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Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments

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Dear Sirs,

The German Savings Banks Association welcomes the opportunity to comment on the second CESR Consultation Paper on aspects of the definition of investment advice, best execution and market transparency in the context of possible implementing measures of the Directive 2004/39/EC on Markets in Financial Instruments. By April 6, 2005 you have received the comments of the ZENTRALER KREDITAUSSCHUSS (ZKA) outlining in two separate documents the joint position of the German credit industry to this effect. As a member of the ZKA the German Savings Banks Association fully endorses the comments expressed in both ZKA position papers.

With reference to the ZKA-comments on **best execution** we would like to stress that from the point of view of the German Savings Banks Financial Group the division of tasks between investment firms cooperating in the field of order execution, e.g. in one financial group, is of high importance. Since investment firms operate in a complex environment there often exists a close link between order execution policies and other order-related services (e. g. clearing and settlement or custody). It is this interaction of services that leads to a reduction of costs for the services provided. We ask CESR to bear in mind that any advice on possible implementing measures for Article 21 should be flexible enough to be compatible with such "multi-tasking"-business models. To this effect it might be helpful to amend **Recital 23** as follows:

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“CESR acknowledges that there can be an interlinkage between order execution policies and other order related services. Where this is the case, the investment firm may take into account these other services when selecting and monitoring intermediaries for the purpose of ensuring best execution for its clients.”

Furthermore, we strongly reject CESR’s proposals for disclosing **information on the frequency of execution**. Such an obligation would raise the costs of investment services without any benefit for investors. A certain percentage offers no indication whether or not a venue is able to guarantee best execution. Neither does it say whether the orders directed to that venue were executed in line with the investment firms execution policy.

In addition to the comments made by the ZKA on **Market Transparency** (Chapter 4) we would like to express our further concern that CESR’s recommendations in Box 2, page 43, on the determination of a „liquid market“ for the purpose of Art. 27 do not sufficiently meet the needs of market efficiency.

Pursuant to para. 22 a share should be deemed to have a liquid market only when - inter alia - the free float of the share is at least € 1 billion and the average number of trades per day in that share is more than 500. Whereas we appreciate that CESR follows a trans-European approach in this respect, we are very much concerned that these thresholds are too high to cover an adequate number of shares for which a systematic internaliser has to publish quotes on a continuous basis. It should be borne in mind, that the most important function of pre-trade-transparency is to enable the interaction between different liquidity pools. Such interaction takes place by means of arbitrage trading which equalizes existing price differences to the best possible extent. Pre-Trade-Transparency can support arbitrage trading most efficiently if a share is subject to an ongoing quotation by the systematic internaliser to the effect that clients of the internaliser have continuously the choice between the price offered by the internaliser and current prices at other market places. A quote on request, however, has the disadvantage that a fast reconciliation between existing price differences is much less workable than it is with a continuous quotation. For this reason, we believe it to be very important that at least the majority of shares listed at the main European stock exchanges is regarded as liquid according to Art. 27. If the thresholds of Box 2 are implemented unchanged, this would not be the case. E. g. in Germany only the top 50 shares in the DAX 100 would be regarded as liquid whereas for the vast majority of listed shares there would not exist a liquid market. Thus, all of these shares (and their investors) would only benefit from a “second class” pre-trade-transparency with its limited positive effect on market efficiency.

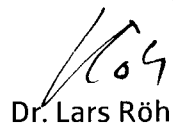
In our view, this would be not a well-balanced solution of the issue. We, therefore, strongly recommend to cut the proposed thresholds significantly, at least to a € 500 million free float and a 250 trades per day.

We would be very grateful if CESR carefully reconsiders this important issue in the course of the forthcoming negotiations.

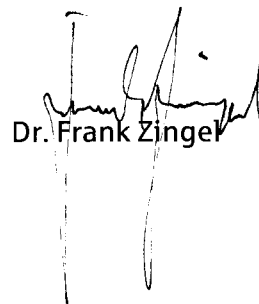
Should you have any further queries on the aforementioned topic, please do not hesitate to contact the undersigned.

Yours sincerely

Deutscher Sparkassen- und Giroverband



Dr. Lars Röh



Dr. Frank Zinger