London
STOCK EXCHANGE

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Dear Fabrice

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

Thank you for the opportunity to comment on the CESR's advice on possible implementing measures of the Markets in Financial Instruments Directive ("MiFID"). This letter and its attachment constitute the Exchange's response.

While we welcome the extension that CESR has given respondents to address certain areas of the paper we have submitted our full response here. However we have separated our comments into separate appendices and our comments on Best Execution and Market Transparency can be found in Appendix 2, while Appendix 1 addresses the rest of the paper.

We have restricted our comments in both appendices to those areas where the London Stock Exchange has relevant experience and expertise or where the issues involved are material to our activities. We will defer to the view of other market participants in matters that are more relevant to investors or investment firms. In addition to the detailed responses attached, the Exchange would like to make some more general comments here.

Flexibility, Lamfalussy and timetable

We urge CESR to have regard to the very demanding timetable that firms, market operators and regulators are up against before attempting to regulate areas that do not require further detail and in fact should not be the focus of level 2 measures.

Regulated markets and MTFs have developed, and will continue to develop, a broad range of efficient and transparent market models, underpinned by sophisticated rule books. These models have been developed to meet the needs of investors, intermediaries and issuers. They offer essential variety to optimise trading, taking into account factors such as liquidity and the extent to which a trading model contributes to price formation. However, in its treatment of pre trade transparency for regulated markets and MTFs, the level 2 text appears to define and restrict market structures to a closed list of three.

Given the extent of the existing rules and the constraints of the timetable, not to mention the principle based approach of the Lamfalussy process, we would urge CESR to restrict itself to providing a requirement of appropriate, consistent transparency, allowing regulated markets and MTFs, subject to the oversight of their competent authorities, to continue to develop market models that meet the needs of market participants.

We have included proposed wording in appendix 2 which we believe meets the requirements of the level 1 text and promotes the continued development of efficient and transparent trading in shares.

Investor choice and competition

We believe that one of the fundamental objectives of the directive is to promote effective competition between intermediaries and execution venues to meet the needs of investors by providing the best possible services at the lowest possible cost. An essential pre-requisite for this will be the ability of investors to be able to assess the quality of the service that they receive and make meaningful decisions about how their business is executed. This requires reliable post trade data from all trading venues that can be viewed without incurring prohibitive cost. To this end we support CESR's proposal that post trade information be consolidatable and reliable. We believe that CESR can only ensure this reliability by requiring real time market monitoring of all post trade reports by the trading or reporting venue.

Transitional arrangements

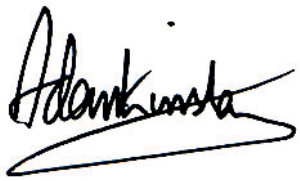
We would like to add our support to the almost universally held view that full implementation of the directive by April 2006 will be a very demanding target and that some way ought to be found to introduce transitional implementing measures. We understand that CESR is limited in its ability to allow transitional arrangements for member states but that there might be some leeway for regulated entities. We would urge CESR to explore these options fully, particularly with respect to those areas that will require significant system development by firms and regulated markets.

Transaction reporting

Another area where there seemed to be a broad agreement at the recent open hearing, from across a wide variety of participants, was to see some uniformity introduced for transaction reporting. There is an opportunity for CESR to significantly reduce the costs and reporting burdens imposed upon investment firms by harmonising the required content of transaction reports. This would also facilitate development of one-stop-shop reporting mechanisms across the EU to deal with regulatory, settlement and post trade reporting requirements.

I hope that you find these comments and the attached appendices useful in your deliberations and look forward to continuing to work with you to ensure a successful implementation of MiFID.

Yours sincerely



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Appendix 1

CESR's Advice on Possible Implementing Measures of the Markets in Financial Instruments Directive

Compliance and personal transactions (Art 13(2)) – BOX 1 page 14

Question 1.1. - Must the compliance function in every investment firm comply with the requirements for independence set out in paragraph 2(d), or should this degree of independence only be required where this is appropriate and proportionate in view of the complexity *of its business and other relevant factors, including the nature and scale of its business?*

No. Requiring full formal independence of the compliance function would prove difficult to implement and prohibitively expensive to all but the largest of firms. CESR should make allowance for other measures that will ensure the same outcome e.g. direct regulation of compliance officers in the UK.

Firms should not be restricted from allowing general profit sharing by compliance staff based on a firm's overall performance. Effective compliance performance will be a factor in overall business performance and firms must not be restricted from adequately incentivising compliance staff if they are to attract and retain quality staff.

Question 1.2. - May deferred implementation of requirements for independence *be based on the nature and scale of the business of the investment firm?*

Yes. See previous answer.

Record Keeping obligation (Article 13(6)) – BOX 4 page 27

Question 4.1. - Should there be a separate obligation for the investment firm to be able to demonstrate that it has not acted in breach of its obligations under the Directive?

No. This is a clear reversal of burden of proof and would place an unacceptable and costly, not to mention impossible, compliance burden on firms.

Client order handling (Article 22(1)) – BOX 11 page 81

Q.1: *Do you agree with the definition of prompt, fair and expeditious execution of an order from a client? Do you think that it is exhaustive? If not, can you suggest any elements to complete this concept?*

There does not appear to be a definition provided, rather some observations on scope.

Q.2: *Do you think that the details of the orders included under paragraph 2 of the draft technical advice should apply also to professional clients?*

Yes, it is vital that customers are able to give specific instructions for the handling of their orders, regardless of their retail or professional nature and firms must keep records to ensure compliance with customers' wishes.

Q.3: *Which arrangements should be in place to ensure the sequential execution of client*s' *orders?*

Firms should have procedures to ensure sequential execution of client orders where appropriate.

Q.4: *Do you agree with the reference in paragraph 7 of the draft technical advice to prevailing market conditions that make it impossible to carry out orders promptly and sequentially?*

Yes. There may be other circumstances where it may well be in a client's interest to have its order executed non-sequentially. For example, a better execution may be achieved in a periodic auction.

Q.5: *Do you think that the possibility that the aggregation of client orders could work to the disadvantage of the client is in accordance with the obligation for the investment firm to act in the best interest of its clients?*

Firms should be free to aggregate client orders when to do so would not disadvantage the client. There should be no presumption that aggregation is in itself harmful to a client's interests. The possibility that aggregation could work to a client's disadvantage does not mean firms have not acted in a client's best interest.

Q.6: *Do you think that the advice should include the conditions with which the intended basis of allocation of executed client orders in case of aggregation should comply or should this be left to the decision of each investment firm?*

This should be left to the firms.

Q.7: *Do you consider that CESR should allow the aggregation of client and own account orders? Do you think that other elements (i.e. in respect of the arrangements in order to avoid a detrimental allocation of trades to clients) should be included?*

There is a clearer conflict if firms aggregate client orders with their own. Firms should be expected to have procedures in place to ensure that the client is not disadvantaged.

Q.8: *Do you think that paragraphs 15 and 16 of the draft technical advice should only apply to retail clients?*

No. There is no reason why professional clients should not to be informed where a firm has departed from its express instructions or for it not to receive a breakdown of how its order has been executed. Such information will be essential for it to gauge the quality of the execution that it has received.

Section III – Markets
Requirements for instrument to be admitted to trading – Article 40 BOX 14 page 97

Q14.1: Do consultees agree on the requirements for admission to trading? Should more (qualitative and/or quantitative) criteria for admission to regulated markets be specified in the level 2 measures? If yes, which?

We agree with CESR's approach that any requirements should focus on supporting optimum trading on regulated markets. We do not believe that any further requirements are necessary, desirable or are even permissible under the mandate and the level 1 text. Regulated markets should be able to compete for new admissions and trading on the basis of market design and this competition will naturally lead to effective rules. Other FSAP directives ensure that issuers meet high standards of initial and ongoing disclosure and market operators should be free to develop differentiated admission requirements that meet any additional needs of investors and issuers.

Q14.2: Do consultees agree on the role proposed for RMs in order to ensure that the issuers fulfil their disclosure requirements?

The level 2 text should be more explicit that primary responsibility for monitoring and enforcing compliance with disclosure requirements lies with the competent authority. Regulated markets have no obligation beyond ensuring there are arrangements in place with the competent authority to be informed of any breach. While regulated markets may choose to suspend securities, responsibility for enforcement of obligations lies with the competent authorities.

We also reject the requirement that a regulated market must satisfy itself that the conditions for any exemption have been met. The obligation should be restricted to confirming that the competent authority has ruled that an exemption applies.

Transaction Reporting (Article 25) – BOX 15 page 104

Q15.1: Should competent authorities be able to waive the requirement for investment firms to report transactions in electronic format? Should such an exemption be limited to exceptional cases, and what cases would those be in your view?

Competent authorities should only be able to waive the requirement for investment firms to report transactions in electronic format if they are confident that they can still meet their monitoring and enforcement responsibilities in a timely manner and if they believe that they can meet their information sharing obligations.

Q15.2: In respect of bond markets and commodity derivatives markets, new systems for reporting financial transactions will probably have to be put in place in many Member States, in order for investment firms to be able to meet the requirements of the Directive and Level 2 advice. (Note that Article 20(1)(b)) of ISD1 already requires investment firms to report all the transactions covering bonds and other forms of securitised debt to competent authorities, though Member States have the right to provide that this obligation only applies to aggregated transactions in these instruments.) To what extent should the implementing measures allow market participants more time to implement these proposals ("transitional regime")? What could be legitimate reasons for such a possibility?

See our general covering comments but yes, CESR should attempt to allow transitional arrangements wherever there are any significant systems development issues for market participants. The difficulty of implementing the directive without some transitional provisions is in itself justification for their inclusion. There should, however, be some consistency in these arrangements to prevent the implementation of systems being delayed unnecessarily.

Q15.3: To what extent should CESR investigate the possibility for future convergence between national reporting systems? What are the advantages and disadvantages of harmonising at EU level the conditions (including format and standards) with which all the reporting methods and arrangements have to comply in order to be approved, instead of, as proposed by CESR, harmonising the conditions at a national level? What impact might harmonisation have on existing national reporting channels, national monitoring systems and on the industry?

CESR should fully investigate the possibility for future convergence between national reporting systems. The advantages of harmonised reporting systems would be huge in the medium term - in terms of the costs that would be saved by firms and in allowing effective information sharing between regulators. However, the short term costs could be prohibitively expensive. Accordingly, CESR should concentrate at this stage on harmonising the content of transaction reports as this would go a long way to producing the desired benefits without mandating expensive system development costs.

Q15.4: Do you agree with the set of the general minimum conditions suggested? If you do not agree, what other general conditions would be more appropriate in your view? In particular, taking into consideration the responsibilities of investment firms on the one hand and third parties and other reporting channels, on the other, do you think that CESR should include the requirement of a standard-level agreement between an investment firm and a reporting channel in the list of general minimum conditions, or would this be better addressed at Level 3? What is your view on the border line as to the responsibilities for reporting if done by a third party acting on behalf of an investment firm or by a reporting channel?

Responsibility for reporting lies with an investment firm unless that firm is relying on a regulated market, MTF or trade matching and reporting system. The systems it uses to report must be acceptable to the competent authority as meeting the requirements set out in paragraph 1, no matter what type of entity it is.

Firms should be free to negotiate their own contracts with reporting systems as long as they meet the requirements of the directive.

Q15.5: What other issues, if any, should CESR take into account when responding to the Mandate concerning the "methods and arrangements for reporting financial transactions"?

We would reiterate the need to simplify and harmonise regimes as fully as possible.

Draft Level 2 Advice – Accessing liquidity in order to determine the most relevant market in terms of liquidity – BOX 16 page 108

Q16.1: Do you agree with the approach to use proxies as suggested above? If you do not agree, what other approach would be more appropriate in your view?

Yes. Any more scientific approach to assessing liquidity is unlikely to produce significantly different results and is likely to prove extremely difficult to perform.

Q16.2: Do you agree with the suggested proxies? If you do not agree, what other proxies would be more appropriate in your view?

Yes. No proxy will be perfect but those proposed look to be workable and practical.

Q16.3: Do you agree with the suggested revision procedures? If you do not agree, what other revision procedures would be more appropriate in your view? In particular, do you agree that the launch of the review procedure should be at the discretion of competent authorities? If not, what other factors should trigger the launch of the review procedure? Do you agree that the time period to be taken into account when applying the criteria "turnover" and/or "volume" and the definitions of such criteria can vary according to the financial instrument under consideration? Do you agree, therefore, that the time-period cannot be determined in a Level 2 legal text and should be defined under Level 3 arrangements for cooperation between competent authorities? If not, please provide suggestions regarding the time period that should be taken into account.

The review procedure appears to be reasonable but it should not be at the initiative of individual competent authorities as there may be some dispute between them. CESR should mandate a single timetable for review. Annually following implementation should be sufficient.

Q16.4: There are specific cases, such as a simultaneous IPO in more than one Member State, where the proxy approach does not work. Should such cases be addressed at Level 2, and if so, in more general terms leaving the details to Level 3, or in a more detailed way already at Level 2? Are there other cases similar to the one mentioned?

In most cases the issue will still only be approved by a single competent authority. The market in that jurisdiction should be presumed to be the market of first admission until the first review takes place. This should also be the case for third country issuers.

Q16.5: What other issues, if any, should CESR take into account when responding to the Mandate concerning the "criteria for assessing liquidity in order to define the most relevant market in terms of liquidity for financial instruments"?

We have not identified any further issues.

Draft Level 2 Advice – Minimum content and common standard/format of transaction reports – BOX 17 page 113

Q17.1: Do you agree with the approach to standardise/harmonise the list in Annex A to this draft advice only at a national level in order to be able to keep reporting systems that are already in place? If you do not agree, what approach do you think would be more appropriate?

As stated above, we believe that it is possible to harmonise content of transaction reports without significant costs - such a move would actually save firms and their customers money and would facilitate more effective information sharing. Accordingly CESR should mandate all fields that they believe necessary.

Q17.2: What are advantages/disadvantages of moving towards harmonisation at EU level as regards the standards or format of the list in Annex A to this draft advice? To what extent would harmonisation at EU level of the standards or format of the list in Annex A to this draft advice impact the existing national data collection mechanisms and national transaction databases? Do you see merits in having an EU harmonised regime for the content and format of transaction reports, taking into consideration whether future and immediate long-term benefits could compensate the initial costs of harmonising the transaction reports?

See previous answers.

Q17.3: Do you agree with the proposed fields in Annex A and B to this draft advice? If you do not agree, what other fields would be more appropriate in your view?

Yes, although all fields should either be mandatory for all or removed.

Q17.4: How would you define the field "agent/propriety"?

Dealing capacity.

Q17.5: What are the advantages/disadvantages of requiring the field "client identification code" in transaction reports, bearing in mind the objectives of transaction reporting? What are your views on making the client/customer identification field mandatory in transaction reports? What are your views on the idea to promote a pan-European code for client/customer identification? Do you see any legal impediment to the introduction of such a code in your Member State?

Client identifier codes in transaction reports are very effective in the detection of market abuse and financial crime but this usefulness will be severely limited if they are only required in certain member states. Furthermore, requiring them in only certain member states will result in an unfair burden on firms in those member states. This problem is accentuated when you consider that regulated markets now have pan-European membership and different members of one exchange will be reporting to different competent authorities and so client identifiers will be available for some trades done on that regulated market, but not for others. This would create a clear incentive for those intending to commit market abuse to select brokers from those jurisdictions which do not require client identification.

CESR must try to find a uniform solution to this problem as we believe that the costs and market distortions involved in optional application would be the worst possible outcome. CESR are obviously aware that one of the key weaknesses of the previous directive was the optionality of many of its provisions. For that reason we urge CESR to attempt to overcome any legal obstacles in individual member states - and we are convinced that these are surmountable - and achieve full harmonisation.

Q17.6: What other issues, if any, should CESR take into account when responding to the Mandate concerning the "minimum content and the common standard or format of the reports to facilitate its exchange between competent authorities"? Will this approach serve the objectives pursued?

See previous answers. Transaction reporting is a significant cost borne by firms and CESR should look to minimise these costs, particularly where firms are accessing markets across the EU. Accordingly CESR must work towards allowing regulated markets and other reporting services to act as one-stop-shop reporting venues across the EU wherever possible.

Obligation to cooperate (Article 56(2)) – BOX 18 page 123

We reject the principle that is represented by Article 56. This is a clear reversal of the concept of remote membership as enshrined elsewhere in this directive and in the previous Investment Services Directive, whereby a remote member firm is viewed as being hosted by the home state of the regulated market when it accesses a regulated market in another member state. The article is also a blunt rejection of the principle of mutual recognition.

Questions Q 18.1: To what extent to you agree with the additional situations outlined in paragraph 11?

No. a) and b) are clearly not appropriate. The admission to trading of securities that are registered in another member state cannot be viewed as having arrangements in that state. Under such an interpretation the London Stock Exchange should be viewed as having arrangements in South Korea, Kazakhstan, Chile and Malawi, along with many, many other countries. c) appears to add nothing more than the original arrangements requirement.

Q 18.2: In determining whether a regulated market is of substantial importance, do you consider the factors listed in paragraph 22 and 23 appropriate and are there any other factors which you believe CESR/competent authorities should take into account?

We do not believe that any measures above and beyond the standard information sharing arrangements are necessary. The principle of mutual recognition should apply and competent authorities should have confidence that their counterparts in other member states are competent to supervise regulated markets situated there.

Q 18.3: To what extent should the overall size/nature of the economy of the host Member State *and other economic factors such as sectoral figures in relation to the issue's activity, employment figures be taken into account as a factor to include in paragraph 23?*

None. If these arrangements must be introduced then trading volume should be the only factor taken into account. To move on to more general economic factors would be a step towards politics that is well beyond the remit of CESR, and certainly irrelevant to the current discussion.

Appendix 2

CESR's Advice on Possible Implementing Measures of the Markets in Financial Instruments Directive

Best Execution and Market Transparency

Best execution (Article 21) – page 72

While we agree generally with the approach to Best Execution that CESR has adopted, we believe that the best approach to ensuring better execution is to provide customers, whether they are professional or retail, with enough information to exercise an informed choice about who they chose to execute their business with, and how that business is executed. Customers need to be given meaningful information from firms about their execution policies to enable them to choose between them or to request that business is done in a certain way. Customers also need to have confidence in the dissemination of trading data once it has been transacted. Only through analysis of post trade reports that are reliable, accurate and complete can investors monitor transaction quality.

Page 73 Questions for consultation

Q1: Are the criteria described above relevant in determining the relative importance of the factors in Article *21(1)? How do you think the advice should determine the relative importance of the factors included under Article 21(1)?*

As the explanatory text makes clear, CESR is not called upon to determine the relative importance of the factors, the mandate only requires it to determine the criteria that should be applied by firms.

The criteria identified are relevant and are precisely those that should be considered by firms when assessing the relevant importance.

Q2: Are there other criteria that firms might wish to consider in determining the relative importance of the factors*? Do you think that the explanatory text clearly explains the meaning of all the different factors in respect of the different financial instruments?*

Firms must also consider market impact when considering execution venue.

Q3: How might appropriate criteria for determining the relative importance of the factors in Article 21(1) differ *depending on the services, clients, instruments and markets in question? Please provide specific examples.*

The criteria do not change - consideration of the services, clients, instruments and markets are the fundamental criteria.

Page 75 Questions for consultation

Q.9: What data is available to carry out these reviews? If no data is available, are market solutions likely to provide it?

The London Stock Exchange provides extensive data and analytical tools to firms that wish to measure execution quality on its markets. There are also a large number of commercial providers that provide tools to enable firms to perform this analysis. It should be noted that this type of analysis is only possible if comprehensive post trade data is readily available and CESR should take this into account when considering arrangements for dissemination of post trade information.

Page 76 Questions for consultation

Q.1: What kinds of monitoring arrangements do firms use now?

In the UK firms are able to effectively monitor execution performance using post trade data that is published by the regulated markets. This data is consolidated by the vendors and is readily available to all market participants. In addition the London Stock Exchange and other entities provide execution monitoring tools on a commercial basis.

Page 77 Questions for consultation

Q.4: Do venues make firms aware of material changes in their business?

Yes. In the UK regulated markets are required to consult with market participants ahead of all rule changes and in practice consult extensively over all system changes. Such are the interdependencies between the markets, the software houses and the firms that even the most minor adjustment to a trading system would be impossible without the full participation of all users.

Q.5: Please provide *examples of instances in which firms have changed the venues that they use.*

A clear example is the switch of liquidity in the Bund future from LIFFE to Eurex where traders switched exchanges on the basis of a superior trading service.

Page 78 Questions for consultation

Q.1: At present, how many venues do firms access directly? Indirectly?

This will depend entirely on the size, sophistication and business model of the firm. The larger investment banks will access any and all trading venues in order that they can provide their customer with the fullest range of execution services. However, this will come at a cost. A discount internet broker may only connect to one venue and will provide a much less sophisticated service at a fraction of the costs. Provided that the customer is aware, they can make an informed choice and select the type and level of service that they require.

Q.2: Should an investment firm be required to provide clients and potential clients with information on the percentage of a firm's orders that have been directed to each venue?

Yes. Only then will clients be able to fully assess the different execution policies of different firms and determine what factors have influenced performance.

Q.3: For example, should an investment firm be required to disclose to clients and potential clients what percentage of its client orders were executed in the trading venues to which the firm directed most of its client orders (to cover, at least 75% of the transactions executed)?

Firms should disclose the percentage of orders transacted in all venues that are used.

Q.4: How frequently should investment firms make this information available to clients? On a quarterly basis, for example?

Quarterly disclosure would be more than adequate. The calculation would not be difficult and could perhaps be displayed on a firm's website on an ongoing basis, with periodic written notification.

Q.5: Should firms be required to update the information to reflect recent usage? How frequently?

Yes. Quarterly should be sufficient to give a relevant but statistically significant picture of performance.

Q.6: Are there any other categories of information that a client or potential client needs to be adequately informed about the execution services provided by firms?

Clients should also be informed about the arrangements a firm or venue has put in place to comply with post trade transparency. Customers, both retail and wholesale, often have a clear preference as to when and where business is printed and in an increasingly fragmented market for post trade reporting they must be given enough information to allow them to choose counterparties and venues that can satisfy that preference.

Q.7: Should the information provided by portfolio managers and firms that receive and transmit orders be different from that provided by brokers? What are the key differences?

Yes. Portfolio managers must provide information on broker selection and relative performance.

Q.8: Have all of the key conflicts of interest been identified?

It is important that conflicts of interest are disclosed but CESR should not limit this to strictly financial incentives. Issues such as market share statistics can have a far more significant influence of brokers' choice of execution venue.

Q.9: When should firms be required to provide required disclosure to clients and potential clients?

The information should be available before any investment service is offered if a client requests it. However, if services are offered at a potential client's initiative it may not be practical to provide the disclosures in advance, in which case they must be provided as soon after as possible.

Q.10: Is there any reason to impose different timing requirements for disclosure under Article 21 than are required in the Level 2 measures under Article 19(3)?

For the reasons stated above, the approach described for Article 19 (3) appears just as appropriate in this case.

Pre-trade Transparency requirements for Regulated Markets (Article 44) and MTFs (Article 29) – BOX 12 page 87

As a general point we would like to remind CESR that pre trade transparency is actively sought out by market participants when it is likely to be the most effective way of getting business done - CESR should focus its attention on ensuring post trade transparency, which some participants may wish to avoid. Fully transparent order books have continuously won business from less transparent trading systems when they have been allowed to compete freely and have not been protected by concentration rules. Accordingly regulated markets should be encouraged to develop their trading systems subject to the discipline of free and open competition, only then will optimal pre trade transparency levels be found.

Q12.1. Do consultees agree with the specific proposals as presented or would they prefer to see more general proposals?

The proposals are far too specific to a limited number of current trading models and fail to take into account the likelihood of market developments to incorporate novel and creative trading methodologies. CESR should allow regulated markets and MTFs the flexibility to develop new trading models. If regulated markets develop trading models that are unattractive to a wide variety of participants then they will soon lose relevance and will be replaced by regulated markets or MTFs that meet markets participants needs.

We would suggest replacing paragraphs 1 to 11 with alternative wording as follows:

> "1. Regulated markets or MTFs that operate a price discovery mechanism shall have rules that govern the display, interaction and obligations attached to orders and quotes submitted by members and participants.
>
> 2. Those rules should provide appropriate pre trade transparency to facilitate orderly and efficient trading in shares that have been admitted to trading and may take into account factors such as liquidity, market conditions, retail involvement and interdependencies with other trading venues.
>
> 3. All order and quote information that is disseminated according to those rules shall be made available on a non-discriminatory, reasonable commercial basis. This shall not preclude regulated markets or MTFs creating differentiated data products and pricing accordingly."

Q12.2. Is the content of the pre-trade transparency information appropriate?

No. See previous answer.

Q12.3. Do consultees agree on the proposal regarding the depth of trading interest and access to pre-trade information?

While the London Stock Exchange does not have any practical difficulties with the proposals we understand that some regulated markets would not be able to provide full order book depth. However, the question is largely academic as, no matter what depth the regulated markets make available, the data vendors through which most market participants view that data generally only carry a limited number of price levels, typically five or ten. This is ultimately decided by market demand and should not be dictated by regulation.

We agree that access should be provided on a non-discriminatory basis but this must not preclude markets and MTFs from created differentiated data products with appropriately differentiated pricing.

Q12.4. Do consultees agree on the proposed exemptions to pre-trade transparency? Are there other market models which should be exempted?

See answer to 12.1. CESR should allow markets to continue to develop a range of market models that provide appropriate transparency for the business being done. By preventing regulated markets and MTF from offering alternative execution opportunities CESR will not promote additional transparency but will force firms to seek out less efficient and even less transparent order execution alternatives.

Q12.5. Do consultees support the waiver for "crossing systems" as defined in paragraph 13? Could pre-trade transparency for crossing systems have a negative impact on liquidity or create the potential for abusive behaviour?

See answer to 12.1.

Q12.6. Do consultees support the same minimum size of trade for the waiver to transparency pre-trade and delayed publication post-trade? Are there circumstances in which the two should be different?

No. There is no basis for considering the pre and post trade thresholds as being equivalent and CESR must look at both separately.

Q12.7: Do consultees have a preference for one of the options proposed for defining the block size, are there other methods which should be evaluated?

For post trade, of the three alternatives only the first is likely to be practical. CESR need to do some detailed analysis to ensure that a correct balance is struck between transparency and liquidity.

Post-Trade Transparency requirements for Regulated Markets (Article 45) and MTFs (Article 30) and for Investment Firms (Article 28) – BOX 13 PAGE 92

Post trade transparency is the area that requires greatest CESR attention. For all the often voiced concerns about pre-trade transparency, we believe that in this area intermediaries will actively seek transparency in order to attract more business. However, there are clear information advantages to be gained if participants are able to hide or distort post trade information.

We have spoken extensively with buy side firms and they have voiced significant concern about the likely implications of fragmentation of post trade data. These concerns include the likelihood of volume manipulation to inflate market share figures and their continued ability to perform transaction costs analysis. At present, the comprehensive picture the vendors are able to provide in London is the only means that institutional (and private) investors have for measuring transaction quality. This allows them to exercise choice and apply the competitive discipline to the intermediaries that is essential if efficient markets are to be preserved and investors' interests protected. This will be impossible if post trade data is not complete or can't be relied upon for its accuracy because of exclusive deals between firms and particular vendors.

Accordingly we propose an arrangement similar to the one that has been put in place in the UK for the dissemination of issuer information whereby the primary collectors of trading data, be they exchanges, MTFs and, with appropriate conflict management procedures in place, investment firms or data vendors, are accredited by competent authorities and subject to a set of regulatory standards that ensure that they are capable of securely and reliably collecting trading information for wider dissemination and collation by the market.

The standards should cover areas such as how trades are 'counted' to ensure consistent volume information, block trade regime compliance and real time market monitoring. We also believe that there should be some certification of systems reliability and that adequate real time market monitoring arrangements are in place. We also fully support CESR's assertion that post trade reports must be consolidatable. These standards can be developed by CESR at level 3 but the wording of the level 2 regulations should be strengthened to provide a basis for this as follows:

> "27. The arrangements set up by RMs, MTFs and investment firms shall be approved by the competent authority as meeting the necessary standards and must ensure that trading information published is reliable. These arrangements shall be capable of monitoring the correctness of the information in real time, alerting of obvious mistakes and correcting wrong data when necessary."

Q13.1: Do consultees support the method of post-trade transparency (trade by trade information), should some other method be chosen (which)?

Yes, only by providing market participants with trade by trade information will they be able to accurately gauge the current market price for a security at a particular time and judge execution quality.

Q13.2: Do consultees support the inclusion of "aggregated information" in paragraph 22 or should it be left for market forces to provide on the basis of the information disclosed under paragraph 21. If it is included what should the content be?

No, we do not support the mandatory inclusion of aggregated information. It should be left to market forces. By forcing regulated markets to provide additional information they are restricting the ability of commercial data vendors to design and sell value added products and is likely to reduce investor choice.

Q13.3: Do consultees support the two week period for which the post-trade information should be available?

Yes. Two weeks seems sensible.

Q13.4: Should some minor trades be excluded from publication (and if so, what should be the determining factor)?

No. All trades where there is a genuine transfer of beneficial ownership should be published.

Q13.5: Do consultees agree on the method of defining the time limit in paragraph 24 and is the one minute limit capable of meeting the needs of occasional off-market trades?

If firms are able to report electronically then they should be able to do so within a minute. However, if the trade is part of a more complex transaction, such as a portfolio or program trade, firms should be given some leeway to allow for the entry of multiple reports.

Q13.6: Do consultees support the view that only intermediaries who have created a risk position to facilitate the trade of a third party should benefit from deferred publication or should all trades which are above the block size be eligible for deferred publication?

Yes. Only where an intermediary has taken on significant risk should it be given the protection of delayed publication. Post trade information is too important for the efficient functioning of the markets to allow delay in any case where there is not a compelling reason for doing so, such as the encouragement of significant liquidity provision.

Q13.7: Should the identifier of a security be harmonised and if so to what extent? What should be the applicable standard (ISIN code, other)?

No. Compulsory standardisation will restrict the market's ability to generate appropriate standards. ISIN, in particular, has been shown to be unsuitable for the range of uses that firms, regulated markets and data vendors require of security identifiers. New enhanced codes which contain market as well as security information may well be preferable.

Q13.8: Should more information be available on stock lending? If so, which should be the content? Are there other similar types of activities which should be covered?

No. The stock loan itself provides minimal useful information. If the loaned stock is then used to transact in the market, then that trading activity will be published.

Q13.9: Should CESR initiate work, in collaboration with the industry and data publishers, to determine how best to ensure that post-trade transparency data be disseminated on a pan-European basis?

Yes, we believe that this is the most important part of CESR's work and will be vital to ensure that they already high standards of integrity in European markets are enhanced, rather than damaged.