

17 April 2009

SUMMARY OF THE PUBLIC HEARING ON CEBS'S CALL FOR EVIDENCE ON CUSTODIAN BANKS

On 2 February 2009, the Committee of European Banking Supervisors (CEBS) issued a [call for evidence](#) to establish the materiality of custodian banks internalising settlement and/or carrying out Central Counterparty (CCP)-like activities. The call for evidence was open for responses until 4 March 2009.

On 24 March 2009 CEBS organised a hearing open to all interested parties to discuss its preliminary conclusions following the receipt of the responses. Market participants from European and national trade associations, representing both domestic and cross border institutions, and from large and complex groups from different Member States contributed to a fruitful discussion.

CEBS initiated the discussion by providing a presentation of the analysis of the responses and some preliminary conclusions. CEBS's draft conclusions were that there is no evidence of material European-wide settlement internalisation by custodian banks. Instead, this practice was found to be concentrated in some markets/products. Therefore CEBS's proposal is that for those markets and for those custodian banks where the volumes of internalisation reach material levels, CEBS members should require the respective banks to follow procedures that are in line with the ESCB-CESR Recommendations for securities settlement systems. CEBS also noted that general clearing member (GCM) activity, which numerous custodian banks engage in, bears similarities in terms of risk management practices to that of a CCP. The answers received on risk management of GCM activity suggest that further work may be needed to investigate such practices. However, this activity is not limited to custodian banks and is thus out of the scope of the initial ECOFIN mandate.

Participants were broadly happy with the conclusions in the settlement section. Nevertheless, some clarifications were sought:

- The conclusions should clearly state that where settlement internalisation is material, only those ESCB-CESR Recommendations that were found by CEBS in its [first report](#) to be relevant to custodian banks should be followed.
- CEBS clarified that the judgement of materiality was made from a prudential perspective and not from a conduct of business perspective.
- Participants clarified that for a lot of OTC derivative products, such as CDS, there may not be any settlement. They also expressed concern that some responses may have counted non-settled trades as internally settled.

- Participants felt that further clarification should be sought on the issue of the use of omnibus accounts. They pointed out that omnibus accounts may be a necessary condition for internalisation but that banks used them for efficiency reasons rather than internalisation.

On the section on CCP-like activities, participants expressed some concerns about identifying GCM as CCP-like institutions. CEBS clarified that the link was only based on similar risk-management practices. Other points raised were:

- CEBS clarified that any follow-up work would require a CEBS main committee decision. Any process/consultation would remain fully transparent and involve the industry.
- Participants pointed out that requirements for GCM were in part determined by the CCP rule book.
- The main GCM are investment banks – such activities are carried out irrespective of the custody banking services offered by a bank.

CEBS decided that its main conclusions will remain, but that the report will take on board suggestions expressed at the public hearing. CEBS agreed to distinguish clearly between the GCM work that may be taken forward and the initial mandate from ECOFIN. Finally, regarding internalisation, CEBS stressed that the conclusion does not imply that supervisors should cease to monitor the degree to which such practices are performed by custodian banks. For that purpose CEBS will continue to rely on close cooperation and cross-fertilisation with overseers and securities regulators.

The final report is published under <http://www.c-ebs.org/Publications/Other-Publications/Others.aspx>