



Deutsche Börse Group

Deutsche Börse's Response
to
CESR's
Public Consultation

on publication and consolidation of
MiFID market transparency

Frankfurt / Main, 15th December 2006

Executive Summary

We welcome the opportunity to participate in the consultation to this Call for Evidence regarding publication and consolidation of MiFID market transparency and hereby present our comments and suggestions on the questions and issues raised. We appreciate CESR's awareness of the importance of data quality and encourage CESR's guidance on this issue.

Deutsche Börse would recommend a light-touch approach in developing standards for trade reporting which would be based on three pillars:

Data quality

Ensuring the data quality encompasses a formation of minimum quality standards and publication of each trade through only one publication arrangement (Option 1 of this Call for Evidence) in order to prevent duplication of trade reports.

Data consolidation

We believe that MiFID's requirement of making available the data in an easily consolidatable format will not be matched by publication on websites. However, in case usage of the internet should explicitly be allowed as an official publication arrangement facilitating consolidation, at least the installation of a push-system which automatically transmits the data to data consolidators should be required.

Technical standards

We recommend no interference in existing market structures and leaving the technical implementation of reporting systems to market forces. Nevertheless, the recommendation to use open industry formats and standards like the ISO standard could be helpful for new data sources in order to facilitate their consolidation in a timely and efficient manner.

Overall, we would suggest adopting a light-touch approach in order to avoid imposing unreasonable costs to market participants, however, we deem minimum data quality standards for trade reporting as necessary, thereby ensuring that the market is not misled.

Additionally, we would like to emphasize the importance of a harmonized approach on market transparency in order to facilitate data consolidation. If the result of national implementation would give rise to 28 different national minimum requirements to data transparency, the full benefits of transparency under MiFID would be difficult to achieve.

Furthermore, a harmonised approach to data consolidation is a pre-requisite for ruling out data fragmentation which would hinder the EU financial market on its way to full integration. Functioning of the MiFID passport in relation to MiFID transparency requirements (e.g. trade reporting services and data dissemination) should therefore be acknowledged.

Detailed Remarks

1. Data quality

Question 1 (page 13):

In your opinion, will this additional guidance help to ensure high quality data monitoring practices?

We explicitly welcome the additional guidance undertaken by CESR as we have asked for in our response to CESR's Call of Evidence 06-134 on consolidation of market transparency data. We believe that harmonised minimum data quality standards for trade reporting would facilitate the price formation process, support consolidation and thereby ensure that the market is not misled. Hence, the overall benefits to the market from increased transparency would be enhanced as intended by MiFID.

We perceive that there is a need for data quality standards on the member state level. In this context, we would like to refer to FSA's Trade Data Monitor (TDM) concept. Such concepts would generally be helpful to the market, but not a guarantee per se for a sufficient data consolidation on EU level, which could result in 28 different minimum requirements within the EEA. Against this background we would recommend the elaboration of EEA wide market standards by CESR.

Beyond this guidance we would appreciate CESR's support in establishing consistency and legal certainty of MiFID with respect to the following issues:

- Functioning of the MiFID passport in relation to MiFID transparency requirements (e.g. trade reporting services) and data dissemination.
- Clarifying the question how the supervision of compliance with minimum requirements as well as possible sanctions for non-compliance is intended to be designed.

Question 2 (page 16):

Option 1 – (a) Would publishing each trade to only one publication arrangement help to address our concerns about duplication? (b) Would this option be sufficient on its own to address the issue, or should it be coupled with another solution? (c) Rather than being an option, should this option be seen a prerequisite (supported by other requirements)? (d) Would this option limit unnecessarily the choice of publication channels for firms?

We support option 1 as a necessary condition for the prevention of duplication of data reporting. By preventing duplication of data right at the source (where the data is generated) this option provides for a high level of data reliability and minimizes the need for complex and expensive cleansing, correction and/or amendment processes at later stages: Simultaneous usage of more than one data aggregator per trade would represent the main reason for duplication of trade reports. All other reasons could be traced down to errors in business or technical processes but the volume of duplicates would be negligible in comparison to the simultaneous usage of publication arrangements.

Any dissemination of redundant trade reports (by using multiple data aggregators for one and the same trade) would not only increase costs on a macroeconomic level and hinder easy consolidation of data, but would very likely result in additional sources of error as well.

We view this option as the most preferable compared to option 2 and 3, which are either non-sufficient at all or appear - both from a time to market aspect as well as cost-benefit viewpoints - unviable. Option 1 would be easy to implement for all market participants and would not require significant additional investments. In addition, Option 1 does not prevent a source to enter into more than one publication arrangement as long as it is ensured that any given trade is only published through a single arrangement.

This minimum requirement - using only one data aggregator per trade only - needs to be strictly binding. Otherwise, duplication of trade reports will increase without doubt, consolidation will be hindered instead of being facilitated, macroeconomic costs (as well on the site of the data source) will rise, and price formation processes will likely be misled.

Question 3 (page 16):

Option 2: - (a) Would a unique trade identifier address our concerns about duplication?

The introduction of a Unique Trade Identifier could theoretically support the identification of a duplicated trade (when using multiple reporting channels per trade at a time). However, such an identification would probably rest on the combination of a venue identifier in

combination with the identifier assigned by the source of the information as it cannot be ruled out that – by chance – two sources use the same identifier. Thus, it compromises the ability of the source of information to remain anonymous where possible.

In addition, Option 2 would not help to avoid an erroneous double entry by both parties of a trade, unless it would be supported by a Transaction Reporting Regime which would use the same Unique Trade Identifier for both sides of a trade as well as a mandatory data field in the transaction reports.

A pre-condition for this would be the assignment of Unique Trade Identifiers on an EEA wide basis, the communication of the respective Unique Trade ID between both parties when a trade has been concluded, the use of it in the Trade Report by one party, and the use of the Unique Trade ID within the Transaction Reports by both parties.

Even in this case only an ex post validation of the reported data could be achieved by the Competent Authorities (which again would request additional investments for investment firms and even more so for the competent authorities). Above all, this validation would be too late in the process to have a positive impact on the real-time price formation process which is the main reason behind establishing post-trade transparency requirements.

Furthermore, such an approach would require a new approach on an EEA wide level, i.e. establishing an institution which provides Unique ID's for all reporting liable investment firms, which would create additional costs for the market. Besides this, we strongly doubt, that such a requirement could be established in a timely manner until the introduction of MiFID in November 2007.

Therefore, we do not think that Option 2 provides an adequate solution to prevent the publication of duplicates and to ease the consolidation of data. A need for a further identification of duplicates actually arises only in a regime where Option 1 is not realized. Such a regime would create duplicate cleansing efforts for all firms involved in the publication and consolidation stages.

As such, Option 2 and Option 1 are not true alternatives for coping with the problem of duplicate reports. In case CESR would decide to recommend the introduction of a unique trade ID, we would always see Option 1 as a necessary pre-condition in order to avoid duplication already at the source.

(b) Do you think this is an appropriate solution?

As mentioned above, we view this option as costly, complex and time-consuming. It would be rather difficult to implement it during the given timeline. Although it is important that duplication of reports is prevented, this should not occur at any price, especially when the

original target (not to provide misleading information to the price formation process to the market – which would require real-time cleansing of data) cannot even be achieved.

Taking into account the cost-benefit ratio, the benefits achievable by such an identifier would not outweigh the costs associated. Additionally, a unique trade identifier would prevent duplication as late as at the stage of data vendors, or even later at the stage of a competent authority. Instead, it is advisable to require that duplication is avoided at the source of reporting, since the removal of duplication is technically much more complex at a later stage of the value chain and leaves ample opportunity for additional mistakes.

(c) How would the industry achieve this? (d) In your view, should this only apply to MTFs and investment firms trading OTC or should it also apply to RMs?

Again we would like to reiterate that this solution (introduction of Unique Trade Identifier on EEA level on IF's sites) is rather difficult to implement especially within the given time frame and we would recommend to abstain from it as we see no additional value in it compared to Option 1.

(e) What costs would be involved and who would bare them?

The overall costs of this option should not be underestimated. However, they are difficult to be quantified on EEA level. Imposing an EEA-wide trade identifier would interfere significantly with existing systems (at the sites of investment firms, data aggregators, data consolidators), whereby all market participants would be subject to additional costs. It is more than questionable whether expected benefits of this option would outweigh the costs as no additional benefit seems to evolve in a timely manner (meaning real-time during the price formation process).

(f) Would this solution request a recommendation on a common and single format for the trade identifier?

In case CESR would still like pursue this approach, a common and single format, however, would certainly be supportive.

Question 4 (page 16):

Option 3: - (a) Would the use of time to milliseconds contribute to the identification of duplicate trades? (b) Do you think this is an appropriate solution? (c) How would the industry achieve this?

Manually inputted OTC transparency data are generally not reported in terms of milliseconds. If this requirement is to be fulfilled, then a completely new data input system would need to be implemented at investment firms' sites.

Although such a solution might theoretically hold the potential of reducing double reporting – but then only in combination with Option 1 - the expected effect should be minor as similar trades might indeed occur at the same time. We therefore deem this option as completely insufficient.

(d) Are there circumstances where legitimate multiple identical trades (to the detail of milliseconds) could exist? (e) In your view, should this option only apply to MTFs and investment firms trading OTC or should it also apply to RMs?

It cannot be excluded that multiple identical trades at milliseconds can occur within the European markets. Unique identification of those trades based on a time stamp – even in milliseconds – but without source code would not be able to be fully identified.

Deutsche Börse e.g. currently only publishes on-exchange matched trades. Each trade can be identified by a Unique Trade ID as well as a Correction ID in case a trade has been amended as well as a Market Identifier. Therefore we would deem it completely unreasonable to generally extend these requirements to every institution regardless of its existing technical set-up and the data quality it already provides to the market.

(f) What costs would be involved and who would bare them?

Implementation costs associated with Option 2 could potentially be comparable to the costs of Option 3 and it would affect the complete reporting chain, starting with the data source, followed by the data aggregator and finally the consolidator.

Question 5 (page 16):

What is your preferred solution? Do you believe that a combination of these different options is viable? Are there alternative solutions?

As already stated, we do not consider these three options as actual alternatives. For Deutsche Börse, the realisation of Option 1 is a natural outcome of the MiFID rules, a prerequisite to prevent an unnecessary explosion of the number of duplicate reports and to ensure transparency for real-time price formation processes.

If Option 1 is realised, all further measures, be it Option 2 or 3 or alternative ideas, might be able to further reduce the number of duplicates. These duplicates could only result from processing errors and/or by both parties reporting the trade. Compared to the size of the problem without a realization of Option 1, however, the number of duplicates to be removed through those additional measures is negligible. Given the expected implementation costs of those measures, we would strongly recommend to abstain from such measures for cost-benefit reasons at least for the time being.

Question 6 (page 16):

In your opinion, is the list as set out by the article 27(4) of the regulation sufficient to alleviate confusion over whose responsibility it is to publish a trade (where there has been no agreement over who should publish)? Is there a need for CESR guidance? If so, in your opinion, what should that guidance cover?

Article 27(4) indeed leaves ample flexibility to reporting liable parties which should generally be seen in a positive light. However, this broad flexibility might create the one or the other uncertainty. A recommendation by CESR which could encompass the suggestion that IF's prepare either standing instructions with their clients regarding who reports under which circumstances, might therefore be helpful.

2. Publication arrangements

Question 9 (page 18):

Do you agree with our proposed approach for dealing with static websites?

We would like to reiterate that MiFID level 1 Directive does not request overall market data consolidation, it rather requests for market data to be easily consolidated. Reporting via internet solutions, however, seems to be contradictory as it would render data consolidation particularly difficult.

We would like to emphasize once again that data fragmentation could harm the integration of EU financial market and it would endanger the transparency concept laid down in MiFID.

So far, we see the following problems to be solved if trading data are published on websites:

- The higher the number of websites to be consolidated, the lower the processing and consolidation speed and hence the data quality.
- The single accesses between consolidators and investment firms would have to be monitored permanently, putting extremely high efforts on consolidators' side.
- Additional resources are required: although hardware and computing power of servers are extendable, over-utilisation of internet capacities is extremely difficult to predict or to re-evaluate.
- The risk of data manipulation in the internet should not be neglected. The required encoding of data would inevitably imply additional loss of processing and consolidation speed, which in turn negatively impacts the data quality.
- Reporting via internet would increase sources of errors and related monitoring efforts exponentially.

As CESR has correctly identified the shortcomings of static websites, the proposed additional requirements are a good step forward in setting minimum quality standards to be offered by websites as a publication mean, but still not enough, if an easy and readily accessibility of pre- and post-trade information to be provided for.

Theoretically, there are three options of publishing data via websites:

Option 1:

Reporting on the website of the investment firm - Theoretically, in the case of no specific standards with respect to data fields and data field structures, the reporting investment firm could publish the data via internet individually in HTML format.

Problem: Data consolidators would need to scan the data through pull-system and develop the relevant interpretation logic for every single website, which would have to be adjusted every time the website is changed. The development and maintenance efforts to be provided by data consolidators are obviously extremely high.

Recommendation: We would urge CESR not to accept such an approach.

Option 2:

Provision of data in defined data formats and structures on investment firm's web-server, whereby consolidators would be given permanent access.

Problem: Reporting the data through fixed formats (e.g. XML) could reduce the difficulties related to consolidation of data reported via internet, but it would not render them non-existent entirely.

The data consolidators, although having permanent access to investment firm's web server, would still have to gain access to the data using a pull-system. The development and maintenance efforts arising from option 1 would not be given here since a certain degree of standardisation of reporting channels would be achieved, still difficulties appear with respect to processing and conversion speed, which makes consolidation "in real time" unlikely.

This is due to two reasons: 1) Since investment firm's web servers are polled in time intervals (in seconds, more realistically in minutes) the consolidation of post-trade data is already particularly difficult at this stage, pre-trade data consolidation being impossible in a timely manner.

2) Download of the complete data content which is made available only at the specified time period (day, hour, minute) is time consuming accordingly (dependant on the agreed time period).

Recommendation: Although this option represents an improvement compared to the first option, it would still not be sufficient to make data from websites easily consolidatable and we therefore recommend CESR not to adopt this approach.

Option 3:

Data reporting as single messages via internet or direct access - this option implies the provision of data by investment firm through push-system. Reporting investment firm would be obliged to send the new data (only the deltas) to consolidators directly and immediately. This methodology enables consolidation of data in real time, especially due to the fact that the volume of transferred data is reduced to a minimum.

Problem: However, high demands on consolidators' hardware and network are made, because of the large number of single permanent accesses.

Recommendation: We view this option as a pre-condition to allow for official publication of data on websites in its role of an official trade report and advise CESR to consider its adoption, since any other option would give rise to information asymmetries and render data consolidation in general impossible.

Question 10 (page 18):

In your view, is this necessary and reasonable? What additional costs would be involved? Who would bare the costs?

The described approach of pushing the data out via a feed would be a reasonable step in facilitating the accessibility to pre- and post-trade information and a minimum requirement for using the internet as a reporting channel. Among currently technically viable solutions with regard to the internet this is the most preferred one.

It is essential to view the total costs and especially the overall welfare costs in the worst case fragmentation. There is no sense in developing a broad framework of transparency requirements with regard to equity trading, unless investors are finally able to access the information in an easy and reliable manner. Therefore, the costs associated with consolidatability of data should be seen in the overall context in the sense of their dimension compared to the benefits of full transparency for the end investor as aimed by MiFID.

3. Availability of transparency information

Question 11 (page 21), Question 12 (page 21):

Do you foresee any difficulties in aggregators identifying key sources of data?

Do you have a preferred means by which to identify sources of data / collection points?

We believe that difficulties in identifying key sources of MiFID market data will increase depending on the level of trade data report fragmentation (e.g. extensive usage of internet sites only as reporting channels as the worst case scenario) This will substantially increase the required efforts with regard to technical consolidation but as well – as a pre-condition – with regard to identifying each relevant MiFID data source, which we deem almost impossible in the worst case. This is one of the reasons why we recommend to abstain from using the internet as an official trade reporting channel / medium for trade reporting.

One possible alternative solution would be the publication of all active reporting channels at EEA level, i.e. on an EC website, easily accessible for all interested parties. This would at least guarantee that a consolidator interested in providing a complete consolidated view on EEA level would not accidentally omit any reporting channel. Active reporting channels would be requested to provide information about their activity, ideally directly to the EC's web-site. This approach imposes nearly no additional costs except the time invested into forwarding the updated list of all active channels to the EC's website.

We would like to use the opportunity to refer also to the FSA's Trade Data Monitor (TDM) concept. The FSA would facilitate the identification of data sources through publication of a list of all active TDMS on its website, so that consolidators would know from where to source the relevant trade information. Although the FSA would only display official TDM's and no Non-TDM's operated within the UK on its web-site therewith, we acknowledge its efforts as a move into the right direction.

Question 13 (page 21):

Do you agree with our approach to facilitate the identification of new sources of transparency data?

The proposed development of mechanisms through which IFs communicate to the market where to collect their pre- and post-trade data, e.g. by using press releases or other corporate media, is a tentative measure but in our view not sufficient at all. It is without doubt that this approach would not facilitate the consolidation as the efforts which need to be undertaken by consolidators would be extremely high and furthermore, open for mistakes and potentially missed data sources.

Again, this approach would leave the identification of all relevant MiFID market data sources to chance, and therewith leave an intended EEA wide and complete consolidation at risk. We would therefore not support this approach but revert back to our suggested model in Q 12. (please see above).

4. Publication standards

Question 14 (page 22):

Do you agree with our recommendation to use ISO formats (and reference data where applicable) to ensure consistent publication of transparency information?

We appreciate CESR's clarification that the change of existing systems and standards used on RMs and MTFs is not subject of their proposal.

There is already, within Europe, as well as on a global level, an existing and well functioning market data infrastructure which should not be disrupted and/or replaced. Innumerable active interfaces between relevant parties (Investment Firm's -IF's-, Regulated Market's -RM's- and Data Vendors) already exist, data is consolidated and disseminated. The utilization of this existing data infrastructure for OTC data could provide for both efficiency as well as MiFID compliance.

Generally, the usage of ISO formats/standards is to be appreciated especially in case of new data sources. Here, we would like to point out that Deutsche Börse already is using ISO standards where useful. We deem it necessary, however, that a certain flexibility needs to be available as well with regard to ISO standards. E.g. with regard to the "unit price" stated in Table 3, page 22 of CESR's Consultation Paper, the explanation states an integer should be displayed in cent or other as appropriate. It is necessary that these flexibilities can be retained and managed by the data source, respectively the reporting channel.

Question 15 (page 23):

Do you agree with our suggested flagging (i.e. C, N and A)

The above suggested flagging generally seems to be fine. Again we assume that existing systems with established and well functioning processes and infrastructures will not be due to unnecessary changes.

Question 16 (page 23):

Is there a need and appetite for additional guidance on what other trades should be regarded as being determined by factors other than the current market valuation of the share (e.g. cum dividend etc)?

DBAG cannot identify any need for further guidance on more detailed specifications with regard to the required data field "other than current market price". Usage of the required indicator should be fully sufficient to identify any trade where the price is based on other circumstances than the current price formation within the market. Any trade flagged with this indicator can then be left outside of the ongoing price formation process within the market.

Of course the more specifications are available on the reasons behind the price formation process "due to other reasons than the current market price" would be additional information and might be appreciated by the market. We would like to point out that MiFID level 2 leaves the degree of freedom to require additional data fields where necessary. We assume that demand might even vary from market to market.

Additional guidance on this issue to our understanding would be beyond the scope of the Call for Evidence.

Question 17 (page 23):

Do you agree with our assessment that there is a need for sources of data to have continuity in the structure of the transparency information they publish?

We agree with CESR's assessment that sources of data would need to provide continuity in the structure of the transparency information they publish in order to be easily consolidatable. Deutsche Börse itself provides data since years in a stable and structured format.

We therefore back CESR's requirement that information that is made public should conform to a consistent and structured format.

Question 18 (page 24):

Is re-publication the best approach for dealing with amendments?

We appreciate CESR's differentiated approach with regard to existing market data infrastructures and newly to be implemented infrastructures.

Deutsche Börse shares CESR's view that a re-publication is the right approach to deal with amendments. Deutsche Börse already complies with this requirement since many years.

In fact amendments within Deutsche Börse's data feeds are identified by a "Correction ID". This "Correction ID" encompasses the original trade's "Unique Identifier" set by DBAG's internal systems as well as an amendment indicator. It is this way that consolidators are able to identify erroneous trades and adapt their consolidated feeds accordingly.

DBAG considers re-publication of amended trades as the right approach. We would like to point out that it will be essential, that amendments/corrections are made via the same publication arrangements as the original trade.

Question 19 (page 24):

Is 'A' an appropriate flag for amendments?

Please refer to our answer to Q15.

Question 20 (page 24):

This approach implies that publication arrangements would need a mechanism for uniquely identifying trades to allow data aggregators and data users to effectively discard the inaccurate trades. Is this necessary?

In our view publication arrangements would indeed need a mechanism for uniquely identifying trades. As already described within our response to Q 18 Deutsche Börse's publication arrangement attributes a unique ID to each trade (which is used for market data dissemination purposes only) which is disseminated together with Deutsche Börse's Market Identifier. In case of a correction, the ID of the original trade together with a correction ID will be disseminated allowing for an unambiguous identification of the amended trade at consolidators site as well. Consolidators are then able to discard the original trade – as described in CESR's Call for Evidence – and replace it by the amended trade. We consider this as a clean and viable solution for any publication arrangement in order to identify inaccurate trades.