

**CESR'S DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING
MEASURES OF THE DIRECTIVE 2004/39/EC ON MARKETS IN FINANCIAL
INSTRUMENTS**

CALL FOR OPINIONS

ADMISSION OF FINANCIAL INSTRUMENTS TO TRADING ON REGULATED MARKETS

Borsa Italiana Group supports the general line taken by the CESR to re-approach the regulatory issues surrounding the admission of financial instruments to trading on RM.

Requirements for instruments to be admitted to trading on a regulated market

We generally appreciate the new structure of the proposal and, in particular, the introduction of requirements for each type of financial instruments covered by the MIFID.

These requirements should be observed through EU, without any lack of harmony. We share the Commission's opinion that Article 40 should be understood as harmonising the admission requirements completely, meaning that any other requirements would not be possible.

However it should be cleared by CESR that Member States can't introduce different or new requirements. The imposition of any national requirements might be a source of regulatory arbitrage.

Additional requirements may be instead established by RMs on the basis of market design (cfr. Recital 57).

Approval clause

We agree with CESR in substance that shares that may be acquired only subject to approval should be treated like freely negotiable shares if the approval clause does not disturb the market.

However, with reference to this option left to Member State on the approval clause, we consider important to distinguish among administrative and property (economic) rights attached to shares. The property rights should be always saved in order to not obstacle the circulation of the financial instruments.

As regards this requirement in general, we refer to the concepts stated and the issues raised by FESE Response.

Additional requirements for shares

Free float

In principle, we appreciate the flexible approach by CESR expressed in par. 14. We would strongly advise against any stricter requirements, in particular against any quantification of "free float".

As we feel that the use of the words “public shareholders” at the end of the first clause may given rise to misunderstandings, we suggest changing this passage in order to clarify that, in assessing the free float, RM should consider the distribution only among the retail or only among the professional investors or among both of them.

Appropriate level of historical financial information

We'd stress that the issue of the disclosure of appropriate level of historical financial information is already dealt in the Prospectus Directive and in the Commission Regulation no. 809/2004.

We would not share an approach with possible implementing measures of MIFID conflicting with the settled legal framework, thus creating confusion and legal uncertainty.

As regards this requirement in general, we refer to the concepts stated and the issues raised by FESE Response.

Intended trading mechanism

As regards this matter in general, we basically refer again to the concepts stated and the issues raised by FESE Response.

Units in collective investment undertakings

We support CESR's approach to such financial instruments. In particular, we share the specification that the adequate breadth of distribution is only one of the criteria that may be used when considering the trading arrangements' capability of creating a viable market.

RM's obligation to verify issuer's compliance with disclosure obligations

We agree with CESR that the issue of admission of securities to trading on RM has indeed linkages with several other Directives, notably the new legal instruments on Prospectuses, on Transparency, and on Market Abuse. We appreciate the commitment by CESR to avoid additional, possibly conflicting requirements.

With respect to paragraph 17, we share the revised proposal reflecting that the main responsibility for preparing the prospectus lies with the issuer and responsibility for the supervision of compliance with the initial disclosure obligation with the Competent Authority. These responsibilities can't hung over the RM, especially in the case of exemption.

In the event that the RM is located in the same Member State of the issuer, the RM can verify that the competent authority has approved the prospectus searching at to the web site of this authority.

We would welcome some clarifications in the event that the RM is located in a different member State of the issuer.

How can the RM verify that the competent authority of the home Member State of the issuer has provided the competent authority of the home Member State of the RM with a certificate of approval in accordance with Article 18 of the Prospectus Directive and that “the prospectus has been published”?

We suggest that this information could be obtained by the RM in different ways. For example, the competent authority of the host Member State should be required to publish on its website all the notifications received. Otherwise, the RM should ask the issuer to provide written confirmation of its request pursuant to Article 18 of the Prospectus Directive.

At last, we believe that the arrangements that RMs should have in place to check that the initial disclosure obligations have been met by the issuer should be uniform, in case of admission on the basis of a prospectus and in case of exemption.

In both cases, the RM should seek confirmation from the issuer.

With respect to paragraph 20, we share CESR's intention to avoid duplicative disclosure requirements. From this perspective, we believe that the requirement provided at paragraph 21 may be redundant. The information published on the basis of the Prospectus Directive is already available to the public (which comprehends RM's members and participants) on the competent authority's web site.

CESR, in the consultation paper (CESR/04-511) on possible implementing measures of the Transparency Directive, proposes to expand the type of information that is to be disseminated and stored under the TOD to include information required under the Prospectus Directive. The public access to such information will be further facilitated.

It could be considered unnecessary to impose upon the RM an obligation to create an additional flow of information towards its members and participants because the information is already accessible.

MIFID obliges RMs only to facilitate access to such documents for their members and participants – which could be done through providing links to the competent authority's web site where the prospectuses are available – and not to push directly and quickly such information to them.

Nevertheless, we believe that it would be useful to specify in detail which kind of such information should be given by the RM to members and participants.

We hope that CESR will find our comments useful in its deliberation. We are of course always available for the discussion of any related matters and we look forward to further good co-operation.

Milan, March, 2, 2005