FESE AISBL
Avenue de Cortenbergh, 52 B-1000 Brussels
VAT: BE0878.308.670
Tel.: +32 2 551 01 80 – Fax : +32 2 512 49 05

BI023.3 FINAL
21/12/06

RESPONSE TO CESR'S CONSULTATION ON PUBLICATION AND CONSOLIDATION OF DATA CESR/06-551

I. Introduction and Executive Summary:

1. The Federation of European Securities Exchanges (FESE) is a not-for-profit international association (AISBL), representing the operators of the European regulated markets and other market segments, comprising the markets for not only stocks and bonds, but also financial, energy and commodity derivatives. Established in 1974 as a small forum of stock exchanges in Europe, FESE today has 24 Full Members representing close to 40 securities exchanges from all the countries of the EU and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.[1]

2. FESE is grateful for the opportunity to provide input to CESR's Consultation Paper (CP) on potential Level 3 measures related to the publication and consolidation of MiFID transparency data. We have provided input to CESR on two previous occasions, in December 2005 and April 2006, and consider the current consultation of great significance to the functioning of the MiFID regime.

3. In summary, the highlights of our comments are as follows:

    - An important general principle applicable throughout CESR's work is the need to keep in mind a clear **cost-benefit assessment of the new standards** to be developed in an area in which data production, aggregation, and dissemination are currently carried out with the use of **existing, well-performing systems.** The cost impact of standards on existing systems should be taken into consideration in this analysis.
    - As operators of regulated markets which have had an important role in ensuring and monitoring **data quality**, we fully support CESR's Level 3 guidelines aimed at ensuring high data standards across Europe;
    - While we support CESR's goal towards **preventing erroneous trades and duplication**, we find none of the three options fully convincing; of the three, our members tend to **favour Option 1 as a prerequisite**, which **may be coupled with Option 2**, although some members believe that the time and resources required to implement Option 2 would make it more suitable to be considered as a long term option to be put into action after the November 2007 deadline **assuming demonstrable net benefits over its costs**;
    - We believe that the use of **websites**, if permitted, should be subjected to **stringent rules** in order to allow the levels of consolidation and reliability that are necessary to achieve the objectives of the Directive with respect to the consolidation of data. The measures proposed

[1] Up to November 2006, the volume of equity trading of European Stock Exchanges was close to EUR 15.5 thousand billion, representing a 31.5% increase compared to a year ago. The equity market capitalisation of FESE Members has reached record levels close to EUR 11 thousand million, a 18% increase over the year. ETFs trading volumes at the end of November were already around 47% higher than for the whole year of 2005, while volumes of Securitised Derivatives were higher by almost 49%. Bond turnover went up 8.3% during the year to November 2006, and is now close to EUR 9 thousand million. The number of Derivative contracts traded has increased by 14.4% for equity derivatives and by 13.6% for bond derivatives in the last year. For more information, please go to: http://fese.eu/en/?inc=art&id=3

by CESR in the CP do not yet seem to incorporate the necessary standards and we therefore urge CESR to reconsider the proposed measures;

- If allowed, websites should provide information on the basis of a **push system (feed), register** with their competent authority, and make a range of **information** public about their **systems**;
- We believe that technical standards for data publication should be left to **market forces**; nonetheless, we support the **recommendation to use the ISO standards for new systems**; and
- We see benefit in **clarifying** CESR's approach to the **bundling of transparency information.**

II. Detailed Remarks:

DATA QUALITY

Inaccurate pre- and post-trade publication

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

4. In our response to previous CESR consultations on the subject, we had recommended strongly for Level 3 guidance to ensure the quality of data being published by trading venues. We therefore welcome CESR's focus on this subject in the CP. Furthermore, it should be noted that regulated markets already have in place tools for ensuring high quality data and they have carried out investments in this respect. These facts should be considered in developing standards in this area.
5. In broad terms, the proposal made by CESR in Para 5.6 and 5.7 concerning the independent verification process seems reasonable. Even if firms have a strong incentive to publish accurate data, there might be mistakes which would have significant consequences for investors, and therefore it is very important that the quality of the data published is subject to high standards.
6. We agree that there should be a verification process in all trading venues irrespective of their size; regulated markets already have such processes and consider them very useful in ensuring data quality. However, we do not think that they should necessarily be external. Some further aspects that might be clarified in Level 3 guidance are, for example:
    - who will monitor and what the objective of monitoring will be;
    - who will be responsible for data accuracy (the trading venue or the data aggregator – in our opinion it should be clarified that the responsibility rests with the trading venue that is the source); and
    - what kind of sanctions would be incurred in the case of non-compliance with the data quality standards.
7. Finally, we acknowledge that the UK FSA is developing a model based on Trade Data Monitors which could prove to be useful in addressing the issues above. However, in the absence of EU-wide standards, no national effort would be sufficient to guarantee consolidation of high quality data in Europe, and therefore urge CESR to bring about a convergence on this point.

Duplication of post-trade transparency information

i) Single trade is counted more than once during the consolidation process

> 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?
>
> ❖

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?

❖

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?

❖

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

8. We fully support CESR's efforts to find a mechanism that can avoid duplication. The mechanism to achieve this goal should have a net expected benefit over costs and be practicable and easy to implement. Moreover, in the case of an imposition of a new standard on existing sources of data, the existing technical set-up and the data quality it provides to the market should be taken into account.

9. On this basis, we appreciate the three options laid out by CESR, although we are not fully convinced by any of them at this point since each has drawbacks. The majority of our members consider that **Option 1 may not be sufficient but that it should be a prerequisite.** It would have the significant advantage of preventing duplication at the source. By contrast, Options 2 and 3 would have an effect later in the chain of actions in a trade, and potentially involve a greater risk of errors.

10. We are aware of concerns that Option 1 might have the effect of limiting competition. While at first sight it might appear to be the case, we tend to think that, after taking into account the full range of objectives set out in MiFID, this Option would be consistent with the overall goal of competition. Whether it is chosen by itself or in combination with another option, Option 1 should be based on a model that allows a choice of publication arrangement for different types of trades or (preferably) different types of securities in order to guarantee a degree of continuity. If a different publication arrangement for each trade were chosen, then this would be too difficult to monitor.

11. Many of our members consider **Option 2 to be potentially the most straightforward in preventing double counting** and as **a model** that Europe should have in place **at least in the long run after a proper assessment of how it would be implemented.** Potential practical difficulties, which some members consider insurmountable, would have to be studied carefully if CESR decides to pursue this option together with Option 1. For example, how would it accommodate the immense quantity and diversity of trades involved? Would the unique trade identifier also include a code for each venue? Would the codes be random or structured in some way at the European level? If not, how would the (at least theoretically present) risk of overlapping codes generated by multiple venues be prevented? Given the time and resources required to put this model into action, we would tend to think that CESR should recommend Option 1 in the first phase of implementation, and study the feasibility of Option 2 in the next phase.

12. By contrast to either Option 1 or Option 2, our members consider **Option 3 to be neither effective nor practicable** and therefore do not think that it needs to be pursued further. Even with a millisecond-degree of precision, the timing of a transaction by itself may not suffice to prevent duplication (even if the probability would be very low). Moreover, this option would require a costly transition since OTC trades in Europe today are certainly not recorded with millisecond-degree of precision.

ii) Single trade published by both parties to a trade

> 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?

13. One could argue that the principles stated in Article 27(4) of the Commission's Regulation are sufficient to provide clarity on the subject. However, we acknowledge that the effectiveness of these provisions will depend on strict compliance by firms. Therefore, supervisors should ensure that these Level 2 principles are applied by firms rather than imposing additional requirements at Level 3. In addition, on some selective issues, we could see benefit in Level 3 guidance. For example, it might be considered to require investment firms to prepare standing instructions with their clients regarding who reports under which circumstances. Moreover, we would like to point out that among the scenarios that need to be prevented is also the case where no publication is made by either party (i.e. not only the case of duplicate reporting).

> 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?

14. As we noted in our response to Q6, on some selected points additional guidance could be useful, e.g. the definition of a single transaction and a matched transaction. For example, to prevent uncertainty, it could be useful to specify that, in the case of the interposition of a single counterparty in a trade, the reporting of the transaction is done according to the Article 27(4) of MiFID Regulation by the initial counterparties, without taking into consideration the interposed single counterparty with respect to reporting purposes.

PUBLICATION ARRANGEMENTS

Websites as a pre- and post-trade publication arrangement

> Para 5.30 (…) CESR is proposing that pre- and post-trade publications should:
>
> i) be accessible by automated electronic means in a machine readable way;
>
> ii) utilise technology that facilitates consolidation of data and permits commercially viable usage; and
>
> iii) be accompanied by instructions outlining how users can access the information.
>
> Q9: Do you agree with our proposed approach for dealing with static websites?
>
> Q10: In your view, is this necessary and reasonable? What additional costs would be involved? Who would bear the costs?

15. With regard to Q9/Q10, we do not think that websites will deliver the kind of results necessary for data consolidation. Therefore we do not share CESR's view that on the basis of being "low cost" (Para 5.30) websites should be allowed. The cost consideration is not of the same magnitude of importance as the principle for the data to be consolidateable and reliable. The possibility to consolidate data is crucial with a view to creating efficient markets. Irrespective of whether the use of websites would be a low cost option, it is critical for the efficiency and attractiveness of European financial markets that CESR ensures that data are consolidateable and reliable even if this comes at a certain cost. The quest for low cost options, which we find valid in general, may not however justify any kind of solution; the efficiency and reliability of European financial markets must come first. In fact, there is a trade-off between the cost of publication of data and the cost of aggregation; the more the venues of publication and the more freedom they are given for the mode of publication, the higher the cost will be for the eventual users of data. Thus even in terms of costs, we are not convinced that websites are a justifiable publication venue.

16. For further information on the technical problems encountered due to the use of websites as reporting venues, we refer CESR to the responses of FESE members on this point, which provide detail.

17. Nevertheless, if CESR decides to allow websites despite their many drawbacks, then it is very important to subject them to conditions to ensure that data consolidation will be facilitated. Most important of these is the principle that publication arrangements should push the information out via a “feed.” Regulated markets already use this method (feed) to disseminate transaction information originated at their venues which greatly enhances the ability of information to be consolidated. We consider that information, in order to be consolidateable, must indeed be pushed: it has to be possible to extract the data from the website and re-use them. The requirement of data being machine readable may therefore not be sufficient to ensure that data published on a website are consolidateable.

18. Moreover, we also believe that websites should be registered with the relevant competent authority in order to allow proper supervision.

19. Finally, with respect to identification of data/collection points, an updated list of the key sources of data/collection points should be held at a centralised entity, such as the Competent Authority, which could in turn be published on a common European database.

AVAILABILITY OF TRANSPARENCY INFORMATION

Bundling of pre- and post-trade information

20. We find the statement in paragraph 5.46 regarding the supply of pre and post-trade information by trading venues rather unclear. We would agree with CESR’s approach if CESR’s comments mean that publication arrangements are not allowed to sell pre- and post trade transparency data for an artificially high price with the only justification of supplying additional data (e.g. financial research by investment firms or mixing transparency data from different sources) and that data aggregators or end-users might not need such additional information. We can agree that a publication arrangement cannot require, as a precondition to provide services to a producer of data source, such a producer of data to buy the information flow the publication arrangement produces.

21. However, if this paragraph is supposed to mean that the publication arrangement could be required to provide a separate feed for each of the producers of data to which it provides a publication service, we would disagree with this approach. The publication arrangement should be able to include in its main feed the data of the various producers of data for which it acts as a publication arrangement. This constitutes a commercial choice for the publication arrangement and purchasers of the feed should not be able to request the possibility to cherry pick the data of a specific data producer in that main feed.

Identifying new sources of pre- and post-trade transparency data

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

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

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

22. Q11: We do not foresee major difficulties regarding the key sources of data. Nevertheless, it will be difficult to identify all sources of data, and we do foresee difficulties in aggregators to source transparency data from unknown publication arrangements.

23. Q12/Q13: We consider that it is essential for the market as a whole and the relevant competent authorities to be adequately informed of where pre-and post-trade transparency information can be found. New sources should make themselves known not only to the respective Competent Authority

but also to all market participants. New sources should provide the market with the technical information necessary to use and consolidate the information provided by the source. This must be a requirement in order to define a source as valid.

24. We do not have any specific preferred means for the publication of this and could agree to a range of options. In principle, CESR's approach of investment firms informing the market about where to collect their pre- and post trade transparency data goes in the right direction. It would be beneficial for the investment firms to inform the relevant competent authority of their publication arrangements. Then, the competent authorities should compile and update a list of all sources of data.

25. In addition to the mechanism in place to inform the market of where to collect, it seems important that, through the same or other mechanism, additional information necessary to assess the source and its characteristics be made public. It could be information concerning how to get pre-trade transparency positions, policy vis-à-vis clients, commissions, eventual guarantees in place and any other circumstances that may be relevant to evaluate the consolidated information for purposes like best execution or surveillance.

PUBLICATION STANDARDS

Data formats, content and protocols

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

26. We support CESR's decision not to require existing sources of transparency information to change their systems and data standards. There is, both in Europe and on a global scale, an existing and well-functioning market data infrastructure, which should not be disrupted and/or replaced. A large number of interfaces between relevant parties exist that allow data to be consolidated and disseminated. Therefore, we agree with CESR that any recommendation on technical standard has to avoid interfering with market decisions.

27. With these principles in mind, we agree with the recommendation to use ISO standards (and reference date where applicable) when developing new systems or making systems changes. Moreover, we note that a certain degree of flexibility will be necessary with regard to ISO standards since an ability to deviate from selected fields (e.g. with regard to the use of integers in the context of page 22 of the CP) would be useful to incorporate market differences.

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

28. Q15: We agree with CESR's suggested flagging system in the absence of an existing flagging system. However, it should be possible to flag these types of trades with different indicators and have other flags for other types of trades. CESR should leave the indication for additional information in relation to some trades to market demand and therefore view the suggested flagging only as a proposal and not exhaustive. On this basis, we agree with the suggested flagging system, as long as it not intended to be exhaustive or mandatory. Regulated markets use categories today that might have a greater degree of granularity, and requiring the use of the proposed flags would have the effect of reducing transparency in these cases. Moreover, there are other flags that have not been considered, e.g. D for deleted (cancelled) trades.

29. Q16: Some of our members see a benefit in 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), while others consider that guidance in this area would go beyond the scope of the Level 2 principles.

Structure of pre- and post-trade transparency information

> 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?

30. Q17: In principle, we agree that continuity in the order and format of the published information is important to facilitate consolidation, and therefore see value in standards in this area. When such guidelines are drafted, CESR should seek to avoid requiring existing sources of data which use standard technology to change their order and formats. Moreover, this requirement should be applied in a way that does not undermine innovation.

Amendments to post-trade published information

> Q18: Is re-publication the best approach for dealing with amendments?
>
> Q19: Is 'A' an appropriate flag for amendments?
>
> 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?

31. We support CESR's differentiated approach with regard to existing market data infrastructures and new sources. We also agree that re-publication is a good approach for dealing with amendments. Amendments/corrections should be made via the same publication arrangements used for the original trade.

Atomic clock for pre- and post-trade transparency information

32. Para 5.64: We agree that discrepancies in sequencing may occur anyway, with or without connection to an atomic clock.

III. Conclusion

33. In conclusion, we thank CESR for the opportunity to respond to this important CP and express our readiness to provide any further information that might be required.