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CESR PUBLIC CONSULTATION
ON PUBLICATION AND CONSOLIDATION OF MiFID MARKET TRANSPARENCY

CESR/06-551 (OCTOBER 2006)

COMMENTS OF EURONEXT

INTRODUCTION & EXECUTIVE SUMMARY

Euronext welcomes CESR's initiative to consult stakeholders on potential level 3 guidance with respect to the publication and consolidation of MiFID transparency data. These issues will have a major impact on the implementation of the Directive and therefore deserve being looked at and considered in further detail.

In particular, we believe that CESR will have a useful role in establishing guidelines on essential issues to ensure the quality and public dissemination of data. It will also be useful for CESR to establish consistency and coherence regarding the approaches of EU regulators as to what they will expect from the industry with respect to publication/consolidation. We welcome CESR's approach to seek to achieve "consolidatable" data, instead of driving consolidation of data. Furthermore, in considering developing any new standards, cost-benefit assessments should always clearly be undertaken, especially considering existing systems.

In summary:

- ▶ We welcome the setting up by CESR of level 3 guidance to ensure high quality data standards for trade publication and data consolidation across the European Union.
- ▶ We also support CESR's objective to prevent erroneous trades and avoid data duplication. Among the proposals offered by CESR, we are in favour of Option 1 (i.e. unique publication arrangement for each trade/trade type) and of Option 2 (i.e. trade identifier) as an additional mechanism to address the issue of duplication.
- ▶ We do not favour the use of websites but consider that, if their use was to be allowed, they should be subject to clear conditions in order to ensure the proper level of consolidation and reliability to achieve the objectives of MiFID with respect to data consolidation (i.e. "push" systems, machine readable format...). This should be further developed by CESR.
- ▶ We support the objective of convergence of standards - rather than full harmonization - and CESR's recommendation to use the ISO standards.

- In order to allow for the identification of sources of data/collection points, it seems useful to create and maintain an easily accessible central list of transparency data sources existing within the European Union.
- We would recommend to take into account the existing and well-functioning systems with respect to the publication of amended trades (i.e. allow for a “cancellation/re-creation” process, rather than impose an “amendment” publication).
- We urge CESR to allow originating data sources to provide trade reports with a time field in their local time, and a field reconciling this time with UTC (i.e. local time +/- hours), instead of imposing the opposite (i.e. publish in UCT and reconcile in their local time).
- Overall, we would like to highlight the importance of allowing the persistence of existing well-functioning systems as much as possible, instead of imposing fully harmonized standards/processes to all stakeholders.

AREAS OF CLARIFICATION & PROPOSED GUIDANCE

DATA QUALITY

INACCURATE PRE- AND POST-TRADE PUBLICATIONS

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

► We fully share CESR’s concern to ensure the quality of market data that will be published at EU level in the new MiFID environment.

Regarding the issue of inaccurate pre- and post-trade publications, CESR considers that it would be reasonable for the publication arrangements of RMs, MTFs and firms trading OTC to include a verification process that is independent from the trading process. We do not have any objection with respect to this guidance but consider that the conditions to be settled for such processes should always remain reasonable and proportionate in relation to the business. Furthermore, we would like to highlight the fact that RMs already have such tools in place, and that this should be taken into account in CESR’s reflexion.

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?

► For the sake of transparency, it is indeed essential that the data resulting from publication by investment firms is exhaustive and entails no duplication. Therefore, we support CESR’s objective to try to manage the risk of duplication in the publication of trade data.

Publishing each trade to only one publication arrangement as proposed in Option 1 would help to address concerns about duplication. Nevertheless, as evoked by CESR, we believe

that this Option 1 may not be sufficient and should be coupled with other checks to ensure and monitor that trades are only published once.

Moreover, whereas ideally a trade should only be published once, if an investment firm decided to publish a trade more, it should be responsible for providing a mechanism ensuring that it cannot result in duplication during the consolidation process.

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?

► We consider that Option 2 could be an appropriate solution when there is a risk of duplication, i.e. when a trade is published more than once and/or the trading venue on which the trade took place is not individually identified. We agree that this trade identifier combined by other criteria such as ISIN, unit price, quantity venue, timestamp would allow to identify duplicate trades and remove them if necessary. This could be achieved through the provision of a sequential number to each trade by the originating data source.

However, this mechanism should not be imposed to the data sources having no duplication concern.

In addition, if Option 2 was to be retained by CESR to address the duplication issue, further reflexion would be necessary regarding the determination and specifications of the trade identifier to be used/provided: which structure and maximum size shall it have?

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?

► We consider that Option 3, proposing the use of time to milliseconds to identify a trade, could contribute to the identification of duplicate trades to a certain extent but that it would not be a 100% secure solution. Multiple identical trades to the detail of milliseconds could potentially exist.

Indeed, it would imply a lesser detail (3 characters) than a trade identifier would provide, which implies a more important risk of duplication. Furthermore, it will be almost impossible to ensure that all systems within Europe are permanently synchronised on a millisecond basis.

In terms of costs, it would probably be more expensive to technically implement milliseconds, i.e. modify the current timestamp, than to add a new reference to the trade report, such as a trade identifier.

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

► Our preferred solution would be a combination of Option 1 (i.e. publication via a unique publication arrangement) and Option 2 (i.e. trade identifier), along the conditions described in responses to Q3 and Q4.

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?

► The list set out by the article 27(4) of the MiFID level 2 Regulation seems globally sufficient to alleviate confusion over whose responsibility it is to publish a trade, as long as compliance with these principles is efficiently ensured in practice.

Nevertheless, we find that further clarification could usefully be provided by CESR regarding certain situations, and in particular in the case where the “selling” party to a trade is not under MIFID provisions.

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?

► Yes, it could be useful for CESR to put in place guidance with respect to what should be considered as a "single transaction" and a "matched transaction", and especially the extent to which they need to be identified.

Similarly, it would be relevant to define the “reasonable steps” that firms should take in order to comply with their publication obligations.

PUBLICATION ARRANGEMENTS

CONTINGENCY ARRANGEMENTS FOR PRE- AND POST-TRADE PUBLICATION

Extract of CESR’s statements (5.28): “CESR considers that all entities with a transparency obligation should have adequate contingency arrangements in place in case their preferred publication arrangement becomes unavailable...Adequate arrangements might include a policy outlining how they will continue to meet their transparency obligations if their preferred arrangement becomes unavailable or it may be a connection to a back-up publication arrangement”.

► We would like to comment here, as we are of the opinion that it would rather be the publication arrangements’ responsibility to provide a continuous service and foresee back-up solutions in case of unavailability of their service.

WEBSITES AS A PRE- AND POST-TRADE PUBLICATION ARRANGEMENT

Q9: Do you agree with our proposed approach for dealing with static websites?

► We share CESR’s view that publication on static websites is not sufficient and would not meet the MiFID requirements. Furthermore, we believe that websites will in any case not offer the necessary conditions to allow for reliable data consolidation. It would hence create a barrier in providing investors with a aggregated view of trade data, hindering the efficiency of the transparency regime settled by the MiFID. If websites were nonetheless to be allowed for publishing trade reports, it would then be essential that the data is provided in an electronically machine readable format with structured records, and that it is updated, available and accessible on a timely basis. Moreover, it would be essential that “push” type methods of publication are used, that provide information through a “feed”. Passive publication methods (i.e. “pull” type systems) would not be acceptable in this perspective.

Q10: In your view, is this necessary and reasonable? What additional costs would be involved? Who would bare the costs?

► Yes, we do believe it is crucial that publication arrangements should push the information out to anyone who wants it via a “feed”.

AVAILABILITY OF TRANSPARENCY INFORMATION

BUNDLING OF PRE- AND POST-TRADE INFORMATION

Extract of CESR’s statements (5.46): “CESR considers that RMs, MTFs, and investment firms should not make the supply of pre- and post-trade information conditional on the purchase of other bundled services and/or data. It would not be an acceptable practice, for instance, for an RM, when acting as a publication arrangement for an investment firm, to subject the re-sale of the investment firm's trade information to the acquisition of its own information flow. Similarly, an investment firm would not be able to bundle its transparency information to other services such as financial research.

► We would like to make sure that this statement does not preclude the right for publication arrangements to determine the various combinations of feed they want to offer their clients, which should remain a commercial decision.

IDENTIFYING NEW SOURCES OF PRE- AND POST-TRADE TRANSPARENCY DATA

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

► It could appear difficult for aggregators to identify key sources of data, because of the existence of multi- publication arrangements.

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

► In order to allow for the identification of sources of data/collection points, it would be necessary to create and maintain an easily accessible central list of sources of transparency data existing within the European Union. This would allow for the identification of the key data sources hence the proper collection and consolidation of such data (this “database” would only list the various data sources, and could be built on a declarative basis whereby each execution venue would declare one meaningful publication arrangement).

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

► We agree with CESR’s that the identification of new sources of transparency data should be facilitated, and that the investment firms that use proprietary publication arrangements that are relatively unknown to the market should have a mechanism in place to inform the market of where to collect their pre- and post transparency information. Nevertheless, if some of the means cited by CESR could help preventing the risk that these new sources remain unknown (i.e. press releases or other corporate media notification), this would in any case not be sufficient and a larger publicity, i.e. through the belonging to a centralized list of data sources, would be necessary as stated above.

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?

► Yes, we do welcome CESR's recommendation to use ISO formats (and reference data) to ensure consistent publication of pre- and post-trade transparency information. More generally, our view is that convergence to a single or limited number of interoperable data formats and protocols would be a benefit for the industry - even if no full standardization should be envisaged. We therefore support CESR's view not to require existing sources of data to change their well functioning their systems and standards. Furthermore, and to ensure consistency of information, it would be relevant that the same standards be used for pre and post trade transparency as well as for transaction reporting to regulators.

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

► We do agree with CESR on the principle of flagging a number of types of trades. Nevertheless it does not really seem necessary to harmonize the "flags" themselves: venues that already have other flags than "C", "N" and "A" for the situations described by CESR should be allowed to keep them; also when more detailed flagging exists, it should be possible that it remains.

Concerning the flags proposed by CESR, we feel that further clarification would be useful regarding the flag "C" proposed by CESR, as to what types of "conditions" are targeted here. The case of a pure cancellation should also be foreseen.

In addition, regarding the trade "amendment" flagging ("A"), we have a different approach than CESR's. Indeed, we consider that it is important to preserve as much as possible the existing systems and avoid too heavy/costly developments. In that respect, we would like to highlight the fact that a number of systems, such as Euronext's one, do not entail any "amendment" or "update" function for a given trade. Cancellation of trades is currently known, but modification of a trade will be a rather new situation that will develop in the MiFID publication context.

In such situation, we agree with the proposal of "re-publishing" the trade, but diverge with CESR's view regarding the method to be used in that objective. In order to remain in line with the existing systems' functions, we would advise that the trade should be cancelled at a first stage and then re-created as a new trade. A flag could potentially be inserted here.

Should an "amendment" technical function be created, significant new IT developments and impacts on the whole chain of transaction (including settlement, reporting...) would be generated. We would therefore recommend that CESR allows re-publication to be dealt with as described above, in order to allow existing systems to avoid heavy new developments.

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)?

► No, we do not believe there is any need for additional guidance.

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?

► Yes, we agree with this assessment.

AMENDMENTS TO POST-TRADE PUBLISHED INFORMATION

Q18: Is re-publication the best approach for dealing with amendments?

► Yes, it is, subject to the conditions developed in response to Q17 here above.

Q19: Is 'A' an appropriate flag for amendments?

► See response in Q17.

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?

► See response in Q17.

TIME ZONES FOR PRE- AND POST-TRADE TRANSPARENCY INFORMATION

Extract of CESR's statements (5.63): "According the Annex 1 to the implementing Regulation the time should be expressed as UTC +/- hours".

► We would like to express our view here that the practical implementation of this provision of the level 2 Regulation should take into account the practical issues relating to the existence of different timezones across Europe, and the necessity to avoid too heavy developments for the stakeholders intervening outside the UTC timezone.

Indeed, in those systems, time parameters are settled in local time across the whole transaction chain. We would therefore ask CESR to consider the option of allowing those stakeholders to provide trade reports with a time field in their local time, and a field reconciliating this time with UTC (i.e. local time +/- hours).
