

**Provisional Mandates under the Future Directive on Financial Instruments
Markets (ISD2)**

Call for Evidence by the CESR

Comments of Euronext

Euronext is very interested in contributing to the process establishing the implementing measures for the future Directive on Financial Instruments Markets (ISD2) since most of the benefits expected from such text will fully depend on the way it will finally be implemented through level II.

The guidance at level II is indeed crucial since many issues have still to be clarified in implementing measures in order to know the concrete framework established at EU level, in particular, in relation to admission of financial instruments to trading on a regulated market.

In this respect the present call for evidence is a first step. In view of its experience as operator of regulated markets across five EU Member States, Euronext is more than willing to give any further assistance that CESR may wish in designing its advice to the European Commission.

On the Call for Evidence, Euronext wishes to comment on the following issues:

In the introductory part, the call for evidence indicates that in order to shorten the time necessary for implementation the Commission may adopt regulations, rather than directives, for a number of important provisions (including the definitions, conduct of business rules, best execution, client order handling rules, post-trade disclosure, organisational requirements for regulated markets, pre and post trade for MTF and pre-trade for regulated markets). We agree with this approach since we welcome a truly harmonised framework throughout the European Union. However, we insist on the fact that, if such approach is used, CESR's consultation documents need to be, at an early stage, in a format as close to a legal text as possible. Moreover, CESR and, subsequently, the Commission should foresee sufficient time for in-depth consultation allowing to verify the practical consequences of such regulation in the national legal environment.

Regarding CESR advice with respect to article 13 (organisational requirements for investment firms), if this article applies to market operators operating an MTF, the implementing measures should take into account the organisational requirements to which market operators are already submitted under the requirement for operation of a regulated market since they will have to comply with those requirements in any case. We also support the view expressed in the call for evidence according to which CESR

advice in respect to organisational requirements should be proportionate and avoid excessive details.

Concerning conflicts of interest (articles 18 and 13(3)), Euronext wishes to underline that in addition to the four areas already identified and for which particular attention should be paid, internalisation should be a fifth area for which due attention should be given.

Concerning best execution (article 21), and more specifically regarding CESR advice on the criteria that investment firms should take into account when executing clients' orders for determining the relative importance of the factors to be taken into account for achieving the best possible result, Euronext wishes to underline the need for devoting special care to the price + costs which seem to be the most important factors.

Concerning reporting of transactions (Article 25), it would be useful that CESR advice on possible implementing measures on methods and arrangements for reporting financial transactions also clarifies to which authority such reporting should be directed. Although, it seems relatively clear that normally it should be the home country authority, it may not be so obvious in certain situations (e.g. reporting of off-exchange transactions on securities listed and mostly traded in a specific country carried out by an investment firms, remote member of a regulated market of such country).

Concerning pre-trade transparency requirements for regulated markets (article 43) and MTF (article 29), Euronext underlines that any attempt to set a single measure with respect to block orders must be handled with great care and prior in-depth analysis in order not to frustrate competition and innovation in Europe. Such a measure must in any case be very high and not an average of existing block order sizes in the various markets.

Concerning post-trade transparency requirements for regulated markets (article 44) and MTFs (article 30), it would be useful to clarify the statement according to which "CESR should consider that part of these measures do also apply to off-exchange trading". The same applies to the sentence requiring that "CESR should analyse the conditions under which those obligations should apply to off-exchange trading as well as the relevance of the obligations for off-exchange trading". Mixing post-transparency of regulated markets and investment firms and trying to elaborate rules that could apply to both do not seem at first sight desirable. Moreover, according to the annex CESR will advice on the "exact content of the information that has to be made public as well as the different forms in which it can be presented". This seems much too prescriptive and Euronext wishes that CESR provides an advice on the minimum content of the information leaving to regulated markets the possibility to decide on the appropriate form as well as if other information could be added.

Regarding admission of financial instruments to trading (article 39), Euronext welcomes the fact that implementing measures should concentrate on a minimum content. It appears crucial that regulated markets are given the possibility to adapt there admission conditions to the policy they deem appropriate for the companies they want to list. The EU regulatory framework should set a common acceptable set of requirements and in particular emphasize what are the minimal criteria for listing and

trading on a regulated market in order to maintain a level playing field throughout Europe. It is not to the regulator to set a quantified set of norms in this field. Therefore, it is important not to set high quantitative requirements in relation to the conditions for admission (e.g. regarding the free float). It should left to regulated markets to adapt the rules to the reality of their market and they should have the possibility to have flexible requirements which can accommodate an important number of specific situations.

Moreover, according to the annex, it seems that CESR is going to consider whether the regulated markets should establish formal separations or segments in respect of the different characteristics of the same type of instruments and define those characteristics. Euronext does not agree with this approach since it is going much beyond minimum conditions for admission to trading. In fact, it slips into what is a matter of commercial policy for the exchange and should therefore under no circumstances be embodied in any legislation and certainly not in level II European legislation. Furthermore, it would be necessary to specify what is meant by the specific case of “parallel trading” in relation to the obligation imposed upon regulated markets to make information accessible to their members or participants.
