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Brussels, 11th April 2005

**Response by FESE to CESR's Second Round of Consultation (05-164)
on the Second Mandate for MiFID Implementation Measures**

FESE is the representative organisation of Europe's Regulated Markets and Derivatives and has incorporated EACH, the European Association of Central Counterparty Clearing Houses. Our Membership comprises all Members States of the EU, old and new, as well as the countries of the EFTA.

We welcome that CESR has followed up to its first consultation paper by publishing a second paper, thus providing a feedback to the comments received as well as a clearer indication of the thinking of CESR Members as to the shape of the forthcoming advice. We also appreciate having been invited to CESR's informal consultation meeting on block size thresholds.

We are aware that several of our Members have made individual comments. We expressly refer to these submissions; they do in certain cases focus on particularities in these Members' environment and may therefore provide additional specific insight to CESR.

In this submission, we focus on the issues of best execution and market transparency.

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

Yours sincerely,

Gregor Pozniak
Deputy Secretary General, FESE

Best Execution¹

1. FESE and its Members support the clear commitment by CESR to best execution obligations for investment firms. We recommend to CESR to take a broad approach to questions of conflicts of interest. This includes the issue of provision of execution services that are bundled with other services, such as research.
2. In response to CESR's **question in par. 30**, we would think that further regulatory initiatives towards transparency in fee structures could provide the tools that would allow firms to better compare venues/intermediaries that offer inducements with those that do not.
3. We agree with CESR's opinion expressed in par. 28 that portfolio managers should not be prevented as such from acquiring research or other goods or services from execution venues or investment firms that execute orders. We would suggest strengthening CESR's principle expressed in the last sentence on page 18:

"That is, only if competing intermediaries offer comparable "execution quality ..."

Relative importance of factors

4. We have argued earlier that most retail clients would presumably regard price and cost as the most important factors for them. We welcome therefore CESR's consideration at the end of par. 39 and in par. 1(a)(ii) in Box 4. An investment firm that gives or might give other factors more importance than these should clearly explain why this should be in the best interest of its retail clients. (This is also our response to the **Question in par. 129**.)

Execution policy

5. We agree with CESR (par. 55) that no general answer can be given to the question whether a firm can satisfy the requirements of Art. 21 if it only accesses one venue.
6. In response to the **Question in par. 56**, we would argue that it is absolutely conceivable for us that a firm accesses only one execution venue and still fulfils the requirements of Art. 21, when this execution is the one that is known (e.g. in the firm's national environment) to consistently provide best results – e.g. the local Regulated Market. Through the transparency required under MiFID, the firm will be enabled to regularly check its execution policy; this check will have to include the verification whether the assumption that accessing a single particular venue (e.g. the Regulated Market) does indeed consistently provide best results. CESR refers to modalities of this verification in par. 71. There should be no ex-ante requirement for a multitude of venues to be accessed (see also CESR's feedback given at the end of par. 52).

¹ In the context of Best Execution, references to FESE's earlier paper relate to document P720, the **(Additional) Response by FESE to CESR's Consultation on MiFID Implementation Measures**, dated October 2004.

Factors for the assessment of execution venues

7. We agree with CESR's opinion, expressed in par. 62, that it is the bottom line amount to be paid by the client (or, in the case of a sale of securities, credited to the client) that determines best execution – as the “best” in best execution has to be judged from the viewpoint of the client. It is evident that – should a firm charge absolutely identical commissions on all deals – the price for the security obtained by the firm on the execution venue is the decisive factor. Whenever commissions differ, however, the net price is relevant.
8. To summarise, we respond to the **Question after par. 65**, that the cost invoiced to the client (we take a purchase as the example) is the determining factor for the selection of an execution venue. If a venue consistently has the best price, the investment firm will have to consider using it; if access to that venue is excessively expensive for the firm, it would have to include this factor in its fee structure, thus providing ex-ante clarity that after all commissions and fees a trade executed on that venue would turn out to be less favourable to its client.
9. In our earlier submission, we endorsed CESR's clarification that the business model of a firm must not be used to justify the exclusion of a venue that would enable the firm to achieve the best possible result on a consistent basis. We underline the importance of this consideration and recommend including it in the body text of CESR's advice, e.g. in the phrasing used in par. 95:

“Commercial considerations do not obviate the requirement to use venues that provide the best possible result on a consistent basis.”

Information on execution policy

10. Only full information about the execution policy of an investment firm (ex ante on the venues accessed) enables the client to make an informed choice. Thus, we support CESR in its strong stance against the criticism cited in par. 101 and 102.
11. While we do understand the reasoning behind CESR's considerations in par. 104 and tend to agree, we suggest including a phrase that such differentiation (in the areas of services and information) should not be abused.
12. We further believe that (statistical) (ex-post) information (about venues and execution quality) about the direction of clients' orders to venues is also valuable for the client to judge the service he receives from the investment firm. While some of the arguments collected by CESR in par.107 may be justified, we particularly reject the idea that “clients only need to know about their own orders”. We emphasise, however, that CESR's thinking should focus on statistics and information provided by investment firms rather than by market operators and systematic internalisers.
13. On the information about selection and evaluation procedures, we support CESR and emphasise that such information is an important part of the information that the client may wish to have before choosing a firm.
14. We agree with CESR that indeed an investment firm should disclose to clients and potential clients any arrangements with venues that involve incentives to select venues for reasons other than execution quality. As we have emphasised in our response to Question 8 of CESR's previous paper, we recommend a broad approach to the question of conflicts of interest.

As discussed by CESR in par. 120, the firm's information about conflicts of interest and their mitigation should be comprehensive and coherent.

15. We finally would like to underline again the importance of CESR's consideration in par. 130 and the inclusion of par. 1(a)(ii)² in CESR's advice on Art. 21(3) MiFID in Box 4.

² ...

(ii) in the case of a service provided to a retail client, if the investment firm gives or might give a factor other than price or cost more importance than any of price or cost for the purposes of Article 21(1) of the Directive, an explanation of why this is in the best interests of its retail clients; ...

Market Transparency³

Definition of Systematic Internaliser

Question 1.1:

16. FESE and its Members welcome many of the amendments that CESR has made to its draft advice. We endorse particularly the abolition of the undefined and unclear concept of an “identifiable” commercial role and the inclusion of the “marketing” (or “holding oneself out”) as an important criterion for identifying systematic internalisers.
17. In the interest of legal certainty, however, we would suggest to CESR a straightening of language in its advice in Box 1 on page 40:
- In the first sub-paragraph of par. 11, we strongly propose **deleting the words “likely to be”** in the brackets.
 - To some of our Members, the use of the conjunctions “OR” and “AND” in par. 11 gives rise to questions and concerns. We would like to underline that it is highly important – regardless of the comments voiced by many at CESR’s hearing – that the first and the second criterion (“separate business model” and “existence of ... rules ... and/or practices”) are both tested and that fulfilment of either of them suffices to qualify as systematic internaliser if at the same time criteria (b) and (c) are also fulfilled.⁴
 - Thirdly, we argue that the phrasing that the numeric criteria mentioned in par 12 “may be taken as indicators” contributes to legal uncertainty and/or to divergent and uneven implementation across the European Union. We are also unclear as to their usefulness, given that these numbers are essentially arbitrary. We would therefore prefer that these criteria are deleted.
 - Lastly – and only for the case that CESR insists on including the numeric indicators in par. 12 in its advice – we submit that we are not certain how CESR would want the “OR” between par. 12(a) and (b) understood. These two items are a list of criteria; deleting the conjunction between the two subparagraph would create the exactly the desired effect that the competent authority would have to look at both (i.e. the complete list), without creating any ambiguity.

Question 1.2:

18. In our earlier response, we argued against the inclusion of numeric indicators at all, and FESE Members are still not convinced that they need to be explicitly mentioned.

Question 1.3:

19. As argued already above, FESE Members do not believe that numeric criteria are useful and advocate their deletion.

What is a liquid share?

20. FESE and its Members agree only in principle with the general line chosen by CESR, namely using pre-defined criteria as the method to determine (for the purpose of Art. 27) the shares for which there

³ In the context of Market Transparency, references to FESE’s earlier paper relate to document P747, the **Response by FESE to CESR’s Consultation Paper on the Second Mandate for MiFID Implementation Measures**, dated 28th January 2005.

⁴ Legal linguists should be able to provide unambiguous wording. It could also be useful to change the order of criteria (a), (b) and (c) and to take the two-pronged criterion last.

is a liquid market. However, we do not concur with CESR on the choice of criteria and on the proposed thresholds.

21. Most FESE Members challenge in general the choice of “free float” as the main criterion and in particular the definition of free float as created by CESR. It is in our unanimous view not the role of CESR at all and especially not its role under this mandate to develop a pan-European definition of free float. In addition to this formal comment, we see the main problem in the divergence across Member States in the characteristics of the stakes that are outside the free float as defined.
22. In several markets, institutional investors, notably funds, take an active part in day-to-day trading and can therefore be regarded as contributors to liquidity, even if their shareholding should constantly lie above 5 per cent.
23. Their trading activity leads to permanent changes in their holdings which may require reconsideration of the free float classification (and hence the classification as a liquid share) every time the fund’s shareholding crosses the five per cent threshold.
24. Moreover, there would still be large inherent uncertainty because any changes in the holdings between, e. g. 5.1 and 9.9 per cent would go unnoticed and would not be accounted for.
25. Since we do not believe in CESR’s role to come up with a new definition of free float in Europe, we suggest to CESR proposing that “free float may be calculated (by the competent authority) by using a widely accepted and/or used index calculation procedure”, without making this approach a temporary, second-best solution. We suggest including in the level II instrument a **review clause after several years**, rather than making the transition to the Transparency-Directive based approach mandatory.
26. In view of the difficulties and problems identified above, we would also suggest to CESR considering total market capitalisation or turnover velocity as an appropriate and straightforward criterion. CESR may use the statistical data it has to identify a proper threshold for this measure.
27. We have indeed earlier supported the number of transactions and overall turnover as useful numeric criteria, but we do not endorse the introduction of such criteria at the choice of a Member State. Of the two criteria mentioned, FESE Members would regard turnover as the more relevant one.
28. On behalf of our Members that operate in smaller markets, we urge CESR to reconsider the idea of providing for an opportunity for competent authorities in Member States to declare a certain number (to be defined) of their top companies as “liquid” (see **Annex**)
29. We summarise our preferences as follows:
 - **Using “free float” as a criterion is probably methodologically correct, but creates definition problems. It is not CESR’s duty to create a definition of “free float” across Europe in the MiFID level II instrument.**
 - **If free float is used, the distinction of the 5 per cent notification threshold should not be applied mechanically – to automatically exclude funds that in many markets are active participants in the markets yields distorted results.**
 - **Index calculators do valuable work. Their concepts can be used and the use of these concepts should be allowed beyond January 2007.**

- Using market capitalisation (probably with a changed threshold value)⁵ or turnover velocity would avoid some of these problems; these are in our view better measures than free float.

30. CESR's advice in par. 22 in Box 2 should therefore read:

"A share should be deemed to have a liquid market for the purpose of Art. 27, when it meets the following criteria:

(a) the share is traded daily;

and any of the following:

(b) the market capitalisation of the share is EUR [xx] billion or more;

(c) the daily average number of transactions is 500 or more;⁶

(d) the average daily turnover is more than [EUR 2 million]."

31. Finally, we note unclear language in CESR's text:

- In par. 21, CESR refers to "all shares within this Member State". What are the "shares within (a) Member State"?
- Choice between the additional criteria (c) and (d) is proposed for "a Member State". Which Member State?

⁵ Most FESE Members agree that substituting "free float" with market capitalisation would require an adapted threshold value. One Member however would prefer to see the threshold of EUR 1 billion applied to market capitalisation.

⁶ We invite CESR again to consider taking account of shorter trading sessions on smaller European markets by defining this criterion as "xx trades per hour of trading".

Content of pre-trade transparency for RMs and MTFs

32. We appreciate CESR's efforts to move away from an exhaustive list of possible market models. Only making this list open by adding general requirements for other types and combinations of market models serves the purpose of leaving markets operators sufficient flexibility and of providing for innovation and evolution in trading methods and trading practices.
33. We congratulate CESR for its decision to propose publication of five lines of bid and offer levels. Furthermore, we find it highly appropriate that CESR recognises the importance and functionality of periodic auction systems by amending its related transparency proposal along the lines of our suggestion, namely to accept an indicative theoretical equilibrium price and an indicative auction volume as appropriate disclosure.
34. We further welcome the clarification by CESR that market operators shall be free to differentiate (beyond minimum transparency standards) their provision of information along commercial lines.
35. Several FESE Members still oppose the complete and unconditional waiver for crossing systems and we refer to the individual submissions by these Members.
36. For our arguments relating to CESR's proposal that for quote-driven market maker systems the market operator should publish a "montage", we refer CESR to the comments made by the representative of the London Stock Exchange at CESR's hearing.
37. The mention of the features of the trading system (fair and orderly trading, investor protection) in par. 78(a) seems superfluous since providing fair and orderly trading is contained in the requirements for trading rules under Art. 39(d) MiFID.
38. FESE Members are divided in their judgement on the exemption from pre-trade transparency for negotiated trades on a Regulated Market or an MTF. A large majority of our Members, however, support such an exemption, some of them strongly. We refer CESR to the arguments brought forward in individual submissions from both sides.
39. This being said, we see nevertheless the need for some clarification in the wording of the exemption (par. 84). It is particularly important to specify that a transaction and its price should be measured against "the current spread"⁷ for a transaction in the respective size of the transaction. For a larger order this means taking into account, for example, deeper levels of the order book in order to arrive at the correct "reference price" for an order of such size on the RM or the MTF.
40. The inclusion of a reference in par. 84 and 85 to the trading rules of the RM or the MTF which are in any case subject to oversight by the competent authority is important and finds our full support.

Updates and withdrawals

⁷ One FESE Member suggests that CESR may reconsider whether negotiated trades exactly at the current spread should be exempted or only orders within the spread (the spread being defined as argued above).

41. We appreciate that CESR refers to Regulated Markets' rules on the (update and) withdrawal of quotes of designated market makers on a RM (and an MTF); we wonder, however, about the legal basis on level I of the advice in par. 79 and 80.
42. We regret to see the elimination of the sentence *"Therefore, an internaliser should be able to update its quotes as often as it is able to justify the change."* (formerly at the end of par. 4 of Box 17 in CESR's doc. 04-562). We strongly suggest to CESR to reintroduce wording to this effect in its advice, either by adding this sentence again or by repeating the consideration in par. 67 in the body text of the advice:

"A firm should not update its quotes in a capricious or discriminatory manner."

43. In general, we observe that CESR's advice includes the heading "Withdrawal and updating of quotes" but that the subsequent text (only par. 99) contains nothing on updates at all.
44. In substance, we reiterate our position on the withdrawal of quotes by internalisers in exceptional circumstances:

Level playing field considerations require permitting an internaliser to stop quoting in exceptional circumstances. Apart from circumstances that are shared by all execution venues, there are circumstances conceivable that lie only in the sphere of the internaliser (market-related as well as technical problems).
In the other direction, we would argue for an automatism, namely that internalisers are obliged to stop quoting whenever trading is suspended on any Regulated Market that has admitted the share in question to trading.

45. In this context, we would like to clarify that the second paragraph in the box is meant to relate to suspensions for a significant regulatory reason (not for technical ones), e.g. called for by regulators in accordance with Art. 12(2)(f) of the Market Abuse Directive.

Standard Market Size (SMS)

46. FESE and its Members basically agree with the proposal by CESR relating to the creation, the "filling" and the review of classes for SMS.
47. We concur with CESR that choosing the mid-point of any class as the SMS for all shares in this class is a practicable approach that should to a reasonable extent fulfil the expectations of the level I text.
48. For the lowest class, however, we would propose a slightly different treatment. The average order values for the shares in this class will not (contrary to the fair assumption relating to other classes) be equally distributed in the class. There will not be shares with order values close to 0 and shares will be more concentrated in the upper part of the EUR 0-10,000 range. We suggest therefore establishing the SMS for the bottom class at EUR 6,000 or 7,000. Alternatively, CESR could consider merging the two bottom classes (i.e. establishing the lowest class at EUR 0-20,000 with the SMS value at, say, EUR 12,500).
49. For the treatment of newly admitted shares, we fully endorse CESR's proposal of provisional allocation to a class on the basis of peer stocks. In the wording of par. 95, the definition of the

competent authority responsible for this allocation should be brought in line with the terminology used elsewhere in level I and II texts (e.g. in the context of Art. 25).

50. It should be specified by CESR that **the two weeks' warning period mentioned in par. 62 and included in advice par. 96 does not apply to the case of par. 95 (new stocks).**

Display of client limit orders

51. As expressed previously, we welcome CESR's commitment to a strict application of the "visibility and accessibility test" for all arrangements outside a RM (or MTF) that are used by investment firms to display their unexecuted client limit orders.
52. We feel in general that the respective level II provisions should be strict and truly challenging and regret in this context that the reference to the best execution principle (formerly in par. 4 in Box 13 of document 04-562) is not any more part of CESR's advice, but has been "relegated" to par. 124 of the explanatory text.
53. For the same reason, we propose to rephrase par. 128 of the advice into:
"Where there is no RM/MTF to where to transmit the limit order, the investment firm may comply with the obligation ..."
54. We welcome the clarification by CESR that the arrangements used by a firm to display limit orders should be described in its execution policy.
55. As a technical comment, we suggest a further change in the text of par. 126: Accessibility and visibility should not only be requested vis-à-vis "other market participants", but vis-à-vis "the broader market".

Post-trade transparency requirements

56. FESE has already in its earlier response supported most parts of CESR's proposals in this area. We are pleased to see now that more of our suggestions have been taken aboard in the new draft, notably the one on aggregated information on trades in the same share at the same time and price, and the abolishment of end-of-day calculation of average prices etc. by Regulated Markets and MTFs.
57. With regard to the provisions aiming at avoiding double counting of trades, we understand that CESR feels the need to clarify the situation for off-exchange trades (the seller reports, unless only the buyer is within the EU). We see no need, however, to interfere with transaction reporting rules and arrangements that Regulated Markets themselves have in place, as long as these arrangements provide for exactly the same result, namely the avoidance of double reporting.
58. We note that CESR, despite its careful efforts to avoid double reporting, does still not address the problem of multiple reporting in the case that a CCP is included in the transaction chain and is obliged to report transactions itself.
59. For par. 141, we would suggest a change in wording:

"In case of transactions that were subject to other conditions than the current market price of the share, post-trade information need not be published unless the transaction entails information ..."

Such a change would in this context help to avoid discussions whether trades that were done outside an Exchange order book but still “on the exchange” (e.g. for reporting purposes) should be able to benefit from the exemption.

Exemptions for large trades

60. After the informal consultation meeting with industry participants, many of our Members are disappointed about the outcome of CESR’s deliberations, especially on pre-trade transparency waivers. They argue that the classification of all shares in no more than four classes (compared with potentially dozens in SMS determination) is too crude and fails to provide a useful result. If the classification approach is chosen at all, we suggest a larger number of classes.
61. In addition, we argue that the “single point per class” approach does not work here (contrary to the SMS approach). This becomes particularly manifest in the “lower mid liquidity class” where the envisaged threshold of EUR 250,000 may equal anything between 1 and 25 per cent of daily turnover. For a share with a daily turnover of EUR 250,000, this would lead to a pre-trade threshold of EUR 250,000 and a post-trade threshold of EUR 125,000. This is totally in contrast with the tenor of the discussions with CESR where it emerged as a broad consensus that useful pre-trade thresholds should be lower than those for post-trade.
62. Likewise, we do not believe that CESR’s proposal for calculating the post-trade deferral thresholds is very useful. Some of our Members argue that here, too, a larger number of classes, probably eight or ten, would be more useful. We acknowledge the necessity of a ceiling in column 1 (high-liquidity shares), but we think that the ceilings in columns 2 and 3 only add to complexity without bringing much benefit.
63. With regard to the floor value of EUR 1 million for two-day deferral for trades in less liquid shares (third column, bottom box), we think that this figure is too high in the case of truly small shares and could be highly damaging to the functioning of any market in such shares.
64. We do indeed see a case for leaving the transparency arrangements for illiquid shares to the discretion of national authorities – which is suggested as a possible alternative by CESR. These securities are generally only traded by domestic investors; overly onerous requirements that have been set on a European level without sensitivity to local market practices could be extremely damaging to the provision of liquidity in small-cap securities.
65. In par. 175 and 176, we see the need for improvement in the wording of CESR’s advice. We have so far not understood the term “most relevant market in terms of liquidity” as a reference to a country or a market in a “geographical” sense, but rather as a “market” as a term for all possible venues. If this understanding is correct, the reference by CESR to “Member States which are the relevant market ...” should be reviewed. We would assume that in no case a “Member State” could be “a market”.
66. In addition, we are surprised by the sudden reference in par. 176 to “shares admitted to trading on a Regulated Market”. According to the level I text, all transparency requirements relate exclusively to shares admitted to trading on a Regulated Market; the reference is therefore redundant.

Publication of transparency information

67. We share CESR's concern about the quality of the publication if investment firms publish their pre- and post-trade information solely on their own websites. The approach chosen by CESR, namely to introduce general conditions that must be met by any publication mechanism chosen by a RM, an MTF, or an investment firm, finds our approval.
68. We also endorse CESR's clarification that post-trade disclosure has in principle to happen as close to real time as possible. The time limit of three minutes included by CESR in its advice in par. 195 should indeed in no case be seen as a permitted mini-deferral if respective IT solutions allow for earlier publication.
69. We tend to share CESR's view expressed in par. 181 that truly "incidental" night or weekend trades should in any case be reported before the opening "of the market" on the following trading day. Knowledge about these trades regularly constitutes an element of information needed by market participants before the start of the trading session.
70. It is however not clear in the proposal what CESR understands under "the relevant market". The importance of a clarification of this definition is especially visible in the case of incidental trades during the night or on the weekend before a non-trading day in a certain market (on which non-trading day the respective security might very well be traded on RMs, in MTFs and/or by investment firms in the same or in other jurisdictions).

The particular problems of any absolute threshold for “liquid shares” for small markets

101. We would like to come back to the discussion (also prominently held at CESR’s Open Hearing in Pairs on 24th March) whether CESR should propose a possibility for national competent authorities to “declare liquid” (for the purpose of Art. 27) a certain limited number of shares in their market, even if these shares do not fulfil the criteria set on a European level.
102. We recall that the purpose of the relevant passages of the MiFID is
- helping to integrate separate/fragmented liquidity pools;
 - taking into account the risks to be borne by systematic internalisers; AND
 - creating a level playing field between execution venues, notably between internalisers and RMs/MTFs.
103. We argue that – if the third purpose is respected – this does indeed justify a “regional” approach. Contrary to the arguments brought forward by the investment banking side at the CESR hearing (notably by the representative of Goldman Sachs), the competition in execution for shares in small European markets is usually not one between Goldman Sachs and the local Exchange but rather between the Exchange and its local (internalising) Members. It is this competitive situation that warrants in our view a national discussion process between the regulator, the local market operators (and MTFs) and the local community to arrive at solutions that do effectively provide a level playing field also for Exchanges in smaller markets.⁸
104. Furthermore, we argue that a large investment bank operating on a pan-European basis and possibly acting as an internaliser in many markets would not be disadvantaged (or put on an unequal footing) if a number of shares in a small market were declared “liquid” without fulfilling the pan-European criteria. The obligation to publish quotes when systematically internalising trades in such shares would equally apply to all participants in this market.
105. After all, the decision to be an internaliser in shares in a small market is a voluntary one (based on a risk/benefit assessment) for any investment firm, whether large or small, whether domestic or foreign. Should the local competent authority, in consultation with market participants and market operators, come to the conclusion that its market its participants are better served if no share is artificially declared liquid, the competent authority would probably refrain from such action.
106. We are aware that all numeric concepts to arrive at a solution that addresses the problem may run into political difficulties, but we invite CESR (and later in the legislative process the European Commission) to use the data they have available to come to practicable results. The respective legal provisions could include the following elements:
- Where the calculation according to par. 22 leads to the designation of shares as liquid (for the purpose of Art. 27) in which together less than xx [50] per cent of [average daily] turnover on the

⁸ The comment made at the CESR hearing that “the top 50 European stocks are probably concentrated in a few markets” is absolutely true and reveals perfectly the need for appropriate steps in order to address the situation of Exchanges in small EU Member States.

market is done, the relevant competent authority may declare shares as liquid (for the purpose of Art. 27) even if they do not fulfil the criteria of par. 22.

- The maximum number of such shares shall not exceed xx per competent authority. OR
- The maximum number shall not exceed xx per cent of the number of companies for which the competent authority is the relevant competent authority. OR
- The competent authority may declare those shares as liquid ... that together account for the top xx per cent of average daily turnover

(We are aware that these texts require extensive legal refining).

107. As a cursory overview which claims neither to be complete nor completely accurate, we would like to cite from the responses to a short survey that we made among our smaller Members:

Malta SE

Further to your enquiry earlier today, the answer from the Malta Stock Exchange is "**NONE**".

Ljubljana SE:

Free float more than Euro 1 billion: 1 company

(the second has € 500 mio) (the criteria for free float is 15%);

The daily average number of transactions in a share is more than 500: No Company

(the most liquid has 60)

The average daily turnover in a share is more than 2 million euro: No Company

(the most liquid has 0,5 million € including blocks)

"This issue is very important for the smaller exchanges. We think that this one quantitative criteria is not appropriate for all markets and so this criteria should be relative regarding the size of particular market."

Cyprus SE

The free float of the share is at least 1 billion euro: 1 Company.

The daily average number of transactions in a share is more than 500: No Company.

The average daily turnover in a share is more than 2 million euro: No Company.

"This issue is quite important for the Cyprus Stock Exchange. It seems that the CESR's benchmark points are too high for "smaller" Exchanges."

Iceland SE

Free float more than Euro 1 billion: 2 companies

The daily average number of transactions in a share is more than 500: No Company

The average daily turnover in a share is more than 2 million euro:

6 companies if both on-exchange and reported trading (off-exchange trading) is calculated but 1 if only manual trading (on-exchange trading) is taken into consideration.

"This issue is important for the smaller exchanges so I hope you get your point through at the hearing."

Prague SE

Free float more than Euro 1 billion: 4 companies

Of these:

The daily average number of transactions in a share is more than 500: No Company

The average daily turnover in a share is more than 2 million euro: 4 companies (quote+order driven systems)

"I hope CESR can find more realistic criteria fitting also to smaller stock exchanges."

Warsaw SE

Free float more than Euro 1 billion: 4 companies

The daily average number of transactions in a share is more than 500: 9

The average daily turnover in a share is more than 2 million euro: 7 companies

Vienna SE

Free float more than Euro 1 billion: 9 companies (out of 120)

The daily average number of transactions in a share is more than 500: No Company

The average daily turnover in a share is more than 2 million euro: 8 companies

Irish SE

"Approx. 10 securities would meet this criterion – this definition is far too narrow and would have a detrimental impact on the SME sector."

Oslo SE

13 shares have a free float of more than 1 bill Euro,

Only one or two of them have more than 500 trades pr day,

All or almost all of them have an average daily turnover of more than 2 mill EUR.