

## 2. Issues for further consideration

### 2.1. Nature of the recommendations

Currently the legal framework is still fragmented throughout the union. Corporates are forced to list in one particular place and can't really go cross-border for listing. This fragmentation keeps the old system of domestic clearing and settlement protected which is not to the benefit of the final investor, as he pays a high operational price in each country. It also makes it very difficult for the institutional investor as he will need to make investments in operations in order to be able to manage the different investments.

All recommendations and standards so far adopted should be implemented as fast as possible by all countries and should in principle override national law. A tight deadline with automatic implementation would be a good step forward. Creating in the short term a European legal instrument (corporate bonds and equities) would create immediately one market.

### 2.2 Addressee

So far the users have tried, but the industry is still too much burdened by domestic powers who force us to keep a quiet profile. The banking industry itself has a problem with different groups representing different interests, all very well genuine but not suitable anymore in this new European environment. The Commission with the ECB are the people that should create this "one level playing field" with the regulator on the side line as they ultimately will have to make sure the guidelines are followed. Capital savings might be an incentive, but this will automatically be pushed through Basle 2 where netting and the use of CCP facilities will be rewarded. It is the lack of moves in the right direction that make this waiting game so expensive for the industry.

### 2.3. Scope

This is an industry wide topic and should cover all parties (CSD - ICSD - CCP - custodians & registrars). Up to now the wide variety of parties is the cause of this lack of progress for the Euro zone. Somebody can always find an excuse not to adhere to a request of the market. All kinds of securities should be covered. Only one point should make a difference between the different competitors for the same function : cost and optimal execution. It is acceptable that for the different functions, a different " rule " book can exist. But it should be organised in a centralised way, thus avoiding fragmentation.

### 2.4 Objectives

Totally agree. However, although at the moment the points mentioned cover the tasks today, one should be careful to have a flexibility to update the objectives , especially in view of the cross border changes. The EU zone , although one of the most important securities market stands not alone. Any impact overseas will have an impact on the EU Zone , and systems might need to be changed.

### 2.5.

Yes, access conditions are discriminatory in many fields. The level playing field are not sufficiently clear or adhered to if they exist in the first place. I can immediately give two examples, but many more can be found. The barrier can be of access criteria or operation features. 1. The use of ATS systems in Spain for cash transactions requires a security account at a different location than the cash settlement, thus DVP is not possible<sup>2</sup>. The choice of a CCP for the Italian market place is restricted to the platform of Clearnet and/or CC&G, with no plans to let market participants choose alternatives.

## 2.6. Risks and weaknesses

Transactions in the market can and are currently governed under different legal agreements. In case of default of one counterparty, you might not be able to offset your risk on the other side. The comparison study of the GMRA against the EMA is one example where the industry looked to make both agreements compatible.

The different rules by for instance the two ICSD's in Europe also create settlement and operational risk. Currently talks between Ecl and Clearstream FFT try to find a solution here.

The most appropriate manner of addressing these issues could be to give the European market a clear set of rules to be adhered to, rules that should make one legal framework that would eliminate all differences in the legal framework throughout Europe.

The practical issues should be imposed by the Commission with the ECB, thus creating a truly one level playing field. This work would define definition and timing of finality, dvp, access to central bank money etc.

The topic of central bank against commercial bank money is a commercial issue. It is not so important that those two functions can co-exist, but they should not give additional risk to the market place.

Operational risks should be studied much better. Although there is a lot of talk about Basle 2 and the operational aspect, many institutions haven't got the framework they clearly need. One reason is the high cost in upgrading the operations. Such upgrades, being very expensive, do add to the bottom line of the banks i.e. profitability. The vague description in the current Basle 2 are confusing market participants. Thus the workgroup should clearly define what is expected from each individual bank as a minimum.

## 2.7. Settlement cycles

In order to decrease the risk of exposure to your counterparty, a fast and speedy process of settlement should be installed. Building up commitments over several days only increases the delivery risk. The T+1 debate proves to be a challenge, but underlines the need for faster settlement cycles. Same day settlement is simple not possible in most European countries because the legacy systems in place don't allow this function in a cross border environment. When a default would happen, a huge backlog of instructions to be settled would remain in the systems. Having a daily same day settlement would at least decrease this uncertainty.

## 2.8. Structural issues

For trading services it is simple, they should be in open competition and each trading services will be rewarded by its flexibility, governance etc. For trading services it is important to stress that no official body (like a national central bank or a debt agency) should have a seat in the facility. Having such bodies in the governance clearly disturbs the competition that is so important for the development of services and competition.

Public intervention is probably the only solution left to open access and interoperability in the clearing and settlement of the European market. All custodians, CCP, CSD and ICSD are utilities. The governance of these different institutions are in some cases open to the market, in some cases owned by official organisations. The mixed is so different that it would take an unreasonable time to bridge all those differences through competition, if ever, thus denying what Europe and the European markets need : an integrated market.

G. De Vidts  
Global Funding Co-ordinator  
Fortis Bank Brussels

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