HELLENIC EXCHANGES GROUP

RESPONSE TO

CESR'S CONSULTATION ON MiFiD IMPLEMENTING MEASURES (04-261b)

September 2004

1. Introduction

Hellenic Exchanges S.A. ("HELEX Group") is a Greek holding company, whose ordinary shares are listed on the Athens Stock Exchange. Helex's, subsidiaries are companies which are in charge of the organization and well functioning of the Greek regulated markets and relevant system infrastructure.

HELEX Group submits by this present its response to the March 2004 Communication of the Commission to the Council and the European Parliament on 'Clearing and Settlment in the European Union – The way forward'. The said response is the outcome of a joint work being undertaken by the following Companies-members of the HELEX Group:

- **Athens Exchange S.A. ("ATHEX"):** ATHEX is the market operator of the Greek Regulated Markets including Cash Markets, such as Equities Markets, Private Bonds Market, Hellenic Depository Receipts, EKAA Units Greek Spot, as well as Derivatives Market. The said corporate name is the new name of Athens Stock Exchange S.A. following its merger with Athens Derivatives Exchange S.A. ATHEX is a full member of FESE and FIBV and an affiliated member of IOSCO and ECMI.

- **Central Securities Depository S.A. ("CSD"):** CSD is the Greek central securities depository which is responsible for (i) the clearing and settlement of all ATHEX cash transactions as well as for the settlement of ATHEX derivatives transactions subject to physical deliveries, (ii) the registration of dematerialized securities monitored by CSD's system, (iii) the corpatate actions processing and (iv) the assignment of ISIN codes to the said securities. CSD is also a member of ECSDA, ANNA and ISSA

- **Athens Derivatives Clearing House S.A. ("ADECH"):** ADECH is the Greek central counterparty clearing house (CCP) which is responsible for the clearing and settlement of all ATHEX derivatives transactions as well as for the proper performance of the said transactions acting in its capacity as a CCP. ADECH is a member of EACH.

The HELEX Group fully supports the work (and the relevant consultation process) undertaken by CESR in the field of MiFiD implementing measures. Furthermore, the HELEX Group considers that it is extremely crucial for the works of CESR in progress, that the European Commission is able to take into consideration the views of the various market players before deciding on its proposal for the measures.

HELEX would like to state that it generally supports the comments provided by FESE on the issues raised as the ATHEX, being a member of this organization, has contributed to the formulation of these comments.

HELEX recognizes the complexity as well as the extreme importance of Level II implementing measures. The effort made by CESR to reach the maximum degree of harmonization without however jeopardizing differentiation and innovation required for a competitive securities market to operate merits strong support. Looking at the overall picture, this effort has been successful, although at some points improvements could be made.

For further clarifications on this response, inquiries should be directed to: Mrs L. Ioannidou (L.Ioannidou@ase.gr), General Manager, Athens Exchange or Mrs J. Giotaki (J.Giotaki@ase.gr), Legal Counsel, Athens Exchange.

2. Boxes 1-11: Implementing measures for intermediaries

We fully acknowledge FESE's point that exchanges are interested in those measures, not only because they are addressed to potential competitors, namely investment firms operating MTFs and systematic internalisers, but also because unclear cross-

references in Art. 5(2) and Recital 56 may also have a direct bearing on market operators that choose to operate an MTF alongside their operation of a Regulated Market. In this context, clarifications by CESR on the interaction of Art. 5(2) with Art. 14 and 18 as regards the definition of the terms [MTF] "client" and "prior verification" would be welcomed. Moreover, we are of the opinion that appropriate regulation is necessarily based on regulatory flexibility to adopt and implement the appropriate regime for every different case –such as MTF/only business. This approach we would like to see incorporated in Level II texts as a principle, although its materialization will obviously take place at Level III.

With regard to Box 4, we are of the opinion that the inclusion in the relevant list a) of an express statement by the client that he/she consents to execution of his orders outside the Regulated Market (Art. 21 par.3 third subpar.) and b) of the expression of consent by clients to the overall execution policy of the investment firm (Art. 21 par. 3 second subpar.) is important and will contribute significantly to effective investor protection.

With regard to Box 7, it must be noted that the general obligation to give a balanced description of an investment service (par. 2) extends naturally to the description of the service of reception, transmission and/or execution of orders in the sense that descriptions of benefits of a particular way of order execution (e.g. internalisation) cannot be presented as solely beneficial but that any such description must be accompanied by appropriate and fair indication of the potential risks arising from internalisation.

With regard to Box 8, we are of the opinion that the list of exemptions from the obligation to inform the retail client whether a financial instrument is traded on an RM or an MTF should be kept short. We also believe that initiating systematic internalisation in a specific instrument should be seen as a material change to the ongoing provision of services warranting notification. Systematic internalisation as well as risks connected therewith should be seen as a piece of information to be included in the "general description of the services to be provided by an investment firm" (par. 6f). We also support FESE's proposal with regard to re-phrasing par. 13 on clearing risks, although we believe that this is merely a drafting issue.

We see of utmost importance with regard to Box 10 that the requirement to inform the client with regard to the execution venue remains in the text. The need to protect the client and safeguard best execution overrides, to our view, the allegation made by investment firms that this adds to their costs.

With regard to Box 11, we believe that differentiation between retail and professional clients as to the content of the order information is unnecessary and will add cost to the intermediaries, who will have to maintain different systems or structures. Extending par. 2 to all client orders is both efficient and serves investor protection. As regards the aggregation of client orders, which cannot be banned ex-ante, serious effort must be made to employ procedures that would guarantee that the investor is not disadvantaged and the best execution principle does not turn into a meaningless and empty box. Serious effort has been made, both at Level I and at this Level, to employ measures that prevent unequal client treatment and safeguard best execution. Aggregation of client orders might be an easy and legitimate escape from many of these rules with serious negative consequences for the end-investor.

3. Boxes 12-14: Implementing measures for markets

As a general comment, we would like to underline that HELEX strongly supports the harmonization effort made by CESR. HELEX believes that internal securities market should be based on competition among the market actors. However, competition should be backed by a harmonized legal regime that forbids or at least seriously impedes regulatory arbitrage. Market forces are invited to play in this level playing field, which must in principle consist in a harmonized legal framework creating as less externalities as possible.

Harmonization of the regulatory and supervisory regime cannot of course in any case mean that any chance to differentiate or innovate ceases to exist. On the contrary innovation and differentiation should be encouraged and this requires that regulatory intervention does not go beyond the point of imposing those rules that guarantee the same degree of market integrity and investor protection everywhere in Europe.

In this context, we see that proposals for pre-trade transparency of regulated markets (Box 12) are so specific that might struggle, not only all future attempts for innovation, but also current regimes that differentiate slightly from the generally followed paths. As FESE clearly indicates in its paper, there exist various market models –such as closed auctions- whereon the list of price discovery mechanisms, as drawn by CESR, are not applicable. We believe that some flexibility in this respect would be extremely helpful. Moreover the obligation to display the full depth adds an unnecessary cost to the RM's pre-trade transparency mechanism without offering anything significantly more than depth 5 would do.

An extremely important for exchanges issue stemming from Level II text in Box 12 is the following: Level I clearly suggests that trading information is in any case a product commercially exploitable by RMs. Accordingly, any disclosure obligation clarified in level II must clearly state that price information disclosure must be made by exchanges subject to reasonable commercial terms. Level II texts, however, in their attempt to describe what kind of information should be disclosed select a horizontal regulation. This practice, which is completely not analogous to the objective it serves (market integrity), does not allow the exchanges to differentiate the information product, which they offer to the various kinds of info receivers (members, vendors et.c.). The obligation imposed on the exchanges to give the same information to everybody goes far beyond the need of pre-and post trade disclosure for market integrity purposes and precludes the exchanges from its Level I recognized right to make information available on reasonable commercial terms, which practically means to structure different products, to differentiate. Please note that HELEX believes that the whole issue can be resolved by re-drafting the equality clause and by repeating Level I principle on reasonable commercial terms in Level II text.

Last but not least with regard to this Box, we do not see any reason for excluding crossing systems from pre-trade transparency requirements. On the contrary, in small and fairly illiquid markets, the need to know that a given volume will be executed off-market at a specific "market" price could be extremely significant both for market integrity and for investor protection.

With regard to the issue of post-trade transparency (Box 13), HELEX would strongly support "aggregated information" in par. 22, provided that common standards and practices for calculating this data are developed by CESR. This, we would prefer rather than leaving the issue to be determined by market forces. However, if such a common understanding is not attainable, we support FESE's comments with regard to the non-compulsory inclusion of this kind of information. We also strongly support FESE's views with regard to the one-minute and the two-week time frames as well as with regard to the inclusion of minor trades in the post-trade transparency regime (points M44 to M49 of FESE paper). We also share view of all exchanges that the circle of exemption from post-trade transparency requirements, that might seriously jeopardize the formation of an integral securities market, should be kept narrow.

Last but not least, we strongly support the argument made by FESE that reference to "appropriate trading mechanisms" are inappropriate when appearing in the Level II text. With regard to obliging market operators to provide links to issuers' prospectuses, we are of the view that the same purpose may be served by simply providing a link to the relevant local supervisory authority's website. This is both effective and cost-efficient, not only for the exchanges, but also for the competent authorities.

4. Boxes 15-19: implementing measures for co-operation and enforcement

With regard to Box 16, we strongly support and welcome the proxies employed by CESR in this respect. We also believe that revision procedures proposed are both appropriate and adequate while we do not see a reason why any other body apart from CESR can be seen as more or equally competent to trigger this revision. We strongly agree with FESE's point that there are and will always be cases where a pre-defined proxy approach will fail to deliver a (practicable or relevant) result; it is therefore important that appropriate level III procedures exist to quickly designate a relevant authority in such cases.

We strongly believe that CESR should make an effort in setting minimum information standards. In the absence of a uniform content standard in the European Union, any reporting mechanism (including Exchanges and MTFs reporting on behalf of their

participants) is exposed to the risk that it would have to report different content to different receiving authorities. We believe that CESR should make every effort to discern item by item whether the content of a particular data field is relevant and necessary or not. This decision should then be relevant for all jurisdictions. CESR's proposal to fully harmonise the content of reports is therefore welcomed. We note with appreciation the intention of CESR to conduct important follow-up work on level III. In this respect we strongly believe in the usefulness of client identification codes in detecting best execution but also market abuse and financial crime and we invite CESR in thinking of including this data in the relevant list.

With regard to Box 18, we believe that the criteria employed by CESR for assessing the competence of a host authority and determining the co-operation necessity try to confront an existing issue and are therefore generally welcomed. We agree with FESE's comment with regard to the non-usefulness of the "hypothetical example" of par. 7 however we feel that the need for supervision and co-operation needs further discussion and elaboration in this respect. Last but not least, we fully support FESE's comments on Box 19.