

To  
Committee of European Securities Regulators

## **NSA response regarding the CESR consultation on the MiFID review for equity markets**

The Nordic Securities Association (NSA) represents the common interests of member firms in the Nordic securities dealers associations towards external stakeholders primarily in the Nordic market but also on European and international issues of common interest. Members of the NSA are the Danish Securities Dealers Association, the Finnish Federation of Financial Services, the Norwegian Securities Dealers Association and the Swedish Securities Dealers Association.

The NSA welcomes the opportunity to comment on CESR's consultation paper on CESR Technical Advice to the European Commission in the context of the MiFID review – Equity Markets.

In general, the NSA supports the response from the European Banking Federation (EBF). However, the NSA finds that there are some significant issues which need to be addressed more specifically in order to ensure the continued development of well functioning, (Nordic) equity markets.

### **General remarks**

As we have all observed, the introduction of MiFID has significantly changed the trading landscape across Europe due to the competitive environment. The competition is good, but challenging: The increased numbers of trading venues have caused an aggressive competition on attracting liquidity and volume, and we have seen adverse consequences:

- Tick size competition leads to reduced volume and market liquidity implying increased market impact.
- Low tick sizes combined with Round Lot down to 1 share imply increased volatility and increased costs.
- Increased use of High Frequency (HF) orders due to low tick sizes and lot sizes challenges the it-capacity overall. HF order are very small in size (often 1 share) and very substantial in numbers. One of the strategies is to test the markets for buyers or sellers. Due to the small sizes – the "testing risk" is very small (the price for a "wrong test result" is low). Another strategy is to exploit beneficial fee structures (maker-taker) implying no genuine trading interest. A substantial part of HFT is done by so-called unregulated firm, which either trade directly on the venue or via Sponsored Access.

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Bullet 1 – 3 above implies complications to execute larger orders in the lit market and forces increased use of dark pools and crossing networks. Although the use of dark pools and crossing networks might not seem substantial at this point in time, we believe there is a significant risk of new, less lit execution facilities.

In order to ensure a level playing field between European market participants in the competitive environment, we believe there is a need to map the differences between Crossing Networks, Dark Pools and Systematic Internalisers (SIs) in order to ensure that the same rules apply to the same business model. In this respect, we find that the definition of Crossing Network (footnote 21) seems too broad. Specifically, client orders executed against own account orders should not be captured as this rather constitutes systematic internalisation. In short:

- SI trading is on own account, rather than between several counterparties as on crossing networks.
- SI deals are frequent and systematic. Crossing Network deals discretionary – i.e. when receiving a client order, broker dealers act as intermediaries and determine how, when and where to execute orders. This might e.g. include splitting up an order and executing it partly through a crossing system, and partly on a regulated market.

In case a broker-dealer acts as a market-maker, enter own orders into its crossing network or in any other way influence the price formation process – also before an (unfilled/partly filled) order is transmitted e.g. to a regulated market, this constitutes systematic internalisation. Moreover, in case external market-makers are invited as market-makers in the Crossing Network, the Crossing Network acts as a MTF and should be regulated as such. This would also be valid when:

- The amount of client business that is executed by Crossings Networks exceeds a certain limit and
- Linkages with other investment firms' Crossing Networks reaches a certain threshold.

Moreover, we believe there is a need to investigate whether Crossing Networks have a preferential position in respect of transparency requirements compared to SIs and MTFs in general. If this is the case, we believe there is a need to look into whether the regulation of Crossing Network is fair compared to SIs and MTFs both in order to secure a level playing field and in order to secure transparency.

### **Question 3**

The present rules mean that the shares with the lowest ADT have the highest threshold for LIS with 10 pct. of the ADT compared with the most liquid shares, where the threshold is 1 pct. of the ADT. We propose a more harmonized LIS for instance 5 pct. of the ADT.

**Question 6**

CESR states in section 37 that the reasoning for the waiver is "...no longer primarily due to the concern that the publication of orders, especially in the less liquid shares for which the systems were most frequently used, would increase the incentive to manipulate the continuous market before the reference price was fixed". Therefore, we believe that the waiver should be revoked, since the market has a clear interest in the part of the pre-trade information concerning the volume even if the price of the order is a reference price and as such a passive price that does not influence the price formation. Moreover, we agree in the concerns expressed in section 38 that a reference price system are being used to execute small orders in the dark and this is inconsistent with the general intention of the waivers to provide protection against market impact.

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Alternatively, in case CESR nevertheless decides to pursue the proposal to maintain the reference price waiver, it should only be used when absolutely needed and is a clear case of enforcement to ensure appropriate use.

Furthermore, NSA proposes to add a general rule where an order should always be lit if it is lower than e.g. 1/10 of LIS. This rule should be applicable to reference price systems, dark pools, crossing networks, iceberg orders and therefore also in connection with the "stub discussion" in Question 5.

**Question 19**

The NSA does not support this proposal. Reporting within one minute for manually handled trades is simply not feasible and the NSA questions the added value of this change.

**Question 21**

From a general perspective NSA encourage enforcement in case a systematic use of the possibility to defer publication is observed. Publication must occur as soon as the risk is unwound.

Moreover, a majority of NSA members agree with a reduction in the publication delay. However, in order not to harm LIS trades done close to end of trading day, it could be argued that "end of trading day" is changed to 24 hours in order to accommodate Large in Scale trades, executed close to end of trading day.

**Question 23**

The NSA would particularly point out the risk taking in shares with the two lowest ADT, where the proposed time limits (60 and 120 minutes) are too short to covering the risks. The NSA proposes 180 and 240 minutes.

## **Annex II**

Side 4

### **Question 1**

Yes

### **Question 2**

Yes – the price should be provided in the major currency (e.g. kroner) instead of the minor currency (e.g. ører).

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### **Question 3 and 4**

We believe that these requirements should be subject to proper cost-benefit analysis before being implemented. At this stage, we do not believe this would add any value. Moreover, we believe it would entail substantial cost (mostly due to costly it-changes) and substantial increased operational risk in adding the requested information.

### **Question 5, 6 and 7**

The NSA would welcome a mechanism to identify transactions which are not pre-trade transparent in order to create an overview of the volume of trades done Dark. The NSA has a preference for the second option, i.e. publication on a monthly aggregated basis. Banks believe that trade-by-trade information is not necessary. Aggregated data would provide a better overview.

### **Question 8**

Yes – NSA believes that the unique transaction identifier should be provided by the party with the publication obligation.

### **Question 9 and 10**

No. We do not see any value in this requirement and in case CESR nevertheless decides to pursue the proposal, proper cost-benefit analyses should be undertaken. From our perspective, we foresee substantial cost incurred with such requirements, mostly due to costly it-changes and substantial increased operational risk in adding the requested information.

### **Question 11**

At present (as also described by CESR) regulated markets, MTF's and OTC publication arrangements already have indications of whether or not the transaction is a negotiated trade (cf. implementing regulation art. 27 (1) (c)). A harmonised requirement for market participants to indicate negotiated trades would require system changes beyond the added value. Instead CESR should focus on requiring the regulated markets, MTFs and OTC publication arrangements to include this information in their publication in a standardised way.

## **Annex III**

### **Question 1**

Yes.

Kind Regards

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