

**Response to**  
**CESR PUBLIC CONSULTATION on**  
**Publication and consolidation of MIFID market transparency**

Borsa Italiana welcomes the opportunity to participate to this public consultation on level 3 measures related to publication and consolidation of MIFID market transparency data.

We provide below comments on the specific questions raised in the CESR's consultation paper.

**Q1: In your opinion, will this additional guidance help to ensure high quality data monitoring practices?**

For a complete answer to this question, at a first instance we want to describe the existing transparency regime in Italy, that in our view ensure an high quality of data published. In particular, with regards to post-trade transparency for trades executed on the Borsa Italiana order book, price and quantity are made available to the public in real time. For large transactions and other trades executed off exchange Borsa Italiana acts as “publication mechanism”, as the general rule<sup>1</sup> provides that investment firms are obliged to report OTC trades to Borsa Italiana within 15 minutes from the execution and the trades are available to the public within 45 minutes. This ensure that within Borsa Italiana there is a quite complete database of trades executed on listed shares and that a number of controls are performed in order to avoid duplication of trades and erroneous trades to be reported. The current high level of controls is possible to be executed considering the availability of the above mentioned 45 minutes time - that allow to double check trade details before their publication - and considering the availability within Borsa Italiana of the information on both the counterparties of the trade - that is not going to be published but that allow to detect duplication.

With the changes introduced by MIFID we find that the same level of service provided today can hardly be ensured for the following reasons:

- the short time leg (3 minutes maximum) within which the information on trades have to be published; this ensure that before publication only macro anomalies are detected and a number of trades could require re-publication in order to manage possible amendments;
- the knowledge of trade counterparties that is essential to verify any duplication; with MIFID it is not clear if investment firms are required to disclose the trade counterparties to the “publication mechanism”.

While we understand the need of the short time leg between execution and publication in order to give a timely information to the market, we believe that investment firm should provide information on trade counterparties to the “publication mechanism” to improve controls on trade details and to help in detect duplication (see also answer to question 6).

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<sup>1</sup> Consob Rule n. 11768/1998

Having said we believe that CESR proposal of an independent verification process is a measure that should improve the quality of post trade data, but we find it would be useful to clarify:

- if any responsibility on the quality of published data for trade executed OTC rely on the investment firm or if the “publication mechanism” is required to provide controls on data quality, also considering the above mentioned difficulties;
- for investment firms that publishes OTC trades through the facilities of a RM or MTF or through the offices a third party, if the “verification process” proposed by CESR on paragraph 5.6 is intended to be internal to the investment firm or is required to be put in place by the “publication mechanism”.

**Q2: 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?**

Publishing each trade to only one publication arrangement is a prerequisite in order to avoid duplication.

We find that this option is sufficient to avoid duplication but it would be useful to clarify that the trades executed in RM/MTF are automatically covered by the publication done by the RM/MTF in which the trade is executed.

**Q3: Option 2: - (a) Would a unique trade identifier address our concerns about duplication? (b) Do you think this is an appropriate solution? (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? (e) What costs would be involved and who would bare them? (f) Would this solution request a recommendation on a common and single format for the trade identifier?**

The unique trade identifier is complicated to be managed by investment firms, to which it is required to add an additional field, and by aggregators, due to the number of different types of possible identifiers that the sources could use.

In addition it must be observed that - in absence of the requirement that each trade has to be published to only one publication arrangement - the unique identifier does not ensure that duplication are detected if different publication mechanisms that have published the same trade are not consolidated by the same aggregator.

**Q4: 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? (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? (f) What costs would be involved and who would bare them?**

The use of time to millisecond does not seem to be sufficient to avoid duplication. This option would work for automated trades but we do not agree with the solution you proposed in paragraph 5.19 for non-automated trades for which you suggest *“it should nonetheless be possible to generate a time identifier, measured in milliseconds, at the point at which the trade details are inputted into an electronic system for trade publication.”* This solution leave out of control the time between the execution of the trade and the time in which the trade is inputted in the system and makes impossible to ensure that the time limit of three minutes for reporting is respected.

In addition - in absence of the requirement that each trade has to be published to only one publication arrangement – time to millisecond does not ensure that duplication are detected if different publication mechanisms that have published the same trade are not consolidated by the same aggregator.

**Q5: What is your preferred solution? Do you believe that a combination of these different options is viable? Are there alternative solutions?**

We believe that Option 1 is a prerequisite. Publishing each trade to only one publication arrangement is the more appropriate option to reduce the risk of duplicate trades and is an inexpensive solution.

This option could be combined with unique trade identifier or time to millisecond, but these other options, as stated above, have technical implication and costs and in our view limits in duplication avoidance.

**Q6: 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?**

In our view the list set by article 27(4) is sufficient to clearly state who have to publish the trades. However we fully share CESR view about the risk that investment firms may be encouraged to publish all their trades irrespective of whether the trades have already been published by other party.

We can not see any way to reduce the risk of trades' double publication except the enforcement of the application of the afore mentioned rule.

The “publication mechanism” can also help in reducing duplication whenever the investment firms would agree in providing information on their trades counterparties and allowing the “publication mechanism” to double check with counterparties if trades have already been published. This would be a service provided by publication mechanism and it would also improve controls on data quality.

**Q7: Is there a need for CESR to put in place guidance to define more precisely what should be considered as a "single transaction" and a "matched transaction"? Additionally, is there a need to define the 'reasonable steps' that firms should take in order to comply with their publication obligations?**

We believe it would be useful to define more precisely what should be considered as a “single transaction” for the purposes of post-trade transparency.

There is the need to clarify that transactions where a central counterparty interposes itself should be considered a “single transaction” and it should be important to clarify if, for the above purposes, the subjects acting as central counterparty have to be a CCPs or could be investment firms interposing themselves.

It should also be important to clarify how to make public transactions in which investment firms trade using a risk-less principal model - meaning that there is a principal trade between the investment firm and its client and an equal/opposite trade between the investment firm and the market. For this purpose it would be important to clarify if there is the need to make public:

- both the trade executed on the market by the investment firm and the trade between the investment firm and its client;
- or if the above described scheme can be considered a single transaction;

It should also be useful to clarify if the 2 legs have to be executed at the same time to consider it as a “single transaction” or if it is enough that the 2 legs are executed within a given interval of time.

**Q9: Do you agree with our proposed approach for dealing with static websites?**

See below answer to question 10.

**Q10: In your view, is this necessary and reasonable? What additional costs would be involved? Who would bear the costs?**

We want to point out that given the increasing number of trading venues that are expecting to compete and the consequent potential fragmentation of liquidity we have major concerns on the possibility that publication solely via a firm’s website lead to a lack of overall visibility and accessibility, depriving market of valuable price formation information and we are worried about the fact that published information can be hidden or made difficult to consolidate.

With this aim we agree that static websites cannot be considered as authorized means for publishing market data for the reasons listed in section 5.29 of the consultation paper.

Even machine readability requirements, listed in section 5.30, are not, in our opinion, sufficient conditions for a website to be considered adequate. In every case, whether machine-readable websites are “linked” through screen scraping technology (html decoding) or through xml formatted data flows or through access to a file formatted according to a specific record format, the following limits can apply:

- market data cannot be updated in real time; update of client software applications can only occur at fixed time intervals (not standard and configurable by each client software application) through “polling” mechanisms;
- polling mechanisms can cause the client software applications to keep on requesting updates to the website causing high consumption of resources and consequent high costs for the website provider or poor service quality for the final user;
- websites rely on public networks (internet) that is free of charge but have several limits such as no service level guaranteed in terms of capacity, availability, latency, security problems, authentication of the content provider or by the final users, etc

In order to reliable, secure and updated in real time, investment firms software applications should receive market data as a formatted feed pushed out by an information system on a Virtual Private Network (even on internet) as described in section 5.33 of the consultation paper. Cost for interfacing a machine readable website (xml like) is not very different from integrating a real-time feed.

**Q11: Do you foresee any difficulties in aggregators identifying key sources of data?**

Also considering what we said in our answer to questions 9 and 10 we believe that aggregators will face difficulties in identifying key sources of market data and difficulties would increase if website became a common channel for data publication considering the concerns above expressed.

**Q12: Do you have a preferred means by which to identify sources of data/ collection points?**

We believe that it would be useful that the Authority, that keeps the register in which the investment firm is entered, will list also the “publication mechanisms” each investment firm has chosen.

This will ensure a complete visibility of the publication mechanism and will allow to anybody is interested to consolidate information to identify data sources.

**Q13: Do you agree with our approach to facilitate the identification of new sources of transparency data?**

We believe that CESR approach facilitate the identification of new sources but it could be strengthen as indicated in our answer to question 12, whenever the Authority will list for each investment firms the “publication mechanisms” chosen.

**Q14: Do you agree with our recommendation to use ISO formats (and reference data where applicable) to ensure consistent publication of transparency information?**

We agree on the need to converge to a single or limited number of interoperable data formats and protocols.

On CESR proposal that new entrants should use ISO standards we believe that other standards like FIX and XML are less expensive and more efficient than ISO.

**Q15: Do you agree with our suggested flagging (i.e. C, N and A)?**

Yes, we agree in identifying trades executed under specific condition, negotiated trades and amendments with specific flag.

**Q16: 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)?**

It would be useful to make evident that trades are determined by factors other than current market valuation but we want to make evident that having too many flags can reduce the importance of the flag itself.

**Q17: 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?**

Yes, we agree.

**Q18: Is re-publication the best approach for dealing with amendments?**

The republication is a good approach for dealing with amendments but it increase the risk of duplication whenever the original wrong trade is not linked with the republished trade.

**Q19: Is 'A' an appropriate flag for amendments?**

Yes, it is.

**Q20: 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 your view, would the unique identifier and millisecond options discussed under the 'data quality' section above be effective identifiers?**

As indicated in answer to Question 18 the republication of correct trades is the correct way to deal with amendments but it could increase the risk of duplication whenever the original wrong trade is not linked with the re-published trade and we find it is necessary to find a mechanism that allow to discard inaccurate trades.

Nevertheless the unique identifier and the time to millisecond are difficult to implement and/or complicated to manage for firms, as indicated in our answers to Question 3 and 4. As an alternative solution it can be considered to republish the amended trade, with its flag, together with the original inaccurate trade. This will allow a sure identification of the trade to be disregarded also if for some extent this could amplify the duplication risk.

We hope that CESR will find our comments useful and we remain at your disposal for further discussion. With our best regards.

Milan, 15 December 2006