



WARSAW STOCK EXCHANGE

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Response of the Warsaw Stock Exchange in relation to consultations concerning CESR'S Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets In Financial Instruments (ref: CESR/04-603b)

The Warsaw Stock Exchange would like to thank for a possibility to present its position on the issues covered by the *second consultation paper on CESR'S Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets In Financial Instruments*.

The following are our comments concerning the issues presented in the document:

Introduction

As the best execution and market transparency issues, as well as admission to trading, have been excluded from the scope of the second consultation paper, while waiting for the consultation documents covering these matters, the Warsaw Stock Exchange would like to declare its willingness to present its position on these very important for a market operator issues in due time.



1) General questions from the first consultation

We hereby agree with the concept of applying transitional periods to the solutions presented within the scope of MIFID and technical remarks:

We would also like to support the idea of going even further and allowing for an extension of the MIFID consultation and implementation periods, including issuance of level 2 regulations. In our opinion this may be of particularly importance especially for new member states including Poland. It should be remembered that as far as many practical issues are concerned relevant experience could have only been acquired after May 1, 2004 and this may not have been a sufficient period to develop a critical reflection on these important issues.

2) Independence of compliance - page 6

Following the experience of recent years, as well as rising expectations towards high standard of compliance we fully recognise the need to ensure independence in performing compliance function. Also individuals performing monitoring duties should be guaranteed relevant independence.

As far as the options concerning independence of compliance presented by CESR are concerned, it seems however that in relation to small investment firms there should be a possibility to apply more flexible (this does not mean less effective) solutions in this area. Thus a compulsory outsourcing of the service seems in this case to be an excessive requirement.

Discussing alternative solutions, a concept of entrusting the compliance function to a person responsible also for internal audit could be considered.

The internal compliance systems developed and implemented by the company should be then subject to review by a competent authority supervising the market (the regulator).

When developing the criteria for classifying companies as small or large ones, the size of the domestic market, including the size of the investment firm itself and its share in trading should be considered.

3) Record keeping and burden of proof - page 6

The Warsaw Stock Exchange shares CESR's approach to this issue and the overall direction of proposed solutions. However, similarly to other respondents, we are against imposing on investment firms (within the framework of technical measures) requirement to prove that the company does not breach rules of business conduct. The same as in the Polish law, it should be the competence of the regulator to monitor the observance of rules by firms using records kept by them on the services rendered and transactions made.



However, it is the obligation of the company to provide access to such records as needed and in the scope determined by competent authorities.

4) Tape recording requirement - page 7

Further to the Polish law, a brokerage house records and maintains for a period of at least five years clients dispositions made e.g. via telephone. The consultation document proposes that such records be kept for one year.

Whatever the period agreed on, the Warsaw Stock Exchange would like to propose that the same rules are applied for the archiving all clients' orders regardless of the information bearer (the technology).

5) Outsourcing of investment services - page 7

We believe that the most representative opinion on this matter would be presented by the most interested parties, i.e. investment firms and regulators. From the point of view of the Exchange the most important issue is to ensure competitiveness and at the same time effectiveness of services rendered, as well as the safety of trading.

6) Conflicts of interests and segregation of areas of business - page 8

Protection of investment firms' clients against the occurrence of conflicts of interests is a matter of great importance, as among others it influences the overall perception of a given market.

Thus for the Warsaw Stock Exchange it is important that goals and basic procedures for managing these conflicts be clearly and explicitly determined.

Further to what has been already stated above, particular solutions regarding technical measures in this area should be first of all consulted with investment firms.

7) Investment research - page 9

This is yet another issue that will be certainly a matter of an in-depth analysis by all interested entities and regulators.

Due to the complexity of the issue, guaranteeing the observance of standards in preparation of investment research may prove difficult in practice. Thus it is vital that any criteria proposed as to the types of reports be determined as precisely and explicitly as possible.

8) Methods and arrangements for reporting financial transactions – page 11

The Warsaw Stock Exchange accepts CESR's proposals concerning transaction reporting rules proposed on Level 2.



At the same time while accepting the general recommendations concerning the direction of work on Level 3 concerning determination of transaction reporting rules, we would like to point out the following issues:

- ensuring correctness and efficiency of reporting in case when an investment company will be reporting via so-called alternative channels
- acceptance of specified minimum uniform requirements concerning the already-mentioned alternative transaction reporting channels by market authorities in member states.

9) Criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments – page 14

The Exchange accepts the approach presented by CESR concerning rules for determining the most relevant market having in mind the liquidity criterion for all indicated instrument groups (shares, stock-based derivatives, index-based instruments, bonds, bond-based derivatives and commodity derivatives).

We accept also the 5-year period proposed by CESR, after which a review of the process and rules for determination of the most relevant market (in terms of liquidity) will be scheduled.

Referring to the proposal concerning the scope of work on the Level 3 regulations related to the determination of the most relevant market (in terms of liquidity), let us point out that defining the „relevant/proper time” in relevant market verification procedure as 5 years, analogous to the Level 2 regulation. Such period seems long enough to analyse the process and present possible modifications as to the market liquidity structure.

Cooperation and Exchange of Information related to transaction reporting (Article 58) - page 19

Level 2

The Warsaw Stock Exchange accepts the proposal concerning level 2 regulations concerning transmission of data on concluded transactions to relevant market supervising authority.

Level 3

We support also the proposal concerning efforts to create a single database and the principle of „immediate data transfer” to the authority supervising the market with the highest liquidity for a given instrument. However, we would like to request that that a deadline for conversion of relevant data and data transfer to competent supervising authority.

This issue should however be further discussed.



10) The minimum content and the common standard or format of the reports to facilitate its exchange between competent authorities – page 22.

The Warsaw Stock Exchange accepts the scope of information proposed by CESR in Annex A (information transmitted by investment company to the supervisory authority) and B (information transmitted between the authorities supervising the markets).

Referring to the proposal concerning reporting principles presented in Annex C, in our opinion the alternative concept presented in scenario number 2, better secures the exchange of information between the institutions supervising the market.

In our opinion, investment firms should report information determined in annex A, only if they are forced to report such information based on the regulations in force in their home countries.

We also accept the proposal concerning the scope of work on the Level 3 regulations, which should be done in order to standardise the scope of information exchanges between the competent supervisory authorities.