

# Norges Fondsmeglerforbund

The Association of Norwegian Stockbroking Companies  
Stiftet 5. oktober 1915



Kredittilsynet  
Postboks 100 Bryn  
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15. august 2001

Re: Consultation of FESCO paper "Proposed standards for Alternative Trading Systems".

We refer to your letter 22<sup>nd</sup> of June 2001.

The reason for the proposed standards seems to be that the development of new – and non-exchange - trading systems, operated by investment services companies, raises regulatory concerns primarily related to the protection of the users and the market integrity. Further FESCO has stated in its paper that the existing conduct of business rules “do not fully address the risks posed by the specific nature of services provided via ATs”.

Before we can comment in detail on the proposed standards and answer the different question it is important to have a clear opinion of what is meant by ATS. The very broad definition of a qualifying system seems unclear. It is not clear what is meant by “automated system”, neither is it clear what is meant by “brings together”. It also seems unclear whether it is the system as such that need to be defined or the “entity which,....., operates..” that is the important issue.

It seems though that the essence of the definition is the automatic matching of orders. If this is the right interpretation this will exclude systems that only provides information on orders and trades, such as the Norwegian OTC-market, and also the different order-routing systems that different investment services companies operates in connection with their membership at exchanges. The same seems to apply also for systems where clients trades directly with an investment services company against the company’s own book. We think that such a delimit of the definition is absolutely necessary and we will recommend that the definition rewrites to cover this.

If our understanding is correct we will propose the following definition of a qualifying system:

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“An electronic trading-system that, according to rules set by the systems operator, automatically matches buying and selling orders placed in the system by a user in a way that forms or results in an irrevocable contract.”

We think that this definition is flexible enough without comprising such systems mentioned above that clearly should not be considered as ATSS.

Another problem is that our proposed definition or the FESCO-definition can entail some problems related to the definition of an authorised market in the Norwegian stock exchange act. The essence of this definition is whether you have established a market (i.e. an automatic matching system) or not. If a system falls within the definition of a market, the company that operates such a system will need a licence from the Norwegian authorities. Such a company will then be regulated by the stock exchange act, and as a result of this will not benefit from a single passport under the ISD, which seems to be contrary to the whole idea of regulating the ATSS.

In the following we will try to answer the different question as far as possible taking into consideration the problems related to the, in our view, unclear definition, ref above.

#### Question 1:

The content of the proposed principles and rules regarding conduct of business introduces extremely comprehensive advisory duties on the firms towards their customers, i.e. requirements concerning risk warnings, monitoring of the customers' trading restrictions, investment advice according to the customers "needs" (as opposed to e.g. the customers "requirements") etc. It is also drawing a distinct line between advisory-based trading and so called execution only trading, where the latter is characterised by the non-existence of advice from the investment services company.

Some of the proposed standards states that the operator shall provide different kinds of information, i.e. standard 4 and 6. If complying with these standards it seems that providing such information can be characterised as providing advisory-based trading and not execution only. We think that this has to be clarified.

#### Question 2:

See above.

#### Question 3:

Again the main problem is connected to the definition. A lot of systems used by investment services companies operates as order routing systems where all trades are reported to the relevant exchange. The same seems to apply also for systems where clients trades directly with an investment services company against the company's own book.

#### Question 4:

It is unclear what is meant by semi-automated systems, not at least in relation to systems that provides information on quotes and trades as a basis for brokers trading, often operated by information vendors and other companies that are not investment services companies. In our opinion regulatory authorities shall not have any right or obligation to regulate such companies and systems.

Question 5 and 6:

In our opinion the standards shall not apply to trading systems for non-ISD instruments. We think it will be more suitable to evaluate the different characteristics of such instruments from an ISD perspective and, if adequate, include the actual instrument in the Annex to ISD.

Question 7:

The notification requirements shall not be applied to all systems (depending on the definition, ref above).

Even though the information requirements under Standard 1 are related to information that an operator shall provide to regulators we will point out that it will not be acceptable to require a separate obligation to make pre- and post-trade information available to the public. Companies operating trading systems in connection with their exchange-membership (i.e. order routing systems), have reporting obligations towards the relevant exchange, and additional reporting should be unnecessary.

Question 8:

In our opinion it is obvious that there must exist a written agreement between the operator and the users. We don't think it will be necessary to regulate in more detail what issues that shall be covered in an agreement.

Question 9:

In our opinion it is obvious that the provider should supply such information, but we can not see the reason for giving information to users regarding the status of other users. Neither can we see the reason behind the requiring of information on different users reporting obligations to different regulatory authorities.

Question 10:

See comments to question 1. We will add that requiring that an "operator might have to take responsibility for providing appropriate information to users" regarding information on issuers of unlisted securities is impossible. In Norway the issuer does not have any such obligation to publish information. An implementation of the standard, to cover this, will therefore need changes in the Limited Companies Act.

Question 11:

It seems that a condition for standard 5 is that the system does provide matching of orders, and if so it is obvious that this should be fair and orderly. In the comments there are some remarks regarding information to non-professional users. It is unclear what kind of information that is needed. There is also a recommendation that all users should be able to view "information on completed transactions". It has to be clarified that this will only cover information on the users own transactions.

Question 12:

We can not see the regulatory need for imposing an obligation on the operators to make trading information "publicly available". We refer to the unclear definition of "qualifying system". We can neither see a reason for stating that such publication shall be on "a reasonable commercial

basis”, not at least when it comes to who shall decide what is “reasonable”. Another unsolved issue is whether the information is to be made public on a real time basis or not. Without knowing the answer to this or how detailed information that will be required, it is almost impossible to have an opinion on the cost/benefit or whether the standard “strike the right balance” or not.

Question 13:

It is obvious to us that an operator of an ATS must comply with standard 7.

Question 14:

It is difficult to oversee all the implications of the standard 8, not at least regarding the more detailed requirements, i.e. in connection with market abuse.

Question 15 and 16:

No specific comments.

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Regarding implementation we do not see any severe problems regarding implementation in Norway. Most of the standards falls within the scope of the Norwegian Securities Trading Act, especially §§ 9-1 and 9-2. It seems that there will be no need for changes in the current legislation, however this will depend of the degree of detail in the standards.

Best regards

**The Association of Norwegian Stockbroking Companies**

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