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CESR
The Committee of European
Securities Regulators
11-13 avenue de Friedland
75008 Paris - France

RE: Remarks on CESR consultation document "Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/CE on Markets in Financial Instruments" - 2nd set of mandates.

Introduction

ASSOSIM is the Italian Association of Financial Intermediaries, which represents the majority of Italian financial intermediaries, banks and branches of foreign institutions, active in the Investment Services Industry.

First of all, we would like to thank CESR for being consistent with the engagement taken with the industry of putting in place open and transparent consultation processes.
We feel that a different culture permeated of awareness is spread across Europe, since the Lamfalussy legislative procedure is in force, even for the activity carried out by the subjects involved.

A general issue that needs to be addressed before moving to the merits of CESR's proposal is that of **harmonization of legislations**.
ASSOSIM has had occasion to express its stance on this delicate issue many other times. Nevertheless we think it is important to express again our confidence in the possibility of pursuing a **profound harmonization of legislations** and at the same time **limiting the discretion** of member countries in laying down further regulation for the regulated entities, with a view to bringing about true integration of European financial markets. The said approach would truly address the objectives of the FSAP.
In the light of the above, we are doubtful regarding the concept of "flexibility" put forward during the discussions on the third level legislation.
In our opinion, insofar as among the objectives of the law-maker at level 1 and 2 legislation there is that of achieving quality and balance in regulations, the same should constantly seek to come to a **fair** degree of detail in making rules. If this is the case there should not be much room for discretionality in the transposition phase at level 3 legislation, therefore all member states should be able to transpose the same regulation.

Another general issue we would like to put to the attention of CESR regards the regulation of the professional client. So far the issue has not been analysed enough. It is as though all have underestimated the problem thinking that with the new categorisation the most part of subjects listed by art. 24, 2, namely the elegible counterparties, would never ask to be treated as clients.
But obviously we cannot know the impact that the new legislation will have and therefore we have to adequately think of the regulation of the relationship between the intermediary and the professional client in order to have workable rules.

Section II – Intermediaries

Definition of investment advice art. 4 (1) no. 4)

We fully agree with CESR's position on the need to precisely define the investment advice service. One reason is that this service, under the Directive 2004/39/CE, is no longer included among ancillary services, but among the "main" investment services and activities.

CESR raises the problem of drawing a distinction between investment advise and other activities, which might have similar characteristics without falling under the investment services (general recommendation, marketing, communication, information given to client, simple offer). The same problem currently exists in Italy (even though the investment advise is an ancillary service) with respect to the so-called "spot consulting" (as addressed below).

Question 1.1. - Do you agree that advice on services, such as recommendation to use a particular broker, fund manager or custodian, should not be covered?

According to ASSOSIM, investment advice should not have investment services as its purpose, but exclusively financial instruments, in accordance with the first level legislation, under article 4(1) no. 4) of the Markets in Financial Instruments Directive ("MiFID").

Question 1.2. - Do you agree with the approach that a personal recommendation has to be held out as being suited to, or based on a consideration of, the client's personal situation or do you consider this criterion to be unnecessary or ambiguous and would like to refer to the bilateral nature of the relationships and bilateral contacts between the firm and its clients? In the latter case which criteria would you use to differentiate between a "personal recommendation" and a "general recommendation" or a "marketing communication"?

One of the elements defining investment advice is identified, by the first level legislation, as the "personal nature" of the recommendations.

CESR proposes two different interpretations of "personal". The first implies an assessment of the client's specific personal situation so that the recommendation is suited to the client or is given on the basis of the client's personal circumstances.

The second interpretation provides an easily identifiable element. The criterion of the personal nature of the recommendation coincides with the formal criterion of the existence of a bilateral communication between the investment firm and the client.

ASSOSIM favours the first of the two interpretations. The personal nature, understood as an evaluation of the client's personal situation/circumstances, represents an essential requirement or rather, an element which in the general understanding characterises investment advice. Indeed, CESR on more than one occasion, has appealed to the "personal nature" as the main distinguishing element between investment advice and almost all other activities with which the investment service must not be confused (general recommendation and marketing communication, simple offer (see page 13 of the CESR document). On the other hand, application of formal criteria such as the mere existence of bilateral communication (telephone, e-mail) between the investment firm and the client may lead to defining as investment advice an activity that lacks the required degree of depth/personalisation.
The personal nature of the recommendation understood as an evaluation of the client's personal situation/circumstances, would allow for a clear distinction to be made between another activity, in addition to those listed by CESR (pag. 13), namely "spot consulting", that the intermediary offers to clients before executing orders on their behalf. As mentioned, this need stems from a specific way of operating that characterises the Italian Industry in which the intermediary *provides information regarding market securities trends, in the sector in question* and does not give, rather, recommendations that result from an evaluation of the client's personal circumstances. Further, under article 19.5, with respect to the sole provision of execution of orders on behalf of clients, the intermediary is not aware of the their financial situation or investment objectives, and would not be able to offer a personalised recommendation, as understood above.

Before dealing with the other topics proposed by CESR, one precision should be made regarding the expression "client or potential client" used in the consultation document, in the context of specifying the definition of investment advice.
As in other cases, CESR considers the opportunity of using several elements of article 19.4 to clarify the provisions of article 4 (1) no.4). In this case, it is not advisable. In article 19.4, the use of the expression "potential client" corresponds to a specific reason in the context of article 19.4, where the legislator lists the information that the intermediary must gather in order to provide investment advice and management services (possibly before entering into a contract, when one can still speak of a potential client). The same cannot be said regarding the definition of investment advice. The legislator has, in this case, chosen to speak only of a client. Indeed, at the time the service is provided, the intermediary is dealing with a client and not a potential client (see below for considerations regarding the contract).

Question 1.3. - Do you think it is reasonable to restrict "investment advice" to recommendations of specific financial instruments or is it necessary to cover generic information including financial planning and asset allocation services for financial instruments?

As opposed to that which seems to be the position of CESR, investment advice may, in our opinion, be for the purpose of providing recommendations of a general nature (i.e. *financial planning/asset allocation*).

Contract
We do not agree with the position taken by CESR in the paragraph dedicated to the contract. Although we understand the difficulties stemming from the absence of common principles of civil law in Europe, we consider the existence of a contract, whether required in writing or not, as a premise to provision of any investment service whatsoever, including advice. Our position is in line with the provisions of article 19.7, which, in our opinion, do not leave space for CESR's interpretation that the contract with the client does not need to be a prerequisite to the provision of investment services.
In the case of *retail* clients, in our opinion, the contract must always be in writing. This requirement, however, should not be applied to institutional clients.

Differentiation between personal recommendation and other terms
With respect to the list on page 13 of CESR's document, which contains terms to be distinguished from investment advice, in our opinion so-called "spot consulting" should be included in the list.

Suitability Test art. 19(4)

The topic of a *suitability test*, is of key importance to the activities of intermediaries.
Article 19.4, as already mentioned, asks the intermediary providing portfolio management and investment advice services, to obtain the necessary information regarding the knowledge and experience of the client or potential client in investment matters with respect to the specific type of product or service, as well as the financial situation and investment objectives, in order to recommend suitable investment services and financial instruments.

With respect to these legislative provisions, a careful evaluation and fine-tuning of the intensity of the obligations placed on the intermediary must be made according to the type of client (retail / professional) in question, as under paragraph 10 letter c) of the same article.

One must consider that currently Italian intermediaries are not required to carry out any kind of suitability test vis-à-vis professional clients. Use of such a test, as required by the MiFID, could be a problem for certain subjects (i.e. a portfolio manager or intermediary). As a matter of fact, it is possible that subjects listed in article 24, considered eligible counterparties by law, ask and therefore may be treated as professional clients. For example, intermediaries or portfolio managers that are required to respect the rules of conduct vis-à-vis their own retail clients, could consider themselves facilitated in respecting this obligation if treated as professional clients by their own counterparts. We cannot know the effects that the new directive will have with respect to the categorisation of investors. We should, therefore, reflect upon the need to distinguish between retail and professional clients as regards the intensity of the rules of conduct the intermediaries have to comply with.

In the opinion of the Association, **information to be asked to *professional* clients must be kept to a minimum and should not be in-depth. Similarly, *suitability* obligations placed on intermediaries should not be stringent.**

The Intermediaries have further noted that certain professional clients may not be willing to provide any kind of information under article 19.4, at least not in writing.

In our view, question 4.1, is related to this topic, which basically requests an opinion regarding whether or not it is possible for an intermediary to offer adequate investment advice or portfolio management services with respect to a client that lacks knowledge and experience, if the client has refused or was not able to provide the information under article 19.4

Question 4.1. - Do market participants think that adequate investment advice or portfolio management service is still possible on the basis of the assumption that the client has no knowledge and experience, the assets provided by the client are his only liquid assets and/or the financial instruments envisaged have the lowest level of risk, if the client is not able to or refuses to provide any information either on his knowledge and experience, his financial situation or its investment objectives? Or would this assumption give a reasonable observer of the type of the client or potential client the impression that the recommendation is not suited to, or based on a consideration of his personal circumstances?

In the opinion of ASSOSIM, the intermediary should not be prevented from providing investment advice and management services in case of retail or professional clients do not provide the information under article 19.4.
The refusal or impossibility of providing information does not necessarily imply that the client lacks knowledge or experience. As a result, we consider that preventing an intermediary from providing services to clients who, for one reason or another, do not provide the information under 19.4 despite the intermediary's request, could represent a serious restriction to the intermediaries' activities.
Further, as already mentioned, professional clients in particular may not wish to provide the information in writing. This, however, does not mean that such clients will not provide the information orally nor does it prevent the intermediary from acquiring knowledge indirectly on the factors to be assessed in order to provide adequate investment services.

Execution only (article 19(6))

Question 5.1. - In determining criteria, should CESR pay more attention to the legal categorisation or the economic effect of the financial instrument?

Assosim members have expressed a preference for the legal categorisation criteria over the economic criteria.

The intermediaries ask that the definition of *non complex instrument* (instruments that may be subject to *execution only*) include convertible bonds and derivatives traded on regulated markets.

Question 5.2. - Do you think that it is reasonable to assume that a service is not provided "at the initiative of the client" if undue influence by or on behalf of the investment firm impairs the client's or the potential client's freedom of choice or is likely to significantly limit the client's or potential client's ability to make an informed decision? Alternatively, do you think that the consideration of this overarching principle is not necessary because the use of undue influence could be subject to the general regulation under the UCPD and that CESR should base its advice more strictly on Recital 30 or refer entirely to this Recital advising the Commission that it is not necessary to adopt Level 2 measures in this area?

ASSOSIM considers *recital 30* sufficient to define the expression "at the initiative of the client" without making reference to the proposed UCPD directive to define the concept of "*undue influence*".

Transactions executed with eligible counterparties (article 24)

Before dealing with CESR's specific request regarding eligible counterparties, a few observations on the *opt-in* process should be made.

According to CESR, such process should concern not only the intermediary's decision to accept or not an eligible counterparty's request under article 24 to be treated as a client, but also implies that the intermediary inform its clients that the implementation of the Directive 200/39/CE has changed the category which they belong to, as well as, as a result, the terms of protection applied to them.

In this respect, we do not find any provision in the directive that places an information responsibility, as outlined by CESR, on intermediaries, during the transition period, vis-à-vis the "new" counterparties under the law.
It is worth reflecting on the fact that the subjects included in the category of eligible counterparties are to gather information of a legislative change of such magnitude which concerns them and of the effects that this will have, without considering that most of these subjects will be informed of the change for professional reasons as operators in the financial industry.

An interpretation that provides for such "information responsibility" in our opinion has doubtful utility and, at the same time, is very costly.

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.

The quantitative thresholds above which companies that do not come under the category of eligible counterparties by law may be treated as such should coincide with those provided under Annex II to extend the category of professional clients.

Section III – Markets

Before dealing with an analysis of CESR's proposals on transparency, we would like to emphasise that the aim of publishing trading information is to obtain the maximum possible transparency with a view to counter-balancing potential negative effects of the internalisation of orders on **the efficiency of the price formation process**.

The EC, in motivating its choice to favour the internalisation of trading in the preliminary Report[1] to the proposed directive (which became the Directive 2004/39/CE), listed a long series of benefits of internalisation. The most important of these was competition between different market participants (markets, MTF, intermediaries).

The EC acknowledged, in the context of a balanced analysis, that **the execution of orders over numerous venues could lead to the fragmentation of negotiations as well as to a decrease in market liquidity. The EC identified the need for a suitable control of this phenomenon in order to avoid negative effects on price formation whether by way of an increase of the spread or reduced trading opportunities.**
The Commission proposed to solve the problem by providing an efficient transparency regime. The Association fully shares this point of view. It is for this reason that it is fully convinced that the adoption of second level regulations on pre- and post- trade transparency represents a very delicate effort. Care should be taken not to lose sight of the principles defined by the first level legislator. These considerations should not be confined exclusively to regulations on transparency. Rather they are valid for the consolidation of information too in order to avoid depriving the same principles of meaning.

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

According to ASSOSIM, the procedures, which differ from the use of regulated markets or MTFs, used by intermediaries to facilitate the most rapid possible execution of outstanding limit orders, under article 22, paragraph 2, should allow an easy consolidation of information. Equally, so as not to impose high costs on intermediaries, it is particularly important to apply article 44 paragraph 2. Article 44, paragraph 2 provides that markets may give access to devices used to disclose information on *commercially reasonable terms and without discrimination* to investment firms that are required to publish their share quotes in accordance with article 27.
This provision applies as well to information under 22.2, which considers the publication obligation with respect to outstanding *limit orders* to have been fulfilled with the sending of same to a regulated market or MTF.

[1]See the Report accompanying the ISD's proposed amendments of 22 November 2002.

Although the legislation leaves the choice of consolidation for the most part to the market, it is important to note that pre- and post- trading information is a public good. This information is hugely important above all for investors and market integrity. As a result, the cost of guaranteeing protection of such information should be shared equally by all market operators.

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

A quote driven system as currently set up could not by its nature allow for publication of a limit order. The problem should be addressed in the unlikely case that the only system to which an outstanding limit order may be sent is a quote driven system to allow the intermediary to fulfil its obligation under article 22.2 of the Mifid.

Pre-trade transparency – Systematic Internalisers (article 4 e 27)
1. Definition of Systematic Internaliser

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?

The downside to CESR's proposal regarding a definition for systematic internaliser is that the qualitative criteria inherent to the intermediary's organisation such as those proposed are subject to an overly broad interpretation.
Considering the general principle of legal certainty, the intermediaries think that it would be very useful to introduce quantitative thresholds. CESR requests an opinion on the usefulness of a numerical threshold only in relation to frequency at question 8.3.

ASSOSIM proposes to identify a percentage threshold of internalisation to a benchmark (10%) compared to overall activities carried out by an intermediary beyond which the intermediary would be considered an internaliser. The calculations would be made over a reference period of 12 months. This would guarantee, above all, a level of market stability and would also avoid depriving the market of information on a significant percentage of share price activity due to irrelevant or exceptional downward variations to the "reference" threshold.

Question 8.2.: Should the criteria be fulfilled collectively or used separately?

Should the quantitative thresholds proposal not be accepted, the criteria listed by CESR should be evaluated separately. It should not be necessary for all criteria to be present in order to qualify a subject as an internaliser.

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?

The percentage threshold suggested in the answer 8.1 should be introduced to determine the concept of "frequent" in the definition of systematic internaliser. See answer to 8.1

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?

ASSOSIM agrees with the proposal that the internaliser should disclose its intention to cease systematic internalisation to the market using the same medium used to publish its quotations.
As regards the notice period to be applied by the internaliser, ASSOSIM believes 3 months would be appropriate, in view of the consequences of such a decision for the counterparties, whether these be *retail*/*professional* customers or eligible counterparties. Consider, for example, an intermediary that provides the service of execution of orders on behalf of clients and that includes the internaliser in question among his *best execution policy venues*. Upon receipt of communication of ceased internalisation activities, the said broker would have to review its policy in order to comply with the contractual obligations undertaken with customers.

Furthermore, for the purposes of removing all problems relating to a lack of legal certainty as regards the identification of the internaliser, and the moment from which he is to consider himself systematic internaliser for a specific security, ASSOSIM suggests that a sort of preventative communication by the broker be put in place, that is comparable to the above communication of ceased activities.

Liquidity

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

Yes, on the basis of the definition specified by CESR, according to which, if a security is considered liquid, all the European internalisers must comply with the transparency obligations.
As regards the calculation of liquidity, see where relevant.

Question 8.6: Do consultees have a preference in favour of setting pre-determined criteria or using a proxy approach?
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?
Question 8.10: Do consultees agree with the analysis of the relative merits and drawbacks of using proxies such as indices?
Question 8.11: Which criteria would best accommodate the needs of different markets within the EU?

ASSOSIM advises that one of the methods (which are based on predetermined criteria) listed by the CESR be followed. In particular, ASSOSIM tends towards letter h), which contemplates **the ratio between capitalisation and the daily trading of a security**.

In the event CESR decides to follow the proxy route, which we believe to be a less reliable method, we feel that we must comment on the choice between a European and a domestic index.

CESR seems to favour a European-style index, to the exclusion of domestic indices.
ASSOSIM, on the other hand, believes that national indices should be carefully considered, in so far as they are the only means of guaranteeing transparency also for those securities that are extensively traded in single countries and by *retail* investors, and that cannot aspire to being included in European indices.

Consider, for example, that currently only 2/3 Italian securities are included in the European index EuroStoxx 50. If the situation were to remain unchanged, the only intermediaries to be subject to transparency obligations, in so far as systematic internalisers of liquid securities, would be the brokers who internalise the 2/3 mentioned securities, while the securities included in the S&P/Mib index represent 95% of trades in Italy.
It is true that, as the concept of liquidity is by now based on EU wide criteria, transparency obligations should be imposed throughout all of Europe, on securities that are only liquid in certain countries (if we take domestic indices as a point of reference).
This problem, however, would also manifest itself, although to a lesser degree, in relation to securities included in a European index, which cannot be expected to be liquid everywhere. ASSOSIM believes that such a contraindication, if it can be considered such, is a natural consequence of reasoning in line with European parameters, a necessary step towards integration. On the other hand, our suggestion takes into account the fact that there may well be, even though in an integrated context, securities, for example, of national issuers that are traded more within the domestic frontiers, and that this phenomenon might or might not be transitional. European regulations must not damage the transparency of securities extensively traded at national level and which, in particular, as we have already said, could be the subject of *retail* customer transactions.

The determination of the Standard market size/Classes of shares

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?

We believe that the block regime should be unified, using, therefore, the same calculation method to determine the blocks, both for the purposes of article 27 and for the purposes of articles 29, 30, 44 and 45, which concern pre- and post-trade transparency on regulated markets and MTFs.

Question 9.2: Would you consider a large number of SMS classes, each comprising a relatively small bandwidth of arithmetic average value of orders executed, as problematic for systematic internalisers?

We believe that in defining the number of classes, account should be taken of the content of Recital 54, which provides that shares be placed in a class whose average value is close to the average value of the share itself, and is therefore representative of the said security.
Nevertheless, this necessary representative feature of the class to which securities belong, must be matched by an equally important need for simplicity in managing the future system publication of quotes.

In order to identify the number of classes, ASSOSIM suggests applying a quantitative tolerance parameter to the class average values and the security average values.

For the purposes of determining classes and average values, the executed orders must be taken into account, and not the executed contracts.
It would be reading too much into the regulation text, if we were to interpret the calculation as being based on a contract average, as the first level legislation directive clearly states the phrase "executed orders".

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?

We believe that the *standard market size* should be represented by a monetary value representing a quantity that can be immediately perceived.
In view of the fact that the market scenario will alter substantially following the implementation of the new internalisation system, it may be necessary to include the possibility of reviewing the parameters defining class and average values, without this resulting in an extra cost for brokers.

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?

Assosim considers the annual revision of the grouping of the shares as sufficient.
The time of revision should be fixed at level 2 and it should be the same all over Europe**.**

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?

Furthermore, ASSOSIM agrees that certain extraordinary events relating to a security, which have an impact on its average value, could result in the need for "ad hoc" reviews of the class grouping (*take over bid*, *public offering*, *merger*).
In the case of IPOs, we agree with CESR's second proposal: the competent Authority determines the class to which a security belongs as from the first day of *trading*, on the basis

of reference parameters such as, for example, the SMS of a share with similar market capitalisation.
Naturally, we do not envisage barring internalisation activities on a security for the initial trading period, following the IPO.

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

Yes, a two-week period from publication is sufficient for systematic internalisers to adapt to new SMSs.

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 level2)?

We agree that information regarding shares' SMSs must be published. A single *contact point* could be useful as a clear point of reference from which to obtain accurate and precise information.

Obligations of the Systematic Internaliser

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?

According to ASSOSIM, no specific regulatory requirements arise where an internaliser represents the trading venue with the largest turnover in a particular share, although they could arise with respect to the fact that, in certain circumstances, references are required to carry out the activity, for example in the event the regulated market on which the share is quoted is closed.

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"?
Yes, ASSOSIM agrees.

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

No, ASSOSIM does not think it is sufficient. (See answer at question 7.1)

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?

We agree with CESR's position.

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 believe that criteria defining exceptional market conditions should be supplemented by an open list of examples of exceptional market 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?

There are 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. At the same time, the systematic internaliser could decide to continue trading a share that has been suspended on a 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?

We agree with CESR's approach.

Handling of client orders and executing the orders

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?

ASSOSIM agrees**.**

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?

We agree with CESR's assessment.

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?

We believe a minimum number of securities should be specified and the number should be 20.

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

ASSOSIM agrees.

4. The Size customarily undertaken by a retail investor

Question 11.5: Should the size be based on a EU wide criteria or would national approaches be preferred?

The Size customarily undertaken by a retail investor should be based on a 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?

A fixed threshold for all shares would be preferable, in order to make it more workable from an operational point of view.

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?

Given the existence of differences in order size in different countries, we would suggest that the threshold be set at the highest level so as not to forego the regulatory benefits of transparency obligations.

We remain at your disposal for any other clarifications you should require.

Yours sincerely

Il Segretario Generale
Franco Gherra