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BBA RESPONSE TO CESR ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE DIRECTIVE ON MARKETS IN FINANCIAL INSTRUMENTS (2nd part of response – Best Execution and Transparency)

The British Bankers' Association represents more than 260 banks carrying on business in the United Kingdom. The majority of these banks come from outside the United Kingdom and our members cover the whole range of investment services covered by the Directive.

We welcome the opportunity to respond to this CESR consultation on behalf of our members. We also welcome CESR decision to extend the deadline to 4 October. However, given the complexity and length of the CP it is conceivable that issues will come to our attention subsequently and we will alert CESR's to them at the earliest opportunity.

As outlined in the first part of our response submitted on 17th September, we strongly encourage CESR to consider both grandfathering and transitional arrangements. Furthermore, we urge CESR and the Commission to work together to review the overall timetable if it should become apparent that the current timing will not suffice for proper consultation and implementation of these proposals which are crucial to the future of European securities markets. We also believe that the current CP is already far too detailed and prescriptive and believe there should be no further detail added to the final advice. Instead CESR should take account of the vast diversity of the markets and instruments covered by MFID and adopt a flexible approach based on high-level principles.

We would like to draw CESR's attention to the following issues, which our members have identified as key priorities.

Best execution

We believe that the provisions of Article 21 of MFID contain sufficient detail to ensure best execution and that there is no need for further detail at Level 2. However, we welcome the fact that CESR has promised to leave room for "significant attention, discussion and debate", as elements of the current proposals are likely to work against both the best interests of firms and consumers.

In particular we do not believe that CESR should impose specific requirements for firms to re-evaluate execution venues as market forces and commercial pressures are likely to achieve greater choice and flexibility of execution without regulatory intervention. Similarly CESR's proposals to update customers on execution venues appear disproportionate and are likely to overwhelm customers with unwanted information rather than improving the overall quality of execution. Instead we would strongly support a generic disclosure in standard customer agreements or on a company website. For example the cost of informing all retail customers individually of changes in execution venues is likely to be substantial and would ultimately have to be passed on to customers. One of our larger member banks estimates that it would have to notify some 2 million account holders of each change of venue.

Pre-trade transparency

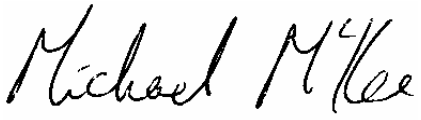
We believe that the current proposals are too wide ranging and specific and are likely to result in heavy systems and implementation costs which will ultimately be passed on to investors. For example the requirement to make public all information for every trade may actually result in reduced pre-trade transparency as electronic order books must be temporarily frozen in order to change the information contained in them. We welcome CESR's proposals to exempt from pre-trade transparency requirements iceberg orders and regulated markets and MTFs that determine their prices by reference to those displayed on other trading venues. We also support the waiver for crossing systems as these systems are likely to have a positive impact on investor welfare due to enhanced efficiency and cost reductions.

Post-trade transparency

We believe that the post-trade transparency requirements suggested by CESR will be costly and time consuming to implement. This will be particularly the case where currently no mechanisms of reporting to an exchange are in existence. We would therefore urge CESR and the Commission to consider interim solutions initially based on existing reporting systems. We do not believe that CESR should set a specific time period to define the concept of "as close to real time as possible". Instead CESR should specify that the time limit should be appropriate given the nature of the asset traded and the execution venue and the nature of the trading and reporting systems in operation. This may vary from market to market.

We would be happy to discuss with CESR any questions arising from our response.

Yours faithfully,



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BEST EXECUTION (Article 21)

The BBA has substantial experience in dealing with best execution issues having submitted detailed responses to the CESR Investor Protection Standards, MFID Level 1 and the FSA's Consultations on best execution.

As we expressed in our response to CESR's call for evidence we believed that Art 21 of MFID contains enough detail and that there is no need for comitology provisions. As the experience of working on the Market Abuse mandates demonstrated, too much detail and prescription are counterproductive to achieving pan-European comfort and acceptance. However, we welcome the fact that CESR leaves room for "significant attention, discussion and debate". We also appreciate the opportunity for further extensive dialogue, given that CESR considers the current proposals a concept paper intended as basis for further discussion rather than a definitive presentation of views.

Q.1: *Are the criteria described above relevant in determining the relative importance of the factors in Article 21 (1)? How do you think the advice should determine the relative importance of the factors included under Article 21 (1)?*

We agree with CESR's proposal that fulfilling a best execution obligation needs to take account of a variety of factors including price, costs, size, speed, likelihood of execution, likelihood of settlement and nature of orders (e.g. order constraints). We also welcome the fact that CESR does not attempt to assess the relative importance of these factors which is left to investment firms. Therefore, we would disagree with CESR's statement that "price is the first consideration in executing client orders" (p.72), it is merely one of the factors of varying importance according to the nature of the transaction. It is impossible to determine the relative importance of these factors as there would be an endless number of different situations to take into account.

We believe for example, there is a distinction between investment management and brokerage services. When a client retains an investment manager, he is in most cases paying for discretion and judgement to be applied to the whole of the investing process within the parameters laid down by regulation and contract. The success of the trading process is part of the overall delivery of performance and fund managers are judged by their clients on performance. This is a different proposition to that of a firm offering a brokerage service, where the quality of execution is determined by the broker itself. When the broker employs a sub-broker to execute in a market in which it is not itself present, then this is a case where the broker is responsible for the selection and the sub-broker for the execution. For example, where a French customer employs a French broker to buy a German share, the French broker may use a German broker to acquire the shares on Deutsche Borse. In such circumstances the French broker is responsible for the choice of the German broker. The German broker is responsible for the execution.

In some circumstances, therefore, best execution may simply mean following customers instructions to the letter and not deviating from them.

For instance, following a customer's instructions to sell at a certain price, although theoretically a better price could have been obtained, should not constitute a breach of a best execution obligation. Article 21 itself appears to recognise this.

We believe that CESR have correctly identified that the relative importance of factors in the best execution process will depend on client, order and venue characteristics.

Q.2: *Are there other factors that firms might wish to consider in determining the relative importance of the factors? Do you think that the explanatory text clearly explains the meaning of all different factors in respect of financial instruments?*

We believe the most relevant factors have been identified already with the relative importance of these factors depending entirely on the nature of the order and the respective client. CESR may wish to consider adding a reference to the likelihood of successful clearing and settlement as this us another consideration.

Q.3: *How might appropriate criteria for determining the relative importance of the factors in Article 21.1 differ depending on the services, clients, instruments and markets in question? Please provide specific examples.*

Best execution is not an exact science and the relative importance of the factors cannot only differ depending on the factors outlined above but can change from day to day and company to company. Investors have different needs and preferences, as the FSA suggested in its consultation paper CP 154 and it may be only possible to make certain very broad generalisations. For instance there is evidence that retail customers value price and speed of execution most highly, whereas institutional traders are often more concerned with any potential market impact of their trading. As the ranking of the different attributes of execution quality also depends on individual preferences it is not easy or even desirable to assign a ranking of relative importance.

Q.4: *Please provide specific examples of how firms apply the factors in Article 21(1) to determine the best possible results for their clients*

See our comments to the previous questions.

TRADING VENUES TO BE INCLUDED IN EXECUTION POLICY AND OBLIGATION TO MONITOR AND UPDATE EXECUTION POLICY

Q.1: *What investment services does your firm provide?*

Questions 1-7 are not directly applicable to a trade association but our 260 member banks provide the whole range of investment services covered under MFID and operate across the range of European and international execution venues.

Our members consider venue selection a very important commercial aspect of business operations. Most of our members review execution venues or arrangements periodically and this tends to be a commercially driven review based on good business practice rather than regulatory requirements. For our members venue choice is a commercial choice driven by availability of new venues, customer demand and the need to deliver good quality execution. It is best carried out by the trading and broking staff responsible for execution rather than by compliance staff and should not become a routine compliance responsibility as this will result in worse execution for customers. Our members consider venues according to a sophisticated set of regulatory, tax, political and venue-specific criteria (for example in respect of derivatives market practices). Market infrastructure also has a bearing on the foregoing criteria in determining the venue of choice. Our firms take account of immediacy as well as potential price improvement as part of their fiduciary responsibility to provide best execution.

CESR will have to bear in mind that the type of the venue review will depend on the type of firm. For instance a review of execution procedures in a fund management (i.e. buy side) firm will be different from a review of execution procedures and venues in a broker/dealer (i.e. sell side firm). Similarly the obligation to review for a solely retail broker would be different from those for a solely institutional broker. Much will depend on the costs involved and data availability. It is also important to note that fund managers will focus on broker selection rather than venue selection in order to meet their best execution obligation.

Commercial pressures and market forces achieve greater choice and flexibility of execution without a need for intrusive regulatory intervention. Any proposals by CESR need to avoid skewed incentives towards concentration of trades on the main stock exchange and allow the possibility of genuine competition and better prices elsewhere. Furthermore we believe that CESR's view of the costs of establishing direct or indirect access is too narrow and should take into account not only the costs of access but also fees paid to data vendors and external and internal IT costs.

Q.2: *How many venues does your firm access now? Does your firm expect to access more venues after the Directive becomes more effective?*

See our answer to Question 1.

Q.3: *What factors does your firm consider in selecting and reviewing venues?*

See our answer to Question 1.

Q.4: *Please provide specific examples of costs you consider in evaluating venues.*

See our answer to Question 1.

Q.5: *How do costs affect your decisions about venue selection?*

See our answer to Question 1.

Q.6*: Do you take account of implicit costs such as market impact? Is the question of implicit costs only relevant to firms that act as portfolio managers?*

See our answer to Question 1.

Q.7: *What specific events have led your firm to re-evaluate venues in the past? Please provide examples of how your firm has changed the venues that it access as the firm, its clients, or markets have changed.*

A good example of commercial pressures that have encouraged firms to add new venues is the development of new venues for equities in Europe such as Virt-x, Euronext, NASDAQ Europe etc. Virtually all major sell-side players joined these exchanges although initially there was considerable uncertainty how successful these business models would prove. However, none of the firms could afford to incur potential competitive disadvantages by not joining new venues of execution that might offer better prices than traditional exchanges.

Q.8: *Have we identified the key criteria?*

Yes, we believe that the key elements in venue selection have been identified by CESR.

Q.9: *What data is available to carry out these reviews? If no data is available, are market solutions likely to provide it?*

Overall, the amount of information and data available appears to be improving, for instance recently the London Stock Exchange has been developing new services which are likely to greatly aid to data availability and transparency. We believe that the majority of information needed for venue review is available on a commercial basis. However, it is still the case that for many venues a lot of information is still obtained, as would be expected, in the negotiations to join a venue.

We are concerned that if stringent regulatory requirements are imposed, this may result in service providers introducing charges for brokers which will ultimately result in higher prices for customers. CESR should not just focus on retail markets but apply a holistic approach that for example takes account of the fact that fund managers will choose those brokers whose execution policy is most relevant and appropriate. CESR's provisions should achieve transparency and accountability regardless of which policy is chosen ultimately. A review of execution venues will inevitably have to be taken without full access to equivalent information on all venues. Firms will have more information about venues that they have already joined than about those they are not yet a member of and any assessment to some extent will be based on value judgements and experience.

However, we do not feel that there should be regulatory standards to specify the broad format of data that should be provided by execution venues. With time market forces will lead to increasing data availability and transparency.

Q.1*: What kinds of monitoring arrangements do firms use now?*

See out answer to Question 6.

Q.2: *How frequently do firms monitor execution quality?*

See our answer to Question 6.

Q.3: *What data is available to aid firms in their monitoring obligations? What does the data cost?*

See our answer to Question 6.

Q.4: *In what respects does the frequency with which firms monitor execution quality depend on the types of instruments, clients, markets and investment services in question? Please provide specific examples.*

See our answer to Question 6.

Q.5: *What, if any, market data do firms consult in order to monitor execution quality?*

See our answer to Question 6.

Q6: *What additional data do firms expect to use after the Directive's transparency requirements become effective?*

The BBA has not conducted specific research amongst its members on the monitoring of execution quality but we believe that the vast majority of investment firms in the UK do undertake appropriate and regular execution quality monitoring exercises. We are for instance aware that the FSA has undertaken some research amongst 20 firms (a mixture of fund managers and brokers) and that all but one monitored execution quality. The method used was split roughly equally between sampling of execution reporting and taking a sample of 100 per month or 1% of all trades. There were wide differences of sampling varying from daily to annually. Benchmark measurement used included, VWAP, similar trades or comparison with previous close adjusted for market movements.

Investment companies monitor execution quality in a manner appropriate to their business and customers and ultimately commercial pressures and need for customer satisfaction will ensure that companies monitor execution quality on a regular and efficient basis.

Review of execution venues should be a normal aspect of a firm's business rather than an onerous regulatory requirement which is then in danger of being outsourced to the compliance department, as this could result in an approach which is less close to customer and business needs.

We would query the need for any further regulation on best execution as there appears to be no evidence of a market failure that further regulation could address. For example, from a broking perspective fund managers monitor trades and if the current system was not efficient, they would not use that broker. There is strong competition between brokers for business.

THE TIMING OF VENUE ASSESSMENTS

Q.1: *How frequently do firms review the venues to which they direct orders on behalf of clients?*

See our answer to Question 2.

Q.2: *Do firms re-evaluate their trading venues:*

-whenever there is a material change of any of the trading venues?
-whenever there is a material change at the firm that affects its execution arrangements?
-whenever the firm's monitoring indicates that it is not obtaining the best possible result for clients on a consistent basis?

Our comments in the previous section also refer. Most firms will review venues on a regular and routine basis as well as reviewing when there are significant market changes such as the opening of an important new venue. All of the above could be reasons for a firm to review the trading venues it uses. In fact the examples could be interlinked. For instance if there is a new trading venue that offers better quality of execution this would then lead to customers not obtaining the best possible results and a company reviewing its existent arrangements.

Q.3: *What difficulties would firms face in reviewing their execution arrangements in response to each of the forgoing events?*

Where an execution venue is new, it is very difficult to evaluate its future liquidity and how good execution is likely to be. It is often possible to recognise that a change in the firm or in a venue is material, but it may take a considerable length of time before it is clear whether it has an impact on execution quality.

Q.4: *Do venues make firms aware of material changes in their business?*

Generally our members feel that venues do make our member firms aware of material changes in their business.

Q.5: *Please provide examples of instances in which firms have changed the venues that they use.*

See our comments in the previous section. Usually it is question of offering additional venues rather than removing venues.

INFORMATION TO THE CLIENTS ON THE EXECUTION POLICY OF THE FIRM

Q.1: *At present, how many venues do firms access directly? Indirectly?*

This question is not directly applicable to a trade association, but on the whole our member firms access a wide range of execution venues both directly and indirectly. However, many venues are now competing against each other. For example a firm may access Deutsche Borse for German shares, Euronext for French shares and LSE for UK shares.

Q2: *Should an investment firm be required to provide clients and potential clients with information on the percentage of a firm's orders that have been directed to each venue?*

See our answer to Question 5.

Q3. *For example, should an investment firm be required to disclose to clients and potential clients what percentage of its client orders were executed in the trading venues to which the firm directed most if its client orders (to cover at least 75% of transactions executed)*

See our answer to Question 5.

Q.4: *How frequently should investment firms make this information available to clients? On a quarterly basis for example?*

See our answer to Question 5.

Q5: *Should firms be required to update the information to reflect recent usage? How frequently?*

Whilst we agree with CESR that there is scope for improving customer and consumer awareness about execution arrangements, we do not believe that the measures suggested are proportionate and likely to result in such improvements.

Most of the information suggested by CESR is not needed and will not be of interest or use to customers. Rather than providing customers with information on the percentages of orders executed at each trading venue, more general information would be more helpful and cost effective. For instance CESR or national regulators could provide generic and regularly updated information about execution venues and how brokers execute trades. Other information that could be provided by regulators could for instance include frequently asked question lists on trade execution.

This approach would be less intrusive and expensive but would lead in the medium term to increased awareness amongst customers. Bombarding customers with quarterly information is likely to lead to 'information fatigue' in the short-to-medium term without enhancements to the overall quality of execution.

In addition we believe that firms will have a commercial interest in providing information about the quality and content of their execution options as an aspect of the general marketing of their services. Subject to the usual requirements that such marketing should be "fair, clear and not misleading" we believe that it is preferable to encourage this but not make it a regulatory requirement. Ultimately customers will choose those service providers that offer the best quality of service and transparent order execution which will also include information on execution venues. Firms can always provide additional information to customers if this is requested.

CESR's draft covers the issue of sub-brokers to access venues. However, it does not specifically ask whether accessing a venue through an intermediate broker constitutes access to a venue which would have to be notified to a client. We would be grateful if CESR could clarify what disclosure to customers is envisaged if intermediate brokers are used. Our members believe that if CESR considers that those who use an intermediate broker have a disclosure obligation then it should be possible to generally disclose that they access a certain market through an intermediary that is subject to best execution requirements but do not believe that it would be helpful to consumers if all intermediaries are named specifically.

Q6: *Are there any other categories of information that a client or potential client needs to be adequately informed about the execution services provided by the firms?*

We do not believe there are any other categories of information a client requires and believe that the information suggested by CESR is already excessive for most clients and costly to the firm. Ultimately there is a danger that clients will end up paying for information they neither want or need.

Q7: *Should the information provided by portfolio managers and firms that receive and transmit orders be different from that provided by brokers? What are the key differences?*

Whilst we can see some merit in getting general agreement of clients to a firm's execution policy we do not think that express consent should be obtained for orders outside a regulated MTF or that clients should be notified of all material changes to execution venues.

We feel those information requirements are excessive for both portfolio managers and brokers.

Q.8: *Have all key conflicts of interest been identified?*

Yes, we believe so. However we feel that conflicts of interest issues should be dealt with in connection with Articles 13 and 18 of the Directive to ensure coherence.

Q.9: *When should firms be required to provide required disclosure to clients and potential clients?*

See our answer to Question 10.

Q.10: *Is there any reason to impose different timing requirements for disclosure under Article 21 than are required in the Level 2 measures under Article (19.3)*

We do not believe that there should be separate regulatory requirements for either the content or timing of information on execution venues and policy.

PRE-TRADE TRANSPARENCY REQUIREMENTS FOR REGULATED MARKETS (ARTICLE 44) AND MTF'S (ARTICLE 29)

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

We strongly favour more general and principle-led proposals and feel that the current proposals are both too wide ranging and too specific and are likely to result in heavy costs ultimately borne by investors. This will be particularly the case in those markets in which as CESR acknowledges "pre-trade transparency is not as wide as proposed". We believe that CESR should establish general principles at Level 2 that allow for future market development and innovation.

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

We do not believe that CESR's current proposals are appropriate. CESR's proposals are too inflexible and do not allow for future developments Overall we would suggest that CESR should replace its detailed provisions with more general wording that focuses on the information about prices that should be made available to users on a fair, consistent and timely basis.

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

No. The costs of building new systems will be very high and there is a danger that too frequent information updates may actually result in reduced pre-trade transparency. Electronic order books must be temporarily frozen in order to change the information contained in them and thus too frequent changes will result in long periods when market users cannot access the relevant information.

Q.12.4: *Do consultees agree on the proposal exemptions to pre-trade transparency. Are there other market models which should be exempted?*

We welcome CESR's proposals to exempt regulated markets and MTFs that determine their prices by reference to those displayed on other trading venues. We also welcome the exemptions proposed for iceberg orders.

With regards to exemptions for large trades and block sizes which would qualify for a waiver from pre-trade requirements, participants in the market will decide what size of trade should not be advertised through the RM's and MTF's, since market participants use RMs and MTF's to specifically advertise their trading interest.

Therefore we believe that no specific provisions/exemptions for large orders are required at Level 2 but RM's and MTFs should themselves provide the range of transparency demanded by market users.

Q.12.5: *Do consultees support the waiver for "crossing systems" as defined in paragraph 13? Could pre-trade transparency for crossing systems have a negative impact on liquidity or create the potential of abusive behaviour?*

We support a waiver for crossing systems. In our members' experience such systems neither have a negative impact on liquidity nor do they create the potential for abusive behaviour. On the whole we would expect a positive impact from crossing systems for investor welfare due to enhanced efficiency and reduction in costs.

Q.12.6: *Do consultees support the same minimum size of trade for the waiver to transparency pre-trade and delayed publication post-trade? Are there circumstances in which the two should be different?*

BBA members are continuing to evaluate this question. There are likely to be circumstances where the minimum size of trade for the waiver could be different for pre-trade and post trade information. We will give this issue further consideration and will put forward more detailed views in our response to the second mandate.

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

See our comments to Q. 12.4.

POST-TRADE TRANSPARENCY REQUIREMENTS FOR REGULATED MARKETS (ARTICLE 45) AND MTFS (ARTICLE 30) AND FOR INVESTMENT FIRMS (ARTICLE 28)

Q.13.1: *Do consultees support the method of post-trade transparency (trade by trade information), should some other method be chosen (which)?*

Whilst we believe in general that trades should be reported on a trade by trade basis, in our members' view, CESR has not demonstrated market failure or conducted a thorough cost benefit analysis that would warrant introducing extensive new systems.

We believe that the post-trade transparency requirements suggested by CESR will be costly and time consuming to implement. This will be particularly the case where currently no mechanisms of reporting to an exchange are in existence. We would therefore urge CESR and the Commission to consider interim solutions initially based on existing reporting systems.

Q.13.2: *Do consultees support the inclusion of "aggregated information" in paragraph 223 or should it be left for market forces to provide on the basis of the information disclosed under paragraph 21. If it is included what should the content be?*

Our members' strong view is that aggregated information should be left to market forces which are likely to provide the most cost-effective, innovative and flexible solution.

Q13.3: *Do consultees support the two week period for which the post-trade information should be available?*

Overall we do not believe there is a need for such a regulatory requirement. If such data storage is useful there will be a market-based supply for such storage offered at commercial prices.

Q.13.4: *Should some minor trades be excluded from publication (and if so, what should be the determining factor?*

We believe that from a systems perspective it would be undesirable and costly to include an additional minor trade identifier. We believe it would be more important to exclude trades that do not contain important pricing information and to ensure that firms are not required to report a trade more than once.

Q.13.5: *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 do not believe that CESR should set a specific time period e.g. one minute to define the concept of "as close to real time as possible". Instead CESR should specify that the time limit should be appropriate given the nature of the asset traded, the execution venue and the nature of the trading and reporting systems in operation. This may vary from market to market. For instance, whilst a one-minute delay may be entirely feasible for companies operating fully automated and electronic trading systems or a stock exchange it could cause substantial problems for reporting in a principal to principal OTC market which is based on telephone trading.

Q13.6: *Do consultees support the view that only intermediaries who have created a risk position to facilitate the trade of a third party should benefit from deferred publication or should all trades which are above the block size be eligible for deferred publication?*

We agree with CESR that only companies that have created a risk position should be exempted from the immediate reporting requirements due to the reasons outlined by CESR. CESR, in its comments to Box 12, suggests defining block size based on 3 possible definitions. For post-trade transparency only, there would appear to be benefits in adopting a formula based on average daily volumes. However, our members are still evaluating this issue and we will provide further comment in our response to the second mandate.

Q.13.7: *Should the identifier of a security be harmonised and if so to what extent? What should be the applicable standards (ISIN code, other?)*

In principle our members support initiatives that facilitate harmonisation and standardisation of standards across the EU and different reporting mechanisms. In formulating its advice CESR should take account of the current work of the Data Reference Group and other current initiatives. The Data Reference Group initiative is seeking to look beyond ISIN codes and therefore it may be best not to use ISIN codes. It will be important to look at the issue at a global rather than just a European level.

Q.13.8: *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?*

We agree with CESR that in transactions such as stock lending no transfer of economic risk takes place and therefore we support CESR's proposals to exempt those types of transactions from specific reporting requirements. Other such transactions that do not involve the transfer of economic risk such as repo transactions or stock loans should also be exempted. We do not believe that these types of transactions influence the market price formation mechanism. Furthermore, disclosure of these transactions is likely to put the firm at a competitive disadvantage.

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?*

In principle we welcome CESR's intention to "consider how the cost of consolidation could be reduced and the production of consolidated data can be encouraged." However, such cooperation will need to be based on thorough consultation with appropriate time frames, a flexible approach and appreciation of issues of global competitiveness. In particular CESR should encourage commercial initiatives to consolidate data and be careful to ensure that any consultation facilitates this, rather than "chilling" such initiatives.

ADMISSION OF FINANCIAL INSTRUMENTS TO TRADING (ARTICLE 40)

Q.14.1: *Do consultees agree on the requirements for admission to trading? Should more (qualitative and/or quantitative) criteria for admission to regulated markets be specified in the level 2 measures. If yes, which?*

We do not believe that further qualitative and/or quantitative criteria for admission to regulated markets should be specified in the Level 2 measures. Furthermore we believe that for certain types of exotic derivatives it would be almost impossible to establish publicly available and reliable prices. It is the function of the market to decide whether the price is appropriate. We would therefore suggest deletion of Box 14, paragraph 3b.

Q.14.2: *Do consultees agree on the role proposed for RMs in order to ensure that the issuers fulfil their disclosure requirements?*

We are concerned about the suggestion in CESR's draft advice that it should be an RM's primary role to ensure that the issuers fulfil their disclosure requirements. The primary responsibility of ensuring compliance with disclosure requirements lies with the relevant authority which would be required to notify RMs of breaches of disclosure rules. RM's would be required to inform authorities of breaches that come to their attention but their primary role would not be to enforce the competent authority's rules. Whilst we believe that the wording of the Box 14, paragraph 6 is acceptable per se, we would urge CESR to remove the reference to RM's from the heading "RM's obligation to verify issuer's compliance with disclosure obligations".