ABI PAPER IN RESPONSE TO THE SECOND CESR CONSULTATION PAPER ON THE IMPLEMENTING MEASURES TO DIRECTIVE 2004/39/EC ON MARKETS IN FINANCIAL INSTRUMENTS.

CONTENTS

GENERAL CONSIDERATIONS

The Italian Banking Association (ABI), which with over 800 member banks represents practically the entire Italian banking industry, appreciates the contents of the second CESR consultation paper, 05/164, containing the proposals for implementing measures to Directive 2004/39/EC (MiFID) on markets in financial instruments.

Nevertheless, we think it necessary to note some procedural problems with this round of consultations, so that it could take appropriate measures to avoid their recurrence in future consultations with the banking industry.

Specifically, as noted by a number of industry representatives at the open hearing of 23 March, the lack of adequate description of the way in which the CESR determined some figures that are of great importance in determining its proposals (most notably those concerning "market transparency") adversely affected our ability to evaluate fully the reasons behind the proposals and their potential implications.

Further, though we are aware of the CESR's strong efforts to solve the time constraints imposed by the Lamfalussy procedure, we must note that the one month given to the industry to respond to the proposals produced by the CESR in the second consultation – quite short even under normal circumstances – is visibly insufficient to respond to this paper, which contains also a number of major new proposals not treated earlier (e.g., evaluation of adequacy for lending and some aspects of best execution).

This said, turning to specific contents, in our view the proposals of the consultation paper are:

- on best execution, generally reasonable; they strike the right balance between investor protection and safeguarding intermediaries' business operations. Accordingly, while we are aware that some industry representatives consider the disclosure requirements excessive, we are confident that requests to ease these obligations will not be endorsed by the CESR, given that some authoritative securities regulators on the Committee have repeatedly complained of the lack of sophistication of the average investor, which implies the need for greater disclosure.[1]
- on market transparency, quite disappointing, in that they seem to be designed to diminish transparency on trading, and, particularly, on internalisers. It seems that the concerns, raised by the majority of industry associations against pre-trade transparency regime, have been taken into consideration, despite to the need to ensure real competition amongst all trading venues and to allow clients into comparing quotations.

[1] Most recently, C. Briault, Managing Director, Retail Markets, Financial Services Authority, Speech "Key themes for 2005" made on the APCIMS Investment Day of 4th March 2005. Extract: "We face a huge challenge in this area due to the very low levels of basic financial literacy in the UK".

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In what follows:

- The "Highlights" section gives our comments on the most important aspects of the consultation paper.
- The "Specific considerations" give ABI's answers to the CESR's questions, sometimes with some introductory remarks.

HIGHLIGHTS

The Italian Banking Association wants to highlight, concisely, the following six points, which we consider to be of particular importance:

- **Lending for financial transactions:** In regard to lending for transactions in financial instruments there must be no requirement to evaluate the adequacy of the transaction; this obligation inheres only to specific main investment services.

- **Investment advice – Generic and specific recommendations:** Any and all recommendations (generic or specific) must be classed as investment advice, in that the investment firm can formulate a recommendation only on the basis of its knowledge of the investor, and this knowledge can only be drawn through an evaluation of adequacy. Consequently, we consider that the investor protection provisions must apply from the moment in which the intermediary begins to provide recommendations, whether these are specific or generic (financial planning and asset allocation service).

- **Best execution:** While the CESR proposals' approach is, on the whole, appreciable, we do not agree with the possibility of allowing the acquisition of customer's consent to the investment firm's execution policy via telephone. For an investor, it is simply not possible to make a thorough evaluation of any proposed execution policy in the course of a telephone conversation.

- **Pre-trade transparency requirements:** The interpretation of the concept of "orders executed" as "transactions" is questionable, in that in addition to conflicting with Article 27 of the Directive, which is extremely clear in speaking of "orders executed", such an interpretation underestimates the "standard market size" of every transaction, with definite negative effects on the level of pre-trade transparency that internalizers must guarantee.

- **Standard Market Size:** The value of just €5,000 is decidedly too low for the first class, considering the pan-European application of the threshold.

- **Post-trade transparency:** We oppose the elimination of the obligation placed upon trading venues to provide market participants, at the end of the session, with aggregate data on trading.

SPECIFIC CONSIDERATIONS

SECTION I - GENERAL OBLIGATION TO ACT FAIRLY, HONESTLY AND PROFESSIONALLY

Question 1: Do you agree with the proposed advice in this area, including the proposed limitations on the scope of the obligation?

We do not agree with the proposal to place an obligation on intermediaries to assess the adequacy of the lending for afterwards transactions in financial instruments.

If on the one hand Article 19.1 of the Directive provides for the inclusion, "where appropriate", of any accessory investment service within the scope of the rule, on the other hand the assessment of "suitability" and "appropriateness" referred to in paragraphs 4 and 5 of that Article relate, as has always been the case in Italian law, to the performance of specific main investment services (e.g., advice, portfolio management, trading) to enable the investor to make informed choices.

Thus, we consider that the need to protect investors with respect to lending for financial transactions – on which we concur – can be satisfied by the CESR establishing specific transparency rules for intermediaries making such loans, such as an indication of the types of lending envisaged, the interest rate and all other prices and terms.[2]

Question 2: Do market participants consider that investment firms have to obtain the necessary information about the retail client's investment objectives in addition to his financial situation?

Please see previous answer.

[2] Italian regulations (Article 47 of CONSOB's regulations on intermediaries) place special transparency requirements on intermediaries in the case of lending to investors. "In addition to the provisions of Article 30, the contract with the investor must indicate the types of lending envisaged, the interest right and any other prices and terms applied or the objective criteria for their determinations, as well as any additional charges in the case of non-payment; the possibility of changing the interest rate or any other price or term to the investor's disadvantage must be expressly indicated in the contract with a clause explicitly approved by the investor."

SECTION II – THE DEFINITION OF INVESTMENT ADVICE - GENERIC AND SPECIFIC ADVICE

Question 1: Do you believe that investor protection considerations require the application of the above conduct of business requirements from the point at which generic advice is provided or do you believe that sufficient protection is provided in any event to allow the definition of investment advice to be limited to specific recommendations?

As a premise, as we said in our response to the CESR's previous consultation paper, even when financial consulting, meant as recommendation to client to follow a certain behaviour, even if it does not refer to a specific financial instrument (e.g. advice on the best portfolio allocation for the customer, with reference to generic types of instrument or sectors for investment that are more or less risky or volatile) it must be defined as investment advice.

In this context, the recommendation towards clients can be given by the investment firm only on the basis of its knowledge of the investor, and such knowledge can only be drawn through a suitability test.

By contrast, merely providing information on issuers, securities, markets, services, which implies no knowledge of the customer, cannot in any case be considered to be an investment advice service.

Consequently, to answer the question, we consider that the investor protection provisions must apply from the moment in which the intermediary begins to provide recommendations to clients, whether these are specific or generic (financial planning and asset allocation service).

In the light of the foregoing, we are against the possibiliy of considering even implicit recommendations as investment advice since this presumes a sort of *probatio diabolica* and, consequently, the setting of control devices on personnel's activity that are not feasible.

However, exclusively with reference to "potential clients," we agree with the CESR that generic advice provided through a "general framework agreement" must not count as an investment service.

In this context, however, we think that the CESR should specify:

- the nature of such agreements and the procedures for their stipulation;
- the rationale, if any, for the difference between "new clients" and "potential clients" and in any case that "potential clients" are only those who have not yet established a

contractual relationship with the investment firm for the provision of investment services.

Question n.2:
Do you believe that considerations relating to the scope of the passport and the scope of the authorization requirements point towards the inclusion or exclusion of generic advice from the definition of investment advice?

We think that the inclusion of generic or just specific recommendations in the investment advice definition has remarkable implications on the business opportunities. In fact, if generic recommendations would be excluded from the investment advice scope, everyone could perform, even if in a hidden fashion, an investment advice activity without being subject to the rules and the requirements provided for by the Directive and with severe alterations of the level playing field.

SECTION III – BEST EXECUTION

ABI attaches great importance to the best execution rules. In a trading environment characterized by the co-existence of a number of different trading systems and venues, best execution is a fundamental safeguard for investors and at the same time a source of numerous obligations upon intermediaries, as regards some of which, however, the CESR's proposals could perhaps be made less onerous without lessening the investors' protection (see below).

In general ABI agrees with the approach taken by the CESR in this matter, because:

- it strikes the right balance between investor protection and safeguarding intermediaries' operational efficiency;
- as we understand it, the CESR's approach appears to imply that intermediaries' observance of the requirements represents an overall obligation to produce a certain result, albeit tailored to the specific execution policy, and not a generic obligation concerning means. This latter aspect of especially important for those intermediaries who conduct their business in a civil code environment (such as Italy's) and consequently need certainty of law and regulation to clarify their liabilities.

The suggested measures specifically concerning the investment firm's disclosure and execution policy, moreover, appear appropriate especially considering the low degree of "financial literacy" of the average European investor. The measures should enable investors to make an adequate assessment of the arrangements that determine a firm's execution policy and more easily to compare the various execution policies available in the markets.

In this regard, it is particularly positive that the CESR requires the investment firm:

- to explain to the retail investor the reasons for any policy based on considerations other than relative cost or price of transactions[3];

- inform a client who has given order execution instructions differing from the firm's execution policy of the risks inherent in that choice.

1. Best execution for portfolio management firms and the reception/transmission of orders

30. Questions for comment

a) How do firms compare venues (or intermediaries) that offer inducements with those that do not?

We cannot answer to this question.

In Italy, as it regards the trading venues, the law currently requires that all trades on listed shares and bonds, but the ones on Treasury bonds, be effected on regulated markets, so virtually the majority of customer orders are transmitted to the markets operated by Borsa Italiana, the stock exchange company. Consequently, there is no need of any comparision.

As it regards the the residual portion of their business (mainly foreign transactions), the firm looks first to the execution quality of the venue and only when equal quality is assured will it consider other inducements.

As it regards the execution intermediaries comparision, for banking groups, virtually all trades are channeled through the group trading unit, while for banks not belonging to groups, they work through consortium, and thus for both situations the question of inducements generally does not arise.

To conclude, the question of inducements is relevant only to a tiny portion of overall financial market trading in Italy, that conducted by small investment firms using venues other than the regulated markets and, consequently, the related data are no significant. In a close future, with the enforcement of the new rules, the operational patterns based on comparisions will be surely more widespread.

30. Questions for comment

b) Where the fees and commissions that firms pay to execution venues or intermediaries include payment for goods or services other than execution, please indicate the circumstances in which firms might determine how much of these commissions represents payment for goods or services other than execution? Under what circumstances do firms consider the entire commission as payment for execution?

[3] C. Briault, "Key themes for 2005".

As above, fees and commissions perceived by clients and, then, given by the investment firm to the trading venue or to the execution intermediary for goods or services other than execution are such a marginal phenomenon in Italy that no significant data can be given.

2. The selection and review of trading venues – Monitoring and review of execution policy

56. Question for Comment.

Please suggest situations and circumstances in which a firm might satisfy the requirements of Article 21 while using only one execution venue.

We consider that an investment firm can satisfy the requirements of Article 21 using only one trading venue if this venue represents the one whereby the majority of orders are directed to and in which the best conditions in terms of liquidity, price discovery and transaction costs are guaranteed.

For instance, one may assume that in Italy, when the requirement to trade on-market is abrogated, the use of a single trading venue with those characteristics (as is now the case for Italian shares traded on the Milan stock exchange) may happen for small investment firms.

For larger investment firms, the situation to which the question refers to is unrealistic since already nowadays most of the investment firms may offer to execute orders via several execution venues or intermediaries.

65bis Question for consultation.

Do market participants consider that the distinction between internal and external costs is relevant? Does the investment firm have to take into account also internal costs? If so, which ones?

As a premise, since no clear, though abstract, definition of internal and external cost was given, we assume that internal costs are those related to service production, while all the others should be deemed as external costs. If such a picture is right, then we already answered to the second question.

As it regards the first question, it is accordingly self-evident that together with other factors an investment firm will also evaluate the costs, both implicit/external and explicit/internal, of different trading venues. The evaluation is necessary insofar as it is needed to determine whether one venue or another best guarantees best execution of customer orders.

Where CESR's final objective is to require investment firms to disclose internal and external costs, we do not agree on such obligation.

82. Question for Comment

How do you assure that your execution arrangements reflect current market developments? For example, if you do not use a particular execution intermediary or venue, how would you know whether they have started to offer "better execution" than the venues and intermediaries that you do use?

For above reasons we have not experience in such field. Nevertheless, we can notice that currently in Italy most of investment firms have special procedures (and data) that permit daily comparison of those main trading venues' performance (moreover the foreigner ones) that provide valid alternative prices.

87. Question for Comment

Are intermediaries likely to inform investment firms that manage portfolios or receive and transmit orders about material changes to their business?

To avoid a situation in which portfolio managers and order receivers get an unwieldy mass of information, the execution intermediary are not required to provide all information on material changes in their business but only those that are likely to affect execution policy.

3. Transparency in investment firms' execution policy

110. Questions for comments

a) Please identify and estimate the specific costs that investment firms will incur to identify the execution venues and intermediaries that have executed or received and transmitted their client orders and to collect historical information about what portion of their client orders they directed to each such venue or intermediary. For example, what costs would be associated with determining what percentage of client orders an investment firm directed to each venue or intermediary it used in the last 12 months, based on both the number of trades and the value of trades?

As we already noticed, given the requirement, in Italy, to trade listed securities on regulated markets, save for government and government-guaranteed securities, we are not experienced at all and, consequently, we do not have any specific statistical data.

Just as additional information, we think that such data are not easily collectible but it takes a specific software.

b) Please explain what competitive disadvantage or other damage to their commercial interests firms would experience if they were to publish the percentage of their business that they direct to different execution venues and intermediaries.

We see no particular competitive disadvantage in the disclosure of this information; indeed, on one hand, it would strengthen competition between investment firms as well as between trading venues and, on the other hand, it would compel them to be consistent with the commitments undertaken in their execution policy towards the client.

c) If firms are required only to make this information available upon request, would that address respondents' concerns about overwhelming clients with too much information?

This would seem to be an appropriate measure to prevent investors from receiving an indiscriminate, enormous mass of information that would be hard to read and understand.

d) Please suggest approaches to focus this information. For example, should this information be disclosed for each execution venue, for different types of instrument, country by country, etc? Should firms break out this disclosure for different business lines (e.g. retail versus institutional)? How?

We agree with the CESR that information should be disclosed for each venue and for different types of instrument. The proposal to differentiate the disclosure requirement by business line is also reasonable.

e) Should there be information for execution venues that investment firms access indirectly? And, if so, should it be on the main intermediaries to whom the firms usually entrust the execution of their orders?

No, only for the execution venues that the firm accesses directly.

f) Please provide specific information about why, in less liquid markets, this sort of disclosure actually might be misleading. Is such disclosure about equity transactions more meaningful or useful than disclosure about transactions in other types of instruments?

We do not agree that this sort of disclosure can be misleading even in less liquid markets. Conceptually, it is hard to see what market liquidity effects could follow from disclosing to clients the percentage of an investment firm's orders that is channeled to that market.

We see no reason to differentiate disclosure between shares and other instruments.

115. Question for Comment

With respect to the fourth disclosure suggested by respondents, CESR requests further comment on whether investment firms that execute client orders directly or indirectly should be required to disclose information about their error correction and order handling policies.

We believe that error correction and order handling, as essential elements of execution policy, should both be subject to the disclosure requirement.

126. Questions for Comment

a) How might an investment firm gain the necessary consents required under Article 21(3) of the Directive as part of a voice telephone communication?

b) What impact would there be on cross-border business and distance marketing if investment firms are not permitted to obtain the client consents required by Article 21 using voice telephone?

c) Can respondents suggest a different approach than the one used in paragraph 5 of the advice under Article 19(3) that would permit investment firms operating via voice telephone to satisfy the objectives of Article 21's consent requirements?

d) How might firms evidence that they had obtained client consent if they obtained that consent via voice telephone?

a) The consent of the client presumes his prior knowledge with and assessment of the investment firm's execution policy. On the other hand, one should consider that the execution policy document is probably quite long and technic.
In light of this, and considering the low degree of financial literacy of most clients, we deem necessary to ensure the possibility of reading on a durable medium the investment firm's execution policy in order to to enable the client to make an informed assessment of the policy proposed. It's quite obvious that this is impossible in the course of a telephone call.

Accordingly, we consider that gaining the necessary consents via telephone conversation must never be permitted.

b) – c) – d) Given our answer to part a), it would not be consistent to give an answer to the other parts of this question.

129. Question for Comment

Should investment firms that do not consider speed to be an important factor in the execution of retail orders be required to highlight this judgement?

Given that speed of execution is an important factor in evaluating best execution policy, we agree with the CESR that investment firms that do not share this orientation should adequately highlight this judgement to clients.

Section IV – MARKET TRANSPARENCY

For ABI, the part of the CESR's consultation paper concerning market transparency proved to be a surprise. The implementing measures proposed appear to weaken the degree of required transparency for European financial markets and investment firms, with the passage of MiFID, that is not high.

We realize that the various actors in European financial markets, especially the operators of regulated markets and MTFs on the one hand and internalizing investment firms on the other, have profoundly divergent needs, interests and visions of the business. Nevertheless, the regulatory approach should be in line with the orientation of the Directive that look strongly at the transpareny the tool through which ensuring an effective level playing field.

In fact, the objective of the Directive is to build an integrated, efficient European financial market. In this regard, competition between trading venues is an essential condition. But such competition necessarily requires a high degree of transparency, especially pre-trade transparency, so that the offers of the various venues can be compared. This competitive capacity will also affect the ability of investment firms to assure the best possible result for their clients.

In support of this not really favourable impression, let us quote just some of the proposals set out in the consultation paper:

- the interpretation of the concept of "orders executed" as "transactions", despite the fact that Article 27 of the Directive is extremely clear in speaking of "orders executed", and even though this position leads to an underestimation of the standard market size of every share, certainly to the detriment of the degree of pre-trade transparency that internalizers must assure;

- the search of data only from regulated markets and not even from other sources even if the Directive (art. 27) make a clear reference to all the European markets and not only the regulated ones;

- the determination of the average value of trades in each share under Article 27 using only data on trading in regulated markets, even though this results in a clear underestimation of the size of the market in each share;

- the determination of fundamental quantitative thresholds for the rules governing systematic internalizers, such as Customarily Retail Size of €7,500 or the criterion of a float of €1 billion for liquid shares; we must note that the consultation paper fails to adequately justify the procedures and criteria whereby these thresholds have been set; and we do not consider that the values adopted are appropriate. A survey of the leading Italian banks has found that on the average they receive orders from retail clients for up to €20,000.

- the determination of Standard Market Size for the first class at just €5,000, which is decidedly too low, considering the pan-European application of the threshold;

- the criticable elimination of the obligation placed upon trading venues to provide market participants, at the end of the session, with aggregate data on trading;

- the option for minimum harmonization, leaving national authorities the possibility of imposing additional, diversified requirements for determining the "block trade" threshold.

Accordingly, in the answers to individual questions we have suggested some possible measures or changes to the consultation paper's approach to move in the direction of greater market transparency, assure a more level playing field between trading venues and adhere more closely to the original approach of the Directive.

A. Definition of systematic internalizer

Q 1.1: Do the revised criteria for assessing 'organised, systematic and frequent' better delineate the activity of systematic internalisation? If not, what further modifications would they propose?

Yes, they do better delineate systematic internalization. We therefore see no need to propose further modifications.

We should like to point out the advisability that at national or European level there be provision for an official list of systematic internalizers, like the envisaged list of regulated markets and MTFs.

Q 1.2: Is the proposed use of a quantitative measure as an additional indicator useful?

As we said in responding to the first consultation paper, they are particularly useful for defining systematic internalizers more precisely.

Q. 1.3: Has the quantitative test been appropriately structured? If not, how should it be improved?

Yes, it is appropriately structured.

B. Pre-trade transparency requirements

Q 2.1: Does the proposed approach to identifying liquid shares establish a sound methodological approach in the context of Article 27? If not, please specify (in sufficient detail) a modified or alternative approach and explain why it would be superior.

We agree with the approach for defining liquid shares. However, as to the requirement on the size of the float, we would like to see the reasons for the choice of this criterion and, even more important, how and why the threshold of €1 billion was decided on.

However, as to the method for calculation SMS, we should like to repeat what we said in the premise, namely that using "transactions" instead of "executed orders" as the base for calculation is not understandable sice the data on the orders are avalilable at any regulated market.

Q 3.1. Do consultees agree with the specific proposals as presented or would they prefer to see more general proposals? (cfr. 21.1)

We agree with the specific proposals; more general proposals are not needed.

Q 3.2. Is the content of the pre-trade transparency information appropriate? (cfr. 12.2)

Yes.

Q 3.3: Do consultees agree on the proposed exemptions to pre-trade transparency? Are there other types or order/transaction or market models which should be exempted? (cfr. 12.4)

Yes, we agree.

Q 3.4: Do consultees agree on the proposal in the second subparagraph of paragraph 84? Would it cause difficulties for firms trading in several capacity (systematic internalisation, crossing client orders etc.)? Are there alternative ways to address the potential loophole between Article 27 and Article 44?

Yes, we agree on the proposal in the second subparagraph of paragraph 84.

Q 3.5: Do you agree with CESR's approach of proposing a unified block regime for the relevant provisions in the Directive or do you see reasons why a differentiation between Art.27 MiFID on the one hand and Art.29, 44 MiFID on the other hand would be advisable? (cfr. 9.1)

Yes, we think a unified block regime for Article 27 and Articles 29 and 44 is appropriate for purposes of pre- and post-trade transparency. It simplifies intermediaries' business and above all it ensures uniform conditions of functioning of the three types of trading venue (regulated markets, MTFs, systematic internalizers).

Q 3.6: Would you consider a large number of SMSs in order to reflect a large number of classes each comprising a relatively small bandwidth of arithmetic average value of orders executed as problematic for systematic internalisers? (cfr. 9.2)

Too many classes could be problematic for the operations of systematic internalizers. Nevertheless, this must be evaluated once the identity of liquid shares and how they are distributed among the size classes is known.

Q 3.7: In your opinion, would it be more appropriate to fix the SMS as monetary value or

convert it into number of shares? (cfr. 9.3)

We do not agree with the CESR proposal and instead consider that the SMS should be set as number of shares (size or pieces). This would make it easier for intermediaries' information systems to manage the various SMSs and for clients to acquire information.

Q 3.8: Do you consider subsequent annual revisions of the grouping of shares as sufficient or would you prefer them to be more frequent? Should CESR make more concrete proposals on revision, especially, should the time of revision be fixed at level 2? (cfr. 9.4)

We consider that in the trade-off between stability and ease of management on the one hand and representativeness on the other, revision should be annual, save exceptional circumstances or events affecting the entire market which require a special revision. We further think that the frequency of revision must be set by level 2 regulation, to provide certainty and guarantee coordination of calculation within the EU.

Q 3.9: Do you support the determination of an initial SMS by grouping the share into a class, once a newly issued share is traded for three months or do you consider it reasonable to fix an initial SMS from the first day of trading of a share by using a proxy based on peer stocks to determine which class the share should belong to? (cfr. 9.5)

We think an initial SMS should be fixed using a proxy, providing that as more appropriate SMS is calculated rapidly, even earlier than the three months proposed, i.e. as soon as the volatility typical of the initial period of trading subsides.

Q 3.10: Do you consider a two week period from publication as sufficient for systematic internalisers to adapt to new SMSs? (cfr. 9.6)

Yes.

Q 3.11: Do you agree on the proposal on publication of the classification of shares, would you prefer establishing a single contact point (at level2)? (cfr. 9.7)

We do not agree with the proposal that individual national authorities should publish the classification of shares and that the consolidation of this classification at European level in a single contact point is a mere possibility. As already noted, we think that the list of liquid shares and their classification, with indication of the SMSs, should be made officially and uniquely at level 2 and published by the Community authorities (e.g. the CESR) in order to facilitate compliance with the regulations on the part of intermediaries.

Q 3.12: Do you have further comments on the proposals for the obligations of systematic internalisers?

We think that the minimum SMS, for the first class (up to €10,000) should be at least equal to Customarily Retail Size, to guarantee pre-trade transparency on

internalization at least up to levels equal to the average size of retail clients' orders (gauged by CRS).

Moreover, for CRS specifically, it is reported that in the explanatory test it is specified that the €7,500 threshold has bee fixed on the basis of information gathered by the CESR. Since this figure seems quite low, it would be most useful to have more detail on this information. As noted above, surveys at the leading Italian banks have found that their retail clients transmit orders averaging up to €20,000.

D. Post-trade transparency requirements

As noted in our premise, the requirement that venues provide participants with aggregate data on trading, apart from the unquestionable advantages in terms of market transparency, would certainly have facilitated monitoring of trading venues by intermediaries to decide whether or not to include them in their roster of best execution choices. Retaining this requirement would therefore increase and improve competition between trading venues and also improve the quality of the best possible result for the client.

Q5.1: Do consultees support the method of publishing post-trade information (either trade by trade information or on the basis of one price determination)?

We support the method proposed by the CESR.

Q5.2: Do consultees agree that the responsibility for publishing the post-trade information lies on the seller in case of trades made outside RMs and MTFs?

Yes, post-trade information on trades outside RMs and MTFs should be on the seller. However, we think the CESR should clarify the scope of the reporting requirement as regards non-EU intermediaries. In particular, it is not clear whether that category does or does not include the European branches of non-EU intermediaries.

If the answer is that they are not covered, then we think the requirement should be extended also to the EU branches of non-EU intermediaries, in order to minimize disparity of treatment vis-à-vis EU intermediaries.

Q6.1: Do consultees agree with the approach to establishing a threshold for a waiver from pre-trade transparency? Would the cathegoric approach cause difficulties or market distortion for shares with different trading patterns? Would the alternative proposal described in annex I option 2 (footnote 19), as more stock sensitive, provide better outcome? If that approach would be taken, would the proposed threshold (95 %) be appropriate and should it be calculated on the basis of trading volume or number of trades? Is there other alternative proposal that you would put forward, bearing in mind the objective of finding an easily understood and easily implemented solution?

We agree with the CESR approach to establishing the threshold for exemption. We underscore the necessity for the competent authorities to determine and communicate to the market the thresholds in terms of monetary value.

Q6.2: For purposes of calculating the average trade size for Article 27 shares, do consultees agree that trades larger than the pre-trade threshold should be those that are excluded when calculating the average size? If not, which trades large in scale compared with normal market size should be excluded? It would be helpful if any suggestions could be illustrated with resultant figures.

Yes, we agree with the use of the pre-trade threshold in calculating average trade size under Article 27.

Q6.3: Do consultees agree with the proposals for determining thresholds for deferred publication arrangements? Is the balance of proposed threshold sizes and time delays appropriate? If you consider that they should be modified, please suggest how and why.

We think the two-day deferral for reporting large trades is too long; one day is more than enough to manage the risk associated with such trades. We accordingly propose limiting deferral to at most one day, and thus having only one class of time delay.

Q6.4: Do consultees consider that intermediaries should benefit from the maximum delay Proposed, regardless of whether they have unwound their position? If not, on what basis should CESR recommend a rule aimed at requiring immediate disclosure once all, or the major part, of the position have been unwound?

We think it should be provided that once the position is unwound intermediaries should not wait up to the maximum delay allowed but should be required to report within 60 minutes of having closed the position.

Q6.5: Do consultees agree with the proposal that Competent authorities should be able to grant pretrade waivers and/or approve deferred publication arrangements that comply with the minimum thresholds regardless of whether or not the competent authority of the lead market adopts higher standards? Would it be better to require all member states to follow the transparency arrangements adopted by the competent authority of the lead market, whether by the competent authority or the lead market operator? CESR would like to receive comments that throw more light on the pros and cons of each option?

We think it advisable that common requirements in all Member States be adopted, and hence that all the authorities use the levels fixed by the relevant market authority. This approach, in addition to ensuring greater simplicity of cross-border transactions, also prevents regulatory arbitrage.

Q6.6: Do consultees have any comments on the proposed short-term arrangements?

What the CESR means by "short-term arrangements" is not entirely clear. If what is meant is to use data only for the main markets (and possibly other significant markets) rather than all the data at EU level (see page 69 of the consultation paper), then we think the proposal is acceptable, in consideration of the need for swift implementation of the regulation, but only on condition that it is transitory and with a predetermined expiration date.

Q6.7: Do the proposals adequately address issues relating to less liquid shares? If not, what arrangements would be preferable?

Yes. See answer to Q6.3.

Q6.8: Is the suggestion in respect of portfolio trades suitable?

The CESR's proposal on application of the reporting time delay to "portfolio trades" is not clear. We do not understand how it is to be applied.

Nor do we consider it advisable to allow each authority to grant or not grant the exemption, because this could result in disparity of treatment between Member States.

Q6.9: Do consultees have any other comments on the proposals in this section

Not further comment**.**