

**BANCA INTESA'S RESPONSE TO
CESR'S CONSULTATION PAPER ON ITS DRAFT ADVICE TO THE EUROPEAN COMMISSION
FOR IMPLEMENTING LEGISLATION UNDER DIRECTIVE 39/2004**

2ND SET OF MANDATES - REF. CESR/04-562

INDEX	
A. Introduction.....	Page 1
B. General Remark.....	Page 1
C. Answers and Comments to CESR's Consultation.....	Page 1
<u>Section II – Intermediaries</u>	
1. Definition of “investment advice”.....	Page 1
2. List of financial instruments.....	Page 3
3. General obligation to act fairly, honestly and professionally.....	Page 4
4. Suitability test.....	Page 5
5. Appropriateness test.....	Page 6
6. Execution only.....	Page 7
7. Transactions executed with eligible counterparties.....	Page 8
<u>Section III – Markets</u>	
8. Display of client limit orders.....	Page 8
9. Pre-trade transparency – Systematic internalisers.....	Page 9
10. Scope of the rule.....	Page 10
11. The determination of the Standard Market Size.....	Page 11
12. Obligations of the Systematic Internaliser.....	Page 12
13. Handling of client order and executing the orders.....	Page 14

A. INTRODUCTION

Banca Intesa is the holding company of the Intesa Group, which is the largest Italian banking group and one of the main players at European level. The Intesa Group is also active in new Member States like Hungary, where Central-European International Bank-CIB is the fourth largest bank, and Slovakia, where Všeobecná úverová Banka-VUB is the second largest bank.

CESR has published its draft advice (Ref. CESR/04-562) concerning possible technical implementing measures (hereinafter the “Level 2 Measures”) of the Directive on Markets in Financial Instruments (CE 39/2004, hereinafter the “MiFID”), pursuant to the mandate granted to it by the European Commission on 25 June 2004. An open consultation is currently open on said Level 2 Measures.

Banca Intesa appreciates the transparent consultation process followed by CESR and would like to submit its comments. Banca Intesa has participated to the past consultations of CESR on the technical advice to the European Commission concerning the implementing measures of MiFID. Our views have been already been publicly expressed.

B. GENERAL REMARK

We appreciate that CESR’s task is one of striking a balance between providing clear and comprehensive rules and avoiding that regulators micromanage the relationship between investment firms, customers and the structure of markets. We agree that, given the diversity of national regulatory systems, investors, investment firms and markets to which the Level 2 Measures will apply, it is not feasible to provide for case-by-case rules. Nevertheless, we believe that CESR should prescribe the specific measures to implement the general principles of the MiFID.

C. ANSWERS AND COMMENTS TO CESR’S CONSULTATION ON THE 2ND MANDATE

Section II – Intermediaries

1. Definition of “investment advice” (Article 4 (1) No. 4)

Banca Intesa is convinced that CESR should take stock of the significant innovation of the MiFID in relation to “investment advice”. Since “investment advice” has been elevated to an authorised investment service, it means that the need to “protect investors and the stability of the financial system” (Recital (17)) arises also in connection with the provision of investment advice.

A number of consequences flows from the definition of “investment advice”:

- The principle that investors have to be protected also in respect to “investment advice” should be expanded by Level 2 Measures in order to

make sure that any and every recommendation which can affect an investor comes from an entity which is supervised.

- Since the activity of providing investment advice is a separate business, which implies a number of duties, such as the duty to “know your customer” under article 19.4 MiFID, Banca Intesa believes that it should be governed by a separate agreement.
- Banca Intesa has the view that, as far as retail clients are concerned, investment advice should best be rendered on a continuous basis in order to comply with all rules relating to this activity. A recommendation of CESR in this direction would be welcomed.

QUESTIONS AT PAGES 10-13 - Box 1

Question 1.1 We think that the clear definition of “investment advice” provided by the MiFID, which makes reference only to financial instruments and not to ancillary services, should prevail. Accordingly, we agree with CESR that advice on these services should not be deemed to be “investment advice”, and thus should be outside the scope of the MiFID.

Accordingly, by way of example, a recommendation to use a particular broker, fund manager or custodian, should be outside the application of the regulation on investment advice.

Question 1.2 Banca Intesa is convinced that a substantial approach should prevail over a formal one. Therefore investment advice should be deemed personal as long as it takes into consideration the client’s personal situation. A contractual relationship or a bilateral communication are significant evidence of the personal nature of the advice and of the investor’s personal situation, but should not be considered conclusive to this extent.

This approach would be flexible and inclusive of all personal advice, irrespective of its form. I would not include any communication which can occur between an investor and an investment firm.

Question 1.3 Banca Intesa’s opinion is that financial planning services and advice on asset allocation should fall into the scope of “investment advice” and hence should be offered only by authorised investment firms. Such a wider interpretation would extend the MiFID investor protection regime to a cluster of activities which do pertain to the personal situation of investors, determine their overall investment strategy and can potentially harm investors materially. Even though this advice is generic, it can damage them greatly: a comparison between the consequences of an advice given in 2001 to invest in government bonds or in equities of high-tech companies speaks for itself.

As financial planning is the preparatory work to any careful investment, it normally involves a bilateral relationship between the investor and the advisor. In fact this relationship is maybe closer at this stage, than on the occasion of the provision of investment advice on single investment instruments. Therefore

Banca Intesa suggests that all protections and duties connected with the provision of personal advice should apply also to financial planning and asset allocation.

In order for the wider definition of investment advice to work, the concept of “generic information including financial planning and asset allocation” should be well defined both for clarity and for the limitation of the rights of investors on one side, and of the liability of investment firms on the other side.

2. List of Financial Instruments (Article 4 – Annex 1 Section C)

QUESTIONS AT PAGES 23-29 – BOXES 2, 3, 4, 5 AND 6

Questions 2.1 and 2.2 In Banca Intesa’s view "commodities" should not be limited to goods for the purposes of MiFID. In turn also rights or property specifically mentioned in C(10) and other intangibles should be treated as "commodities".

Questions 2.3 and 2.4 It is our opinion that derivative instruments based on telecommunications bandwidth should be considered to be within the scope of MiFID. We believe that these derivatives should be considered within the scope of paragraph C(10) of Annex I, since they cannot be deemed to be relating to commodities.

Questions 2.5 and 2.6 Assuming that the definition of "commodities" is restricted to goods, Banca Intesa believes that no requirement concerning the liquidity of the market in the underlying should be imposed. In fact, a liquid market in the underlying is a condition necessary but not sufficient to justify the presence of a market for the derivative instruments based to such goods. Any lack of liquidity in the underlying will simply prevent a derivative market to be attractive.

We believe that no further requirement on the capability of the underlying to be traded and on liquidity should be imposed by Level 2 Measures. The inclusion in the "commodities" category of assets, rights, obligations, indices and other official economic statistics, makes the requirements of delivery, trading and the presence of liquid markets redundant and counter productive to the scope of such a broader definition.

Question 2.7 According to Banca Intesa the idea of the initial filter to exclude contracts which are likely to be spot contracts will not lead to satisfactory results. The proposed filter - based on a set settlement period - fails to provide a definitive criterion to sort commercial transactions from speculative ones. Instead it is our opinion that the very legal nature of the counterparty is relevant for the definition of the regulatory requirements applicable, and then of the ensuing exclusions, if any. As a result, the same transaction could be treated as being done on a financial instrument by one counterparty and not by other principal of such a deal.

Questions 2.8 and 2.9 In our view the status of the parties should be a conclusive factor and not just an indicative one for the purpose of determining whether there is a commodity derivative, as opposed to a commercial contract for the supply of commodities.

As far as commercial merchants are concerned, we observe that whereas a commercial merchant can be qualified - from time to time - as a speculator if the "intention to deliver test" is failed, it can be said that a speculator is seldom in a position to make/take actual delivery of the commodities involved in the transactions. Again, the legal nature of the counterparty in a transaction should suffice to distinguish between commercial versus speculative purposes.

Question 2.10 We do not agree with an approach under which the status of the contract for both parties is based on a consideration of the status and/or intent of either of the parties. Given the different treatment of these transactions in respect to their qualification, requiring that either parties status and/or intents coincide will prevent a more flexible and therefore effective implementation of the scopes of the MiFID.

Question 2.11 If both elements, i.e. legal capacity and permits or licences to make or take delivery, are present, that should be a conclusive indicator that the transaction is made for commercial purposes. Should the indicator being qualified as indicative, the legal capacity shall prevail over permits and licences in determining a transaction as performed for commercial purposes.

3. General Obligation to act fairly, honestly and professionally and in accordance with the best interests of the client (Article 19.1)

Banca Intesa welcomes CESR's strategy to provide for a different set of Level 2 Measures on article 19.1 according to the nature of the client. A clear distinction between professional and retail clients is indeed vital to allow investment firms operate efficiently and tailor the level of protection to the sophistication of the investor.

QUESTION AT PAGE 38

Banca Intesa shares the proposed Level 2 Measures on portfolio management and agrees with the introduction of Standards 136 and 137 as implementing

measures of MiFID, since they have already been tested and have proven to work well. Banca Intesa does not see any other issue, which should be dealt with under article 19.1.

4. Suitability test (Article 19.4)

Since investment firms will be allowed to provide investment services throughout the European Union on the basis of the authorisation granted to them in their home Member State, Banca Intesa is convinced that conduct of business rules should be exactly the same in the whole European Union. Such regulatory uniformity on one side would entail investors of all Member States to enjoy the same rights, and on the other side would allow “reputable investment firms to work anywhere in the EU with a minimum of red tape” (from former Internal Market Commissioner Frits Bolkestein’s speech on the occasion of the approval of MiFID). Therefore Banca Intesa restates the opportunity that Level 2 Measures on article 19 MiFID are of maximum harmonisation, being introduced in all Member States at the same time and in the same manner by way of regulation.

As it has been said in the occasion of CESR’s public hearing of 19 November 2004, one of the knots concerning the suitability test is the case of the non provision of information by a client or a potential client. This is a case that can occur quite often and can raise major concerns. Accordingly we would like to invite CESR to provide a clear set of rules governing this case.

QUESTION 4.1 AT PAGE 38

Banca Intesa believes that this is one of the very issues where theoretical instances have to bend to reality concerns. Abstractly speaking, the non-provision of any information by a client should impede to assess its suitability: hence no investment advice or portfolio management should be supplied in this case. In practice, however, a client may not want to give, or be able to give (e.g. for communication problems), any information. In such circumstances the non-provision of a service required would harm more than protect the investor, who indeed has asked for a service but is not ready to put the investment firm in a position to serve him at best. Once a certain level of protection is offered, such protection can always be waived by the protected party but this should not prevent the same party from obtaining a service. A right cannot be turned into a duty.

It is to be pointed out that, as opposed to paragraph 19.5, paragraph 19.4 states that “the investment firm shall obtain the necessary information regarding the client’s or potential client’s knowledge and experience”. This means that the information provided by the client are not the only source on which the suitability test is based. The investment firm can and shall found its assessment also on the basis of other elements it has obtained elsewhere.

The consequence of this is that the assumption that the client has no

knowledge and experience can be formulated only in the absence of any other available data on that client. On the opposite, whereas the investment firm already has some information on that client – for instance because of his track record – the suitability assessment should be based on this information. This is the rule currently applicable in Italy; it has proven to provide a good degree of protection and to strike a good balance between the need to provide tailored information and the respect of the privacy of every client.

BOX N. 8 AT PAGE 42-44

1) a) trading history: Banca Intesa suggests that clients or potential clients should not be asked for information concerning their trading history.

Banca Intesa agrees with the light regime provided for professional clients: once a client has provided the information necessary to be qualified as professional, it should not undergo the suitability test, set out to protect retail clients.

5. Appropriateness test (Article 19.5)

For the same reasons set forth with reference to the suitability test Banca Intesa is convinced that Level 2 Measures on this article 19.5 should be of maximum harmonisation and should be enacted by way of regulation.

Since implementing measures should also clarify the meaning of MiFID, we would welcome a list of the “investment services other than those referred to in paragraph 4” and the precise description of the regime applying to the “reception and transmission of orders in relation to one or more financial instruments”, making the distinction between complex and non-complex financial instruments, and between initiative of the client and initiative of the investment firm. This would help greatly to establish the correct relation between transactions subject to the appropriateness test and execution only transactions.

BOX N. 9 AT PAGE 47

Banca Intesa agrees with CESR’s Level 2 Measures in question. In particular we welcome the distinction between professional and retail clients, the comparison of every transaction to a set of parameters and the features of the warning.

We suggest that the provision according to which the warning is to be as short and concise as possible could be inserted in the Level 2 Measures.

6. Execution only (Article 19.6)

Banca Intesa shares the view of the industry that the criteria to be inserted in Level 2 Measures with respect to the definition of “complex instrument” should be flexible. Since market innovation in the field of financial instruments is to be fostered, the criteria should be such that it is possible to develop in the future a “non complex” financial instrument, to which the “execution only” regime can apply.

Also in this respect, we believe that a substantial look though approach should be followed: the driver for the qualification of financial instruments in terms of complexity should be their overall economic effects. To this extent, not only the price, but also other factors such as the costs of acquisition and custody, the liquidity and the availability of information and data should be relevant.

QUESTIONS AT PAGES 49 AND 51

Question 5.1 According to Banca Intesa both the legal categorisation and the economic effect should concur to define the category of “complex instruments”. According to our analysis, however, the driver should be the economic effect of a financial instrument. In turn the legal qualification - which in some cases is not even certain (e.g. asset back securities) - should not be the ultimate criterion, in that it is not based on the risk of an instrument but on its abstract structure. What really matters, as it is clear from the Level 2 Measures of Box 10, is that the financial instrument can be easily understood by a retail investor, is liquid and does not imply hidden and/or non foreseeable liabilities.

There are some financial instruments, which do embed a derivative component, but are as normally traded by retail investors as shares or plain vanilla corporate bonds; for example:

- Structured bonds, especially the inflation linked;
- Plain vanilla covered warrants; and
- Exchange traded derivatives such as futures and options.

In these cases, the derivative component is either negligible or it does not involve the risks, which are normally borne by financial derivatives; therefore we propose to define these financial instruments as non complex.

Question 5.2 Banca Intesa agrees with CESR approach to combine the general condition on “undue influence” with the criteria under Recital 30 MiFID.

Excluding that the service is provided at the initiative of the client if undue influence has been applied flows from the general duty to act honestly and fairly. We notice, however, that in practice it is very difficult for an investment firm to exclude any indirect influence on the client; to this extent we would invite CESR to provide some criteria to assess the vague concept of “influence”.

For instance, we would like CESR to clarify how the concept of “undue influence” applies in a number of grey areas, such as for instance the case of a client of a bank receiving once or twice financial information on a certain

product sold by the bank on his/her personal e-mail.

7. Transactions executed with eligible counterparties (Article 24)

Provided that we do not have any experience with the differentiation between professional clients and eligible counterparties, given that the MiFID has taken stock from a purely English experience in this respect, we understand that this should be an option given to some professional clients, identified under article 24.2 MiFID and the relevant Level 2 Measures, to waive some protections, normally given by law to professional clients, and to negotiate at arm's length with investment firms.

QUESTION AT PAGE 57

Banca Intesa does not share CESR's proposal to apply the same quantitative thresholds both for the treatment as eligible counterparty and for the identification of professional clients.

We believe that only a professional client of large dimensions should be allowed to be treated as professional counterparty, thus accessing the market directly. Accordingly the quantitative thresholds for the purpose of the qualification of "eligible counterparty" should be higher than those for "professional clients". Such an approach would carry a number of benefits:

- Limitation of the number of potential defaulted parties accessing the market directly, as the smaller, and therefore riskier, professional clients should still access the market via the intermediation of investment firms;
- Limitation of the number of subjects shifting from the regime of professional client to eligible counterparty, and *vice versa*, especially taking into account that this shift is more likely to happen in the case of smaller entities;
- Tailoring of the degree of protection also in respect to professional clients, hence limiting the exception under the "eligible counterparty" regime and ensuring that smaller professional entities can always enjoy some protection, as provided for by the MiFID.

Section III – Markets

8. Display of client limit orders (Article 22.2)

Banca Intesa understands and fully supports CESR in its effort to identify a set of rules that makes non immediately executed orders visible and accessible in a number of trading venues. A prompt disclosure of non immediately executed orders contributes to the effectiveness of the price discovery process, to the efficacy of pre-trade transparency and ultimately to the best execution of the order.

QUESTIONS AT PAGE 60

Question 7.1 In order to ensure the best consolidation of information and hence a working pre-trade transparency, also arrangements such as info providers and third party systems should be considered as complying with Article 22.2 MiFID.

Question 7.2 We believe that also a publication of a non immediately executed order in a quote driven system is appropriate, provided that it is coupled with the publication in another form (e.g. in the website of the trading venue).

9. Pre-trade transparency – Systematic internalisers (Article 4 and 27)

Since systematic internalisers are one of the trading venues recognised by MiFID, because of their crucial importance for a smooth functioning of the financial market, it is essential that they are univocally defined, on the same lines as regulated markets and multi trading facilities. For this purpose Banca Intesa invites CESR to come up with comprehensive and rigid Level 2 Measures, which leave no room for interpretation. In our view this is one of the issues where it is preferable to have non flexible but precise Level 2 Measures: in fact the burden to update the rule is outweighed by far by the legal certainty of knowing which are the investment firms acting as trading venues.

A straightforward consequence of the above is that Level 2 Measures in this respect should be of maximum harmonisation and should be implemented by way of regulation.

QUESTIONS AT PAGE 62-63

Question 8.1 Banca Intesa believes that the criteria selected by CESR to identify a systematic internaliser are significant and shareable. However, even though the business model, the existence of *ad hoc* procedures and the assignment of personnel are all clear indications that the investment firm is organised in order to carry out the activity of systematic internalisation, these criteria are not stringent enough and should be coupled with further criteria (e.g. total turnover, implementation of technological standards, IT investments). These further quantitative and qualitative criteria should aim at proving that the investment firm is in a position to carry out systematic internalisation also in reality and not only potentially.

Question 8.2 We believe that all criteria should be met collectively, since they pertain to different features of internalisers.

Question 8.3 In our view the introduction of a quantitative criteria to better define the concept of “frequent basis” and hence of systematic internaliser reflects the need to apply the rules on systematic internalisers only to the entities which effectively carry out this activity. In this perspective the most

significant quantitative criteria are:

1. the trading frequency; and
2. the percentage of orders on a given share executed on a certain systematic internaliser.

Question 8.4 The provision of a duty of information in case of cessation of systematic internalization is to be shared, in that the market must be in a position to know who the systematic internalisers are at any given time.

As for the notice period we suggest:

- 10 business days in case of a temporary interruption of systematic internalisation with respect to one or more financial instruments;
- 1 month in case of permanent termination of systematic internalisation. This longer notice is justified by the fact that investment firms are then required to update their execution policy.

10. Scope of the rule (Article 27.1)

Banca Intesa congratulates with CESR for the method followed in this respect. With regard to a highly technical issue, such as the definition of liquidity for the purpose of the publication of firm quotes by systematic internalisers, it is essential that regulators act upon the data, comments and suggestions of the industry, which in fact is the subject in the best position to assess the matter from a factual perspective.

QUESTIONS AT PAGE 67-68

Question 8.5 Moving from the assumption that the definition of liquidity in question is for the purpose of determining the shares subject to pre-trade transparency rules pursuant to Article 27 MiFID, we consider that this definition should foster the creation of a transparent market in all Member States. It is important that Level 2 Measures ensure that both in the small markets and in the more developed ones a good level of transparency in the price formation mechanism is achieved. This means that in each market there have to be a certain number of shares to which the pre-trade transparency regime applies: this implies that the definition of liquidity has to be tailored to the features of each market. This leads to the conclusion that liquidity should be measured on a national basis.

On the other hand, this domestic benchmarking of liquidity should not surprise, since it has to be read as a technical tool to accomplish in all Member States a general goal of the MiFID, such is the achievement of transparency of transactions.

Question 8.6 Banca Intesa is in favour of using a proxy approach for a number of reasons:

• Simplicity and automatic updating; • Correctness in the assessment: if a title appears in an index, for instance, some of its features (e.g. volume, turnout) have already been assessed and in fact only the most liquid securities are at the basis of the indexes ; • Presence of well tested and trustworthy domestic indexes.
Question 8.7 We agree with the analysis made by CESR of the possible criteria to determine liquidity. We think that there are no further methods which should be evaluated.
Question 8.8 In our view it is appropriate and possible to combine absolute and relative criteria for the purpose of identifying liquid shares within the scope of Article 27 MiFID.
Question 8.9 In the case a pre-determined criteria will be used, generally speaking we agree with the figures proposed by CESR. At any rate, we would suggest that thresholds should be low rather than high, in order to make sure that a sufficiently high number of shares is considered liquid, and hence subject to the pre-trade transparency regime under Article 27 MiFID. This would ensure that systematic internalisers have to comply with duties as burdensome as those of RMs and MTFs and do not benefit from a lighter transparency regime. By way of example we notice that during the first 11 months of 2004 the 10 most liquid shares (e.g. Eni, Enel, Tim, Generali, Unicredito, Banca Intesa) represented on average 69% of the total trading at Borsa Italiana S.p.A.. This means that a percentage of 95% of the total trading in Italy would roughly imply that some 20-25 shares would be subject to the pre-trade transparency obligations.
Question 8.10 We agree with the analysis of CESR on the pros and cons of the use of proxies. We would stress, however, that further emphasis should be placed on the fact that proxies are anyway reliable and are a system easy to implement, since there are already well calculated indexes in all Member States.

11. The determination of the Standard Market Size / Classes of shares (Article 27.1 and 27.2)

Banca Intesa is convinced that – whenever it is applicable – the Standard Market Size is an important information on the share, in that it provides significant evidence of the level of liquidity, the nature of investors and the negotiation frequency of a given share. For this reason we would welcome both the a single SMS for each share, irrespective of the trading venue, and the attribution of a SMS for each share, as from its initial public offering.

QUESTIONS AT PAGE 73-74

Question 9.1 For the sake of simplicity and uniformity, Banca Intesa agrees

with CESR's approach to provide for a unified block regime for the purpose of public quotation of shares irrespective of the trading venue.

Question 9.2 For the sake of simplicity and of effectiveness of pre-trade transparency, we would recommend CESR to provide for a limited number of SMS classes. A large number of SMS classes would indeed be problematic not only for systematic internalisers but also for investors and would make the whole trading process more time consuming.

Question 9.3 In our opinion it would be more appropriate to convert the SMS into a number of shares.

Question 9.4 In order to ensure that Standard Market Sizes are representative, we support the introduction of the proposed Level 2 Measure, which provides for "The revision of the grouping of shares shall be undertaken annually" (Box 16 at page 73).

Question 9.5 Banca Intesa favours the resolution of CESR's alternative on the definition of SMSs in the case of IPOs by privileging the second option, i.e. to fix an initial SMS from the first day of trading of a share by using a proxy based on peer stocks. This choice would be beneficial both for internalisers and for investors. For the first subjects, it would put them in a position to systematically internalise also the share object of the IPO; for the latter subjects, it would add relevant information to qualify the newly offered share.

Question 9.6 We agree with the Level 2 Measures allowing two weeks after the grouping by the competent authority for the SMS to become effective. We believe that it is a sufficient time.

Question 9.7 We agree on the publication of the classification of shares in an easily accessible manner, such as a web-site. From our analysis, the best place to publish this classification is the web-site of national competent authorities and/or of CESR. This would couple the advantage of accessibility with the one of being a no-profit third party interested publisher.

12. Obligations of the Systematic Internaliser

Banca Intesa is convinced that – whatever the chosen trading venue may be – investors should be in the same position, as far as the publication, availability and withdrawal of quotes are concerned. This statement flows from the general concept that competition among trading venues is meant to be beneficial to investors, in the sense that it leads to a greater variety of negotiation conditions; on the other hand, competition among trading venues is not meant to be detrimental to investors, which would happen if a new less transparent and less reliable trading venue is introduced because of larger competition.

Accordingly, we are convinced that the obligations of systematic internalisers should be coincident, with minor variations linked to their nature, to the ones of RMs and MTFs.

A further advantage of this uniform legal regulation lies on the fact that no trading venue is put at an advantage from a regulatory perspective and thus fair competition among trading venues is fostered.

QUESTIONS AT PAGE 78

Question 10.1 Since systematic internalisers put their own capital at risk while executing orders, we believe that it is quite difficult that a systematic internaliser becomes the trading venue with the largest turnover in a particular share. At any rate, we do not see any reason why carve-out, specific provisions or exceptions, which would also be extremely thorny to draft, should be provided for in this case.

Question 10.2 Banca Intesa shares the view that systematic internalisers should publish a quote throughout 100% of their normal trading hours. This is a workable requirement detailing the concept of “a continuous basis”. Taking into account that this exception is not automatically provided for in all legal systems, the exception of *force majeure* (such as strikes, technical problems independent from the internaliser, etc.) should be introduced.

Question 10.3 According to Recital 34 of MiFID, information on prices should be consolidated, so that it is possible to compare prices. From this perspective, we are convinced that the mere publication of price information on the web-site of the internaliser is not sufficient, in that it would resolve in a high level of fragmentation and the more some information is fragmented, the less accessible it is.

In order to provide investors with consolidated, easily accessible information, Banca Intesa suggests CESR to introduce a provision that obliges systemic internalisers to publish the prices not only on their web-site but also on other media.

Question 10.4 Banca Intesa is convinced that CESR’s proposed general criteria will be sufficient to determine when market conditions are reflected in a price.

Question 10.5 Although both criteria brought forward by CESR to determine when a systematic internaliser can withdraw its quotes are workable and effective, we are slightly more in favour of the first one, i.e. internalisers can withdraw their quotes in circumstances which might lead a regulated market to suspend trading. We would advice CESR not to combine this criteria with a short list of exceptional market conditions, firstly because it is inherent of the concept of exceptionality that it cannot be formalised and codified in advance; secondly because there are already precise criteria to determine what is exceptional; and thirdly because such a list could be unduly exploited to withdraw quotes.

Question 10.6 We are convinced that systematic internalisers should not enjoy a lighter regime than RMs and MTFs; therefore, we do not believe there should

be any circumstance that allows internalisers only to withdraw their quote.

Question 10.7 We do not agree with the proposed approach to the updating of quotes. Since the whole rationale of the introduction of systematic internalisers as third trading venue by the MiFID lies in the opportunity to improve the price discovery mechanism, internalisers have to be free to update quotes actively and not to simply react to a change of market conditions. In other words, systematic internalisers should be market makers and therefore should be left free to update their quotes.

13. Handling of client order and executing the orders

QUESTIONS AT PAGE 79-84

Question 11.1 Banca Intesa agrees with CESR on the non-necessity of Level 2 Measures expanding and specifying. Article 27, paragraph 3, last period of MiFID is indeed clear and comprehensive enough.

Question 11.2 Since the ability of a systematic internaliser to take risks depends on its structure and dimensions, it is for each internaliser to determine the number and/or number of orders that it can manage prudently. Banca Intesa accordingly totally agrees with CESR's Level 2 Measures on this issue, which makes the ability to execute client orders depend on the internaliser's internal policy.

Question 11.3 Banca Intesa believes that it is not necessary to specify a minimum number of securities for the purpose of identifying a portfolio transaction.

Question 11.4 Banca Intesa shares the approach taken by Level 2 Measures towards "orders subject to conditions other than current market price".

Question 11.5 Generally speaking Banca Intesa prefers that the CRS is defined at European level, in order to treat all investors of the European Union on equal terms.

We notice, however, that the activity of retail clients varies a great deal among the various Member States. For instance, in Italy retail clients are more active in percentage than in most of the other Member States, so that – according to the calculations of the Italian Banking Association, ABI – a representative figure for CRS in Italy is at about Eur 20,000.

Question 11.6 We would welcome a system that sets thresholds for groups of shares, rather than a single fixed threshold. Such a system would have the benefit to take into account the peculiarities embedded in each share. We agree that the grouping among shares should be consistent with the one done for the purpose of the calculation of the standard market size.

Question 11.7 In order not to penalise excessively the investors and the investment firms at both ends of the spectrum, Banca Intesa would prefer a

threshold adjusted to the medium retail size trade in the European Union.

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