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Via Electronic Submission

Committee of European Securities Regulators
11-13 avenue de Friedland
75009 Paris, FRANCE

**Re: CESR Technical Advice to the European Commission in the Context of
the MiFID Review – Equity Markets, Ref: CESR/10-394**

Dear Sir or Madam:

Wellington Management Company, LLP (“Wellington Management”) appreciates the opportunity to comment on portions of the Consultation Paper entitled “CESR Technical Advice to the European Commission in the Context of the MiFID Review – Equity Markets, dated April 2010, Ref. CESR/10-394 (the “Consultation Paper”).

Introduction

Wellington Management is a privately owned investment management firm registered under the U.S. Investment Advisers Act of 1940 (the “Advisers Act”) that provides investment services to UCIT funds, US investment companies, employee benefit plans, endowments, foundations and other institutions.¹ As of March 31, 2010, Wellington Management served as an investment adviser to approximately 1,700 clients and had investment management authority with respect to approximately \$560 billion in assets. Wellington Management’s investment services include portfolio management styles and approaches in equities, fixed income securities, and asset allocation across all asset categories. Wellington Management directly or indirectly provides investment advisory services to institutional clients located in the United States of America (“US”) and around the world, including within member states of the European Union (“EU”). Wellington Management does not trade for its own proprietary accounts.

We support the Committee of European Securities Regulators’ (“CESR”) comprehensive examination of different aspects of MiFID to evaluate whether, and how, some portions of MiFID might need reexamination or change in response to technological and market practice changes after its adoption in 2006. We also

¹ Many of our institutional clients invest on behalf of individual participants or investors with long-term goals. For example, employee benefit plans, UCITs and US investment companies invest on behalf of individuals saving for retirement and other long-term goals. Other institutions use their investments to fund long-term charitable, educational and development needs that benefit large segments of the communities they serve.

applaud CESR's decision to solicit comments before making formal recommendations to the European Commission, which should promote a more holistic approach to reform.

Because we are an investment firm that provides investment services and not execution services, we are limiting our comments to the portions of the Consultation Paper that could impact global firms providing investment advisory services and in the areas of pre- and post-trade transparency and the need to develop a European mandatory consolidated tape.

General Comments

Our comments derive from three different principles that we believe that market regulation should promote. These three principles are:

1. Fair regulation and competition among different execution venues.
2. Enhancement of liquidity and efficiency for the benefit of market users.
3. Fair access for market users.

Fair Regulation and Competition Among Different Execution Venues

The Consultation Paper notes that one of the key objectives of MiFID was "to promote competition between trading venues for execution services so as to increase investor choice, encourage innovation, lower transaction costs, and increase the efficiency of the price formation process on a pan-European basis." We strongly concur that regulation should foster fair competition among different execution venues. We believe that regulatory requirements for different types of venues should differ only to the extent that differentiated requirements are specifically designed to address clearly identifiable and compelling needs. For example, we generally do not support additional or different regulation imposed on broker crossing networks ("BCNs", similar to ATSs in the US), including broker-dealers who internalize orders rather than crossing different client orders. Differing regulation based on type of venue without a compelling need would promote execution venue choice based on regulatory considerations rather than rewarding a venue for service differentiation (including especially superior execution performance), innovation or another positive competitive differentiation. We do not believe that this outcome would be consistent with a key objective of MiFID.

We also believe that the burden of regulation should be shared fairly by execution venues. Any significant disparities between the level of regulation of a regulated markets ("RMs") and multi-lateral trading facilities ("MTFs") and other types of execution venues should be carefully studied to ensure that burdens are justified by a compelling need or a countervailing benefit conferred on the regulated venue.

Enhancement of Liquidity and Efficiency For The Benefit Of Market Users

We support the goal of MiFID to promote competition among execution venues and believe that all market regulation should be evaluated with respect to its impact on the liquidity and efficiency of equity markets for the benefit of investors. Thus, we encourage CESR to carefully consider the potential effect of any changes in market regulation on these critical factors. For example, certain short-term traders and high frequency traders provide liquidity to the markets. Although some of these short-term traders may differ at times in their goals and overall position vis-à-vis other types of investors, we believe, on the whole, that the liquidity they provide is beneficial to the markets. Accordingly, we encourage CESR to thoroughly assess the likely impact on liquidity of regulatory changes that affect, for example, the frequency of trading activity by some market participants and other current market practices.

Although we do not believe that the regulation of market structure should revolve around the distinction between different types of investors (e.g., long-term or short-term investors), we do believe that the divergence of goals or practices that negatively impact certain types of investors should be a factor weighed by CESR in determining whether a compelling need justifies new or different regulation. In particular, we believe that divergence of interest among investor types is important in considering whether access is “fair” for market participants. For example, institutional advisers managing assets for large numbers of individual investors have a strong interest in preventing other market participants from front-running their orders while retail investors trade smaller amounts and therefore are typically less concerned with others front-running their orders.

Fair Access for Market Users

As noted above, we strongly support competition based on service differentiation. Some venues compete based on their automation and speed and will budget extensively for technological improvements, while other venues compete based on providing block liquidity and will budget more to support those services. We believe that practices such as co-location and future technical advancements that rely on investments in technology to implement should not be prohibited or discouraged as each venue should be able to choose how it wants to compete. However, venues should have fair access to compete for location of servers based on objective factors, such as price or timing of request. Therefore, we believe that regulation of co-location facilities should focus on preventing unfair discrimination on the part of facility operators against venues seeking access.

“Fair” access also does not mean the same access to all execution venues by all investors. We believe that venues (particularly BCNs and other dark pools) should be able to establish access parameters to their venues so long as those factors are objective and do not unfairly discriminate among investors. For example, a BCN offering a service for large institutional investors to cross large blocks should be able to prohibit non-threshold size orders from their systems, or limit participants to certain objective client types. These criteria differentiate the services provided by the venue and can help investment managers trying to complete large orders on behalf of clients to avoid short-term traders trying to trade ahead of or with their large orders. We believe that permitting venues to establish their participation criteria will ensure that they remain responsive to the competitive needs of the market and enhance competition.

Our Views on Specific Provisions

Based on balancing these principles, we comment below on certain proposals in the Consultation Paper. The numbering corresponds to the Consultation Paper.

2. Transparency

2.1 Pre-Trade Transparency and Existing Waivers – Questions 1-16

CESR has asked for comment on MiFID’s default pre-trade transparency position for RMs and MTFs and whether existing exemptions should be amended. We support the long-standing approach that pre-trade transparency should be the default for transactions on RMs and MTFs with exemptions based on a compelling need. With some exceptions designed to prevent front-running of large orders, we believe that pre- and post-trade transparency benefits long-term market structure by improving price discovery for all investors. Thus, we agree with the overall approach in MiFID for RMs and MTFs and, as a general matter, we agree with the existing exemptions. Although we believe that some could be defined in such a way (e.g., average trading volume as opposed to dollar thresholds) to reduce the necessity for frequent amendments caused by market evolution, at this time we have no comment on changes to the current exemptions.

As a fund manager, we routinely use broker crossing networks (BCNs) for large orders to avoid market impact that might arise if other market participants were to trade ahead of our orders. We generally instruct firms not to display our orders where such non-display is judged to benefit execution quality. As such, we would not support any proposal that would limit a client’s ability to continue to instruct a firm not to display its order or that imposes the same default pre-trade transparency on BCNs that exists for RMs and MTFs. If CESR proposes changes to the pre-trade transparency requirements for BCNs or limits a client’s ability to instruct firms not to

display their orders on a pre-trade basis, we will comment on the existing exemptions.

Section 2.2 Post-Trade Transparency – Questions 17-23

This section seeks comment on the quality of post-trade transparency and proposes a multi-prong improvement approach, including: 1) amending MiFID to embed standards for publication of post-trade transparency information to improve clarity, comparability, and reliability; 2) clarifying MiFID to provide greater certainty of what constitutes a single transaction for reporting purposes and which firm is responsible for publicizing each transaction; and 3) establishing a CESR/Industry working group to finalize these standards.

We agree with the overall approach described in the Consultation Paper. We believe that greater clarity and standardization of post-trade reporting information is a critical first step to developing a reliable and accurate mandatory consolidated tape.

Section 4 Consolidation of transparency information – Questions 27-37

Prior to MiFID, most trading information was publicly available to participants on a consolidated basis since most trading was concentrated on a single RM and, in many states, trading done away from that RM was required to be reported to it. MiFID encouraged the development of new trading venues, increasing competition for order flow. The Consultation Paper states that, following the adoption of MiFID, market forces were expected to provide incentives for publishers to provide consolidated data to market participants and other end users. Unfortunately, market forces alone have not been sufficient to drive post-trade data consolidation, and the result has been fragmented information and limited choice in the transaction information that users can access at reasonable cost. Also, data publishers typically do not offer post-trade data separately from more costly pre-trade information. As a result, users of European market data generally pay significantly higher prices, and some users may be subsidizing the expense of costly pre-trade information.

CESR has asked whether it should: 1) recommend enhancements to the current system of multiple approved publication arrangements and standards to require consolidation, or 2) pursue a mandatory consolidated tape (MCT). We believe that a MCT in Europe is essential to an efficient market for equity securities and that regulatory action is required to bring this about. We believe that a European MCT would provide investors, regulators and other users with more complete, accurate, consolidated, and inexpensive market data. In our view, two prerequisites to the development of a MCT are: 1) standardizing the information that is reported, and 2) clearly identifying which entity must report a transaction in order to minimize double counting. We believe that development of a MCT also will provide investors

with unbundled, more affordable post-trade information, particularly for those investors who do not need such information on a real-time basis. We recognize that developing a comprehensive MCT will take time but strongly urge CESR to undertake this important work.

During the interim period before development of an MCT and afterwards to foster additional competition in the provision of trading data, we believe changes to the current publication system are warranted. We agree with CESR's proposals to require consolidation and standardize reporting. Data from these publication sources also should be available to all investors on the same terms and conditions and at the same release time to ensure fair access. CESR also should consider the benefits of requiring these publication sources to unbundle pre-trade and post-trade data for the reasons noted above.

Section 5 Regulatory Boundaries and requirements

5.1 Regulated Markets vs. MTFs

As stated above, we believe that RMs and MTFs should be regulated similarly unless there is a compelling need or justification for treating them differently. CESR should carefully study the differences in regulation applicable to RMs vis-à-vis MTFs to determine if the differences are justified by investor need or outweighed by some corresponding benefit or advantage to the RM.

Section 5.2 Investment Firms operating internal crossing systems/processes – Questions 42- 45

CESR proposes to introduce requirements for investment firms operating crossing networks including: 1) a requirement for such firms to notify their competent authority and a description of the system, 2) a requirement for the regulatory authority to identify firms that operate a BCN with the respective bank identification code; and 3) a requirement for these firms to add the identifier (BIC number) to their post-trade information for all transactions executed in such systems; and 4) impose a limit on the amount of client business that can be executed by such BCNs before the crossing system is required to become an MTF. The Consultation Paper notes that the US SEC proposed similar measures to address concerns related to US ATSs.

BCNs, similar to ATSs in the United States, offer an alternative execution venue for market participants to find liquidity. BCNs and ATSs developed in part to address a market need driven by the difficulty of executing large orders with minimal market impact. We do not support the unilateral imposition of regulatory burdens on the BCN segment of a firm's trading operations. Such actions will likely drive BCNs out of the market landscape and cause more opaque, less regulated venues to gain share.

As noted above, BCNs and other venues that are operated as truly dark pools should be able to limit access based on objective factors and should not be required to publicly display their orders until well-defined, material market share criteria are met. Dark pools that selectively expose their orders to other market participants, however, should be required to publicly display such a quotation. For that reason, we support the treatment of actionable IOIs as quotations, provided that similar messages at other types of execution venues are treated in a consistent manner

We support public post-trade identification by all venues on a per security basis of aggregated daily volume after an appropriate delay that is determined based on the liquidity of each security.² We believe that such a delay in publicly identifying transaction volumes by venue is justified by the compelling need to protect the best execution interests of market participants, especially large institutions representing individual investors. Moreover, we believe that aggregated, appropriately delayed reporting by all venues would contribute to the standardization of trading volume accounting and, in particular, reduce double counting. We believe that delayed reporting would benefit the price discovery process without harming the best execution of large orders by premature disclosure. We also believe that this reporting would give managers a way to verify volume claims by venues, thereby improving the selection process and resulting competition among venues, all for the benefit of best execution.

We do not support proposals that would require only certain undisplaced liquidity pools such as BCNs to publicly report transactions but not require other venues to do so. We believe these proposals would adversely affect both transparency and competition. Moreover, these changes would not improve long-term price discovery because large investors would likely shift some portion of their order flow to other, more opaque venues.

² We generally do not support real time public identification of specific transaction executions by all venues. We believe that real time disclosure by any venue would harm investors, particularly long-term institutional investors by making their large orders visible to sophisticated professional traders. We believe that any benefit to price discovery would inure primarily to the benefit of professional traders trying to identify and front-run these large orders, negatively impacting best execution for investors.

Conclusion

We urge CESR to proceed deliberately but carefully to address the market structure issues that exist in Europe today. Our firm appreciates your consideration of this letter and looks forward to working with CESR and its staff on their resolution.

Sincerely,



David Cushing
Director of Global Equity Trading
Wellington Management Company, LLP