

Brussels, 05 March 2007

Mr. Fabrice DEMARIGNY
Secretary General of CESR
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Subject: ***EBF Response Level 3 Guidelines on MiFID Transaction Reporting - CESR Public Consultation – Ref: CESR/07-047***

Dear Mr. Demarigny,

The European Banking Federation (EBF)¹ welcomes the opportunity to comment on CESR's public consultation on Level 3 Guidelines on MiFID transaction reporting (Ref: CESR/07-047).

I would be happy to discuss with CESR, any aspect of this response. Alternatively, please contact Mr Stephen Fisher, Financial Markets Adviser, (Stephen.Fisher@fbe.be; +32 2 508 37 45).

Yours sincerely,



Guido RAVOET

Enclosures: 1

¹ The European Banking Federation (EBF) is the voice of the European banking sector representing the vast majority of investment business carried out in Europe. It represents the interests of over 5,000 European banks, large and small, from 29 national banking associations, with assets of more than €20,000 billion and over 2.3 million employees.

RESPONSE

Level 3 Guidelines on MiFID Transaction Reporting

CESR Public Consultation – Ref: CESR/07-047

1. The European Banking Federation (EBF)¹ welcomes the opportunity to comment on CESR's public consultation on Level 3 Guidelines on MiFID transaction reporting. The **EBF identified transaction reporting as a priority issue for CESR at Level 3 of MiFID**, since clarity on this important process would greatly aid the smooth implementation of the MiFID regime on a pan-European basis.
2. Whilst welcoming CESR working in this area to provide clarity through Level 3 guidance on transaction reporting under MiFID, **we remind CESR that the timing of such guidance has now become critical**. We strongly believe that CESR's guidance on the most important elements of MiFID (e.g. transaction reporting, best execution, the passport, inducements etc.) **must be finalised by the end of the first quarter of 2007**. This would provide industry with a degree of certainty which would allow firms to proceed with their implementation plans. After CESR has published guidance on these most critical aspects of the MiFID regime, further guidance should only then be issued (after due consultation with the market) in 2008 and after the date for MiFID implementation has passed.

I. General remarks

3. The EBF believes that key to achieving effective pan-European supervision is the efficient exchange of information with appropriate levels of standardisation in the transaction data that is delivered. This will imply that **it will become, over time, increasingly less relevant to which supervisory authority transaction reports are made**.² We very much welcome the efforts CESR has gone to in this current consultation to reflect this shared objective, irrespective of the outcome of the current discussions on the passport under MiFID.

Key considerations

Transitional arrangements

4. It appears that in a number of cases Member States will implement in November 2007, or even later, having missed the transposition date of January 2007. This will leave firms in the invidious position of having to comply with a new set of wide

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² See EBF's response of 9 February to CESR's consultation on the passport under MiFID for its position in respect to which supervisory authority transaction reports should be made.

ranging regulatory standards with little time to make the appropriate changes, carry out training etc. **We would encourage CESR to outline a solution for the transitional arrangements for firms in this situation.** This solution should ensure that firms receive the full nine months to put in place requirements, as promised by the European Commission following national implementation.

Design, build and testing of transaction reporting systems

5. **Transaction reporting is a vital issue for CESR to resolve quickly.** For firms' implementation of MiFID, those areas of the requirements that entail major IT changes and associated large internal projects must be resolved by CESR sufficiently far in advance of required compliance so as to give firms the ability to comply. Transaction reporting is one of these areas.
6. Concretely, there is currently a good deal of uncertainty in the market regarding which instruments would be eligible for transaction reports. Clearly this is an area where certainty is needed without delay and well in advance of 1 November 2007 to allow for systems to be designed, built and tested. While Article 11 of the MiFID implementing Regulation foresees the establishment and maintenance of a list of those financial instruments **we call on CESR to put pressure on its members to publish these lists for use by investment firms. Ideally a consolidated list of all financial instruments where transactions have to be reported should be published by CESR itself. This would make a significant contribution to establishing reliable pan-European exchange of data.**

II. Specific remarks

Level 3 Guidelines

CESR acknowledges that all transactions executed by branches where the service is provided within the territory of the Member State where the branch is located, shall be reported to the host Member State competent authority, whereas other transactions executed by branches shall be reported to the home Member State competent authority.

However, CESR recognizes that, from a practical point of view, it would be burdensome for branches of investment firms to be obliged to report their transactions to two competent authorities.

Therefore, all transactions could be reported to the host Member State competent authority, if the investment firm elects to do so and in agreement with the home Member State competent authority. In these cases transaction reports may follow the rules of the competent authority to which the report is made. Agreements may be given either in general or on a case-by-case basis.

Question 1: Do respondents agree with the proposed guidelines?

7. **CESR's approach is pragmatic and we welcome the guidelines it sets out, albeit with caution.** We have some reservations however in respect of how bi-lateral agreements could work in reality. Investment firms need clarity from the outset in order to set up their reporting systems. We would therefore very much welcome if CESR members could draw up a general agreement amongst all authorities. If such an agreement were reached in due time this would deliver stability upon which firms rely.
8. **CESR should keep in mind that MiFID is designed to create a level playing field for firms to compete across Europe.** For this reason, there should be a consistent policy that all European regulators adopt and such an approach should not be done on a case by case basis as this would lead to confusion, not only to firms and regulators.

Question 2: Do respondents consider that guidance is needed on which transaction is executed by a branch or by its head office for the purpose of reporting it to the relevant competent authority? If yes, do respondents consider that transactions executed by a branch should be understood as those transactions booked by the branch?

9. It should be clear that **branches of firms should only be required to report once to one supervisor.** It would then be up to CESR members to facilitate the prompt exchange of transaction reports to relevant supervisors as the requirements of MiFID and/or need calls for.
10. To report once a choice needs to be made between reporting to the home or to the host supervisor. **The default rule favoured by the EBF would be to make that report to the supervisory authority to which the characteristic performance test points at.** A (light touch) booking test could then be a helpful criterion with which to determine where the characteristic performance takes place. CESR may also consider, from a practical point of view, a solution that a branch reports all transactions to the host state supervisor.

Level 3 Guidelines

CESR members have agreed to commit themselves to collecting and, where required, exchanging information about at least the following set of transactions:

- (a) those conducted by the immediate market facing investment firm; and
- (b) transactions not covered by (a) above but where the investment firm is undertaking the transaction on its own accounts (either on RM, MTF or OTC).

Question 3: Do respondents agree with the proposed guidelines?

11. CESR's starting point ought to be to **consider the added value of collecting transaction reports**, i.e. what will the respective CESR member do with the transaction report once it has been collected? With that in mind it would then be

possible to specify in narrow terms in relation to which transactions would information be required.

12. Flexibility is an important factor in the guidelines CESR proposes at Level 3 in general. However, **flexibility should not prejudice efforts to facilitate meaningful supervisory convergence in Europe.** Therefore, **members have reservations towards CESR setting out common minimum requirements** (CESR guidance: “[...] at least [...]”) **to which its members could freely add,** albeit to the extent permitted by MiFID.

13. We therefore call on CESR to restrict itself to **exchanging information on the most meaningful information related to transactions** and to do so **on a consistent pan-European basis** where the margin for divergence is very narrow, if not eliminated altogether. In this respect, the purpose of the distinction made between “market facing” and trading on own account is not clear, as the examples given (RM, MTF, OTC) could also be market facing.

Level 3 Guidelines

CESR members agree to take account of any prior approval by another CESR member (home competent authority of the reporting channel) for reporting channels when conducting their work under Article 25 of MiFID and Article 12 of the implementation Regulation. To the extent permitted by national law, they will adapt their internal processes to rely on the evaluation of other members and to avoid unnecessary duplication documents.

Question 4: Do respondents agree with the proposed guidelines?

14. **CESR’s guidelines are welcome** as they appear to be a pragmatic solution to rightly recognising that the market would benefit if the approval process were to be streamlined. CESR should encourage its members to move towards convergent processes over time through interrogating the relative merits in existing differences in approach across supervisors.