



***Association of Members of the Athens
Exchange***

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**REPLY TO EUROPEAN COMMISSION
Internal Market and Services DG's
CALL FOR EVIDENCE**

ATHENS, 8 APRIL 2009

**SUBJECT: REVIEW OF DIRECTIVE 1997/9/EC ON INVESTOR-
COMPENSATION SCHEMES**

This reply is issued on behalf of the Association of Athens Stock Exchange Members (SMEXA). Following European Commission's request for the views of all interested parties regarding a possible review of directive 1997/9/EC on Investor Compensation Schemes, SMEXA would like to respond, by virtue of this letter.

Answers to the specific Questions

1) Should the operation of multilateral trading facilities be excluded from the scope of the ICSD?

To the extent that an MTF is only a trading platform bringing together multiple third-party interests in accordance with certain rules and is assimilated to a regulated market, it may be considered appropriate to exclude its operation from the scope of the ICSD. On the other hand though, there are many cases where the MTF itself or the MTF operator reportedly acts as a counterparty in order to conclude transactions on its platform. In such cases, the operation of an MTF should be included in the scope of the ICSD, as the risk undertaken by the investment firm-MTF operator, not only may affect the overall operation of the investment firm, but it may also result in compensation claims, in case of default.

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

We agree that all investment firms should be included in the scope of the ICSD, even in the cases clients' assets are only *de facto* held by the investment firm. Their participation though should be proportional to the risks involved.

3) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although they provide their services only to non-retail clients?

Consistently to our previous answers, we believe that investments firms only providing services to non-retail clients should participate in a scheme, proportionally to the risks involved.

4a) Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

Yes. There should be provisions that enable investors to claim compensation in the case of default of the third party by the scheme covering that party. Actually, in Greece there are provisions in the deposit guarantee scheme Law fully covering an investment firm's customers' accounts held in a bank.

4b) Should investors (such as UCITS or a UCITS unit holder) be able to claim compensation for loss of assets under the ICSD in those cases where the UCITS depositary or the institution which has been mandated to safe keep the assets, fail to perform its duty?

Yes. There should be provisions that enable investors to claim compensation for losses provoked by the third party, by the scheme covering that party.

5) Should loss events include also any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules?

In our opinion, the ICSD should not cover such losses. The definition of such losses is vague and involves a degree of potentiality.

6) Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

No. The amount covered by the ICSD is sufficient for compensating investors. Investment firms hold investors' assets in safe-keeping by depositories or depositaries and MIFID explicitly prevents the use of clients' assets on own account, which is not the case for credit institutions concerning deposits which can be used indiscreetly on own account.

7) The ICSD does not harmonize the funding systems of the schemes. Should the ICSD provide for some general principles concerning the funding of the schemes?

Yes. The ICSD should provide for some general principles concerning the funding of the schemes in order to harmonize the different investor compensation schemes across the EU.

8a) Does the legislation of the Member State you know the best provide mechanisms aimed at limiting compensation schemes' obligations over time? If

yes, how many clients saw their compensation unpaid as a result of such mechanisms?

N/A

8b) Should this kind of mechanisms be prohibited?

N/A

9a) Should the process of recognizing the eligibility of the claim be regulated for the purposes of the ICSD?

The ICSD should only establish a strict deadline for reimbursement. The "eligibility and the amount of the claim" as well as the deadlines establishing them should be governed by the national insolvency laws.

9b) Should, at least, a mechanism be introduced providing for provisional partial compensation based on a summary assessment of clients' positions?

No. Such a provision involves the danger of partially reimbursing claims which might prove not eligible for compensation.

9c) Irrespective of the harmonisation of their funding systems, should compensation schemes ensure that they have minimum reserve funds in order to comply rapidly with any immediate needs?

Yes.

10) Do you think special attention should be given to money market funds?

Yes. Money market funds should be covered by some form of guarantee.

11) Based on the concrete application of the ICSD do you see further issues other than the ones mentioned in the present document that might be of relevance to this analysis?

N/A

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PRESIDENT

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SECRETARY GENERAL