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Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS
Director

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**NOTE TO P. DELSAUX,
ACTING DIRECTOR, DIRECTORATE F**

**Subject: EU Clearing and Settlement
Legal Certainty Group
Advice**

The Commission was pleased to receive from you the Advice of the Legal Certainty Group on 28th July, which sets out a description of principles for new legislation about the legal effects of book entries. The Advice is an impressive piece of work, and we are most grateful to the members of the Group.

We note with particular pleasure that the work of the Group is on schedule. The Commission (and the Giovannini Group before it) estimated 3 years for this project, the subject-matter being so complicated and sensitive. The Group started in early 2005, and is therefore half-way through. In the first 18 months they have proceeded with a detailed stocktaking exercise of the legal regimes of all EU member states' jurisdictions and have presented a basic design for a new law, leaving another 18 months to specify it in detail.

It seems to us that the Advice represents a very sensible and truly European solution, as it is based on the single factor common to all EU securities trades, i.e. that the buyer uses a securities account held for him by someone else, and makes the account become the focus of legal importance.

Going forward, we would like to ask the Group to continue its work. Please note that it is not excluded that we may also arrange a hearing for interested parties about the Advice we have received from you. This will be decided in the light of feedback from the November UNIDROIT negotiations, and from the Group secretariat as views are collected from other commentators over the next few months. We will pay particular attention to the views of CESAME also.

Specifically, we would like the Group to undertake the following tasks, in the order of priority set out here.

The absence of an EU-wide framework for the treatment of interests in securities held with an intermediary.

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The Group's Advice sets out a basic design for new legislation about the legal effects of book entries made on securities accounts. Please now give further advice, elaborating on this, by describing exactly the provisions that would be needed in such legislation. Please identify at an early stage the issues that are best decided by policy-makers, so that we can make suggestions to the Group on these issues as its work progresses.

Please continue closely to monitor the work of UNIDROIT, and please inform us whether the draft UNIDROIT Convention that results from the November 2006 exercise of the UNIDROIT Committee of Experts takes a form that matches the new legislation described in the Advice.

Restrictions relating to the issuer's ability to choose the location of its securities.

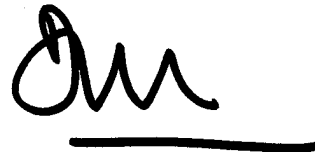
The Group has advised that new legislation would be needed to abolish such restrictions. Please describing exactly the provisions that would be needed in such legislation. In asking this, we appreciate that the Group will need to undertake further study on the matter, not least because the market is rapidly evolving in this area.

Differences in national legal provisions affecting corporate action processing.

The process by which specific legal issues have been exposed by the trade groups investigating the commercial aspects of this issue, under the name "Giovannini Barrier 3", within the workload of CESAME is accelerating. And the final shape of the proposed directive on the exercise of shareholders' voting rights is becoming clear. Please therefore take forward this issue, by advising us whether and, if so, what additional measures may be needed to resolve this barrier. And we note that many have argued that solutions here should be at a national rather than an EU level. If that is the case, please say so.

I look forward to the Group's continuing success.

*Thanks for all
your help,*



David Wright

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