WARSAW STOCK EXCHANGE

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Response of the Warsaw Stock Exchange in relation to the consultation process concerning CESR'S Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments.

The Warsaw Stock Exchange welcomes the opportunity to participate in the consultation process on such a significant issue as the CESR'S Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments.

The following are our general and particular remarks and comments, attempting to address to the greatest possible extent the questions set out in the document.

I. CESR'S Advice on Intermediaries

Q 1.1-3 (page 14)

The Warsaw Stock Exchange supports the majority of the proposals presented by CESR in relation to the conditions determined for intermediaries. At the same time we would like to address several issues in more detail, indicating matters of importance for the integrity and completeness of the regulations.

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Requirements concerning compliance should, in our opinion, be matched to the scope of investment firms' operations in such a way that the level of detail of the rules corresponds to the scale of the firms' activities and the complexity of their services. This is particularly important in the case of smaller investment firms, whose ability to maintain a competitive position in the market is affected by the costs of implementing the regulations. Therefore we support the solutions proposed by CESR which would permit such firms to adapt to new regulations gradually, and would make the necessity to meet all the requirements dependent on the size and scale of the investment firm's activity. Further to the above it seems advisable to allow these intermediaries adequately wide use of outsourcing. This would of course require appropriate broadening of the CESR 127 standard and the introduction of conditions protecting the service standard.

Q 4.1 (page 27)

In our opinion, there may be doubts concerning the advisability of introducing additional requirements relating to proof that investment firms have not breached the rules of the Directive on documentation of transactions concluded.

Q 5.1-5.4 (pages 32-33 and 37)

The issue of conditions guaranteeing the safety of clients' assets should be analysed in detail (and weighted) in relation to the costs which investment firms will have to incur in order to meet such conditions.

Q 1-3 (page 73)

We consider the scope of the criteria concerning conditions for execution of clients' orders (best execution) listed in the consultation document to be satisfactory. The criteria and their source have also been properly and clearly defined.

However, in the assessment and implementation processes attention should be paid to the interests of investors and the competitiveness of regulated markets as well as MTFs. As concerns the level of detail of the criteria within the possible implementing measures, care should be taken that over-detailed regulation in this area does not conflict with the realization of the aim outlined in article 21 of the MIFID directive.

As regards extending the list of criteria included in the document, in our opinion it is worth considering adding a criterion concerning market transparency both in terms of information and regulation, which is so important for the average investor.

As regards deciding which criteria are relevant, considering the variety of services and instruments, as well as markets which need to be taken into account by investment firms

when considering market operators within the general policy for executing clients' orders and the selection of a particular market (cf. Q 8, page 75), in our opinion the criteria of likelihood of order execution and market liquidity market are particularly important and at the same time universal. These directly and permanently affect firms' ability to ensure execution of transactions based on the principle of obtaining optimum results.

II. CESR'S Advice on Possible Implementing Measures regarding Markets

Q 12.1-7 (page 90)

To begin with we would like to state that in our opinion, the rules on pre-trade transparency for regulated market operators and MTFs operating on the basis of the same transaction rules (e.g. order-driven markets) and allowing transactions in the same instruments (e.g. the same shares) should be identical. The Exchange supports the scope and level of detail of the CESR proposal concerning pre-trade transparency requirements.

As concerns the scope of exemptions from pre-trade transparency related to the market model, as indicated in the document, in our opinion this should correspond as far as possible to the positions presented by market operators and other directly interested entities, or else constitute a compromise agreed by all of these institutions.

As regards access to information on the state of the market (pre-trade transparency), we believe that regulated markets should be given freedom to determine it, within the scope of the above-mentioned proposal concerning a "five best offers" threshold. We take the position that the subject of unification (precise regulation) should be the minimum information standard (accessible on commercial terms), not the maximum scope. In our opinion it is in the interest of market participants that there exists the possibility of using (in accordance with specified rules) the widest possible range of information.

We would also like to point out that the WARSET (WSE trading system) already enables the distribution of information as stipulated in the document in case of introduction of an electronic order-driven system encompassing all available buy and sell offers. Currently, the Warsaw Stock Exchange immediately distributes information on buy and sell offers as far as offers placed in the order book are concerned. This is in line with relevant technical recommendations. Nevertheless, we believe that the distribution of the range of information indicated in the document should take place on a commercial basis. At the same time we accept the position concerning iceberg type (hidden size) orders proposed by CESR. This solution is analogous to that used in the WARSET system.

At this point we would like to present a more detailed commentary on the matter of block size trades, indicating also the issues which we believe it may be particularly useful to analyse and consider in relation to future implementing measures:

- In our opinion details concerning delays in distribution of data on block trades should be determined in detail by the relevant authorities of Member States. The subject of unification at level 2 of the Lamfalussy process should only be the maximum permitted delay in the provision of information on block trades. Accepting a general rule that such information should be made public following the close of the trading session on the day the transaction is made may be the proper solution. A unification of rules on the publication of such information for both regulated markets and MTFs would also be advisable.
- At the same time a rule of trade-by-trade publication of information should be accepted.
- The principle seems proper that the same minimum transaction size criterion should be applied in the case of delay in data transmission prior to opening (pre-trade transparency) and in the case of post-trade transparency.
- As concerns the problem of defining the block size, the method based on the average daily volume seems the most advisable. However, attention should be drawn to the risk related to the proposed division of all securities listed in EU markets into classes for determining the size of block trades, based on their liquidity. The introduction of such a criterion, taking into account the much lower liquidity and size of markets such as Poland in contrast to Frankfurt and London, may prove disadvantageous for smaller markets and their market communities. This may lead to a situation where companies listed on such markets will be assigned to a lower class (less liquid category) which in turn may cause weaker interest on the part of investors, particularly foreign ones. Determination of the size of block trades on a national level, i.e. using criteria suitable for a given market, seems to be a solution here. We would like to add that in order to guarantee a level playing field, it also seems necessary to introduce uniform rules on block trades for RM and MTF in each country.

Q 13.1-9 (page 95)

In our opinion the issue of post-trade transparency seems particularly important for the assessment and perception of the market by its participants. From this point of view the rule of trade-by-trade publication of information seems appropriate. However, the content of post-transaction information requires explanation and specification in case of transactions concluded on a regulated market, MTF or outside them, when the obligation to make the information public rests with the investment firm and relevant regulations do not state precise publication rules. The scope of publication proposed by CESR for aggregated data is

adequate, however detailed rules in this matter should be uniform both for the regulated markets and MTFs.

We would also like to point out that the proposed principle of maintaining access to post-trade information in the 14 days following its publication does not seem fully justified. This constitutes additional obligations imposed on market operators, thus requiring them to incur extra costs. At the same time performance of this obligation does not have much significance for market participants who receive such post-trade information online. In our opinion it will be sufficient to limit the period of access to the published data to e.g. a maximum of 5 days after the publication date. Of course access to post trade information over a longer period should be possible on a pre-defined commercial basis.

It is right that information be published on all transactions with no exceptions. However, some transactions may be of lesser importance to investors. Thus special marking of such transactions, e.g. resulting from the exercise of managerial options, should be considered in order to differentiate them from regular market transactions.

The 1-minute maximum delay limit for publication of information on transactions concluded, specified in § 24 (box 13), is right in our opinion.

We also support the introduction of uniform rules for publication of information on concluded block trades without preference for any of the parties. Moreover, introducing a uniform rule for transferring information, e.g. following the session close, would also be advisable.

As regards harmonization of stock identifiers, this should, as proposed by CESR, be based on the ISIN code, but should also take into account the consequences of cross listings, i.e. concurrent listing of instruments assigned the same ISIN code (mostly shares) on various markets.

The matter of publication of additional information concerning short selling, indicated in the document, relates invariably to the cost of its preparation and publication. The first step should therefore be to agree the scope of such additional information that could be published.

We therefore support the initiative whereby CESR along with market participants, including data vendors, will work to design a uniform approach and scope of data to be published on European markets within the framework of post-trade transparency. This will make it easier to fulfil the obligation imposed upon market operators concerning possession of solutions enabling the consolidation of information, e.g. on transactions concluded.

Q 14.1-2 (page 100)

As regards the guidelines for possible implementing measures concerning reporting requirements in regulated markets, the Warsaw Stock Exchange would like to state the following:

In our opinion the scope of information required when admitting instruments for listing is acceptable. The level of detail of the proposals put forward by CESR as to the listing requirements (box 14) is also sufficient.

The basis for admission of an issuer to public trading is the decision of a regulatory body. Thus the delivery of that decision by the issuer is a prerequisite for admitting the issuer to trading on the Exchange. On the Polish capital market, examination of a prospectus and admission of securities, based on the prospectus, to public trading is conducted by a state administration agency. This body possesses all the competencies and tools which guarantee effective flow of information on the capital market, and hence common and equal access to information by investors.

Thus in the opinion of the Warsaw Stock Exchange, the most effective solution would be to concentrate competencies within one state administration body, including powers concerning prospectus review, admission to public trading, and supervision of issuers' compliance with reporting requirements. It should also be noted that the MIFID directive disperses these requirements somewhat, but practical execution of its rules at the implementing measures level should be aimed mainly at ensuring a solution which is effective from the point of view of all market participants.

Taking the above into account, the activities proposed in box 14 § 5 to 8 concerning ensuring the completeness of the prospectus, supervision exercised by regulated markets over performance of reporting requirements by issuers and the provision by regulated markets' websites of links to prospectuses and annual reports of issuers (or indication of where they are accessible) should lie within the range of responsibility of the body which verifies the prospectus and possesses general competences in relation to supervision of public trading.

At the same time we would like to express the opinion that the obligations referred to in § 5, concerning procedures and regulations related to the performance of reporting obligations by issuers, may be performed by regulated markets purely on the basis of information exchange, under the condition that the supervising body admits the securities to public trading based on a prospectus in which all the information required by law has been disclosed, and with this being confirmed by a relevant decision issued by that body.

The mechanisms indicated by CESR for regulated markets to ensure that listed issuers fulfil reporting requirements (box 14 § 6) may thus only result in ongoing cooperation and exchange of information with a body such as that which on the Polish market supervises the discharge of reporting requirements by issuers, and in obtaining statements from the issuers that they themselves follow the regulations in force on a given market (which among other things means fulfilling the reporting requirements).

As far as the indication of a location where prospectuses are available (box 14 § 7) is concerned, subject to the general remark concerning this matter already presented above, regulated markets may limit themselves only to posting on their websites links to relevant sites of individual issuers. It should be noted, however, that in such cases the question of responsibility for accessibility of such sites, i.e. de facto ensuring the proper functioning of the Internet links, still remains open and unregulated. In the opinion of the Exchange, providing investors with information concerning the location where a prospectus is available, particularly in paper form (when the prospectus is not published electronically) may be done effectively only by the body admitting securities to public trading.

Similarly, the obligation to provide the market with information resulting from issuers' reporting obligations, indicated in box 14 § 8, should also be included in the range of responsibility of the body supervising reporting obligations. The role of the regulated market in facilitating access to the above-mentioned information, in the opinion of the Exchange, should be limited to indicating the addresses of the websites of listed companies.

III. CESR'S Advice on Possible Implementing Measure on Cooperation and Enforcement

Undoubtedly the institution most appropriate to provide responses to the questions listed here would be the market supervisory body, however the WSE would like to address some of the matters described in this part of the document.

Q 16.5 (page 110)

As concerns guidelines concerning criteria for determining liquidity in order to select the right market for reporting, the proposed approach concerning selection of a market appropriate for the liquidity in a given instrument may not be sufficient (proxy approach) not only in the case of concurrent IPO but also dual listing.

In our opinion the additional costs which will result from the unification of reporting rules should also be considered. It does not seem advisable to oblige the setting up of a new uniform reporting system from scratch, as this would probably involve substantial costs.

Thus agreeing a uniform minimum standard, whose introduction would only involve minimum costs, would be a better and more efficient solution.

Q 19.2-3 (page 130)

As far as cooperation and exchange of information is concerned, it seems advisable that information concerning transactions concluded on a given market by remote members be also provided to the regulators of that market, and not only to the regulator of the market with the highest liquidity in the given financial instrument.

We would like to draw attention to the fact that the submission procedure for market operators, as described in the CESR document, for information on the activity of remote members may result in increased reporting obligations being imposed upon the WSE and other regulated markets. There is a risk that they will be obliged to transfer information on transactions executed by such entities to the supervisory authorities in the country of the remote member, e.g. to France or Germany, which will also result in additional obligations, responsibility and cost.

In our opinion it would be more appropriate for responsibility for provision of such information to lie with the body supervising the given market and not with the market operator itself.