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RESPONSE TO THE CALL FOR EVIDENCE

(Ref.: CESR/06-134)

CONSOLIDATION OF MARKET TRANSPARENCY DATA

I. Introduction

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments. Established in 1974 as a small forum of Stock Exchanges in Europe, FESE today has 24 Full Members representing 36 Securities Exchanges and clearing houses from all the countries of the EU, Iceland, Norway and Switzerland as well as 6 Corresponding Members from other non-EU countries. FESE co-operates with European settlement and securities depository organizations and works closely with the European Association of Central Counterparty Clearing Houses (EACH).
2. FESE's members are greatly interested in the subjects discussed in the current Call for Evidence. As a matter of general principle, we support the CESR practice of consulting on the scope of potential Level 3 work before the start of any substantive work. We participated in the Roundtable organized in December 2005 and provided our provisional views in writing (Provisional FESE Response Ref: I004/5 dated 23 December 2005). We are therefore pleased to respond to the current Call for Evidence. At the same time, given the scope of questions posed by CESR in the current consultation, the importance of the subjects discussed, and the limited amount of time allowed for the consultation, we may wish to come back to CESR with additional input at a subsequent point in time.
3. Our response is structured as follows: First we provide our **General Remarks (II)** on issues raised by Call for Evidence; then we provide more **specific remarks (III)**, followed by a **Conclusion (IV)**.

II. General Remarks

4. We agree that data dissemination and consolidation are issues that will have a major impact on the implementation of MiFID and therefore deserve being looked at and considered in further detail. As with all potential Level 3 work, we need to be very clear about the ultimate objectives pursued by the exercise, and respect a set of principles and objectives pursued by Level 1. As the Roundtable demonstrated, the scope of CESR's involvement in this area needs to be fully clarified. Before agreeing on any scope of policy intervention in the area, CESR will need to be more specific about **the need for and the expected net benefits** of such intervention.

5. Foremost among the overarching principles relevant to the current exercise is the supremacy of **market-led processes of data consolidation** over policy intervention. Consolidation of data is currently managed by market forces, which should be allowed to decide the outcome of any technical standardization process. Even if the post-MiFID environment could increase the amount of data to be consolidated and the number of venues where data will be published, confidence should remain with market-driven solutions. As we argued in that initial consultation, instead of seeking to force consolidation, we should rather seek to achieve “consolidatable” data.
6. We were pleased in the Roundtable that CESR also appeared keen to follow this principle. While we believe that CESR has the right intentions in this regard, we find the questions raised by CESR in the current Call for Evidence excessively focussed on the technical aspects of consolidation. This raises real risks. Markets already have developed numerous arrangements for the consolidation/dissemination of trade data in Europe over time, which, as evidence shows, are well functioning. These arrangements should not be disrupted and/or replaced by a completely new scheme. Envisaging a regulatory role in choosing among the different technical standards today would make no sense; even the protocols differ among themselves greatly and have numerous versions, which almost function as proprietary models.
7. By contrast, we find that there is a useful potential role for CESR with respect to guidelines ensuring the quality and public dissemination of data. In fact, it would be very beneficial for CESR to establish certainty over what EU regulators will expect from the market and to ensure consistency among its membership. We see a great value in members of CESR agreeing over fundamental issues, such as the conditions under which the use of proprietary means (such as websites) would be deemed to fulfil the standards set by the Directive and the monitoring arrangements that data must be subject to. Another important practical consideration with significant potential impact is the risk of double counting of data and how this can be prevented. Thus we point out below a number of the areas where Level 3 guidelines to be set up by CESR would be beneficial.

III. Detailed Remarks

8. Below we provide our comments on some of the specific points raised in the Call for Evidence.

Publication of data:

9. We note that CESR raises a number of questions related to publication. Our initial reactions to the net relative benefit of standardization in the items mentioned on page 2 of the Call for Evidence are as follows:
 - **Standards for date and time recording:** Standardization of this area is possible in principle; it would have to be accompanied by a reference to the time zone. We could agree in principle with the need to choose one of the two time formats (24h/12h) but reserve our views on which one would be more suitable.
 - **Type of instrument identifier to be used:** Standardization in this field appears difficult because it would be hard to avoid promoting commercial entities. This is an example of an area where CESR should not play a role.

- **Displaying price and quantity:** Standardization in this field appears difficult because it would be hard to have prices expressed in the same way for different markets (as this may have implications for the tick sizes, which differ by market). It would nevertheless be possible to agree on currency codes.
- **Minimum length of time transparency information needs to remain published and accessible:** First of all, we are a bit unclear as to the precise objective targeted by CESR in this item. Leaving this point aside, it seems to us that what really matters is for the trade to be published and be accessible for later retrieval, but not necessarily to be displayed. Firms would need access to historical information for best execution purposes and, as a result, there would be sufficient commercial incentives to store and make available such data. Therefore, those entities disseminating the information should not be subjected to standards imposing publication requirements for a defined period of time. This is therefore not an area where CESR should be involved.

Ensuring that data published is accurate and reliable:

10. On page 2, CESR asks what steps firms could take to ensure that data they publish is accurate and reliable. We find this question very important. As we argued in our Provisional Response, it is important for publication venues to maintain high standards of data quality, including data quality checks or even market monitoring arrangements. In this context, we believe that it is appropriate to consider within the scope of Level 3 whether guidelines might be useful in ensuring the quality and public dissemination of data.

11. By way of example, such standards could be aimed at the following objectives:

- **Preventing double counting:** To clarify the very important issue of which part of a flow of transactions that involves several players would be subject to the publication obligation (which is currently defined only by exchanges which are active in OTC trade reporting); please also see our comments on exclusivity/non-exclusivity in Para 15.
- **Block trade regime compliance:** Monitoring of deferred publication thresholds and delays for large trades must be ensured in a consistent manner and must be monitored near to real time to achieve both timely notification and final publication. The economic incentives for non-compliance are far too great to allow any lessening of standards in this area;
- **Minimum measures for ensuring reliability of data:** e.g. **Real time market monitoring** - live supervision of incoming trading information with the ability to detect erroneous reports. The EU-wide application of the same recognized standards to those entities that wish to collect and disseminate data will provide them with the authority that is required when querying reports with firms;
- **System standards:** Systems should match the reliability of the systems currently operated for collecting and disseminating trading data;
- **Consolidatable output:** The entities must disseminate the data on to those data vendors that wish to carry market data in a manner that allows for consolidation with other sources of post trade data.

12. If standards were to be imposed in this area, they would have to be imposed on all entities publishing data and not only on firms; a consistent accreditation mechanism throughout Europe could potentially help achieve this aim. Such accreditation should of course not relieve the firms from their general obligation to ensure that they make public data that is accurate and reliable. Consideration needs to be given to the potential benefits of, and the possible arrangements for, an accreditation regime that could be established to serve the objectives of the Directive. FESE would be happy to engage in such a debate with CESR and other market participants.

Consolidation of data:

13. First of all, we would like to reiterate our comments in Section II. As a guiding principle, we believe that CESR should focus on ensuring that data published is consolidatable, but not actually take steps for it to be consolidated. In this sense we welcome the request for input on page 3 regarding the obstacles to consolidation.
14. On page 3 (*“what is needed to remove the obstacles and by whom?”*), CESR refers to the possibility of competition authorities intervening with pricing. While we are not sure this is what CESR means, the wording could be interpreted as questioning the principle stated in MiFID that information should be provided on a *“reasonable commercial basis”* (as *“the consolidating body is required to enter into a commercial relationship with all providers of the information”*.) First of all, as a general principle, we would like to reiterate our view that any work initiated at Level 3 needs to follow the objectives set by Level 1 and Level 2. Moreover, we do not see any reason to question the principle concerning *“reasonable commercial basis”* referred to above. We believe that execution venues create value with the information they publish. This value is relative to the use made of it by the different users of the information (e.g. crossing networks). It is a fact that data has different values for different entities. The principle of *“reasonable commercial basis”* takes this fact into account by allowing for the necessary flexibility to adapt to the needs of all the different market participants.
15. On the other hand, standards in the following areas could be useful:
- To confirm **the primacy of the obligation to publish ahead of other principles**, such as the condition that it is done on reasonable commercial terms. This would mean that the pricing arrangements made would have to respect the principle that data is pushed, and not pulled.
 - To establish a **common understanding of what is consolidatable**. For example, CESR could develop a standard with regard to the conditions under which the use of proprietary means (such as websites) would be deemed to fulfil the standards set by the Directive.
 - To require that data dissemination be carried out via **non-exclusivity arrangements**. It is vital that investment firms are prohibited from striking exclusive deals with particular vendors. Data must be offered for onward distribution on a non-discriminatory basis to ensure that users have comfort that they are seeing the complete picture. However, any discussion of exclusivity of arrangements needs to differentiate between the flow of data from the producer to the data aggregator, which, if exclusive, would have the advantage of ensuring that data is not reported more than once, and the flow of data from the aggregator to the

disseminators, which should not be exclusive if the data is to be disseminated widely.

IV. Conclusion:

16. In view of the importance of the topic and the far-reaching questions posed regarding costs and benefits, we find that the time allocated to this Call for Evidence could have been longer. Thus we encourage CESR to continue its study of this subject over the coming months and to keep an open mind.
17. While we encourage CESR to act as a forum allowing exchange of views among interested parties, we urge it to refrain from making recommendations with regard to technical standardization, where we see no need for policy actions. Market forces should decide the outcome of any technical standardisation process.
18. By contrast, we see potential value in CESR guidelines at Level 3 to ensure supervisory convergence with regard to the quality of data or the public dissemination of data. We look forward to providing more input to CESR as it continues its work on these issues.