

To
The Committee of European Securities Regulators
11-13 avenue de Friedland - 75008 PARIS
FRANCE

***Subject: Consultative report on standards for securities
clearing and
settlement systems in the European union;***

***Comments sent by "OPEX – Sociedade Gestora de Mercado de
Valores Mobiliários Não Regulamentado, S.A." (OPEX).***

In order to better understand our reply on the questions specifically addressed by the joint working group of ESCB-CESR in the document entitled "The Scope of Application of the ESCB-CESR Standards", OPEX starts with an overview of what its responsibilities and objectives are.

Both documents were downloaded from CESR website (www.europefesco.org).

Introduction – OPEX and PEX

OPEX is a limited liability Portuguese company whose objective is to set up and manage a non regulated securities market.

The market managed by OPEX is named PEX.

PEX is a registered market under the supervision of the Portuguese securities market commission (CMVM). It is an organized market and subject to the applicable rules of "Código dos Valores Mobiliários" (securities code), the main Portuguese law concerning the capital markets, as well as some regulation issued by CMVM.

Although within the European framework and the Investment Services Directive (ISD) PEX is considered a non regulated market, PEX is subject to supervision by the national regulator and must abide to the existing rules and regulations. As such, PEX is viewed as a less regulated market rather than a non regulated market.

PEX has an electronic trading system where only PEX Members (institutional clients, brokers and/or banks) can trade directly in the system by inputting buy and sell orders on behalf of customers or for their own interest.

The electronic trading system allows for the registration of previously agreed trades (where both buyer and seller are known, as well the price and quantity), or for the continuous roll call auction (where a trade is registered whenever a buy and sell order matches, priority being given, for same prices, to the earliest order registered) or finally by electronic auction (where buy and sell orders are collected and at a given point in time all orders are consolidated to obtain, if possible, a single price to trade the largest amount of securities).

PEX may trade any type of securities (shares, private bonds, public bonds, warrants, options, futures, certificates, and so on), as long as its admission is requested by the issuer.

PEX may trade securities already listed on other markets, including regulated markets.

PEX has started operations on September 19, 2003, and has 13 Members and 12 issues listed (shares and bonds), of which 4 issues (shares) are also listed in Euronext Lisbon.

Additional information may be obtained from OPEX website (www.opex.pt).

The problem concerning the settlement of PEX trades

From the beginning, OPEX has tried to provide its Members with the most adequate solution(s) for settlement.

OPEX does not manage any clearing and/or settlement system and, as such, has tried to use the existing alternatives, including the option of settlement through Euroclear and/or Clearstream for issues admitted in those systems.

OPEX has also naturally tried to use the national and so far only available clearing and settlement system in Portugal, the system operated by Interbolsa.

Interbolsa is the clearing (netting) and settlement system for trades registered in Euronext Lisbon, as well as being the Central Securities Depository for Portuguese (Central) securities.

The use of Interbolsa would be the most natural solution to clear (net) and settle trades registered in PEX of securities admitted in Central.

However, conversations with Interbolsa were started in end of February 2003 and until now no satisfactory reply from Interbolsa has been given to the request of OPEX to use the netting and settlement functionalities provided by Interbolsa.

This lack of reply has directed OPEX to mandate a bilateral netting settlement for PEX trades (netting of trades of same security between same Members), the results of the netting being settled by Members using the real time gross settlement of Interbolsa. Needless to say, this is a sub-optimal solution for PEX and its Members.

Interbolsa is a company owned 100% by Euronext Lisbon, and Euronext Lisbon is 100% owned by Euronext, N.V.

OPEX has no connection whatsoever with Euronext or with any other trading system or stock exchange.

This specific situation may help to understand the comments produced by OPEX: OPEX is facing not a theoretical situation of lack of alternatives from existing organisations providing clearing and/or settlement services but is experiencing in practical terms the effects of such unavailability.

Comments on the proposed Standards

General

We find the 19 Standards to be well elaborated and appropriate to cover the clearing and/or settlement services provided in the European market.

We strongly support the definition of Standards instead of adopting recommendations or guidelines, and we would like to imagine the Standards being adopted as Community law status so as to set an identical minimum set of rules governing clearing and/or settlement.

We think that the Standards should be applicable universally, that is according to the services provided, regardless of the nature or type of organisation providing such services.

The functional perspective assumed by the Standards considers clearing and/or settlement to be activities where the level of guaranty, certainty and reliability should be high, consistent and clearly defined to all entities providing such services, whether or not those entities are CSDs, Central Clearing Counterparties, Banks or other organisations or companies.

The functional perspective finally provides an equal playing field for the regulatory environment applicable to any one which sells and/or offers clearing and/or settlement services.

The particular situation experienced by OPEX as mentioned above, concerning the settlement of its trades, has made us acutely aware of the strong need for regulators and regulation to really assure that access to clearing and/or settlement systems and CSDs is fair, efficient, quick and not unduly expensive. In the present environment it is much easier and less costly to establish a modern, robust and efficient electronic trading system in comparison with establishing a new settlement system or CSD. As such, OPEX would like to stress the importance of Standards 13, 14 and 15.

Reply to the questions put forward in the document "Scope of Application of the ESCB-CESR Standards"

1. *Do you agree that some of the scope of the standards should be extended to systemically important providers of securities clearing and settlement services other than CSDs and CCPs?*

ANSWER: Yes, considering that the extension is to be of all standards to all providers. See our remark in the General section.

2. *Should the extension be to all custodians, or should it be limited to systemically important providers of securities clearing and settlement services?*

ANSWER: The extension should be to all custodians. As an example, assuming that a custodian has a global securities account in a CSD, and exempting such custodian (of complying with the standards) because it has just 3% of one issue, although those 3% represent 500 customers, and imposing the standards to another custodian,

which has a global account in the same CSD of 15% of same issue representing 10 customers, does not make sense nor seems reasonable.

Our opinion is that it is important to consider, when addressing clearing and settlement matters, that one is dealing with the definition of who is the owner of what: the clarity of such definition should not be dependent on volumes or percentages.

3. What are the criteria along which – according to your opinion – the systemically important system could be defined? What would you consider to be the essential elements that should be apart of such a definition?

ANSWER: OPEX does not consider being relevant to establish criteria to define systemically important settlement and/or clearing systems for the purpose of applying the standards, as it is proposed by OPEX to apply those standards whenever settlement and/or clearing activities are performed. Nevertheless, should such criteria be defined OPEX agrees with the definition proposed in question 4.

4. Do you agree that systemically important providers could be defined as institutions with a business share of 5% at EU level or 25% at domestic level (or lower, at the discretion of the national authorities) in each relevant market?

ANSWER: see last sentence in question 3.

5. Do you agree that three relevant markets can be considered – bonds (public and private), equities and derivatives – or would a different categorisation be helpful?

ANSWER: OPEX believes the standards should be applicable to all providers of clearing and/or settlement systems and because of this there should be no distinction of relevant markets. However, if there is the adoption of the systemically important providers approach, then OPEX agrees that at least those three relevant market segments should be considered. Special care should be taken in order to prevent an aggregate of those three categories, as such option would make it more difficult to establish a dominant position by one player.

6. Which of the ESCB-CESR standards should apply to all systemically important custodians?

ANSWER: OPEX's opinion is that all standards should apply (of course depending on the actual clearing and/or settlement activities performed by the custodians).

7. What would be the implications of extending the scope of the standards to cover systemically important providers of securities clearing and settlement services?

ANSWER: OPEX believes the implications would be very positive, specifically because (a) it would exert further guarantees to the rights of the beneficial owners of the securities regardless of the system provider used and (b) it would assure a minimum level of common regulation, not only within the framework of a single national market but across all European markets.

8. Do you agree that standards 13, 14, 15 and 17 should apply to custodians with a dominant position in one market? If yes, how would you define a dominant position?

ANSWER: Yes. OPEX proposes that those standards should be applied regardless of the size of the custodian involved. Nevertheless, a dominant position may be assessed by the same criteria proposed in question 4. Of course when using the definition of dominant position one may have to take in consideration the criteria used in competition laws and regulations, and, depending on the answer to that question, other criteria may be, if more adequate, defined in order to avoid possible conflicts between the standards and European competition law.