

31 May 2010

Re: Response to Consultation – CESR Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets

Ladies and Gentlemen,

Bloomberg L.P. (“Bloomberg”) welcomes and appreciates the opportunity to respond to CESR’s Consultation Paper - CESR Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets.

Bloomberg applauds CESR’s continued work in addressing many of the issues identified in its previous report on the Impact of MiFID on Equity Secondary Markets Functioning (Ref.: CESR/09-3) and many of the proposals set out in the paper. Before addressing some of the specific questions posed in the paper, however, we would like to make two general remarks.

First, we respectfully submit that while some changes to (or clarification of) the regulations are clearly necessary, additional regulation alone will not, unless supported by robust and consistent supervision, be sufficient to resolve the issues they seek to address. In fact we believe that several of these issues could have been addressed to a large degree by better supervision alone.

Secondly, we feel that, rather than address many of the components of the regulation somewhat in isolation, we believe that it would be beneficial if CESR were able to take a step back and try to better articulate the overall type of market structure that it is in favour of and therefore hoping to achieve. For example, it is clear that CESR is in favour of pre-trade transparency wherever possible while recognizing that in certain cases investment firms may be able to achieve better results for their clients when trades are executed without it (i.e., in “the dark”). What is less clear is whether CESR would prefer that these dark trades were executed on “organized platforms” (such as regulated markets (“RMs”) or multilateral trading facilities (“MTF”s), rather than “non organized platforms” (for example, Broker Crossing Networks). If this were the case this might lead to some different conclusions (e.g., greater flexibility for RMs and MTFs with respect to reference price waivers than might be the case when looking at pre-trade transparency waivers for RMs and MTFs in isolation).

Pre-Trade Transparency

Question 1: Do you support the generic approach described above?

Bloomberg supports retaining the generic requirement that all trading on organised markets (RMs/MTFs) must be pre-trade transparent and allowing exceptions to pre-trade transparency in certain circumstances. We would also support a move towards more of a “rule based” approach where a more precise description of the waivers would provide greater clarity for market participants and competent authorities and facilitate continuous supervisory convergence with regard to waivers providing that there was a sufficiently robust process for CESR/ESMA to take into account financial innovation and evolve those rules.



We do note, however, that MiFID permitted financial institutions to delay reporting trades for a large share of block trades. We suggest that enquiry be made to determine whether the waivers allow market participants to delay publication of certain trades, such as risk trades, even after the risk is offset. There is a risk waivers could be manipulated to delay reporting for block trades, resulting in a reduction in the value of the real-time data being published to the market.

Question 2: Do you have any other general comments on the MiFID pre-trade transparency regime?

It does appear from our data not only that average trade sizes are decreasing in general but also that the average trade size on the "Dark Pools" run by RMs and MTFs and operating under a pre-trade transparency waiver is often not significantly larger (and in many cases are even lower) than that general average size.

For Example, for Vodafone from 08/02-06/05 15.7 Bn. Shares were traded with an Average Trade Size 10,191. In the same period the Average Trade Sizes for Vodafone were NXEU 9,665; ITG POSIT 6,547; Liquidnet 490,133; Smartpool 7,209; Blockmatch 4,000. The Average Trade Size for OTC Trades reported to various OTC publishing venues in the same period was BOAT 131,117; LSE 2,264,272; Euronext 4,708,970; Chi-X 650,396 and Deutsche Boerse 335,158.

This would appear to indicate that the "Dark Pools" run by RMs and MTFs may currently be struggling to provide institutions with a viable alternative to the OTC Market for executing large orders without adversely impacting the market. One possible reason is that the current pre-trade transparency waivers for RMs and MTFs (especially the reference price waiver which permits trades only at the mid price and not within the spread) are in fact too restrictive and the argument that this could put these organized platforms at a competitive disadvantage is one with which we have some sympathy.

We believe that waivers of some description are necessary to ensure that institutions can execute large orders without adversely impacting the market price. The question is which types or mix of "Dark Pools" provides the optimal combination of both facilitating this aim while at the same time offering the greatest degree of transparency.

We believe that purely from a perspective of market transparency, instantaneous post-trade reports of "Dark Trades" from an open-access, specifically identified, electronic RM or MTF are almost as useful as pre-trade transparency and significantly more useful than post-trade transparency of "Dark Trades" that are either executed away from an order-book (for example, under negotiated trade waivers) and trade reported to a RM or post-trade transparency of "Dark Trades" that are executed either by an SI or OTC and reported under one of the 2 generic mnemonics (e.g. OTC, SI).



On a more generic note we would recommend that CESR be cautious when looking at Trades without “pre-trade transparency” as a percentage of Total Trades on an RM or MTF. If electronic Dark Pools in an RM or MTF are successful in helping institutions to execute trades that they would not otherwise have been able to execute then although the percentage of Total Trades executed on an RM or MTF that had been traded without pre-trade transparency would have risen in this case the outcome must, in fact, be beneficial to the market. Similarly, if electronic Dark Pools in an RM or MTF are successful in helping institutions to execute trades that would otherwise have been executed OTC, the percentage of Total Trades executed on an RM or MTF that had been traded without pre-trade transparency would have risen while the percentage of Total Trades (RM, MTF, Systematic Internaliser (“SI”) or OTC) traded without pre-trade transparency would not and yet again we would suggest that in this case the outcome must be at worst the same and more likely positively beneficial to the market.

Question 3: Do you consider that the current calibration for large in scale (“LIS”) orders is appropriate (Option 1)? Please provide reasoning for your view.

We are not persuaded that decreasing Average Trade Size (which is mainly the result of how SORS and Trading Algorithms slice and dice orders) should justify a reduction in LIS waiver. Average Daily Turnover and Order Size (which we expect have not reduced in size) still appear to be the logical yardsticks and we would recommend leaving the current calibration unchanged.

Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal?

No. (See 3 above)

Question 5: Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1 or 2)? Please provide reasoning for your views.

While we would instinctively have a preference for Option 2 (seeing no theoretical reason why the stub should continue to benefit from the LIS waiver), we understand that from a practical perspective this would result, in most cases, in the stub having to be redirected to a different venue for execution and that this may result in unnecessary additional cost and complexity with respect to settlement.

Question 6: Should the waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.

We believe that in the end it depends on what type of market structure CESR is aiming for. While on the one hand it is not obvious that the fact that reference price systems are being used to



execute small orders is consistent with the general intention of the waivers to provide protection against market impact; on the other, it is clear that further restrictions on pre-trade transparency waivers on MTFs and RMs are likely to result in these trades being executed instead by SIs or OTC with a potential further reduction in overall transparency.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?

Bloomberg does not believe that there would be any justification in interpreting “wide publication” as meaning that a reference price is required to be accessible free of charge. We do, however, believe that it should be made available on a non-discriminatory basis and at “reasonable cost”.

With respect to the issue arising when considering a reference price based upon prices of multiple platforms (such as a customised EBBO) and whether the reference price itself would need to be published rather than, or as well as, its components might in our view depend on the fine print in the definition of that reference price. There are many ways in which an EBBO could be constructed (for example which venues or types of venues are included, which quote types, rules for when a venue is in Auction, rules for when a venue is down, etc.). Ideally these rules (or “components”) should be published. The reference price is then calculated according to this set of rules by a calculation agent (RM, MTF, vendor, etc.). Again ideally this reference price should also be published. A potential issue may arise, however, if for some reason the calculation agent has a problem in correctly calculating the reference price according to the published rules (for example, the incoming feeds for one or other of the venues goes down, the calculation algorithm has a bug, etc.). In this case would the reference price at which trades would be executed be the (incorrect) price generated by the calculation agent or the reference price that should have been calculated according to the rules? If it is the former then perhaps requiring the publication of the components is not really necessary and if it is the latter then perhaps requiring the publication of the reference price itself is not really necessary.

With respect to whether or not a certain reference price is “reliable”, it is not clear exactly what type of “price validation mechanism to ensure the quality of the reference price on an ongoing basis” is envisaged or why the “markets referred to should be sufficiently liquid” (a reference price such as an EBBO might well reference a range of venues including relatively illiquid ones which users might not have independently linked to and therefore otherwise have benefited from). Nevertheless, we agree that the judgment of the reliability should be made by the platform intending to use it and ultimately the competent regulator.

Question 11: Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?

If SIs were going to be required to maintain quotes it would appear to make sense that they should be as meaningful as possible. The quotes in 1 share provided by some SIs currently are not, in our view, meaningful and almost guarantee that SI quotes cannot be seriously considered for inclusion in any EBBO.

Question 13: Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.

We are not persuaded that SI's should be restricted from price improvement since this would appear to offer the possibility of a better execution for the client. It would also appear to be inconsistent with the treatment of market makers in some RMSs and MTFs (see Question 16).

Question 14: Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?

We would be in favour of requiring SIs to identify themselves when they publish post-trade information for all trades. If post-trade data is to be truly useful it needs to help participants to understand exactly where trades are getting done at the best price so that they too know where they have the best chance of achieving best execution for their own orders.

Question 15: Have you experienced difficulties with the application of "Standard Market Size" as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify.

No.

Question 16: Do you have any comments on other aspects of the SI regime?

The systematic internaliser regime is one of the areas in which we have had, and continue to have, the most difficulty fully understanding what the regulators are to trying to capture, enshrine or protect against. We understand that the SI regime was probably created more with retail investors in mind than wholesale but are not familiar with exactly how or where the retail investor is currently supposed to avail themselves of those SI prices or exactly how the system is currently perceived to be protecting them.

We believe that a review as to where CESR sees SIs fitting into the current and desired market structure would be extremely useful.



We do carry SI pre-trade transparency on the BLOOMBERG PROFESSIONAL service but our clients rarely, if ever, use it and the overwhelming majority of feedback we have had since 2007 is that our clients view these quotes as “noise” and we subsequently never included them in our Consolidated European Best Bid and Offer. We are not convinced that requiring an SI to quote both sides and in a minimum size is likely to change that perception.

With respect to post-trade transparency, we do not see any significant advantage to the market in a trade being identified as “SI” rather than “OTC” and have had no demand from our clients for SI Quarterly Reports which are seen as providing “too little, too late” to be useful.

There does appear to be some inconsistency between the rules of engagement for an investment firm acting as an SI and an investment firm trading either as a market maker in a quote-driven RM or MTF or under the rules of an RM but away from the RM’s order book.

For example, judging by the huge Bid-Ask spreads displayed on PLUS Markets (a quote driven RM) compared with both the trades being reported to that exchange and with the Bid-Ask spreads for the same stocks trading in other venues it is fairly clear that the pre-trade transparency provided by this exchange is not really a true reflection of the true prices available from the market makers who are able to price improve with impunity (and who are possibly even trading systematically through a completely independent platform) and report their trades anonymously to the exchange under that exchange’s rules. It is difficult to understand what it is about this model that CESR should be happy to let continue unchanged while at the same time continuing to restrict SIs from price improvement and making them improve their quotes and identify their trades.

Post-Trade Transparency

Question 17: Do you agree with this multi-pronged approach?

Yes, we both agree with and fully support this multi-pronged approach. We believe it would be helpful if the joint CESR/Industry Working Group was an ongoing or even permanent group as there would no doubt be a need for the development of further standards and clarification as new use cases emerge and markets evolve.

Question 18: Do you agree with CESR’s proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.

We believe that it is important that transactions are published as close to real time as possible. While investment firms would be better placed to comment on whether or not they would face difficulties fulfilling the requirement if the deadline were reduced from three minutes to one minute



we would expect that there may be certain exceptional circumstances (including periods of extreme activity) when the full three minute buffer may be needed for a short period of time.

More importantly, however, if the goal of the shorter deadline is, as it appears to be, to address the fact that some investment firms are routinely using the full three minutes to publish a transaction, rather than publishing a trade in real-time and using the full three minutes on an exceptional basis, then we would respectfully suggest that this is not the optimal solution and that instead greater supervisory follow up with the firms in question is required to ensure that they comply with the regulation as it currently stands. Changing the deadline to one minute and allowing those firms to routinely use the full one minute would not sufficiently solve the problem.

Question 20: Do you support CESR proposal to maintain the existing deferred publication framework whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?

Yes, we believe a framework based on the liquidity of the stock and the size of the transaction makes the most sense.

Question 21: Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.

We believe that shortening the delays would definitely contribute to greater overall transparency for all shares admitted to trading.

By ensuring that all trades are published on the same day investment firms would also be able to run more timely and complete post-Trade TCA analysis and take earlier steps to follow up on any issues identified. Under the current regime those investment firms wishing to include OTC trades in their post-Trade TCA cannot reliably do so until three days after the trade was executed in case large OTC trades are published that are “folded back” to the day in question and subsequently change the benchmark (e.g. VWAP, etc.).

We also recognize, however, that these proposals would in certain circumstances make it more difficult for investment firms to use their capital in facilitating their clients in executing large blocks of shares without significantly impacting the market price and that this rise in the cost of risk capital would result in worse execution prices. It would be unlikely that an investment firm would be able to facilitate a client looking to get out of a large block of stock shortly before the close of the day, for example, if the end of day rule were imposed.

We would therefore suggest that a combination of higher thresholds before delays were permitted combined with a requirement to publish all transactions no later than the end of the next trading

day would deliver greater transparency and cleaner data without such a negative impact on the cost of risk capital and, consequently, liquidity.

Application of transparency obligations for equity-like instruments

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):

- DRs (whether or not the underlying financial instrument is an EEA share);
- ETFs (whether or not the underlying is an EEA share);
- ETFs where the underlying is a fixed income instrument;
- ETCs; and
- Certificates

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

We agree with the proposal to apply transparency requirements to equity-like financial instruments, in particular ETFs and ETCs which have grown significantly in turnover since the introduction of MiFID and where a significant amount of the trading is conducted OTC.

It may be interesting to note that we already provide consolidated data on several hundred ETFs and ETCs at the request of some of the major brokers who are already reporting OTC trades in these through BOAT and other venues (although at present it is unlikely that this represents the total volume traded). They were interested in providing greater transparency into the total volume of ETFs being traded in order that potential investors could gain a greater level of comfort about the true available liquidity in these instruments.

We believe that it may be less appropriate to apply transparency requirements to Certificates. Although linked to underlying Equities or Baskets of Equities we would not argue that they would be better classified as Equity Derivatives or Structured Products rather than “equity-like” in the same way that, for example, DRs are. We, for example, store these in our fixed income data base and treat as structured products and believe that a transparency regime in line with those securities would probably be more appropriate.

Question 26: In your view, should the MiFID transparency requirements be applied to other “equity-like” financial instruments or to hybrid instruments (e.g. Spanish participaciones preferentes)? If so, please specify which instruments and provide a rationale for your view.



As with Certificates above we believe that a transparency regime in line with fixed income or structured products might be more appropriate for hybrid instruments (such as Spanish participaciones preferentes) than the equity transparency regime.

Consolidation of transparency information

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for APAs? If not, what changes would you make to the proposed approach?

On the whole we support the proposed requirements/guidance.

Turnaround of cancels and / or corrections at the moment can be frustratingly slow. We would encourage emphasising that the requirement to “alert the investment firm that the trade report is incomplete or contains information that is likely to be erroneous and has not been published” should be done immediately or as close to real time as possible.

With respect to the Periodic Regulatory report we would recommend adding:

- (i) a measure of the average time taken to resubmit corrected trades when the APA flagged as being either incomplete or likely to be erroneous;
- (ii) a measure of the average time between when a trade was first published and later either cancelled or amended; and
- (iii) the proportion of trades flagged as being either incomplete or likely to be erroneous that were resubmitted and the resubmitted trade was then subsequently cancelled or amended (at present several reporting venues have processes in place to flag a trade report as being potentially correct but the investment firm is then immediately resubmitting without correcting what is clearly still an incorrect report).

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?

We believe that the requirement to make transparency information public in a way that facilitates the consolidation with data from other sources is an important one and may benefit from some further clarification.

As it currently stands the requirement could be interpreted in a number of different ways including that the data is required to be made available in some (as yet undefined) specific feed format and



using some (as yet undefined) specific data standards. While these could be specifically identified and standards could be selected this may be overly prescriptive and onerous. We believe the emphasis should instead be on the obligation to make transparency information public in a way that does not hinder the consolidation with data from other sources. These might include publishing to areas that it would be commercially unviable for anyone to consolidate (such as individual web-sites) or more importantly data publishers imposing different restrictions on how the data could be applied with the risk that no application could use consolidated data without contravening the restrictions imposed by one or more of the component data providers.

Again it is important that the CAs do all they can from a supervisory perspective in order to ensure that any barriers to consolidation do not arise and, to that extent, any amendment to this requirement should be driven by what the supervisors themselves feel would enable them to do this more thoroughly and consistently going forward.

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

We believe that the approach described above would contribute significantly to the improvement in any European Consolidated Tape (assuming by "European Consolidated Tape" we mean Consolidated Time and Sales Data).

Firstly it should enable providers of consolidated tape data to ensure completeness of coverage. At present, due to the fact that investment firms can report more-or-less anywhere (including their own websites) and that there is no complete source as to what these venues and who is reporting where, it is practically impossible for any provider to identify where this data is and, in many cases, would not anyway be commercially viable for any provider to capture and aggregate that data even if they could.

Secondly it should lead to cleaner and more accurate data both as a result of a greater level of commitment to monitoring and flagging potentially erroneous data on behalf of the APA and by providing CAs with evidence of investment firms that are not consistently monitoring their continuously for errors or correcting them in a timely manner (or at all) when errors do arise.

The level of success in practice, however, will depend in no small part on the CAs actually using the data provided by the APAs and following up with any consistently failing investment firms.

Our experience since 2007 has been that in some regions there has been little or no attempt on the behalf of CAs to identify and follow up with erring brokers despite ample and consistent evidence that problems existed in those regions.



When the FSA first introduced the TDM regime in the United Kingdom we were nervous that a need for each publishing venue to gain approval from each of the CAs might prove unnecessarily burdensome. We were also nervous of a potential “tit-for-tat” if a publishing venue in one region failed to gain approval in another. In order to avoid the potential of this happening in this case an APA approval from one CA should be passport-able to all other regions. We also believe that there is a strong argument that the approvals and subsequent supervision should be carried out by CESR rather than the CAs.

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an E.U. mandated consolidated tape (as described under 4.1.2 below)?

We believe that there are several advantages of the proposed multiple approved publication arrangements compared to an E.U. mandated consolidated tape.

First, as referred to above, we believe that these arrangements would address the most important hurdles to producing an acceptable market-led consolidated tape (or tapes) by ensuring that all post-Trade data was captured by a number of known publishers and that these publishers in turn had a role in ensuring that that data was accurate and timely.

Secondly, the multiple approved publication arrangements would seem to provide a more viable system with both a sufficient level of competition between publishing arrangers (important in giving those with publishing requirements a choice of venue, pricing, contribution technologies and processes, etc.) and sufficient incentive for organizations to actually want to become an APA. On this second point, it is not clear what incentives APAs would have to enter and invest in developing the business if they would be required to send their trade reports to an MCT free of charge. The only real options open to them would be to try to sell low latency feeds of the same data (which would presumably incentivise them not to invest in improving latency with respect to the feed sent to the MCT) and try to sell “value-added” data (although it is difficult to envisage what meaningful “value-added” data sets could be constructed out of the subset of trading data likely to be reported through APAs).

Thirdly, the multiple approved publication arrangements would enable healthy competition in the provision and development of consolidated tape and other consolidated products and services. Despite some rumblings to the contrary we believe that rather than failing to come up with an acceptable consolidated tape the market has in fact developed and evolved a number of excellent solutions (especially given the paucity and unavailability of some of the constituent data). In the three years since the launch of MiFID we have seen significant differences between both what different players are looking for from a consolidated tape as well as between what the same players are looking for today compared to what they were looking for a year or two ago. It is vital, therefore, that the market be able to quickly respond to these changing demands and evolve the products and services being offered.

Question 31: Do you believe that MiFID provisions regarding cost of market data need to be amended?

We do not believe that MiFID provisions regarding cost of market data need necessarily to be amended but we do believe that some clarification or better understanding around what is meant by “reasonable cost” is critical, especially as the principle of “reasonable cost” is also being considered as part of increased transparency requirements in the non-equity space.

While we have no doubt that the high real-time exchange costs that we have to collect from our users on behalf of exchanges have prevented many of our users from being able to fully benefit from our consolidated data solutions (especially when the same trader is required to subscribe separately for each vendor, internal or EMS/OMS platform that they view the data on) we nevertheless believe that it is important to examine the topic of costs as holistically as possible so as to be able to properly understand how best to frame the context in which costs should be judged as “reasonable” both for the consumers and providers of the data.

First of all, it is worth remembering much of the data that is available today (including most of the OTC data outside of the UK) was not available pre-MiFID and it should perhaps not be unreasonable to expect that access to this additional data will incur additional costs.

Secondly, the number of trades in Europe has been significantly increasing (albeit at the expense of the size of those trades). Increased trade volume requires greater storage and distribution capacity for which again it may not be unreasonable to expect users to incur a higher cost. Much has been made by the fact that in some cases although a RM percentage Market share of all post-trade data in specific securities reported has decreased, the costs of accessing that RMs data have not done likewise. In many cases, however, the overall volume of trades reported by those exchanges may still have increased rather than decreased.

Thirdly, when considering the total cost for a full data set of pre- and post trade data of all E.U. venues it is useful to note where those have and have not changed since pre-MiFID. Most, if not all, of the new venues do not charge for market data so the additional cost is almost exclusively due to the new reporting venues - some of which also do not charge and many of which, as we have discussed above, are publishing data that was not previously available.

Fourthly, we need to be clear that there is no such thing as a single “cost of European Consolidated Data” as the actual cost borne by an actual user will depend on a number of factors including their objective, the securities they are looking at and the service they are using. For example, from June 1st data from all exchanges with the exception of Luxembourg (which has a 24 hour delay policy and whom we consequently exclude from our composite) will be available free of charge after 15 minutes. This in itself means that many users will be able to satisfy many of

their needs without incurring any real-time fees at all. Furthermore, prices and trades of many liquid securities trading on new MTFs are available in real-time free of charge. Since Bids and Offers in these venues are very often on the touch (due to the nature of their user base) this means that any investor (including retail) can effectively track the current price of securities like BP, Deutsche Telekom, Nokia, Total and ING in real time without any charge at all. Even for those users looking for full composite data most should not need to incur the total cost for a full data set of pre- and post trade data of all E.U. venues if they are not trading in securities from all venues. For our own European Composite a user only needs to subscribe for each security in which they are interested to those venues in which that security trades or publishes. [e.g. for U.K. stocks like Vodafone, to be able to track in real time consolidated Best Bid and Ask, Open, High, Low, Close, all trades and aggregate volume from the 8 RMs and MTFs on which Vodafone trades, VWAP excluding OTC trades, etc. would cost one of our users \$77/month. If they also wanted to track in real time OTC trades, total volume including OTC trades and VWAP including OTC trades would cost a user an additional \$134/month (for a total of \$211/month). A security such as Total (which trades on more RMs that charge for data) would be a little more.

Finally, it is important to ensure that venues are able to generate sufficient revenues to be able to continue to survive and invest in their businesses. This is particularly true if CESR would prefer to see more trading taking on open-access, organized trading platforms (RMs and MTFs) than with SIs, on Broker Crossing Networks or OTC. Apart from trading fees (which market participants also want to minimize for obvious reasons) data subscriptions are often the only other major source of revenue available to venues. Few, if any, of the new trading platforms combining low trading costs and no data costs are believed to be trading profitably and several have recently either gone out of business altogether or had to be rescued.

In summary, the overall total cost of subscribing to Level 1 Real Time Market Data to securities from **all** 27 MiFID countries actually hasn't risen significantly since 2007 at a time when the overall volume of data has significantly increased and new data sets that were not available at all in many countries have become available. Where additional costs have been incurred this has been almost exclusively to pay for OTC data, much of which was previously unavailable. The cost impact for an investor or investment firm focused on only one market is however likely to have been greater, (especially if that one country was the United Kingdom where OTC trades were already available and reported to the exchange).

Whether or not costs have risen significantly as a result of MiFID, it is nevertheless certainly the case that the total cost for a full data set of pre- and post trade data of all E.U. venues is still high and significantly higher than in the United States (although the latter should perhaps not be surprising since, as CESR recognizes, there are significant differences between the European and U.S. market regimes).



Our biggest concern in the area of cost, however, is that there exists under the current regime the potential for a single venue (RM, MTF or APA) to charge a “monopoly rent” for its data in the knowledge that anyone attempting to offer a comprehensive consolidated tape will have to either include those fees in those that they have to collect from their clients (for them to continue to be able to access comprehensive coverage in real-time) or exclude that venue from their composite. While in theory this would appear to contravene the “reasonable cost” test our experience to date is that regulators have been reluctant to test the “reasonable cost” term in relation to any venue’s costs.

It could be argued that a potential “test case” did exist for some time with respect to one of the major Trade Data Monitors whose fees many participants in the market felt were not reasonable. In the absence of any serious test by the regulators as to whether or not these costs were indeed “reasonable” it was left to the market to “vote with its feet”, persuade the vendors to offer them consolidated products that did not require them to subscribe to that venue (i.e. excluding OTC trades) and hope to persuade the venue to reduce its pricing.

While market pressure may have played a part in this case it is possible that it will not always be the case. For example, while successfully managing to persuade a number of exchanges to follow the same venues reduction in the delay period before its data becomes free to 15 minutes, we have still not been able to persuade Luxembourg to reduce its delay from 24 hours to the new standard of 1 minutes and have consequently no alternative but to exclude Luxembourg from our composite with the result that our coverage is currently not 100% comprehensive (albeit only for a few Luxembourg-traded securities). If a contributing venue were to start charging an excessive rate for its data we would be faced with the same choice – pass the cost on to our clients (and therefore raise the total cost of accessing composite data) or omit the venue from our composite and offer an incomplete composite. Since we are determined to offer as complete a composite as possible we would almost certainly take the former route and encourage the regulators to examine whether the venues costs were “reasonable”. We respectfully encourage CESR to think about how they would carry out that test in future and to issue some guidelines in advance.

One possible costing benchmark that has been muted in the past has been “cost plus”. While this would have many benefits it should be recognized that new venues typically have far higher costs due to the high capital investment needed to build the necessary infrastructure so while this would in many ways seem “reasonable” it would not necessarily lead to lower costs. Also, as mentioned above, volumes of trades (and associated data costs) are increasing rapidly and this might also be expected to result in rising costs in a cost-plus regime.

A better test of “reasonable cost” might be to compare the cost for a venue with some composite benchmarks derived from the overall costs of all European venues (for example, average cost per security, average cost per trade reported, average cost per EUR traded and reported). This would require very similar types of analysis to any revenue-sharing model that would need to be adopted by a central consolidated-tape utility. While still leaving venues with autonomy over their own

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pricing it would however prevent any venue from charging relatively excessive fees as well as incentivise venues to increase efficiency, unbundle their product and reduce their own prices, consequently reducing overall costs and the benchmarks against which their competitors would have to price.

Question 32: In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.

We are not persuaded that publication arrangements should be required to make pre- and post-trade information available separately.

Firstly, we believe that anyone that is interested in real-time pre-trade information would also be interested in real-time post-trade information and vice versa.

Secondly, we believe that it is the global market standard to bundle pre- and post-trade data and it would be extremely confusing for our clients if they had to subscribe separately for fields that relied on one and not the other for European Markets but not any non-European ones. Unbundled fees would also be extremely expensive for us to incorporate given the additional layer of entitlement that would be needed throughout our service.

Thirdly, there is no guarantee that this on its own would lead to significantly lower prices for post-trade data. It could be argued that the majority of the value in an Exchanges data is in fact in its post-trade data and market depth (rather than its top-of-the book pre-trade quotes) and that the cost of an unbundled post-trade data feed may not therefore not be significantly less than the currently bundled fee. More importantly, we believe that if exchanges were forced to unbundle pre and post-trade the total of the two components post unbundling would almost certainly be greater than the cost of bundled data today and since we believe that those interested in one are almost certainly interested also in the other that this would be somewhat self-defeating.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.

We believe it is very beneficial for markets that from the beginning of June the vast majority of publication arrangements will make post-trade transparency information available free of charge after a delay of 15 minutes. In fact, as alluded to above, only the Luxembourg Stock Exchange at present does not currently make its data available for free after 15 minutes leaving aggregators with a choice of either excluding the exchange from its consolidated tape or having to offer a comprehensive consolidated tape of free delayed data only after 24 hours. We are not sure, however, whether a specific new requirement is necessary (perhaps instead this could be

addressed under the requirement to make the data able to be consolidated with similar data from other sources?). Since there is currently no specific regulation in this area and yet the norm for the delay period has nevertheless been coming down there may be a concern mandating a 15 minute delay may impede the norm from decreasing further.

Question 34: Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?

We see no reason not to support this proposal.

Question 34: Do you support the proposed approach to a European mandatory consolidated tape?

We are not persuaded by the proposed approach to a European mandatory consolidated tape because we are uncertain as to exactly what problem the mandatory consolidated tape is supposed to address (although we believe that the main goal is to make access to Consolidated Data more affordable), who would use it and in what form. At the same time we believe that it would be an extremely difficult and expensive utility to set up. We make the following observations.

If APAs are made to send their data to the MCT for free we believe that there will be little incentive to set up as an APA, especially under the restricted requirements. In practice we would therefore expect the MCT to have to effectively be the (sole) APA and therefore have to have direct links with all of the investment firms, additional monitoring requirements, record keeping requirements, etc. This would invariably make the MCT an even larger and more expensive project than is currently envisaged.

For this not to be the case the MCT would not only have to “charge a fee to its subscribers for real-time reports” but in addition “any profit made beyond covering operating costs and required capital expenditure” that “would be distributed to the RMs, MTFs and APAs that contributed to the MCT based on the number/volume of transactions” would need to be of sufficient size to enable the APAs (as well as RMs and MTFs) to at least cover their costs of collecting, monitoring and distributing the data as well as investing in their technology and processes.

The question then boils down to what is the maximum acceptable fee (in other words “reasonable cost”) that the MCT would be able to charge its subscribers for real-time reports? Is it EUR 1,000 / month? EUR 500 / month? EUR 200 / month? (As described in Question 31 above even this smaller figure would be more than a user would pay to access comprehensive real-time consolidated data for many securities on our system, especially if they were only focused on a single country like the UK). In other words a test of what is or is not a “reasonable cost” cannot be

avoided by mandating a central Consolidated Tape. More importantly, once a better test of “reasonable cost” has been established what then would be the advantage of a mandated Consolidated Tape rather than applying those tests to the individual venues and leaving Consolidation to the market?

If APAs, RMs and MTFs are not sufficiently compensated for making their trades available then the only alternative forms of revenue open to them are from making low latency and value-added feeds available. Since it is difficult to envisage what value-added products might be available to an APA the emphasis would be on the former and consequently the APA will always be incentivised to make the direct feed of greater quality than that provided to the MCT in order to make the value of that feed more valuable. This is more-or-less the experience in the United States today.

Given that most if not all investment firms and vendors will elect to take direct low latency feeds from the exchanges and aggregate them themselves rather than rely on a high latency feed from an MCT the question again is who would be the beneficiaries of this central utility tape and what would they be using it for such that the higher latency did not matter?

Question 35: If not, what changes would you suggest to the proposed approach?

We believe that the multiple APAs regime together with the measures addressed elsewhere for improving the quality of post-Trade data and a framework against which reasonable cost can be measured would be sufficient to enable the market to provide sufficiently robust consolidated tape and other products and services at a reasonable cost.

We would respectfully suggest CESR set up a combined CESR/Industry working group to try to come up with some meaningful criteria against which the costs of real time market data can be tested.

Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?

We are unconvinced that there would be any benefits of a consolidated tape compared with multiple approved publication arrangements.

Question 37: In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

Clearly there would be additional costs involved in setting up an MCT and in providing trade reports to MCT. More importantly we believe that there would almost certainly be considerably



higher costs for all data sets that are not contributed to an MCT (including low latency direct feeds and level 2 market depth data) and that therefore the overall cost of market data to many investment firms could inadvertently rise.

Regulatory boundaries and requirements

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?

We believe that a requirement for investment firms to add the identifier for its crossing system to their post-trade information for all transactions executed on such systems would add to the overall transparency in the market without leading to any of the concerns that some participants have with the immediate post-trade publication of dark trades since there would not be the same signaling risks.

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring investment firms to establish an MTF for the execution of client orders ("crossing systems/processes becoming an MTF")?

We are not persuaded that this makes sense since the type of business done in a broker's crossing network is typically of a different kind and it is unclear what perceived problem this would solve. It seems counter-intuitive that if a crossing network grew to a particular size because clients found that model best for executing their business without impacting the market price and consequently directed a sufficient amount of their business in that networks direction, that as a result that venue should be forced to change its (popular) business model.

As we have remarked earlier, if the goal of CESR is ultimately to move more trading to more formal platforms (RMs and MTFs) then one solution may be to relax some of the narrowly defined pre-trade transparency waivers such as enabling reference price to occur anywhere in the spread and not solely at the mid price.

Annex II – Proposed standards for Post-Trade Transparency

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

On the whole we believe the ISO standard formats suggested could help reduce a number of problems. However, moving to different identifiers from the ones currently used will require



changes on behalf of both the feeds from a number of venues and all those parsing those feeds (such as vendors and investment firms taking direct feeds from the venues) and so will not come without incurring a cost against which the benefits should be carefully weighed.

We further believe that the ISO 6166 (ISIN) is insufficient on its own as an identifier in some cases (where stocks like STM Microsystems and ETFs trade 2 or more lines in the same currency but with the same ISIN). The SEDOL would perhaps have been a better identifier in these cases had it been an open identifier and not incur a cost.

Bloomberg has recently launched a new Open Symbology initiative and it may be that the new Bloomberg Global Identifier would offer a sufficient level of granularity without incurring an associated cost. Further information is available on our website <http://bsym.bloomberg.com/sym/>

Alternatively the ISIN supplemented by a Primary Exchange code (e.g. a MIC) may suffice when necessary.

Question 2: Do you agree that the unit price should be provided in the major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.

We believe that the most important thing is that the information given in trade reports is accurate. That is if a price for a trade in Vodafone is given as being in pounds (GBP) then it is given as e.g. 1.30 and if the price is given as being in pence (GBp) then it is given as being e.g. 130. It is very common in some OTC reporting venues to see mistakes in this area and we believe that resolving this requires more of an increase in supervision than it does an increase in regulation. We are not persuaded that mandating either major or minor currency will necessarily help this issue.

It would, however, mean that anyone consolidating data from multiple venues – some of which are contributing in major currency and others in minor - would no longer have to map from one to the other in order to provide a consolidated feed that was consistent in either the major or minor currency. Nevertheless a very large number of firms and vendors are already doing that mapping and this would need to be undone if the denomination on some of the feeds were changed so any ease of use and cost savings going forward would need to be set against an immediate cost in reconfiguration both upstream and downstream for those currently already incorporating feeds from these venues.

Question 3: Do you agree that each of the above types of transactions would need to be identified in a harmonised way in line with table 10? If not, please specify reasons.

We are certainly in favour in general of encouraging additional information with regards to trades published but not convinced that the particular types of transactions in Table 10 need to be identified in a harmonised way.



The greater the granularity of information the more choice we are able to offer our users as to which trades they include or exclude in their transaction cost analysis. Having said that we would almost certainly exclude all of these trades from, for example, our default VWAP calculations so as long as they are already being marked as having traded at a price determined by factors other than the current market valuation of the share we would not expect to be able to provide any significantly improved analysis. What we have heard from clients from time to time is that blocks they have traded have been marked as having traded at a price determined by factors other than the current market valuation of the share but they have not fully understood why so an additional level of granularity may help in that respect.

If it were mandated that these transaction types should be specifically identified it is not clear that using a standard identifier for each would be necessary or beneficial. First of all the condition codes are already being used by many of the venues to indicate other conditions (For Example, D already indicates a Delayed Trade, Special Price or Delivery vs. Payment; O an Ordinary Trade or an Overnight Trade; G represents a Bid in Germany; I a Dutch Fund Trade on Euronext; V an update to Volume only; I an Indicative Price or Indicative Open). This would therefore require changes to many exchanges' Condition Code regime while still leaving many other potential code clashes unresolved. As long as the trades are clearly identified on the feed from each venue then any vendor would be able to offer the market a set of standardized codes as an alternative to (and as well) the exchanges' domestic codes.

Question 5: Would it be useful to have a mechanism to identify transactions which are not pre-trade transparent?

We believe that identifying those trades that were not pre-trade transparent is definitely useful. As referred to earlier we have many users looking for a post-trade TCA benchmark of "lit only" electronic trades and being able to identify "dark trades" enables us to exclude such trades in order to be able to offer this functionality.

One of the reasons that many users are looking for lit only analysis is to be able to benchmark their Smart Order Routers and Algorithms which often cannot interact with dark trades because the latter can specify a minimum trade size that it is prepared to allow to execute against it. It has been suggested by some that a trade also identifies the waiver under which it was able to trade without pre-trade transparency. We believe that the ultimate in transparency here would be to include any minimum allowable execution size with each dark trade report so that SORs would have a better idea as to which orders they could or could not have expected to execute against.

Question 6: If you agree, should this information be made public trade-by-trade in real-time in an additional field or on a monthly aggregated basis? Please specify reasons for your position.

We believe this should be made public trade-by-trade in real-time so that it is available in a timely fashion for TCA purposes. If trades were executed in dark only pools or in dark broker crossing networks or OTC the trades would be expected to be reported in real-time with either the appropriate MIC or OTC indicator and therefore instantly recognizable as trades that had occurred in the dark and it is not immediately obvious why a dark trade executed on a mixed book should be treated differently. Monthly aggregated data, in our view, would be next to useless except, perhaps for giving some idea of the total amount of trades being executed in the dark.

Question 7: What would be the best way to address the situation where a transaction is the result of a non-pre-trade transparent order executed against a pre-trade transparent order?

The best way to address the situation where a transaction is the result of a non-pre-trade transparent order executed against a pre-trade transparent order is to use a separate condition code similar to the way Turquoise currently does, for example, by using the code "DD" to indicate a "Dark-to-Dark" trade and "DV" to indicate a Dark-to-Visible one.

Question 8: Do you agree each transaction published should be assigned a unique transaction identifier? If so, do you agree a unique transaction identifier should consist of a unique transaction identifier provided by the party with the publication obligation, a unique transaction identifier provided by the publication arrangement and a code to identify the publication arrangement uniquely? If not, please specify reasons.

We wholeheartedly agree that each transaction published should be assigned a unique transaction identifier. From our perspective as a downstream aggregator and vendor of the data the main thing is that each trade has a unique transaction identifier provided by the publication arrangement so that should that publication arrangement subsequently need to cancel or amend a trade we are able to identify exactly which trade has been cancelled and amended and make all the correct necessary adjustments. While most venues (with the exception of Athens OTC) currently provide some form of unique identifier for each trade a number of those (Wiener Boerse OTC, BOAT, NYSE Euronext OTC, Oslo Bors OTC, NASDAQ OMX OTC, and Stuttgart OTC) do not provide trade id's that are unique across multiple days which can cause problems when trying to identify and either cancel or amend a trade from a prior day.

While each publication venue will no doubt need each client party with a publication obligation to report trades to them in turn with a unique identifier there is no need in our view for that identification number to also be included in the publication report downstream. We are a little concerned that the suggestion that this too be included would be so that an investment firm with a publication obligation would be able to send a cancel and / or amend to a different publication venue to the original trade. We believe this behaviour should be explicitly forbidden and it made



clear that cancels and amendments should be posted to the same publication venue as the original trade report.

Question 9: Do you agree with CESR's proposal? If not please specify reasons.
Amendments

We agree that when there is a decision to cancel a transaction the information relating to the transaction would need to be republished together with the unique transaction identifier of the previously disclosed information as soon as possible but that the time period with which it should be "and no later than" should be consistent with the same time period required for publishing the trade in the first place (currently 3 minutes)

Again we do not believe it is critical to require each venue to use the same mnemonic (in this case "C") so long as the information is made available in an accurate and timely fashion.

Question 10: Do you agree with CESR's proposal? If not please specify reasons.

We agree that when there is a decision to cancel a transaction the information relating to the transaction would need to be republished together with the unique transaction identifier of the previously disclosed information as soon as possible but that the time period with which it should be "and no later than" should be consistent with the same time period required for publishing the trade in the first place (currently 3 minutes)

Again we do not believe it is critical to require each venue to use the same mnemonic (in this case "A") so long as the information is made available in an accurate and timely fashion.

Question 11: Do you agree with CESR's proposal? If not please specify reasons.

Again we do not believe it is critical to require each venue to use the same mnemonic (in this case "N") so long as the information is made available in an accurate and timely fashion.

Respectfully submitted

Alex Clode

Bloomberg