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CESR Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets

Reply of NASDAQ OMX

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NASDAQ OMX appreciates the possibility to comment on the important issues raised in this consultation paper. However, we note that the short consultation period did not allow for the in-depth analysis and statistical work that would have been necessary to deliver more substantiated answers.

Executive summary

NASDAQ OMX supports transparent trading unless transparency creates market impact and adversely affects the execution of orders.

We further consider that this principle should not be restricted to trading happening on regulated markets (RMs) and multilateral trading facilities (MTFs) but should in general concern all forms of trading, with limited exemptions. Trading patterns identical or very similar to those of RMs and MTFs should therefore develop with pre-trade transparency to avoid organizing competition around limitations to transparency and to allow for a level playing field between execution venues. This is also essential to guarantee adequate price formation. In broad terms, multilateral trading should therefore take place on RMs or MTFs, automated bilateral trading should be carried out under the systematic internaliser (SI) status and OTC should only comprise the non-automated large size bilateral trading.

The interest of the investor community as a whole is a well regulated and transparent marketplace where pre-trade transparency is waived only when otherwise market impact of full transparency would create disproportionate adverse consequences for the orders concerned.

We agree that pre-trade transparency waivers should continue to exist but need to be more consistently applied throughout Europe and across trading venues. More specifically, we believe that the thresholds currently set for the large in scale waiver are still relevant because the average order size remained generally stable. Since the reference price waiver was meant to allow crossing large orders seeking to avoid market impact, we consider important to set a minimum threshold below which orders cannot be executed under the reference price waiver exemption. We also agree that the negotiated trade waiver is useful as a way to avoid market impact and should be maintained. In addition, RMs and MTFs should be able to provide any order management facility that other providers offer provided it does not adversely affect the orderbook.

Regarding the SI regime, we consider that the reference to non-discretionary rules and procedures should be removed as it prevented this regime to apply to activities that it was supposed to cover. In addition, the SI regime should no longer be a voluntary one and regulators should apply it consistently across Europe. We also support the proposals to require maintaining two-side quotes and a minimum quote size as well as appropriate post-trade transparency.

Improving the quality of post-trade transparency of the OTC market (30-40% of the overall market) is crucial to effectively protect investors and maintain fair and orderly market. It will be useful to establish standards for the publication of post-trade transparency information to ensure consistency and readability of information. Greater clarity of what should be considered as a transaction is crucial to a consistent post-trade transparency regime as well as who should publish transactions.

We also support the proposal to extend the transparency regime to equity-like instruments, in particular ETFs. Investors will be able to assess more easily the quality of execution obtained. They will also benefit from enhanced competition allowed by transparency.

As for consolidation of data, we believe that better control over publication arrangements should ensure better quality and consistency of the data published. We therefore support the regime proposed by CESR for approved publication arrangements (APAs). Consolidation of data should remain voluntary as the sector is open to competition. A mandated consolidated tape will not, by itself, solve all problems. It will for instance not solve the issue of the poor quality of data on OTC transactions. It will also add additional issues, such as the place where computers generating the consolidated tape should be located. It will increase latency, requiring firms to continue to consolidate individual feeds and consequently increase costs for the industry. We would suggest not mandating a consolidated tape and instead work to improve the quality of the consolidated tape services provided by vendors by improving the quality of the data made available to them.

With respect to differences between MTFs and RMs, it is important that MTFs manage appropriately conflict of interest, risks and ensure the sound management of the technical operations of the system. However, the absence of a level playing between MTFs and RMs is mainly due to the light touch in term of supervision benefitting MTFs due to the challenger

position that they occupy. Some MTFs are now larger than smaller RMs in Europe and it would be time to ensure a level playing field.

Regarding the regulatory treatment of internal crossing networks, creating a specific regime for these networks is not our preferred option as it would affect the level playing field between execution venues that MIFID aimed at establishing. We believe that, in principle, internal crossing networks should be regulated as MTFs or possibly as SIs, if the business model justifies it.

Detailed replies

Pre-trade transparency

Organised trading platform (RMs and MTFs)

Waivers from pre-trade transparency

Question 1:

CESR has considered carefully the most appropriate framework for pre-trade transparency in a post-MiFID environment and concluded that it would be desirable to:

- retain the generic requirement that all trading on organised markets (RMs/MTFs) must be pre-trade transparent;*
- continue to allow exceptions to pre-trade transparency in certain circumstances. However, there is a question as to whether some of the waivers should be recast (further details on options for the waivers are set out below); and*
- seek to move from a "principle based" approach to waivers from pre-trade transparency to a "rule based" approach where a more precise description of the waivers would provide greater clarity for market participants and competent authorities and facilitate continuous supervisory convergence with regard to waivers within CESR/ESMA, taking into account financial innovation.*

Do you support the generic approach described above?

NASDAQ OMX embraces the general principle that trading should be transparent unless transparency has an adverse effect on the execution of orders. We are however concerned that CESR seems to want to restrict this principle to regulated markets (RMs) and multilateral trading facilities (MTFs) only. By doing so, CESR allows trading patterns identical or similar to those of RMs and MTFs to develop without pre-trade transparency, breaking the level playing field between execution venues and organizing competition around limitations to transparency. We are concerned with such an approach which encourages trading to move to non organized markets executing transactions without clear rules that could otherwise contribute to price formation.

That said, we perfectly recognize that a number of transactions cannot take place on organized markets and should remain OTC to avoid market impact but not all transactions should be able

to be carried out OTC without consideration for the manner they are executed (multilateral or bilateral) and the size concerned.

An argument often used to justify the execution OTC of very different types of transactions is the interest of the investor. It is however important to keep in mind that the individual interest of each investor is to know investment policies and decisions of other investors without revealing its own policies and decisions. However, the interest of the investor community as a whole is a well regulated and transparent marketplace where pre-trade transparency is waived only when otherwise the market impact of full transparency would create disproportionate adverse consequences for the orders concerned.

We agree that pre-trade transparency waivers should continue to exist but need to be more consistently applied throughout Europe and across trading venues. We therefore believe that a more precise description of the waivers would be beneficial. A more rule based approach could in this respect be useful.

Question 2: Do you have any other general comments on the MiFID pre-trade transparency regime?

It is key not to let trading develop on “unregulated” platforms while heavily regulating RMs and MTFs. It also appears that certain waivers are allowed to MTFs whereas they are not for RMs as those markets are considered as having to set the reference price in all instances. It is dangerous to allow those differences as fewer orders interact for price formation purposes whereas a greater number of orders are executed on a price different from the reference price. It is also, problematic as it drives revenues away from markets setting the reference price which have important costs to ensure reliability of systems, surveillance of markets.

Large in scale waiver

Large in scale – thresholds

Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.

We consider that the thresholds currently set for the large in scale waiver are still relevant because, although the trade size has decreased, the average order size remained generally stable. However, it could be useful to ensure in the future that those thresholds can be adapted promptly if needed. We therefore suggest that ESMA is empowered to adapt those thresholds if market trends require such adaptation. Any proposal to change such thresholds should however be first submitted to a rigorous public consultation process allowing all parts of the industry to present views.

Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal? -

Large in scale – treatment of residual orders ('stubs')

Question 5:

Option 1: Amend MiFID to clarify the application of the LIS waiver to stubs. This option would make it clear that partially executed LIS orders (stubs) continue to benefit from the waiver following partial execution.

Option 2: Amend MiFID to clarify that the LIS waiver does not apply to stubs. This option would require that LIS thresholds only apply to initial orders and not to residual orders that have been partially executed. Thus, the remaining stubs would have to be disclosed in the order book or cancelled.

Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1 or 2)? Please provide reasoning for your views.

There seems to be good arguments for both options and we have no strong views on which of the options should be chosen. However, we find it essential that there is a consistent approach by all regulators regarding the treatment of residual orders to avoid regulatory arbitrage.

With respect to deciding whether lit orders should have execution priority over dark orders with the same limit in integrated orderbooks, we consider that a premium should be given to transparency in the market. Therefore, lit orders should be executed first.

We also consider that the large in scale waiver should be interpreted strictly to avoid abuses that may affect transparency in the market. In this context, orders that are modified just before execution and that therefore do not meet the thresholds at the time of execution should be cancelled and newly stamped as new orders.

Reference price waiver

Question 6: Should the waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.

This waiver was meant to allow crossing large orders seeking to avoid market impact. There is therefore no logic for important quantities of small orders to be captured by this waiver. Allowing this waiver to operate in such a way reduces price formation and liquidity on transparent venues and therefore affects the market quality of multilateral platforms. To maintain the attractiveness of these venues, we consider important to set a minimum threshold below which orders cannot be executed under the reference price waiver exemption.

We suggest that minimum sizes be set based on average daily turnover of instruments. The same grouping of shares that is used for the large in scale levels could be applied.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I? -

Negotiated trade waiver

Question 8: Do you have any specific comments on the waiver for negotiated trades?

We agree that the negotiated trade waiver is useful as a way to avoid market impact and should be maintained. It should be recognized that this waiver allows large orders to be executed at a price that is in relation to the orderbook price, under specific pre-defined rules and within the scope of the market surveillance carried out by exchanges.

Order management facility waiver

Question 9: Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?

Like for others waivers, it is necessary to ensure a level playing field between investment firms and RMs/MTFs. RMs and MTFs should be able to provide any order management facility that other providers offer, provided it does not adversely affect the orderbook. Moreover, we would favor a more flexible approach to this waiver to take account of markets developments as well as innovation and ensure a level playing field with investment firms.

Systematic internaliser regime

Question 10: Do you consider the SI definition could be made clearer by:

i) removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation?

Yes. The reference to non-discretionary rules and procedures has prevented the development of the SI status and internalization activities have been carried out in the OTC market with no pre-trade transparency and poor post-trade transparency records. Removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation should allow the SI regime to capture more easily the internalization business which it was suppose to regulate.

ii) providing quantitative thresholds of significance of the business for the market to determine what constitutes a 'material commercial role' for the firm under Article 21(1)(a) of the MiFID Implementing Regulation.

Most importantly, the SI regime should no longer be a voluntary one but carrying out the activity of systematic internalization should be enough to trigger the application of this regime. Also, regulators should apply such regime consistently across Europe.

Question 11:

CESR proposes to amend the SI quoting obligations to make them more reflective of and useful to the type of business being undertaken. In particular, CESR proposes that:

SIs be required to maintain two-side quotes; SIs be required to maintain a minimum quote size equivalent to 10% of the standard market size of any liquid share in which they are a systematic internaliser; the provision exempting SIs from identifying themselves in post-trade reports if they publish quarterly trading data be rescinded;

Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?

We support the proposals to require maintaining two-side quotes and a minimum quote size equivalent to at least 10% of the standard market size of any liquid share in which they are a SI as well as appropriate post-trade transparency. This will allow reinforcing transparency which is necessary to deliver best execution to investors and allow them, as well as regulators, to carry out necessary checks.

Question 12: *Do you agree with the proposed minimum quote size? If you have a different suggestion, please set out your reasoning.*

We support the proposal.

Question 13: *Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.*

No, SIs should not be able to improve on their quoted prices for smaller sizes. Otherwise, this will make the price they quote misleading and the transparency regime inefficient.

Question 14: *Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?*

All transactions of SIs should be subject to full post-trade transparency but with the necessary delays for large transactions. These delays should allow them to avoid market impact.

Question 15: *Have you experienced difficulties with the application of 'Standard Market Size' as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify.*

No.

Question 16: *Do you have any comments on other aspects of the SI regime? -*

Post-trade transparency

Quality of post-trade information

Question 17:

To address the concerns relating to the quality of post-trade transparency information, CESR proposes to follow a multi-pronged approach, comprising the following elements:

a. Amend MiFID to embed standards (list of proposed standards and consultation questions is provided in Annex II) for the publication of post-trade transparency information. These proposed standards are generally aimed at improving clarity, comparability and reliability of post-trade transparency and would cover matters such as condition codes for trade types and process for correcting erroneous post-trade reports.

b. Amend MiFID to provide greater clarity i) in terms of what constitutes a single transaction for post-trade transparency purposes and ii) in terms of which investment firm shall make information related to OTC transactions public. CESR is also considering developing guidance to provide greater clarity about more complex trading scenarios; and

c. Establish a joint CESR/Industry Working Group immediately following the publication of this CP to finalise the development of standards and clarification amendments by July 2010.

This proposed approach would be effective at addressing concerns over the quality of post-trade transparency information and enhancing the ability of competent authorities to monitor compliance and consider enforcement action as required.

Do you agree with this multi-pronged approach?

We support this approach and believe that improving the quality of post-trade transparency of the OTC market (30-40% of the overall market) is crucial to acquire the knowledge necessary to effectively protect investors and maintain fair and orderly market.

It will be useful to establish standards for the publication of post-trade transparency information to ensure consistency and readability of information. Greater clarity of what should be a transaction is crucial to a consistent post-trade transparency regime as well as who should publish transactions. We also welcome the establishment of a working group.

Timing of publication of post-trade information

Real-time publication of transactions not eligible for delay

Question 18:

CESR proposes to improve the timeliness of post-trade transparency information by:

i) amending MiFID obligation which requires RMs, MTFs and investment firms trading OTC to publish post-trade trade information in real time as follows: transactions would need to be published as close to instantaneously as technically possible , and

ii) reducing the 3 minute deadline to 1 minute.

Do you agree with CESR's proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.

We do agree with CESR's proposal to require real time publication of transactions and believe that information systems have allowed for this possibility for a number of years already.

Question 19: *In your view, would a 1-minute deadline lead to additional costs (e.g. in terms of systems and restructuring of processes within firms)? If so, please provide quantitative estimates of one-off and ongoing costs. What would be the impact on smaller firms?*

We do not believe that costs can be a serious obstacle to such proposals as most of the systems used at present allow for this possibility.

Deferred publication regime

Question 20:

CESR proposes to maintain the existing deferred publication framework (Table 4 of Annex II of the MiFID Implementing Regulation) which currently encompasses four liquidity bands but to recalibrate delays and thresholds so as to:

- i) shorten the delays so as to ensure that all transactions are published no later than the end of the trading day;*
- ii) shorten the intra-day delay of 180 minutes to 120 minutes; and*
- iii) raise all intra-day transaction size thresholds.*

Do you support CESR proposal to maintain the existing deferred publication framework whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?

Yes, we believe this framework is appropriate and the criteria of liquidity of the share and the size of the transaction appear the most relevant.

Question 21: *Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.*

We do agree with the proposal to shorten delays for publication of trades that are large in scale. These long delays have unnecessarily limited the post-transparency in Europe.

Question 22: *Should CESR consider other changes to the deferred publication thresholds so as to bring greater consistency between transaction thresholds across categories of shares? If so, what changes should be considered and for what reasons?*

This regime should apply to OTC transactions as well to enhance the quality of post-trade transparency in general.

Question 23: In your view, would i) a reduction of the deferred publication delays and ii) an increase in the intraday transaction size thresholds lead to additional costs (e.g. in ability to unwind large positions and systems costs)? If so, please provide quantitative estimates of one-off and ongoing costs.

We do not believe that it will increase costs. On the contrary, a better post-trade transparency regime will foster efficiency and should reduce costs for investors.

Application of transparency obligations for equity-like instruments

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):

- DRs (whether or not the underlying financial instrument is an EEA share);
- ETFs (whether or not the underlying is an EEA share);
- ETFs where the underlying is a fixed income instrument;
- ETCs; and
- Certificates

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

We support this proposal. Investors in these instruments will benefit from the extension of the transparency regime as they will be able to assess more easily the quality of execution obtained. They will also benefit from enhanced competition allowed by transparency.

Question 25: If transparency requirements were applied, would it be appropriate to use the same MiFID equity transparency regime for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). If not, what specific aspect(s) of the MiFID equity transparency regime would need to be modified and for what reasons?

We note that for instruments traded on regulated markets, transparency is already available. We believe the MiFID equity transparency regime can be extended to 'equity-like' financial instruments without major problems although the transparency regime for certain instruments may require some limited adaption.

Question 26: In your view, should the MiFID transparency requirements be applied to other 'equity-like' financial instruments or to hybrid instruments (e.g. Spanish participaciones preferentes)? If so, please specify which instruments and provide a rationale for your view. -

Consolidation of transparency information

Regulatory framework for consolidation

Multiple approved publication arrangements

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for APAs? If not, what changes would you make to the proposed approach?

We indeed support the regime proposed for APAs. Better control over publication arrangements should ensure better quality and consistency of the data published.

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?

Yes, requirements imposing that data be consolidatable are not sufficiently specific and have allowed for certain publication mechanisms to be used although they do not ensure a sufficient ease of consolidation, like for instance the use of websites. This should be remedied. The compliance of the data with specific standards, as proposed by CESR, should also ensure that data are more easily consolidatable.

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

The approach above should ease consolidation of data. To a large extent the market data vendors, Integrated Software Vendors, and others have done an excellent job in creating a European consolidated tape already. However, the main problem in terms of consolidation lies with the data quality of OTC transactions reported from the reporting facilities. All mechanisms publishing such transactions (including exchanges) must become stricter in requesting quality and complete data from those executing these transactions.

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape (as described under 4.1.2 below)?

Better control and more specific requirements over the publishing mechanisms will improve the quality of data as it will facilitate the implementation of the proposed standards for data. A mandated consolidated tape will not, by itself, solve all problems. It will for instance not solve the issue of the poor quality of data on OTC transactions. It will also add additional issues such as the place where computers generating the consolidated tape should be located. It will also increase latency, requiring firms to continue to consolidate individual feeds and consequently increase costs for the industry. Moreover, the philosophy of MiFID is to open transaction execution services to competition. It would not be logical to restrict competition in the data business.

Cost of market data

Question 31: *Do you believe that MiFID provisions regarding cost of market data need to be amended?*

No. We do not see any need for amending MiFID provisions regarding cost of market data. The data business needs to continue to be disciplined by competition to ensure innovation and adequate developments.

Question 32: *In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.*

Unbundling of pre and post-trade data can have an impact on the cost of data. Many exchanges, including NASDAQ OMX, already unbundle pre and post-trade data.

Question 33: *In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.*

No. It should remain voluntary as the sector is open to competition. At present, all major venues make post-trade transparency information available free of charge after a delay of 15 minutes.

MiFID transparency calculations

Question 34: *Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?*

Yes. Regulators should obtain the data allowing them to make MiFID transparency calculations based on all transactions including the OTC.

EU mandatory consolidated tape

Question 34: *Do you support the proposed approach to a European mandatory consolidated tape?*

No. A mandated consolidated tape will not, by itself, solve all problems. It will for instance not solve the issue of the poor quality of data of OTC transactions. It will also add additional issues such as the place where computers generating the consolidated tape should be located. It will also increase latency, requiring firms to continue to consolidate individual feeds and consequently increase costs for the industry.

Question 35: *If not, what changes would you suggest to the proposed approach?*

We would suggest not mandating a consolidated tape and instead work to improve the quality of the consolidated tape services provided by vendors by improving the quality of the data provided to them.

Question 36: *In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?*

We see no advantage, especially since the post-trading environment is not unified in Europe. The prices that investors will be able to see on the tape will be misleading as investors will not necessarily be able to obtain such prices in their national environment.

Question 37: *In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.*

Yes. A consolidated tape will result in additional costs. As the consolidated tape will create a feed with increased latency (due to delays in consolidating the various feeds), it will require firms to continue to consolidate individual feeds themselves. As a consequence, the consolidated tape will not replace individual feeds and will increase costs for the industry.

Regulatory boundaries and requirements

Regulated markets vs. MTFs

Question 38:

Member States shall require that an investments firm or a market operator operating an MTF, in addition to the requirements laid down in Article 13:

a. have arrangements to identify clearly and manage the potential adverse consequences for the operation of the MTF or for its participants, of any conflict of interest between the interest of the MTF, its owners or its operator and the sound functioning of the MTF, and in particular where such conflict of interest might prove prejudicial to the accomplishment of any functions delegated to the MTF by the competent authority;

b. be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation and to put in place effective measures to mitigate this risks;

c. to have arrangements for the sound management of the technical operations of the system, including the establishment of effective contingency arrangements to cope with risks of systems disruptions.

Do you agree with this proposal? If not, please explain.

We agree with this proposal. It is important that MTFs manage appropriately conflict of interest, risks and ensure the sound management of the technical operations of the system.

Question 39: *Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.*

The absence of level playing between MTFs and RMs is not due to the provisions mentioned above. It is mainly due to the light touch in term of supervision benefitting MTFs due to the challenger position that they occupy. Another issue is the differentiation MiFID makes between RMs and MTFs in the authorisation of new products. Currently, RMs wishing to trade an instrument admitted to trading on another RM must wait 18 months before being authorised to trade it. The same rule does not apply to MTFs. Additionally, in certain jurisdictions, the fees paid to regulators are significantly higher for RMs. Some MTFs are now larger than smaller RMs in Europe and it would be time to ensure a level playing field.

Question 40: In your view, what would be the benefits of the proposals with respect to organisational requirements for investment firms and market operators operating an MTF?

Market operators operating an MTF fulfill such requirements already.

Question 41: In your view, do the proposals lead to additional costs for investment firms and market operators operating an MTF? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

This may lead to additional costs for those that do not have the requirements in place already but a level playing field between venues requires these costs to be supported.

Investment firms operating internal crossing systems/processes

Question 42: Do you agree to introduce the definition of broker internal crossing process used for the fact finding into MiFID in order to attach additional requirements to crossing processes? If not what should be captured, and how should that be defined?

We believe that when crossing networks carry out multilateral matching they should be considered as MTFs and regulated accordingly.

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?

Creating a specific regime for internal crossing networks is not our preferred option as it would affect the level playing field between execution venues that MIFID aimed at establishing. We believe that, in principle, internal crossing networks should be regulated as MTFs or possibly as SIs, if the business model justifies it.

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring investment firms to establish an MTF for the execution of client orders ('crossing systems/processes becoming an MTF)?

At present, we do not see the logic of setting a limit on internal crossing networks below which crossing networks would not be required to register as an MTF. This approach would discriminate against smaller MTFs and affect the level playing field between execution venues.

a) What should be the basis for determining the threshold above which an investment firm's crossing system/process would be required to become an MTF? For example, should the threshold be expressed as a percentage of total European trading or other measures? Please articulate rationale for your response.

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b) In your view, should linkages with other investment firms' broker crossing systems/processes be taken into account in determining whether an investment firm has reached the threshold above which the crossing system/process would need to become an MTF? If so, please provide a rationale, also on linking methods which should be taken into account.

Yes.

Question 45: *In your view, do the proposed requirements for investment firms operating crossing systems/processes lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.*

Any costs will be compensated by the benefits that investors will obtain from pre and post-trade transparency.

MiFID options and discretions

Waiver of pre-trade transparency obligations

Question 46: *Do you think that replacing the waivers with legal exemptions (automatically applicable across Europe) would provide benefits or drawbacks? Please elaborate.*

We believe that replacing the waivers with legal exemptions will be beneficial as it will allow for a level playing field between execution venues and reduce the opportunity for regulatory arbitrage.

Determination of liquid shares

Questions 47: *Which reasons may necessitate the application of both criteria?*

The choice between the daily number of transactions and the average daily turnover for the share seems appropriate and more flexible.

Questions 48: *Is a unique definition of liquid share for the purposes of Article 27 necessary?*

It does not seem so.

Questions 49: *If CESR were to propose a unique definition of 'liquid share' which of the options do you prefer?*

a) apply condition a) and b) of the existing Article 22(1), or

b) apply only condition a), or

c) apply only condition b) of Article 22(1)?

Please elaborate.

Immediate publication of a client limit order

Questions 50: *Is this discretion (for Member States to decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market and/or an MTF) of any practical relevance? Do you experience difficulties with cross-border business due to a divergent use of this discretion in various Member States?*

The discretion for Member States to decide that investment firms comply with the obligation of immediate publication of a client limit order by transmitting the client limit order to a RM and/or an MTF does not seem of any practical relevance as the vast majority of CESR members do consider compliance met by transmission of the client limit order to a RM or an MTF.

Question 51: *Should the discretion granted to Member States in Article 22(2) to establish that the obligation to facilitate the earliest possible execution of an unexecuted limit order could be fulfilled by a transmission of the order to a RM and/or MTF be replaced with a rule?*

It would be clearer to have a rule. It is difficult to see drawbacks to such rules which are in the interest of investors as investors can always instruct otherwise.

Requirements for admission of units in a collective investment undertaking to trading on a RM

Question 52: *Should the option granted to Member States in Article 36(2) of the MiFID Implementing Regulation be deleted or retained? Please provide reasoning for your view.*

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