



Deutsche Börse Group

Deutsche Börse's Response
to
CESR's
Public Consultation

Improving the functioning of the MiFID database

Frankfurt / Main, 21st January 2008

Deutsche Börse Group welcomes the opportunity to respond to CESR's consultation on improving the functioning of the MiFID database. We would like to point out explicitly that we appreciate the work undertaken by CESR so far to develop and establish the MiFID database.

CESR's MiFID database constitutes a unique source of information within Europe as it forms the overall benchmark list for all European investment firms in their efforts to act compliant regarding the pre- and post-trade transparency requirements which MiFID entails on them. Furthermore, not only investment firms and regulators rely on this CESR database but, amongst others, market data vendors as well who need to identify information necessary for consolidating pre- and post-trade market data.

The unique feature of the CESR database carries the implicit requirement that it will be a reliable and up-to-date source of essential information for the European market in order to assist market participants to act in a MiFID compliant way. Therefore we explicitly welcome CESR's intention to introduce moderate but necessary modifications in order to further improve its usability.

We generally agree with the proposed functions and new information which CESR considers to include in the MiFID database and especially appreciate the new data fields "*date of update*" and the "*information indicating the date when the information becomes applicable*" which will add further necessary information to the database.

Please find below our comments, which refer primarily to the CESR database of shares admitted to trading on EU regulated markets and the information already available or to potentially be included therein. We kindly ask CESR to consider our comments when reviewing possible adjustments of the CESR database.

1. Information update (frequency and completeness)

We would like to point out that the frequency and the completeness of the updates have a major influence not only on the ability of every market participant to verify which instruments actually need to be trade reported and/or quoted but on the technical processes already implemented in order to facilitate pre- and post-trade transparency as well.

In general, it is essential to update this information that is critical for accurate establishment of pre- and post-trade transparency as soon as possible and on an ongoing basis. Therefore, a regular daily update and a communicated deadline for updates should be standard practice.

Particularly in relation to new admissions to trading, Art. 33 (3) of the Commission Regulation EC No. 1287/2006 requires the competent authority to provide several important

estimates like the average daily turnover and market capitalisation (including the country code in order to provide an indication for the most relevant market for this instrument) in respect of that share before the first admission to trading on a regulated market takes place.

Taking into account that these data are essential information we would like to highlight the importance of a timely inclusion of all relevant data into the CESR database in order to facilitate the fulfilment of pre- and post-trade transparency obligations according to MiFID. A sufficient lead time of, for example, at least two days with regard to amendments, additions or deletions in the CESR database would significantly reduce efforts of market participants for keeping their reference data up-to-date and minimize the risk of missing obligations for reasons of data inconsistencies.

2. Scope of additional information

We generally appreciate CESR's offer to add further data to its data base in order to provide the market with necessary information. Nevertheless, there is a trade-off between the provision of additional information and the associated workload for CESR. We would therefore recommend to add only data which is necessary for market participants in order to identify the MiFID relevant instruments, potential changes to the instruments data as well as the time of applicability.

In this context, especially the data fields "*date of update*" as well as "*date when the information becomes applicable*" will undoubtedly be extremely supportive for market participants. The inclusion of these data fields will finally introduce certainty with regard to the exact timing of quotation and trade reporting obligations in relation to a particular instrument. Again, we would like to point out that a sufficient time span between the updates and the "*date when the information becomes applicable*" needs to be given in order to enable market participants to update their systems accordingly.

Any further transparency conveniences going beyond all those proposed by CESR which might be favoured by some participants of the consulted audience might undoubtedly provide additional value for them above necessary information. However, conforming to these requirements would add further complexity to the workload carried out by CESR and stretch CESR's responsibilities above the legally requested and necessary ones.

We do not consider it a core requirement for CESR to provide the market with all sorts of value added data which can be calculated by the market participants themselves, but with the essential raw data required in order to comply with MiFID and enough information to understand how the data are obtained and/or calculated.

3. Functionality

Art. 22 (1) of the Commission Regulation EC No. 1287/2006 describes criteria under which a share is considered as liquid. Beyond a minimum free float of EUR 500 million, one of the conditions: a) the average daily number of transaction is not less than 500, b) the average daily turnover is not less than EUR 2 million, apply either alternatively or cumulatively to the discretion of the Member State. Furthermore, "*...a Member State may, in respect of shares to which it is the most relevant market, specify by notice that both of those conditions are to apply. That notice should be made public.*"¹ We believe that the CESR database is a good place to fulfil this disclosure requirement on the part of competent authorities by including for example another sign or tag, similar to the sign indicating a liquid share, which indicates whether both or only one of the two criteria apply when determining that particular share as liquid. This would enable market participants to understand the way how a particular share has been calculated as liquid and facilitate recalculations. However, in relation to this discussion we would like to refer to our comments below.

At this stage of the comments we are aware of blurring the line between the functionality discussion to directing it to the contents of the CESR database. However, as this consultation seems to be one of the last chances to submit comments, we deem it necessary to point out some information in relation to the question how liquid shares are calculated.

4. Calculation of liquid shares

An even better solution to introducing a tag indicating whether the criteria a) and/or b) laid down in Art. 22 (1) of the Commission Regulation EC No. 1287/2006 are used would be a uniform application of those criteria amongst competent authorities. Competent authorities should use either the criterion a) or b) (in addition to the free float criterion), because each criterion alone is sufficient to classify a share as liquid. Such approach applied Europe-wide would reduce the overall complexity and improve transparency of calculations performed by competent authorities, and perhaps more importantly, it would significantly reduce the necessity for competent authorities to often calculate liquid shares case by case.

Finally, the explanation of how the average daily number of transactions is calculated described in CESR/07-322 (Guidebook, May 2007, page 2) and in this consultation paper (CESR/07-832, page 2) is confusing: while CESR/07-322 (Guidebook, May 2007 page 2) includes on- and off-market transactions, the consultation paper at hand in 9.C excludes "negotiated deals". We would very much appreciate a clarification by CESR on the terms used in these two documents and a statement on which approach for the calculation of average daily number of transactions applies. Beyond that, we believe that CESR would avoid further

¹ Art. 22 (1) of the Commission Regulation EC No. 1287/2006, last paragraph.

confusion by integrating the description provided in paragraph 9. of this consultation paper in the introduction on the website of the database.

We appreciate very much this opportunity to provide comments and remain at CESR's disposal for questions and further discussion.

CESR's proposals and amendments:

Amendment 1:

CESR proposes to add the following new data fields to the database:

- i. Exchange rate for non-Euro countries, which would indicate the rate which was used for calculating the respective information.
- ii. Date of update, which would indicate when the information regarding a given share was last updated
- iii. Information indicating the date when the information becomes applicable. This is to facilitate the presentation of two sets of information as necessary in relation to annual updates and new admissions. The new data field would indicate future information which will become applicable at certain point of time.

Amendment 2:

CESR proposes to add the following function to the database:

- possibility to extract only liquid shares from the database.

Questions:

1. Do you agree with the proposed amendments?
2. Is it necessary to add other information or other search functions? If so, please explain what you would like to add and the reasons for your proposal?
3. Do you agree with the proposal to identify investment firm acting as systematic internaliser?