Irish Stock Exchange Response to the CESR Consultation Paper on the MiFID Review – Equity Markets

The Irish Stock Exchange (ISE) welcomes the opportunity to comment on CESR's Consultation Paper on the MiFID Review – Equity Markets.

By way of background, the ISE operates the regulated market (Main Securities Market) in Ireland on which equity securities, government bonds, collective investment undertakings and debt securities are admitted. In addition, the ISE operates two multi-lateral trading facilities, the Enterprise Securities Market and the Global Exchange Market. At the end of April 2010, the ISE had 62 quoted equities admitted to trading, over 3,100 funds and sub-funds, as well as over 24,000 debt securities, many of which originate from non-EU issuers.

2.1 Pre-trade transparency

Questions 1 & 2
The ISE supports the continuation of the pre-trade transparency regime and believes that a rule-based approach would promote transparency across European markets.

Questions 3 & 4
The ISE believes that the current calibration for large in scale orders is appropriate and moreover should not be reduced.

Question 5
The ISE believes option 2 would bring greater transparency to the market and is therefore in support of this option. Furthermore, with reference to paragraph 3, Annex I, the ISE agrees that clarification is needed to ensure that a modification of the volume of a large in scale order to below the minimum size should result in a transparent order.

Questions 6 & 7
The ISE believes that a minimum threshold should be introduced for the reference price waiver to support market transparency.

In relation to the additional points in Annex I, the ISE supports further clarification and definition on the criterion 'reliable reference price'. In particular, the ISE supports the proposal that a quality standard should be applied similar to the standard already in place on regulated markets.

Question 8
The ISE supports the view of CESR that further clarification on the scope of the negotiated waiver would be beneficial to all market participants to ensure the waiver is applied in a consistent manner.

Question 9
In relation to the points contained in Annex I, the ISE:

- Agrees that an order which leaves an order management system and subsequently matches an opposite order in an instant should be considered to be disclosed and therefore supports further clarification of the definition of the term by the use of the term 'pending release from the order management system'; and
- Agrees that the specification of an overall volume for an iceberg order should be left to the discretion of RMs and MTFs.

2.2 Post trade transparency

Question 17

The ISE agrees with the multi-pronged approach proposed by CESR. The ISE supports the view of FESE that the main improvements needed in the post-trade transparency space are:

1. enhancing the quality and availability of OTC data, by ensuring it is more consistent and consolidatable; and
2. strengthening the standardisation of data across all venues.

Questions 18 & 19

The ISE agrees with the proposal to reduce the reporting deadline to 1 minute to improve post-trade transparency. The ISE does not believe the 1 minute deadline would lead to additional costs.

Questions 20 to 23

The ISE agrees with the proposals given in relation to the deferred publication thresholds and delays and does not believe that the proposed changes should lead to additional costs.

Our answers to the questions raised in Annex II on the proposed standards for post-trade transparency are set out in Appendix 1 of this response.

3. Application of transparency obligations to equity-like instruments

Questions 24 to 26

We are of the view that it would be appropriate to apply the MiFID transparency requirements to financial instruments such as depository receipts, exchange traded funds, exchange traded commodities and certificates on the condition that they actually trade on-exchange like shares. This condition is important so as to avoid inadvertently applying transparency requirements to financial instruments, such as collective investment undertakings, that facilitate investments via subscriptions and redemptions, rather than by on-exchange trades. The definition of 'Exchange Traded Funds' in footnote 12 is too broad and should, in our view, clearly exclude collective investment undertakings which are admitted to trading on a regulated market but which do not actually trade in the secondary market and which instead facilitate investments via subscriptions and redemptions.

4. Consolidation of transparency information

Questions 27 to 37

The ISE supports improved transparency of price and trade information however the ISE does not believe that a consolidated tape will achieve the optimal result. Instead the ISE supports FESE in its view that MiFID should be amended to ensure that better quality OTC data is available to market participants. This will enable vendors, who already provide a competitive service consolidating data, to consolidate OTC data with the high quality trade information they already receive from regulated markets and MTFs. The ISE also supports the harmonization of trade flags and identifiers to enable a more efficient consolidation of this data.

5. Regulatory boundaries and requirements

Questions 38 to 41

The ISE supports CESR's proposal to bring the current MTF organisational requirements under MiFID into line with the higher requirements applying to Regulated Markets.

6. MiFID options and discretions

Question 46

We support the retention of all of the existing pre-trade transparency waivers, and our view is that their retention should not be based on a test of whether a particular waiver is used in all EU countries as CESR has pointed out that market models of RMs and MTFs may vary and may use different waivers. We agree that a single interpretation of the same waiver across the various EU jurisdictions may assist reduce uncertainty of interpretation of the scope of the waiver and would not oppose a replacement of the existing waivers with a legal exemption.

Questions 47 to 49

We do not consider that the current liquid share calculation provides a meaningful reflection of the actual level of liquidity in a particular share as (i) it excludes negotiated trades, which form a significant portion of trading on some trading venues including the ISE and (ii) the criteria as set out are appropriate for the larger rather than smaller EU trading venues. This leads to shares, which are for all practical and objective purposes liquid, where investors are in a position to easily buy or sell shares in that particular share based on the level of activity, being designated as illiquid for the purposes of Article 27. The results provide a distorted view of the liquidity of a significant number of shares.

In order to make the calculation more meaningful, as a first step negotiated trades should be included. It is not a consistent or logical approach to require post-trade reporting of all trades, which is a key MiFID concept, and to then exclude a significant portion of the data thus reported from calculations such as the liquid share calculation. Either the post-trade data is relevant and should be reported or its not. Furthermore, we suggest that the level of the criteria of the average daily number of transactions and ADT should be reduced as they were agreed upon when trading volumes and value were higher than in today's market.

Our strong preference is to retain the discretion of choosing a) or b).

Questions 50 to 51

We support the retention of a legal provision allowing investment firms to comply with the requirement in Article 22(2) by transmission of a limit order to a RM and/or MTF but we do not object to CESR's suggestion that the legal form be changed from a discretion to a rule.

Question 52

We strongly believe that the option granted to member states in connection with Article 36(2) should be retained.

We agree with the views of the CESR member states outlined in paragraph 125. The marketing of units of a collective investment undertaking is a separate and distinct activity from the admission to trading of units of a collective investment undertaking. The former is governed by separate domestic and European legislation. The requirements in relation to marketing are likely to be further strengthened for non UCITS funds under the upcoming AIFM Directive.

It is not the case that all collective investment undertakings admitted to trading on a regulated market in a member state are marketed in that member state. Applying local marketing requirements to issuers which are not marketing in that country would not be proportionate nor would it serve any investor benefit as the collective investment undertaking is not being marketed to investors in that country. National marketing requirements should apply in the jurisdictions in which the collective investment undertakings are being marketed.

While it is noted that only a small number of member states have availed of the option outlined in Article 36(2) there is no evidence cited that this option is giving rise to regulatory gaps in those member states which have availed of it.

Appendix 1

Responses to the questions in Annex II on the proposed standards for post-trade transparency:

Q1. The ISE agrees that the ISO standard formats should be used to identify instrument, price notation and venue.

Q2. The ISE also agrees that the unit price should be provided in the major currency rather that the minor currency.

Q3. The ISE supports the implementation of standard identifiers for certain transaction types are outlined in table 10.

Q4. No comment.

Q5 & 6. The ISE in general supports the proposal to introduce a mechanism to identify transactions which are not pre-trade transparent, provided that the mechanism introduced is clearly defined and therefore applied equally by all venues. The ISE believes that such information should be made public on a trade-by-trade basis in real-time consistent with the display of other post-trade transparent information.

Q7. The ISE believes that either a separate identifier should be assigned for these situations or the scope of the identifier is limited to transactions that were as a result of non-pre-trade transparent orders only.

Q8. The ISE supports the introduction of a unique transaction identifier for each transaction published however we believe that the definition of the identifier will have to be clearly defined. For example, in the case that an investment firm is reporting a transaction that was carried out under the rules of a RM, then both the RM and the investment firm have an obligation to publish the transaction. The ISE is unclear in this regard which party, under CESR's proposal, would be providing the unique transaction identifier. Furthermore the codes of the publication arrangement should be available on the CESR database.

Q9. The ISE supports the introduction of a time limit for cancelled transactions, however this should be sufficiently long to allow adequate time for the originating market participant to identify and react to the erroneous trade.

Q10. The ISE is supportive of the proposal to introduce a standardised field to identify amended transactions.

Q11. The ISE agrees with the proposal to introduce a standardised field to identify negotiated transactions.