

February 2007

CESR PUBLIC CONSULTATION
ON “THE PASSPORT UNDER MiFID”

REF: 06-669 (15 DECEMBER 2006)

EURONEXT’S RESPONSE

GENERAL COMMENTS

Euronext welcomes the opportunity to provide its views to CESR in response to the public consultation on the functioning of the “Passport under MiFID”. The concept of the European “passport”, although already introduced by the Investment Services Directive 93/22/EEC, is indeed a key issue of the Markets in Financial Instruments Directive 2004/39/EC. CESR’s objective to seek for a common supervisory approach of cross-border activities and of the home/host relationships is welcomed as a principle.

Being a pan-European market operator, we would like to take this opportunity to comment specifically on the subject of MTFs’ cross-border activities and the related developments and questions raised by CESR in the consultation paper. We have some remarks on the following issues:

- the appropriateness of CESR’s proposal of a “connectivity test”;
- the importance of ensuring a harmonised approach for notification procedures;
- and the need to ensure a real “level playing field” as regards the national rules applied by local regulators to services rendered across borders by MTFs.

SPECIFIC COMMENTS ON THE CROSS-BORDER ACTIVITIES OF AN MTF

● ***CESR’s proposal of a “connectivity test”:***

According to Article 31(5) of MiFID, investment firms and market operators operating MTFs are allowed “to provide appropriate arrangements” on the territory of other Member States, without any further requirement, “so as to facilitate access to and use of their systems by remote users or participants established in their territory”.

Whereas Euronext agrees that it is essential to ensure a harmonised implementation of these provisions across Member States, we believe that there is no need for CESR to be more prescriptive in the definition of such “arrangements”. It is indeed important not to impose

too restrictive criteria, that go beyond the provisions of the MiFID and that may limit innovation and efficiency in the future MiFID environment.

- ***Approach to notification procedures:***

Furthermore, we consider that it is essential that CESR members ensure a consistent approach to the “notification” procedures mentioned in Article 31(6), so that these procedures are equivalent, fast and efficient in all Member States.

- ***“Level playing field” for MTFs’ cross-border activities:***

Finally, we believe that a real "level playing field" regarding the cross-border activities of an MTF can only be reached with a harmonised set of rules applied by CESR members (e.g. an MTF could be able to give access in several “host” countries from a technical standpoint thanks to the passport, but would then incur possibly different local rules restricting its commercialisation efforts; in particular, the host countries’ approaches could for legitimate reasons differ if traded products benefit from a prospectus approved pursuant to the relevant directive by the competent authorities).

The case of MTFs that trade instruments not listed on any regulated market has to be explicitly considered in this respect.
