new rule permits the re-entry of materialised securities. It even appears desirable to impose dematerialisation, or at least immobilisation, across the European Union within a time period of e.g. 3 years.

Q19: How could the integrity of an issue be ensured in the case of a split issue?

In line with AFME's previous positions, we would like to stress that the split of an issue is an undesirable possibility and should, in view of the complexity and risk that it entails, be disallowed, unless effective measures are in place that ensure the integrity of an issue, such as the Euroclear-Clearstream Bridge.

Q20: What is your opinion on granting a CSD access rights to other CSDs and what should their scope be?

For CSDs participating in T2S, access to other CSDs participating in T2S will be granted systemically, i.e. by means of participation in T2S. Outside T2S CSDs' access rights to other CSDs in regard of core functions should in our view be granted including interoperability by way of direct links. However, we take the view that access rights in regard of ancillary services should be a matter of agreement between CSDs, but the overall objective should be the principle of fair and open access.

Q21: 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 practical need for such access; the CCP having the support 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.

Q22: 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?

We advocate user choice between competing CSDs and therefore agree in principle that trading venues (both Regulated Markets and MTFs) should have a right of access to CSDs. However, this right should be conditional on: the trading venue having the support of its users to request such access; the CSD receiving the access-request establishing a link with the CSD already used by the trading venue (to allow the settlement of transactions between trading venue members that are participants in the different CSDs); trading venue members authorizing the CSD receiving the access request to accept instructions on their behalf; and the CSD receiving the access request and trading venue making arrangements for the flow of information to fulfill regulatory obligations (e.g. on settlement status reports)

Q23: 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 support 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).
These feeds should be flowing in two ways, i.e. not just from trading venue to CCP and CSD, but also from CSD to CCP and/or trading venue. Indeed, trading venues and CCPs need settlement information from the CSDs to perform their activity.

Q24: What kind of access would a CSD need to effectively compete with incumbent providers of CSD services? Should such access be defined in detail?

To effectively compete with the incumbent CSD, the access-requesting CSD must be given non-discriminatory access to the transaction feed and the right to establish appropriate links with the incumbent CSD (and CCP where used).

Q25: 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).

Q26: In particular should all settlement systems operated by CSDs be subject to an obligation of designation and notification?

Shifting from a voluntary system of designation and notification to a mandatory one will definitely increase clarity and legal certainty and appears therefore desirable, but it also appears crucial that it is clearly stipulated - as a matter of legislation - that any rule of designation and notification, as well as any rule on interoperability and compatibility (as contemplated in Section 4.2(2)), is over and beyond the provisions of the future Securities Law Directive, which Directive should be applicable to any securities account provider (therefore unreservedly including any CSD).

Q27: 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?

We take the view that future CSD legislation should not force CSDs to provide securities lending services. We agree with the Commission that securities lending services should not be counted among core services.
Given the benefits of securities lending, future CSD legislation should not hamper the provision of such services by banks or by CSDs as ancillary services (see our principal position outlined in Q6).
We agree that securities lending facilities should be freed from any impediments, such as the UK SDRT.

Q28: What do you think about the requirement for issuers to pass their securities through a CSD into a book entry form? If such obligation were considered, which securities should it concern? Only listed securities? All securities with an ISIN code? Only equities? Eligibility approach?

We strongly support the mandatory dematerialisation – or at least the immobilisation – of all CSD eligible securities and/or for actively traded securities.

Q29: What is your opinion with respect to grandfathering?

To adapt to such requirement, we agree with grandfathering for a limited period of time, i.e. not more than 3 years. Without such time limit the targeted result of dematerialisation / immobilisation is jeopardised, negatively impacting for example the implementation of market standards for corporate actions processing.

Q30: What do you think about the requirements above for DvP? Do you see any issues in respect of the different DvP models?

In general believe that DvP should be encouraged - the 1991/92 CPSS IOSCO definitions are already largely used by most CSDs and this good practice should continue to 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; such FoP transactions typically include account transfers, inheritance transfers, and settlements of securities lending transactions. We recommend to focus on principles in the CSD legislation and to deal with technical details at level 2 or 3.

Q31: What are your particular views on the grandfathering principle coupled with the requirement for the introduction of a guarantee fund?

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. Consequently there should be no guarantee fund requirement as no such fund is required in a DVP model.

Q32: What do you think about a preference of settlement in central bank money? Should such a preference be applied to all types of securities?

Central Bank Money (CeBM) is preferable where available but it should not be mandated as outlined in the principles, with which we agree.
For transactions where CeBM could be used (eg in the domestic CSD, when the participant has access to CeBM) there should not be incentives not to use it. It should be understood that participants may not have access to CeBM and will work via an intermediary which does. This intermediary could be another CSD participant or the CSD operating an ancillary service outside the core CSD services.
CSDs that offer both cash accounts in CeBM and Commercial Bank Money (CoBM) should offer cash accounts in CoBM through a separate legal entity.
We take the view that there is no reason to differentiate by security type.

Q33: Do you think that the principles outlined above could be transposed in future legislation?

Yes, see our answer to Q32 above. Greater details, e.g. the definition of feasibility or practicability to be defined at level 2 or 3.

Q34: What is your opinion about the extent of the requirements that should be imposed when commercial bank money is used?

If the CSD is offering CoBM this should be done as an ancillary service provided in a separate legal entity, not a core CSD service (see our answer to Q 6). Providers of CoBM should be treated as a bank and subject to all relevant banking authorization, regulation and supervision, including inter alia the BIS core principles of systemically important payment systems.
Additional rules may be required to mitigate risks where two or more banks act as CoBM settlement banks for a CSD.

Q35: What do you think about the above rules?

These rules are in our view a good and sufficient starting point.
Details in regard of the required mechanisms to certify the integrity of issue referred to in the (2) second bullet, may need to be determined at level 2 or 3 taking into account different requirements for dematerialised/physical certificated markets.
A CSD should offer the technical possibility to segregate assets as per (2) first bullet. Although in case of doubt the presumption principle should apply, CSD participants should have the ability to specify their accounts.
An Issuer CSD should segregate its own assets from its participants' assets when acting as an Investor CSD.

Q36: Are further rules needed in order to ensure reconciliation and segregation?

No.

Q37: Do you think that these six basic principles cover sufficiently operational risks?

We suggest adding the requirement for adequate insurance and risk transparency to its participants.
We are unclear of what is meant by 'heavy equipment' in the second paragraph of 4.8. and propose to replace 'sensible information' by 'sensitive information'. In the fifth bullet we suggest to specify: 'operational risks'.

Q38: What do you think about the eight principles above, particularly with respect to board composition and the need for a risk committee?

The principles on governance should apply to all CSDs irrespective of ownership.

We agree with the first six principles; however, we disagree with imposing a minimum requirement on independents.
As the risk ultimately belongs to the participants it makes sense to allow their participation in a risk committee, however without an obligation of participants to take part. Such a risk committee should not be confined to settlement risk only. Participants in the risk committee should be subject to qualifications based on expertise and knowledge.

Q39: 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, a CSD should retain full control and responsibility for outsourced tasks as an Issuer CSD.
References to 'public entities' should be exchanged for 'public authorities'.

Q40: Should there be any other exemptions from the principle of responsibility and control of CSDs on outsourced tasks?

No. However, where there is a clearly defined reason for exceptions, these should be subject to approval by the local competent authorities of the CSD. T2S cannot be mandated, and should not form an explicit part of CSD legislation.

Q41: What is your opinion on the above prudential framework for risks directly incurred by CSDs?

As outlined in our answer to Q6, we take the view that future CSD legislation should focus on the ring-fenced functions. If the CSD decides to offer additional risk-taking services these should be separated from ring-fenced functions and should be subject to existing authorisation, regulation and supervision. In particular, on extension of credit point in (b), CSDs should be subject to banking rules.
The only aspect in (a) that is in our view relevant is custody risk (third bullet), and this, irrespective of causes, should be covered by insurance.

Q42: What do you think about the principles above?

We are unclear about the relevance of these principles against the background of our principal position that distinguishes between the ring-fenced functions and risk-taking ancillary services and the respective regulations and supervision.

Q43: 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.

Q44: 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. The harmonisation of key post trade processes is essential to the smooth, safe and efficient functioning of cross-border investment. We would emphasise that this harmonisation is required across all markets, i.e. within the markets that participate in the T2S project as well as those that either do not, or which delay participation until a later phase.

There are numerous practical examples where the functioning of the internal market is hampered by the absence of harmonisation in key post trading processes:

a. Giovannini Barrier 6 identified the harmonisation of settlement cycles as a key requirement for breaking down the barriers to efficient cross-border processing. More recently, the work of the harmonisation of settlement cycles working group (HSC WG) has described instances in which the lack of harmonisation impacts day-to-day operations, in particular effective corporate actions processing.
b. There are numerous well documented issues that affect corporate actions processing, and its significant impact on settlement: market claims, buyer protection and the type and level of service within the CSD all vary significantly between markets with significant impact on efficiency and risk.
c. The growth of the European ETF market is hampered by the lack of an integrated clearing and settlement infrastructure, together with a lack of tax harmonisation and automation. The current structures are extremely inefficient and a barrier to business.
d. CSD account structures are non-standard, meaning that any client investing in multiple markets must maintain a complex static data set up. In cases where CSDs require accounts for each beneficial owner, this requirement is extremely onerous; the required information could be provided via alternative means without reducing transparency or increasing risk.

e. The settlement of registered shares and the reflection of changes of ownership on the register varies widely between markets. Standardisation and simplification of this process would be beneficial.
f. There is no standard mode or requirement for access by CCPs to CSDs; nor are there standard settlement practices related to this.
g. The imposition of domestic taxes, in particular stamp duty, is significantly different between markets, increasing cost and complexity.

Q45: Do you identify any other possible area where harmonisation of securities processing would be beneficial?

The main issues are outlined in the response to Q44 above. It is worth noting, however, that the ECB, under the auspices of the T2S project, has set up a task force on Smooth Cross CSD Settlement, which is identifying the barriers to intra-CSD interactions, i.e. the key issues within T2S that may affect cross-border efficiency. This task force is developing a detailed document listing issues market by market, which we would ask you to refer to when it is made available (in early March). It is our belief that these issues must not only be addressed for the smooth operation of T2S, but that they are also critical to the wider European harmonisation project, which must be delivered for all countries whether in or out of the T2S system.

Q46: 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?

A common definition of settlement fails in the EU might be helpful, but it should be very simple and apply across asset classes. We would propose the following: a settlement fail is a transaction that remains open at close of business on intended settlement date.

We do not believe that the references to short selling are relevant or helpful in this section of the document. In our view, there is no link between short selling and settlement failure. Furthermore, the question of short selling is being dealt with comprehensively in other instruments.

In our responses to the short selling consultation we have emphasised the importance of implementing common buy-in rules across markets. Where a CCP exists we would expect these rules to be implemented by the CCP; where there is no CCP, the CSD should facilitate the operation of such a regime between its participants. Please see our paper of 2010, proposing a set of standards on buy-in rules, in the Annex.

Q47: 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.

We do not believe that legislation can, or should, prohibit settlement fails, as any market participant can suffer a failed settlement arising from causes beyond its control. Any such prohibition could have the unintended consequence to generate an incentive to move market activity away from the secure environment of the central infrastructure.

We do see a role for legislation setting out certain high level rules and minimum requirements.

Such requirements should identify structural causes of fails that are linked to CSD operation such as those barriers to good practice identified in Q44 and Q45. The CSD is at the centre of the process, and where the causes of settlement fails are attributable to functions that take place within a CSD, then the CSD should be responsible for putting appropriate measures in place and managing any related regime. We would like to establish the principle that there should be standard, structural best practice in CSDs in all key areas related to strong settlement performance, notably early matching and early settlement; settlement optimisation (such as settlement netting and partialling mechanisms); the use of hold/release mechanisms; and effective and timely reporting to participants.

We do not believe it appropriate to impose through legislation facilities such as auto-borrow mechanisms. Whilst these can extremely helpful in the case of liquid securities they are not always available in cases where they are most needed. Such facilities should be available, and their use encouraged, but not made mandatory.

In all cases, the implementation of such structural measures should not lead to CSDs taking on additional risk, or generating revenue from such services other than to cover their specific development and running costs.

Q48: What do you think about promoting and harmonising these ex-ante measures via legislation?

Whilst we agree that ex-ante measures are preferable to ex-post measures, we do not believe that it is appropriate or practical to identify and promote these ex-ante measures via CSD legislation. Rather than a prescription that would apply to the EU only (with no influence on those parties involved outside the reach of EU legislation) we would like to see the issues that exist being addressed by participants in specific markets with public sector support where necessary. Good market practice should be encouraged and supported as a means of addressing the root causes that lead to the need for discipline, and commercial pressures will help to identify the most practical and appropriate measures.

Q49: What do you think about promoting and harmonising these ex-post measures via legislation?

We are in favour of the promotion of good settlement discipline, but believe that the focus should be on the ex-ante measures referred to in previous questions, in particular the implementation of common, realistic buy-in rules (see Short Selling Paper[3]) i.e. addressing the root causes rather than penalising the effect. Where a CCP regime is already in place, there is no need for duplication of such measures at CSD level. Where there is no CCP, and to facilitate a common approach for OTC transactions, we would propose that CSDs provide the functionality to help counterparties manage a buy-in-like procedure between themselves on an optional basis and at their discretion.

We would also remark that whilst CSD participants are an important element in settlement performance, they are in fact dependent on their clients' (who are not CSD participants, such as fund managers) performance. We refer to our paper (Annex) and to the work of the HSC WG.

It is very important that any measures are carefully coordinated so that the desired effect – of improved settlement performance and incentivising improved performance in the guilty party– is achieved, whilst bearing in mind that not all of the relevant market participants would be subject to any regulatory measures taken by the EU

We believe that it is extremely important to establish the principle that fines and penalties should not be a source of revenue for the body that imposes them. Any monies collected through a penalty regime should be either invested in improvements to the system that will assist all participants in improving performance; or passed on as compensation to the injured party. Better performance should be incentivised, and the system overall enhanced to assist improved performance by all participants.

Q50: According to you, is there a need for the harmonisation of settlement periods? Yes? No? No opinion? Please explain why.

Yes. The harmonisation of settlement cycles was recognised within the Giovannini process, and remains a barrier that should be broken down for standard cash transactions in listed securities on trading venues.[4] Note also that such harmonisation is required for efficient Corporate Action handling[5], as well as to ensure the required efficiency is achieved in T2S.

[3] http://www.afme.eu/document.aspx?id=4674

[4] Note that this effort extends beyond Europe; working groups in the USA are prepared to coordinate with colleagues in Europe on moving towards a settlement cycle of T+2, should that be agreed and implemented.

[5] See: http://ec.europa.eu/internal_market/financial-markets/docs/cesame2/subgroup/20100921_hsc_role_en.pdf

Q51: In what markets do you see the most urgent need for harmonisation? Please explain giving concrete examples.

Harmonisation implies the inclusion of all markets, and should be applied as such across geographical markets and asset classes (e.g. bonds, equities, DRs) so that participants are not forced to cope with different regimes. Please clarify what additional information you are seeking with this question.

Q52: What should be the length of a harmonised period? Please explain your reasoning.

For the trading of listed securities, we agree with the proposal to move to T+2. For other types of transactions, such as repo and securities lending, or transactions in specific asset types where a T+2 cycle would cause issues, a shorter or longer cycle more appropriate to those instruments and as agreed between the executing parties will continue to be required.

Q53: What types of trading venues should be covered by a harmonisation? Please explain the reasoning.

We agree that trading venues should implement harmonised settlement periods and make the necessary changes to their rules to put this into effect. The harmonisation of settlement cycles should be agreed with market regulators and market participants, and imposed by regulators. Any harmonisation of settlement cycles should apply (as per MiFID) to all trading venues.

Q54: What types of transactions should be covered by a harmonisation? Please explain your reasoning.

Transactions on regulated markets should be covered. However, it is important that derogations between counterparties are permitted and that CSDs should be capable of facilitating any required settlement period. We do not believe that it would be beneficial or feasible to extend the requirement to bilateral contracts which may at any rate be outside of the regulatory reach of the EU.

Q55: What would be an appropriate time span for markets to adapt to a change? Please explain.

This harmonisation must be achieved at the latest by the time of the commencement of T2S testing (September2013). This means that it must be implemented in all EU markets by the end of Q2 2013. It should be

implemented as a big-bang; a long implementation period carries with it high risks.

It is very important not to underestimate the amount of work and the number of different types of market participant involved in making a move to T+2 a success: the work of AFME and the HSC WG on the pre-requisites for the successful implementation of a shorter settlement cycle should be taken into account here.
In emphasising the pre-work required, and hence the need for a lead time of at least 18 months, we would encourage the earliest possible confirmation and publication of an intention to impose T+2, and the earliest possible communication of our proposed deadline for implementation of 30 June 2013.

Q56: According to you, how should the principles examined in the communication on sanctions apply in the CSD and securities settlement environment?

To avoid distortions of competition, in particular in the context of the removal of Barrier 9 (see our answers to Q 17 and 18), we advocate the application of the envisaged harmonisation of sanctioning regimes.
We would, however, be concerned with respect to the application of the principles set out in the sanctioning regime paper to settlement discipline fines. We see settlement discipline fines as being of a different nature to fines punishing a violator.

We hope that our replies will assist the Commission in its drafting of the legislation on CSDs and on securities settlement rules. Please do not hesitate to contact us if any further information of clarification is necessary or desirable. We are prepared and would be honoured to discuss the topics discussed in this document in more detail should you wish to do so.

ANNEX

20 May 2010

AFME Settlement Committee Task Force on Market Discipline

Pre-conditions to T+2: Initial Proposals

1. Background

The AFME Post Trade division's Settlement Committee agreed that development of pan-European market discipline should be one of its priorities for 2010. Accordingly, it set up a task force to explore key topics related to market discipline, and to develop recommendations that could be agreed by the wider market prior to implementation.

The initial focus of the task force has been to contribute to and build on the work done by the CESAME2-sponsored Working Group on the Harmonisation of Settlement Cycles, and in particular to develop further points set out in the list of pre-conditions for T+2 discussed at the CESAME2 meeting of 2 March 2010 (see Annexe 1).

2. Introduction

The AFME Post Trade Division's primary objective is to contribute constructive and practical proposals that contribute to the elimination of the current fragmentation in Europe, to reduce costs and increase efficiency, and in doing so increase the attractiveness of the European market place to cross-border investors, regardless of their location.

The securities industry and European public sector authorities share the common objective of creating an integrated and efficient post trading system. To this end important harmonization and standardisation efforts are underway, such as the process of dismantling the Giovannini Barriers to improve and streamline operational processes, as well as public sector reviews of the legal, regulatory and fiscal framework. In this broad context, the implementation of T2S (Target 2 Securities) in 2014 is a core milestone of particular interest to the AFME Settlement Committee, and it is the implementation of T2S that drives this piece of work.

In order to function efficiently, in particular in a T2S context, it is clear that settlement cycles must be harmonised across Europe. Currently, there is general harmonization on T+3, with the exception of Germany which is operating on a T+2 cycle. It is proposed that the rest of Europe should rise to the challenge of meeting T+2 in good time for implementation of T2S; however, there are a number of pre-conditions that must be met if the wider market is to be able to meet this challenge.

This paper develops these ideas and aims to reach consensus on proposals to make T+2 an achievable goal.

3. Preconditions to Achieving T+2

As laid out in Annexe 1, there are several pre-conditions to the achievement of T+2 settlement across all markets in Europe. This document provides an outline assessment of these preconditions and some initial, high-level proposals on how to approach them.

3.i. Same Day Affirmation

Same Day Affirmation (SDA) is the verification of economic details between the Investment Manager and Broker /Dealer on the same date as trade execution. The process ensures all parties are in agreement on the security traded and associated trade details.

The five key steps in the verification/confirmation process are:

1. Notice of execution by the broker/dealer
2. Transmission of block details by broker/dealer (Omgeo CTM clients only)
3. Transmission of allocation details by the investment manager
4. Confirmation of those details by the broker/dealer
5. Affirmation by the investment manager

Once fully affirmed the verification process is concluded and the clearing and settlement processes can begin. Affirmation on the same day as execution should help to lock in key details earlier in the process and allows more time for the completion of the settlement process (currently usually T+3).

SDA encourages the use of automated STP (straight through processing), and this reduction in manual input radically improves the quality of post-trade information as well as increasing market participants' ability to deal with increased volumes.

Key benefits of SDA include:

- Locking in key trade information at an early stage of post-trade processing, thereby increasing stability throughout the entire process
- Reduction in fails by increasing ability to send affirmed instructions to agents/custodians on trade date, giving more time to deal with underlying discrepancies and achieve on-time settlement.
- Risk mitigation by matching trades so soon after execution and decreasing the exposure to pricing movements, interest claims and market buy-ins.
- Better cost efficiency based on reduced sensitivity to volume increases and greater/earlier post-trade transparency

The goal is to have all buy- and sell-side participants confirming their executed business via electronic platforms on trade date. Manual conformation processes are

inefficient and high risk, and unsustainable in a T+2 environment. Within this broad goal, there are several further challenges to be considered:

- Ensure SSIs (security settlement instructions) can be enriched electronically at the same time as confirming the trade economics.
- Ensure market participants already live with an electronic matching platform are utilising its functionality to the full and can maximise their STP rates (currently firms using SDA services still have 13% block and 30% allocation level trades unaffirmed on trade date).
- Ensure the solution is feasible for institutions that operate across multiple time zones and book a large proportion of business at market close

3.ii. Trade Date Matching

Overriding principle

All settlement instructions should be in a matched status at the CSD as soon as possible. This principle implies that all settlement instructions should – wherever possible – be in a matched status at the CSD by the end of trade date.

Such a principle promotes transparency (with a unique repository for information as to matching and settlement issues and success rates), and settlement efficiency (as issues such as discrepancies with respect to trade and settlement details, potential shortages of securities, potential missing instructions, etc, will be identified earlier in the transaction lifecycle).

It applies to all types of transactions, as the full benefit of the principle comes into effect only if information on all types of transactions is available at the CSD.

A. On-exchange / MTF / CCP Settlement

Settlement instructions for on-exchange / MTF / CCP transactions are in many cases sent to the CSD in an already matched status; in other cases, they are sent to the CSD as two separate instructions, but are sent by a single party (who can ensure that both instructions do indeed match). For these reasons, it is rare for the instruction and matching process for such transactions to be the direct source of settlement failures. However, it is desirable nonetheless that such transactions be in place in a matched status at the CSD as soon as possible. Accordingly, trade date netting processes are to be preferred over continuous net settlement processes.

It is desirable that there be a reporting system showing the proportion of total transactions that is in place in a matched status at the CSD at close of business on (a) trade date (TD), (b) TD +1, and (c) TD +2.

The ultimate objective should be that all on-exchange / MTF / CCP settlement instructions be in place in a matched status at the CSD at close of business on trade date.

B. OTC Settlement

The instruction process for OTC Settlement may in many cases follow on from a trade confirmation or trade affirmation process. OTC settlement instructions typically require bilateral input with a matching process at the CSD, and in many cases are initiated by the underlying trading parties.

For these reasons, and because of additional delays resulting from time-zone differences, it is typically not possible to have all instructions matched at close of business on trade date.

It is desirable that there be a reporting system showing the proportion of total transactions that is in place in a matched status at the CSD at close of business on (a) trade date (TD), (b) TD +1, and (c) TD +2.

The ultimate objective should be that a high proportion of settlement instructions be in place in a matched status at the CSD at close of business on trade date, and all settlement instructions be in place in a matched status at the CSD at close of business on TD+1.

ESCDA / ESSF Standards

The ECSDA / ESSF Standards, which cover OTC settlement, but not on-exchange / MTF / CCP settlement, already state the following:

Standard 3: Matching should occur real-time and continuous throughout each business day from Trade Date up to and including the Intended Settlement Date deadline and possibly beyond.

Standard 4: Matching should take place as early as possible.

The ECSDA /ESSF Standards are a valuable building block, but they are not by themselves the solution.

- they are focused very largely on CSD processing, and pay little attention to the wider community;
- they could benefit from endorsement by a greater range of market participants;
- they have not yet been fully implemented (even though the implementation deadline was end 2009);
- they date back to October 2006, and could benefit from recent work in this area, notably some of the work done in the context of T2S.

C. Requirements for High Levels of Matching

(i) High levels of Same Day Affirmation (SDA).

(ii) Issuance of formatted, electronic settlement instructions (i.e. no faxes) that allow STP-processing throughout the chain.

(iii) Ability of intermediaries to process instructions STP.

(iv) High quality of instructions i.e. elimination of reasons for incorrect instructions.

(v) Increased harmonisation in mandatory information required in settlement instructions across CSDs (i.e. going beyond the requirements set out in the ECSDA / ESSF Standards). Such harmonisation would

require work to eliminate or to mitigate the effects of various market specificities.

(vi) Implementation of a full hold and release mechanism at the CSD-level (as mandated by the ECSDA/ESSF Standards).

(vii) Ability of intermediaries to use such a hold and release mechanism.

D. To Do:

(i) CSDs to implement current version of ECSDA / ESSF Standards (OTC only) = matching at CSD to take place asap, trade date onwards.

(ii) Invite other stakeholders to draft / endorse / implement an expanded version of the ECSDA / ESSF Standards that (a) covers the entire chain of custody, (b) incorporates T2S developments and discussions, and (c) includes specific targets for market performance for all relevant market participants.

(iii) CSDs to implement harmonised and comparable statistical reporting on matching rates at close of business on TD, TD+1 and TD+2 across all CSDs.

(iv) Initiate, support and encourage work to harmonise national market specificities in order to achieve harmonisation of mandatory information in securities settlement instructions.

3.iii. Harmonisation of Settlement Fails Regimes

Settlement fail regimes are any means by which a market body (exchange, CCP or CSD, depending on the market) seeks to maximise the settlement rate of its participants by incentivising settlement on contractual settlement date, or disincentivising settlement fails and aged fails, using tools such as daily fail fines, defined buy-in timeframes and the censure of members.

The goal should be for all in-scope markets to share a common approach to settlement discipline, by aligning buy-in timeframes (including buy-in execution timeframes), buy-in penalties, delivery fail fines and other measures. The spirit of these rules also needs to be common, where the defined aim of the fails regimes is to maximise settlement rate, not to generate revenue for the market body.

In order to achieve this goal, an ideal or best practice fails regime should be compiled, drawing on the successful elements of existing regimes, a spirit of not-for-profit, and the market experience of AFME members. The benefits and dependencies of a common set of settlement discipline rules should be defined by the taskforce to encourage market bodies to adapt their rules, which in some markets are governed by local regulators or even acts of parliament.

3.iii.a. Fail rate discipline

(i) A first key requirement is reliable comparable statistics on matching and failure rates (and - to the extent possible - on reasons for failure).

(ii) ECSDA is clearly the body to provide these statistics. But maybe we have some comments on how they should provide (type, scope, etc)

(iii) It is useful to differentiate between on-exchange/CCP transactions and OTC transactions.
(iv) For OTC transactions, we should specify a goal of 99% of transactions matched by end of day on T+1.
(v) We should set up a best practice in market discipline measures: reliable statistics / transparency / advice to regulators.
(vi) We need to create incentives for good behaviour. There should already be incentives for good behaviour and high settlement rates, namely improved cash management, reduced costs of managing fails (market claims, buyer protection etc). We need to see how we can strengthen these. (Putting the buyer protection process to the CSD participant would be one way of incentivising CSD participants).
(vii) An explicit fining regime should be only a last resort.

3.iii.b. Buy-ins

This section is largely drawn from the ESSF paper '*Proposal to harmonise and standardise buy-in rules in European securities markets'* of 9 June 2009. Where relevant, the proposals have been updated and adapted to coordinate with a move to T+2. Annexe 2 contains a short summary of current buy-in regimes and penalties in major European markets.

A. Background

Rationale of buy-in regimes

Buy-in regimes as an instrument to remedy failed settlement were compared with alternatives such as fines regimes, mandatory failed lending programs, partialling, suspension and withdrawal of license etc. The conclusion was that there is a rationale for buy-in regimes, however, economics require one pan-European harmonised and standardised process.

Drawbacks of current situation

The most striking disadvantages of the current fragmented and diverse landscape of buy-in regimes in Europe are:

- the cost and effort caused by the dedicated operational infrastructure required to deal with diverse buy-in regimes; not all operations departments can be experts in all markets
- time and effort required for each individual buy-in event
- the direct financial cost of buy-ins, whereby the income counterpart is often unclear
- often arbitrary and artificial rules replacing market forces and actual market costs
- the impact of all of this on the attractiveness of the European market to external investors

B. Objectives of Buy-In Standards

The proposed standards aim at harmonising all existing and future buy-in processes in Europe and should thus

- optimise settlement rates *and* market liquidity whilst reducing risk

- reduce the operational cost to market users and thereby contribute to the increase of post trade efficiency in Europe
- increase the certainty as to applicable processes and create transparency in regard of the 'defaulter pays' principle, ensuring protection of the innocent party
- develop penalties that are effective and targeted, designed to encourage improved behaviour rather than to penalise

C. Scope of proposed standards

Transactions

In scope should be:

- on exchange transactions whether or not cleared by a CCP system
- OTC transactions cleared by a CCP system
- pass-ons[6] among trading counterparties

All fails meeting the above criteria should be subject to the proposed standards irrespective of the causes of fails, unless otherwise agreed by the relevant parties. For OTC transactions, including securities financing transactions (i.e. repos and securities lending transactions that are not cleared by a CCP system), it is proposed to develop best practice guidelines.

Involved parties

Involved parties include two types of player, some directly affected and others involved but not directly affected.

Directly affected parties:

- market users (trading counterparties in wholesale securities markets)
- Securities exchanges (regulated markets) and MTFs
- CCPs
- (I)CSDs

Others involved but not directly affected:

- Legislators, e.g. European Commission, national Governments
- Regulators
- European bodies, e.g. ECB, CESAME

D. Guiding principles

- Buy-in regimes should contribute to post trading efficiency rather than being a source of profit.
- Any profits earned from a buy-in regime should be redistributed to innocent parties or used for market developments that improve settlement rates and reduce fails.
- The cost of buy-ins should reflect actual market costs without additional penalties.
- Buy-ins should take place in accordance with one pan-European standardised buy-in process.

[6] Transfer of original buy-in liability to the defaulting party

- Buy-in standards should significantly reduce the costs currently caused by managing diverse buy-in regimes; therefore standards should be simple, easy to apply and stringent.
- Securities lending facilities to avoid fails should be promoted; this includes legal and regulatory action, where required.
- Passing-on of buy-in liability where a market participant is failing to receive securities should be allowed in order to target an underlying party at fault, but notice must be given with sufficient time to source inventory.

E. Proposed standards

Key dates

Standard 1: The buy-in notification date[7] should be 3 business days after intended settlement date (S+3).

Standard 2: The last buy-in OTC pass-on notification date should be one complete settlement cycle prior to the buy-in execution date[8].

Standard 3: The buy-in execution date[9] in a T+3 environment should be 6 or 7 (tbd) business days after intended settlement date (S+6 or S+7) (tbd); in a T+2 environment it should be 5 or 6 (tbd) business days after intended settlement date (S+5 or S+6) (tbd).

Standard 4: The cash settlement date[10] should be the day after execution of the buy-in i.e. S+buy-in cycle+1.

Standard 5: The value date for both a buy-in transaction and a cash settlement transaction should be same-day.

Execution of buy-in transactions

Standard 6: For CCP cleared transactions (on exchange or OTC), the CCP of the defaulting party should be the executing party[11].

Standard 7: For on exchange transactions not cleared by a CCP system, the respective securities exchange should be the executing party unless it has agreed with a (I)CSD that such (I)CSD should the executing party.

Standard 8: Execution of buy-in transactions and the calculation of the cash settlement amount should only take place on the buy-in execution date or the cash settlement date respectively.

Pricing

Standard 9: Buy-in transactions should be priced as per prevailing market conditions at the buy-in execution date in accordance with the rules of best

[7] The date at which the executing party notifies the defaulting party of the buy-in at the buy-in date.
[8] This gives failing OTC counterparts sufficient notification to source stock and mitigate the buy-in prior to execution.
[9] The date at which the executing party endeavours to buy the non-delivered securities in the market.
[10] The date at which the executing party calculates the amount payable by the defaulting party is case the buy-in at buy-in execution date was unsuccessful.
[11] The executing party is defined as the party responsible for (i) issuing the buy-in notification, (ii) executing the buy-in transaction or (iii) calculating the cash settlement amount.

execution or as per the agreed price of the original transaction[12], whichever is higher.

Standard 10: The cash settlement amount should be determined by applying (i) the quoted offered price as at close of trading on buy-in execution date or, if such quoted price is not available, the last traded price of the relevant security or (ii) the agreed price of the original transaction, whichever is higher.

Standard 11: The non-defaulting party should be entitled to be compensated by the defaulting party for any forgone financial benefits (including fiscal benefits) arising from corporate action events.

Standard 12: Fees levied by the executing party compensating it for incurred costs should be made transparent in accordance with the Code of Conduct on Clearing and Settlement.

Standard 13: No fines or penalties should apply to buy-in or cash settlement transactions.

3.iv. Securities Lending Recall Procedures

As an overall service, securities lending is a commercial offering that, in a T2S environment, may be available from CSDs or agent banks. This increased competition will break down some of the barriers that have led to high costs and lack of availability of illiquid stocks. It should also foster the development of new, more accessible and streamlined securities lending services, which will benefit from the development of standards and best practices related to the recalls procedures in particular.

Today, intra-bank securities lending recalls are conducted on a best-efforts basis, making the process inefficient, unpredictable and excessively time-consuming. Furthermore, it is extremely difficult (if not impossible) to achieve same-day movements. In a T+2 environment this lack of efficiency will have an even greater impact on the smooth operation of overall settlement processes.

Work to be completed:

- Analysis of the issues related to recalls, including impact on other processes
- Proposals for an efficient, streamlined process for recalls

4. Next Steps

This document is a small first step in the work and discussions to come. We invite comments on the content and substance of the ideas outlined here; and invite interested parties and stakeholders to involve themselves in the work to be done over the coming months.

[12] The original transaction is defined as the transaction that failed to settle on intended settlement date and gave rise to the buy-in transaction.

afme/post trade

Annexe 1

Work on Giovannini Barrier 6 – Conclusions and Next Steps
CESAME2 Group Meeting
Brussels, 2 March 2010

I. Introduction

- The Harmonisation of Settlement Cycles Working Group is an ad hoc group mandated by CESAME2 during its meeting of February 2009 to review possible solutions to eliminate Giovannini Barrier 6 (Differences in standard settlement cycles)
- During the CESAME2 Meeting of 2 March 2010, the Working Group reported on its work, and presented a number of recommendations.
- Following discussion, the Meeting reached a number of conclusions with respect to future work on Giovannini Barrier 6.
- This presentation summarises those conclusions.
- The formal minutes of the Meeting will contain a full report on the discussion and the conclusions.

II. Conclusions

CESAME2 decided:

1. To instruct the Working Group to continue its work and present, preferably at the next CESAME2 meeting, a fully-fledged implementation & monitoring plan. This plan will identify a list of pre-conditions that would need to be fulfilled for European markets to be able to move without undue additional cost or risk to a harmonised settlement cycle of T+2.

This plan will cover the development, agreement, endorsement and implementation of market standards that include the buy side in regard of :

- same day affirmation;
- trade date matching;
- harmonisation of matching criteria;
- harmonisation of settlement fails regimes;
- securities lending recall procedures.

This plan will include :

- a gap analysis market by market;
- a set of implementation indicators (similar to those used for the work on other Giovannini Barriers);
- a prospective timetable, including a mid-term (i.e. before any individual moves to T+2) market by market evaluation of the progress made.

2. To postpone the endorsement of the recommendation for a harmonised settlement cycle across Europe of T+2 in the medium term to a later CESAME2 meeting, following further evaluation as well as progress on the plan mentioned in point 1, and bearing in mind the global dimension.

3. To instruct the Working Group to engage with markets outside of Europe (in first place, the United States and Japan) in order to determine prospects for steps towards a global harmonisation of settlement cycles.

4. To ask the Working Group – in the event that non-European markets signal a lack of interest in moving to T+2 - to prepare a case study in order to assess the implications of a unilateral move by Europe to a harmonised settlement cycle of T+2.

5. To ask the Working Group to review the scope of its work, and in particular to analyse whether the harmonisation effort should focus to a greater extent on OTC activity.

6. To ask the co-chairmen to broaden the composition of the WG to representatives amongst others of the buy-side.

Annexe 2

24 February 2010

Summary of Major European Markets' Buy-in and Penalty Regimes

Market	Settlement Cycle	Buy-Ins Deadlines	Buy-In Penalties	Fail Fine
Austria	T+3	S+3	Up to 20% of the countervalue or closing price.	30bps per ISIN per day for S+1 & S+2, minimum €250 per fail
Belgium	T+3	S+7 (or early buy-in*)	Up to 20% of the countervalue or closing price.	€15 + EONIA/360 (max €500) per ISIN per day from S
France	T+3	S+7 (or early buy-in*)	Up to 20% of the countervalue or closing price.	€15 + EONIA/360 (max €500) per ISIN per day from S
Germany	T+2	S+5	Up to 100% of the countervalue	None currently imposed
Holland	T+3	S+7 (or early buy-in*)	Up to 20% of the countervalue or closing price.	€15 + EONIA/360 (max €500) per ISIN per day from S
Italy	T+3	S+7	€1000 plus a variable fee of 0.1% of cash countervalue.	€50, €150 or €200 per ISIN per day from S, depending on countervalue band.
Portugal	T+3	S+7 (or early buy-in*)	Up to 20% of the countervalue or closing price.	€15 + EONIA/360 (max €500) per ISIN per day from S
Sweden	T+3	S+7**	Up to 50% of the countervalue or closing price.	€15 + (STIBOR + 1%)/360 per ISIN per day from S
Finland	T+3	S+7**	Up to 50% of the countervalue or closing price.	€15 + (EONIA + 1%)/360 per ISIN per day from S
Denmark	T+3	S+7**	Up to 50% of the countervalue or closing price.	€15 + (DK Interbank Rate + 1%)/360 per ISIN per day from S
Norway	T+3	Broker-initiated S+8 (this is a minimum guideline)***	Based on closing price + admin fee.	€15 + (NIBOR + 1%)/360 per ISIN per day from S (EMCF only, currently no fines for OSE***.

(*) Early buy-in can occur at the discretion of LCH.Clearnet, with official 24 hour notice
(**) Broker-initiated S+8 buy-ins can still occur for on-exchange non-CCP elidgible ISINs
(***) Oslo Clearing propsal is S+14 buy-ins with fines set at 200 NOK + (NIBOR + 2%)/360

EMCF & EuroCCP buy-ins and fines mirror incumbent CCP rules where applicable