BME SPANISH EXCHANGES COMMENTS ON CESR's CONSULTATION PAPER ON THE CESR TECHNICAL ADVICE TO THE EUROPEAN COMMISSION IN THE CONTEXT OF THE MiFID REVIEW – EQUITY MARKETS (CESR/10-394)

Madrid, May 31st, 2010

INTRODUCTION

Bolsas y Mercados Españoles (BME) integrates the companies that operate and manage the securities markets and financial systems in Spain. It brings together, under a single activity, decision-making and coordination unit, the Spanish equity, fixed-income and derivatives markets and their clearing and settlement systems.

We welcome the Consultation Paper on the CESR technical advice to the European Commission in the context of the MiFID review with regards to equity markets, published by CESR on April 2010 (CESR/10-394). We would like to thank the CESR the opportunity to provide with our views on the questions posed by the aforementioned Consultation Paper as follows:

2. TRANSPARENCY

2.1.1 Pre-trade transparency – Organised trading platforms (RMs and MTFs)

1. Do you support the generic approach described above?

The described approach can be seen as a move forward to preserve and improve the transparency regime for the regulated EU financial markets framework. Being this initiative aimed at providing transparency for currently non pre-trade transparent trading in the EU, we would support it. However, we would like to draw CESR's attention to certain remarks:

i. The fact described in the Consultation Paper -re the low rate usage of the waivers for pre-trade transparency obligations- does not necessarily lead to concluding that most of the trading is done under circumstances not qualifying for the application of the waivers; instead, one could suspect that waiver eligible transactions, mainly those large in scale, are being done out of the regulation and supervision, i.e., in the OTC space;

ii. In our view, the effort CESR is considering to propose for further enhancing pre-trade transparency should be widened in order to provide transparency not only to trading done in the regulated space, but also to OTC trading. Whereas accurate dimensions for OTC logically remain unknown, estimations generally accepted suggest OTC represents around 40% out of the total trading volume in the EU. Leaving OTC trading out of the scope of transparency obligations again would not only consolidate a lack of level playing field but also, and probably more relevant, would keep on pouring additional risks to the system. This would not favour neither markets protection in general, nor investor protection to a particular extent.

2. Do you have any other general comments on the MiFID pre-trade transparency regime?

As a general comment, we understand that there are still differences which have not allowed to achieve a real level playing field between the different sorts of trading venues as regulated under MiFID.

When it comes to the waivers issue, we consider appropriate to take into account the existence of certain circumstances that trigger exceptions for pre-trade transparency obligations as long as it could contribute to protect markets' stability from the potentially heavy impact of certain transactions. However, those transactions, despite other considerations, are a natural part of the market and thus they should contribute to the natural price formation. On these grounds, we advocate for the review of the scope of the application of waivers in such a way that transparency, and, consequently, the quality of price discovery is enhanced. This may require a clearer regime for the application of waivers, leaving no room for rule interpretation, goldplating or regulatory arbitrage.

3. Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.

We deem the LIS waiver to be an acceptable mechanism to prevent the market from potential heavy impacts caused by the execution of large volume transactions. Thus, in our view, the LIS waiver should stay. However, considering CESR's concern and commitment towards transparency, it seems logical to expect that any eventual modification of the current thresholds would not lead to a lesser degree of transparency but to a reinforced one. Hence, where thresholds are to be modified, they would rather be raised so as to allow for a more pre-trade transparent trading landscape and to ensure that only truly large volume transactions benefit from this waiver, according to MiFID's spirit.

By these means, a more complete picture of the whole markets activity could be offered (except for those markets escaping the regulation and/or supervision), contributing to the markets integrity.

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?

In principle any reduction of the thresholds qualifying an order as large in scale would take a greater amount of trading than today away from the transparent environment. This would be especially relevant considering the bulk of trading currently done by means of technologically advanced trading methods such us, inter alia, high frequency trading, which have brought a general reduction on the average size of transactions.

Whether to modify the thresholds or not could be a long and hard discussion, however we would like to advise CESR to stay away from recommending a step forward on weakening the pre-trade transparency regime currently in place. Consequently, in case a decision would be made on recalibrating the thresholds, we would recommend to keeping or raising them with a view on the necessary equilibrium between both transparency and market liquidity.

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.

In our view, Option 2 ("Amend MiFID to clarify that the LIS waiver does not apply to stubs") is more appropriate for the sake of market transparency and could be said to be more in line with the MiFID's spirit.

The rationale behind the LIS waiver claims for all orders placed in the order book under a certain threshold to be disclosed following pre-trade transparency obligations, regardless whether the threshold is achieved

from the beginning or after the order has been partially executed. Otherwise, an abusive use of the waiver could be experienced (e.g., by placing orders slightly above the applying threshold and getting it very slightly partially executed, resulting that the greatest part of such order would remain in the dark until its complete execution).

Under this view, we support stubs disclosure based not in their stubs nature but based on the fact that they are not eligible (by its very size) for applying the LIS waiver. A different issue would be whether or not to identify the disclosed order as stub, which from our perspective should not be required neither.

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.

In our view, this waiver should be amended to include minimum thresholds. Otherwise, there would be – as it currently exists – a strong incentive for trading platforms which only carry out this kind of transactions to free-ride on price discovery done in trading venues that disclose their pre-trade transparency information. Moreover, it has always been claimed by the proponents of reference price systems that these systems cater for investors that place large orders that, if submitted to transparent order books, would suffer from very high implicit transaction costs so it makes much sense to set minimum thresholds.

By means of introducing trading volume thresholds, transparency – and consequently price formation, though residually – would be enhanced, and a level playing field would be a further step achieved as long as we avoid situations such as two different investors placing orders with the same features would receive two different treatments merely based on the kind of venue to which the order is being addressed, instead of on the features of the orders themselves.

7. Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?

In our view, the reference price waiver introduces several difficulties, namely with regards to

- the fact that it does not add any value to the price-formation;
- how to determine upon which part of the spread the price is taken; and so
- price improvement upon the reference price quotations, in which case we understand pre-trade transparency should be required.

Once the reference price systems are not based on a unique reference price but on a combined one (the EBBO) we agree that both the EBBO and their components must be published in order to get information about the price used as reference and the way it is constructed.

8. Do you have any specific comments on the waiver for negotiated trades?

In general terms, we would encourage the initiative to produce a clear definition of the scope of the waiver as well as the establishment of a well defined regime for its application across the EU in order to elude uncertainty and eventual regulatory arbitrage.

This waiver, where properly managed and controlled, could play a relevant role in the registration by regulated markets of OTC born transactions.

This waiver is based on VWAP transactions than can be introduced in the market using the block trading mechanism. This waiver should be based on the volumes established for LIS.

9. Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?

We agree with CESR's views in this regard.

2.1.2 Pre-trade transparency – Systematic internaliser regime

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.

i. The non-discretionary rule is often claimed by some networks to stay outside the scope of MiFID obligations, so it should be reviewed. Applying a certain level of discretion when it comes to admission of members makes an Investment Firm not to fit any of the trading venues definitions (RM, MTF or SI)

ii. No, it should be the nature of the activity which triggers the regulatory treatment to be provided, under the rationale *similar activities, similar treatment*.

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?

Yes. In fact, as the CP points out, that would improve the information content that SI quotes deliver to the market and would also prevent SIs from making one side quotes of just one share, a practice that is clearly against the spirit of art 27 of MiFID.

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

Yes, we agree with the proposed minimum quote size.

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.

We think that removing such restriction could lead to:

a) Empty the informational content of SI quotes as they would become just "indicative" quotes as long as price improvements would be performed without informing the market;

b) Unequal treatment of retail investors with no apparent benefits outweighing it. Retail client orders with an average volume under the standard must stick to what is currently established under the Directive and the Regulation, the prices shown by the SI.

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?

We support the obligation to include the identification in the SIs' post-trade information for all trades, whether as systematic internalisers or not.

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.

16. Do you have any comments on other aspects of the SI regime?

As a general comment, we think that there should be a deep review of the trading venues definitions, particularly SIs and MTFs in order to capture the whole trading activity.

2.2.1 Post-trade transparency – Quality of post-trade information

17. Do you agree with this multi-pronged approach?

We agree with CESR's assessment on the current scenario for the quality of the post-trade information as written in section 2.2.1. The Consultation Paper suggests that poor quality in the post-trade information concentrates on the information generated by players different from regulated markets and MTFs, specifically pointing at the investment firms.

On these grounds, the transparency model used by the regulated markets has proven to be sound and efficient. Hence, should there is an initiative to modify post-trade transparency obligations for venues other than RMs and MTFs, we would suggest to widen the scope applying to the latter rather than trying to look for newly designed solutions. By those means, post-trade transparency would keep been satisfied following a well functioning and already known model, instead of a new one whose implications and consequences remain unknown.

The multi-pronged approach as tackled by CESR could contribute to further deliver certainty to the post-trade transparency obligations framework. The proposal to provide clarity on the concept of single transaction for post-trade transparency purposes could play a particularly important role as long as it would prescribe a post-trade transparency regime depending on the features of the transaction itself rather than on the trading venue on which it is executed. This necessarily drives to the previous question of providing some regulatory framework for the so called OTC trading space.

As long as the current regulatory scenario facilitates the non-enforceability of the obligations of post trade transparency regarding the trading taking place OTC, it could be mentioned that

- Post-trade information could not be said to be offering a complete picture of a given market trading activity, but it is instead of poor quality, incomplete and difficult to consolidate, and
- Any alternative or additional regulatory requirements on the issue of transparency would only be addressed to trading models already regulated, which comply with post-trade transparency obligations efficiently, leaving "untouched" a trading model that has demonstrated is capacity to transfer risk to the system as a whole.

2.2.2 Post-trade transparency – Timing of publication of post-trade information

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.

We would support CESR's proposal aimed at further ensuring the disclosure of post-trade information stick as close to real time as possible, improving transparency and thus integrity and safety of the markets.

We would welcome the proposed reduction on the allowed delay from three to one minute. In our view it could positively contribute to a obtaining a greater degree of transparency, by means of a faster definition of the market activity's picture. What is more, considering the current state of the art, even adopting the thirty seconds delay that FINRA is proposing would represent a more than feasible timeframe to reveal transactions.

From our experience, as a regulated market, in strictly adhering to the disclosure regime and for the sake of preserving and promoting a truly transparent market, we would encourage CESR to highlight that such delay in the post-trade disclosure should be triggered only on the basis of particular circumstances, which could eventually be required to be proved. We would, consequently, support the implementation of measures in order to prevent abusive practices in this regard.

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?

As referred in our previous answer, from the point of view of the current state of the art, a reduction in the time for disclosing post-trade information to the public would be really easy to implement. Considering this and the fact that it is market transparency what is at stake, in case reasonable costs may be incurred (which we doubt), the benefits for the market as a whole would outweigh them.

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?

We would agree with CESR proposal to maintain the existing framework as long as it is the size of a transaction, when compared to the liquidity of the securities on which the transaction has been made, the factor determining the magnitude of an eventual impact on quotation.

As it has been already expressed, any separation of an ordinary transparency regime could reduce or blur the access to the picture of real market activity, and thus such separations should be minimized. To this end, reducing the delay to the maximum possible extent would contribute to market transparency.

Besides, it could be argued that all transactions should contribute to price discovery, which would be more properly achieved where the lower the delay in accessing the post-trade information is. In this line, it should be considered that the longer the time lapse between a transaction and its disclosure happens, the higher the possibility that it is artificially influencing price formation and, thus, market trend.

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.

We would agree on that, as long as it could play a positive role in reducing information asymmetries. The proposal for the reduction of the allowed delays framework – making the delay closer to real time disclosure – would enhance market transparency by means of allowing a greater number of investor to access information on the market true activity on a more simultaneous basis.

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?

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.

See answer to Question 19.

3. APPLICATION OF TRANSPARENCY OBLIGATIONS FOR EQUITY-LIKE INSTRUMENTS

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.

Yes. Equity-like instruments must be subject to equity-like transparency obligations.

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?

Equity-like instruments are traded on the same platforms where equity instruments are, under similar rules and price formation mechanisms, so similar transparency requirements should be used.

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.

Yes, for the same reason as question 24.

4. CONSOLIDATION OF TRANSPARENCY INFORMATION

4.1.1 Regulatory framework for consolidation – Multiple APAs

INTRODUCTION

Prior to any other consideration, we would like to point out that the focus of the Consultation Paper should be put on achieving data consolidatability itself rather than focusing mainly in mechanisms to collect, consolidate and disseminate post-trade information, which may bring similar results amid a lighter impact on the market structure itself.

It should be acknowledged that post-trade information generated and disseminated by regulated markets currently is highly standardized and thus consolidatable. Besides that, on the issue of the cost of trade information, ESME issued a report[1] in which it was clearly expressed that the cost of regulated markets trade information is reasonable and commercially offered on a non discriminatory basis, both as required by MiFID. Hence it could be said that it is not the trade information from regulated market that creates any sort of difficulty in terms of transparency.

It should be reminded that the introduction of competition is one of the basic principles in MiFID, whereas walking towards a consolidated tape like framework would be essentially clashing with the Directive's spirit, not to mention other indirect implications, such as preventing innovation. Thus, data consolidation and dissemination should, in our view, be left to market forces as a way to ensure that users needs are met.

Taking the abovementioned into account, when looking for a workable solution for this post-trade transparency concern one could think about extending post-trade information standards used on the regulated markets side to other players, such as investment firms. By means of that, the full range of post-trade information under the scope of the regulation would follow similar standards and would, hence, be consolidatable.

However, the big difficulty arises not with regards to the regulated scope of the market but with regards to the bulk of operations made outside the scope of MiFID, namely in the OTC space, which obviously lacks any sort of transparency.

Finally, in our view, the option suggested in the Consultation Paper about setting up the so called APAs could be of a useful step in further ensuring transparency, provided that their provision of services remains open to competition.

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. In order to avoid potential misunderstanding on requirements that APAs must comply with, it will be very helpful

- to clearly define "similar" scope (see point 88 f) of CESR CP);
- to clearly define which will be the scope of "ongoing monitoring by the competent authority" (see point 90 of CESR CP);
- what "quality" should be understood like (see point 92 of CESR CP);
- to clearly state that data publication via website does not meet the criterion to consider that the APA "can facilitate the consolidation of the data";

[1] European Securities Markets Expert Group Report on Fact finding regarding the developments of certain aspects of pre-trade transparency in equities under MiFID, issued on July 27th, 2009.

- to oblige IFs to declare what APAs they are using to publish their data and to make such information available to the public in CESR website.

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. While RMs have made a great effort to update their information dissemination systems and to made their data easy to consolidate - to the extent that market participants concur that minor adjustments in the transaction type standards would be enough to consolidate RMs and MTFs data - OTC trades are reported by IFs under proprietary formats and through publications arrangements that, in most cases, are not known or do not facilitate consolidation (e.g., data publication via website).

29. In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

It should be recalled that the regulatory framework in the US substantially differs from the one in the EU. On these grounds, we understand that a consolidated tape scheme may not fully fit the EU securities markets industry framework. In our view, the APA solution would constitute a less traumatic step towards providing the market with a solution on post-trade transparency encompassing the promotion of common information standards for all the players.

Every step aimed at setting up an arrangement, standardization and clarification of the reporting of OTC trades (some 40% of the market according to CESR data) would remove the main stumbling block that prevents the creation of industry-driven European consolidated tapes.

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)?

A regime designed comprising a number of APAs in EU could potentially allow to further consolidate and make post-trade information available to the public on a commercially reasonable manner. This multiple APAs scheme would also contribute to prevent the risks, present under the consolidated tape regime, associated to the fact of a single point of access to the information.

The benefits of multiple APAs compared to the current situation are clear: APAs would themselves consolidate a great deal of data in a standardized format, with mechanisms to avoid double reporting and supervised by EU competent authorities. Moreover, the proposed regime would avoid the current situation by which some IFs report through obscure or difficult to consolidate publication arrangements.

In sum, several APAs working on the same arena will solve most of the current OTC data problems while providing the community with a consolidation regime that is subject to competition and adapted to the different needs of investors.

The creation of a MCT would be a very complex task which will entail notable investments while creating new weaknesses and problems:

- It will introduce a single point of failure to the European Securities Markets;
- It will involve intractable choices such as the physical location of the MCT, a crucial question as it will provide the financial center chosen with a formidable competitive advantage over the rest of European Financial Centers given the reduced latencies that IFs located close to the MCT will enjoy;

- It will introduce (as it current happens in the US) a distortive element in the European securities markets microstructure as IFs, RMs and MTFs will try to game for data revenues.

31. Do you believe that MiFID provisions regarding cost of market data need to be amended?

Post-trade information produced and disseminated by the regulated markets is made available to the public both at a reasonable cost and on a non-discriminatory basis. In addition to this, all regulated markets in EU provide non real time post-trade information – typically 10 or 15 minutes after the transaction has been registered- free of charge to end users.

From our perspective, considering the EU framework with multiple active trading venues and the competition environment enshrined by MiFID for trading, and thus information dissemination, we understand that the cost of post-trade data is reasonable. Furthermore, specific fees for non-professional users, which are even cheaper, are a common practice amongst the regulated markets.

It should not be forgotten that producing such post-trade data involves costs and effort and that leads to what current regulation provides for, i.e., a balance between reasonable costs of selling and producing the data. Other amendments regulating price for post-trade data could lead to strangulation of an activity that plays a crucial role in ensuring transparency for the EU markets.

MiFID provisions have proven to work properly with regards to the cost of market data. MiFID has created a competition environment in the European securities markets that hardly can allow for prices controls beyond the current provisions ("reasonable commercial terms"). Moreover, most RMs have frozen or even reduced their market data fees after the introduction of MiFID and have special, deep discounted fees for private investors and delayed data (15 minutes) delivered for free to end users.

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. In fact, most RMs, acknowledging that investors needs differ and that not all investors require pre-trade data, are already providing post trade data separately.

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.

As referred to in our answer to Question 31, delayed post-trade information is offered by the regulated markets free of charge to end users. Thus, this is an already existing practice. We would support such approach.

34. 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?

As long as the proposal and its eventual implementation would effectively contribute to a more transparent, safer and better supervised market, we would support such approach. However, considering the limited scope of transparency regulation – not including OTC –, we would strongly warn about the concern on how the supervisors would manage to make sure the post-trade information they would receive is complete and accurate.

Where not properly regulated, this initiative could lead to a paradoxical result: what would be supposed to be a full picture of the market activity could not be and no way to so check it. Another, inter alia, paradoxical result regards an eventual designation of broad OTC market as the most significant market in terms of liquidity for a given security.

4.1.2 Regulatory framework for consolidation – EU Mandatory Consolidated Tape

34. Do you support the proposed approach to a European mandatory consolidated tape?

No. We think that a consolidated tape is not the correct solution to address the problems of data consolidation in Europe. In our view, as previously suggested, imposing the implementation of a consolidated tape would not fit the European markets framework as there exists substantial differences with the US markets' reality. Regardless this general explanation, there are a number of relevant points that could be made on the consolidated tape option:

- A consolidated tape like regime would face against one of the MiFID pillars: it reduces competition. In our view, post-trade information dissemination should be left to market forces as they have demonstrated its flexibility in quickly adapting to both, regulatory requirements and users needs;
- A consolidated tape regime brings no incentive to technological innovation, as opposed to consolidated data being commercially offered;
- Post-trade data generated and disseminated by the regulated markets is highly standardised and consolidatable, a fact that allows market forces, as so they are already doing, to easily consolidate and commercially offer regulated markets' post-trade data. However, post-trade data from other players has not proven to be neither standardized nor consolidatable, and in most cases not disclosed to the public. From our view a consolidate tape approach should guarantee that all the post-trade information is disseminated by its mechanism, otherwise the rationale for such a consolidated tape would not be met;
- The consolidated tape approach described would not allow its users, as it would be expected to be useful for, to meet their best execution obligations. For this purpose, it should encompass a pretty much wider sorts of information, which would make such consolidated tape extremely difficult and expensive to manage and operate with;
- A mandatory consolidated tape would add inefficiencies and costs as long as multiple trading venues in Europe currently coexist, with different execution rules, different structures and structures of data provision.

Therefore, we do not support the proposed approach to create a European MCT.

35. If not, what changes would you suggest to the proposed approach?

In our opinion, a mandatory consolidated tape should not be an option. Instead, we would support a commercially driven approach. As experience often demonstrates interaction between providers and users lead to adequate solutions in terms of both service level provided and reasonable costs.

But we would highlight that the great difficulty when looking for a sound and reliable post-trade transparency is not the way in which it is offered but the scope of information it effectively provide with. As long as post-trade transparency is not compulsory for the so called OTC markets, no matter what the approach to post-trade transparency is as it would never provide with a complete or quasi-complete picture of the trading market activity.

As we have stated in our response to Question 30, we find that an approach of multiples APA will solve most of the current problems regarding OTC data transparency and market data consolidation whereas any "mandatory" consolidated tape poses, inter alia, the following problems:

- It will introduce a single point of failure to the European Securities Markets;
- It will involve intractable choices such as the physical location of the MCT, a crucial question as it will provide the financial center chosen with a formidable competitive advantage over the rest of European Financial Centers given the reduced latencies that IFs located close to the MCT will enjoy;
- It will introduce (as it current happens in the US) a distortive element in the European securities markets microstructure as Ifs, RMs and MTFs will try to game for data revenues;
- It will hinder the competitive environment created by MiFID in the European securities industry by introducing an utilities like regulation ("RMs, MTFs and APAs would be required to send their trade reports to the MCT free of charge") in one of the key segments of this industry.

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?

As stated in our response to Question 34, we think that a mandatory consolidated tape does not provide benefits compared to the APA approach. On the contrary, we think that it could have negative effects in terms of costs, efficiency, data quality, innovation and level playing field.

An European mandatory consolidated tape will bring to the community many issues like a pseudo-monopolistic scenario where consolidation facilitator will be expecting that market data providers do delivery to them corresponding data no matter what the extra maintenance/development costs are. This could drive the situation to a scenario where data providers will not accept to continue maintaining such services for free and consequently consolidated tape will not be of enough "quality" for fulfilling its target. In the other hand, APAs model is a more competitive scenario where such organizations endeavour to offer a better service that its competitors.

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.

Providing trade reports to a MCT would involve the costs of adapting protocols, formats, data dictionaries, communication lines, etcetera. Besides, it would have ongoing costs of maintenance and control.

In our view it would lead to a multiplication of the administrative burden for the market players, at least from a regulated markets perspective, which has a proven track record of successfully delivering pre-trade and post-trade transparency. Should such workload increase leads to a complete post-trade transparency, we would support it.

Hence, additional development/maintenance costs should have to be afforded by market data providers besides the sizeable costs for creating the MCT itself, that, ultimately, will have to be borne by users. As MCT technical requirements are not yet defined it is not possible to determine the potential cost increment.

5. REGULATORY BOUNDARIES AND REQUIREMENTS

5.1 Regulated markets vs. MTFs

38. Do you agree with this proposal? If not, please explain.

BME thinks that there is not a level playing field between RMs and MTFs in legal and supervisory fields. Thus, we would support the proposals set out in paragraph 102.

39. Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.

Yes. Considering the fact that MiFID aims at establishing "*a comprehensive regulatory regime governing the execution of transactions in financial instrument so as to ensure a high quality of execution of investor transactions and to uphold the integrity an overall efficiency of the financial system*", it becomes obvious that potential unlevel playing field issues should be addressed.

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?

In addition to those addressed in the answer, the proposed requirements would mean

- A regulation of the conflicts of interest and, as a consequence, a higher level of transparency and confidence, both essential to the proper functioning of the market;
- A better risk control with preventive processes that allows a higher reliability of the system;
- Contingency plans that guarantee one of the MiFID mandates, the continuity of the service that will allow a higher soundness of the system.

The income and costs structure must allow the sustainability of the system in the mid and long term.

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.

Regulatory compliance has a cost. However, costs arising from the implementation of the proposed measures should not be high. The factors proposed are demanded by MiFID to Service providers companies in order to be authorised. The additional cost should not be relevant.

5.2 Investment firms operating internal crossing systems/processes

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?

In our view, the aim pursued by CESR proposal could be achieved by means of a sound review of the definitions of the currently in place trading venues, namely MTFs and SIs, rather than by introducing bespoke requirements for IFs operating crossing systems. As a matter of principle and fair regulatory treatment, we support that similar activities should be subject to similar regulatory requirements.

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

We deem the proposed measures under paragraph 113 of the CP to be broadly adequate; however we would encourage CESR to consider introducing pre-trade transparency obligations for the activity undertaken by these IFs.

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 the 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.

As previously mentioned, we are supportive of a scheme under which similar activities are to be subject to similar regulatory requirements.

In case CESR is committed to introduce such a thresholds scheme, we understand they should be based on the activity of the firm and on the activity of total European trading. Therefore, in any case, thresholds should be established per venue, after which the IF should be subject to MTF rules. Additional measures should be established in order to prevent the gaming of the threshold rule, i.e., by establishing several crossing systems operated by the same or linked IFs. Threshold should apply to all OTC activity and not to any specifically defined OTC activity such as crossing networks.

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.

As in our response to Question 41, we understand that regulatory compliance has a cost. However, costs arising from the implementation of the proposed measures should not be high. The factors proposed are demanded by MiFID to service providers companies in order to be authorised. The additional cost should not be relevant.

ANNEX II – PROPOSED STANDARDS FOR POST-TRADE TRANSPARENCY

1. Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

Yes, as they are already standard in the industry.

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.

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. In fact most RMs already identify each type of transaction in a similar way.

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.

Not in our view.

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

YES, as it would give a real time indication of the amount of dark liquidity as well as dark prices something of the essence for surveillance and price formation purposes.

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.

If we want to reap the benefits stated in the previous answer trade-by-trade disclosure in real time is the only choice in order to add informational value for market participants. The other option will not work by the very same reasons that made not workable (nor useful) the current regime enshrined by MiFID Implementing Regulation exempting SIs from revealing their identity in post-trade reports, provided they publish quarterly trading statistics.

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?

We feel that such trades should also be indentified with the “D” field proposed by CESR in order for the market to have a clearer picture of the amount, prices and timing of dark trading.

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.

Yes. In fact most RMs already identify each type of transaction in a similar way.

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

Yes. In fact most RMs already identify each trade cancellation in a similar way. We would like to point out that trade cancellations should be published on a real time basis. Receptors should have this key information as soon as the market participants.

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

Though we do not have any trade amendment scenario, we would support CESR's proposal. Trades are published on a real time basis and any "correction" is treated as a cancellation followed by a new trade.

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

Yes. Transparency is always a good value for the community.

ANNEX III – CLARIFICATIONS OF THE POST-TRADE TRANSPARENCY OBLIGATIONS

1. Do you agree with CESR's proposals? Are there other scenarios where there are difficulties in applying the post-trade transparency requirements?

At first CESR/Industry Working Group meeting (May 18th 2010 at Paris) it was decided to formulate again the transaction scenarios provided at CESR CP. There seems to be a more complex combination of transaction scenarios than the ones provided in the document.