

I. INTRODUCTION

This response to the “CESR’s Market Abuse Additional Level 2 Implementing Measures, Consultation Paper” (April 2003) 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.

These are the following companies:

- **Athens Exchange S.A. (ATHEX)**, is the new corporate name of the company Athens Stock Exchange S.A., after its merger with Athens Derivatives Exchange S.A. ATHEX is responsible for the operation, monitoring and support of the following Greek regulated markets: equities markets, private bonds market, Hellenic Depository Receipts, EKAA Units and derivatives market. ATHEX is a full member of the Federation of European Securities’ Exchanges (FESE) and FIBV and an affiliated member of IOSCO and ECMI.
- **Central Securities Depository S.A. (“CSD S.A.”)** is the Greek central securities depository, which provides (i) clearing and settlement services for all ASE transactions, (ii) registration services for all dematerialized securities and (iii) the assignment of ISIN codes to all Greek securities. CSD S.A. is also a member of the European Central Securities Depositories Association (ECSDA), the Association of National Numbering Agencies (ANNA), the ISSA and an affiliate member of ECMI.
- **Athens Derivatives Exchange Clearing House S.A. (ADECH)**, is responsible for the clearing and settlement of derivatives transactions concluded in the relevant ATHEX derivatives market and it acts as a central counterparty for the said market. ADECH is a member of the European Association of Central Counterparty Clearing Houses (EACH).

II. RESPONSE TO CESR CONSULTATION PAPER (APRIL 2003):

A. “ACCEPTED MARKET PRACTICES”

Question (1): Is the proposed approach appropriate, focusing both on the characteristics of particular market practices and the procedures that Competent Authorities should follow?

Taking into account the proposed methodology approach as regards consideration of “accepted market practices” we would like to note the following:

1. It is common place that every market practice has its own particular characteristics. In assessing at a first level a market practice we consider that it is crucial to examine the *functional side* of the said practice. Determinant factors at this level affecting the formation of the characteristics of the practice concerned are for example the market structure, the type of trading intermediation facilities (order or quote driven markets, market makers’ markets, agency or principal markets etc), the type of traded financial instruments etc. *Formal side* of the market practice should also be taken into account when assessing its particular nature and substance. Determinant factors that have to be considered, at this point, are in particular the prevailing market ethics, trading customs and the economic purpose of the practice (hedging, arbitrage, speculation, investment, portfolio management etc) concerned. Both levels of assessment are of a pivotal necessity not only for the purpose of defining a particular market practice but also for distinguishing such practice from other practices.
2. Another stage of assessment, following those mentioned above, refers to the *impact* and *effects* of a particular market practice to the market concerned. Assessment of relevant actions, omissions, behavior and other material facts as well as of the degree to which they have an impact on the market is obviously a core part of the process in question.
3. We consider that CESR’s proposed advice on the said issues (par. 35, p. 11-12 of the Consultation Paper) covers a series of needed factors that has to be taken into account when assessing whether a practice can be regarded as an accepted market practice. However we believe that it would be important for clarity purposes to have a further categorization of the factors concerned, by virtue of functional, formal or other criteria, in terms of drafting the guidelines that are relevant to this point.

4. In commending to CESR's proposed procedure that has to be followed by the Competent Authorities when considering whether to accept particular market practices (par. 36, p. 12), we would like to state the following:

5. Consultative arrangements

5.1. It is apparent that the establishment of the proposed consultative arrangements constitute an essential part of the referred decision making process concerning the consideration of accepted market practices. It is also indisputable that such arrangements will further contribute to the fulfillment of the goals as clearly stated in par. 43 of the preamble of Directive 2003/6/EC.

5.2. In terms of the said arrangements Competent Authorities should take into account all data presented by market participants (market authorities, market association etc) when reaching a decision on accepted market practices in the context of particular cases. Moreover to the extent that they are otherwise assessing accepting practices, Competent Authorities should act in accordance with effective and transparent consultative arrangements at least as extensive as those implemented for the purpose of article 11 of the Directive.

5.3. Hence we strongly believe that consultation process should be carried out as a preliminary procedure that has to be followed by the Competent Authorities before reaching a relevant decision as to the acceptability of a particular market practice. For the above reasons we endorse CESR's advice on the said issues.

6. Publication

6.1. For the purpose of ensuring adequate transparency on the decision reached by the Competent Authorities on the acceptability of market practices, we believe that publication arrangements, as proposed by CESR, should be an essential element of the procedure in question.

6.2. Moreover it should be reasonable, for the same purpose, to be included in the publication procedure not only the Competent Authorities decisions reached on the market practices concerned but also the views, even on an anonymous basis, of the market participants being presented under the aforementioned consultation arrangements.

Question (2): Are the suggested principals, factors and procedures appropriate? Would you consider adding more factors such as the degree to which a practice has a significant effect on prices and in particular on reference prices?

1. Overriding principals (par. 34). We endorse CESR's initiative to define further principals – or clarify those already stated (p. 43 of the Directive's preamble) - for the protection of market integrity in light of its relevant considerations regarding accepted market practices issues. However we believe that further elaboration could be useful at this level particularly as regards market practices carried out on a cross border basis. Regard should be given in this case of the different trading ethics and customs being followed by the markets concerned.
2. Factors (par. 35). As it is stated above (par. 3 Q1) we consider that a categorization of non-exhaustive factors under predefined criteria might be useful in assessing at any needed stage the acceptability of a particular market practice. Factors concerning the degree to which a practice has a significant effect on prices/reference prices, as well as any other relevant factor referring to the impact of the practice on the market concerned could fall into the same category stipulating the practices effects.
3. Procedure (par. 36). See our comments above in par. 6 of Q1.

Question (3): The Directive focuses on accepted market practices “on the regulated market concerned”, but the prohibitions of the Directive also apply to OTC trading. Is it necessary to make any distinction between standards of acceptable market practices on regulated markets and OTC practices? Is it also necessary to make distinctions between standards of acceptable market practices in different kind of regulated markets or MTFs (e.g. order driven or price driven)?

1. It is apparent that although the definition of accepted market practices under par. 5 of article 1 of the Directive covers all financial markets by reference to which the mentioned practices are reasonably expected, accepted market practice defense (sub. (a) par. 2 article 1) is limited only to practices being carried out on regulated markets. However taking into account that the Directive applies to transaction or orders entered into or issued on any financial markets it should be unjustifiable to limit the scope of the above defense to accepted market practices carried out on regulated markets only. For this reason we are of the opinion that CESR should expressly recognize the said defending rights to persons carrying out practices in any financial market and not only in those that are regulated.
2. Given the differences between regulated markets and OTC markets, regarding structural characteristics, order matching and handling methods, types of financial

instruments etc, we acknowledge the need of distinguishing relevant standards when assessing the acceptability of a particular market practice. In terms of the above differences we strongly believe that adoption of “one size fits all” approach could lead to inappropriate results to the markets concerned. Relevant distinctions between standards of accepted or acceptable market practices should also be necessary in case of different kind of regulated markets or MTFs. Summing up, we are of the opinion that the said practices should be determined on a market-by-market basis.

Question (4): Do you agree that a practice need not be identifiable as already having explicitly accepted by a Competent Authority before it can be undertaken?

1. We agree with the stated approach. Following the Commission’s suggestions in its mandate, we underline that it is of great importance to recognize that *there is a broad range of existing market practices that are “reasonably expected” in financial markets and that should be accepted by Competent Authorities*. Furthermore it is crucial to note that one of the fundamental principals as laid down by the Directive (par. 43 of its preamble) is the need to encourage innovation in financial markets if they are to be dynamic and efficient. Hence any limitation to the freedoms of trading or of carrying out particular market practices on the above grounds should be regarded as infringement of the provisions concerned.
2. In terms of the above we endorse CESR’s approach to clarify at this level that there isn’t any presumption of unacceptability of any new or emerging market practices simply because they have not been previously described as acceptable by the Competent Authorities.

Question (5): CESR is committed to the future discussion of specific market practices as part of the Level 3 work necessary to increase the harmonization of accepted practices where appropriate. Please specify any examples of particular practices, which you consider could be classified as accepted market practices for the purpose of the Directive.

1. We believe that discussions of specific market practices on Level 3 stage of work would be very important for further elaboration of issues related to the fields that need to be harmonized.
2. For the needs of this working stage we submit the following cases as examples of practices that might be considered as accepted market practices:
 - 2.1. Short sales: Sales covered by borrowed shares often concluded for hedging purposes. Such sales are permitted under Greek Law by virtue of specific

regulatory conditions. In particular existing regulations prevent short sellers from engaging in transactions that cause declines in securities prices. Among other rules the said regulations refer to the so-called “up tick rule”. In addition, rules requiring the disclosure of uncovered sales to our Competent Authority are set for the purpose of prevention of manipulative actions.

2.2. Matched orders: Preagreed trades concluded on the condition of non-simultaneous entering of the buy and sell orders to the trading system. Under Greek regulations preagreed derivatives trades are permitted only on the condition of non-simultaneous matching (a specific time period order stay is provided) as well as on the disclosure conditions aiming at providing to the market participants an opportunity to respond to the relevant matching process.

2.3. Position limits: This practice exists to the Greek derivatives markets. Position limits imposed under the market’s regulation aiming at inhibiting the development of large exposures or the acquisition of dominant position to the markets concerned.

B. INSIDE INFORMATION FOR DERIVATIVES ON COMMODITIES MARKETS

Question (6): Has CESR correctly identified all the relevant and material market product and information factors relevant to the definition of inside information for commodity derivatives?

1. Taking into account the characteristics of the existing commodity derivatives markets and the relevant disclosure rules applicable to those markets, we believe that CESR’s relevant identifications are rather precise and comprehensive.
2. Information disclosure by the market operator is an essential prerequisite ensuring integrity of the markets concerned. Disclosures usually fall into the categories as referred to in par. 41 (p. 14) of the Consultation Paper, i.e. order, trade, open position and volume information. Such disclosures are rather essential for market users in order to reach informed investment decisions.
3. It seems also necessary, especially in case of emerged or non-liquid markets, to give users additional information on client positions on an anonymous basis. In those cases publication of the said positions enhances users confidence in the integrity of the relevant markets.

Question (7): Is there further information which is material, relevant and disclosable in relation to commodity derivatives markets?

Other information that should be immediately disclosed relate to:

1. Any changes to contract characteristics of the traded commodity derivatives,
2. Any increase/decrease to margin/collateral requirements or any alteration of other financial obligations of the market users that affect the price movements, volumes (open interest) of the market concerned.
3. Any temporary shortage of the underlying commodity particularly in case of physical delivery derivative products etc.

Question (8): Does the draft advice accurately reflect the information relating to the underlying commodities which commodity derivatives markets users expect to receive?

1. We believe that CESR's approach reflects the information relating to the underlying commodities which commodity derivatives markets users expect to receive.
2. However, due to the fact that such information may alter from time to time depending on the particular conditions affecting the underlying markets, we believe that CESR should develop a relevant discussion as part of Level 3 work concerning cases of accepted market practices in those markets (commodity derivatives in conjunction with underlying markets).

Question (9): Is there any additional guidance that CESR should consider giving in relation to the definition of "inside information" for commodity derivatives?

1. In case of securitized commodity derivatives we think that further information should be disclosed not only by the market operator but also by the intermediaries acting as market makers or dealers of the said derivatives products.
2. In those cases due to the familiarities of the above products to other transferable securities we believe that further information should be taken into account as disclosable in terms of ensuring market integrity and users confidence in those markets.
3. Given the current proposal amending the ISD and the inclusion of commodity derivatives within the legal "passporting" regime provided in relation to the referred investment services field, we strongly believe that CESR should examine any needed issue regarding inside information, disclose arrangements as well as relevant definitions of accepted market practices in those markets.

C. INSIDER'S LISTS

I. General comment on Insiders' Lists

1. We strongly support the preventative and surveillance purpose of the proposed measures and we basically agree with the advice given on Insiders' Lists.
However we would like to point out that during the implementing process the issuers' (and persons' acting on their behalf) cost / benefit balance should be taken into account.
2. In the said context it should also be considered whether the congregation and dissemination of too much information might not have the expected results, especially when the competent authorities lack the means to scrutinize it.
3. As far as the lists' drawing up is concerned, we believe that special consideration should be given to the protection of the individuals' personal data (especially according to Directive 95/46/EC of the European Parliament) as well as to the confidentiality of the content itself.

II. Specific Responses

Questions (10) and (13): Do you agree on the relevance of establishing a list for each matter or event when it becomes inside information? To what extent is drawing up a list of "permanent insiders" useful? Should Level 2 identify the jobs which typically provide access to inside information?:

The importance of such lists lies on the nature of inside information.

1. In case of inside information not yet disclosed that occurs on a *regular basis*, permanent lists pre-identify the persons deemed to have access to it. This permanent list is useful for both issuers and competent authorities: for the first because it minimizes costs and helps their internal control of information and for the latter because it concentrates the relevant data when conducting an investigation.
Moreover the knowledge that such lists exist is likely to prevent any abusive behaviour on behalf of the persons on the list.
With regard to the identification of special jobs that typically provide access to inside information, we consider that their inclusion at Level 2 would not be appropriate since such identification would not constitute a *measure of general*

scope (Council Decision 1999/468/EC, recital 7). Alternatively, we would recommend the inclusion of the said guidance at Level 3 considering that it can achieve the same function.

2. In case of information that becomes “inside” *on the occurrence* of a price sensitive event, a separate list of insiders for each matter or event is drawn up. These *ad hoc* lists are also very useful because they provide information linked to a specific action and - in conjunction with permanent lists - they consist a comprehensive pack of information to be used for preventative and investigating purposes.

Questions (11) and (12): Should the minimum content of the list be specified at Level 2? Should Level 2 give examples of those persons acting on behalf of or for the account of the issuer who should be required to draw up lists?

We are of the opinion that the description of the minimum content should be specified at Level 2 in order to give the necessary guidance. This description falls within the scope of Council Decision 1999/468/EC, since it constitutes a general provision applicable in abstract cases. The same does not however apply for the proposed examples, which, we believe, should be included in the Level 3 guidance.

Question (14): Would it be useful to further develop at Level 3 the “illustrative system” outlined?

Yes it would.

Question (15): Would it be useful to describe the meaning of expression “working for them” (article 6 para. 3) for example, to give clarification regarding people who are not employees of the issuer?

1. Further description of the persons working for the issuer or persons acting on their behalf or their account, depends on how wide one wants the scope of the measure to be: without any other clarification the meaning of the term is quite broad and covers all types of working relationships irrespectively of their potentiality to provide inside information.
2. This expression could be further clarified in order to describe persons that are not employees of the issuer (or person acting on their behalf or their account) but have access to inside information due to their involvement in the course of business of the issuer (or person acting on their behalf or their account).

Question (16): Do you agree with the approach adopted regarding the criteria which trigger the duty to update insiders' lists?

Yes, we agree with the said approach (updating on a continuous basis) because in this way the information provided by the lists is at any time reliable and easily monitored.

Question (17): Is the above description for “persons discharging managerial responsibilities within an issuer” sufficient for Level 2 legislation? Are there other persons that should be considered as belonging to the management of the issuer or should there be a specific restriction to persons who can assess the economic and financial situation of the company?

We believe that the above description is sufficient for Level 2 legislation because it is specific and generally applicable. As far as the expansion to other persons, we are of the opinion that the scope of the measure should be restricted to persons that, due to their position in the issuer, can assess and influence its financial situation, because only the actions of those persons may have a significant impact on the market and on the investors' reactions with regard to the issuer.

Question (18): Is the above description sufficient for Level 2 legislation? Are there other persons that should be considered as belonging to this category?

We believe that the above description is sufficient for Level 2 legislation because it is specific and generally applicable. We do not think that any other persons should be included in this category.

Question (19): Is the above description sufficient for Level 2 legislation? Should there be a threshold concerning the disclosure of obligation to the competent authority?

We believe that the above description is sufficient for Level 2 legislation. We do not think that article 6 para. 4 leaves any space for exempting transactions with regard to type or size, therefore, no threshold should be introduced.

Question (20): Is the above description sufficient for level 2 legislation? Are there any other details that should be covered on this level, for example the number of the relevant securities that the person holds after the transaction?

We believe that the above description is sufficient for Level 2 legislation because it is specific and generally applicable. Another element that could be contained in the notification is information regarding previous similar transactions (date of last transaction, price, amount).

Question (21): Do you agree with the proposed approach? (regarding the notification of suspicious transactions)

1. The Directive as well as CESR's proposal impose to all market participants the duty to be alerted and responsible for the detection of any transaction suspicious for market abuse.
2. We strongly support the imposition of the notification duty to the persons professionally arranging transactions, although the possibility of their civil liability even in case they act in good faith cannot be excluded.
3. We believe that CESR's view regarding the criteria for determining the notifiable transactions is the safest approach in the matter, however we think that the indications for notification should be "strong" and not "sufficient".

Question (22): Do you think that other possibilities should be taken into account?

We cannot propose any other possibilities at this time.

Question (23): Do you think that other elements should be mentioned?

We think that the said elements are sufficient.

Question (24): Do you think that the proposed advice is appropriate?

Yes, we think this advice is appropriate.