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Waivers from Pre-trade Transparency Obligations under the Markets in Financial Instruments Directive (MiFID)

- Updated -

The Markets in Financial Instruments Directive (MiFID) allows competent authorities to waive the obligation for operators of Regulated Markets and Multilateral Trading Facilities (MTFs) regarding pre-trade transparency requirements for shares[1] in respect of certain market models, types of orders and sizes of orders. MiFID allows competent authorities to grant four types of waivers which are contained in Articles 18 and 20 of the Commission Regulation 1287/2006 (MiFID Implementing Regulation). Possible waivers apply to:

- Systems where the price is determined by reference to a price generated by another system. This waiver can be granted only for systems where the reference price is widely published and regarded generally by market participants as a reliable reference price.
- Systems that formalise negotiated transactions, provided the transaction:
    - Takes place at or within the current volume-weighted spread reflected on the order book or the quotes of market makers in that share or, where the share is not traded continuously, within a percentage of a suitable reference price set in advance by the operator of the Regulated Market or MTF; or
    - Is subject to conditions other than the current market price of the share (e.g. a volume weighted average price transaction).
- Orders that are held in an order management facility maintained by a Regulated Market or MTF pending those orders being disclosed to the market.
- Transactions which are large in scale. An order shall be considered to be 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 Annex II of the MiFID Implementing Regulation.

Where an operator of a Regulated Market or an MTF seeks to rely on a pre-trade transparency waiver, the arrangements will be considered at CESR level at the initiative of the relevant CESR Member. This is consistent with CESR's role to achieve supervisory convergence and is without prejudice to any policy work that CESR might conduct in this area. CESR's consideration of the arrangements covered in this document has been based solely on the information provided to it by the relevant CESR Member. According to the existing legal framework, the responsibility for the final decision on the waivers lies with the national competent authorities.

The information contained in this document is made public for use as examples of systems or functionalities whose compliance with the requirements for exemptions from MiFID pre-trade transparency requirements has been considered by CESR. They are intended to provide information on the application of the relevant provisions of MiFID in specific cases and to assist market participants when creating new functionalities. The specification of a system or order type as being MiFID compliant/non-compliant does not imply that only a system/order type having exactly the same characteristics is considered to be MiFID compliant/non-compliant. However, CESR's consideration would naturally have the same outcome if other arrangements have exactly the same characteristics as the ones already considered by CESR. Reference to a specific product, process or service does not constitute or imply that it is recommended or favoured by CESR or any of its Members.

This document is made public via the CESR website under the section Expert Groups/MiFID Level 3 Expert Group. The information in the table will be updated on a continuous basis as and when CESR forms a view on whether a proposal made to a CESR Member satisfies the criteria of a particular waiver. The table does not include all waivers granted by competent authorities, but only the ones that have been considered at CESR level after the establishment of this process in February 2009. This information is published without prejudice to any new considerations that CESR might want to make following new information and/or new developments having an impact on its content.

[1] Under MiFID, in respect of shares admitted to trading on a regulated market, operators of regulated markets and MTFs must make public the current bid and offer prices and the depth of trading interests at those prices unless exemptions apply.

Table: Proposals considered by CESR from operators of Regulated Markets and MTFs seeking to avail themselves of the pre-trade transparency waivers in MiFID

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<tr><td colspan="2">

Article 18(1)(a) of the MiFID Implementing Regulation

<u>'Reference Price Waiver'</u>

Waivers in accordance with Article 29(2) and 44(2) of Directive 2004/39/EC may be granted by the competent authorities for systems operated by an MTF or a regulated market, if those systems satisfy the following criteria:

They must be 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.

In the case of systems having functionality other than described above, the waiver shall not apply to that other functionality.

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Functionalities that satisfy the criteria contained in MiFID

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<u>Example 1:</u>[2]

All orders will be submitted to the system for execution/crossing at the midpoint of the European Best Bid and Offer (EBBO). The European Best Bid price is the highest binding bid (or buy) price available in the central limit order books of the regulated markets and MTFs contributing to the determination of the EBBO. The European Best Offer price is the respective binding lowest offer (or sell) price. Thus the EBBO will always deliver the tightest spread available in the contributing trading platforms.

In order to ensure the integrity of the price formation process, the EBBO is calculated using data from the primary exchange and other sufficiently liquid (e.g. in terms of market share for a particular share) European regulated markets and MTFs where the share is traded. The EBBO is distributed by market data providers.

All orders will be matched (or crossed) at the midpoint of the EBBO. Midpoint orders will only interact with other

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[2] The decision regarding this example has been adopted by CESR at qualified majority, according to Article 6 of the Charter, with the dissenting opinion expressed by the French AMF, the Italian Consob and the Greek CMC. These three competent authorities have a dissenting opinion on the compliance of the described system with the criteria set out in Article 18(1)(a) of the MiFID Implementing Regulation. These three competent authorities consider that by selecting the two sides of its quotes from different and multiple systems, any such platform undermines the principle of fair competition between trading venues and may ultimately damage the quality of the price formation process taking place on displayed markets and overall market efficiency.

	midpoint orders. The system will allow trading participants to submit immediate-or-cancel (IOC) orders (which will be immediately matched at the midpoint of the EBBO or cancelled). The relevant competent authority granting the waiver will monitor that the system continues to fulfil the criteria set out above and will report its findings as necessary as part of future consideration by CESR of the application of the waivers. *Example 2:*[3] All orders will be submitted for execution/crossing at one of the following European Best Bid or Offer (EBBO) reference prices: – the midpoint of EBBO; – the European Best Bid; or – the European Best Offer. The European Best Bid price is the highest binding bid (or buy) price available in the central limit order books of the regulated markets and MTFs contributing to the determination of the EBBO. The European Best Offer price is the respective lowest offer (or sell) price. Thus the EBBO will always deliver the tightest spread available in the contributing trading platforms. In order to ensure the integrity of the price formation process, the EBBO is calculated using data from the primary exchange and other sufficiently liquid (e.g. in terms of market share for a particular share) European regulated markets and MTFs where the share is traded. The EBBO is distributed by market data providers. The system will allow crossing as follows:

[3] The decision regarding this example has been adopted by CESR at qualified majority, according to Article 6 of the Charter, with the dissenting opinion expressed by the French AMF, the Italian Consob and the Greek CMC. These three competent authorities have a dissenting opinion on the compliance of the described system with the criteria set out in Article 18(1)(a) of the MiFID Implementing Regulation. These three competent authorities consider that by selecting the two sides of its quotes from different and multiple systems, any such platform undermines the principle of fair competition between trading venues and may ultimately damage the quality of the price formation process taking place on displayed markets and overall market efficiency.

	– EBBO midpoint orders will only interact with other orders entered for crossing at the EBBO midpoint reference price; – European Best Bid orders will only interact with other orders entered for crossing at the European Best Bid reference price; and – European Best Offer orders will only interact with other orders entered for crossing at the European Best Offer reference price. All executions will occur at one of these three EBBO reference prices. The system will allow trading participants to submit immediate-or-cancel (IOC) orders pegged to bid, mid or offer of the EBBO (which will be immediately matched at the relevant pegged point or cancelled). The relevant competent authority granting the waiver will monitor that the system continues to fulfil the criteria set out above and will report its findings as necessary as part of future consideration by CESR of the application of the waivers. *Example 3:*[4] Orders for a particular share will be submitted for crossing at one of the following reference prices derived from the central limit order book of the primary regulated market where the share is admitted to trading. Such a regulated market has to be sufficiently liquid.[5] • The best bid on the primary market – the highest binding bid price of the primary regulated market • The best offer on the primary market – the lowest binding offer price of the primary regulated market • The midpoint between the best bid and best offer of the primary regulated market. The system will allow crossing as follows:

[4] The decision regarding this example has been adopted by CESR at qualified majority, according to Article 6 of the Charter, with the dissenting opinion expressed by the French AMF, the Italian Consob and the Greek CMC. These three competent authorities have a dissenting opinion on the compliance of the described system with Article 18(1)(a) of the MiFID Implementing Regulation. They consider that the price limits set by participants willing to trade on that system do contain some substantial price information. As such, such orders should not be eligible to Article 18(1)(a) waiver and should be publicly displayed to contribute to the overall price discovery process.

[5] The reference price will be taken from the primary regulated market where the share is admitted to trading in each case. The only exception is for German primary listed stocks where Xetra (Deutsche Borse) will be used as the reference market.

	• Midpoint orders will only interact with other orders entered for crossing at the midpoint reference price; • Best Bid orders will only interact with sell orders entered for crossing at the Best Bid reference price; and • Best Offer orders will only interact with buy orders entered for crossing at the Best Offer reference price. All unpriced orders will enter the system with instructions to execute at one of three points - mid, best bid or best offer on the primary regulated market, i.e. these orders are to be crossed at the reference price explicitly nominated when the order is entered. All orders can cross only at these points. The crossing system would allow trading participants to protect themselves by limiting the absolute price level at which they are willing to buy or sell shares. This feature allows participants to withdraw their order from crossing in the event that the reference price moves above (or below) the price at which they are willing to trade. Participants could place a price cap (for a buy order) or a price floor (for a sell order) on the order submitted for crossing. Participants do not have to specify a limit price. During continuous crossing each reference price will change as the market changes. The effect of an order limit will be to prevent the order from executing above or below the specified limit price. The limit does not allow an order to execute at a price which is different to the specified reference price. The relevant competent authority granting the waiver will monitor that the system continues to fulfil the criteria set out above and will report its findings as necessary as part of future consideration by CESR of the application of the waivers. *Example 4:*[6] All orders will be matched and executed at the official closing price published by the primary market. These orders will not be able to interact with the transparent order book and will be governed by a separate matching logic. • During continuous trading on the primary market, participants can submit orders to the system. All orders are unpriced and will rest hidden. No matching of orders will take place until after the primary market closing auction begins.

[6] The decision regarding this example has been adopted by CESR at qualified majority, according to Article 6 of the Charter, with the dissenting opinion expressed by the French AMF and the Greek CMC on the compliance of one of the functionalities offered by the system with Article 18(1)(a) of the MiFID Implementing Regulation. They consider that the price limits - above (or below) the official closing price - participants may place on their orders for a ten minute period after the publication of the closing price on the primary market contain substantial information for the overall price discovery process. As such, such orders should not be eligible for Article 18(1)(a) waiver and should be publicly displayed.

	- At the start of the closing auction on the primary market, all orders held in the system will be matched and 'locked' in time priority against other orders. A locked order is one which has been matched with an opposing order of equal size but is yet to be allocated the reference price (because the closing price on the primary market has not been finalised). Once an order is locked it cannot be cancelled. Participants can continue to submit unpriced orders for matching during the closing auction. When new orders are entered, they will either be matched or rest in the system. - At the end of the closing auction on the primary market, any residual orders that have not been matched will rest in the system or be cancelled (depending on the preference of the participant). The system will continue to allow unpriced orders to be matched and executed for ten minutes after the closing price on the primary market has been published. When new orders are entered, they will either be immediately matched at the closing price or rest. During this ten minute period, participants can also place a limit price on their order. The limit will only be used to determine whether an order is accepted or rejected by the system and all orders submitted will execute at the specified reference price. The benefit to the participant is that a limit can be specified when the official closing price may not yet be known to it. These order limits are an additional feature, and are not essential to the functionality of the system. The limit does not allow an order to execute at a price that is different to the primary market closing price (reference price) and it does not influence the priority at which orders are matched. At the end of the ten minute period after the closing price has been published, any orders that have not been matched in the system will be cancelled. All orders entered into the system will: - be matched at the closing price published by the primary market - be price taking (closing price on the primary market) - not be able to interact with other price forming orders. *Example 5:* The trading platform will offer trading based on the volume weighted average price (VWAP) on the relevant primary market. The system will match sell orders with matching buy orders on a continuous basis. It is a separate system and does not allow interaction with any other system or order book of the trading platform.

	Orders submitted to the trading system must specify the volume and time period (based on units of 15 minutes) over which the order is to be matched. Trading participants can specify any period, from the minimum 15 minute interval to the whole of the trading day. The system will match all orders seeking execution for the same time period. Where there are multiple orders for the same time period, orders will be matched on the basis of time priority of orders received. Orders will be matched on a non-discretionary basis. The trading system will notify trading participants of successful matches every 15 minutes. At the end of the period over which two orders are matched, the trade will be finalised at the VWAP for that period. The trade would be published immediately at the end of the VWAP period with an indication that the exchange of shares was determined by factors other than the current market valuation of the share (under Article 27 of the Commission Regulation). The system will operate without pre-trade transparency as orders will execute only at the VWAP – a price which cannot be determined until the relevant trading period has been completed. The VWAP for any specified period is based on a formula which divides the total value of trading in the period by the total number of shares traded. The system will not match or execute any orders where there is an absence of continuous trading on the relevant primary market. The executions that occur on the primary market (and which make up the VWAP) are widely published and distributed by market data vendors via real-time data feeds.
Functionalities that do not satisfy the criteria contained in MiFID	<u>*Example 1:*</u> All orders will be subject to dual mode matching by reference to the midpoint of the Best Bid and Offer (BBO) on the primary market. The best bid is the highest bid price and the best offer is the lowest offer price. The dual mode matching of orders will operate as follows: • Periodic auction – matches passive orders at the BBO midprice of the relevant primary market (i.e. 50% of the spread). Periodic auctions will take place approximately every 30 seconds in each instrument. Passive/resting orders that do not require immediate execution will be matched as part of the periodic auction. Randomised periodic auctions will be completed in less than a millisecond and will only engage resident passive orders. Aggressive orders will be queued while the randomised periodic auction is ongoing. • Continuous execution – matches new/unexecuted orders with aggressive orders (requiring immediate execution). Continuous executions will take place at the mid-point of the primary market midprice and the market price (the Best Bid for a sell order, and the Best Offer for a buy order). In other words, a passive order will pay/give up 25% of the spread and an aggressive order will pay/give up 75% of the spread. There is only continuous execution for

aggressive orders; the execution price is the midpoint of the primary market midprice and the market price when an aggressive order enters the system, not the midpoint of the previous periodic auction.

There is no interaction between the system and the transparent order book of the primary markets used as a reference.

Only the timing of the periodic auctions is randomised, not orders which form part of the continuous execution. Continuous matching will be available whenever a periodic auction unwind is not underway.

The table below sets out an example of the execution prices for passive executions (midpoint) and aggressive executions.

Best Bid	**Aggressive sell**	**Midpoint (passive)**	**Aggressive buy**	**Best Offer**
149.00	149.25	149.50	149.75	150.00
	An aggressive sell order will be matched with a resting buy order at this price	The periodic auction will match passive orders at the midpoint price	An aggressive buy order will be matched with a resting sell order at this price	

The possibility of executing transactions at prices determined in accordance with a reference price but at the same time adjusted for incentives or fees should not be considered as trading without price discovery, which is the rationale behind the pre-trade transparency waiver of article 18(1)(a) of the MiFID Implementing Regulation. In order to benefit from the waiver of Article 18(1)(a), one should be able to determine at which price an order would be executed. As there are multiple prices possible, this requirement is not fulfilled by this proposal (i.e. a passive order does not know when (periodic auction or continuous) or at what price (midprice or at 25%/75% of the reference price) it will be executed. Therefore this example is not compliant with the criteria for waivers set out in MiFID.[7]

Example 2:

[7] The Czech National Bank (CNB) does not agree with these justifications and therefore considers that this waiver would fulfill the criteria set out in MiFID for a reference price waiver under Article 18(1)(a). The platform publishes information about the price at which it is possible to trade and that is where CNB sees the rationale behind the pre-trade transparency obligation imposed by MIFID. The option to accept less favourable price than the published one falls within the investor's decision. In case of periodic auction systems, even those with full pre-trade transparency, one does not know the exact execution price beforehand. So there is no reason to make system using the pre-trade transparency waiver subject to stricter conditions.

	Participants may submit into the open order book either displayed limit orders or hidden EBBO reference price orders. All EBBO reference price orders can interact with any other type of order entered into the open order book. EBBO orders will be submitted for execution at one of the following European Best Bid and Offer (EBBO) reference prices: • The midpoint of EBBO • The European Best Bid • The European Best Offer The European Best Bid price is the highest binding bid (or buy) price available in the central limit order books of the regulated markets and MTFs contributing to the determination of the EBBO. The European Best Offer price is the respective lowest offer (or sell) price. Thus, in principle, the EBBO will deliver the tightest spread available in the contributing trading platforms. All EBBO reference price orders will enter into the system with instructions to execute at a reference price explicitly nominated - midpoint, best bid or best offer of the European markets. All EBBO reference price orders can match only at these points (i.e. the dark EBBO orders will only execute at the midpoint/EBB/EBO, according to the conditions set out when entering the order). Even though a dark EBBO order sitting in the order book hits an incoming displayed limit order that improves price conditions, the EBBO order will not benefit from price improvement. Whereas hidden EBBO orders can only interact with displayed limit orders at a price generated by another system [the aforementioned EBBO price (midpoint, best bid, best offer)], for displayed limit orders (non EBBO) entered into the system - in the case of interaction between other displayed limit orders - the matching price will not be generated by another system. The EBBO will be provided by a market data provider already offering this service to investment firms, regulated markets and MTFs on the basis of the trading data of regulated markets and MTFs that trade the shares. The trading platform itself will not calculate the EBBO figures and will not have the discretion to select among trading platforms contributing to the EBBO. This example falls outside of the scope of Article 18(1)(a) of the MiFID Implementing Regulation. Therefore it does not satisfy the criteria contained in this article.

Article 18(1)(b) of the MiFID Implementing Regulation <u>'Negotiated Trade Waiver'</u> Waivers in accordance with Article 29(2) and 44(2) of Directive 2004/39/EC may be granted by the competent authorities for systems operated by an MTF or a regulated market, if those systems formalise negotiated transactions, each of which meets one of the following criteria: (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the regulated market or MTF operating 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. (ii) it is subject to conditions other than the current market price of the share. Other conditions specified in the rules of the regulated market or MTF for a transaction of this kind must also have been fulfilled. In the case of systems having functionality other than described above, the waiver shall not apply to that other functionality.	
Functionalities that satisfy the criteria contained in MiFID	
Functionalities that do not satisfy the criteria contained in MiFID	<u>*Example 1:*</u> [8] The trading system will formalise negotiated transactions at or within the volume weighted spread whereby trading participants will individually agree on the price and volume of the trade before transmitting it to the trading platform. The system will ensure that all negotiated transactions are at or within the volume weighted spread on the public order

[8] The decision regarding this example has been adopted by CESR at qualified majority, according to Article 6 of the Charter, with the dissenting opinion expressed by the Danish Finanstilsynet, Estonian Finantsinspektsioon, Hungarian FSA, Irish Financial Regulator, National Bank of Slovakia, Finnish Finanssivalvonta, Swedish Finansinspektionen and UK FSA, that consider that in the absence of continuous trading on one platform, a suitable reference price can be taken from an alternative platform where there is continuous trading in that particular share, provided that the alternative reference price is specified in advance by the system operator.
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	book of the trading platform. The volume weighted spread is defined as the volume weighted bid and offer prices of orders on the trading platform's public order book aggregated to the size of the negotiated transaction, i.e. the spread between: • the average price of the transaction assuming that a sell order executed against buy orders on the trading platform's public order book up to the transaction size. If the transaction size is larger than the volume of buy orders on the order book it will be the average price of the transaction assuming that a sell order executed against all buy orders on the order book; and • the average price of the transaction assuming that a buy order executed against sell orders on the trading platform's public order book up to the transaction size. If the transaction size is larger than the volume of sell orders on the order book it will be the average price of the transaction assuming that a buy order executed against all sell orders on the order book. Where there is no volume weighted spread on the trading platform's order book at the relevant time, the transaction will be subject to the following price constraints: • within a percentage of the high or low price for trading in that share on the trading platform on that day; or, if not available, • within a percentage of the trading platform's closing price on the previous day. In the event that there were no transactions on the trading platform's public order book on the previous day, the trading platform's closing price would be the closing price for that share published by the relevant primary market. Trading participants are provided with these reference prices (i.e. the trading platform's closing price and its high and low price) through data feeds provided by the trading platform and through market data vendors. All trades executed using the system will be made public with a flag, indicating that the transaction was a negotiated trade in accordance with Article 27(1)(b) of the Commission Regulation. These trades will be made public as close to real time as possible. The calculation of both the volume weighted spread and, in case of shares not traded continuously, the reference price used should always be based on the trading data of the trading system operated by the same regulated market or MTF that seeks to develop a functionality of negotiated transactions. Therefore the suggested use of reference prices from the

	primary market is not in compliance with Article 18(1)(b)(i) of the Commission Regulation.

Article 18(2) of the MiFID Implementing Regulation ‘Order Management Facility Waiver’ Waivers in accordance with Articles 29(2) and 44(2) of Directive 2004/39/EC based on the type of orders may be granted only 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.	
Functionalities that satisfy the criteria contained in MiFID	*Example 1:* In the Reserve order system, a part of the order (a peak) is introduced in the order book whereas the rest of the total volume of that order is not displayed, resting in the order management facility. After the displayed portion of the order has been executed, a new peak is sent to the order book (with a new time stamp), and the non-displayed portion of the order is decreased accordingly (retaining time priority against other Reserve orders at the same price level). As a particular feature, the displayed and non-displayed portions of a Reserve order are available for potential execution against incoming aggressive orders, i.e. once all the visible orders at a certain price level (including visible peaks of reserve orders) have been executed, the non-displayed part of a Reserve order has priority for execution against the non-displayed part of other Reserve orders at the same price level which have been entered to the system at a later time. As a consequence, if the outstanding volume of the incoming aggressive order equals or exceeds the remaining part of the Reserve order with the highest time priority, no new peaks of any Reserve orders will be executed in the order book before the Reserve order with the highest time priority (on the basis of the entering time of the original Reserve order) will have first gotten full execution. This is because newly introduced peaks, despite having the same time stamp, will be executed according to its reserve order’s original time priority in the order management facility. Only after the full execution of the Reserve order with the highest time priority new peaks will be executed in the order book according to their price level and time priority.
Functionalities that do not satisfy the criteria contained in MiFID	*Example 1:* A discretionary order is an order to buy or sell a stated amount of a security at a specified price (“displayed price”) which would be visible in the order book, where in addition to the “displayed price”, there is a hidden instruction that allows the order to be executed at a more competitive undisplayed price (“discretionary price”) when there is no current opportunity for execution at the displayed price. Discretionary orders therefore execute at the displayed price when there is a matching order available to them at that price. As long as there is no match, the discretionary element

	enables the order to execute at a "better" price for the counterparty (i.e. higher than the displayed price for a buy order, lower for a sell order) against incoming orders priced within the limit that has been set for the undisplayed price. The limit order at the undisplayed price is held in the order management facility run by the trading venue. When, under the algorithm set out for this type of order, the discretionary order can be matched with an incoming limit order (either passive or aggressive[9]) priced within its undisplayed limit, the transaction takes place at the price of the incoming order. Discretionary orders may be "triggered" by either passive incoming limit orders which if not "hit" would rest on the book, or aggressive orders, such as "fill or kill" orders, which would be cancelled instantaneously if there was no immediately available match. In cases where the discretionary order is only partly executed at its undisplayed limit, the non-executed amount may remain in the order book at the displayed limit price. Such orders are considered not to meet Article 18(2) criteria as they contain an undisplayed element that, by construction, does not have the potential to rest in the order book, as required by the waiver. *<u>Example 2:</u>* A trading platform is proposing to offer a functionality with the following types of orders that were described by the trading platform as 'iceberg' orders: • They are always limit orders. • They have: o a displayed quantity in the order book ('visible tip'); and o a non-displayed quantity held in the order management facility at the same price limit. • The 'visible tip' is disclosed in the order book, while the non-displayed quantity of the order is held in the order management facility pending its disclosure to the market. Only once the displayed quantity has been completely filled, a new quantity is released from the order management facility and displayed in the order book. • The size of the 'iceberg' orders cannot be increased after a partial execution. In that case, there would be a second 'iceberg' order with a different timestamp. • Whilst in the examples of 'iceberg' orders in place across Europe a new time priority (and timestamp) is assigned each time a new quantity (tranche) is introduced to the order book, in the suggested functionality the new

[9] "Aggressive limit orders" require immediate execution, otherwise the order will be cancelled (or 'killed'). No aggressive order, or part of an aggressive order, will ever rest on the order book. Aggressive limit orders can be understood as immediate-or-cancel (IOC) or fill-or-kill. The difference between IOC and fill-or-kill order is that IOC can partially execute, whereas a fill-or-kill will only execute if the entire volume of the order can be filled. These orders can be used by investment firms to 'ping' trading platforms to discover trading interest.

	tranche displayed would retain the original timestamp of the 'iceberg' order. Therefore, each new tranche would have time priority against other orders sitting in the order book at the same price level. CESR considers that the feature of this functionality where the new tranche displayed would retain the original timestamp of the original 'iceberg' order is not compliant with MiFID.[10]

[10] The decision regarding this example has been adopted by CESR at qualified majority, according to Article 6 of the Charter, with the dissenting opinion expressed by the Czech National Bank, Hungarian FSA, Icelandic FSA and Swedish Finansinspektionen that consider that there is no support in MiFID for not allowing the use of this kind of time priority for an order type.

<table>
<tr><td colspan="2">Article 20 of the MiFID Implementing Regulation
‘Large in Scale Waiver’

An order shall be considered to be 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 Annex II of the Commission Regulation 1287/2006. For the purposes 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 33 of the Commission Regulation 1287/2006.</td></tr>
<tr><td>Functionalities that satisfy the criteria contained in MiFID</td><td>Example 1:

A trading platform has a system with the following characteristics:
• For shares admitted to trading on an EEA Regulated Market, orders must be equal to or exceed the relevant minimum size set out in Table 2 of the MiFID Implementing Regulation.
• Checks will be carried out upon initial order entry, on the residual portion of the order following a partial fill, and when the order size is amended.
• Any order or residual portion of an order below the relevant minimum size set out in Table 2 of the Commission Regulation will be rejected/cancelled.
•
Accordingly, all orders or residual portions of orders in shares admitted to trading on an EEA Regulated Market in the trading system will meet or exceed the MiFID large in scale size thresholds.</td></tr>
<tr><td>Functionalities that do not satisfy the criteria contained in MiFID</td><td></td></tr>
<tr><td>Functionalities in relation to which there is no common CESR position</td><td>Example 1:

For shares admitted to trading on an EEA Regulated Market, orders are only permitted to enter the open order book without being disclosed if they are equal to or exceed the relevant minimum size set out in Table 2 of the Commission Regulation. The ADT used for determining the minimum order size will be based on the figures published in the MiFID Database (http://mifiddatabase.cesr.eu/).

Every large order entered into the system must satisfy the minimum order size in Euro volume or it will be rejected otherwise. The same applies to order modifications, i.e. a reduction of the order below the minimum order size will be</td></tr>
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	rejected. A hidden order can be executed against disclosed or non-disclosed orders in the order book. It remains hidden after any partial fill regardless of the size of its remaining unexecuted quantity. During the process of assessing the MiFID compliance of the functionality described above, the Commission services were asked for their view on the interpretation of Article 20 of the MiFID Implementing Regulation, more specifically when an order has to be large in scale in order to qualify for a waiver from pre-trade transparency, i.e. when first introduced into the order book or all the time. In their answer, the Commission services noted that there appear to be two different models that have been adopted in relation to this waiver provision. The first model assumes that to qualify for the waiver an order is assessed at the time it is entered into the system and it can remain undisclosed even if, after partial execution, the remainder of the order is reduced below the relevant threshold. The second model assumes that to qualify for the waiver the order must be above the large in scale threshold when it is first entered into the system and then must continue to remain above the threshold if it is partially filled by subsequent orders. The Commission services concluded by noting that, having regard to the underlying intention of the directive, they think that both models are permissible under the directive. After having received the Commission services' view, the case was submitted to the decision making process of CESR where, because consensus could not be reached, a vote by CESR Members took place. In the vote, qualified majority was not reached. As a consequence, there is no common CESR position for this functionality and the relevant competent authority to whom an application for this waiver is submitted has to decide on the MiFID compliance of this waiver without further guidance by CESR.