FIL response to CESR's Consultation Paper on Technical Advice to the European Commission in the context of the MiFID Review – Equity Markets

Pre-Trade Transparency

Question 1: Do you support the generic approach described above?
Yes. However, we do not want to lose flexibility on our side to hide flow – i.e.: route orders to dark venues. Dark venues provide significant benefits to institutional clients' whose flow tends to be large in size. Benefits include reduced market impact, lower information leakage and larger fills than on traditional public and light alternatives.

Question 2: Do you have any other general comments on the MiFID pre-trade transparency regime?
We would be concerned if the European Commission were to introduce rules which dictate that we need to show our flow to lit venues. We are not convinced that rules intended to bring more transparency to non-displayed trading venues including lowering the threshold at which they have to display quotes or forcing these venues to identify themselves in real-time post-trade is in the interests of all market participants. We also have concerns that lit markets tend to be dominated by High Frequency Traders (HFT) who trade in small size round trips and maintain flat positions.

Large in Scale Waiver:
Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.
FIL believe that the current calibration for large in scale waiver is appropriate and do not believe that there is evidence to support a changes to the rule.

Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal?
No. The current calibration is appropriate.

Question 5: Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1 or 2)? Please provide reasoning for your views.
FIL believes that the remaining "stubs" from larger orders should continue to benefit from not having to be shown into the lit market. We would favour Option 1.

Question 6: Should the waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.
FIL are in favour of more flexibility for market participants to choose execution at different points within the spread and would encourage CESR, when discussing MiFID modifications with the European Commission to take into account the specific needs of institutional investor trading.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?
FIL agrees with the proposed clarifications in Annex 1.

Negotiated trade waiver:
Question 8: Do you have any specific comments on the waiver for negotiated trades?
In our view, no amendment is required to the negotiated trade waiver.

Question 9: Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?
No.

<u>**Systematic Internaliser Regime**</u>

Question 10: Do you consider the SI definition could be made clearer by:
i) removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation?

ii) providing quantitative thresholds of significance of the business for the market to determine what constitutes a 'material commercial role' for the firm under Article 21(1)(a) of the MiFID Implementing Regulation.

Please provide reasons to support your views.
FIL believes that making the SI definitions more clear is a good idea that may result in fewer investment banks staying with this category.

Question 11: Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?
FIL is generally in favour of more pre and post trade transparency.

Question 12: Do you agree with the proposed minimum quote size? If you have a different suggestion, please set out your reasoning.
Yes.

Question 13: Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.
FIL do not have a view.

Question 14: Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?
It is important that the Regulator has correct data on the amount of orders being executed by SI's. FIL recognises that the current post-trade reporting regime for OTC trades is inconsistent and the level of detail and quality of reporting can vary between investment firms. SI trades are generally reported to BOAT and are not within a consolidated tape.

Question 15: Have you experienced difficulties with the application of 'Standard Market Size' as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify.
No. We have not experienced any issues post-MiFID.

Question 16: Do you have any comments on other aspects of the SI regime?
FIL see little purpose or benefit in the existing SI regime. However, if the SI status remains, a level playing field should be established for all investment banks trading in this manner. The requirement for accurate and timely pre and post trade transparency will be an important component if this objective is to be achieved.

Post Trade Transparency

Question 17: Do you agree with this multi-pronged approach?
FIL agrees with the multi-pronged approach. The fragmentation and poor quality of post-trade information for equity markets is a major concern for market participants as it not only negatively affects trading, but it also impacts our ability to accurately assess best execution. FIL welcomes the fact that CESR is proposing to deal effectively with the issue and fully supports its efforts.

FIL welcomes the creation of a joint CESR/Industry Working Group with buy-side participation to finalise the development of the standards and clarification amendments. However, given the complexity of the problem, we are concerned about the short deadline and believe that the Working Group should be given sufficient time to examine the problem and propose appropriate remedies.

Question 18: Do you agree with CESR's proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.
FIL agrees with CESR's proposals. In particular, we strongly support the proposal that all trades be published by the end of the day. This should ensure that market participants have the complete data set for transaction analysis.

That said, FIL orders worked over the day with non-MiFID brokers would only be reported from our systems when the total execution was booked out at the end of the day. In this instance, partial trades reported to us would not be instantly reportable.

Question 19: In your view, would a 1-minute deadline lead to additional costs (e.g. in terms of systems and restructuring of processes within firms)? If so, please provide quantitative estimates of one-off and ongoing costs. What would be the impact on smaller firms?
Yes. However, in most cases, the costs should not be material given that systems should already be in place to report MiFID transactions.

Question 20: Do you support CESR proposal to maintain the existing deferred publication framework whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?
Yes.

Question 21: Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.
Yes. However, our concern would be that Investment Banks may be less inclined to commit capital to our trades if the period they have to unwind their risk positions is shortened significantly.

Question 22: Should CESR consider other changes to the deferred publication thresholds so as to bring greater consistency between transaction thresholds across categories of shares? If so, what changes should be considered and for what reasons?
The four deferred publication thresholds currently in place seem fine.

Question 23: In your view, would i) a reduction of the deferred publication delays and ii) an increase in the intraday transaction size thresholds lead to additional costs (e.g. in ability to unwind large positions and systems costs)? If so, please provide quantitative estimates of one-off and ongoing costs.
It is difficult to comment on system costs. In terms of unwind risk, we do not think there is much risk of increasing trading costs but only time will tell. Note: the Worked principle agreement no longer exists.

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):
- **DRs (whether or not the underlying financial instrument is an EEA share);**
- **ETFs (whether or not the underlying is an EEA share);**
- **ETFs where the underlying is a fixed income instrument;**
- **ETCs; and**
- **Certificates**

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

FIL is generally in favour of greater transparency. In particular, it would be interesting if CFD's were printed in some form, if only to the Regulator. HFT trade only on swap as stamp duty is by-passed.

Question 25: If transparency requirements were applied, would it be appropriate to use the same MiFID equity transparency regime for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). If not, what specific aspect(s) of the MiFID equity transparency regime would need to be modified and for what reasons?
We would be in favour of treating them the same.

Question 26: In your view, should the MiFID transparency requirements be applied to other 'equity-like' financial instruments or to hybrid instruments (e.g. Spanish participaciones preferentes)? If so, please specify which instruments and provide a rationale for your view.
We would like to see the MiFID transparency requirements apply to CFD trades.

<u>Consolidated tape</u>

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for APAs? If not, what changes would you make to the proposed approach?
Yes. FIL welcomes CESR's decision to prioritise post-trade transparency information and its focus on data consolidation. However, FIL believes that it is important that after the MiFID review CESR should not just be able to facilitate consolidation, but should be given regulatory powers to set standards for data publication. FIL would also question why APA's

are replacing TDM's. It is not clear whether all TDM's will disappear or convert to APA's post this view.

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?
Yes. The current rule is confusing and open to mis- interpretation. It is also unclear with whom the data should be facilitated. The rule needs to be more explicit and needs to be based on a more outcome-based approach which ensures the requirements are widely adopted, consistently applied and cost-effectively administered by all market participants, execution venues and infrastructure providers across the EU marketplace.

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?
Yes. It is an essential pre-condition.

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape (as described under 4.1.2 below)?
The introduction of APA's should ensure that reporting standards are consistent and of a high standard. It should also ensure that data can be readily discovered by data vendors. The publication of the names of the APA's should also ensure that data vendors and other interested parties can identify all necessary places from which to obtain post-trade data.

Question 31: Do you believe that MiFID provisions regarding cost of market data need to be amended?
Yes. FIL believes that the procurement cost of live market data is higher than it should be and should be reviewed by the Regulator. In our view, any amendment of MiFID should aim at fostering price competition and cost reduction.

Question 32: In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.
Yes. Unbundling of trade information is a necessary prerequisite to a reduction of data costs in the EU.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.
Yes. It is already the practice on many markets that data is available free of charge after 15 minutes. We think CESR should go further and propose regulations that would require an APA to make post-trade transparency information available free of charge after a delay of no more than 15 minutes.

Question 34a: Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?
Yes.

Question 34b: Do you support the proposed approach to a European mandatory consolidated tape?
Yes. FIL supports the proposed approach for a MCT. It is also very important that the MCT is seen as a not for profit organisation.

Question 35: If not, what changes would you suggest to the proposed approach?
The proposed approach seems sensible. The hope of a market lead solution has not materialised so we believe it is time for regulation.

Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?
The key to a effective, reliable and trusted consolidated tape is access to quality post-trade data delivered in a timely and cost effective manner. The key benefits of a MCT would be easier price discovery, improved price and volume info for better execution and TCA data points. The lack of a consolidated tape makes it difficult for traders to get a complete picture of tradeable liquidity across countries and trading venues.

Question 37: In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.
There should be no material increase in costs for most market participants. For some market participants, the MCT will be too slow and low latency feeds will be purchased probably at a premium. On the other hand, some market participants will be content to use consolidated products from data vendors informed by the 15 minute delayed data and this will likely be available at a very low cost. The MCT will sit somewhere between these boundaries.

Question 38: Do you agree with this proposal? If not, please explain.
We agree with the proposal, however, we are a little surprised that some of these provisions are not already in place. In particular, we are supportive of improvements in the areas of conflicts of interest and corporate governance.

Question 39: Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.
Yes. These proposals should go a long way in addressing the unlevel playing field issues between MTF’s and RM’s. As it stands, it would appear that the MTF’s are subject to lighter touch regulations than RM. We would question whether this is still appropriate given the value of trades taking place on MTF’s. We would also be concerned if a HFT had direct / indirect ownership of a MTF or a substantial percentage of that flow. MTF’s are currently losing money. It is difficult to see how more MTF’s will improve this situation.

Question 40: In your view, what would be the benefits of the proposals with respect to organisational requirements for investment firms and market operators operating an MTF?
N/A. This question is for market operators.

Question 41: In your view, do the proposals lead to additional costs for investment firms and market operators operating an MTF? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.
N/A. This question is for market operators.

Question 42: Do you agree to introduce the definition of broker internal crossing process used for the fact finding into MiFID in order to attach additional requirements to crossing processes? If not what should be captured, and how should that be defined?
We believe that trades that are broker crossed should be known, tagged and correctly defined by the Regulations. Institutional investors benefit from broker crossing networks / dark pools and we are opposed to any signalling from them to the lit market that may increase our cost to trade.

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?
Yes.

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring investment firms to establish an MTF for the execution of client orders ('crossing systems/processes becoming an MTF)?
a) What should be the basis for determining the threshold above which an investment firm's crossing system/process would be required to become an MTF? For example, should the threshold be expressed as a percentage of total European trading or other measures? Please articulate rationale for your response.

b) In your view, should linkages with other investment firms' broker crossing systems/processes be taken into account in determining whether an investment firm has reached the threshold above which the crossing system/process would need to become an MTF? If so, please provide a rationale, also on linking methods which should be taken into account.

A/At this stage we would say no, provided best execution is achieved and demonstrated. However, we believe that the Regulator should have a full data set of these trades and should have a good understanding of this flow to enable further debate and decision. We believe there may be a tipping point at which one crossing network becomes the default market but his is unlikely.

B/As above, this would need to be monitored. We do not support the above to the detriment of the lit book. We see no advantage of moving our flow to another MTF.

Question 45: In your view, do the proposed requirements for investment firms operating crossing systems/processes lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.
FIL believes that banks should benefit from lower exchange fees, while clients from lower impact costs.

<u>MiFID Options and discretions</u>

Question 46: Do you think that replacing the waivers with legal exemptions (automatically applicable across Europe) would provide benefits or drawbacks? Please elaborate.
The current process seems to be lacking, so a consistent approval process across all member states would be preferable. Consistent legal exemptions applicable across Europe would be desirable. FIL believes market participants are looking for consistency across EU markets.

Questions 47: Which reasons may necessitate the application of both criteria?
We have no view on this question.

Questions 48: Is a unique definition of liquid share for the purposes of Article 27 necessary?
In order to avoid confusion a clear definition of liquid share should be defined.

Questions 49: If CESR were to propose a unique definition of 'liquid share' which of the options do you prefer?
a) apply condition a) and b) of the existing Article 22(1), or
b) apply only condition a), or
c) apply only condition b) of Article 22(1)?
Please elaborate.
A liquid share can be defined as a combination of shares traded and value. It would be interesting to run the analysis to show the outliers.

<u>**Client Limit orders**</u>

Questions 50: Is this discretion (for Member States to decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market and/or an MTF) of any practical relevance? Do you experience difficulties with cross-border business due to a divergent use of this discretion in various Member States?
We think it is important that institutional clients have the choice about whether to make their limit orders public or not. We would not be in favour of rules that mandate investment firms to make such orders public.

Question 51: Should the discretion granted to Member States in Article 22(2) to establish that the obligation to facilitate the earliest possible execution of an unexecuted limit order could be fulfilled by a transmission of the order to a RM and/or MTF be replaced with a rule?
In our view, limit orders should only be passed through to RM/ MTF's if the action is beneficial to the end client. The notion of showing a substantial limit order on a lit market would surely hinder best execution in many ways. There may be a need for a rule as Retail and Institutional investors have different needs.

Question 52: Should the option granted to Member States in Article 36(2) of the MiFID Implementing Regulation be deleted or retained? Please provide reasoning for your view.
We do not see any harm in retaining the option.

<u>**Annex II**</u>

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.
Yes, we agree. It will ensure consistency.

Question 2: Do you agree that the unit price should be provided in the major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.
Yes, we agree.

Question 3: Do you agree that each of the above types of transactions would need to be identified in a harmonised way in line with table 10? If not, please specify reasons.
Yes to Table 10, we assume that option trades at odd prices will be clearly shown.

Question 4: Are there other types of non addressable liquidity that should be identified? If so, please provide a description and specify reasons for each type of transaction.
It is unclear whether an OTC hedge includes options call / put trades.

Question 5: Would it be useful to have a mechanism to identify transactions which are not pre-trade transparent?
Yes.

Question 6: If you agree, should this information be made public trade-by-trade in real-time in an additional field or on a monthly aggregated basis? Please specify reasons for your position.
Yes. Real time data is the key. One month aggregate data is no good to many.

Question 7: What would be the best way to address the situation where a transaction is the result of a non-pre-trade transparent order executed against a pre-trade transparent order?
These trades should be identified on a post trade basis to show that they were not subject to pre-trade transparency.

Question 8: Do you agree each transaction published should be assigned a unique transaction identifier? If so, do you agree a unique transaction identifier should consist of a unique transaction identifier provided by the party with the publication obligation, a unique transaction identifier provided by the publication arrangement and a code to identify the publication arrangement uniquely? If not, please specify reasons.
This may be difficult to achieve. However, we believe there may be worth in exploring what would need to be done to ensure that each transaction was assigned a unique transaction identifier.

Question 9: Do you agree with CESR's proposal? If not please specify reasons.
We agree.

Question 10: Do you agree with CESR's proposal? If not please specify reasons.
We agree.

Question 11: Do you agree with CESR's proposal? If not please specify reasons.
We agree.