

**Response to**

**CESR'S CALL FOR EVIDENCE**

**PROVISIONAL MANDATES UNDER THE FUTURE DIRECTIVE ON FINANCIAL  
INSTRUMENTS MARKETS (ISD2)**

**(Ref: CESR / 04 - 021)**

CESR is invited to provide advice on the following priority issues: organisational requirements (article 13), conflicts of interest (article 18 ), conduct of business obligations when providing investment services to clients (article 19), best execution obligation (article 21), client order handling rules (article 22), reporting of transactions (article 25), pre- and post-trade transparency obligations for Regulated Markets and MTFs (articles 29, 30, 44, 45), post-trade transparency requirements for investment firms (article 28), admission of financial instruments to trading (article 40).

We examine hereafter the issues that can have a major impact on the framework and activity of the Regulated Markets and on their competitive environment.

Articles 44 and 29: pre-trade transparency requirements for Regulated Markets and MTFs

As regards this issue we firmly share the view that CESR shall determine in particular the following factors:

- when and how the information is considered to be public:  
we think specifically that there should be no differences between the information accessible to the members of the market and that accessible to investors, and that CESR shall establish the condition under which the information may be considered as accessible to the investors and the arrangements that a Regulated Market has to put in place directly or indirectly in order to fulfil its obligation to make public the information
- the content of the terms "bid" and "offer", what is to be considered as "depth of trading interests" and the range of information that should be made available
- the criteria in order to establish an open list with the different types of orders that are expressly eligible to be exempted from the obligation to be made public
- in respect of block orders: the criteria for grouping shares into types, what is to be considered a normal market size, what is to be considered as large in scale compared to the normal market size
- the general criteria for determining when a market model may be exempted from the obligation to make public pre-trade information

#### Articles 45 and 30: post-trade transparency requirements for Regulated Markets and MTFs

As regards this issue we firmly share the view that CESR shall determine in particular the following factors:

- when and how the information is considered to be made public
- the exact content of the information that has to be made public as well as the different forms in which it should be presented, especially distinguishing between the information that has to be made public during the trading session and the information that has to be disclosed at the end of the trading session
- the different criteria for assessing whether the information has been disclosed “as close to real time as possible”
- the criteria for deciding the transactions for which deferred publication is allowed

On the contrary, we don't agree with the possibility for CESR to determine what can be considered as “reasonable commercial basis”: market and commercial practices will establish the meaning and content of this concept.

#### Article 28: post-trade disclosure by investment firms

The introductory phrase of the comitology clause in Art. 28 calls on the Commission to adopt level II measures with the purpose of ensuring the “orderly functioning of the markets”.

We find it difficult to accept that post-trade disclosure by investment firms could also be done “through proprietary arrangements”; we fear that allowing such publication through the investment firm's proprietary arrangements would, even if such arrangements would technically speaking be “easily accessible”, fail to achieve the purpose of creating a truly uniform and complete picture of all market activities.

An even more significant issue raised by such arrangements would be how such “proprietary arrangements” are supervised. Regulated Markets currently commit significant resources to ensure that all business transacted on or reported through their systems is monitored in real time. This surveillance is vital, both for the prompt and effective detection of market abuse and to ensure the integrity and accuracy of the data that the market receives. If business is to be reported by other means, arrangements must be made to ensure that the reporting systems are subject to equivalent levels of real-time surveillance.

We argue that post-trade disclosure of executed deals should in any case include a push obligation by the investment firm to a Regulated Market. Only active provision of the data to an environment where quality and reliability standards are applied and supervised can reach the specified purpose.

#### Article 40: admission of financial instruments to trading

We think that CESR should determine a series of general principles in order to ensure a “level playing field” for the rules referred to the admission of financial instruments to trading, but we are firmly convinced that market operators should have the discretion (and also the duty) of establishing the rules concerning the

organisation and management of its Markets regarding the following aspects: admission of financial instruments to trading, access to Markets by intermediaries, trading methods and obligations of operators, verification and diffusion of prices, authorised types of contracts.

#### Article 21: best execution

As regards specifically the trading venues that are to be included in the order execution policy we think that CESR shall determine in particular:

- the different execution methods and the price availability
- the criteria for determining when an execution venue is offering the best results on a consistent basis, specifying what could be considered “consistent basis”
- the conditions of the order and the conditions prevailing in the marketplace

We also underline the importance of fixing the net price as the indicator to be taken into account for determining the best possible result referring to retail clients.

Milan, February 19<sup>th</sup> 2004