



WARSAW STOCK EXCHANGE

Dr. Wiesław Rozłucki  
President

M. F. Demarigny  
Secretary General  
CESR  
11-13 Avenue de Friedland  
75008 Paris  
France

Warsaw, April 6<sup>th</sup>, 2005

*Dear Mr. Demarigny,*

**Response by the Warsaw Stock Exchange in relation to the consultations regarding the CESR's Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments**

- **Aspects of the definition of Investment Advice and of the General Obligation to Act Fairly and Professionally in the Best Interests of Clients**
  - **Best execution**
  - **Market Transparency**
- (Ref.: CESR/05-164).

The comments of the Warsaw Stock Exchange as presented below focus on issues directly related to the operation of regulated markets.

Chapter 4 – Market transparency:

Re. 2 Pre-trade transparency requirements:

BOX 1 pg. 40 (definition of Systematic Internaliser)

Re. Q 1.1

The proposed criteria and their structure delineate the activity of systematic internalisation to an appropriate degree.

Re. Q 1.2

The use of quantitative measures as additional indicators is beneficial.





Re. Q 1.3

Quantitative and qualitative indicators should be applied simultaneously – if an investment company meets the quantitative indicators, it should be considered to be a systematic internaliser.

BOX 2 pg. 43 (criteria for determining liquidity for the purposes of internalisation)

Re. Q 2.1

We believe that the proposed approach to the criteria for determining liquidity for the purposes of internalisation is unfavourable to smaller markets such as the Warsaw Stock Exchange. We would like to repeat our proposal that these criteria be determined at the domestic market level. We would like to point out that use of domestic indices as a proxy is a better solution.

This should also apply to the transitional period prior to the implementation of the directive's requirements concerning transparency, during which CESR proposes that the free float be calculated on the basis of a general European index. The proposed target free float for a given stock set at EUR 1 billion, i.e. the liquidity criterion proposed for the entire European market, will include only very few Polish companies – four companies out of the 200+ listed on the Warsaw Stock Exchange (using the 5% free float calculated by the Warsaw Stock Exchange).

We believe that detailed values of the criteria for determining whether companies are liquid for the purposes of internalisation (including the average value of turnover, free float, or the average volume of transactions per session needed to qualify a company as liquid) should be determined individually for each market or Member State. We believe that unifying these values for the entire European market is an unfavourable solution, since the fact that markets differ in size makes it impossible to determine satisfactory values for the aforementioned criteria.

BOX 3 pg. 53-57 (criteria for determining the Standard Market Size)

Re. Q 3.1

We have no objections to CESR's proposal, although we believe, as in the case of Q 2.1, that the criteria determined at the directive level should be more general, making it possible for each market or Member State to adopt appropriate detailed criteria.

Re. Q 3.2

We believe that the content of the pre-trade transparency information proposed by CESR is appropriate.

Re. Q 3.3

We agree with the exemptions to pre-trade transparency proposed by CESR.

Re. Q 3.4

We believe that these issues do not directly concern the interests of the stock exchange market. We are not taking a position on this issue.

Re. Q 3.5

We agree with CESR's proposal.



Re. Q 3.6

We believe that these issues do not directly concern the interests of the stock exchange market. We are not taking a position on this issue.

Re. Q 3.7

We believe that the appropriate approach to determination of SMS is based on the criterion of turnover value (monetary value). The criterion of the number of shares does not provide an appropriate picture of the market size.

Re. Q 3.8

We believe that revisions of the grouping of shares should be performed at least once every two years, the preferred frequency being once a year.

Re. Q 3.9

The Warsaw Stock Exchange maintains its previous position as expressed in its letter containing comments on the document CESR /04-562.

We agree with the proposed provision of BOX 3 point 95 regarding the determination of the initial Standard Market Size (SMS) by grouping shares under a given class starting on the first day they are listed based on a proxy, which will be comparable shares. In accordance with our previous opinion, we propose that the SMS be verified after 3 months and not after 6 months as CESR proposes.

Re. Q 3.10

We believe that a two week interval is sufficient.

Re. Q 3.11

We agree with the proposal concerning publication of the share classifications.

Re. Q 3.12

The threshold value of transactions above which they can be performed by the internaliser at a price which is better than the stock exchange price should be set at a level of at least EUR 20 000.

We maintain our previous opinion concerning "Quotes reflecting market conditions", i.e. we generally accept the approach proposed by CESR.

However, consideration should be given to adding more detailed criteria, such as the admissible fluctuation range (the price would move within a specified percentage range of the price for a given order - purchase/sale - on the reference markets, as the formulation "prices are similar to comparable prices on other markets" is too unspecific).

### Re. 3. Post-trade transparency requirements:

BOX 5 pg. 64 (methods of publishing post-trade information)

Re. Q 5.1

We maintain our previous position – the proposed method of publishing information (trade by trade) is appropriate for post trade transparency.



Re. Q 5.2

We agree with CESR's proposal that the entity responsible for publishing post-transaction information be the investment company selling the given security in the case of transactions concluded outside of the regulated market and MTF, provided that this does not apply to transactions of the systematic internaliser. In the case of transactions concluded by the systematic internaliser, it is the internaliser who should be responsible for publishing post-transaction information.

Re. 4 Transactions large in scale:

BOX 6 pg. 72-73 (permissible delays in publishing information about large transactions)

Re. Q 6.1

We agree with the proposal to release block trades from the pre-trade transparency obligation, although the values of the transactions released from this obligation should be specific for each market or Member State. On the Warsaw Stock Exchange the threshold value for a block trade is PLN 500 000, whereas the CESR's proposal sets this value at between EUR 100 000 and 500 000 depending on the liquidity of shares being traded.

Re. Q 6.2

Because our remarks concern the general approach to determination of liquidity for the purposes of internalisation, we do not have comments on any detailed proposals concerning calculation of average transaction value for the determination of the liquidity of companies.

Re. Q 6.3 – 6.5

We believe that the proposed approach to the publication of information about transactions large in scale is contradictory to the idea of market transparency.

We disagree with the proposed admissible delays (as long as 2 days after a transaction). We believe that information about concluded transactions should be published no later than after the end of the session during which they were concluded. For the good of the market, information about concluded transactions should be published as soon as possible. With regard to this general reservation, we are not commenting on the detailed proposals put forward by CESR in this matter.

Re. Q 6.6

We do not have any comments on this issue.

Re. Q 6.7

We believe that these issues should be resolved at the level of each market or Member State, because it is impossible to determine uniform liquidity thresholds and values of transactions considered to be packet transactions.

*Best regards,*