

**THE RESPONSE OF THE HELLENIC EXCHANGES GROUP OF COMPANIES
("HELEX GROUP")**

TO

**THE ESCB/CESR CONSULTATIVE REPORT
ON STANDARDS FOR SECURITIES CLEARING AND SETTLEMENT SYSTEMS
IN THE EUROPEAN UNION**

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

A short presentation of the HELLENIC EXCHANGES GROUP

The Hellenic Exchanges group of companies ("Helex Group") was formed in 2000 to provide a full range of stock exchange services including trading, clearing and settlement on both securities and derivative contracts. Today, the Group comprises, *inter alia*, the following companies:

- Hellenic Exchanges S.A., the holding company of the Group the ordinary shares of which are listed on the Athens Exchange. S.A. ("AE").
- Athens Exchange S.A., is Greece's regulated market for equities, bonds, Hellenic Depository Receipts, EKAA Units and derivative contracts. AE is a full member of the Federation of European Securities' Exchanges (FESE), FIBV, IOMA-IOCHA and also an affiliated member of IOSCO and ECMI.
- Central Securities Depository S.A. 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., is in charge for the clearing and settlement for the derivatives market, acting as a central counterparty. ADECH is a member of the European Association of Central Counterparty Clearing Houses (EACH).

Further details of the Helex Group can be found at www.helex.gr

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Introductory remarks

The HELEX GROUP strongly supports the works of the ESCB/CESR relating to the establishment of common standards for Securities Clearing and Settlement Systems in the European Union. Those standards represent an important step towards the creation of a pan-European securities market since they promote the transparency, efficiency, and secure functioning of securities clearing, settlement and custody arrangements. They also put the end-investor protection in the centre of the discussion.

After the introduction of Euro, the borders between the notions of “domestic” and “cross border” clearing, settlement and custody as also the differences between the services provided by CSDs, ICSDs and Custodians/Agent Banks have become more blurred. It is also true that an important part of the trades is now internalised in the books of the relevant intermediaries (participants to the “central systems”) which, in this manner, may provide, at the same time, not only custody but also clearing and settlement services.

In addition, the internalization trend, which could grow further following the draft text of the New Investment Services Directive, complicates further the differences of roles between “clearing houses”, “settlement service providers” and “custodians”. For example, when trades are fully internalized in the books of a custodian bank, such custodian offers clearing, settlement and custody services together.

The new European environment is more competitive because of the need of all market participants to have access to clearing, settlement and custody services across national European markets. The market clearly demands an integrated service offering for both “domestic” and “foreign” securities and derivative contracts. In their turn, the market participants face these changes by a rapid development and expansion of services at all levels of clearing, settlement and custody. This is the main reason why the use of an “institutional approach” to regulation in the area of clearing, settlement and custody is no longer an appropriate solution: given the strong competition and the similarity of services, it is crucial for the market all institutions providing the same (or similar) type of services (settlement, clearing, and/or custody) to be regulated in the same manner in order to avoid a *de facto* “regulatory arbitrage” situation. In addition, imposing stricter regulatory regimes on the “central providers” of clearing, settlement and custody services (CCPs, CSDs and ICSDs) than on other market participants with similar activity (custodians, agent banks or even important brokers) does not seem enough to fully protect the end-investors.

Consistency of treatment of all participants offering the same or similar services in the clearing, settlement and custody chain shall be the corner stone of any new European regulatory initiative in the field of clearing, settlement and custody such as the ESCB/CESR one. This is the main reason why the e HELEX GROUP believes

that a more “functional approach” that is, one which uses language which is as neutral as possible and formulates rules by reference to their results, shall be clearly preferred in drafting the final ESCB/CESR standards.

The scope of standards and the addressees

The HELEX GROUP considers that the main aim of the standards is not only to avoid systemic risk and to enhance the efficiency of securities clearing and settlement in Europe but also to better protect the end-investors and strengthen securities markets' transparency. Consequently, we believe that the standards should be re-focused on this core objective.

The HELEX GROUP supports the extension of the most of the standards to all providers of securities clearing, settlement and custody services no matter what their size is. As an example, we believe that the standards should apply to all custodians and not only to "systemically important" ones, since the crucial issue is not only the size of the relevant custodian (and the risks associated with such size) but also the promotion of market transparency and the fullest possible protection of all end-investors' assets.

The ESCB/CESR standards use three different phrases to describe the addressees of the standards:

- "systemically important custodians"
- "systemically important providers of securities clearing and settlement services," and
- "custodians with a dominant position"

We understand that CSDs, CCPs and ICSDs at least fall into the second category. But the other two definitions bring little clarity as to the entities which will be obliged to comply with the standards.

In addition, addressing the standards only to institutions who pose a "*significant risk*" to the proper functioning of the financial markets, poses, first, the question how to precisely define the term "significant risk" and, second, how to monitor - at all times - which entities fall into such definition and to what extent they comply with the standards. Another remark is that the use of the term "systemically important custodians" in order to specify the addressees of the standards, could probably help the regulators in achieving their first goal (enhancement of clearing, settlement and custody risk management), but it would not satisfy the need for equal end-investor protection and market transparency to the fullest possible extent: the end-investors shall have an equal level of protection no matter if they choose a bigger or a smaller bank as custodian.

Therefore, we would urge ESCB/CESR, in its final report, to follow a more functional approach, to extend application of most of the standards respectively to all clearing, settlement and custody providers and to specify precisely the standards which would apply to each category. The use of terms such as "dominant position" or "systemically important" would be much preferable to be avoided since it can be

interpreted in different manners by the market participants and the competent national regulators harming the goal of consistency of treatment of the intermediaries.

Please also note, that our affiliated company, CSD S.A., has actively participated in the elaboration of the ECSDA's response to the draft ECSB/CESR standards. Therefore, some of our remarks are also expressed through ECSDA's response. In those cases, a cross reference to the ECSDA's response will be used in this document.

- Standard 1 – a sound legal framework is very important for all market participants. It shall be addressed to all custodians.
- Standard 2- since custodians provide services to end-investors, they play an important role in the timeliness of trades' confirmation. Therefore, standard should encompass all custodians.
- Standards 3 and 5 – Final settlement of securities incurs only when custodians make securities available to their clients' accounts. In addition, they are active in the securities lending business. Therefore, standards 3 and 5 should apply to all custodians active in the above mentioned businesses.
- Standard 7- all entities active in the settlement business shall clearly guarantee DvP process.
- Standard 8- this standard shall apply to all providers of services to end-investors.

Furthermore, we fully agree with ECSDA's comments concerning standards 9, 10, 11, 12 and 16.

Comments on the ESCB/CESR draft standards

Standard 1 Legal framework

The HELEX GROUP believes that all entities involved in the clearing, settlement and custody process (and not only those who operate systemically important systems) should operate under a sound and transparent legal basis.

In addition we suggest the term “analysis or opinion” used in the draft text to be defined in a manner permitting also the use and publication of in-house legal opinions.

We agree with the ECSDA’s remark concerning para 32 of the ESCB/CESR text.

Standard 2 Trade Confirmation and Settlement matching

Quick matching of instructions may reduce some operational risks and costs for the market. However, we want to draw your attention to the fact that “central institutions” such as CSDs, CCPs and ICSDs may only provide incentives to the market to match in a timely fashion but they cannot set up mandatory rules concerning the behaviour of end investors, especially in a cross-border environment.

Standard 3 Settlement cycles

No comments

Standard 4 CCPs

We agree with ECSDA’s remarks.

Standard 5 Securities lending

We agree with the standard. However, we shall bear in mind that there are legal and/or tax obstacles or disincentives in place in several national markets which require the attention of national regulators and legislators. Consequently, this standard should be clearly addressed to these authorities.

Standard 6 Central Securities Depositories

The HELEX GROUP believes that the current drafting of Standard 6 could have, according to its interpretation, a material adverse effect on the business of CSDs and/or group of companies to which they belong.

Although we fully agree with the introduction of a risk-based functional approach to the regulation of settlement, custody (and registration) activity, the current drafting of this Standard 6 makes a further step which reflects the view that CSDs (as separate institutions or members of a group of companies) should take no risks at all in any of their activities/businesses. This is obviously impossible at least as far as some areas of risk, such as the “operational risk”, the “legal risk”, or the “custody risk” undertaken by the CSDs are concerned. Such risks should be adequately monitored by the regulators, but regulators can not eliminate them.

Furthermore, it is important to bear in mind that there is a clear trend the CSDs to act as private sector companies, which is obvious particularly when CSDs belong to a group of companies which is listed on an exchange. Therefore, CSDs are obliged to structure their business and services in a way which delivers value to their customers and to their shareholders as any other company of the private sector (taking, of course, into account their unique role in a national market). This is the case of our affiliated company, Central Securities Depository S.A., which is part of the HELEX GROUP, the mother company of which (Hellenic Exchanges S.A.) is a listed company.

In this context, it is not logical that regulators indirectly decide which business activities a CSD could, or could not, develop. The role of regulators should be to work close with each CSD in order to ensure that the risks of any existing or potential business are properly controlled and mitigated.

Standard 7 DVP

No comments.

Standard 8 Timing of settlement finality

We agree with ECSDA's comments.

Standard 9 Risks controls in systemically important systems

The current drafting of this standard allows for different interpretations. Is ESCB/CESR intent that custodians should fully collateralise any credit which they extend for settlement purposes? According to the functional approach similar

standards should apply to all market players active in this area including CSDs, ICSDS and agent banks, since they are undertaking similar risks.

Standard 10 Cash settlement Assets

It is important to remind that the cross-border settlement of the cash leg is one of the major obstacles to cross-border DVP. Therefore, we agree with ECSDA's comment and we suggest, at least unless the rules of the Eurosystem are changed, and unless Target 2 is introduced, commercial bank money to be possible to used and be considered as a viable way of settling cross-border transactions.

The HELEX GROUP encourages ESCB/CESR also to address this standard to all National Central Banks and to commercial banks where appropriate (particularly when commercial bank money is still used for settlement).

Standard 11 Operational reliability

We support the extension of this standard to all custodians, since one of the most important threats to financial stability results not from legal or credit risks, but from operational incidents caused either by internal or external factors.

Standard 12 Protection of customers' securities

No comments

Standard 13 Governance

No comments

Standard 14 Access

We would urge ESCB/CESR to ensure that this standard is consistent with Article 32 of the Investment services Directive. Currently, it seems there is a slight inconsistency between the ESCB/CESR standard (which permits denial of access on the basis of "risk control"), and the ISD text which states that access can be refused on "legitimate commercial grounds".

Standard 15 Efficiency

No comments

Standard 16 Communication Procedures etc

The Standard should also apply to all custodians.

Standard 17 Transparency

No comments.

Standard 18 Regulation, supervision and oversight

No comments.

Standard 19 Risk Controls in cross system links.

No comments.

Implementation of the standards

The HELEX GROUP believes that it is extremely crucial to ensure that the implementation of the ESCB/CESR standards promote the creation of a level playing field between all providers of the same or similar clearing, settlement and/or custody services.

Consequently, it should be guaranteed that the final standards will, first, be introduced in the same time by all regulators and that, second, will be interpreted in the same manner by the competent supervisory authorities. In order to achieve the second point), we would urge all regulators and the ECB to follow the final standards (once agreed) and not to permit alteration of the standards by the addition of supplementary criteria for reasons of indicated in paragraph 9.2 of the ESCB/CESR text. Such additional criteria could lead to important discrepancies. A single European capital market cannot be achieved without achieving a high level of regulatory consistency.