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Statement to Consultation Papers:

CESR Technical Advice to the European Commission in the Context of the MiFID Review – Investor Protection and Intermediaries (CESR/10-417) and – Equity Markets (CESR/10-394)

Dear Sir or Madam,

Thank you for providing us the opportunity to write a statement to MiFID Review Consultation Papers.

In connection to the above mentioned Consultation Papers we would like to comment as follows:

I. CESR Technical Advice to the European Commission in the Context of the MiFID Review – Investor Protection and Intermediaries (CESR/10-417)

- Part 2: Execution quality data (Art. 44 (5) of the MiFID Level 2 Directive: No. 75 and question 15: Do you believe that Investment Firms have adequate information on the basis of which to make decisions about venue selection for shares?

Our opinion is that a regulatory requirement is needed to ensure that Investment Firms check on a regular basis the existence of new trading venues providing considerably improvement of the execution.

If the result of this check shows that a new trading venue provides significant improvement of order execution, the Investment firm shall only refrain from connecting to this venue and from adapting the venue in the respective Investment Firm's Best Execution Policy in cases of important reasons.

This regulation is important to improve the quality of the order execution and to improve the competition of the trading venues.

Currently the intermediaries only consider the existing trading venues they already have access to in their Best Execution Policies.

As a result, the existing landscape of trading venues persists and new competition is inhibited.

II. CESR Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets (CESR/10-394)

Question 1, page 39: Proposed standards for post-trade transparency: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

Yes, we agree to use ISO standard formats to identify the instrument, price notation and venue.

In the interest of EU harmonisation, we see the necessity to clarify which ISO MIC shall be used to identify the trading venue.

Whereas the London Stock Exchange reports all trades under one single MIC code (XLON stands for LONDON STOCK EXCHANGE – AIM, – MTF and also for the REGULATED MARKET in Germany e.g. Deutsche Börse uses different MIC Codes for each trading venue, such as:

- FRAA for Frankfurt Stock Exchange – Regulated Market
- XETA Frankfurt Stock Exchange Xetra - Regulated Market
- XETC Frankfurt Stock Exchange Xetra International - Regulated Market
- FRB Open Market

Our proposal is to harmonise the use of the MIC code in the EU.

The advantages of using different / several MIC codes would be:

- Compliance with the system of MiFID: Differentiation between the categories of Regulated Market, MTFs and outside Regulated Markets / MTFs.
- Clarity about the execution venue.

Where a regulated market operator operates more than one market segment meeting the MiFID regulated market requirements, each such segment can be reported under one regulated market MIC.

The interest of Börse Berlin is to reach a uniform EU regulation on the use of MICs. Börse Berlin is neutral towards the result of the unification– but a unique solution is necessary to gain legal clarity.

- Question 2, page 39: Do you agree that the unit price should be provided in the in major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.

Yes, we agree to the use of the major currency since this is general practice in Continental Europe.

- Question 11, page 42: Indications as negotiated trade

We support in principle the concept of negotiated transactions and we believe that the immediacy of post trade transparency achieved by encouraging such OTC trades to be reported to operators of regulated markets and MTFs will benefit the market.

Negotiated transactions should, we believe, be easily/readily identifiable and as such we support the CESR Level 3 Recommendation to flag such transactions as 'N'.

In the interest of EU harmonisation, we see the necessity to harmonise the regulation in the EU concerning the legal classification of negotiated trades:

Pursuant the German Stock Exchange Act, time and place of the conclusion of the contract are the relevant factors to classify a trade as an OTC trade or as a trade of the Regulated Market or MTF.

According to a statement of BaFin, a trade in which the conclusion is made outside a Regulated Market or MTF, the execution of this trade on a RM / MTF cannot turn this trade into a trade of the Regulated Market or MTF – even if the parties agreed the execution on the RM / MTF in advance.

According to BaFin this is the general opinion of the CESR-Tech members except for Great Britain.

Börse Berlin is neutral towards the result of the unification.

Kind regards



Artur Fischer