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Sociedad de Gestión de los Sistemas
de Registro, Compensación y Liquidación
de Valores, S.A., Sociedad Unipersonal

Iberclear comments to the ESCB-CESR Recommendations

Iberclear welcomes the ESCB-CESR recommendations and its interest in reducing systemic risks while promoting free competition. Indeed, the financial turmoil of the last few months has proved the importance of counting on sound and reliable clearing and settlement infrastructures. However, in order to ensure that these conditions are preserved for the future, it is paramount that infrastructures are not forced to compete in those parts of their mission that are related to ensuring the stability and the efficiency of the system. A level playing-field needs to be provided to market infrastructures so as to ensure that competition is based on a cost-efficiency and service-delivery basis only.

It is for this reason that Iberclear would like to express its concern about some of the aspects addressed by these recommendations, precisely aiming to the efficiency of the system and the avoidance of systemic risk, particularly on their enforcement conditions, which sometimes appear to us as insufficient or asymmetrical in their application.

More particularly, we would like to refer to recommendations, 2 and 6 for CSDs, which, in our opinion haven't been illustrated firmly enough. The reservations to the application of matching in free-of-payment, and the admission of the issuance of global notes as a way towards dematerialisation of securities, are arbitrary to the extent that such reservations are not in place in all systems nor based on principles generally accepted on the market. From our viewpoint, matching and full dematerialisation should be recommended without exceptions.

Regarding recommendation 8 for CSDs we have a similar unease. While the recommendation limits unilateral revocation, it only refers to unsettled instructions. However, we strongly believe that unilateral revocation should not be allowed from the moment an instruction has been matched. Allowing revocation of matching creates uncertainty to participants and increases the liquidity risk of the system.

Besides, recommendation 12 also seems to not accomplish deeply enough its intention to protect customer's securities. While we fully agree with the proposal of segregating client holdings from proprietary holdings, the acknowledgment of legal definitions instead of technical segregation seems surprising to us.

As a partial conclusion to the above mentioned recommendations, we are of the opinion that all recommendations are not expounded in the same fair terms. Certain of the recommendations are addressed in stricter and more demanding terms than others which admit, as above explained, more flexibility and exceptions in their implementation or applicability.

As a consequence of this, there is an inequitable distribution of the burden of adaptation, which

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seems to favour the systems that are already complying with some of the practices recommended in a strong manner, but would be required additional work in order to adapt themselves to those recommendations that have been allowed flexible interpretation, had these practices been drafter in the same strict manner as the others.

In consideration to the above, we would propose to revise the entire set of recommendations in order to guarantee that their wording contributes, as it aims to do, to create a more balanced regulatory framework.

On to another matter, there are some comments we would like to make in order to improve the framework in which CSDs are allowed to promote efficiency in their systems as well as to make accessible to the general public the different existing degrees of efficiency. Although in recommendation 3 for CSDs there is a brief description of the instruments that can be used in order to reduce settlement failure risks, there are indeed some important tools that we fail to see, such as the centralised securities lending facility, or the buy-ins and sell-outs. On the other hand, while securities lending is thoroughly analysed in recommendation 5, we have a special concern with regards to the statement "access to securities lending facilities should not be compulsory". This statement ignores existing Spanish regulations which make the centralised securities lending facilities compulsory in the relevant case. Additionally, we believe that CSDs must be allowed to impose last minute centralised lending facilities when all other voluntary instruments have failed, including bilateral loans. Although the reference in that same paragraph to "the possibility of having facilities that can be automatically activated in some circumstances" may be interpreted as a justification for an automatic centralised lending facility, the previous statement seems too categorical. We would therefore suggest a more flexible drafting in order to provide enough ground for agile instrumentation by CSDs.

In relation to the above mentioned arguments, we would like to take the opportunity to suggest that, as recommendation 3 declares "settlement failures should be monitored and evaluated by the operator of the securities settlement system", in order for supervisors and the industry in general to fully assess the compliance of this point, efficiency ratios should be made public by all settlement systems, together with the methodology used for their calculation, or ideally, work on a harmonised methodology.

Additionally, there are some aspects of recommendation 6 that we would like to comment in order to ensure that CSDs can compete on a level playing field among its peers. The statement that "CSDs should avoid credit and liquidity risks to the greatest possible extent" and the acknowledgement that "most CSDs are prevented by their statutes from doing so", is indeed describing a big competitive issue. The asymmetries in the regulations that the different CSDs need to comply with, give huge advantages to those that can assume even limited credit risks vis-à-vis those who cannot at all. The range of services offered by CSDs not allowed to take these risks is very significantly limited, to a point that in an open competition environment those CSDs will be facing harsh difficulties that may even endanger their existence. Besides, the fact that some CSDs are openly allowed to provide a full range of banking services, places the

whole set of market infrastructures into the competitive spectrum of other financial institutions which by their nature, are totally different from CSDs. Thus, we strongly recommend that regulators unambiguously define the limits of the risks that CSDs are allowed to take, and provide harmonised rules for all CSDs to follow inside the boundaries established by such limits, for the sake of delivering a true level playing field to the industry.

Finally, we would like to comment on a very technical aspect of recommendation 16 which refers to the use of ISO20022. We would like to point out that this standard is currently perceived by the industry as a medium/long term target. These standards haven't even been developed yet for most of the tasks related to the activities of CSDs, and even if plans were met to deliver the standards in schedule, it is currently questioned whether a change from the recent and broadly extended ISO15022 could be imposed. For these reasons, we believe that a reference to ISO15022 should also be mentioned in this recommendation.