European Association
for
Listed Companies

EALIC

Mr. A. Docters van Leeuwen
Chairman
CESR
112-13, Avenue de Friedland
75008 Paris
France
BY MAIL AND BY E-MAIL

Date 21 January 2005

Your ref. 04/562
Our ref. \276\20232217\b042-1252(MIFID).doc

Re. Consultation on CESR's draft advice on the second set of mandates from the European Commission on the Markets in Financial Instruments Directive (MiFID).

Dear Mr. Docters van Leeuwen,

Ealic, the European Association for Listed Companies, aims to represent European listed companies and to promote their common interests on the European level. Ealic was incorporated in December 2002 as a non-profit association. Its membership is growing. Presently sixty-two public companies are member. A membership list is attached for your convenience.

Ealic is pleased to respond to the proposals set forth in the consultation document. In particular, Ealic would like to comment on the following two issues relating to the pre-trade transparency requirements set forth by article 27 of the directive on Markets in Financial Instruments (the "**Directive**"):

(i) The definition of classes of shares (question 9.1/9.2)

Pursuant to article 27 of the Directive, shares shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that share. As acknowledged in the consultation document, the relevant issue is how to set the parameters for the classes of shares. In this respect, it is pointed out that the text of the Directive does not specify over which period of time the average value is to be determined, e.g. on a daily basis or on a monthly basis. Ealic considers that a fairly long period should apply, in order for the distribution of shares among classes to remain stable.

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In addition, Ealic would like to suggest that the classes of shares could be determined not only on the basis of the average value of the orders executed in the market but also on the basis of the liquidity of the shares. Accordingly, the number of transactions could be used to define liquidity as well as the various classes of liquid shares. If and to the extent future Level 2 rules would stipulate such parameter based on liquidity, Ealic considers that these rules should ensure its continued relevance. For instance, in the event the liquidity of a particular share decreases on the regulated market while it increases on internalized systems or on “Multilateral Trading Facilities”, applicable Level 2 rules should provide for an adequate method to adjust the liquidity parameter.

(ii) Fixation of the standard market size as a monetary value (question 9.3)

According to the Directive, the defined standard market size for each class of shares shall be a size representative of the arithmetic average value of the orders executed in the market for the shares included in each class of shares. The market for each share shall be comprised of all orders executed in the European Union in respect of that share excluding those large in scale compared to normal market size for that share. In this respect, Ealic considers that the amount of standard market size should be capped at EUR 50,000 as this amount adequately protects the interests of issuers in pre-trade transparency. *Inter alia* the following circumstances provide ground for such cap:

(i) pre-trade transparency rules would also apply to transactions initiated by retail investors as nearly all orders transmitted by retail investors are below this threshold;
(ii) pre-trade transparency rules would also apply to transactions initiated by corporations given the fact that a large number of orders transmitted by corporations are below this threshold and
(iii) although a majority of orders transmitted by institutional investors are above this threshold, generally such orders are not executed at once but are split in several orders of an amount below EUR 50,000 in order to avoid any negative impact on the shares quotation.

Moreover, most orders likely to be dealt with by systematic internalisers are retail and small corporate orders. Therefore, Ealic considers that the level of transparency provided by the proposed cap would be at least equivalent to that which presently exists.

Sincerely,

P. Cronheim

General Secretary