



WARSAW STOCK EXCHANGE

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Response of the Warsaw Stock Exchange in relation to consultations concerning CESR'S Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets In Financial Instruments 2nd Set of Mandates (ref: CESR /04-562)

Using the opportunity to participate in the consultation process, the Warsaw Stock Exchange would like to propose the following remarks and comments related to the questions presented in the SECTION III – MARKETS of the above-mentioned document.

General remark

The issue concerning regulation of alternative trading systems (MTF) and internal transactions is a matter of particular interest of the Warsaw Stock Exchange. Referring to the on-going discussion taking place on the domestic side, we would like to stress that in our belief issues concerning rules and conditions for organisation of the so-called alternative trading systems (further referred to as MTFs) and internalization of transactions should be considered particularly from the perspective of the potential risks as to the safety of investors and trading, as well as guarantees for the effectiveness and integrity of the market, including the so-called „level playing field”. Thus it is vital that domestic regulations sufficiently/appropriately regulate (and guarantee) creation of organisational structures, sufficiently powerful and specialised, both in terms of their functions and capital to serve this purpose.

Particular remarks

Transactions executed with eligible counterparties (Article 24) - page 53



Question 6.1.: Do Market Participants agree that the quantitative thresholds for undertakings to request treatment as eligible counterparties should be the same as the thresholds for professional clients? Please provide the reasons for your position? – page - 57.

We agree with the proposal that the quantitative thresholds for undertakings to request treatment as eligible counterparties should be the same as the thresholds for professional clients. In our opinion these entities should be considered together as a broadly defined group of professional clients, considering the level of their market knowledge, investment rules, etc.

Display of client limit orders (Article 22.2) – page 60

Question 7.1.: In your view, what types of arrangements other than RMs and MTFs could be considered as complying with article 22.2?

None.

Question 7.2.: Do you consider the proposal on publishing the client limit order in a quote-driven system appropriate?

No.

Display of Client limit orders (Article 22.2) - page 58

Pre-trade transparency – Systematic Internalisers (Article 4 and 27) - page 61

Question 8.1.: Do consultees agree with criteria for determining systematic internaliser? Should additional/other criteria be used and if so, what should these be? (page - 62)

We agree with the criteria proposed for systematic internalisers.

However, we believe that the following additional criteria should also be used:

- possession of relevant financial means allowing performance of such functions
- operational experience on the market, guaranteeing proper discharge of the internaliser's role.

At the same time we would like to propose that the introduction of minimum numerical thresholds be considered, as far as the criteria (indicated by CESR and in the consultation process), which should be met by an entity to be considered an internaliser are concerned, e.g. offering quotes during 100% of the regulated market trading hours. Such the entity should also submit relevant notification upon starting its activity.

Question 8.2.: Should the criteria be fulfilled collectively or used separately? – page -62

In our opinion all the criteria listed, as well as the additional ones indicated in the consultation should be fulfilled collectively.

Question 8.3.: 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? – page 63

We believe that such the criterion should be determined by CESR, based on relevant experience of the markets on which the internalisers function, opinion of market organisers and market participants, as well as the market regulators. In our opinion the criterion should also take into account the specificity of smaller markets.



Question 8.4.: 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? – page 63

In our opinion appropriate notification period as far as ceasing internalisation is concerned should be at least two weeks.

At the same time, having in mind ceasing the internalisation of orders, we would like to propose considering a rule that an entity which has ceased such activity for a given security may not resume it for a specified period of time (e.g. 6 months).

Scope of the Rule (Article 27.1) - page 64

Question 8.5.: Should liquidity be measured on an EU-wide or national basis?

In our opinion the most rational solution seems to be measuring liquidity on a national level.

Question 8.6.: Do consultees have a preference in favour of setting pre-determined criteria or using a proxy approach?

Application of proxy based on the use of existing indices seems appropriate. The „predetermined” criteria should be considered as supplementary ones for companies that are not index constituents.

Question 8.7.: 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? – page 67

We accept the criteria analysis performer by CESR

Question 8.8.: 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? – page 67

Relative criteria seem a better solution. However, a combination of relative and absolute criteria is also acceptable and justified.

Question 8.9.: Do consultees consider the proposed figures (i.e. 480 trades per day and 95% of total (value traded) as appropriate? If not, and where no figures are suggested what are the appropriate figures in your opinion? - page 67

In our opinion the proposed criteria may prove to be too high – particularly in case of smaller markets. For example as indicated by the data submitted to CESR by the WSE, the criterion of 480 transactions daily was met in 2004 only by two companies, while the criterion of 95% share in total turnover (trading) by about 60.

In our opinion relevant criteria should be proposed by CESR following a detailed review of the data submitted by particular exchanges, taking into account the specificity of smaller markets, such as among other also the WSE.

We would like to stress that use of the proxy (criteria) delivers other more appropriate results.

Question 8.10.: Do consultees agree with the analysis of the relative merits and drawbacks of using proxies such as indices? – page 68

We agree with the remarks presented by CESR.

However, it is our opinion that use of national indices constitutes a better solution.



Question 8.11.: Which criteria would best accommodate the needs of different markets within the EU? – page 68

We would like to stress once again that in our opinion the most proper approach is the proxy one. However, should the numerical criteria be used, then having in mind the differentiation of European markets, the most proper solution would be the analysis done based on the following criteria (jointly):

- methodology for determination of trading activity (as much convergent as possible)
- trading activity in a particular security (whether transactions are concluded every day)
- average number of transactions per day – we do not however view it necessary to set a numerical threshold concerning the number of transactions like e.g. minimum one per minute
- daily trading activity (volume/value)
- spread
- relative activity in various stocks
- whether the stocks are used as underlying for any derivatives.

The determination of the Standard Market Size/Classes of shares (27.1 and 27.2) - page 69

Question 9.1: 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? – page 73

The CESR proposal is acceptable.

Question 9.3.: In your opinion, would it be more appropriate to fix the SMS as monetary value or convert it into number of shares? – page 73

In our opinion the SMS value criterion (monetary value) is more appropriate.

Question 9.4.: 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? – page 74

In our opinion the annual revision is sufficient.

It is however appropriate to introduce a possibility for the parameters to be modified ad hoc, with the pre-determined set of criteria that would make such the modification possible.

We also believe that CESR should prepare a more detailed proposal in this respect, which could then be determined by Level 2 regulation.

Question 9.5.: 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? - page 74

In general, we accept the option II proposed by CESR, i.e. determination of SMS prior the first listing based on the proxy - peer stocks. In our opinion a SMS modification should be allowed in case of such stocks e.g. 3 months after their listing; in case when the actual trading activity in a given security significantly differs from the trading in peer stocks and the SMS previously determined (based on the proxy) for the stock.



Question 9.6.: Do you consider a two week period from publication as sufficient for systematic internalisers to adapt to new SMSs? – page 74

In our opinion a two week period is sufficient.

Question 9.7.: Do you agree on the proposal on publication of the classification of shares? Would you prefer the establishment of a single contact point (at level 2)? – page 74

We accept CESR's proposal concerning classification of particular shares to relevant groups. We consider creation of a single contact point where all the information will be easily accessible (e.g. CESR web site) necessary.

Obligations of the Systematic Internaliser - page 75

Question 10.1. Do Consultees consider that there might be specific regulatory issues and specific provisions needed where a systematic internaliser is the trading venue with the largest turnover in a particular share falling within the scope of Article 27? page 78

We agree with CESR's opinion on this matter. Such issues should be determined through a consultation process.

Question 10.2: 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"? - page 78

Yes. We think that the availability of quotes of the internaliser during 100% of normal market trading time may be considered as trading on a continuous basis. Envisaging the obligation of the internaliser to provide quotes at a given markets opening and closing time is particularly important.

Question 10.3: Do consultees think that publication of quotes solely on the firm's own website meets the "easily accessible" test? – page 78

In our opinion publication of quotes solely on the internalising entity's own web site does not meet the "easily accessible" criterion.

To meet both the criterion of the ease of access and the reliability of information, quotes should be accessible also by others means indicated by the directive.

With the use of one of the indicated manners for quote publication, they may be additionally accessible on the internaliser's web site. However, this should not constitute the only and the most reliable source of information on the quotes.

Question 10.4.: 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? – page 78

In general, we agree with CESR's proposals on this matter.

However, proposing more detailed criteria, like e.g. permissible deviation range from the reference markets (price should fall within a pre-determined percentage range relative to the price of a given order buy/sell), could also be considered.

We believe also that a possibility of introducing sanctions against the internaliser, in case when it does not discharge its obligations at all or does not discharge them properly, be considered.



Question 10.5: 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 consider it necessary to define exceptional conditions.

Question 10.6.: 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? – page 78

In the WSE opinion, the internaliser should have a possibility to withdraw its quotes only in a situation when trading in a given security is suspended on the regulated market.

Question 10.7.: 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? – page 78

We agree with the approach presented by CESR as to rule for updating of quotes by the internaliser (change of the market price, appearance of material information). This issue however should be subject to further analysis based on the comments presented in the course of the consultation of the document hereby. In our opinion, in order to maintain high level of market liquidity it may be advisable to determine some detailed criteria which will have to be met by the internaliser; for example an obligation to update quotes not later than within a specified period of time (determined as maximum allowed time) relative from the moment prices have changed on the regulated market.

Question 11.1: 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?

In our opinion, the issue related to the execution of clients' orders should be paid particular attention by CESR and market supervisors in a given country. Further to the above we consider it worthwhile that CESR carries out additional analysis, taking into account positions on this issue presented by entities participating in this consultation. In particular attention should be paid to the fact that for some of the countries the issue related to the internalisation of orders is a new matter.

Question 11.2.: Would there be any benefit to CESR making more detailed recommendations concerning how a firm should set the number and/or volume of orders that represents the norm? If so, what form should they take?

Considering the fact that, as already mentioned, the issue related to internalisation of orders is a new matter, the WSE believes that it would be advisable if CESR prepares more detailed recommendations in this area, based on other markets experience and determining at least the minimum requirements in this area.

Such recommendations should encompass the best execution rule, aiming at minimising the situation in which the internaliser could limit the number of executed clients orders while at the same time taking into account the risks to which the internaliser is exposed. Such possibilities and rules for limiting the number of executed orders should be widely known among the investor community (presented in a written form).



"Handling of client orders and executing the orders" - page 79

Question 11.3: 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? – page 79

We agree with the transaction definition proposed by CESR and with the proposal concerning the minimum number of shares (10) which may be the subject of such transactions.

Question 11.4.: Do consultees agree with the approach to "orders subject to conditions other than current market price"?

As far as this matter is concerned, we believe that it is advisable to clearly indicate the orders (e.g. create a list of them) which:

- do not qualify to be assigned to such category,
- or
- are qualified to such category.

Question 11.5: Should the size be based on an EU-wide criterion or would national approaches be preferred? - page 84

The size should be determined based on EU-wide criteria.

Question 11.6: 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? - page 84

In our opinion having one threshold for all shares is more proper.

Question 11.7: 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? - page 84

In case of setting a threshold for the order size we would like to propose that it is set as the highest value level (highest retail size).

WICEPREZES ZARZADU

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