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CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments

1st Set of Mandates, Second Consultation Paper

- submission from OMX Exchanges

OMX Exchanges

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EFFICIENT SECURITIES TRANSACTIONS

Introduction

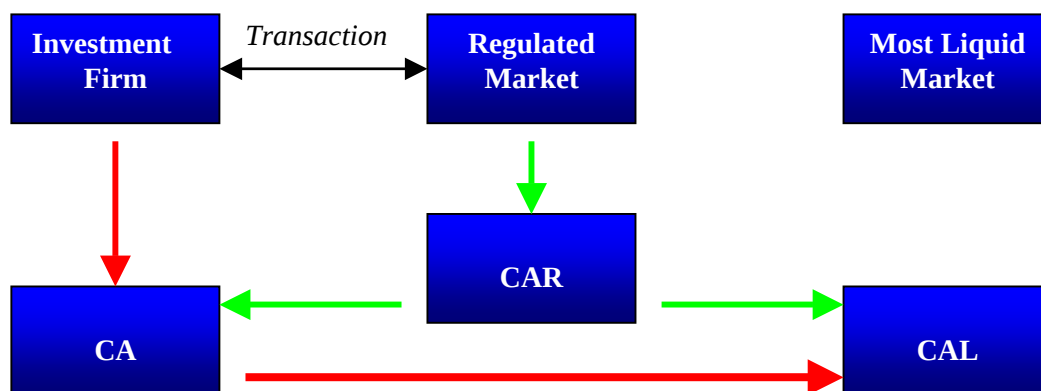
1. OMX Exchanges is Northern Europe's leading provider of exchange services in respect of the Nordic and Baltic equity markets as well as trading in other financial instruments traded on the Nordic and Baltic markets. OMX Exchanges currently comprises Stockholm Stock Exchange, Helsinki Stock Exchange and the exchanges in Tallinn, Riga and Vilnius. Discussions are currently taking place with Copenhagen Stock Exchange in respect of further Nordic integration.

The Consultation Paper

2. OMX Exchanges welcomes in general the very proactive and constructive way in which CESR has carried out its considerations in respect of Transaction Reporting Systems (TRS). As CESR rightly points out in its consultation, it is of utmost importance to strike a proper balance between, on the one hand, the interest of not imposing a too burdensome and costly regulatory regime on the stake holders in respect of TRS and, on the other hand, the interest of making TRS become a valuable regulatory tool in order to maintain and safeguard the integrity and quality of the financial markets.
3. In summary, OMX Exchange is supportive of the flexible approach taken by CESR, and the trade-off between the two interests above. In the following, we will only comment upon a few items in the consultation, which from our perspective merit particular attention.
4. OMX Exchanges welcomes the clarification in Paragraph 5, Page 12, that any reporting system that complies with the predetermined minimum criteria shall be approved as a reporting system by the relevant competent authority. Such an approach would facilitate competition between reporting channels, and thereby foster innovation and improvements in respect of such systems. It could also be expected that a competitive environment in respect of TRS would result in more efficient mechanisms as well as a potential pressure on the prices to the advantage of users.
5. In respect of the criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments, OMX Exchanges generally supports the use of proxies rather than more sophisticated methods for the calculation. Bearing in mind that the objective for the calculation is to provide the major market, or rather its competent authority, with transaction reports, the costs for carrying out the computation should not be forgotten. Complex methods for the calculation would require additional resources, which would have to be born by the market participants and, in the end, their clients. The evidence is overwhelming that proxies in the majority of cases would give the adequate result, and even if the result may be "incorrect" in an individual case, that should be acceptable. If the result would not be correct in a certain case, the competent authority of the *prima facie* most liquid market would only get more information that otherwise would have been the case, and the competent authority of the *truly* most liquid market would have a right to reclaim its rights based on the revision procedure envisaged on level 3.

6. In respect of proxies for shares, it could be argued whether the domicile of the company or the market where the share was first admitted to trading should be used as a proxy. We would favor the domicile of the issuer, but have no objections toward the other approach since the both proxies would normally give the same result anyway.
7. We also fully endorse the approach that the proxy for equity derivatives should be that the competent authority for such derivatives should be the same as the competent authority for the underlying share. One of the most persuasive arguments for that would be that markets participants to a large extent trade in combinations, where trades are done both on the cash market and on the derivative market. In order for a competent authority to get the full picture in respect of trading patterns or behavior, e.g. when assessing market abuse, information should be easily accessible from both market segments.
8. We feel sympathetic to the approach taken by CESR in respect of TRS for remote members of regulated markets (Paragraphs 8-12, Page 20-21). CESR should be encouraged to proceed with such considerations which, we would argue, facilitate a cost efficient regime in respect of cross-border transactions from such members. One of the advantages would clearly be the positive effects in respect of the regulatory impact of TRS for regulated entities subject to such requirements.
9. On top of that, the competent authority of any regulated market where financial instruments are admitted to trading will always find an interest in getting transaction reports in respect of trades carried out on such market, even if the market is not the most liquid one. It should also be acknowledged that a number of larger investment firms are remote members of a number of European regulated markets. To route transaction reports from each of such regulated market directly to its regulator, on behalf of the remote member, would be a rational way of releasing the investment firm from its administrative burden, without setting the interests of the competent authorities aside.

10. The advantages with the model presented by CESR in the Consultation Paper can be illustrated as follows:



In the picture above the red arrows indicate the information flows that would follow from a rigid and narrow interpretation of the MiFID level 1 text. The green arrows indicate the information flow in the alternative model presented by CESR. CA stands for “Competent Authority of the Investment Firm”, CAR stand for “Competent Authority of the Regulated Market” and CAL stands for “Competent Authority of the Most Liquid Market.”

11. In summary, we strongly recommend that the level 1 text should be interpreted in a way which would best serve the objectives behind the transaction reporting requirements. The advantages with a model where the regulated market may could report the transactions directly to its regulator (“CAR”) would be;
- CAR would get the information in a timely fashion, acknowledging that CAR in most situations also would be the authority with the highest interest in receiving such information (e.g. in case of investigations in respect of suspected wash sales where one leg of the transaction is done through a domestic firm and the other leg is done through a remote member);
 - The solution would facilitate a cost-efficient solution in respect of transaction reporting from remote members, and contributing to limit the regulatory cost for such members (investments, administration etc.); and
 - The regulatory costs would in general be kept down, since most of the infrastructure is already in place, and probably can be used with slight adjustments for the purposes of TRS.

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