BRITISH BANKERS' ASSOCIATION

Pinners Hall
105-108 Old Broad Street
London EC2N 1EX

Tel: +44 (0) 20 7216 8800
Fax: +44 (0) 20 7216 8811

Michael McKee
Executive Director

Direct Line: 020 7216 8858
Direct Fax: 020 7216 4358
E-mail: michael.mckee@bba.org.uk

8 April 2004

Fabrice Demarigny
Secretary General of CESR
11-13 Avenue De Friedland
75008 Paris
FRANCE

Dear Sir,

BBA Response to CESR Consultative Concept Paper on Transaction Reporting

The British Bankers' Association is the principal trade association for banks operating in the London financial markets and for United Kingdom banks. Around 75% of our members come from outside of the UK including many from elsewhere in the EU.

We welcome the opportunity to respond to CESR's Consultative Concept Paper – particularly in view of our very active engagement in relation to the negotiation of the Investment Services Directive both directly and through the European Banking Federation.

We have attached our answers to the questions asked by CESR but have one or two comments which we consider it useful to set out in this covering letter. These are as follows:

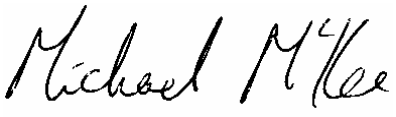
- Ideally transaction reporting should deliver the possibility for firms to choose a pan-European one stop shop to which they can report their transactions. Firms should have the option of reporting to the regulator where they do most of their business and also to exchanges or ATSs which are prepared to transmit transactions on that exchange or ATS to the regulators.

- We support the idea of common transaction reporting content which could also be used for clearing and settlement purposes. In defining the content of these reports CESR should only incorporate essential data for the purposes of clearing, settlement and initial regulatory monitoring. Data which is not essential but which could be useful after the event in market abuse investigations, for example, should be dealt with separately by requests for such information after the event by the investigators. The essential data will be sufficient to permit the market abuse investigators to spot transactions which may be suspicious.

- We consider that "the most liquid market" should be measured by the volume of trades (by number of securities – not by number of transactions) done across different exchanges, ATSs etc.

We hope that these comments are of assistance and would be very happy to discuss them further with you.

Yours sincerely



Michael McKee
Executive Director
Wholesale Banking and Regulation

Answers to Questions Asked by CESR

Q1. Do you agree with the approach suggested above to determine the methods and arrangements for reporting financial transactions in one set of criteria applicable to both, the conditions for a trade matching and reporting system to be considered valid to report transactions to competent authorities and the criteria allowing for a waiver? If you do not agree, what other approach would be more appropriate in your view?

The approach set out is very high level and much will depend on the detail but, in principle, the approach appears to be the right one. Much could be gained from having one set of data. However, in developing one set of data CESR should consider that if this data is to be trade reported quickly it needs to include as few fields as possible. Data that is not required within the first day of reporting should not be included (e.g. ultimate client). If this information is subsequently required (e.g. for market abuse investigation purposes) it can be sought at a later date from the relevant firm by investigators.

Q.2 What requirements should such an inventory contain?

Transaction reports should only contain details of the following:

- Firm
- Counterparty – if known
- Security
- Time/date
- Price
- Size
- Buy or sell
- Market/ATS etc

Q.3 What other issues, if any, should CESR take into account when responding to the Mandate concerning "the methods and arrangements for reporting financial transactions"?

CESR should give firms simple but practical reporting options. Ideally firms should be able to report to one national regulator (preferably the regulator where the bulk of the transactions are carried out) and, where they are dealing on an exchange or ATS which has acceptable reporting systems to that exchange or ATS. The national regulators and the exchanges should be responsible for exchanging transaction data amongst themselves where it is necessary for one regulator to have information about transactions reported to another regulator or exchange.

Q.4 What would general criteria for measuring liquidity be?

The criteria should be as simple as possible – both for ease of measurement and to avoid complications in liaison. The best proxy would seem to be volume of a security traded in a particular venue (number of securities traded rather than number of transactions). The most liquid market would be the market on which the highest volume traded. To avoid frequent changes of "most liquid market" this should not be measured too frequently – it should be half yearly or yearly rather than, say, monthly.

Care needs to be taken in how exchanges, ATSs etc calculate volume. There may be a risk of double counting of buys/sells. A standard approach to measuring volume of trades would be needed.

Q.5 What specific criteria could be useful in measuring liquidity? Should they be prioritised?

See Q.4.

Q.6 What could be an appropriate mechanism for assessing liquidity in a simple way for the purposes of this provision?

See Q.4 Exchanges already calculate their volumes. Provided there was an adjustment of the way in which these are calculated to ensure that a common approach was being taken and that the statistical processes were of an appropriate quality then these figures should be used. CESR would seem to be the right body to oversee this and make the decision about which market was "most liquid".

Q.7 What other considerations should guide CESR in its work regarding the assessment of liquidity in order to define a relevant market in terms of liquidity?

No comment.

Q.8 Do you agree with the approach proposed by CESR for determining the minimum content and common standard/format for transaction reports? Are there other approaches that could usefully be considered?

Yes, in principle we agree. It is important to try and keep the fields required to a minimum. That should be possible with regard to trade reports (e.g. reports sent to an exchange within a few minutes of completion of a trade) and transaction reports (i.e. reports sent to a regulator by the end of the day). Ideally those reports should be matched with information required for clearing and settlement purposes – and if this could be done there could be scope for substantial savings.

As mentioned above this data should also be useful for the purposes of market abuse investigations by competent authorities. However, CESR must be careful to differentiate between information essential for transaction reporting, clearing and settlement and other information that could subsequently be useful for market abuse investigators but which is not essential for transaction reporting, clearing and settlement. The latter information should <u>not</u> be required in transaction reports because it will only be needed some time after the event and can be separately obtained by a request to the firms concerned.

Q.9 Apart from the types of information set out in Art. 25 par. 4 and the Mandate, what other information might be usefully included in transaction reports?

The exchange, ATS or other on which the transaction was completed.

Ideally a common security identifier would be developed rather than ISINs. The work of the Reference Data Coalition and the Reference Data Users Group should be taken into account here.

Q.10 Do you agree that the content of transaction reports has to be equal irrespective of the entity reporting the transaction? What considerations would justify a different treatment of reporting parties?

Yes.

Q.11 Do you agree that this preliminary assessment on the scope of the implementing measures is appropriate, and with the approach suggested above to determine the criteria under which the operations of a regulated market in a host Member State can be considered as of substantial importance, or would you consider another approach more appropriate?

We agree with the preliminary assessment of the scope of the implementing measures. However, proportionality is an overriding EU law obligation and therefore an important consideration in relation to any implementing measures which the Commission may adopt. In view of this we support CESR's plan to carry out an initial fact-finding exercise before proposing criteria.

Q.12 What relevant criteria should be taken into account in order to assess the substantial importance of the operations of a regulated market in a host Member State?

A regulated market should not generally be regarded as having "operations" in a host Member State unless it has actually established a physical presence in that Member State. Consequently it should be clear that where an exchange only has remote members in a particular Member State then it does not have "operations" in that Member State.

"Substantial importance" suggests a fairly high threshold – say 35% or above over a range of significant securities which are mainly traded in the host Member State.

As the most liquid securities of stocks domiciled in the host Member State are usually regarded as the most important it could be expected that "substantial importance" would need to embrace both coverage of a substantial number of those securities (e.g. 35% plus of the CAC, DAX or FTSE principal stocks and 35% of the trading in those securities i.e. a need for a double majority).

Q.13 What other indicative elements should CESR take into account when drafting its technical advice in this field?

An important consideration when exchanging information cross-border is the security and confidentiality of any information supplied. The ISD imposes confidentiality obligations on regulators in relation to the exchange of information but the implementing measures could also usefully require that information exchanged electronically between regulators across borders should be exchanged in a secure fashion.

We are supportive of a more standardised approach to information requests and more common understandings about when it is appropriate to obtain assistance from another regulator. The statutory powers and jurisdiction of the regulator are important – these vary significantly from one CESR member to another. It is suggested that CESR should identify areas where all CESR members have a broadly equivalent jurisdiction and powers and focus on these as the areas of primary importance in developing a common approach. In areas where some CESR members do not have powers but a common approach would be useful consideration should be given to the extent to which it is possible for CESR, EU institutions and other member states to encourage the relevant Member State to extend the powers of the CESR member to permit a common approach.

While we are supportive of a more standardised approach the watchword needs to be effectiveness, rather than bureaucracy. It is important that a search to find common approaches or forms does not inhibit real co-operation. Consequently an important consideration in developing common formats and information exchanges must be whether there is genuine utility in the information being supplied. In our experience providing documentary information is generally only a useful adjunct to real human beings co-operating with each other in a helpful way. For this reason we would generally support the development of common approaches though Level 3 rather than Level 2 because this will be more flexible and there is less risk that legal requirements will hinder genuine regulatory co-operation.

Q.14 To what extent should CESR take into account the nature of the information to be exchanged in order to set up different categories of information and corresponding procedures for exchange of information (i.e. routine, case specific)?

See Q.13

Q. 15 To what extent do you agree with the approach outlined above? In particular, are there any issues which you believe would be more appropriately dealt with at Level 3? What other considerations should guide CESR?

See Q.13