

Direction

COMMITTEE OF EUROPEAN SECURITIES
REGULATORS

Attn. : Monsieur Carlo COMPORTI

Secrétaire général

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Notre référence

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Votre référence

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Subject: **Response from the Luxembourg Stock Exchange to the consultation on
CESR technical advice to the EC in the context of the Mifid Review
Equity Markets**

Dear Mr Carlo Comporti,

We welcome the opportunity to comment on CESR technical advice on the current 2004/39/EC Directive aimed at providing inputs to the European Commission its Mifid review.

The Luxembourg Stock Exchange is a major listing place of international bonds, equities and investment funds. On 31 December 2009, 45,660 different securities were admitted to trading on the two markets operated the Luxembourg Stock Exchange, with more than 3,500 issuers from about 100 jurisdictions. Our exchange is operating a regulated market and an MTF, with a central order book offering pre and post trade transparency features irrespective of the type of financial instruments traded on our markets.

Question 1:

The Luxembourg Stock Exchange favours that all orders sent to Regulated Markets (RMs) and MTFs should be pre-trade transparent. In addition, we think that orders or indication of interests disclosed on all the other channels for trade executions which are not RMs or MTFs, should be made pre-trade transparent, if such orders or indication of interests are distant from the price of the latest transactions on RMs or MTFs.

We agree on the principle of some exceptions to pre-trade transparency. However, we think they should be recasted.

We favour also a rule based approach.

Question 2:

We think the Mifid should start to address the issue of the capital market activities of broker dealers, including when they are part of a bank. The title of Directive 2004/39/EC seems to us misleading because it addresses only a rather small part of the functioning of the markets in financial instruments. Off exchange and OTC transactions are by far the largest part of the capital markets, notably in commercial paper, investment funds, bonds, structured and derivative products. EU Union legislation is de facto only covering the functioning of on exchange transactions on listed shares which is simply outdated if there is a will to police and monitor the functioning of markets in financial instruments. Pre trade requirements is certainly one issue among the various traditional items for regulating the proper functioning of capital markets.

Question 3:

We favour option 1 because we think the currently adopted figures are too low. We believe that the waivers should target only very significant transactions compared to the capital of the issuers (at least 1 % of the capital of a given issuer).

Question 4:

See answer above. We prefer another methodology that would decrease the possibility of pre trade transparency exemption for large orders. In addition, we favour option 2 for the treatment of residual orders.

Question 5:

We favour option 2.

Question 6:

We agree that such exemption should be available only for large orders.

Question 7:

We will wait the proposed provisions that should be established on the methodology described in annex I.

Question 8:

We think that the rationale of the negotiated trades exemption has very little to do with the market functioning and is more linked to legal and taxation issues. We think such exemption should not be suppressed because these trades are mainly bilateral transactions and thus not part of the order book and therefore not contributing to the price discovery of the trading platform that will report such transactions. The fact that a RM or an MTF provides a trade reporting functions or an STP solution for clearing and settlement should not blur the fact that such transaction was not concluded with the matching engine of the given trading platform. Therefore, we think such trades should be part of the off exchange and OTC market transparency rules. It is worth mentioning that in our answer to question 1, we do favour the modernisation of the Mifid with a new obligation that orders or indication of interests disclosed on all the other channels for trade executions that are not RMs or MTFs, should be made pre-trade transparent, if such orders or indication of interests are distant from the price of the latest transactions on RMs or MTFs.

Question 9:

We favour the levelling up proposed in option 1, mentioned in question 8.

Question 10:

Our proposal would go beyond the clarification of the SI definition, in order to address the issue of the execution of all OTC transactions done through the automated systems operated by investment firms. Since the implementation of Mifid, many investment firms have bought software tools that prior execution match orders internally and send the remaining part to be executed externally (as the case may be). These tools are named order management systems or best execution engine, or crossing systems. However, they do provide the same functionality as RM or MTFs. A limited number of IT providers are selling these software tools which are also used by exchanges. We favour a real functional approach based on the use of certain type of technology and not legal definitions that are already outdated at the time of the implementation of a directive. There should be a level playing field in the regulatory treatment when executing trades on a bilateral or on a multilateral basis irrespective of the fact that investment firms act on their own account or on behalf a customer, at least for pre and post trade information.

Therefore, we think that the SI issue is off little importance in order to address a proper functioning of capital markets as a whole. Anyway, we favour the deletion of the reference to the non discretionary rules and procedures. On the material commercial role element, we preclude that the fact that a given investment firm has invested a certain amount of money in a order matching system should the criterium to qualify as a SI. Such investment firms expect a return on investment.

Question 11:

Yes

Question 12:

Yes

Question 13:

Question 14:

Yes. All trades of SI should be identified.

Question 15:

No See below our answers to the questions in Annex II

Question 16:

No

Question 17:

Yes

Question 18:

Yes

Question 19:

No

Question 20:

No. We would rather prefer less categories and simpler criteria

Question 21:

No. We would rather prefer shorter delays

Question 22:

A complete deletion of the deferred publication regime should be consider by CESR.

Question 23:

We don't know.

Question 24:

Yes

Question 25:

Yes

Question 26:

Yes

Question 27:

Yes

Question 28:

No

Question 29:

Yes

Question 30:

Option 1 seems easier to put in place compared to option 2.

Question 31:

No. Data vendors are not currently in the scope of Mifid and they are the main proponents on this issue.

Question 32:

We prefer Apas to determine themselves their fee structure for competition reasons.

Question 33:

No. It won't made it cheaper. As mentioned above in our answer to question 31, CESR needs to address the fee structure of data vendors if they wish to decrease costs for market participants.

Question 34:

No. We prefer the Apas approach as mentioned above.

Question 35:

This approach seems to us too ambitious and might be at the end more costly than the approach with Apas.

Question 36:

The one stop shop functionality.

Question 37:

Yes. We anticipated that starting from scratch such a mechanism could be adventurous and could generate higher costs compared to the other solution where providers would have to upgrade their systems in order to qualify as Apas.

Question 38:

Yes

Question 39:

It won't be sufficient. We consider that requirements for MTF and regulated markets should be strictly aligned. The Luxembourg Stock Exchange is subject to two different

sets of rules being an operator of a regulated market and an MTF because of the existence of specific rules for investment firms operating .

Question 40:

We suggest that investment firm operating MTFs must adopt the regime of market operators for regulated markets if they want to run MTFs in order to avoid deregulation and ensure a level playing field between market operators and investment firms.

Question 41:

No

Question 42:

Mifid should address the issue of the capital market activities of broker dealers, including when they are part of a bank. Off exchange and OTC transactions are by far the largest part of the capital markets, notably in commercial paper, investment funds, bonds, structured and derivative products. Investment firms do have invested money in tools named order management systems or best execution engine, or crossing systems. However, they do provide the same functionality as RM or MTFs, i. e matching orders. A limited number of IT providers are selling these software tools, which are also used by exchanges. We favour a real functional approach based on the use of certain type of technology in order to avoid using definitions that can be easily bypassed in order to be outside of the scope of the requirements for market operators. There should be a level playing field in the regulatory treatment when executing trades on a bilateral or on a multilateral basis irrespective of the fact that investment firms act on their own account or on behalf a customer, because technology has blurred these differences.

Question 43:

No see above our alternative proposed approach.

Question 44:

We propose to establish the threshold on the basis of the volume of transactions matched by a given regulated market within the European Union. If an investment firm using crossing systems has a flow of matched transactions below the one mentioned above, such entity will not be required to register as an MTF.

Question 45:

Yes, because OTC transactions matching is barely addressed today.

Question 46:

Yes, we favour an harmonisation of these waivers.

Question 47:

Criteria a and b are similar. However, criterium b seems to be more demanding than criterium a. The combination of both criteria would de facto lead to application of criterium b in most cases.

Question 48:

Yes

Question 49:

We favour option c).

Question 50:

We don't know because we don't have figures on this issue.

Question 51:

Yes. We prefer an harmonised regime where investment firms would be required to sent to a RM or an MTF a client limit order when the order is not immediately executed under prevailing market conditions.

Question 52:

Yes, Article 36 (2) is to be retained. Deleting such option would create discrimination with the listing with the other categories of financial instruments. According to the Prospectus Directive, a listing does not amount to a public offer of securities. As long as there is no definition of private placement in the Ucits directive and in the proposed AIFM, it is unclear if marketing amounts to a private placement or a public offer of financial instruments. Therefore, such deletion should only intervene after the introduction of such definition in European legislation. Moreover, there are some spill over effects. What is the applicable regime for the listing the shares of a company having also an agreement of UCITS? Moreover, it does not harm investors protection because the investor will benefit from the addition of two regulatory regimes (the one for listed shares and the one for UCITS).

Answers to Annex II

Question 1: Yes

Question 2: Yes

Question 3:

No. For cost reasons. There is no possibility to amortize the additional costs to implement these possible new requirements. Moreover, the issue on other type of transactions refer to identification of corporate actions and to instruments which are not transactions type. It seems to us irrelevant in the context of this table, and similar to extension of the scope for post trade transparency to new instruments.

Question 4:

No

Question 5:

Yes

Question 6:

Yes. On a trade by trade basis, in real time with an additional field, for level playing field reasons with the market operators.

Question 7:

Question 8:

Yes

Question 9:

Yes

Question 10:

Yes

Question 11:

No. We think such trades should be part of the off exchange and OTC market transparency rules. As mentioned above, we think these trades are bilateral trades reported to an exchange with no use of the matching engine of the market operator. Our view is there should be consistency with the other trades executed on a bilateral basis and off exchange. The category of negotiated trade should not be addressed as such and should not benefit from a particular regime.

Yours sincerely,

Société de la Bourse de Luxembourg
Société Anonyme

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