HELLENIC BANK ASSOCIATION

RESPONSE TO THE ECB/CESR CONSULTATION ON CLEARING AND SETTLEMENT

The Hellenic Bank Association (HBA) welcomes the objectives set by the joint CESR/ECB group to reduce risks in the area of Clearing and Settlement in the European Union. We believe that all market participants should coordinate their efforts towards this direction.

HBA feels though, that the CESR/ECB standards as currently drafted have a major implication, which to our opinion will not benefit the European markets.

The implication is that a triple equation is established, CSD = ICSD = Big custodians. This means, that:

- The door is open to CSDs to become banks, extending their service offer to risky products, such as securities lending (standards 5, 6, 9, 10). We believe that the essential infrastructure of securities markets, such as CCPs and CSDs have a public interest role to play, which is the protection of the investors and the preservation of market stability. In this sense, infrastructures should refrain from any activity containing risk, which is not essential to their core functions. Their role and responsibilities should be limited on their core mandate. That simply means that they should not perform bank-alike duties, settle only in Central Bank money and avoid merging with entities of a different nature.

- Banks will be obliged to fully collateralise all credit lines and accept the proposed standards in terms of governance, client access, risk etc (standards 1, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 19). This will harm the traditional role of banks (granting credit lines) and in view of the fact that the area is adequately regulated, we consider this is unnecessary. Conforming to the standards mentioned above means that custodian banks will be obliged to accept all clients, apply the same tariff and publish it. Moreover, the proposal is to apply this restriction to “systemically” important and “dominant” custodians. CESR/ECB proposes a threshold of 5% in European and a 25% in national level, but the authorities of member states can impose more strict rules. This will impose extra burden to the market and increase dramatically the costs, without any clearly demonstrated deficiencies in the current banking regulations and EU competition law that would warrant additional regulations. The increased costs will ultimately be borne by investors, who will not benefit from incremental protection.

In this framework, we would like to raise the following concerns:

The roles and risks of custodians and infrastructures are different

We agree that the systemic risk is undesirable and should be mitigated. Standards attempt to cover this issue, by regulating agent bank the same way as CSDs. However, infrastructures serve the entire market, while custodians serve only their

1, Massalias Street, 106 80 Athens, Greece • Tel.: 3386.500 • Fax : 3615.324 • E-mail: hba@hba.gr • Url : http://www.hba.gr

clients functioning in an extremely competitive environment. These entities have totally different legal statutes leading to different risks.

Banks are already heavily regulated

The banking sector is already heavily regulated and agent banks have to comply with a set of rules, which among others obliges them to have sound and clear risk management procedures. The regulation already in place, addresses all kind of risks and soon banks will have to comply with the Basel II requirements.

We believe that the standards will pose extra burden to the agent banks, without adding safeguards, which do not already exist in current banking regulation.

Infrastructures are not regulated in a uniform manner.

There is no uniform regulation in the area of CSD/CCP. We believe that EU regulators should try to impose a regulatory benchmark in these areas.

On the other hand, the application of standards 6, 9, 10 to CSDs will bring in new risks.

Concentration and Competition issues

Allowing CSDs to expand in banking activities would imply that credit and liquidity risks would be concentrated to thinly capitalized institutions. Imposing collateralization requirements does not eliminate risk. Extra risk should come across from the fact that the core infrastructure activities will be mixed with commercial ones.

Moreover, these standards if applied to custodians would force certain custodians out of business leading to even greater concentration and risk.

We welcome standards 13, 14, 15, 17 related to governance, access, efficiency and transparency respectively, but they should not be applied to custodians, since they will oblige them to reveal critical business elements to competitors.
Allowing CSDs to become “banks” entails the danger of creating for-profit, risk-taking monopolies, in stark contrast with the EU trend in other utility sectors.

Finally non-systemically important banks will have a competitive unfair advantage over systemically important players.

Conclusion

We would like to mention once again that we welcome the standards, but we believe that applying them to custodian banks will bring unnecessary costs and extra burden. We also believe that we should think again the blurring of roles between

infrastructures and commercial enterprises. We feel that CESR/ECB standards should therefore:

- Regulate infrastructure in the securities area in the way this is done for other general interest services.
- Not regulate agent banks and CSDs the same way, since the risks are different.
- Adopt “infrastructure” and “intermediary” as the relevant functions in the “functional” approach to regulation, which is appropriate for public interest and competition reasons.
- Ensure that a level playing field is provided without confusion of roles between infrastructure and intermediary service providers.
- Safeguard infrastructures from entering into risk-taking activities not essential to their core functions; if they do enter into providing intermediary services of a competitive nature then the infrastructure and intermediary businesses be ring-fenced to ensure clear segregation.

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