

EN

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TRANSPARENCY AND ADMISSION TO TRADING

Important note: This document is a working document of the Commission services for discussion and consultation purposes.

It does not purport to represent or pre-judge the formal proposals of the Commission.

Proposed Recitals

1. A negotiated transaction is a trade where:

- one member or participant deals with another member or participant, where both are executing orders on own account;
- one member or participant acts for the account of both the buyer and seller;
- one member or participant acts for the account of the buyer and another member or participant acts for the account of the seller; or
- one member or participant trades for own account against a client order.

1a. For the purposes of Articles 25(3), 28, 30, and 45 of the Directive, the following should not be considered to be sales, where done in good faith and not for the purpose of avoiding the obligations arising under those Articles:

- stock lending or lending of other financial instruments;**
- repurchase and reverse repurchase transactions;**
- buy-sell back and sell-buy back transactions;**
- the exercise of options; or**
- primary market transactions such as issuance [and allocations].**

2. Table [1] in [the Annex] contains descriptions of the types of system covered by Articles 3(2) to (4) below and a summary of the information to be made public in accordance with those Articles.

3. Member States shall ~~be free to grant~~ **provide that the competent authorities may authorise** the waivers referred to in Articles 4 and 5 to all MTFs and regulated markets that they authorise under the Directive, or to none. **Competent authorities which authorise** Member States which choose to grant the waivers shall not impose additional requirements.

4. Usually a trading algorithm will seek to maximise the volume traded, but other trading algorithms are possible.

5. In line with Recital 49 of the Directive, systematic internalisers are not able to make use of the waiver from pre-trade transparency obligations contained in Article 4 in respect of those transactions **in liquid shares** which they conclude on a bilateral basis ~~and which do not comply with all the obligations established for~~ **under the rules of** a regulated market or an MTF ~~under the Directive and this [Regulation], even where they are carried out under the rules or by means of the systems of a regulated market or an MTF~~ **where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements set out in Article 27 of the Directive.**

6. A waiver from pre-trade transparency obligations is not required, based either on the market model or size of order, for orders executed through a quote driven system operated by a regulated market or MTF which **requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and**

the risk to which the market maker exposes itself and complies with its obligations to make public information about those quotes, ~~as those orders themselves are not required to be made public, being instantaneously executed against those quotes.~~

7. ~~A volume weighted average price transaction, and Aa~~ transaction related to an individual share in a principal portfolio trade, ~~are both~~ **is an** examples, **for the purposes of Article 4 of this Regulation,** of a transactions subject to conditions other than the current market price.

8. An activity can be considered to have a material commercial role in the business model adopted by a firm if the activity is treated by the firm as a separate or significant source of profit, as a separate or significant source of cost, ~~or as an activity to which separate or significant management resources are dedicated.~~

9. For the purposes of this Regulation a **volume weighted average price** transaction ~~that involves the use of shares for collateral, lending, [options expiry] or primary market placement or allotment~~ should **be** considered to be:

(a) one where the exchange of shares is determined by factors other than the current market valuation of the share; **and**

(b) a transaction subject to conditions other than the current market price.

10. Information to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the firm concerned, and given existing infrastructure ~~external-over which to~~ the firm **does not exercise control.**

11. For the purposes of Article 15, orders executed should be understood as referring to transactions.

11a. The requirements of this [Regulation] in respect of admission to trading on a regulated market should not be understood as requiring adherence to the same standards as the Consolidated Admission Requirements Directive.

12. The admission to trading on a regulated market of units issued by undertakings for collective investment in transferable securities (UCITS) should not allow the circumvention of the relevant provisions of Directive 85/611/EEC, in particular Articles 44 to 48 of that Directive.

13. Calculations of which shares are liquid to be published in 2007~~6~~ and 2008 will be based on total turnover in shares on regulated markets only. In subsequent years, the total turnover within the European Union will be taken into account.

Article 1

Subject-matter and scope

This [Regulation] lays down implementing measures in respect of:

a) criteria for whether an investment firm is a systematic internaliser for the purposes of Article 4(1)7 of the Directive;

- b) pre-trade transparency for regulated markets and MTFs for the purposes of Articles 29 and 44 of the Directive;
- c) pre-trade transparency for systematic internalisers for the purposes of Article 27 of the Directive;
- d) post-trade transparency for regulated markets, MTFs and investment firms for the purposes of Articles 28, 30 and 45 of the Directive;
- e) conditions (for the admission of financial instruments to trading for the purposes of Article 40 of the Directive;
- f) publication of client limit orders for the purposes of Article 22(2) of the Directive;
- g) exchange of information relating to calculations relevant to transparency, based on Article 58 of the Directive; and
- h) record-keeping obligations relating to systematic internalisation, based on Article 13(6) of the Directive.

Article 2

Definitions

For the purposes of this [Regulation], the following definitions shall apply in addition to those provided in Directive 2004/39/EC:

(a) “the Directive” means Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;¹

(b) “the Prospectus Directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;²

(c) “the Transparency Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;³

(ca) “transaction” for the purposes of Articles 25(3), 28, 30, and 45 of the Directive, means the sale of a financial instrument;

(d) “negotiated transaction” means a transaction involving members or participants of a regulated market or an MTF which is negotiated privately but executed within the regulated

¹ OJ L145, 30.4.2004, p.1.; *this definition is already included in the working document ESC/7/2005 on cooperation and enforcement.*

² OJ L 345, 31.12.2003, p.64.

³ OJ L 390, 31.12.2004, p.38.

market or MTF;

(e) “Consolidated Admissions and Requirements and Listing Directive” means Directive 2001/34/EC of the European parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities;

(f) “execution venue” means a regulated market, MTF or systematic internaliser, and (where the context so permits) an equivalent system outside the European Economic Area;

(g) “execution venue identification” means:

(i) for a transaction executed within an execution venue: the identifying code of that venue; and

(ii) for a transaction executed otherwise: the code “OTC”; and

(h) “relevant competent authority” for a share means the competent authority of the Member State which is the most relevant market in terms of liquidity for that share for the purposes of Article 25 of the Directive.

Pre-trade transparency for regulated markets and MTFs

Article 3

Pre-trade transparency obligation

1. For the purpose of Articles 29 and 44 of the Directive, regulated markets, and investment firms or market operators operating an MTF shall, in respect of each share which is admitted to trading on a regulated market and that is traded within their systems, make public at least the information set out in this Article.

2. Regulated markets, and investment firms or market operators operating an MTF which (in each case) operate an continuous auction order book trading system shall, for each such share, make public continuously throughout its trading hours the aggregate number of orders and of the shares they represent at each price level, for at least the five best bid and offer price levels.

3. Regulated markets, and investment firms or market operators operating an MTF which (in each case) operate a quote driven trading system shall, for each such share, make public and continuously update throughout its trading hours two way quotes of each registered market maker in that share. Those quotes should represent binding commitments to buy and sell the shares and indicate the price and volume of shares in which they are prepared to buy or sell, except for a limited time in exceptional market conditions where one-way prices may be allowed.

4. Regulated markets, and investment firms or market operators operating an MTF which (in each case) operate a periodic auction trading system shall, for each such share, make public and continuously update throughout its trading hours the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price by participants in that system.

5. Where regulated markets, and investment firms or market operators operating an MTF operate a trading system which is not covered by paragraphs (2) to (4) above, either because it

is a hybrid system or because the price determination process is of a different nature, they shall maintain a standard of pre-trade transparency that ensures that adequate information as to the level of orders or quotes and of trading interest in that share at any particular time is made publicly available.

In particular, the five best bid and offer levels and/or two-way quotes of each market maker in that share should be made public, if the characteristics of the price discovery mechanism so permit.

Article 4

Waivers based on market model and type of order or transaction

1. For the purposes of the application of Articles 29(2) and 44(2) of the Directive, competent authorities may waive the requirement to comply with the obligations mentioned in those articles for:

a) systems, to the extent they are based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;

b) systems, to the extent that they formalise negotiated transactions, provided that:

i) any such transaction is made at or within the **current volume** weighted spread for the size of the trade reflected on the order book or the quotes of the market makers of the regulated market or MTF operating in that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator; or

ii) any such transaction is subject to conditions as to price other than the current market price of the share; and

iii) in either case, the other conditions specified in the rules of the regulated market or MTF for a transaction of this kind have been fulfilled.

2. For the purposes of the application of articles 29(2) and 44(2) of the Directive, competent authorities may waive the requirement to comply with the obligations mentioned in those Articles in relation to orders held in an order management facility maintained by the regulated market or the MTF pending their being disclosed to the market. Competent authorities may not, in relation to orders, otherwise waive the requirement.

Article 5

Waivers in relation to transactions which are large in scale

For the purposes of Articles 29(2) and 44(2), and of the fifth sub-paragraph of Article 27(1), of the Directive, an order will be considered as large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table [2] in [the Annex]. For the purpose of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 15.

Pre-trade transparency for systematic internalisers

Article 6

Criteria for whether an investment firm is a systematic internaliser

1. For the purposes of Article 4(1)(7) of the Directive, where an investment firm deals on own account by executing client orders outside a regulated market or an MTF, it shall be considered as carrying on this activity on an organised, frequent and systematic basis if:

- (a) the activity has a material commercial role in the business model adopted by the firm, and is carried on in accordance with non-discretionary rules and procedures;
- (b) the activity is carried on by personnel, or by means of an automated technical system, assigned to that purpose (whether or not those personnel or that system are used exclusively for that the purpose);
- (c) the activity is available to clients on a regular and continuous basis.

2. An investment firm will cease to be a systematic internaliser in one or more shares if it ceases carrying on the activity mentioned in paragraph (1) in respect of those shares, provided that it has announced in advance that it intends to cease that activity using the same publication channels for that announcement as it uses to publish its quotes or, where that is not possible, using a channel which is equally accessible to its clients and other market participants.

3. **The activity of dealing on own account by executing client orders will not be constituted by transactions is not to be considered as being carried out on an organized, frequent and systematic basis to be covered by paragraph 1 if:**

- (a) it is carried out on an OTC basis, the characteristics of which include that the transactions are ad-hoc and irregular and are carried out with wholesale counterparties and are part of a business relationship which is itself characterised by dealings above standard market size; and
- (b) where the investment firm concerned is a systematic internaliser, the transactions are carried out outside the systems usually used by the firm concerned for its business as a systematic internaliser.

Article 7

Liquid shares

1. For the purposes of Article 27 of the Directive, and of this [Regulation], shares admitted to trading on a regulated market shall be considered to have a liquid market if:

[Option 1:

- (a) the shares are traded daily and the free float of any shares is equal to or higher than €500 million;
- (b) the average daily number of transactions in the share is equal to or higher than 500; and

(c) the average daily turnover for the share is equal to or higher than €2 million.]

[Option 2:

the shares are among the most liquid shares representing 40 per cent of the total cumulative annual turnover of shares admitted to trading on regulated markets in the European Union.]

[Option 3:

(a) the shares are traded daily and the free float of any share is equal to or higher than €500 million; and

(b) one of the following criteria applies:

(i) the average daily number of transactions in the share is equal to or higher than 500; or

(ii) the average daily turnover for the share is equal to or higher than €2 million.]

2. For the purposes of this Article, the calculation of the free float of a share made on or after 20th January 2007 shall exclude holdings exceeding 5% of the total voting rights of the issuer, unless such a holding is held by a collective investment undertaking or a pension fund, and those voting rights shall be calculated on the basis set out in the Transparency Directive.

The calculation of the free float of a share made before 20th January 2007 may be made using, as a proxy, an index based on a market of the European Union that is widely accepted and used by market participants.

3. A share will not be considered to be liquid for the purposes of Article 27 until six weeks after it is first admitted to trading on any regulated market, if the estimate made by the relevant competent authority for that share of the total market capitalisation at the start of the first days' trading after admission is €500 million or less.

Article 8

Standard market size

For the purposes of the fourth sub-paragraph of Article 27(1) of the Directive, and in order to determine the standard market size for shares that are considered to have a liquid market under Article 7, those shares shall be grouped into classes in terms of the average value of orders executed in accordance with Table [3] in [the Annex].

Article 9

Quotes reflecting prevailing market conditions

In order to comply with its obligations under Article 27(1) of the Directive to publish quotes which reflect the prevailing market conditions for shares, a systematic internaliser shall, for each share for which it is a systematic internaliser, maintain:

(a) a quote or quotes which are close in price to comparable quotes for the same share in other relevant markets; and

(b) a record of its quoted prices, which it shall retain for a period of 12 months or, in its discretion, longer. This obligation shall be without prejudice to the obligation of the

investment firm to keep at the disposal of the competent authority for at least five years the relevant data relating to all transactions it has carried out, under Article 25(2) of the Directive.

Article 10

Execution of orders by systematic internalisers

1. For the purposes of the fifth sub-paragraph of Article 27(3) of the Directive:
 - (a) execution in several securities is part of one transaction if that one transaction involves 10 or more securities grouped and traded as a single lot against a specific reference price;
 - (b) an order subject to conditions other than the current market price means any order which is not an order for the execution of a transaction in shares at the prevailing market price (market order) or a limit order.
2. For the purposes of Article 27(6) of the Directive, the number or volume of orders considerably exceeds the norm if a systematic internaliser cannot execute those orders without exposing itself to undue risk.

In order to identify the number and volume of orders that it can execute without exposing itself to undue risk, an investment firm which acts in the capacity of a systematic internaliser shall maintain and implement as part of its risk management policy under Article [5] of [ESC/17/2005] a non-discriminatory policy which takes into account the volume of the transactions, the capital that the firm has available to cover the risk for that type of trade and the prevailing conditions in the market in which the firm is operating.

An investment firm will document the arrangements which ensure non-discriminatory treatment of clients when, in accordance with Article 27 (6) of the Directive, it decides to limit the number and/or volume of orders it will execute. These arrangements shall be set out in writing and made available to clients and potential clients.

Article 11

Retail size

For the purposes of the fourth sub-paragraph of Article 27(3) of the Directive, an order is of a size bigger than the size customarily undertaken by a retail investor if it exceeds [€7,500-~~€5,000~~].

Post-trade transparency for regulated markets, MTFs and investment firms

Article 12

Post-trade transparency obligation

1. For the purposes of Articles 28, 30 and 45 of the Directive, investment firms, regulated markets, and investment firms and market operators operating an MTF shall make public the details of the transactions in respect of shares admitted to trading on regulated markets concluded by them or within their systems. ~~These transactions shall include sales.~~
2. The information shall be made public either by reference to each transaction or in a

form aggregating the volume and price of all transactions in the same share taking place at the same time. It shall include the following information items (as defined in Annex A of [ESC Working Document 7/2005]):

- a) execution venue identification;
- b) instrument identification;
- c) trading day;
- d) trading time;
- e) quantity;
- f) price per share, ~~unless;~~

~~i) the transaction is one where the exchange of shares is determined by factors other than the current market valuation of the share; and~~

~~ii) there is no price per share calculated or attributed to that transaction;~~

[g) an indication that the ~~the~~ exchange of shares is determined by factors other than the current market valuation of the share, where applicable;]

h) indication that the trade was a negotiated trade, if applicable; and

i) any amendments to previously disclosed information, where applicable.

3. Where the transaction is executed outside the rules of a regulated market or an MTF, the information shall be **arranged to be** made public by such person (**being an investment firm**) as is agreed by the parties or failing agreement by **the first-mentioned person in the following list:**

(a) the investment firm (if any) that sells the share concerned;

(b) the investment firm (if any) that acts on behalf of or arranges the transaction for the seller;

(c) the investment firm (if any) that acts on behalf of or arranges the transaction for the buyer;

(d) the investment firm (if any) that buys the share concerned.

~~or on behalf of the buyer.~~ The parties shall take all reasonable steps to ensure that the transaction is **reported made public only once as a single transaction**; for these purposes **a two matching matched-principal trade trades entered at the same time with a single party interposed** shall be considered a single transaction:

Article 13

Deferred publication of large transactions

~~1.~~ Notwithstanding Articles 12 and 14(2), investment firms regulated markets, or market operators or investment firms operating an MTF, required to make information in respect of a

transaction public in accordance with Article 12, may defer that publication in their discretion for no longer than the period specified in Table [4] in [the Annex] for that class of share and transaction, where

the transaction is between an investment firm dealing on own account and a client of that firm, and the size of that transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table [4] in [the Annex].

For the purposes of determining the relevant minimum qualifying size all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover **expressed in number of shares** to be calculated in accordance with Article 15.

~~2. Publication of information relating to a transaction of a kind mentioned in Article 10(1)(a) may only be deferred if at least one constituent of that transaction qualifies for delayed publication, in which case the longest delay shall apply in relation to all the executions which are part of a single transaction in accordance with Article 10(1).~~

Provisions common to pre- and post-trade transparency

Article 14

Publication and availability of data

1. For the purposes of the first sub-paragraph (in each case) of Articles 27(3), 29(1) and 44(1) of the Directive, pre-trade information will be considered to be published on a continuous basis during normal trading hours if it is published as soon as it becomes available during the trading hours of the regulated market, MTF or systematic internaliser, and remains available until it is updated. A regulated market, MTF or systematic internaliser shall establish in advance and make public the trading hours of its systems.

2. Pre-trade and post-trade information shall be made available as close to real time as possible. Information as to a transaction of a kind mentioned in Article 10(1)(a) shall be made available with respect to each constituent transaction as soon as possible, having regard to the need to allocate prices to particular shares.

3. Post-trade information referring to transactions taking place outside normal trading hours as established in paragraph 1 shall be made public before the opening of the next trading day of the execution venue on which the transaction took place. For transactions that take place outside a regulated market or MTF, post-trade information shall be made public before the opening of the next business day in the most relevant market in terms of liquidity for that share for the purposes of Article 25 of the Directive.

4. For the purposes of Articles 27, 28, 29, 30, 44 and 45 of the Directive, pre- and post-trade information will be considered to have been made public or available to the public if it is made available:

- (a) through the facilities of a regulated market which has admitted the share to trading or an MTF where the share is traded;
- (b) through the offices of a third party; or
- (c) through proprietary arrangements.

5. An investment firm shall be deemed to have met its obligations under Article 22(2) of

the Directive to disclose client limit orders that are not immediately executable if it transmits the order to a regulated market or MTF that operates an ~~continuous-auction~~ order book trading system ~~or a periodic-auction-order book trading system~~.

Where an investment firm does not transmit the limit order to a regulated market or MTF in accordance with the preceding sub-paragraph, in order to meet its obligations under Article 22(2) of the Directive it shall ensure that the order is made public and can be easily executed once market conditions allow.

6. Any arrangement adopted for the purposes of paragraphs 4 and 5 above shall:
 - (a) include all reasonable steps necessary to secure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
 - (b) facilitate the consolidation of the data with similar data from other sources;
 - (c) make the information available to the public on a reasonable and non-discriminatory commercial basis; and
 - (d) comply with the requirements of this [Regulation].

Article 15

Required calculations and estimates⁴

1. In respect of each share that is admitted to trading on a regulated market, the relevant competent authority for that share shall arrange for the following calculations to be made annually in respect of that share:

- a) for the purposes of Articles 5, 7, ~~11~~ and 13, the average daily turnover **[as well as its equivalence in terms of number of shares]**;
- b) the average daily number of transactions executed in the preceding 12 month period;
- c) for those shares which satisfy Article **[7(1)(b) and (c)]**, the free float as at 31st of December; and
- d) for the purposes of Article **8 and 11**, if the share is considered to have a liquid market in accordance with Article 7, the average value of the orders executed.

2. The calculation of the average daily turnover, average value of the orders executed and average daily number of transactions shall take into account all the orders executed in the European Union in respect of the share in question between the 1st of January and the 31st of December of the preceding year, or, where applicable, that part of the year during which the share was admitted to trading on a regulated market and was not suspended from trading on a regulated market.

3. In the calculations of the average daily turnover, average value of the orders executed and average daily number of transactions of a share, non-business days in the Member State

⁴ Depending on which option is chosen under Article 7, the drafting of this Article may need to be revised. The current drafting is based on option 1.

of the competent authority making the calculation shall be excluded.

4. When a share is first admitted to trading on a regulated market, the relevant competent authority for that share shall:

a) prior to that admission, estimate the average daily turnover, the average value of the orders executed, the free float and the average number of transactions for the **six-week period following its admission to trading** ~~remainder of the calendar year~~, as well as the market capitalisation as it will stand immediately prior to the first day of trading. These estimates shall take account of any previous trading history of the share, as well as that of shares that are considered to have similar characteristics; and

b) subsequent to that admission calculate the average daily turnover, the average value of the orders executed, the free float and the average number of transactions ~~[for the remainder of the calendar year]~~, using data relating to the first month's trading, as soon as practicable after those data are available to it, and in any case before the end of the six-week period mentioned in Article 7(3).

5. During the course of a calendar year, competent authorities shall arrange for the review and where necessary the recalculation of the average daily turnover, average value of the orders executed, average number of transactions executed and the free float of a share whenever there is a change in relation to the share or the issuer which significantly affects the previous calculations on an ongoing basis.

Article 16

Publication and effect of results of required calculations

1. On the first business day of March of each year, the competent authority shall, in relation to each share for which it is the relevant competent authority, arrange for the publication of:

a. the average daily turnover, **[the average daily turnover expressed in number of shares]** free float as at 31st December, **and** average number of transactions executed ~~and relative percentage of turnover~~, where calculated in accordance with Article 15 of this [Regulation]; and

b. where there is considered to be a liquid market in that share for the purposes of Article 27 of the Directive, the average value of the orders executed, as calculated in accordance with Article 15 of this Regulation.

2. In a case where Article 15(4) or 15(5) applies, the publication of the results of a required calculation or estimate shall take place as soon as practicable after the calculation or estimate is completed.

3. For the purposes of Articles 5, 7, 8 and 13:

a) the classification based on the publication referred to in paragraph 1 shall apply for the 12 month period starting from the 1st of April following publication and ending on the following 31st March; and

b) the classification based on the estimates in Article 15(4)(a) shall apply from the relevant admission to trading until the end of the six-week period mentioned in Article 7(3);

and

c) the classification based on the calculations in Article 15(4)(b) shall apply from the end of the six-week period mentioned in Article 7(3) and (unless subsequently recalculated) until the following 31st March.

4. In addition to the publication arranged by each competent authority in accordance with paragraph 1, the Committee of European Securities Regulators shall, where ~~it~~**the Committee** is not the person publishing the information, link to the information on its website.

Admission of financial instruments to trading

Article 17

Transferable securities

1. Transferable securities shall be considered freely negotiable for the purpose of Article 40(1) of the Directive if:

(a) they can be traded between the parties to a transaction, and subsequently transferred without restriction; and

(b) all securities within the same class as the security in question are capable of being fungible.

2. Shares which may be acquired only subject to approval may be considered as freely negotiable **only** if the use of the approval clause does not disturb the market. Transferable securities that are not fully paid may be considered as freely negotiable if ~~the negotiability of such securities is not restricted and investors have adequate information about the securities arrangements have been made to ensure that the negotiability of such shares is not restricted and that dealing is made open and proper by providing the public with all appropriate information.~~

3. Regulated markets shall have discretion whether to admit shares to trading. ~~Without prejudice to the Consolidated Admission Requirements Directive, f~~For the purposes of Article 40(1) of the Directive, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account:

(a) the distribution of those shares to the public; and

(b) such historical information as to the issuer's track record as is required to be prepared ~~by~~**under** the Prospectus Directive, or is or will be otherwise publicly available.

4. A share that has been admitted to and remains on an Official List in accordance with the Consolidated Admission Requirements Directive shall be considered to be capable of being traded in a fair, orderly and efficient manner.

5. For the purposes of Article 40(1) of the Directive, when assessing whether a security defined in Article 4(1)(18)(c) of the Directive (derivative securities) is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether:

(a) the terms of the security are clear and unambiguous and allow for a correlation

between the price of the security and the price or other value measure of the underlying;

- (b) the price or other value measure of the underlying is publicly available;
- (c) there is sufficient information publicly available of a kind needed to value the security;
- (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying ; and
- (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are:
 - i) adequate settlement and delivery procedures for that underlying; and
 - ii) adequate arrangements to obtain relevant information about that underlying.

Article 18

Units in collective investment undertakings

1. In ~~order to~~ **complying** with the obligations under Article 40(1) of the Directive, when admitting units in a collective investment undertaking (whether or not constituted according to Community law) to trading, a regulated market shall satisfy itself that the collective investment undertaking complies or has complied with those registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the regulated market. **Without prejudice to any other community or national law relating to collective investment undertakings, ¶the law of the jurisdiction of the competent authority that has authorised that regulated market under the Directive** may provide that compliance with such requirements is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a regulated market.

2. For the purposes of Article 40(1), when assessing whether units in an open ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account:

- (a) the distribution of those units to the public; and
- (b) whether there are either appropriate market-making arrangements, or the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units; and
- (c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

3. For the purposes of Article 40(1), when assessing whether units in a collective investment undertaking of the closed-end type are capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account:

- (a) the distribution of those units to the public; and
- (b) whether the value of the units can be made sufficiently transparent to investors, either by

publication of information on the fund's investment strategy or by the periodic publication of net asset value.

Article 19

Derivatives

1. In order to comply with the obligations under Article 40(1) and 40(2) of the Directive, when admitting to trading a financial instrument of a kind listed in paragraphs 4 to 10 of Section C of Annex I to the Directive, regulated markets shall take into account whether:

(a) the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is publicly available, unless the conditions fulfilled in paragraph 2 are fulfilled;

(c) there is sufficient information of a kind needed to value the derivative publicly available;

(d) the arrangements for determining the settlement price of the contract are such that the price properly reflects the price or other value measure of the underlying ~~and those arrangements minimise the potential for manipulation or distortion.~~;

(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement:

i. there are adequate arrangements to enable market participants to obtain relevant information about that underlying; and

ii. there are adequate settlement and delivery procedures for the underlying.

2. The conditions in this paragraph are fulfilled where:

(a) a regulated market admits to trading a financial instrument of a kind mentioned in paragraph 5, 6, 7 or 10 of Section C of Annex I to the Directive;

(b) the contract establishing that instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying (that price or value measure not being otherwise publicly available); and

(c)CESR the regulated market ensures that –

i. there are in place appropriate supervisory arrangements to monitor trading and settlement in such financial instruments, and

ii. the contract terms and conditions of those financial instruments can effect proper settlement and delivery, whether physical delivery or by cash settlement.

Final provisions

Article 20

Transitional provisions

1. The calculations mentioned in Article 15 which are to be published before the first business day in March 2008 shall be done on the basis of the data relating to the regulated market or markets of the Member State which is the most relevant market in terms of liquidity for the security in question. For **the reason of lack of comparable data of negotiated transactions among the European markets**~~these purposes~~, negotiated transactions shall be excluded from the calculations.

2. Competent authorities shall publish the data for 2006 on the first business day in January 2007. This data will be applicable from 30 April 2007 and will be based on the reference period 1st October 2005 to 30th September 2006.

Article 21

Revisions

At least every two years, and after consulting the Committee of European Securities Regulators, the Commission shall review the tables included in [the Annex].

Article 22

Entry into force

1. This [Regulation] shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. This [Regulation] shall apply in respect of Article 20 from 1 March 2007 and otherwise from 30 April 2007.

3. This [Regulation] shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Table 1: Information to be made public in accordance with Article 3

Type of system	Description of system	Summary of information to be made public, in accordance with Article 3
continuous auction order book trading system	a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels
periodic auction trading system	a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
quote-driven trading system	a system where transactions are concluded on the basis of quotes that are continuously made available to participants	the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices

Table 2: Orders large in scale compared with normal market size

Class in terms of average daily turnover (ADT)	ADT < €500,000	€500,000 ≤ ADT < €1,000,000	€1,000,000 ≤ ADT < €25,000,000	€25,000,000 ≤ ADT < €50,000,000	ADT ≥ €50,000,000
Minimum size of order qualifying as large in scale compared with normal market size	€50,000	€100,000	€250,000	€400,000	€500,000

Table 3: Standard market sizes

Class in terms of average value of orders executed (AVO)	AVO < €10,000	€10,000 ≤AVO< €20,000	€20,000 ≤AVO< €30,000	€30,000 ≤AVO< €40,000	€40,000 ≤AVO< €50,000	€50,000 ≤AVO< €70,000	€70,000 ≤AVO< €90,000	Etc.
Standard market size	[€65,00 0] {€7,500}	€15,000	€25,000	€35,000	€45,000	€60,000	€80,000	Etc.

Table 4: Deferred publication thresholds and delays⁵ [Marked-up version]

[Option 1]

Minimum qualifying size of transaction for each class of shares in terms of average daily turnover (ADT)				Permitted delay for transaction publication
Illiquid shares		Liquid shares		
ADT < €1,000,000	€1,000,000 ≤ ADT	€12,000,000 ≤ ADT < €50,000,000	ADT ≥ €50,000,000	
Greater of 5% of ADT and €25,000	Lower of 10% of ADT and €3,500,000			3 minutes after unwinding of at least 80% by value of relevant position in share concerned
Greater of 5% of ADT and €25,000		Lower of 10% of ADT and €3,500,000	Lower of 10% of ADT and €7,500,000	60 minutes
Greater of 15% of ADT and €75,000		Lower of 15% of ADT and €5,000,000	Lower of 20% of ADT and €15,000,000	180 minutes
Greater of 25% of ADT and €100,000		Lower of 25% of ADT and €10,000,000	Lower of 30% of ADT and €30,000,000	Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 2 hours of trading)
Greater of 50% of ADT and €100,000		100% of ADT	100% of ADT	Until end of trading day next after trade
Greater of 100% of ADT and €100,000				Until end of second trading day next after trade
Greater of 250% of ADT and €100,000				Until end of fifth trading day next after trade

⁵ Depending on which option is chosen under Article 7, the drafting of this Article may need to be revised. The current drafting is based on option 1.

[Option 2]

Minimum qualifying size of transaction for each class of shares in terms of average daily turnover (ADT)	Permitted delay for transaction publication
Greater of 5% of ADT and €25,000	Ten minutes' delay for each percentage point of ADT

Table 4: Deferred publication thresholds and delays⁶ [Clean version]**[Option 1]**

Minimum qualifying size of transaction for each class of shares in terms of average daily turnover (ADT)			Permitted delay for transaction publication
ADT < €1,000,000	€1,000,000 ≤ ADT < €50,000,000	ADT ≥ €50,000,000	
Greater of 5% of ADT and €25,000	Lower of 10% of ADT and €3,500,000	Lower of 10% of ADT and €7,500,000	60 minutes
Greater of 15% of ADT and €75,000	Lower of 15% of ADT and €5,000,000	Lower of 20% of ADT and €15,000,000	180 minutes
Greater of 25% of ADT and €100,000	Lower of 25% of ADT and €10,000,000	Lower of 30% of ADT and €30,000,000	Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 2 hours of trading)
Greater of 50% of ADT and €100,000	100% of ADT	100% of ADT	Until end of trading day next after trade
Greater of 100% of ADT and €100,000			Until end of second trading day next after trade
Greater of 250% of ADT and €100,000			Until end of fifth trading day next after trade

⁶ Depending on which option is chosen under Article 7, the drafting of this Article may need to be revised. The current drafting is based on option 1.

[Option 2]

Minimum qualifying size of transaction for each class of shares in terms of average daily turnover (ADT)	Permitted delay for transaction publication
Greater of 5% of ADT and €25,000	Ten minutes' delay for each percentage point of ADT