

**FORMAL REQUEST FOR TECHNICAL ADVICE ON POSSIBLE  
IMPLEMENTING MEASURES ON THE DIRECTIVE ON MARKETS IN  
FINANCIAL INSTRUMENTS (DIRECTIVE 2004/39/EC)**

ICAP is the world's largest inter-dealer broker and is very active in the energy and hard commodities arena, providing specialist intermediary services to the wholesale segment of those markets.

ICAP is supportive of the aims of the MiFID and the Lamfalussy process.

**Eligible Counterparties - Article 24**

ICAP regards the classification of eligible counterparties as one of the most important issues in CESR's second mandate. This is primarily due to the fact that large corporate entities deal regularly in commodities and commodities derivatives to hedge their underlying exposures. This activity may not be the "main" activity of that entity or group, and is usually merely ancillary. Examples would include oil companies, international airlines, and energy generators.

In these markets such corporate entities deal in the wholesale segment on an equal footing to investment firms. This is because, unlike other financial instruments, these corporates are the liquidity (i.e. price availability) providers to their respective markets. These corporate entities therefore currently have access to the most accurate and efficient price execution via both exchanges and OTC.

If such entities are not permitted to select eligible counterparty status for the specific activity in which they are professional they will not be able to participate in price formation in the wholesale segment. The conduct of business rules, far from protecting the corporate in its own specialist market, would prevent brokers and potential counterparties from dealing with it on wholesale terms. This would inevitably lead to less efficient execution and increased costs for the corporate entity.

ICAP therefore urges CESR to consider the existing benefits of direct access for corporates that have wholesale access to markets when considering the qualitative and quantitative requirements for the purposes of their advice on Article 24(3).

To step back from this market structure would represent a reduction in efficiency in Europe's markets and ultimately impact both investors and consumers. This in no way should prevent corporates that wish to adopt investment firm status from doing so, but it would be extremely negative for regulation to prescribe such a move across the industry.