



Deutsche Börse Group

Deutsche Börse's Response
to
CESR's Consultation Paper
(Ref.: CESR / 04-562)

**CESR's Advice on Possible Implementing Measures of the
Directive 2004/39/EC on Markets in Financial Instruments**

Frankfurt am Main, 21/01/2005

General Remarks

Deutsche Börse gladly takes the opportunity to respond to the consultation paper about CESR's draft technical advice on possible implementing measures of Directive 2004/ 39/ EC on Markets in Financial Instruments (MiFID/ 2nd set of mandates). Our response focuses on the markets section with the main issues of client order handling and systematic internalization.

Overall, Deutsche Börse supports CESR's approach on implementing measures as drafted in the consultation paper, both with regard to client order handling as well as the implementation of Article 27 to promote market efficiency and investor protection.

Section III - Markets

Display of client limit orders (Article 22.2)

a) General comments

Deutsche Börse supports CESR's principle approach towards the display of client limit orders.

Limit orders which are not immediately executable contribute valuable information to the price discovery process in securities trading. For that reason, the transparent and accessible disclosure of limit orders to the market is central to efficient price discovery, especially in liquid share trading.

Client limit orders which can not be executed immediately should be displayed to the market ("visibility test") and accessible by market participants for execution. Both criteria, display and accessibility for execution, need to be taken into account jointly for the handling of client limit orders which can not be executed immediately. This will ensure the interaction of client limit orders with the broader market in the over all price formation process, enable for the earliest possible execution of client limit orders and contribute to their best execution.

In the context of *accessible and executable* client limit orders, the issue of membership may be of importance also in defining arrangements compliant with article 22.2. In order to allow for a most efficient and frictionless interaction of non-marketable client limit orders with the broader market and to reach the largest possible audience of market participants, CESR should point out that membership to any arrangement compliant with article 22.2 should be open to all interest market participants on a non-discriminatory basis.

The implementing measures of Article 22.2 should not interfere with well established current market practices or order driven market models which are in compliance with the pre-trade

transparency requirements of Articles 29 or 44. For that reason and to provide a consistent systematization in contrast to *quote driven* market, we propose to redraft CESR's advice with the wording *order driven* market (cf. specific comments).

b) Specific comments

Box 13/ 2.

"The obligation would be met where the limit order is sent to **an order driven** Regulated Market (RM) or Multilateral Trading Facility (MTF) ~~which runs a public order book.~~ ..."

c) Questions

Question 7.1 (page 60):

In your view, what types of arrangements other than RMs and MTFs could be considered as complying with Article 22.2?

Any other arrangement than order driven RMs or MTFs that jointly meets the criteria visible display and executable access to client limit orders which are not immediately executable should be considered as compliant with Article 22.2.

Question 7.2. (page 60):

Do you consider the proposal on publishing the client limit order in a quote-driven system appropriate?

We consider the CESR proposal appropriate. In a quote driven system which displays only market maker quotes or the inside market, client limit orders in the market depth would not be visible and accessible for execution to market participants. Consequently, client limit orders are not able to contribute to price discovery and quote driven systems do neither meet the visibility nor accessibility requirement of Article 22.2.

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

1. Definition of systematic internaliser

a) General comments

Deutsche Börse supports CESR's draft advice on the definition of systematic internaliser. The definition of systematic internalisation relies on qualitative criteria with reference to an ongoing commercial basis or a scale which requires a business enterprise of commercial proportions without the need of a technical platform as precondition.

We agree with CESR's argumentation and draft advice to avoid numerical thresholds in assessing systematic internalisation. Therefore, our specific comments suggest referring to a commercial role only - without the additional characterization of an *identifiable* one - or the active marketing communication of internalisation as separate criteria, i.e. the external identification of related service offerings to market participants/ clients. This will leave out the need to define any numeric thresholds for an *identifiable* commercial role of systematic internalisation as its economic relevance may significantly differ between an internaliser's business model and the impact on market efficiency for a specific share which is subject to systematic internalisation.

b) Specific comments

Box 14/ 1.

“- The use of a business model in which internalisation has ~~an identifiable~~ commercial role **or is advertised by active marketing communication**”

c) Questions

Question 8.1. (page 62):

Do consultees agree with criteria for determining systematic internaliser? Should additional/ other criteria be used and if so, what should these be?

We agree with the criteria for determining systematic internalisation. Qualitative criteria serve best in determining systematic internalisation and reduce regulation complexity in setup and maintenance.

Question 8.2. (page 62):

Should the criteria be fulfilled collectively or used separately?

The criteria should be used separately. Especially the first criteria of an *identifiable* commercial role may differ largely between potential systematic internalisers having different business models in general. In this context, systematic internalisation may not have an identifiable as important commercial role to the investment firm itself but very well have an important economic impact on market efficiency in securities trading.

Question 8.3. (page 63):

Should CESR set criteria for the term "frequent"? If so, do consultees support the setting of numeric criteria or do they believe that a more flexible approach would be useful? What should these criteria be?

CESR should not set criteria for the term frequent. Typically, how often systematic internalisation takes place depends on market conditions and client activity, especially retail client activity. This market environment, and consequently service demand, is likely to change more often within short time frames. Moreover, numeric thresholds could only be set on the level of individual firms in systematic internalisation as service providers may differ significantly in scale, business model and client base.

In order to provide a sustainable definition of systematic internalisation and reduce regulation complexity, CESR should rely on qualitative criteria and avoid numeric thresholds. Wherever the criteria organised and systematic are given as necessary conditions in determining the service offering of systematic internalisation, the criteria frequent as service demand should be regarded given also as sufficient condition.

Question 8.4. (page 63):

Do you agree with the proposed obligation to disclose the intention to cease systematic internalisation? Should CESR propose more detailed proposals on this and if so, what should be the appropriate notice period?

The intention to cease systematic internalisation should be disclosed to the market obligatorily. We support CESR's current draft advice in how to announce the intention.

2. Scope of the rule (Article 27.1)

a) General comments

The assessment of liquidity is a key element across MiFID regulation. Therefore, the implementing measures on what is to be considered a liquid market in the context of Article 27.1 should not be treated in isolation from other MiFID references to liquidity. Yet, Article 27 contains two different references to the term liquidity itself. The first reference in Article 27.1 focuses on a *liquid* market in trading a specific share, the second one in Article 27.2 focuses on the competent authority of the most relevant market in terms of *liquidity*.

In order to provide a consistent approach in the assessment of liquidity, we suggest using a single approach in quantifying liquidity across its references in MiFID. As CESR argues in favour for a unified block size regime across [pre-trade] provisions to enable for a consistent approach towards *orders large in scale* (c.f. CESR consultation paper p. 70 and Question 9.1), we propose to apply the same argumentation in assessing liquidity provisions also.

Deutsche Börse favours the Market Impact methodology in quantifying liquidity¹, serving best the different needs for an objective, transparent and operational approach towards liquidity across the different liquidity references in MiFID.

b) Questions

Question 8.5. (page 67):

Should liquidity be measured on an EU-wide or national basis?

Liquidity should be measured on a national basis. As CESR states accurately, trading of single shares is usually concentrated in one marketplace or in one Member State. Systematic internalisers have the free option and ability to unwind or hedge their risk positions on these liquid marketplaces in order to control for and manage their market exposure out of systematic internalisation. Consequently, a share should be considered to be liquid if there is at least one liquid marketplace for that share anywhere in the European Union.

¹ For more detailed information and results on the Market Impact methodology, please refer to ["The Market Impact – Liquidity Measure in Electronic Securities Trading"](http://www.deutsche-boerse.com/The-Market-Impact-Liquidity-Measure-in-Electronic-Securities-Trading) available on www.deutsche-boerse.com.

Question 8.6. (page 67):

Do consultees have a preference in favour of setting pre-determined criteria or using a proxy approach?

Deutsche Börse favours the setting of pre-determined criteria with the Market Impact approach to quantify liquidity as the first best solution. The Market Impact approach quantifies liquidity by its value to investors and intermediaries, the ability to trade fast and at lowest implicit transaction costs. Therefore, the approach is best suited to allow for the objective and consistent assessment of liquidity across the different needs for an operational definition of liquidity within the MiFID.

Nevertheless, we acknowledge that the Market Impact calculation may require corresponding computing power and currently not every market is able to quantify liquidity on the basis of an exact methodology yet. For that reason, CESR may additionally consider - for a transitional period - a proxy approach on the basis of tradable indices or the existence of a derivative for those markets that are not able to quantify liquidity on basis of the Market Impact methodology.

Question 8.7. (page 67):

Regarding the different criteria described above, do consultees agree with the analysis of each of them, and are there other methods which should be evaluated?

Deutsche Börse generally agrees with the analysis of the different criteria with some additional remarks on the use of indices as proxies, c.f. Question 8.10.

Question 8.8. (page 67):

Is it possible and/or appropriate to use for the purposes of article 27 a combination of absolute and relative criteria to define shares as liquid?

Deutsche Börse does not propose to use a combination of absolute and relative criteria in defining shares as liquid. The combination of criteria would make computation and communication unnecessarily complex with only small value added in assessing liquidity for the purpose of Article 27.1 and no meaningful contribution to other liquidity references in MiFID with regard to a consistent approach.

Question 8.9. (page 67):

Do consultees consider the proposed figures (i.e. 480 trades per day and 95% of total trading) as appropriate? If not, and where no figures are suggested what are the appropriate figures in your opinion?

Activity figures do not really quantify liquidity. They may at most serve as estimators or proxies in assessing liquidity because activity figures do not capture most important liquidity dimensions. Especially cost dimensions and market quality are not reflected by activity figures at all although central motivations in MiFID regulation and important to assess also for any future review of implementation achievements². For these reasons, it is hard to decide why any specific activity figure, e.g. one trade per minute and not 100 trades per hour, should represent a reasonable threshold and the other figure does not?

Question 8.10. (page 68):

Do consultees agree with the analysis of the relative merits and drawbacks of using proxies such as indices?

With regard to the analysis of indices as proxies for the existence of a liquid market, index providers - may it be Regulated Markets, MTFs or third party providers - have implemented clear rules and regulations for the entrance and exit of shares into indices. These regulations typically provide a transparent, independent and clearly predictable framework in index governance leaving only little or no discretion to the index provider. Also market participants themselves are typically involved in the framework of index governance. For these reasons, potential sources of conflicts in the context of indices as liquidity proxies are only small or even not present as the major driver in index acceptance is the reputation of the index provider and consequently the independence and clear governance of the benchmark itself.

² Empirical evidence on this argumentation can be found in the market data published by CESR on December, 30th 2004 as annexes to the consultation paper (c.f. [CESR](#), reference 04-717 annex 1-6). Annex 2 provides activity figures and average spreads as one dimension of implicit transaction costs which are also included in the market impact methodology. Comparing activity and liquidity on that basis, the data ranks i.e. Infineon and BASF shares 10th and 11th almost equally by average turnover per trading day whereas BASF is about 30 per cent more liquid than Infineon indicating clear differences in liquidity on the basis of implicit transaction costs. In contrast, Siemens and E.ON rank equally by average spread whereas activity in Siemens by average turnover is almost twice the activity in E.ON ranking Siemens 1st and E.ON 8th. This evidence questions again the significance of activity figures in assessing liquidity by its value to investors, the ability to convert assets into cash immediately and at lowest costs and vice versa.

Question 8.11. (page 68):

Which criteria would best accommodate the needs of different markets within the EU?

Deutsche Börse regards the Market Impact methodology to fit best with the future needs of integrating European capital markets in equity trading as the methodology is readily available, commonly accepted among market participants and has a proven track record in practical application for the German equity market since mid 2002, e.g. in trading parameter definition in electronic trading.

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

a) General comments

Deutsche Börse supports CESR's general approach in the determination of the Standard Market Size (SMS) and classes of shares.

With regard to the basis for calculation, level one text explicitly refers to executed orders. Referring to trades or transactions in the CESR draft advice deviates from level one guidelines and results in significantly lower SMS figures compared to level one intentions (also c.f. CESR example on p.70, fn 14)³. These results do systematically underestimate the SMS as they do not reflect the role of larger orders and typically depend on partial execution rates which are of no importance in the context of Article 27. To avoid misclassification of shares by biased Standard Market Size results, we suggest implementing executed orders as the basis for SMS calculation.

In case the SMS calculation on the basis of executed orders is not possible for technical reasons of data availability, we propose to adjust the calculation results on trade basis with a factor greater than one in order to account for the issue of partial executions and to better reflect level one text intention.

We explicitly support CESR's approach towards *orders large in scale compared to normal market size*. The draft advice implements a consistent definition between the SMS calculation and the block size regime of Articles 29, 30, 44, 45 MiFID.

A pragmatic approach towards grouping single shares together into classes of shares may be to refer to quartiles or percentiles on the basis of SMS calculation results.

b) Specific comments

Box 16

1. Calculation of the average order size

The average executed order size should be based on orders and not trades.

5. How to fix the SMS

The SMS for each class of shares shall be fixed as monetary value only. A conversion into a single number of shares for every group may result in large deviations with respect to the different shares in one group because of different nominal price levels - although grouped together because of comparable average executed order sizes in terms of monetary value.

³ Calculating the SMS on the basis of trades instead of executed orders decreases the result when partial executions take place, e.g. assume a buy order of 100 shares is matched with 2 sell orders for 50 shares each. The resulting SMS on trade basis would be 50 shares whereas the resulting SMS on executed order basis would be approximately 67 shares which implies a deviation in results by calculation methodology of about one third.

c) Questions

Question 9.1 (page 73):

Do you agree with CESR's approach of proposing a unified block regime for the relevant provisions in the Directive or do you see reasons why a differentiation between Art.27 MiFID on the one hand and Art.29, 30, 44, 45 MiFID on the other hand would be advisable?

Deutsche Börse agrees with the CESR approach to define a unified block regime for all the provisions in the Directive. A unified block regime provides a consistent approach across the Directive and avoids unnecessary efforts by the duplication of numeric calculations. We also encourage CESR to apply unified implementing measures with regard to other issues with multiple provisions in the Directive such as e.g. liquidity (c.f. page 5, general comments).

Question 9.3. (page 74):

In your opinion, would it be more appropriate to fix the SMS as monetary value or convert it into number of shares?

The SMS should be fixed as monetary value in order to account for differences in nominal price levels between shares in one class, to adequately reflect the reason for defining different share classes because of differing liquidity risk and to allow for a straightforward communication of share classes.

Question 9.4. (page 74):

Do you consider subsequent annual revisions of the grouping of shares as sufficient or would you prefer them to be more frequent? Should CESR make more concrete proposals on revision? In particular, should the time of revisions be fixed at level 2?

Deutsche Börse regards the annual revision of the grouping of shares as sufficient in the interest of legal certainty, stable parameters over a sufficiently long period and the cost-benefit relations of necessary efforts in computations.

More concrete proposals are not necessary for the formal revision as well as for the ad hoc revisions as long as the option for ad hoc revisions remains possible. The time of annual revisions should be fixed at level 2.

Question 9.5. (page 74):

Do you support the determination of an initial SMS by grouping the share into a class, once a newly issued share is traded for three months, or do you consider it reasonable to fix an initial SMS from the first day of trading of a share by using a proxy based on peer stocks?

New issues should be assigned to a class of shares from the first trading day to ensure a complete instrument universe in the context of Article 27. We support the CESR approach to assign new issues to a class of shares using a proxy approach based on peer stocks. If necessary, a review/ reassignment may take place on the basis of trading activity for the first three months by the competent authority.

Question 9.7. (page 74):

Do you agree on the proposal on publication of the classification of shares? Would you prefer the establishment of a single contact point (at level2)?

Deutsche Börse agrees on the proposal on publication of the classification of shares. A single point for publication may be helpful in order to provide consolidated information to market participants. As suggested, this single point of publication may be CESR's website.

4. Obligations of the systematic internaliser

a) General comments

Publication of quotes/ access

Referring to the extract from the mandate from the commission (CESR p.75), systematic internalisers may choose among three different channels to comply with the obligation to publish their quotes on a regular and continuous basis. One of three options is to display their quotes "through the facilities of any regulated market which has admitted the instrument in question to trading", a second one "through the offices of a third party, e.g. a data vendor." The difference between these two options is obvious: Whereas regulated markets could only offer a reduced service level to systematic internalisers - only in instruments admitted to trading on its own market - any third party could offer a complete service level encompassing all European instruments (CESR p. 76). To provide for a level playing field within a competitive market structure, CESR should explicitly acknowledge that regulated markets may also act in the role of a "third party provider" and offer their data dissemination services to systematic internalisers in more than shares admitted to trading on its own systems only. Regulated markets have proven track records in market data dissemination ensuring that all data vendors, not just isolated ones, have access to pre trade data from the respective systematic internalisers.

Reflecting market conditions

CESR discusses the issue of how or when a price [systematic internalisation quote] would reflect prevailing market conditions? Defining absolute criteria for systematic internalisation quotes to reflect prevailing market conditions is hardly achievable in an operational way. In order to avoid obvious problems in any absolute definition, we suggest to link up the price quality of internalisation quotes with the Best Execution obligation of Article 21. This interlinkage between the desired price quality of internalisation quotes and the Best Execution obligation would make the need for any further definition obsolete and provide a consistent framework with the logical interplay of MiFID principles as CESR refers to also in the draft advice for Article 22.2 (c.f. CESR p.60, box 13 no. 4).

Best execution is a key element of investor protection and competition in the provision of order execution services. Best Execution constitutes of different dimensions. Price quality is one important dimension of order execution quality and one central driver in delivering best execution. The interlinkage of both will automatically ensure the desired price quality in systematic internalisation quotes by the ex post assessment of resulting execution quality. The definition of internalisation quotes reflecting prevailing market conditions on the basis of best execution will set the focus on total execution quality, serve best investor protection, promote efficient price formation and contribute to pre trade transparency in a meaningful way while leaving the necessary freedom in determining price quality to systematic internalisers.

b) Specific comments

Box 17

2. Reflecting market conditions

"A price or prices reflect prevailing market conditions when the price or prices are close to comparable quotes on other relevant markets **and when the price or prices enable investment firms to obtain the best possible result in executing client orders in accordance with Article 21 MiFID.** ..."

4. Updating of quotes

"... Therefore, an internaliser should be able to update its quotes as often as it is able to justify the change **or as often as necessary to provide best execution to investors**"

c) Questions

Question 10.2 (page 78):

Do consultees agree that the availability of quotes during 100 % of normal trading hours of the firm is reasonable and workable requirement for "on a continuous basis"?

We support CESR's approach on the availability of quotes during normal trading hours in order to allow for investor choice in execution services and provide a level playing field in trading service availability with public market places.

Question 10.3 (page 78):

Do consultees think that publication of quotes solely on the firm's own website meets the "easily accessible"-test?

Publication of quotes solely on the firm's own website does not meet the easy accessible test. As CESR states on page 64, the central aim of pre-trade transparency is helping to integrate separated liquidity pools, aid competitive price formation and lower search costs for market participants. In addition, a competitive price-formation process supports both intermediaries and investors in achieving best execution in equity trading. The publication of internalisation quotes solely on a firm's website does not contribute to these pre-trade transparency aims in a meaningful way and would increase investors search cost unduly.

Question 10.4. (page 78):

Do you agree with the proposed general criteria for determining when a price or prices reflect market conditions or do you think that more specific criteria should be added? In the latter case; which criteria do you think should be added?

Deutsche Börse agrees with CESR's general requirement approach not to add specific criteria in determining prevailing market conditions for pre trade internalisation quotes. Nevertheless, systematic internalisation quotes should contribute to pre trade market transparency in a meaningful way on the one hand and serve investors' interest in best execution on the other hand. For that reason, the price quality of systematic internalisation quotes needs to enable for a consistent best execution of client orders.

This aspect is especially important with regard to retail trading where internalisation quotes are not subject to price improvement during order execution. Therefore, the link between prevailing market conditions and the price quality of systematic internalisation quotes should be Article 21 with its requirement to execute client orders on terms most favourable to the client. As price quality is one important aspect of these most favourable terms, pre trade quality of systematic internalisation quotes will reflect prevailing market conditions automatically when subject to the best execution requirement of Article 21.

Question 10.5 (page 78):

Do you prefer either of the criteria defining exceptional market conditions, and should those criteria be supplemented by an open list of exceptional market conditions?

We support CESR's general approach on the determination of *exceptional market conditions*. We prefer the second criteria to make a link between the decision of a Regulated Market (or competent authority) to suspend trading and allow internalisers to withdraw their quotes only when trading is suspended on a Regulated Market in order to provide a sustainable framework in securities trading. Trading service availability in general is an important element of market integrity and fosters investor confidence. Especially in exceptional market conditions, the ability to trade is of high value for both investors and intermediaries.

An open list of exceptional market conditions seems not necessary in the draft advice. These conditions are already defined and well established market practices either by Regulated Markets or the respective competent authorities.

Question 10.6. (page 78):

Are there exceptional market circumstances where a systematic internaliser should be able to withdraw its quotes even though a trading suspension has not been called by the regulated market? In the latter case, which market conditions should be added to an open list?

The quote obligation for systematic internalisers refers only to shares admitted to trading on a regulated market and for which there is a liquid market. As long as trading is not suspended on the respective regulated market, systematic internalisers have the opportunity to unwind or hedge their proprietary trading positions in a liquid market if necessary.

Even and especially in exceptional market circumstances, this opportunity should serve the orderly functioning of securities trading in general and especially in systematic internalisation. Therefore, no additional exceptions for the withdrawal of quotes in systematic internalisation are necessary as long public markets are open and accessible for trading.

Question 10.7. (page 78):

Do you agree that the proposed approach to the updating of quotes is acceptable or would you prefer more specific criteria? In the latter case, which criteria could be added?

We agree with the CESR proposal on updating quotes. To publish quotes on a continuous basis reflecting prevailing market conditions contribute to the price formation process and allow for the best execution of client orders (c.f. Question 10.4). The ability to update quotes should not be restricted in this way in order to serve investors' need for best execution. Therefore, we suggest to include in CESR's draft advice the ability to update its quotes as often as necessary to provide best execution to investors.

Handling of client orders and executing the orders

a) General comments

Limiting the total number of transactions from different clients

With regard to the criteria determining what constitutes considerably exceeding the norm in order to limit the number of transactions from different clients, CESR discusses the issue with regard to a trade-off between a systematic internaliser's risk management abilities due to possible excessive market exposure and investors' interest in the reliable availability of trading services.

Market participants engaged as systematic internalisers should be deemed to have the necessary abilities in risk management to control for and manage market exposure. In order to limit capital at risk, investors can expect to first rely on professional risk management by hedging or unwinding excessive portfolio positions and therefore avoiding undesired market exposure by risk management and not by shutting down trading services. This should be true especially as Article 27 focuses on shares for which there is a liquid market only and systematic internalisers have unrestricted access to these markets to manage their portfolio by the degree of market exposure.

For these reasons, the trade-off between the ability to manage market exposure and investors' interest to be able to trade should not be solved against the interest of investors to rely on the reliable ability of trading services also in systematic internalization.

Portfolio transactions

Defining a portfolio transaction, CESR's draft advice sets a threshold of 10 or more securities grouped together in a basket. In order to emphasize the wholesale nature of portfolio transactions and to reflect current market practices, we suggest to additionally include a value threshold of at least Euro 1 million. For example, the London Stock Exchange defines a portfolio transaction today as a transaction involving the sale or purchase, or both, of 20 or more securities, the New York Stock Exchange defines portfolio trading strategies involving the purchase or sale of 15 or more stocks having a total market value of \$1 million or more⁴. Including an additional value threshold will align the common European perspective closer with current market practices.

b) Specific comments

Box 20/ 1.

"... which involves 10 or more securities **with a value of at least Euro 1 million** grouped together into a basket ..."

⁴ C.f. Rules of the London Stock Exchange as of May 2004, definitions/ XVII and www.nyse.com/glossary, program trade.

c) Questions

Question 11.1 (page 79):

Do consultees agree that it is unnecessary for CESR to provide additional advice in respect of the handling of client orders where a systematic internaliser publishes multiple quotes?

Additional advice in respect of the handling of client orders where a systematic internaliser publishes multiple quotes is unnecessary if the linkage between price quality of internalisation quotes and prevailing market conditions is implemented by the principle to deliver best execution (c.f. response on Question 10.4). In any other case, it should be clear that the resulting execution price is in favour of the investor's interest if a systematic internaliser publishes multiple quotes, chooses to execute a client order of a size in between quoted sizes and by that has the discretion to decide at which of his quoted prices the client order is executed.

Question 11.3 (page 82):

Do consultees agree with the definition of a transaction where execution in several securities is part of one transaction? In particular, is there a need to specify a minimum number of securities and if so, what should the number be?

Portfolio transactions should be defined additionally on the basis of a minimum basket value, e.g. one million Euros in order to align the common European perspective with current market practices.

Question 11.4. (page 82):

Do consultees agree with the approach to "orders subject to conditions other than current market price"?

We support CESR's approach in the definition of orders subject to conditions other than current market price.

Question 11.5 (page 84):

Should the size be based on an EU-wide criteria or would national approaches be preferred?

The size customarily undertaken by a retail investor should be set as a single European threshold in order to promote a consistent, harmonized approach as well as to enable for the transparent communication to market participants.

The calculation of the size customarily undertaken by retail investors on a European level for single shares or a common market definition seems not advisable as retail markets have a largely national focus. Therefore, thresholds should be calculated on national basis and aligned on a European basis for the purpose of harmonization.

Question 11.6 (page 84):

Do consultees prefer having a fixed threshold for all shares, or should the size be linked to the grouping of shares (and subsequently to the SMS of each class) or to some other factor? If so, which?

Deutsche Börse supports the approach of a fixed threshold for all shares. The actually discussed figures should mark off retail and wholesale trading clearly while leaving the necessary negotiation freedom to market participants in professional trading. Having in mind that values of e.g. Euro 20,000 are no binding thresholds for wholesale trading in restricting negotiation freedom, no negative effects on market efficiency can be expected whereas retail investors are provided with the necessary investor protection.

Question 11.7 (page 84):

If a threshold is set, how should it reflect the different sizes around the EU, i.e. should it be the highest retail size, the lowest or something in between?

Deutsche Börse supports the approach to set the highest retail size as threshold in defining the size customarily undertaken by a retail investor. On the one hand, the actually discussed figures are no restricting threshold for wholesale trading but, on the other hand, a too small harmonized threshold would probably exclude a share of retail investors from necessary investor protection. For that reason and to provide a time consistent threshold as fixed threshold, choosing the highest retail size as threshold is the most practicable and effective approach.