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EUROPÄISCHE VEREINIGUNG DER GENOSSENSCHAFTSBANKEN

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ECSA Feedback in Response to the Implementation of the Pan-European Code of Conduct for Clearing and Settlement by Market Infrastructures

The Economic and Financial Affairs Council (ECOFIN) will meet informally in Ljubljana on 4-5 April 2008. One of the topics for discussion will be the progress made by Market Infrastructures (MIs) – Regulated Markets (e.g. Stock Exchanges), Central Counterparty Clearing House (CCPs) and (International) Central Securities Depositories ((I)CSDs) – in respect of their implementation of the Pan-European Code of Conduct for Clearing and Settlement by Market Infrastructures ("the Code").

The feedback that follows is that of banks doing business in Europe, which make up the vast majority of the community of users through their wide ranging and varied activities in the securities markets.

Introduction

The European Credit Sector Associations (ECSA)[1] established a Task Force in early 2007 to gather and to feed back to the MIs[2] and to the key European Institutions the evidence

[1] The European Credit Sector Associations (ECSAs) comprise three pan-European representative trade associations:

- The **European Banking Federation (EBF)** was set up in 1960 and is the voice of the European banking sector representing the vast majority of investment business carried out in Europe., with over 30 000 billion EUR assets and 2.4 million employees in 31 European countries. The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. For more information, please visit www.ebf-fbe.eu.
- The **European Savings Banks Group (ESBG)** has 26 members from across Europe, comprising approximately 870 individual savings and retail banks, operating 84,000 branches and employing 970,000 people. It comprises about one third of the retail banking market in Europe with total assets of ESBG members amounting to € 5,215 billion at the start of 2006. For more information, please visit www.savings-banks.com.
- The **European Association of Co-operative Banks (EACB)** comprises members of co-operative banking groups representing 4,500 banks from 23 European states including Central and Eastern European countries. With 47 million members, the EACB serves 140 million customers in more than 60,000 outlets, with the support of 730,000 employees, For more information, please visit www.eurocoopbanks.coop

[2] For a list of the MIs assessed by the ECSA Users Task Force please see Annex I.

and impressions of the community of users in respect of the implementation of the Code. Drawing on expertise from the three ECSA associations and their member banks, the ECSA Users Task Force has members from a wide representation of European markets so as to be in a position to provide the most thorough and representative user opinion on Code implementation. The comments that follow are therefore the consensus view of the European banking community.

General ECSA position on the Code

The ECSAs are keen to see that the implementation of the Code encourages MIs to disclose price information in a readily comparable manner to thereby enable users to understand the prices and services they buy and, where choice is possible, to find the most competitive post trade service offering for their businesses.

Overall, **a good level of progress has been achieved towards implementing the Code** in the relatively short amount of time since a text was agreed by the MIs in November 2006. A momentum for change has developed within the MI community due to the *de facto* obligation upon the MIs to implement the requirements set out in the Code. **Users are eager to see this momentum continue so that the very valuable progress achieved so far is capitalised upon by completing the implementation of the Code by the letter and in the spirit in which it was intended.**

Implementation of the Code, **a Code designed to apply to the trading, clearing and settlement of equities, must remain the priority for MIs at this time.** Users look forward to continuing to engage constructively with MIs to complete this important task before consideration is given to applying the principles of the Code to other asset classes such as derivatives and bonds. The ECSAs believe that any consideration of a Code for derivatives or bonds should be founded on a clear adherence to the principles of better regulation with thorough consultation of the market (MIs and users) to come to evidence-based decisions.

Price Transparency and Comparability

The prices of the services MIs offer can generally be considered as "transparent"[3] since information is now generally available in English and in the local language and can be readily downloaded in an electronic format. In the majority of cases there is a single document with all tariffs listed and examples of costs per total transaction. Users are also helped by the information being generally readily available and in a prominent place on the websites of MIs and in the majority of cases users are notified at least one month in advance of tariff changes. A good level of information also exists across the board in relation to discount and rebate schemes. Where they exist MIs generally provide examples and a calculation methodology to facilitate understanding by users.

[3] For the methodology employed in the Users Task Force assessment of price transparency and comparability please see Annex II.

Some MIs go further that what is strictly set out in the Code by providing information on historical tariffs and by consulting users on tariff changes. These good practices are welcome and will ultimately influence, where choice is possible, the decisions users make with respect to the CCP or CSD they choose to clear and settle their equities trades.

Whilst billing reconcilability is generally strong amongst the CCPs the ECSA Users Task Force has found mixed results amongst the CSD community. Only about half of the CSDs were found to have invoices in excel format (allowing for ease of use) with the detail of total amount of fees per account and of the calculation of the invoice clearly set out. Those CSDs which score well on billing reconcilability have often gone beyond what is required of them by the Code by providing a handbook, and in some cases general training, which users very much welcome.

The vast majority of CSDs have implemented the ECSDA Conversion Table designed to facilitate price comparability. The ECSAs welcomed the development of the Conversion Table when it was first announced by ECSDA in April 2007 as a useful step towards the implementation of the price comparability provisions, as it helps users to unpack complex tariffs and therefore make prices more readily comparable.

However, users have to date seen only one version, presumably the original version, of the Conversion Table. Users have raised a number of concerns with ECSDA in the past and concluded that **implementation of the current version of the ECSDA Conversion Table is not, by its self, sufficient to facilitate a meaningful or relatively straightforward comparison of prices.** The frustration for users is compounded by the fact that most CSDs have chosen not to publish a glossary of terms which could also facilitate price comparability.

Users would welcome feedback from ECSDA in relation to the comments it raised with it first in May 2007 as regards suggestions to improve the Conversion Table and by doing so better facilitate price comparability.[4]

Access and Interoperability

MIs discussed their final draft of the Access and Interoperability Guideline with the community of users. The negotiation on the contents of the Guideline amongst MIs was evidently sensitive and this could explain why user demands in respect of the Guideline were only minimally met.

Since the Guideline has been applied there have been a high number of requests for access and interoperability within and between the CCP and (I)CSD communities. Whilst this could, at first sight, indicate a general willingness on the part of the CCPs and CSDs establish and use the links, **users still lack information on how the various requests are being prioritised and dealt with.**

[4] The points which the ECSAs have previously raised with ECSDA (and circulated to the European Commission) are summarised in Annex III.

Whilst this dearth of information remains speculation and concerns grow amongst the community of users. To address this situation:

- first, users need to have assurances that **clear and credible business cases,** based on actual user demand, have motivated the requests for access and interoperability;

- second, users need a degree of certainty from MIs that the **requests based on actual user demand will be answered positively** or if not, the reasons why this would not be possible;

- third, users need certainty from MIs regarding **risk implications resulting from establishing links** among CSDs and in particular among CCPs; and

- fourth, users must have an early indication from the MIs of what the **economic impact of establishing links** will be on their relationship with the MIs in question.

There is also **a lack of clarity surrounding how securities supervisors are handling the requests to approve the establishment of links.** In this respect, clear and common guidance to establish a pre-defined process about how securities supervisors ought to handle the requests for links should be provided by CESR without further delay. This we feel is one tangible step that can be taken in short order to facilitate progress on this fundamental element of the Code.

The ECSAs have also expressed **a concern that (I)CSDs may have made requests of each other without having taken into account the likely development of the TARGET2-Securities (T2S)** single settlement platform by 2013, upon which it is anticipated that the vast majority, if not all CSDs will participate. This is an important consideration for users given that the establishment of links between (I)CSDs may be rendered obsolete by the development of T2S in the coming years.

Therefore, **users can at this stage only react in relation to the unknown elements of the process regarding the establishment of links for access and interoperability.** This is regrettable given that users consider this element of the Code to be the foundations upon which its success will be judged. Further work must continue therefore and users must receive assurances as described above to assuage the notable concerns that are beginning to emerge in this area.

Service Unbundling and Accounting Separation

Users welcome the principles of service unbundling and accounting separation that aim to make transparent the relation between revenues and costs of different services and to address potential cross-subsidisation between the different services. However, we regret that users have not been consulted on the methodology to approach implementing this element of the Code in any formal way.

Users have expressed concerns in the past over how a distinction between "core" *vs.* "non-core" services will be applied by the MIs. These terms and their division into core and non-core need to be clearly defined in the ECSDA Conversion Table as well as in the glossary drafted by the MIs in relation to service unbundling. **Users consider that potential cross-subsidies between central network activities and value-added competitive services can only be prevented if there is clear accounting separation and unbundling between central and competitive services.**

Users remain unsighted on progress made to date regarding the approach MIs will adopt, for example, in respect of the accounting methods to be used. **Only the development of a specific accounting methodology for clearing and settlement core services that is consistently applied by all MIs will lead to the desired transparency of the relationship between costs and revenues of core and non-core services.** Transparency of cost-allocation between network and competitive services will be key to prevent potential cross-subsidies.

Users remain not in a position to pass judgement on the implementation of this element of the Code given that information will only be passed from MIs to their relevant national authorities and the MoG. The disclosure to the MoG as a central body is essential in order to ensure consistent compliance across to the Europe. Furthermore, users will attach a good deal of importance to the proposed "assurance reports" which will describe the findings of the audit process for the implementation of the Code.

Finally, securities supervisors typically do not have the mandate (and therefore may not have the necessary expertise) to interrogate the data that will be provided to them by the MIs, which could also be of interest from a competition perspective. Therefore, we suggest that in this case **CESR members seek to establish dialogues with relevant national competition authorities to facilitate their assessments of compliance with the Code.**

Conclusions

A **good deal of progress has been made** by the MIs and their commitment to ensuring that the Code is deemed to be a success is not in question. Nor is the willingness of users to see the Code succeed as we feel that encouraging progress has been achieved in 18 months since the Code was first announced. **However, users still require answers to the questions raised,** especially in relation to access and interoperability and accounting separation. Specifically in relation to access and interoperability, users would not want to finance links and/or be exposed to risks arsing from the establishment of links in which they do not perceive a plausible business case from the user perspective.

In conclusion, at this stage the full results of the implementation of the Code have not emerged and it would, therefore, be premature for users to conclude that the Code has succeeded or failed in delivering on its aims**.** Rather, **we urge the MIs to build on the good progress made to date and to continue to involve the ECSAs in the future**

developments since the community of the users stands ready to be part of the solution to any blockages thus far identified in respect of the Code's implementation.

Annex I – List of MIs analysed by the ECSA Users Task Force

CCPs		**CSDs**	
CC&G	Italy	Bank of Greece CSD	Greece
CCP Austria	Austria	Clearstream Group	Germany and Luxembourg
Eurex Clearing	Germany	Cyprus Stock Exchange	Cyprus
Keler	Hungary	Estonian CSD	Estonia
LCH.Clearnet Ltd	UK and Ireland	Greek CSD	Greece
LCH.Clearnet SA	Belgium, France, the Netherlands	Euroclear Bank	Belgium
SIS x-clear	Switzerland	Euroclear Group	Belgium, France, the Netherlands, UK and Ireland
		Iberclear	Spain
		Interbolsa	Portugal
		KDD	Slovenia
		KDPW	Poland
		Keler	Hungary
		Latvian CSD	Latvia
		Lithuanian CSD	Lithuania
		Monte Titoli	Italy
		NCSD APK SA	Finland
		NCSD VPC AB	Sweden
		OeKB	Austria
		Prague SC	Czech Republic
		SIS Group	Switzerland
		Slovakia CSD	Slovakia
		Univyc	Czech Republic
		Verdipapirsentralen	Norway
		VP Securities	Denmark

Annex II – ECSA price transparency and comparability assessment methodology

Every effort has been taken by the ECSA Users Task Force to ensure consistency in the results of its assessment of the implementation of the price transparency and comparability elements of the Code by CCPs and CSDs. For the larger markets the feedback submitted has been agreed by the national user community. However, for the smaller markets the input is generally that of representatives of banks who are familiar with the markets concerned and are therefore in a position to provide insights into how the Code has been implemented.

To provide consistent and dispassionate feedback in respect of the implementation of the price transparency and comparability provisions of the Code by CCPs and (I)CSDs, common criteria were devised *a priori* and adhered to in the assessment. In coming to the overall view presented in this paper, contributors to the assessment assessed whether or not MIs had achieved the following, which users deem important as they are good practices to fulfil the implementation of the Code:

- display of price information in English and the local language;
- price information that could be easily downloaded (in an electronic format);
- examples of the cost of total transactions;
- information appearing in a single document with all tariffs listed;
- glossary of terminology;
- information displayed in a prominent place on the websites of MIs;
- users are given at least one month's notification of tariff changes;
- information on the existence of discounts and rebates (and if so, with examples and a calculation methodology);
- implementation of the ECSDA Conversion Table (CSDs only);
- invoices presented in a readily navigable and usable (e.g. Excel) format;
- display of the total amount of fees per account; and
- detail of the calculation of the invoice.

The ECSA Users Task Force had also noted that in some cases MIs had gone beyond the strict requirements of the Code and had adopted a number of best practices which especially helped to facilitate price comparability. Therefore, contributors to the assessment also noted how far the following good practices were in evidence across the sample of CCPs and (I)CSDs:

- price simulation tools (including online calculators) in evidence;
- an overview of the tariff policy
- information available of historical tariffs;
- consultation of users on tariff changes;
- a version of the ECSDA Conversion Table that better responded to user request in evidence;
- availability of a handbook for billing and reconcilability; and
- possibility for training of users by the MI

Annex III – ECSA comments on the ECSDA Conversion Table

These comments were raised first with ECSDA in May 2007 and remain valid today.

General considerations

- The **distinction between core and non core services** is necessary to implement the Code of Conduct provisions pertaining to service unbundling and accounting separation (paragraphs 38 to 43). Nevertheless, the application of price comparability provisions is deemed necessary for core services only (mandatory) and left to the appreciation of undersigning Organisations for non core services (voluntary).

- **Geographical scope:** ECSDA has announced that its members who are signatories of the Code shall complete the conversion table for their individual organisations by the end of June 2007. It would be useful for CCPs and to a lesser extent Exchanges to conduct a similar exercise.

- The **conversion table should be made available on the Organisation's website** alongside the current tariff schedule. It should be downloadable in a computer-friendly format with appropriate functionality such as a search function.

- The **conversion table should be kept up-to-date** to reflect the current fee structure of the Organisation. Changes should be highlighted and dated.

- Entities deciding to extend the Code to **other asset classes should present a separate conversion table** by class of instruments.

Definitions

Users propose the following definitions to be attached to the Conversion Table in order to improve its clarity and usefulness:

CCP: A central counterparty (CCP) interposes itself between buyers and sellers, becoming, in effect, the buyer to every seller and the seller to every buyer[5]

Core CCP activities

- Central Counterparty Clearing: the process by which a third party interposes itself, directly or indirectly, between the transaction counterparties in order to assume their rights and obligations, acting as the direct or indirect buyer to every seller and the direct or indirect seller to every buyer.

[5] CPSS-IOSCO recommendation – Standards for Settlement Systems – November 2001

- Clearing: the process of establishing settlement positions, possibly including the calculation of net positions, and the process of checking that securities, cash or both are available.

- Collateral management.

- Communication.

- Reporting

CSD: Most markets have established central securities depositories (CSDs) that immobilise physical securities or dematerialise them and transfer ownership by means of book entries to electronic accounting systems[6]

Core CSD activities

- Establishing securities in book-entry form: the initial representation and subsequent maintenance of securities in book-entry form through initial credits and subsequent credits and debits to a central book of securities accounts, on the basis of: (a) the information provided by the issuer or its agent; or (b) the number of physical securities on deposit; providing the root of title and guaranteeing a permanent balance between issue and securities accounts.
- Account provision: the maintenance of a central book of securities accounts.
- Issue accounts: accounts opened for the purpose of establishing securities in book-entry form.
- Securities accounts: accounts, other than issue accounts, where securities are represented in book-entry form.
- Central book-entry settlement: the act of crediting and debiting the transferee's and the transferor's account respectively on a central book of accounts, with the aim of effecting the transactions processed by a securities settlement system.
- Communication.
- Reporting.
- Maintenance of shareholder registers and other registers of right holders (related to the securities).

Detailed comments on ECSDA Conversion Table

Services

We consider the following order to be the most logical from a user perspective:

[6] CPSS-IOSCO recommendation – Standards for Settlement Systems – November 2001

Core services

- Stock related
  - Establishing securities in book-entry form
  - Account provision & Asset servicing

- Flow related
  - Central book-entry settlement
  - Communication – where not included in the previous sections
  - Reporting – where not included in the previous sections

Non core services

- Securities lending and borrowing
- Collateral management
- Credit provision

ECSDA proposed sub-sections

- "Establishing securities entries in book-entry form": add the opening and maintenance of issue accounts, the services for registered shares, the services for bearer shares.
- "Central book-entry settlement": remove verification (matching) unless evidence that charged separately, remove settlement netting as performed on behalf of CCP core activities.
- "Reporting": reporting charges are supposed to be included in the relevant service caption, however this does not read from CBF draft table. It would be useful to identify a dedicated reporting line in each service section and to keep a separate Reporting item to identify any item not mentioned in the other services sections.
- Communication: same comments as for Reporting.
- Tariff sections/captions refer to which service (Reference to members' fee schedule/ tariff brochure).
  - Indicate date of validity of tariff brochure
  - Present a second version of the table with the actual details of the tariffs, in addition to the summary reference to tariff sections
  - Cross-check that no lines are missing
  - For those entities deciding to extend the Code to other asset classes, present a separate table by class of instruments.
- Overview of fees charged to customer (issuer/ agent, intermediary, end investor, other)

- Preferably classify the services by type of participants: it would be best if services charged to issuers (or their agents) were classified separately from services charged to intermediaries

- It was noted that the "Other" cell of the clearing and settlement section of the table can include a number of items that can add up to a considerable amount of money.[7] Substantial cost may also be charged for entering into the CSD as a player. Fixed entry costs may be charged for broker/ dealers, account operators, companies, etc, which should also be taken into consideration. Finally there are monthly charges that may or may not be specified under this "Other" item. This is a point which will vary from market to market, but we should reserve the right for every market to comment on this section of the table.

[7] For example, in Norway there are 5 potential additional elements that may be charged, which, in a worst case scenario, can add up to NOK 130 (+/-EUR 16). These items are, supplement for T+0 settlement, addition for linking, charge for ISO 15022 message, deferred transaction per transaction settlement, rejected transaction.