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Response by FESE to
CESR's Consultation Paper (04-562)
on the Second Mandate for MiFID Implementation Measures

1. FESE is the representative organisation of Europe's Regulated Markets and Derivatives and has incorporated EACH, the European Association of Central Counterparty Clearing Houses. Our Membership comprises all Members States of the EU, old and new, as well as the countries of the EFTA.

2. We welcome that CESR has again published an extensive consultation paper on its draft for technical advice in response to the Commission's second set of mandates. We appreciate the opportunity to submit comments and regret the delay in our response beyond CESR's deadline.

3. We are aware that several of our Members have made individual comments. We expressly refer to these submissions; they do in certain cases focus on particularities in these Members' environment and may therefore provide additional specific insight to CESR. We will make particular reference to the responses by our commodities derivatives markets Members (IPE and LME) and by OMX Exchanges later in this paper.

4. In our submission, we focus on the issue of display of client limit orders (Art. 22(2)) and on pre-trade transparency for internalisers (Art. 4 and 27). We do however include also comments on several other subjects, as they have been brought to our attention by our Membership or are of genuine relevance to Europe's Regulated Markets and their Association.

A. Introduction

5. Some of the issues dealt with in this consultation are among the most contentious that CESR (and later the Commission and the ESC) will have to consider and drafting the level 2 measures on these issues will be very difficult. Accordingly, we would recommend to CESR to search for simple and practical solutions wherever possible, for example in regard to several quantitative and numerical thresholds in the regime for systematic internalisers. Both, regulators and market participants would face additional (and probably avoidable) difficulties should they be obliged to apply a regime that has been over-engineered.

6. As a further matter of introduction we would like to express our surprise to read (in the second subparagraph of par. 5 of the introduction of CESR's paper) that the MiFID – in CESR's view – "is intended to deliver an effective 'single passport' for investment firms and Regulated Markets". As far as passporting is concerned, the MiFID does not do more for Regulated Markets than the (old) ISD, namely allowing them to link up Remote Members[1]. It expressly provides no passport for market operators (except the half-hearted recognition of fitness and properness of directors in Art. 37(2)); quite to the contrary, it invites and obliges host country competent authorities in Art. 56(2) to co-operate with the Regulated Market's home competent authority as soon as "substantial importance" is attested to that market's operations in the host country. In our response to CESR's first consultation paper on the first mandate (our document P700 with annexes, of September 2004), we have extensively and critically commented on this topic (see paragraphs C. 32 through C.40).

[1] … and to choose clearing and settlement facilities in another Member State.

B. Display of client limit orders – Art. 22(2) MiFID – Box 13

7. FESE and its Members welcome the clear language and the strong commitment used by CESR in regard to the necessary visibility and accessibility/executability for such orders that have been received by investment firms from clients and that cannot be immediately executed.

8. We also specifically endorse paragraphs 4 and 5 of CESR's advice in Box 13 since the application of the "best execution" principle and of the rules for the communication on a firm's execution policy are of highest relevance for such not immediately executable orders.

9. Where a Member State chooses not to make use of the option to foresee RMs and MTFs as the only way for making unexecuted client orders visible and accessible, we argue that the visibility and accessibility provided by RMs (MTFs) that operate a public order book should serve as a benchmark.

10. It is a given for us that that CESR considers that Regulated Markets and MTFs will only fulfil their purpose of making such orders visible and accessible to the desired extent if they offer non-discriminatory access for all market participants. A respective clarification should be included in CESR's advice.

11. On many Regulated Markets across the EU, hybrid models are in operation. We agree with CESR that order-driven markets (with a publicly accessible order book) have the potential to fulfil the criteria of visibility and accessibility/executability whereas purely quote-driven market-maker system would fail the test. Hybrid models exist in various "shades of grey"; level II measures should leave room for acknowledging that public order books in hybrid markets may deliver the desired results (regardless of whether such models are seen as order-driven with market-maker support or as quote-driven with certain display facilities).

Question 7.1.
Any arrangements other than RMs and MTFs that offer non-discriminatory access for market participants and that operate on an order-driven basis with a public order book could be considered as complying with Art. 22(2) as long as they jointly meet the criteria of

- being likely to achieve best execution,
- making the order fully visible (widest possible "audience"), and
- making the order accessible and executable.

Question 7.2.
We concur with CESR's argumentation with regard to systems that are purely quote-driven.

12. In the context of FESE's argumentation regarding the depth of the order book display under the MiFID's pre-trade transparency rules for Regulated Markets (and MTFs), we wonder whether CESR would consider addressing or discussing among its Members the potentially unequal treatment of limit orders that are far off the current equilibrium price. Should the Commission's level II instrument eventually foresee a display of less than full order depth (as requested by FESE and many other respondents to the CESR's respective consultation), such "wild" limit orders would probably not be displayed if they were entered directly in the system while they might have to be displayed when received for display from investment firms under Art. 22(2).

C. Systematic Internalisation

Definition of Systematic Internaliser – Art. 4(1)7 – Box 14

Question 8.1.
We broadly agree with the criteria considered by CESR for determining systematic internalisers. While these criteria are probably not the only factors to consider, we would at the same time advise against defining additional criteria.

13. With regard to the first indent of par. 1 in Box 14, we propose to eliminate the word "identifiable", as it adds in our view nothing to the assessment process. CESR might consider specifying that including internalisation in the range of services offered to the firm's clients is clear evidence of the commercial role that the firm attributes to internalisation (the concept of "holding itself out" as discussed during mach of the MiFID legislative process).

14. It is important for us to note that CESR refers to the assignment or use of personnel or automated technical systems by investment firms and we urge CESR to maintain its comprehensive approach in the text of indent 3 of par. 1 (assignment/use, personnel/IT, exclusively used or not).

15. With regard to Question 8.2., we are not certain whether CESR refers to the triad of criteria organised/frequent/systematic or to the three aspects given in the three indents in Box 14. It would in all likelihood lead to undesired results were the first three criteria applied in strict separation. No investment firm can seriously be expected to do its business on an unorganised basis – meaning that if "organised" dealing alone would suffice to establish systematic internaliser status, all internalising investment firms would be caught.

16. On the other hand, a number of FESE Members feel that the three aspects in Box 14 should in principle be considered separately. For them, as an example, failure to carry out internalisation in a way that results in a commercial role[2] should not relieve an internaliser that fulfils the criteria of indents 2 and 3 from its status as "systematic". We note that CESR suggests using the three criteria as "aspects (that) should be considered as an indication".

Question 8.2.
While the three criteria organised/frequent/systematic must probably (level 1 text) be applied collectively, a number of FESE Members believe that the indicative aspects included in Box 14 should be considered separately. Others emphasise that none of the three criteria should be sufficient in itself.

Question 8.3.
We do not believe that CESR should set quantitative/numeric criteria for the term "frequent". As we do, on the other hand, not think that CESR should in its advice remain totally silent on this question, we recommend including in the text in Box 14 a reference to availability and consistency.

Question 8.4.
Regarding CESR's consideration of an announcement of the intention to cease systematic internalisation, we are not certain whether the mandate does actually include advice on this issue. This being said, we agree with CESR's proposal to oblige investment firms to disclose their intentions to cease acting as systematic internalisers (in one or more shares). Not all FESE Members are convinced that employing the quote disclosure channel (e.g. a feed into the public order book environment of a RM would provide the necessary and desirable wide publicity.

Scope of the Rule – Art. 27(1) – p. 64-68

17. The discussions among FESE Members on the question whether liquidity should be measured on a national or on an EU-wide basis (and the responses CESR may receive from individual Exchanges) reveal that CESR's question may be ambiguous. It might however not really be necessary to give a straight black or white (i.e. national or EU-wide) answer to question 8.5. as long as an agreeable result is achieved.

18. Under the overarching concept of a Single European Financial Market, liquidity in a share must for some purposes certainly be regarded on an EU-wide basis. The determination, however, whether a particular share is really "liquid" (i.e. whether the market in this share is deep and trades can be done easily, fast and at relevant prices) will probably have to look at this share's order and trading patterns in individual markets. CESR rightly addresses this problem in the second paragraph of its explanatory text on page 64.

[2] particularly if that term remains qualified by "identifiable" and is not – as suggested – complemented with a reference to the "marketing" of that service

19. An internaliser usually competes with (and in most cases in) the "home market" of a given share. Hence, home market criteria should in principle apply. Once a share is declared "liquid" in one of its markets, the level playing field principle requires that this character applies across the EU, i.e. for all investment firms intend to internalise trades in this share.

Question 8.5.
Most FESE Members support that CESR look at the individual markets where a share is traded in order to determine whether on one of them the criteria for a "liquid share" are fulfilled (regardless of the kind of criteria – see below).

20. FESE Members generally call for an approach towards the determination of liquid shares that is simple, practicable, representative, and at the same time consistent. When finalising their advice, we call on CESR to keep in mind the underlying objective of Article 27.

21. The call for simplicity and practicability, however, does for us not warrant the exclusive use of proxies (reference to indices and/or derivatives) as the latter would in our view yield only unsatisfactory results. We tend to agree with CESR in its discussion of the problems related to index composition and existence of a derivative as key proxy criteria for liquidity. We do however believe that composition and size (number of constituents) of leading national indices can assist CESR in finding the numeric solutions for threshold values or e.g. for the minimum number of "liquid" shares per Member State market (should such a number be found desirable).

22. **Spread size** and **market impact** are indeed valuable measurements for liquidity. They quantify liquidity by its value to investors and intermediaries and they point to low implicit transaction costs. The examples given by our Member Deutsche Börse AG reveal that taking them into consideration may deliver liquidity statistics and rankings that differ substantially from turnover league tables.

23. On the other hand, FESE Members concur that – due to the high complexity of the necessary data collection and computations – this approach is certainly not simple, and that respective data is not available for most European markets. Our Members differ in their views whether therefore the use of market impact analysis should be defined as a long-term goal for the exercise of liquidity classification or whether at this juncture (only) other criteria – probably in essence number of trades per time unit and turnover – should find entry into European legislative texts.

24. With a view to the list of other possible criteria offered by CESR, we would like to offer the following comments:

- The criterion of **continuous trading** creates a problem in at least one EU Member State where currently no share at all is traded on a continuous basis.

- The criterion of indeed **at least one trade in a share per day** does in itself not truly assess that share's "liquidity". When testing its approach on the data that CESR has from all markets, CESR should however be guided by the reasonable consideration that a share that is not traded daily should not (through what criterion ever – e.g. through a "min. x shares per country" rule) be artificially declared "liquid".

- When using the **number of trades per time unit**, CESR should discuss whether an eight-hour trading day can be taken for granted across all markets in the EU. Presumably, such a criterion should rather be phrased as "at an average x trades per hour of market opening hours" in order to cater for differences.

- The number of trades and the number of shares traded on a trading day are as such in our view not sufficient to identify liquidity. While assessing the chances of being able to do a trade in, say, 100,000 shares regardless of their individual price level, such volume-related criteria negate the fact that of a "heavy" share, a lower number would usually be sought/offered than in a share with a low price. Therefore, **turnover figures that relate to the value of trades** are for us essential for the determination of liquidity.

- While probably not being an appropriate criterion alone (as CESR acknowledges), the consideration of **relative activity** could (like the proxies – see above) provide valuable guidance top CESR when analysing the data collected from all markets.

- When based on a more or less uniform concept of free float, **turnover velocity** calculation could provide valuable additional input in any further discussion of refining the methods for determining liquid shares – should such refining ever become necessary.

Questions 8.6. – 8.11.
With a view to the great challenges in data collection and computation that the use of spread size and market impact analysis tools would create, FESE Members recommend in principle that (at least for now) the average number of trades per time unit (thus catering for trading days of less than 8 hours) together with a measure for turnover value should form the core criteria for finding the liquid shares for which the systematic internaliser should compete on an open and level playing field with RMs and MTFs and should therefore publish quotes. CESR should revisit this issue in the future for possible reassessment.
Any rule to ensure that every Member State has at least a certain number of shares declared "liquid", should however not be construed in a way that adversely affects the principles of the calculation applied to larger markets. Such rules applied on a national level should hence look at relative activity within the individual market and might well include factors such as index composition, "top x percent" concepts, et simil.
For our views on individual criteria we refer to our above comments.

Determination of Standard Market Size / Classes of Shares – Art. 27(1) and (2) – Box 16

25. FESE and its Members broadly support the general approach by CESR to the determination of Standard Market Size (SMS). We concur with the underlying commitment to base the calculation of the average value of orders (but see subsequent paragraph) in a given share on information from the "general market", i.e. from all markets (RMs, MTFs, internalisers, and, as far as possible, also OTC) across the EU. For initial calculations, national data will generally have to suffice.

26. We appreciate CESR's presentation of the discussion between its Members as to whether to base calculations on "completed transactions" or on "executed orders". As is the case within CESR, FESE Members are aware of the differences, but their views are split; we regret therefore that we are not in a position to provide a unanimous view.

Question 9.1.
FESE Members tend to concur with CESR that the same threshold could apply for "large orders" in the context of Art. 27 as in the Articles on pre- and post-trade transparency for RMs and MTFs. We suggest however to use the neutral term "size threshold" when referring to so different contexts as the waiver of pre-trade transparency, the possible delay in post-trade transparency, and the relief from the duty to route unexecuted orders (if a Member State chooses the option at the end of Art. 22(2)). Not all of these exemptions should be drawn into the term "block regime".

Question 9.2.
We trust that CESR, on the basis of the data it has available from almost all European markets, will find an appropriate number of classes that properly balances the need for proper differentiation with the call for a certain practicability. We are aware that the numeric suggestions made by individual FESE Members diverge, but we would assume that a number between 5 and 10 would achieve acceptable results.

Question 9.3.
The SMS should be expressed in value terms.

Question 9.4.
In general, we would assume that annual revisions are appropriate, probably starting after a shorter first "trial period" after the entering into force of MiFID and its implementation measures in the Member States. One of our Members would prefer (at least initially) a shorter revision period which may be extended once more evidence about the robustness of the classification is available.

Question 9.5.
FESE Members request almost unanimously that any share that is newly brought to a market be immediately classified as "liquid" or not and grouped into one of the classes, based on trading expectations and peer comparison. A shorter time cycle for the first revision may be considered.

Question 9.7.
Most FESE Members agree that the publication of the classification of shares could be done on the responsible competent authority's website. If, as some believe, the market would be interested in a form of consolidated overview, we favour relying on market forces to create such a consolidated view rather than CESR making efforts to consolidate the information.

Obligations of the Systematic Internaliser – Box 17

27. When discussing publication channels, CESR deviates from the classification in the level I text. In the Directive, RMs that have not admitted a certain share to trading, would act as "third parties" (Art. 27(7)(b)(ii)) when accepting an internaliser's quotes for publication. In CESR's list, reference is made in letter (b) to (only) third parties other than a RM. We note that CESR regards cases (a) and (b) "similar".

28. We would propose to CESR to expressly acknowledge that RMs may act in the role of "third party provider" and offer their data dissemination services to systematic internalisers in more than the shares they have themselves admitted to trading. Should CESR not find that this should be explicitly mentioned in the body text of any level II document, we address our proposal to the Commission for consideration at least in a recital.

29. We fully agree with the three general requirements for quote publication as set out by CESR, namely real-time publication, easy access at reasonable costs, and internaliser's responsibility for its quotes, regardless of the publication channel chosen.

Question 10.1.
FESE Members agree that the situation when an internaliser becomes the trading venue with the highest turnover in a given share (that falls under Art. 27) may create certain challenges for regulators. In such a situation it would in our view become even more important for CESR Members to monitor that this internaliser fully complies with its transparency and access requirements.

Question 10.2.
We support the principle that a systematic internaliser should publish its quotes during all of its trading hours which have to be duly published.[3]

[3] A short discussion was held among FESE Members whether the phrasing "100 per cent" is justified given the (restricted) withdrawal possibilities. We call on CESR to find the appropriate wording that emphasises

Question 10.3.
We support CESR in its negative stance towards publication of quotes solely on the internaliser's own website. Such restricted publicity would in our view fail any "easy access" test and would make the consolidation of data (with the purpose of achieving true pre-trade transparency across markets) difficult.

Question 10.4.
FESE Members do not recommend adding more specific criteria for determining when a price reflects market conditions. What is in our view important is the link to the firm's execution policy and its best execution obligation.
We strongly suggest therefore including in par. 2 in Box 17 a further specification of the "relevant markets", relating to those execution venues that the firm has included in its execution policy. This specification should not only indicate that the firm "may wish to take into account" those execution venues, but a clear obligation to take them into account. CESR might also regard appropriate a reference to the most relevant market in terms of liquidity for the given share.

Question 10.5. and 10.6.
The two "options" provided by CESR as to the permission for an internaliser to withdraw its quotes are not really options but rather complementary scenarios. Level playing field considerations require permitting an internaliser to stop quoting in exceptional circumstances. Apart from circumstances that are shared by all execution venues, there are circumstances conceivable that lie only in the sphere of the internaliser (market-related as well as technical problems).
In the other direction, we would argue for an automatism, namely that internalisers are obliged to stop quoting whenever trading is suspended on any Regulated Market that has admitted the share in question to trading. We refer to our contribution in September on the question of the cross-border effect of trading suspensions.
Regarding possible open lists of circumstances that justify quote withdrawal, our Members do not see the necessity of such lists on a level II basis; CESR Members should, however, discuss such lists and procedures in their local environment as well as among themselves (level III).

Question 10.7.
The approach proposed by CESR in this respect seems acceptable and we would not suggest any further criteria.
We would however, here again, propose a reference to best execution by amending par. 4 in Box 17: "… to update its quotes as often as it is able to justify the change and is necessary to fulfil its best execution obligations."

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the principal obligation to quote at all times – except in the very few exceptional circumstances that would justify a withdrawal (or non-opening in the morning).

Handling of client orders and executing the orders – Box 18

Question 11.1.
FESE would like to underline also in this context the importance of the best execution principle. If it is clear that this principle applies also in the situation when an internaliser has to decide to execute a quantity for which it has not explicitly quoted a price, no additional advice is necessary.

30. We agree with CESR's approach towards the possibilities for internalisers to limit the total number of transactions from different clients at the same time in certain circumstances. We endorse the opinion of CESR that such limitation should be allowable only where "absolutely necessary" and call on CESR Members to arrive at a common interpretation of this restriction. We also underline the importance of equitable treatment of all clients in the case of any limitation decision.

Question 11.2.
We would not see much necessity for more detailed provisions.

31. While FESE Members widely agree on CESR's proposal regarding the first exemption (several securities in one transaction), some FESE Members feel that the description of the second exemption (namely all orders except simple market orders or limit orders) may be too wide, resulting in a gross exemption of practically all orders in the sphere of professional clients' transactions. We refer explicitly to relevant examples that individual FESE Members may provide, but also to the differentiated experience among CESR Members.

Question 11.3.
There should be a number of securities involved when defining a portfolio transaction – 10 seems to be the right order of magnitude. CESR might consider adding also a minimum total value requirement.[4]

Question 11.4.
As some FESE Members harbour concerns, we ask CESR to reconsider in the light of the feedback from consultees and of experience among its Members whether the definition proposed would really be effective (by filtering out orders that are truly and to a material extent subject to conditions other than current market price) or whether it would de facto exclude practically all orders from the sphere of professional clients.

32. There is divergence in the views between FESE Members on the question whether customary retail size (CRS) should be set at an identical level across all securities across all EU Member States or whether any differentiation is necessary or useful.

33. We may come back to CESR with responses to the related questions once CESR presents further proposals in this area.

[4] CESR Members might discuss whether it would be useful or necessary to request immediate time proximity for the execution of the various parts of a portfolio transaction in order to prevent abuse.

D. Other Issues

Definition of Investment Advice

34. We have noted that the examples given by CESR for information that, although factual, may assume the force of a recommendation (bottom of p. 14) are not explicitly included in CESR's advice in Box 1. We would nevertheless like to make the point that information about forthcoming decisions on listings, corporate actions, inclusion in a specific market segment or index, or on the creation of a derivative could, among many others, also easily obtain the character of a recommendation.

Suitability test

35. CESR may wish to consider whether the suitability test should include checking whether a chosen execution policy (including choice of the trading venue) is suitable for the client (see paragraph 7 in Box 8).

Execution only

36. Many FESE Members do not concur with CESR's interpretation of Art. 19(6), namely that "all derivatives have to be considered as complex instruments". Firstly, this interpretation does not seem to flow from the wording of the level I text. Secondly and most importantly, such a broad sweep against "derivatives" of all sorts is likely to deliver unwanted results.

37. The term "derivative" is not defined in the Directive; this means that it will most likely be subject to different interpretation and application in Member States. A narrow view could for example already exclude 1-to-1 depository receipts for shares from execution-only business on the grounds that such receipts are not "shares" in the strictest sense (cf. Art. 4(1)(18)(a) MiFID).

Question 5.1.
We support CESR in its approach described in the paragraph immediately preceding question 5.1. on p. 49, namely subjecting all securities that are not expressly declared non-complex to the test whether or not they are (nevertheless) non-complex or indeed complex. When establishing and carrying out this test, CESR should take account of the economic effect (including risk profiles etc) of the financial instrument rather than of its pure contractual design and name.

38. With regard to CESR's advice in Box 10 on the definition of non-complex instruments, we strongly recommend an overhaul, including the deletion of "non-derivative" in the first line, but including enhanced wording as to identifying "complex" features, such as geared or leveraged exposure.

39. Another area where some of our Members note an inconsistency in CESR's approach is the treatment of (straight) bonds as in any case non-complex (regardless of their origin, issuer,

rating etc.). This seems to stand in contrast with the restriction of non-complex shares to those admitted to trading on an EU Regulated Market (or an equivalent third country market).

Definition of a commodity and of certain characteristics of derivative contracts

40. As CESR is aware, FESE's Membership includes the two specialised London-based markets for derivatives based on commodities as well as other Exchanges that are also to a greater or lesser extent engaged in this business. Knowledge about these markets, their products, participants and practices is in our Federation concentrated within the LME, the IPE and Euronext.LIFFE. It is for this reason that we refer with emphasis to the submissions that these institutions have sent to CESR as well as to the relevant passages in the joint comments by the FOA and ISDA.

41. In the responses from the IPE and the LME we find the following thoughts particularly valid and worth considering:

- CESR's advice should be consistent with the stated intention of the level I text, namely to include commodity derivatives in the scope of the MiFID.
- CESR's advice (and the subsequent practices by CESR Members) should not jeopardise (in the field of commodity derivatives) the general aim of the MiFID, namely to provide passporting opportunities for firms and market operators active in the business. Regulatory add-ons or "super-equivalence" would maintain or even acerbate today's fragmentation and barriers.
- CESR should keep an eye on the overall competitiveness of Europe's highly specialised commodity derivatives markets and work to the extent possible towards creating a level playing field between the EU-based markets and their competitors that are exclusively located outside the EU.

42. On the more detailed comments made by the IPE and the LME in respect of CESR's individual pieces of draft advice, we have nothing to add.

On-Exchange and Off-Exchange trades

43. Some of our Members draw our attention to the fact that the designation of a transaction as "on-exchange" or "off-exchange" has bearings that go far beyond the area of securities market legislation in the narrower sense as contained in the MiFID. Examples for such wider implications of the said distinction are effects on the taxation of transactions (different tax regimes may apply to on-exchange and off-exchange transactions), restrictions for certain types of transactions (that may be permissible only on-exchange), or restrictions for certain types of investors that may have to trade on-exchange a certain proportion or all of their business.

44. One of the core objectives of the MiFID is to create a level playing field between different types of trading venues. The Directive therefore emphasises that pre-trade and post-trade transparency shall apply in a widely identical manner whenever trading takes place in a regular and organised form, no matter the legal basis and systems design of the trading venue. We note in this context particularly the text of Recital 6[5] and CESR's considerations on page 61 and 62 (Box 14) of its paper[6].

45. We would call on CESR and its Members to include a clarification in their draft advice on the MiFID implementation measures that any classification of a trade as "outside" or "on" a Regulated Market (as referred to in Recital 49 and Art. 4(1)(7)) shall have no bearing on the classification in a national context and for a purpose outside the MiFID of a transaction off or on an exchange. We find an interesting parallel text in CESR's considerations on its mandate with regard to the definition of a commodity on p. 18 of the CESR consultative paper.[7] We recommend a similar approach.

46. For further considerations on this issue, we refer CESR to the submission by our Member OMX Exchanges.

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We hope that CESR will find our comments useful in its deliberations, we are of course always available for the discussion of any related matters, and we look forward to further good co-operation.

Yours sincerely,

Gregor Pozniak
Deputy Secretary General, FESE

[5] "The term 'system' encompasses all those markets that are composed of a set of rules and a trading platform as well as those that only function on the basis of a set of rules. Regulated markets and MTFs are not obliged to operate a 'technical' system for matching orders. A market which is only composed of a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, reporting and, where applicable, transparency obligations is a regulated market or an MTF within the meaning of this Directive and the transactions concluded under those rules are considered to be concluded under the systems of a regulated market or an MTF."

[6] "In setting the proposed criteria, any reference to installation of a technical platform as a necessary precondition for internalisation has been deliberately omitted. This is because an investment firm can engage in systematic internalisation not only through its own technical platform but also by using other kind of in-house or external systems or other facilities (e.g. its own phones, call centres, etc)."

[7] "CESR emphasises that its consideration of this mandate has been limited to the context of the Directive. In particular, the draft advice on the definition of a "commodity" is valid only for the Directive and is in not intended, without further explicit consideration, to affect the various definitions of "commodity" in national and other legislation for other purposes. Examples of such measures include the Market Abuse Directive (Directive 2003/6/EC)."