



Deutsche Börse Group

Deutsche Börse Response
to
CESR
Call for Evidence

on the review of the scope of
the MIFID transaction reporting obligation

Frankfurt / Main, 5 December 2008

Executive Summary

Deutsche Börse Group appreciates the opportunity to respond to the CESR Call for Evidence on the review of the scope of the MiFID transaction reporting obligation.

Deutsche Börse AG plays an active role in providing services to its clients that are subject to the transaction reporting obligation via its transaction reporting system TRICE.

However, with the entry into force of MiFID, home member state supervision principle applies to transaction reporting which has triggered changes with regards to the recipient Competent Authority. This has altered the scope of clients on behalf of whom Deutsche Börse AG transmits transaction reporting data to the responsible Competent Authority.

Hence, investment firms subject to transaction reporting obligation have undergone changes in their opportunities to outsource Transaction Reporting to an external service providers such as Deutsche Börse AG with the entry into force of MiFID. Any modifications of the current set up of the transaction reporting obligation should therefore be carefully considered and any additional cost burden on the industry should be avoided if not ultimately justified. In this context, the additional information on the ultimate client may represent such significant modification as it is currently not a constituent part of the transaction reporting data set in several Member States.

We elaborate on this in more detail so please find below our detailed remarks to the relevant questions raised in the Call for Evidence.

Detailed Remarks

Question 1:

Have the differences in the scope of the transaction reporting obligation between CESR Members caused problems for you? Please provide practical examples of any difficulties encountered.

- Deutsche Börse AG supports with its Transaction Reporting System TRICE more than 340 investment firms that are subject to transaction reporting obligation. Based on existing trading data of the trading systems XETRA® and Eurex remote members (foreign trading participants of the Frankfurt Stock Exchange or Eurex Exchanges) Deutsche Börse AG automatically generates a transaction reporting data set and transmits it to the responsible Competent Authority. Thereby, Deutsche Börse AG operates as a third party acting on behalf of its client, while the transaction reporting obligation remains with the clients.

Prior to MiFID entry into force the responsible Competent Authority for the transaction reports was the Federal Financial Supervisory Authority (BaFin), while after the entry into force of MiFID it is the Competent Authorities of the remote members that are responsible for receiving transaction reporting data according to the home member state supervision principle laid down in MiFID. Due to differing reporting requirements of individual Competent Authorities and the associated very high costs of reporting to every single Competent Authority where our remote members are located, it is not viable for Deutsche Börse AG anymore to support all its remote members in the fulfilment of their transaction reporting obligation. After MiFID entry into force, this viability is given only for French and German remote members.

- Eurex Clearing AG, a 100% subsidiary of Eurex Frankfurt AG which is as a Central Counterparty subject to transaction reporting obligation, is not experiencing any problems with transaction reporting requirements. In the context of reporting of Eurex derivatives transactions, Deutsche Börse Group very much welcomes the application of the Alternative Instrument Identifier as granted by CESR instead of ISINs on series/settlement level.

Question 2:

Please provide information on your practical experiences in reporting transactions that fall under each of the items (a)-(c) above? Is the difference between these three categories

sufficiently clear? Do the competent authorities interpret the scope of these categories in the same way? If not, where in particular have you encountered problems?

N/A.

Question 3:

In your opinion, what are the advantages and disadvantages of competent authorities systematically receiving transaction reports covering the information referred to in item (c) above versus acquiring that information on an ad-hoc basis by other means?

Currently, the information on the “initiator of the order” or “ultimate client” is not a constituent part of a trade confirmation or execution confirmation which in general serves as a basis for generation of transaction reporting data set.

In case information on the “ultimate client” is required to be included in the transaction report on a general basis, investment firms will not be able anymore to outsource transaction reporting to an external service provider because this information is not available to the latter. Hence, if the information on the “ultimate client” is introduced as a regular constituent of the transaction reporting data set, investment firms which currently entrust third parties with generation and transmission of transaction reporting data sets to Competent Authorities would have to terminate these agreements and themselves generate transaction reports.

However, generation of transaction reports by investment firms would lead to combination of transaction reporting data and custody related data within the reporting system which otherwise would not be necessary. The implementation costs of such a significant system change are likely to be very high.

Question 4:

On the basis of their pros and cons, what would be the preferred solution in relation to the possible convergence of the scope of the transaction reporting obligation (regarding what constitutes ‘execution of a transaction’)? Please provide justifications for your choice. When analysing the pros and cons, please consider also whether there is a danger of regulatory arbitrage if the scope of the transaction reporting obligation is not harmonised between Member States, as well as the implications for transparency calculations on shares considering that in the future these calculations will be conducted on the basis of the transaction reporting data?

N/A.