

Valtiovarainministeriö

E-kirjelmä

VM2005-00592

RMO Soini Sirkku

23.8.2005

Eduskunta
Suuri valiokunta

**LUONNOS KOMISSION ASETUKSEKSI RAHOITUSVÄLINEIDEN
MARKKINOISTA ANNETUN DIREKTIIVIN 2004/39/EY 4(1)(7), 22(2), 27, 28, 29, 30,
40, 44, 45, ja 58 artiklojen täytäntöönpanosta**

U/E-tunnus:

EUTORI-numero:

Valtiovarainministeriö lähettää perustuslain 97 §:n 1 momentin perusteella eduskunnalle komission edustajan Euroopan arvopaperikomitealle 13 päivänä kesäkuuta 2005 jakaman komission luonnosasiakirjan Euroopan parlamentin ja neuvoston direktiivin 2004/39/EY 4(1)(7), 22(2), 27, 28, 29, 30, 40, 44, 45 ja 58 artiklojen täytäntöönpanotoimiksi ja luonnoksesta laaditun muistion.

Helsingissä 23 päivänä elokuuta 2005

Toinen valtiovarainministeri

Ulla-Maj Wideroos

Ylitarkastaja

Tuomas Majuri

ASIAKOHTA:

EU; Rahoituspalvelut; Rahoitusvälineiden markkinoista annettu direktiivi; Direktiiviä täydentävät säännökset

KOKOUS:**EUTORI-asian nro:****U/E-tunnus:****KÄSITTELYVAIHE JA LUONNE:**

Komission sisämarkkinat -pääosaston (*DG Internal Market*) luonnos. Luonnos ei ole vielä komission virallinen ehdotus, jonka antamisesta alkaisi rahoitusvälineiden markkinoista annetun direktiivin (2004/39/EY) 64 artiklassa tarkoitettu kolmen (3) kuukauden määräaika säännöksen hyväksymiselle. Komissio antanee virallisen ehdotuksensa lokakuun 31 päivään 2005 mennessä.

Luonnosta on käsitelty kahdessa Euroopan arvopaperikomitean varajäsenten kokouksessa (21.–22.6.2005 ja 13.–14.7.2005).

Komissio on Euroopan arvopaperikomitean kokouksissa ilmoittanut aikomuksestaan antaa lopullinen ehdotus komission asetuksena.

ASIAKIRJAVIIITTEET:

Komission sisämarkkinat – pääosaston Working Document ESC/20/2005: Draft Commission Working Document on pre- and post-trade transparency and admission to trading (saatavana vain englanniksi).

**EU:N OIKEUDEN MUKAINEN OIKEUSPERUSTA /
PÄÄTÖKSENTEKOMENETTELY:**

Rahoitusvälineiden markkinoista annetun direktiivin 4(1)(7), 22(2), 27, 28, 29, 30, 40, 44, 45 ja 58 artikkelit / Neuvoston päätöksen 1999/468/EY 5 ja 7 artiklassa säädetty komiteamenettely ottaen huomioon mainitun säännöksen 8 artiklan säännökset.

KÄSITTELIJÄ(T):

Ylitarkastaja Tuomas Majuri / RMO, puh. 09 160 33277.

SUOMEN KANTA/OHJE:

Suomi on suhtautunut asetusluonnokseen pääosin myönteisesti, vaikka yksittäisissä kohdissa määritelmiä ja velvoitteita on tärkeä selkeyttää oikeusvarmuuden lisäämiseksi. Tavoitteena on mahdollisimman pienet muutostarpeet Suomessa käytössä olevaan kaupankäyntimalliin. Suomi ei ole muun muassa kannattanut osakelainojen sisällyttämistä kaupan jälkeisten

avoimuusvelvoitteiden piiriin. Suomi pyrkii joustavoittamaan eräitä säännöksiä siten, että sääntelystä valvojille aiheutuvia tarpeettomia hallinnollisia rasitteita voitaisiin rajoittaa. Suomi on myös ilmoittanut kannattavansa ehdotuksen antamista direktiivinä, jotta sääntelyn riittävästä selkeydestä ja ymmärrettävyydestä voitaisiin kansallisesti varmistua.

Valtioneuvosto ei ole vielä muodostanut kantaansa asiaan.

PÄÄASIALLINEN SISÄLTÖ:

Asetusluonnoksessa on 23 artiklaa ja yksi liite, yhteensä 18 sivua. Artikla 1 koskee asetuseräluonnoksen asiasisältöä ja soveltamisalaa. Sen mukaan asetuksessa säädetään:

- monenkeskisten kaupankäyntijärjestelmien (*Multilateral trading facility, jäljempänä myös MTF*) ja säänneltyjen markkinoiden kauppaa edeltävistä avoimuusvaatimuksista, rahoitusvälineiden markkinoista annetun direktiivin 29 ja 44 artiklan mukaan;
- osakekauppojen sisäisten toteuttajien kauppaa edeltävistä avoimuusvaatimuksista, rahoitusvälineiden markkinoista annetun direktiivin 27 artiklan mukaan;
- säänneltyjen markkinoiden, monenkeskisten kaupankäyntijärjestelmien ja sijoituspalveluyritysten kaupan jälkeisistä avoimuusvaatimuksista, rahoitusvälineiden markkinoista annetun direktiivin 28, 30 ja 45 artiklan mukaan;
- ehdoista koskien rahoitusvälineiden ottamista kaupankäynnin kohteeksi (lukuun ottamatta tietojen antamista koskevia ehtoja), rahoitusvälineiden markkinoista annetun direktiivin 40 artiklan mukaan;
- rajahintatoimeksiantojen julkistamisesta, rahoitusvälineiden markkinoista annetun direktiivin 22(2) artiklan mukaan; ja
- tietojenvaihdosta koskien avoimuuden kannalta keskeisiä laskelmia, perustuen rahoitusvälineiden markkinoista annetun direktiivin 58 artiklaan.

Artikla 2 sisältää keskeiset asetuseräluonnoksessa käytetyt määritelmät.

Artiklat 3-5 sisältävät säännökset säänneltyjen markkinoiden ja monenkeskisten kaupankäyntijärjestelmien kauppaa edeltävistä avoimuusvaatimuksista (*Pre-trade transparency for regulated markets and MTFs*). Artiklassa 3 säädetään yleisestä velvoitteesta (*General obligation*). Sen mukaan säänneltyjen markkinoiden, sijoituspalveluyritysten ja markkinoiden ylläpitäjien, jotka operoivat monenkeskisiä kaupankäyntijärjestelmiä, on julkistettava jokaisen kaupankäynnin kohteeksi otetun osakkeen osalta osto- ja myyntitarjoustiedot. Erilaisia kaupankäyntityyppejä koskevat erilaiset velvollisuudet julkistaa tietoja, ja nämä velvollisuudet on listattu myös liitteenä olevassa taulukossa. Artiklassa 4 säädetään valvontaviranomaisten mahdollisuudesta myöntää vapautus kauppaa edeltävästä avoimuusvaatimuksesta, kun kyseessä on tietty markkinamalli tai toimeksiannon tyyppi (*Waivers based on market model and type of order or transaction*). Artiklassa 5 säädetään valvontaviranomaisten mahdollisuudesta myöntää vapautus kauppaa edeltävästä avoimuusvaatimuksesta sellaisten

liiketoimien osalta, jotka ovat kooltaan suuria verrattuna kyseisellä osakkeella tai osaketyypillä markkinoilla tavanomaisesti tehtävään liiketoimeen (*Waivers in relation to transactions which are large in scale*). Liiketoimien suuruus määritetään menettelyn mukaan, josta säädetään artiklassa 15.

Artikloissa 6-11 säädetään kauppaa edeltävistä avoimuusvaatimuksista kauppojen sisäisten toteuttajien osalta (*Pre-trade transparency for systematic internalisers*). Kauppojen sisäisten toteuttajien käymällä kaupankäynnillä tarkoitetaan rahoitusvälineiden markkinoista annetun direktiivin 27 artiklan mukaista uutta kaupankäyntityyppiä. Siinä sijoituspalveluyritys toteuttaa kauppvoja omaan lukuunsa liiketoimintana, säännöllisesti ja järjestelmällisesti säänneltyjen markkinoiden ja monenkeskisten kaupankäyntijärjestelmien ulkopuolella. Artiklassa 6 määritetään edellytykset, joiden perusteella sijoituspalveluyritystä voidaan pitää kauppojen sisäisenä toteuttajana (*Criteria for whether an investment firm is a systematic internaliser*). Artiklassa 7 määritetään rahoitusvälineiden markkinoista annetun direktiivin 27 artiklaa varten, milloin osakkeella on likvidit markkinat (*Liquid shares*). Tällä on merkitystä sijoituspalveluyritysten velvollisuudelle kauppojen sisäisenä toteuttajana julkistaa sitovat hintatarjoukset osakkeille, jotka on hyväksytty kaupankäynnin kohteeksi säännellyillä markkinoilla.

Artiklassa 8 säädetään osakkeiden tavanomaisen markkinakoon määrittämisestä kauppojen sisäisten toteuttajien käymän kaupan osalta (*Standard market size*). Artiklassa säädetään, että osakkeet jaetaan luokkiin keskimääräisten toimeksiantojen koon mukaan asetuksen liitteen taulukon mukaisessa järjestyksessä. Tavanomaisen markkinakoon määrittämisellä on merkitystä siksi, että sijoituspalveluyritysten velvollisuus julkistaa sitovat hintatarjoukset koskee vain niitä kauppojen sisäisiä toteuttajia, joiden liiketoimet ovat enintään tavanomaisen markkinakoon suuruisia. Artiklassa 9 säädetään hintatarjouksista, joita osakekauppojen sisäisten toteuttajien on julkistettava kaupankäynnin kohteeksi otetuille osakkeille (*Quotes reflecting prevailing market conditions*). Artiklassa 10 säädetään siitä, miten kauppojen sisäiset toteuttajat toteuttavat toimeksiantoja (*Execution of orders by systematic internalisers*). Artiklassa 11 asetetaan 7 500 euron raja sijoituksille, joita suurempia toimeksiantoja ei pidetä enää yksityissijoittajien tavanomaisina toimeksiantoina (*Retail size*).

Artikloissa 12 ja 13 säädetään säänneltyjen markkinoiden, monenkeskisten kaupankäyntijärjestelmien ja sijoituspalveluyritysten kaupan jälkeisistä avoimuusvaatimuksista (*Post-trade transparency for regulated markets, MTFs and investment firms*). Artikla 12 sisältää velvollisuuden kaupan jälkeisestä avoimuudesta (*Post-trade transparency obligation*). Sen mukaan säänneltyjen markkinoiden, sijoituspalveluyritysten sekä monenkeskisiä kaupankäyntijärjestelmiä ylläpitävien markkinoiden ylläpitäjien on julkistettava osakkeita koskevat tiedot toimeksiannoista, jotka on toteutettu näiden toimesta tai järjestelmissä. Tämä velvollisuus koskee sekä osakekauppaa että osakelainausta. Artiklassa on listaus tiedoista, jotka näin tulee julkistaa ja jotka määritetään tarkemmin liitteessä. Tällaisia tietoja ovat mm. toimeksiannon paikan ja instrumentin identifiointi, kaupankäyntipäivä ja – aika, määrä ja hinta osakekohtaisesti. Artiklassa 13 säädetään mahdollisuudesta tietyin ehdoin

toimivaltaisen viranomaisen luvalla lykätä tietojen julkistamista suurten toimeksiantojen osalta (*Deferred publication of large transactions*).

Artiklat 14-16 sisältävät säännökset, jotka ovat yhteisiä sekä kauppaa edeltävälle että kaupan jälkeiselle avoimuudelle (*Provisions common to pre- and post-trade transparency*). Artiklassa 14 säädetään tietojen julkistamisesta ja saatavuudesta. Sen mukaan kauppaa edeltävät tiedot on julkistettava reaaliajassa, ja kaupan jälkeiset tiedotkin niin lähellä reaaliaikaa kuin mahdollista. Tietojen katsotaan tulleen julkisiksi, kun ne ovat saatavilla säännellyn markkinan tai monenkeskisen kaupankäyntijärjestelmän palvelun, kolmannen osapuolen tai muuten sopivan järjestelyn kautta. Artiklassa 15 säädetään valvontaviranomaisen velvollisuudesta varmistaa, että niiden osakkeiden osalta, jotka määritelmän mukaisesti ovat likviditeetiltään sen jäsenvaltion markkinoiden merkittävimmät, tehdään tietyt luonnoksessa säädetyt laskelmat (*Required calculations*). Näiden laskelmien julkistamisesta säädetään artiklassa 16.

Artikloissa 17-20 säädetään rahoitusvälineiden ottamisesta kaupankäynnin kohteeksi ja pyritään varmistamaan, että rahoitusvälineillä voidaan käydä kauppaa hyvää kauppatapaa noudattaen, asianmukaisesti ja tehokkaasti (*Admission of financial instruments to trading*). Artiklassa 17 ovat säännökset siirtokelpoisista arvopapereista ja siinä määritetään, mitä tarkoitetaan siirtokelpoisilla arvopapereilla ja milloin ne ovat vapaasti luovutettavissa (*Transferable securities*). Artikla 18 koskee sijoitusrahasto-osuuksia (*Units in collective investment undertakings*). Siinä säädetään säännellyn markkinan velvollisuudesta varmistua, jos sijoitusrahasto-osuuksia otetaan kaupankäynnin kohteeksi, että nämä täyttävät vaatimukset, joita on asetettu sijoitusrahasto-osuuksien kaupankäynnille. Artiklassa säännellään vaatimuksista, jotka rahasto-osuuksien tulee täyttää, jotta niillä voidaan käydä kauppaa rahoitusvälineiden markkinoista annetun direktiivin mukaisesti. Artiklassa 19 säädetään johdannaisten (*Derivatives*) ottamisesta kaupankäynnin kohteeksi ja pyritään erityisesti varmistamaan se, että johdannaissopimusten sisältö mahdollistaa asianmukaisen hinnoittelun ja toimivat selvitysedellytykset näille johdannaissopimuksille. Artiklassa 20 säädetään säännellyn markkinan velvollisuudesta ylläpitää menettelyä, jolla varmistetaan, että liikkeeseenlaskija noudattaa tietojen antamista koskevia säännöksiä (*Obligation to verify issuers' compliance with disclosure obligations*).

Artiklat 21-23 sisältävät voimaantulo- ja siirtymäsäännökset.

KANSALLINEN KÄSITTELY:

Euroopan Arvopaperikomitean kokousten valmistelusta vastaa valtiovarainministeriön rahoitusmarkkinaosasto. Kantoja on valmisteltu keskusteluin Rahoitustarkastuksen Markkinavalvontaosaston kanssa sekä Rahoitusvälineistä annetun direktiivin implementointia valmistelevalle valtiovarainministeriön työryhmässä. Kantoja on sovitettu yhteen valmistelujaosto 10:n (rahoituspalvelut ja pääomaliikkeet) kirjallisessa menettelyssä 17.6.2005–8.7.2005.

EDUSKUNTAKÄSITTELY:

Tämä muistio ja komission sisämarkkinat – pääosaston asetusluonnos lähetetään E-kirjeellä eduskuntaan (PeL 97 § 1 mom.).

KANSALLINEN LAINSÄÄDÄNTÖ:

Kansallisessa lainsäädännössä ei tällä hetkellä säädetä ehdotetuista asioista vastaavalla tarkkuudella.

Arvopaperimarkkinalain (495/1989) 3 luvun 4 §:ssä säädetään siitä, mitä arvopaperipörssin sääntöjen tulee sisältää (*Arvopaperipörssin säännöt*). Sen 1 momentin 3 kohdan mukaan pörssin sääntöjen tulee sisältää määräykset siitä, miten, milloin ja missä laajuudessa tarjouksia tai tarjouskehotuksia ja kauppvoja koskevat tiedot saatetaan sijoittajien ja kaupankäyntiin osallistuvien arvopaperinvälittäjien ja muiden arvopaperipörssissä toimivien tietoon. Vastaava säännös muun julkisen kaupankäynnin osalta on AML 3:13.1 §:n 3 kohdassa (*Muun julkisen kaupankäynnin säännöt*). Asetusehdotuksessa nostetaan lain tasolle velvoitteita, joista aiemmin on säädetty arvopaperipörssin säännöissä.

Sijoituspalvelun tarjoamista koskevia säännöksiä on AML 4 luvussa. AML 4 luvun 4 §:ssä säädetään arvopaperinvälittäjän asiakkaiden toimeksiantoja koskevista säännöistä (*Arvopaperinvälittäjän toiminta*). Rahoitustarkastuksen ohjeessa Nro 201.7 on tarkempia säännöksiä sijoituspalvelun tarjoamisessa noudatettavista menettelytavoista.

Kauppojen sisäisten toteuttajien määritelmä ja näiden kaupankäynti on uusi kaupankäyntityyppi ja tätä koskevaa sääntelyä ei ole kansallisessa lainsäädännössä.

TALOUDELLISET VAIKUTUKSET:

Ehdotukset tulevat vaikuttamaan avoimuutta koskeviin vaatimuksiin ja niitä koskeviin järjestelyihin ja järjestelmiin. Luonnoksen ehdotukset tarkentavat sijoituspalveluyritysten velvoitteita, mikä merkinnee toimijoille sitä, että sääntelyn noudattaminen aiheuttaa aiempaa enemmän työtä ja huolellisuutta. Asetusluonnoksessa asetetaan myös valvontaviranomaisille laskelmien tekoon liittyviä lisävelvoitteita, joista aiheutuu kustannuksia.

AVOIMET KYSYMYKSET JA MUIDEN JÄSENVALTIOIDEN/EU-TOIMIELINTEN KANNAT NIIHIN:

Muiden jäsenvaltioiden kannat eivät ole vielä lopullisesti tiedossa. Vaikeimmiksi kysymyksiksi ovat keskusteluissa osoittautuneet kauppojen sisäisten toteuttajien määrittelyn määrälliset kriteerit sekä likvidien osakkeiden markkinoiden kriteerit. Erimielisyyttä on myös siitä, tulisiko osakelainat sisällyttää kaupan jälkeisten avoimuussäännösten piiriin. Monet ovat vaatineet tarkennuksia ja tiukennuksia kaupankäynnin kohteeksi listalle ottamista koskeviin kriteereihin.

Asetusluonnos ei ole vielä komission virallinen ehdotus, jonka antamisesta alkaisi rahoitusvälineiden markkinoista annetun direktiivin 64 artiklassa tarkoitettu kolmen kuukauden aika säännöksen hyväksymiselle. Komissio antanee virallisen ehdotuksensa lokakuun 31 päivään 2005 mennessä.

MUUT MAHDOLLISET ASIAAN VAIKUTTAVAT TEKIJÄT:

Working Document ESC/20/2005

**Draft Commission Working Document on pre- and post-trade transparency and
admission to trading**

Draft Commission Working Document on pre- and post-trade transparency and admission to trading

Article 1

Subject-matter and scope

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

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

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

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.

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

- (d) “market order” means an order for the execution of a transaction in shares at the prevailing market price; and
- (e) negotiated transaction means a bilateral transaction between members or participants of a regulated market or an MTF which is negotiated privately but executed within the regulated market or MTF.

Pre-trade transparency for regulated markets and MTFs

Article 3

General obligation

1. For the purpose of Articles 29 and 44 of the Directive, regulated markets and investment firms and 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.⁴
2. Regulated markets, investment firms and 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 in terms of monetary volume and the shares they represent at each price level, for at least the five best bid and offer price levels.
3. Regulated markets, investment firms and 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 the best bid and offer in terms of price, indicating volume, of each market maker in that share.
4. Regulated markets, investment firms and 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 system⁵.
5. Where regulated markets, investment firms and market operators operating an MTF operate a trading system which is not covered by paragraphs (2) to (4) above, they shall maintain a standard of pre-trade transparency that ensures that all market participants and prospective market participants are adequately informed as to the level of transactions and of interest in that share, [and other information relevant to its price formation, at any particular time.

³ OJ L 390, 31.12.2004, p.38.

⁴ Table [1] in [the Annex] contains descriptions of the types of systems covered by paragraphs (2) to (4) below and a summary of information to be made public in accordance with Article 3. The content of this table will probably be included in a recital in the formal proposal.

⁵ The following Recital will be included: “Usually the trading algorithm will seek to maximise the volume traded, but other trading algorithms are possible”.

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 systems based on the following market models:
 - a) a system 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) a system that formalises negotiated transactions, provided that:⁶
 - i) any such transaction is made at or within the current weighted spread for 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;⁷ and, in either case
 - iii) the other conditions specified in the rules of the regulated market or MTF for this 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.

⁶ The following Recital will be included: “Investment firms that deal on own account by executing client orders in an organised, systematic and frequent manner cannot, to the extent they do so by dealing under the systems of a regulated market or an MTF, profit from the pre-trade transparency waiver in respect of negotiated trades, where if those negotiated trades were done outside those systems they would be required to make public firm quotes. In this respect they are subject to the general transparency requirements imposed by this [Regulation]”.

⁷ Possible recital to be included: “A volume weighted average price transaction, and a transaction related to an individual share in a principal portfolio trade, are both examples of transactions subject to conditions other than the current market price of the share.”

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 commercial role in the business model adopted by the firm, or is carried, 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); and
 - (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.

Article 7

Liquid shares

1. [For the purposes of article 27 of the Directive, there is a liquid market for a share if:
 - (a) that share is among the most liquid shares representing 60% of the total cumulative annual turnover of shares in a Member State⁸; and
 - (b) that State is the most relevant market in terms of liquidity for that share.]
2. In addition to paragraph (1), shares admitted to trading on a regulated market shall be considered to have a liquid market if:
 - (a) the shares are traded daily and the free float⁹ of any share is equal to or higher than €500 million; and
 - (b) one of the following criteria applies -

⁸ Possible Recital to be included explaining the mechanics of this calculation. The shares that will be included are those that beginning with the one that represents the higher turnover and continuing with the second highest turnover and so forth represent up to 60% of the total turnover.

⁹ To be included in a recital: “The calculation of that free float shall exclude holdings exceeding 5% of the total voting rights of the issuer, as calculated for the purposes of the Transparency Directive, unless such a holding is held by a *collective investment undertaking* or a pension fund. If information on holdings on the basis of the Transparency Directive is not available, calculation of the free float shall be made using, as a proxy, an index based on the a market of the European Union that is widely accepted and used by market participants”.

- (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 euros.

For the purposes of this paragraph, each Member State shall choose which one of the criteria set out in sub-paragraphs (i) and (ii) above applies in that State. That choice shall take into account the market structures characteristic in that State.

3. 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 the voting rights shall be calculated on the basis set out in the second sub-paragraph of Article 9(1) of the Transparency Directive.

The calculation of the free float of a share made before 20th January 2007 shall 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.

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 the prices of which are close to comparable quotes for the same share in other relevant markets; and
- (b) a record of its quoted prices.

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 price conditions other than the current market price means any order which is not a market order or a limit order.
2. For the purposes of Article 27(6) of the Directive, the number or volume of an order considerably exceeds the norm if a systematic internaliser cannot execute that order without exposing itself to undue risk for the financial stability of the firm.

In order to identify the number and volume of orders that it can execute without exposing itself to such undue risk, a systematic internaliser shall maintain and implement a policy which takes into account the volume of the transactions, the capital that the firm has at risk generally and the prevailing conditions in the market in which the firm is operating.

This policy shall be set out in writing and made available to clients and potential clients.

3. A systematic internaliser shall keep a record of all the orders that, due to the application of the limitation established by the policy maintained in accordance with paragraph 2, have not been executed at the quoted price.

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.

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 and loans of shares.¹⁰
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]), where those items are relevant to the transaction in question:
- a) execution venue identification;

¹⁰ Sales and loans of shares will be defined in conjunction with working document ESC/7/2005.

- b) instrument identification;
 - c) trading day;
 - d) trading time;
 - e) quantity;
 - f) price per share;
 - g) indication that the trade is subject to conditions other than the current market price; and
 - h) [indication that the transaction is a loan].
- 3 In the case of transactions arising from orders that are subject to price conditions other than the current market price of the share, as referred to in Article 10(1)(b), post-trade information is only required to be made public if the transaction is equal to or exceeds 100% of the average daily turnover for the share in question.
4. Where the transaction is not executed in accordance with the rules of a regulated market or an MTF the information shall be made public by:
- (a) in a case where an investment firm acting on its own account is a party to the transaction:
 - (i) the investment firm that is the seller or borrower of shares;
 - (ii) where paragraph (i) does not apply, the investment firm that is the buyer or lender of shares;
 - (b) in a case where the transaction involves one or more investment firms acting on behalf of a client or clients:
 - (i) where a different investment firm is acting on behalf of each party, the investment firm acting on behalf of the seller or borrower;
 - (ii) in any other case, the investment firm.

Article 13

Deferred publication of large transactions

1. Notwithstanding Articles 12 and 14(2), a competent authority may permit a person required to make information in respect of a transaction public in accordance with Article 12 to defer that publication where:
 - a) 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];
 - b) in a case where there is a transaction arising from an order which was subject to a pre-trade transparency obligation under the Directive, the order was considered as large in scale compared to normal market size in accordance with Article 5.

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 to be calculated in accordance with Article 15.

2. Publication of information relating to a transaction of a kind mentioned in Article 10(1) may only be deferred if it involves at least one execution relating to a share that meets the relevant threshold for deferred publication specified in Table [4] in the Annex. Where there is more than one execution that meets such a threshold, the delay permitted for the execution in the highest class of shares in terms of average daily turnover 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 information shall be made available in real time. Post-trade information shall be made public as close to real time as possible and, in any case, no later than three minutes after the relevant transaction.
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 or is intended to take place. For transactions that take place outside a regulated market or MTF, post-trade information shall be made public immediately upon commencement of trading hours of the investment firm that is required make public the information in accordance with Article 12(4).
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 if it is made available:
 - (a) through the facilities of a regulated market 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 which are not immediately executable if it transmits the order to a regulated market or MTF that operates a continuous 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 available to other market participants 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) not prevent or impede the consolidation of the data with similar data from other sources;
 - (c) make the information available to the public for a reasonable fee or other consideration; and
 - (d) comply with the requirements of this [Regulation].

Article 15

Required calculations¹¹

1. In respect of each share that is admitted to trading on a regulated market, the competent authority of the Member State which is the most relevant market in terms of liquidity for that share (as defined in Article [] of ESC 7/2005 for the purposes of Article 25 of the Directive) for that share shall ensure that the following calculations are made annually in respect of that share:
 - a) for the purposes of Articles 5, 7, 11 and 13, the average daily turnover;
 - b) for the purposes of Article 7, the free float as at 31st of December and the average number of transactions executed in the preceding 12 month period, as well as the relative percentage of turnover; and
 - c) for the purposes of article 8, 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 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 number of transactions of a share, non-business days in the Member State of the competent authority making the calculation shall be excluded. When a share is first admitted to trading on a regulated market, prior to that admission the competent authority

¹¹ The following Recital will be included: “For the purposes of Article 15, orders executed shall be understood as referring to transactions.”

of the most relevant market in terms of liquidity for that share shall estimate the average daily turnover, the average value of the orders executed, the free float and the average number of transactions to be executed for the remainder of the calendar year. This estimate shall take account of any previous trading history of the share, as well as that of shares that the competent authority considers to have similar market capitalisation and free float.

4. During the course of a calendar year, competent authorities shall review and where necessary recalculate 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 and permanently affects the previous calculations.

Article 16

Publication of results of required calculations

1. On the 1st of March of each year, or on the following business day if 1st March is not a business day, the competent authority shall publish, in relation to each share for which it is the competent authority of the most relevant market in terms of liquidity in accordance with Article 25 of the Directive:
 - a. the average daily turnover, free float as at 31st December, average number of transactions executed and relative percentage of turnover, as 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) applies, the publication required by paragraph 1 shall take place as soon as the new calculation is completed.
3. For the purposes of Articles 5, 7, 8 and 13, the classification based on the publication referred to in paragraph 1 shall apply for the 12 month period starting from the 1st of April of each year.
4. In addition to the publication made by each competent authority in accordance with paragraph 1, the Committee of European Securities Regulators shall publish 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. Transferable securities that are not fully paid and shares which may be acquired only subject to approval shall be considered as freely negotiable if the conditions in paragraph 1 are otherwise satisfied.
 3. [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 whether:
 - (a) there is a sufficient number of financial instruments in public hands;
 - (b) there is a sufficient breadth of distribution of the financial instruments; and
 - (c) the issuer operates an established business with appropriate track record. This requirement may be waived if there is satisfactory information or other arrangements to ensure that the shares of such companies are capable of being traded in a fair orderly and efficient manner.]
 4. 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 reliable and publicly available;
 - (c) there is sufficient information 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 minimises the potential for manipulation or distortion; 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 comply with the obligations under Article 40(1) of the Directive, when admitting units in a collective investment undertaking 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. The law of the jurisdiction of the regulated market 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 For collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account whether:
 - (a) there is a sufficient number of those units issued and a sufficient breadth of distribution of the units; or
 - (b) 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, in either case,
 - (c) the value of the units is 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 whether:
 - (a) there is a sufficient number of such units issued;
 - (b) there is a sufficient breadth of distribution of the units; and
 - (c) 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

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 reliable and is available to the market;

Where 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, and 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 available to the market), the regulated market shall ensure that –

- i. it has 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 ensure proper settlement and delivery, whether physical delivery or by cash settlement.
- (c) there is sufficient information of a kind needed to value the derivative available to the market;
- (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; 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.

Article 20

Obligation to verify issuers' compliance with disclosure obligations

1. In order to comply with the obligations under Article 40(3) of the Directive, regulated markets shall maintain documented procedures enabling them to monitor the compliance of issuers whose securities are admitted to trading with their initial, ongoing and *ad hoc* disclosure obligations. Those procedures shall ensure:
 - a. that in every case the regulated market verifies –
 - i) that a competent authority has approved the prospectus (if any) required under Article 3(2) of the Prospectus Directive
 - ii) that any such prospectus has been published in accordance with Article 14 of the Prospectus Directive, and
 - iii) that the competent authority which approved any such prospectus has notified the competent authority of Member State in which the securities are admitted to trading of the approval of the prospectus, where required to do so by Article 18 of the Prospectus Directive; and
 - b) that any mechanisms required by the Transparency Directive for sharing information with the relevant competent authority of the home Member State of the issuer are properly established.

2. If no prospectus has been published in accordance with the Prospectus Directive, the regulated market shall obtain documented confirmation from the issuer or other person applying for the admission to trading that there is no obligation under the Prospectus Directive to publish a prospectus.
3. When a prospectus is published in connection with a new admission of a financial instrument to trading on that market is published, the regulated market shall, without undue delay, inform members and participants where that prospectus can be obtained.

Final provisions

Article 21

Transitional provisions

1. The calculations mentioned in Article 15 which are to be published in 2007 and 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.¹² For these purposes, negotiated transactions shall be excluded from the calculations.

The competent authority of a Member State in which a regulated market has admitted to trading a share for which the market of that Member State is not the most relevant market in terms of liquidity shall, during the transitional period mentioned in the previous subparagraph, send to the competent authority of the most relevant market for that share in terms of liquidity all the necessary information in order to enable it to carry out the calculations required by this Regulation.

2. Competent authorities shall publish the data for 2006 on 1 March 2007.¹³ This data will be applicable from 30 April 2007.

Article 22

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 23

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 21 from 1 March 2007 and otherwise from 30 April 2007.

¹² A recital will be included indicating the effect of this transitional provision: that is, that the publication of May 2007 and March 2008 will be done on the basis of different data.

¹³ A recital will be included indicating that the data used for the calculation shall be that of 2006 – the same data as for in paragraph (1) of Article 21.

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 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	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 ¹⁴
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, if any

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	AVO = €90,000
Standard market size	€7,500	€15,000	€25,000	€35,000	€45,000	€60,000	€80,000	€100,000

¹⁴ See Recital referred to in footnote 5

Table 4: Deferred publication thresholds and delays

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% and €100,000			Until end of second trading day next after trade