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Mr Wim Moeliker
CESR
11 –13 Avenue de Friedland
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Mr Elias Kazarian
European Central Bank
Kaiserstrasse 29
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Germany

7th November 2003

Dear Mr Moeliker, Mr Kazarian,

Response to CESR-ESCB consultation on standards for securities clearing and settlement systems in the European Union

Barclays is pleased to be able to contribute a response to CESR and ESCB's joint consultation on standards for securities clearing and settlement systems in the European Union.

Barclays is the fifth largest financial services group in the EU (as measured by market capitalisation), employing over 80,000 people in over 60 countries. Within the EU we are present in the UK, Belgium, France, Germany, Greece, Portugal, Spain, Italy, Ireland, Luxembourg, and the Netherlands.

We strive to engage positively with the EU institutions and are members of a number of European organisations that share this objective. We have seen and support the submissions of the London Investment Banking Association (LIBA), the British Bankers Association (BBA) and the European Banking Federation (EBF). Consequently, we do not intend to provide exhaustive commentary on the discussion paper, but merely to add our voice on the higher-level issues that arise from the CESR-ESCB consultation paper.

Barclays has always believed that any EU harmonisation effort of clearing and settlement systems should focus on the removal of cross-border barriers, rather than the imposition of a rigid regulatory framework. Our preference is for market led solutions to the harmonisation of technical and market practices. The authorities should help improve the European clearing

and settlement environment by ensuring open access, by the robust examination of anti-competitive practices, and removing the legal and tax barriers hindering cross-border clearing and settlement.

We support the basing of the proposed standards on the CPSS-IOSCO recommendations, which implicitly recognise that clearing and settlement systems operate in the global context.

We wish to take issue with the ESCB-CESR Group's view of the tasks that a custodian undertakes, as many of the Standards as currently drafted apply to custodians '*operating systemically important systems*'.

Firstly we are concerned about the principle of applying uneven regulation to custodians, depending on whether or not they are of systemic importance. This distinction seems particularly inappropriate in relation to Standards 5 (Securities Lending), 7 (Delivery versus Payment), 8 (Timing of Settlement Finality), 10 (Cash Settlement Assets) and 11 (Operational Reliability).

Secondly, we feel there is a need for the Standards to recognise the difference between the role of a Custodian and that of a CSD. Custodians provide the services of safekeeping and administering of securities on behalf of a third party. The assets are actually 'safe kept' at the CSD. The 'administering' function performed by custodians involves corporate actions processing, income collection, and proxy voting amongst other things.

The Standards apply to operators, CSDs and ICSDs, and it should be the safety and soundness of the CSD that concerns both the ESCB/CESR Group and custodians as users of these infrastructure systems. It would be wrong however to apply the Standards to custodians as they do not 'operate' these systems, but rather abide by the rules of the depositories. They may have directors on the boards of CSDs and ICSDs, but, as just one voice amongst many, their influence is limited and their interest is likely to be in the very small minority category.

We are especially concerned that the standards reflecting public interest requirements in the governance of settlement systems (Standard 13), equal access to such systems (Standard 14) and transparency (Standard 17) should not apply to custodians. In general, these issues are addressed by the operation of a competitive market for custody services in which the individual competitors are regulated. Issues relating to abuse of competitive positions are adequately addressed by national and European competition legislation.

Our final comment is with regard to the suggested requirement that CSDs, CCPs and SICs should fully collateralise credit risks. It seems again that this is formulated from the point of view of the classic role undertaken by CSDs and is not appropriate for custodians.

A new requirement of full collateralisation for credit provision by parties acting as custodians would greatly increase the cost of investment in the EU. All participants in the investment chain would be adversely affected. This particular measure would damage progress towards two further goals of the standards – cost reduction and increased efficiency.

Should you wish to discuss any elements of this response in more detail, we would be delighted to oblige.

Yours sincerely,

W. B. Eldridge
EU Public Affairs Director