Commentary of Wiener Börse AG on CESR's Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments

Wiener Börse AG welcomes the possibility to comment on the CESR´s Consultation Paper.

Generally we are concerned about the detailed regulation and the danger of inflexibility included. Due to innovation in market models and technical matters we need as much flexibility as possible.

Section III Markets:

BOX 12

Content of information

1. Where a Regulated Market (RM) or a Multilateral Trading Facility (MTF) operates a price discovery mechanism through an auction electronic trading system, it should display an indicative theoretical equilibrium price during the pre-auction phase, together with the underlying orders (the orders on which the calculation of the indicative theoretical equilibrium price is based).

The indicative theoretical equilibrium price is the price at which the largest volume of shares can be transacted at a given time.

In our opinion regulation of trading models should be as flexible as possible. Otherwise the Stock Exchange Industry is precluded in creating innovative new market models. This would reduce competitiveness and flexibility of European Regulated Markets against OTC Markets and also against international competition, e.g. US-Markets.

Wiener Börse AG applies a partially closed order book in auctions. In this model, the orders are not shown but the indicative auction price, the indicative auction volume and the surplus are displayed. If the order book is not crossed, the best bid and the best ask with their volumes are displayed. This level of transparency provides the necessary information to assess the potential outcome of the auction and protects participants with large orders. This model is fully accepted by market participants.

In the auction system of the Wiener Börse AG the underlying orders of more illiquid instruments are not being displayed. The reason for not displaying the underlying orders is to avoid a possible influence of market participants and to prevent the market of undesired volatilities. This measure has been implemented in accordance with the Austrian Financial Market Authority.

2. Where an RM or an MTF runs an electronic trading system providing for continuous trading, each bid or offer displayed on the system shall at least include the following elements :

- Type of quote/order, i.e. bid or offer
- Security identifier
- Number of shares the market participant is ready to buy (or sell) and,
- Price at which the market participant is willing to buy (or sell).

Price at which the market participant is willing to buy (or) sell: in case of Market Orders (buy or sell at best available price) display of an identifier (in case of Vienna Stock Exchange "M") should be sufficient

3. Where an RM) or an MTF runs a floor trading system, with market members acting as market personnel in one or more stocks, the bids and offers (quotes) of the market personnel should be displayed electronically on the floor.

Updating and withdrawal of quotes

4. The bids/offers/quotes as referred to in paragraphs 1-3 shall be firm ones. Members and participants are entitled to update and withdraw their bids/offers/quotes, subject to orderly market and market abuse provisions.

5. RMs and MTFs shall have rules governing the conditions and circumstances in which designated market makers may withdraw their quotes. Such rules should ensure that such conditions and circumstances are clearly defined and that they provide only limited exemptions.

Market Makers at the Wiener Börse AG are required to quote for a minimum period of 65% of the trading time. This is a very flexible solution which allows the market maker to react to fast market situation (such as price deviation, volatility). In our opinion setting of fixed conditions and circumstances is to inflexible.

6. RMs and MTFs shall also have rules governing the conditions and circumstances in which designated market makers may update their quotes to ensure that this is not so frequent as to intentionally deprive market participants of trading against the quotes displayed.

Due to inflexibility in our opinion no regulation is necessary on this issue.

Depth of trading interests and access to pre-trade information

7. Where the RM or the MTF operates an electronic order driven system, it shall make available all bids and offers in the order-book, updated on a continuous basis.

Wiener Börse AG is operating a so-called quote and order driven system.

Regarding Market depth we distinguish between participants in the trading system and other market participants There is more information regarding orders displayed in the trading system Xetra than via other facilities, e.g. data dissemination systems for the use of data vendors. Dissemination of all bids and offers is on the one hand a technical problem with bandwidths because of the huge numbers of updates. On the other hand, we think that showing the whole order depth provides information which is in most cases irrelevant for the investor.

We are convinced that displaying an order depth of at least 5 best bids and asks is the most relevant information. In Xetra the volumes at each price level are aggregated instead of displaying individual order sizes. Additionally the number of orders representing the displayed volume is shown. This level of market depth information proved to be sufficient as it displays the relevant sizes. Distribution of full market depth would require major investments for trading system functionality, for data dissemination systems and bandwidths for all market participants.

8. Where the RM or the MTF operates an electronic quote driven system, it shall make available the quotes of each designated market maker in any given equity.

9. Where the RM or the MTF operates a floor-based trading system with market members acting as market personnel in one or more stocks, the bids and offers (quotes) of the market personnel should be made available electronically.

10. An RM or an MTF should make available the same degree of pre-trade information to all its members, participants, investors or other interested parties.

It should be possible for Stock Exchanges, despite of displaying a minimum order depth, to tie up different packages with different information for different types of investors.

Timeliness

11. The information referred to above shall be disclosed in real time during trading hours.

Effectiveness

12. Pre-trade information can be made available to the public either directly, through contractual arrangements, or indirectly, through data vendors. The arrangements set up by RMs or MTFs shall ensure that the information is reliable. These arrangements shall be capable of monitoring the correctness of the information and alerting of obvious mistakes and correcting wrong data when necessary.

Exemptions from pre-trade transparency

Based on market model
13. If trading on an RM or MTF is based on a market model where the price of the transaction is not determined within the trading system, but by reference to that of another trading venue, then there is no obligation to display orders and/or quotes.

In our opinion so-called crossing systems are a helpful tool for block trading. Due to a level playing field we don´t see an exemption to display retail orders.

Based on type of order
14. If trading on an RM or MTF is conducted by means of an 'iceberg'-type order, whereby the proportion of the order which is available for execution is visible, pre-trade transparency obligations will be considered to have been met.

This exemption should also be applicable for so-called Stop Orders (Stop market order: A stop market order is entered into the order book automatically as a market order once the specified stop limit has been reached. Stop limit order: A stop limit order is entered into the order book automatically as a limit order once the specified stop limit has been reached.)

Large trades
15. The obligation to display orders or quotes does not apply when the following conditions are met:

CESR is still considering in detail how to define the block size which would qualify for a waiver from pre-trade transparency or for deferred publication of post-trade transparency.
It is currently evaluating three alternatives which are as follows:
• "average daily volume method"
This method compares the size of order (or trade) with the average daily volume of a share. This would be calibrated such that an order (or trade) of a size exceeding a certain percentage of daily average volume would qualify either for waiver or deferred publication.
“method based on the average size of orders"
In response to the forthcoming mandates on Article 27 CESR will provide proposals on pre-trade transparency for systematic internalisers. A formula for calculating size

thresholds is already set out in the Level 1 text of Article 27 - the arithmetic average value of the orders executed in the market. On the basis of this calculation with respect to standard market size, CESR could extrapolate what is large in scale compared with normal market size.

• "market impact method"

This method measures the impact of different order sizes on the market. For each share a relationship can be established between ticket size and market impact. On the basis of this relationship we can calibrate the minimum impact that warrants waiver or delay.

Whatever the methodology is eventually chosen by CESR, the following conditions should be met:

• If the method refers to liquidity, turnover or other market activity, it should be calculated on the basis of total trading activity in the EU (not that of any single platform);

• Although identifying a unique block size for each individual share might lead to the appropriate size for that share, CESR proposals are likely to be based on the idea of grouping shares into different groups in order to make the method more practical.

Q. 12.1 Do consultees agree with the specific proposals as presented or would they like to see more general proposals?

Wiener Börse AG would like to see more general proposals. The specific proposals to define pre-trade transparency requirements potentially restrict future market mechanism innovation and product development opportunities. We would appreciate to define more general principals to avoid incompleteness in assessing existent market mechanisms as well as being unable to cover future developments.

Q. 12.2 Is the content of the pre-trade transparency information appropriate?

The proposed level of content for pre-trade transparency is appropriate for liquid shares. Additionally, Wiener Börse AG recommends that partially closed order book in auction electronic trading and closed order books in auctions for less liquid shares should be possible. A principle of optimum transparency should be the guiding principle instead of requiring maximum transparency for all mechanisms.

Q. 12.3 Do consultees agree on the proposal regarding the depth of trading interest and access to pre-trade information?

We see a marginal economic benefit of additional levels of market depth for the individual investor. This benefit does not justify the massive costs for the implementation of the technical changes for all market participants. Therefore, we propose to define a minimum requirement for at least 5 limits with display of order volumes aggregated per limit for pre-trade information. Concerning access to pre-trade information it should be considered that the concept of equal access can not apply to market personnel as market personnel per definition needs order book insight in order to fulfill their duties.

Q. 12.7 Do consultees have a preference for one of the options proposed for defining block size, are there other methods which should be evaluated?

Even the market impact method is more complex, Wiener Börse AG regards this method to be as best suited to define block sizes.

BOX 13

Content of post-trade information

In general we want turn the attention on the issue of Central Counter Parts (CCP), the Clearing and Settlement Systems. From a legal point of view the CCP acts as buyer and seller in every single trade. To avoid doubling of post trade information (CCP as buyer and seller, as well as one investment firm as seller and one investment firm as buyer) we strongly recommend to except CCPs from post trade information requirements.

We would suggest, that CESR requires all RM and MTF to publish an official list of all instruments which are subject to pre- and post-trade transparency.

21. The following information shall be made public trade by trade for every trade regardless of whether it was executed on an RM, MTF or outside them:

- Market or other source identification;
- Security identifier;
- Date and time of trade;
- Volume (number of shares);
- Price per share;
- (If applicable) indicator that the trade was eligible for delayed publication;
- (If applicable) indicator that the trade was at a price other than the current market price;
- Any amendments to previously disclosed information.

Crossings (a trader contracts with a trader of the same member of the stock exchange) should be excluded from the obligation to be published.

If current market price should be defined: in our opinion this should be the last price of the regulated market.

Definition of Security identifier: should be ISIN

According to our experience in real time data distribution, dissemination of redundant data should be avoided (e.g. date).

22. Moreover, in an aggregated manner and at the end of the trading session[or each trading day], the following information shall be provided by RMs, MTFs and systematic internalisers:

- Opening price;
- Closing price;
- Maximum and minimum price during the session;
- Weighted average price of the session;
- Total traded volume.

23. The procedures for disclosing the information in paragraph 21 (trade by trade information) shall ensure that every trade is published only once. If the trade is done on an RM or MTF the publishing may happen according to their rules. If not specified by their rules, or for trades which are executed outside an RM or an MTF, the investment firm acting as the seller shall be responsible for disclosing the information. Where the seller is not an EU investment firm (but the buyer is), the publication obligation is on the buyer.

Arrangements to disclose post trade information

24. Post trade information shall be made public as close to real time as possible taking into account the characteristics of the trading venue where the transaction was executed. This should in any case not happen later than one minute after the transaction took place. The information published shall be available for at least 14 days from its publication.

25. The publication arrangements for trading information shall operate all the time trading takes place. For RMs and MTFs that covers the period when trading is possible according to their systems and rules. For investment firms the mechanism shall be available all the time the firm is (actively) trading.

A definition of (actively) trading is necessary.

26. Post-trade information can be made available to the public either directly, through contractual arrangements, or indirectly through data vendors. RMs, MTFs and investment firms shall have in place appropriate arrangements to make the post-trade information available to all interested parties in a way which is easily consolidatable.

We appreciate CESR's approach to focus on consolidatable data and would suggest a model of proven publishing channels. The national authority could provide a list of proven publishing channels therefrom a market participant who is obliged to publish his data could chose a channel supplier. Such a model would improve data quality and data availability.

27. The arrangements set up by RMs, MTFs and investment firms shall ensure that trading information published is reliable. These arrangements shall be capable of monitoring the correctness of the information and alerting of obvious mistakes and correcting wrong data when necessary.

28. When the transaction does not include the transfer of economic risk (relating to the instrument) between counterparties the obligation to publish the transaction does not apply.

29. When transactions include transfer of shares where the price is based on other factors than current market valuation of the share, the information to be published shall include an indicator showing that the price of the trade is away from the prevailing market value of the share.

Deferred publication of transactions

30. In accordance with paragraph 24 post-trade information shall be published in as close to real time as possible. However, in specific circumstances the publication of post-trade information may be deferred when the following requirements are met:

31. a. The transaction shall include the participation of an investment firm acting as a principal in the transaction in a risk-taking capacity.

   b. The firm must have created a risk position through taking a long or short position in the security as a direct result of the facilitation of third party business.

   c. The size of the trade must be above the threshold to qualify.

32. Trades eligible for delayed publication shall be published according to the following formula:

CESR will further investigate the definition of a block size along the lines described in paragraph 15.

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

Beside the method of "trade by trade" information, cumulated and aggregated data should be possible too. Wiener Börse AG is distributing cumulated trade volumes for an instrument at the same price level at the same time.

Q13.3 Do consultees support the two week period for which the post-trade information should be available?
It should not be necessary, that every market participant who will be obliged to publish post trade information, shall keep this data available for the public for 14 days. Due to the fact, that market data industry is a well organized market, it is obvious that this information will be available through different channels. Furthermore, Investment Firms are requested by law, to keep records of their trading data for legal reasons.

Q13.4 Should some minor trades be excluded from publication (and if so, what should be the determining factor?)
In our opinion there is no reason for exclusion of minor trades.

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?
We agree with a short time limit in general, but acknowledge that some OTC trading venues might need slightly more flexibility.

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)?
In our opinion there is no European alternative to the ISIN standard code.

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?
Stock lending, Exercise and Assignments should be out of scope, because their price normally differs from the market prize.

Q. 13.9: 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?
We are convinced, that suggesting a list of recommended proven reporting channels by national authorities would do the job. In such a scenario we trust, that market forces will set up efficient data distribution solutions.