Hellenic Exchanges S.A. Group
Athens Stock Exchange
Athens Derivatives Exchange
Central Securities Depository
Athens Derivatives Clearing House

JOINT WORK OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS IN THE FIELD OF CLEARING AND SETTLEMENT

RESPONSE
TO THE CALL FOR CONTRIBUTIONS FROM INTERESTED PARTIES

1. Introduction

This response to the Call for Contribution of the Joint CESR-ECB workgroup is the outcome of a group of companies providing infrastructure services related to the capital market in Greece. The companies belong to the "Hellenic Exchanges S.A." group (hereinafter called "HELEX") which, as from 2000 is listed on the Athens Stock Exchange.

Members of the above group are, inter alia, the following companies:

- Athens Stock Exchange S.A. (ASE), is Greece's regulated market for equities, private bonds, Hellenic Depository Receipts and EKAA Units. ASE is a full member of the Federation of European Securities' Exchanges (FESE) and FIBV and an affiliated member of IOSCO and ECMI.
- Athens Derivatives Exchange S.A. (ADEX), is Greece's regulated derivatives' market. ADEX is a full member of FESE and IOMA- IOCHA.
- Central Securities Depository S.A. (CSD), is responsible for the clearing and settlement of the ASE transactions, the registration of dematerialized securities and the assignment of ISIN codes to the Greek securities. CSD is a member of the European Central Securities Depositories Association (ECSDA), Association of National Numbering Agencies (ANNA), ISSA and affiliate member of ECMI.
- Athens Derivatives Clearing House S.A.(ADECH), is responsible for the clearing and settlement and acts as counterparty for the derivatives market. ADECH is a member of the European Association of Central Counterparty Clearing Houses (EACH).

The above mentioned group of companies fully supports the joint work of CESR-ECB in the field of clearing and settlement (c&s) with the intent to promote the efficient and proper functioning of securities clearing and settlement arrangements and the proposed consultation process. We find that it is extremely crucial for the work of CESR-ECB workgroup (Group) in progress, to be

able to take into consideration the views of the various market players before deciding on the proposal of specific recommendations-standards.

2. Issues for further consideration

Our response is based on the structure proposed in the call for contribution paper published by CESR-ECB on March 15, 2002.

2.1 nature of the recommendations:

At this stage, where no specific proposals for recommendations and /or standards from the Group are made, we believe it is premature to voice an opinion concerning the binding or non-binding character of these recommendations and standards through the use of European legal instruments or national laws.

Following the conclusion of the Group's work and the publication of the proposed recommendations and standards, the market players, in general, should be given the chance to examine them in depth and come back with specific proposals on the legal nature of these recommendations.

2.2 addressee:

In practice almost all categories of institution you mention (regulators, systems, operators, users) is expected to be affected by some or all of the recommendations. Our belief is that compliance to the recommendations should be supervised and controlled by the regulators, especially in the case of recommendations that will be binded in the form of a European legal instrument or national laws. Based on the experience acquired so far with recommendations and standards as proposed by international organizations (G-30, ISSA), it seems that markets tend to voluntarily adopt these recommendations, without necessarily these being legally imposed.

2.3 scope:

We believe that the functional approach should be followed with regards to the recommendations. However, it is extremely important that the Group clearly defines and describes the functional areas, the services included in these areas and the role of the various types of institutions which provide these services, in order to achieve a common basis of understanding. Functional areas that should be covered include: clearing, settlement, registry, custody, risk mitigation and banking related services (e.g. payments, tax services).

Wherever necessary, recommendations should be differentiated per functional area and particular service. Recommendations should also be addressed to the participants of csds, ccpss and icsds based on the functional approach.

A clear distinction should be drawn between custody services and c&s activities, since there is a high degree of overlapping on the services offered by various types of institutions depending on the position they hold in the transaction chain and the recipient of their services, e.g. a broker offers custody services to his client as far as securities are held in an account with the broker, settlement services to his client when exchanging this client's securities against money; a csd offers settlement services to a broker and safekeeping and custody service to the broker, the issuer and the investor when acting as a registry.

This distinction will help the development of clear level playing fields and regulator efficient controls. However, this distinction should not lead neither to extensive fragmentation of services, not to extreme financial burdens and barriers to the competivity of the companies.

Special considerations should be taken into account where custody and safekeeping services are provided by credit institutions or investment firms for the mitigation of insolvency and operational risks. The focus should be on the continuous monitoring of capital adequacy requirements, the strict segregation of own and client assets in accounts held with the csd, the strengthening of transparency regarding the client's identity and the application of stricter rules for the offering of services relating to the custody area to the benefit of the investors.

Additionally recommendations should opt for the creation of level playing field among credit institutions and investment services firms in the area of custody and safekeeping. Credit institutions generally enjoy higher creditworthiness, while custody and safekeeping is considered as one of their main services.

We do believe that recommendations should cover all types of instruments (sovereign and private debt, equity and other securities, as well as depository certificates, receipts, derivatives, etc) and markets (regulated and OTC). Special consideration should be taken in the case of derivatives instruments, as these instruments have particularities with regards to risks and custody issues.

Specific recommendations and standards should be addressed to cross-border transactions given their complexity, due to the involvement of multiple players located in different

jurisdictions. Since there is a certain vagueness concerning the definition of a "cross border" transaction, the Group should also try to draw up a clear definition or further elaborate existing criteria.

2.4 objectives:

The objectives of central banks and securities regulators as summarized in the 'Call for Contribution' are well specified. However, we believe that the promotion of integration of the EU securities market infrastructure is mainly an eventual evolution and not an objective per se. The efforts of regulators should focus on the harmonization of markets across Europe in order to facilitate further integration based on business criteria.

Central Banks and regulators should be equipped with the appropriate tools and accesses to achieve these objectives and further effort should be undertaken for the provision of these tools and accesses.

2.5 access conditions:

Access to the European csds, icsds, ccps, is based on publicly disclosed criteria. Usually, barriers to access derive from legal and regulatory issues as well as technical and operational incompatibilities which increase the cost of doing business.

2.6 risks and weaknesses:

With regard to legal risks, the most important problem is the different legal approaches in national legislations concerning ownership of securities, colalteral management and transfer of title, leading to legal uncertainties. Differences in the basic infrastructure of the national capital markets concerning the exisitng models of clearing, settlement and custody in each jurisdiction, also reflect differences of legal frameworks. Additional uncertainties are created with regard to the different taxation approaches across EU. The involvement of several actors in the process of cross-border c&s multiply these uncertainties, thus increasing legal risk.

The segregation of assets and the reconciliation of positions are the most crucial issues to be addressed, as far as custody is concerned. In Greece, we believe that we have managed to minimize risks associated with custody by rendering conpulsory the accounts segregation at the end investor, which is considered to be the sole owner of the account and the securites kept in it. This segregation is recorded in the books of the CSD which, additionally to its clearing and settlement function, acts also as the registrar and central safekeeping mechanism for all securities listed in the ASE.

Segregation at the investors level make sure that in case of a custodian default, the defaulting custodian's creditors will not reach investors' assets. This is not always the case when banks or investment services firms offer custody services and segregation is done through omnibus/nominee account structures. Usually csds are not exposed to the same extent to the risks custodians are, e.g. csds do not undertake counterparty or principal risk and their operation is heavily regulated and supervised, thus being less exposed to insolvency.

Regarding corporate actions it is obvious that concentration of the shareholders securities in one account in a centralized mechanism like a csd, enhances the efficiency of corporate actions processing, reduces execution time and facilitates issuers' work. In addition, operational risk is reduced when custody is concentrated in one entity (the csd), provided csd has in place adequate back up systems and contingency plans. To the contrary, operational risk is multiplied proportionally to the number/levels of intermediaries edging into the custody chain(CSD-custodian-subcustodian-…-investor).

Furthermore, regulators have the ability to exercise their supervisory functions though one access point (the csd) that records all information related to an investor or intermediary activity.

Investors holding accounts into the centralized mechanisms have also the ability of crosschecking their intermediaries actions and directly verifying the status of their whole portfolio through one access point (the csd).

Concerning settlement risk, the same issues should be addressed for both domestic and cross-border transactions. The most crucial issue is the establishment and smooth operation of the mechanisms that ensure efficiency across the entire settlement chain. Ideally, achieving simultaneous DvP from the securities settlement system to the participant and from the participant to its client minimizes the risks associated with settlement. However, this requires high investments in STP technology. The use of central bank money, thourgh obviously preferable, may not be always feasible, due to legal and/or technical barriers.

For cross border settlement, ECSDA's Eurolinks model provides a workable solution to the cross-border DvP settlement by linking csds from different jurisdictions and specifying standards based on which a cross border settlement could be achieved with the least possible risk.

As far as operational risk is concerned, recommendations should aim mainly to issues concerning, contingency planning, business continuity, internal controls, financial and IT audits, access controls, employee education and experience, electronic fraud, errors and omissions.

2.7 settlement cycles:

Ideally harmonization in the settlement cycles will allow the investor, to improve their capital use and to achieve a more efficient collateral management and flexibility in his investment decisions and strategies. To achieve this, harmonization to the same target (a settlement cycle of T+1), should be accomplished across all instruments for EU regulated markets. Special considerations should be taken with regard to differences to operating days and time zones.

To our view, securities settlement systems and clearing houses should be in a position to move to a shorter cycle in a quick pace, since this would require mostly changes in operational procedures and not high technological investments. However, it is doubtful whether market participants will be able and willing to adapt systems and procedures in the same pace. For this reason, compliance to the recommendations on this subject will need to provide market players with a feasible timetable facilitating the necessary adaptation of systems and procedures

2.8 structural issues:

We consider interoperability as the most appropriate and efficient way to achieve gradual and stable integration of infrastructures. Concentration could eliminate competition, create private monopolies capable of abusing their dominant position. In addition concentration could lead to technical and legal problems due to the existing differences between technical systems and national legal frameworks. Open access is an ideal situation, but progressively it may lead to a considerable proliferation of the existing icsds and ccps and thus to an incoherent situation, far away from the desired integration. Additionally in an “open access environment” local regulators would be charged with the control and surveillance of foreign institutions. We also consider that open access will signal competition in certain areas such as risk management between various ccps, competing over cost reduction, and thus put into danger the stability of the markets in which they operate.

Public policy intervention may lead to minimization of systemic risks, soundness of systems, progressive integration and may provide solutions in competition issues, but it should opt for

decentralized structures within EU and not within national jurisdictions. Governance of infrastructure is not an issue requiring regulatory intervention. Service providers must be free to decide their structure provided that reasonable costs, safety, healthy competition and interoperability are preserved and not inhibited by this very structure. Custodians, ccps, csds and icsds are to be considered as commercial firms, provided that competition between them does not jeopardize the safety of the markets. The same reasoning also applies to the providers of trading services (exchanges), although for different objectives.