

**RESPONSE TO CONSULTATION PAPER – “CESR’S DRAFT TECHNICAL
ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE
DIRECTIVE 2004/39/EC ON MARKETS IN FINANCIAL INSTRUMENTS –
OCTOBER 2004” – CESR/04~562**

In the case of client limit orders, Article 22.2 requires firms to "take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants".

In CESR’s Draft Technical Advice, Question 7.1 asks, “In your view, what types of arrangements other than RMs and MTFs could be considered as complying with Article 22.2?”

The Directive allows investment firms to choose from three alternatives as to how they publish pre- and post-trade prices, ie:

- (i) through the facilities of any regulated market which has admitted the instrument in question to trading or through the facilities of an MTF in which the share in question is traded;
- (ii) through the offices of a third party;
- (iii) through proprietary arrangements.

These same arrangements should also be considered as complying with Article 22.2.

In CESR’s Draft Technical Advice, Question 10.3 asks, “Do consultees think that publication of quotes solely on the firm’s own web site meets the “easily accessible”-test?”

In its Consultation Paper on the first set of mandates, CESR concluded (nr. 40 on page 94) that publication (Post-Trade Transparency) just on the firm’s own website was unlikely to meet the “easily accessible” test, as investors would have to search through a large number of web sites, and that an investment firm must choose a publication mechanism that publishes the post-trade transparency information in a form that is easily consolidatable.

It should be considered that:

- the “easily accessible”-test is not met if a firm publishes quotes solely on the firm’s own web site
- the “easily accessible”-test is not met if a firm publishes post-trade prices solely on the firm’s own web site
- compliance with Article 22.2 is not achieved if a firm publishes non-executed client limit orders solely on its own web site.

Non-executed client limit orders, quotes and post-trade prices should all be “made public” by at least one of the three alternatives offered to investment firms, ie:

- (i) through the facilities of any regulated market which has admitted the instrument in question to trading or through the facilities of an MTF in which the share in question is traded;
- (ii) through the offices of a third party;
- (iii) through proprietary arrangements.