

January 12, 2009

By electronic mail: www.cesr.eu

The Committee of European Securities Regulators (CESR)
11-13 Avenue de Friedland
Paris, France 75008

**RE: CESR Call for Evidence on the Impact of MiFID on Secondary Markets
Functioning; Ref. CESR/08-872**

Ladies and Gentlemen:

Bloomberg L.P.¹ (“**Bloomberg**”) welcomes and appreciates the opportunity to respond to CESR’s Call for Evidence on the Impact of MiFID on Secondary Markets Functioning, dated November 3, 2008 (the “**Call for Evidence**”). Bloomberg applauds the range of topics CESR will review in connection with this Call for Evidence, and we appreciate that CESR has requested guidance from market participants regarding MiFID’s impact on Secondary Markets Functioning. We lay out our responses to the inquiries raised by the Call for Evidence below.

1. What do you think are the key benefits for yourself or the market more generally that have arisen as a result of MiFID provisions relating to equity secondary markets?

Transparency in the equity secondary markets promotes better investment decisions, better risk assessment and more investor confidence. Moreover, transparency is needed to ensure the effective integration of E.U. Member State equity markets, to promote the efficiency of the overall price formation process and to assist the effective operation of best execution obligations. A lack of transparency, on the other hand, has the potential to amplify financial downturns and distort the overall functioning of the financial markets. Many observers believe that a lack of transparency and absence of reliable information have contributed significantly to the crisis in the global credit markets and subsequent crises in other segments of the economy. While recent focus is on the lack of transparency as an acute problem in the derivatives market, we believe that transparency should be prioritized for all markets, including secondary equity markets.

¹ The BLOOMBERG PROFESSIONAL service provides financial market information, data, news, analytics and multimedia reports to investment firms, institutional investors and other professionals via approximately 250,000 BLOOMBERG PROFESSIONAL service subscriptions worldwide. The BLOOMBERG PROFESSIONAL service is owned by Bloomberg Finance L.P., and Bloomberg L.P. operates the BLOOMBERG PROFESSIONAL service on behalf of Bloomberg Finance L.P.

MiFID's post-trade transparency regime is an important step toward protecting investors by attempting to ensure the smooth operation of securities markets while promoting competition. High quality execution, controlled execution costs, increased competition among trading venues and increased transparency lie at the heart of MiFID. These goals can best be achieved when the guidelines under MiFID are both clear and rigorously enforced.

2. Do you consider that there are any remaining barriers to a pan-European level playing field across trading venues? If so, please explain.

The lack of a pan-European entity charged with oversight of the MiFID transparency regime is an obstacle to a level playing field across trading venues. The lack of a central regulator contributes to the difficulty in harmonising each Member State's rules and regulations with respect to MiFID.²

Article 32 of Commission Regulation No. 1287/2006 of 10 August 2006 (the "**MiFID Implementing Regulation**") provides that any arrangement to make information public must facilitate the consolidation of data with similar data from other sources and make the information available to the public on a non-discriminatory commercial basis at a reasonable cost. We would suggest that CESR consider issuing further guidance on the meaning of the terms in Article 32, especially as additional data vendors in various Member States enter the market.

In the absence of such guidance, transparency could suffer. We have already seen examples of how this can occur. Last year, one consortium-bank-owned data vendor in the United Kingdom attempted to impose terms on other data vendors for carrying OTC equity data that would have defeated the goals of MiFID by permitting discriminatory treatment and impeding, rather than promoting, the effective consolidation of data. The strong intervention of the regulators resulted in a rejection of this discriminatory effort and helped promote transparency in the U.K. market. There is, however, no guarantee that regulators in all Member States would intervene in like measure with respect to similar discriminatory policies. The result could be a patchwork of regulations throughout Member States regarding the definition of discriminatory treatment among data vendors. Such an outcome is not consistent with the goal of achieving pan-European transparency in the equities secondary markets.

We believe that long-term harmonisation could be better achieved through the use of a central oversight body. For the short to medium term, however, we respectfully acknowledge the need for CESR and the European Commission to issue much clearer guidance, mandates and enforcement parameters on the difficult issues — like transparency — as the marketplace cannot wait for a single, pan-European regulator to achieve convergence. We appreciate the difficulties

² We discuss the effect of MiFID on data consolidation and transparency in response to later questions; however, we wish to provide a brief example relating to data consolidation and transparency here as an illustration of the need for a central regulator to implement harmonization.

involved in the process of convergence, in particular removing existing obstacles with the aim to creating a single market for post-trading services.³

3. Do you think that MiFID has supported innovation in the equity secondary markets? Please elaborate.

MiFID has made substantial progress toward the goals of innovation — given the number of trading venues that have emerged — and bringing European markets together, but more remains to be done. For example, to provide for truly useful and comprehensive pre- and post-trade transparency, MiFID should have required all market participants to report their quotations and trades in a form and format that facilitate consolidation and should have required all such reports to be synchronised to a common, atomic clock to assure proper sequencing of entries. As it was, powerful political forces came together to frustrate the goal of greater transparency and the legislation reflects the success of those forces in diminishing the effect of the initial legislative policy to spur greater transparency. The original “deal” was to replace the concentration rules that were in effect in several Member States with a common, pan-European system of transparency that would promote price discovery, competition between and among market venues and liquidity providers and enable order-entry firms to route their investor orders to the best markets.

The result of the several compromises that were made has been to yield to the short-term advantage of market participants who saw themselves as threatened by greater transparency and market efficiency. That in turn puts their short-term interests ahead of the interests of the investors in European securities and in the development of better and more attractive markets in the European Union. We very much hope that these adverse effects will be mitigated in the future as more and more market participants perceive a need to promote greater transparency, innovation and competition.

4. Have you faced significant costs or any other disadvantages as a result of MiFID relating to equity secondary markets? If so, please elaborate. Have these been outweighed by benefits or do you expect that to be the case in the long run? If so, please elaborate.

³ As CESR notes in its publication, *Preliminary Draft Technical Advice By CESR in Response to the Mandate from the European Commission On Access & Interoperability Arrangements* (December 19, 2008) http://www.cesr-eu.org/index.php?page=document_details&from_title=Documents&id=5438, “For almost every jurisdiction in the E.U., securities regulators point out that central banks have responsibilities in the area of clearing and settlement, mainly from the point of view of oversight of systems. In some cases, a specific task is entrusted by the Ministry of Finance. In a single case, an authority linked to a stock exchange, is having responsibilities, which are separate from the responsibilities of the securities regulator.” CESR further notes that the long-term objective of a single market for post trading services has been considered as a generally accepted view and that CESR members expressed the opinion that the aim of the single European post trading market might be better served within a harmonised E.U. framework.

We have faced considerable additional costs as the result of the implementation of MiFID and the functioning of the secondary equity markets. These costs relate to, among other areas:

- **Data acquisition.** We have to administer a large number of additional feeds as markets fragment and new venues emerge. This involves additional research, negotiation, subscription, connection and programming costs. The poor quality of many of these additional feeds has required additional expenditure on quality control and data cleansing algorithms. In order to provide a comprehensive aggregate of the market place would additionally require us to parse data from hundreds of websites which would be prohibitively expensive (and this is even if all of the website data sources are known).
- **Data aggregation.** We have to re-aggregate fragmented data in order to give users a comprehensive overview of the overall market place for each security. This has involved re-writing many of our functions as well as writing a number of new applications especially for this purpose.
- **Data storage.** We have to store more data as the volume of trades increases (due in part to fragmentation and in part to increases in slicing of orders into smaller pieces as result of smart order routing). The need to store each tick at both the individual venue level and European composite level has further doubled the amount of storage necessary.
- **Support.** We have committed significant additional resources to support real-time enablement to new venues, as well as training and supporting users with respect to new venues, feeds, trade types, functions, tickers, aggregates, etc.

With respect to whether these costs are expected to be outweighed by the benefits in the long-run is a difficult question to evaluate so shortly after the implementation of MiFID. Our clients may, in the long-term, benefit from greater transparency, cheaper trading costs and better execution quality, but Bloomberg would likely benefit only if we were able to either pass on additional costs or sell additional subscriptions to our services (i.e., by doing a better job than our competitors at re-aggregating, displaying and analyzing the market).

More generally, we observe that the MiFID Implementing Regulations require investment firms that effect trades in equity securities away from the regulated markets such as exchanges and multilateral trading facilities (“MTFs”) to publish information concerning their trades. Investment firms can meet this requirement in a number of ways, and, as noted above, the ways of meeting the requirement are not always clear. MiFID, however, prescribes the key features required of the publication arrangement used. In that regard, Article 28 of Commission Directive 2004/39/EC of 21 April 2004 (the “**MiFID Level 1 Directive**”) obliges Member States to require investment firms to make public the volume and price of those transactions and the

time at which they were concluded.⁴ As noted above, Article 32 provides that any arrangement to make information public shall satisfy, *inter alia*, the following conditions:

- (a) it must facilitate the consolidation of the data with similar data from other sources; and
- (b) it must make the information available to the public ***on a non-discriminatory commercial basis at a reasonable cost.*** (Emphasis added).

If an investment firm publishes its post-trade information through a third party, it satisfies its MiFID publication obligation only if the third party publishes the information in a way that complies with the MiFID requirements set out above.⁵

To facilitate MiFID's transparency goals, the information which is made available under this regime must be accurate and the means of collecting and distributing the information must ensure that transactions concluded outside regulated markets are not "double-counted." As a result, some Member State regulators such as the U.K. FSA⁶ have stated that each trade should be published through only one primary publication channel (i.e., a data collector). The data collectors then supply the data to data distributors such as Bloomberg, which can then be satisfied that, when the data are properly consolidated with other data, they will present an accurate and comprehensive view of the market.

The lack of a common data consolidator raises the possibility that entities that pool their data could extract monopoly rents and that the data will not be correctly sequenced, which will mislead investors as to the state of the market, market trends and trading patterns. With MiFID's abolition of the concentration rule and allowance of off-exchange trading, each investment firm's trading data is unique and distinct from each other's. As there is currently no central clearing house for such information, these firms could discriminate among purchasers or take other anti-competitive actions that would impede rather than support MiFID's goals. Trade data monopolies of the regulated markets and other entities entering the marketplace as data

⁴ Article 28 of the MiFID Level 1 Directive further requires that the information that is made public comply with the requirements set forth in Article 45 of the MiFID Level 1 Directive. The Article 45 requirements are set forth in Article 32 of the MiFID Implementing Regulation adopted by the Commission.

⁵ The FSA has recognized the risk of abusive conduct. In its Trade Data Monitor regime, it has emphasized the need to cleave to these key principles of MiFID as follows: "Firms intending to use trade publication arrangements for post-trade reporting are under an obligation to verify that the systems: (i) ensure that information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected; (ii) facilitate the consolidation of data with similar data from other sources; and (iii) make the information available to the public on a non-discriminatory commercial basis at a reasonable cost." FSA, *Guidelines for Investment Firms Using TDMs — Trade Data Monitors* (November 14, 2007) http://www.fsa.gov.uk/pubs/international/guidelines_tdm.pdf.

⁶ See MAR 7.2.12 A (2)

publishers could exacerbate these anti-competitive effects.⁷ Comprehensive implementation of MiFID requires thorough consideration of these issues.

Granted, a material deviation from the general range of prices available in this context would indicate that the reasonable cost criterion in Article 32 of the MiFID Implementing Regulation is not met. An arrangement under which different distributors are made to pay the same price but are given materially different licences would also likely fail the reasonable-cost test. Nevertheless, we respectfully submit for CESR's consideration in this context the warning of Charlie McCreevy, European Commissioner for Internal Markets and Services, noting that:

“...It is important that market positions in respect of the supply of this data are not abused and that real time data needed to fulfill the requirements of MiFID is made available at reasonable cost to data customers and vendors, given that one of the main purposes of the MiFID is to bring down overall transaction costs.”⁸

Increased costs are also affected by the increased restrictions that have been imposed on Bloomberg's and/or its customers' rights to use exchange data. **We discuss these increased costs in Section A of our answer to Question 15.**

We respectfully recommend that CESR take the initiative in addressing the proper role of regulated markets and other entities as sole-source data providers within the MiFID framework and in ensuring their ability to make information available on a non-discriminatory commercial basis, at a reasonable cost and in a manner which facilitates the consolidation of the data with similar data from other sources. Acting after the regulated markets or other entities have exercised their market power will be more costly for the markets and investors as well as for regulators.

6. What impact do you consider that increased competition between equity trading venues is having on overall (i.e. implicit and explicit) trading costs? Please elaborate.

We have observed the introduction and rise in various Member States of the use of asymmetric “maker/taker” fees to increase trading costs. Trading venues such as Chi-X, Turquoise, and Equiduct as well as exchanges such as the London Stock Exchange and Deutsche Börse are among the trading venues that reward “market makers” (those who contribute liquidity

⁷ The United Kingdom Office of Fair Trading (“OFT”) and the Competition Commission (“CC”) have observed that “an exchange is a monopolist of its proprietary information,” (such as real-time market data, including prices and trading volumes of securities listed on the exchange), therefore, “...of necessity the available market data sets will vary as between exchanges. As such, information from other exchanges is complementary and cannot substitute for exchange-specific information.” See the OFT decision dated March 29, 2005 relating to the anticipated acquisition by Deutsche Börse AG of the London Stock Exchange plc, at ¶ 93, available at http://www.of.gov.uk/shared_of/mergers_ea02/2005/deutsche.pdf.

⁸ “Moving Forward on Capital Market Integration”, speech by Charlie McCreevy, European Commissioner for Internal Market and Services before the Federation of European Stock Exchanges Convention. June 26, 2007.

to a market) by providing them with a rebate. These venues in turn charge customers who take liquidity away from the venue.

“Maker/taker” fees raise issues about the proper cost justification for trading and how moving toward a “maker/taker” model will operate in a world of expanding best execution obligations. “Maker/taker” fee schemes are, in effect, a system of payment for order flow. Regardless of whether there is economic utility in providing an economic incentive for market participants to post liquidity on certain markets, “maker/taker” fee schemes raise significant issues which should be the subject of further consultation and public comment. We believe CESR should carefully evaluate the impact “maker/taker” fees have on the accuracy and reliability of prices displayed, and the impact of the fees on fair and efficient access to those prices. This is particularly important in a market structure where investment firms have a duty of best execution.

7. Do you think that there has been significant fragmentation of trading and/or liquidity in European equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs, best execution requirements)? If so, please elaborate on those concerns.

Please see the discussion of this issue in our response to Questions 4, 8 and 15.

8. Do you think that MiFID pre- and post-trade transparency requirements adequately mitigate potential concerns arising from market fragmentation?

MiFID pre- and post-trade transparency requirements do not entirely mitigate potential concerns arising from market fragmentation, as there are still significant costs and efforts involved in accessing, aggregating, analyzing and connecting to all of the different venues. In addition, these requirements do not always go far enough in helping the sell-side answer the critical question — where is the liquidity in my security with which I should be interacting — especially when this liquidity is OTC.

Increasingly, publishers of market data have sought to impose unprecedented restrictions on the applications in which the data can be used. We believe that if each source of similar data has a different set of strings attached, it will effectively become impossible to consolidate the data in anything apart from the *least* useful type of applications, resulting in a decrease in transparency. If this trend is allowed to continue unchecked, we believe that competition to add the most value to (and derive the most insight from) commonly available data sets will devolve into competition to own and control those data sets. That, in turn, may well lead to further fragmentation, less consolidation, substantially increased costs and ultimately less transparency.

Restrictions on the use of data in this manner temper both the spirit and purpose of MiFID and the post-trade transparency regime. MiFID Recital 44 provides the purpose of this regime as:

“With the two-fold aim of protecting investors and ensuring the smooth operation of securities markets, it is necessary to ensure that the transparency of transactions is achieved . . . In order to enable investors or market participants to assess at any time the terms of a transaction in shares that they are considering and to verify afterwards the conditions in which it was carried out, common rules should be established for the publication of details of completed transactions. These rules are needed to ensure the effective integration of Member State equity markets, to promote the efficiency of the overall price formation process and to assist the effective operation of ‘best execution’ obligations.”

End-user costs for market data have risen significantly after the implementation of MiFID because of the substantial degree of market fragmentation. Because quotes and trades that were originally available from a single (concentrated) exchange are now reported to a range of different venues, a user may now have to subscribe to up to 20 different venues to get the full picture for a specific security. Many of these venues are either free of charge to the end user or of reasonably modest cost. Certain feeds charge fees that, as noted in our answer to **Question 12**, are as much as \$170 per month per user. Such fees, in our opinion, are far from “commercially reasonable” given the need for market participants to purchase multiple feeds due to fragmentation of data sources and we believe the regulators urgently need to review and define more clearly the definition of that term. MiFID transparency requirements underscore the TDM regime in the United Kingdom and require TDMs to verify that their respective systems make information available at a reasonable cost. A material deviation from the general range of prices available in a particular context for similar types of data would clearly raise issues as to whether the reasonable cost criteria were met.

10. Do you see any benefits (e.g. no market impact) to dark pools of liquidity (to be understood as trading platforms using MIFID pre-trade transparency waivers based either on the market model or on the type or size of orders)? If so, what are they?

While MiFID does not define “dark pools”, these trading facilities are typically sponsored by a single broker, a consortium of brokers, or by a technology company that operates very similarly to a broker. By providing access to undisplayed, off-exchange liquidity, dark pools may alleviate problems in executing large orders in a fragmented market, particularly in less-liquid stocks on traditional exchanges. Dark pools also have the ability to trade large blocks away from exchanges’ displayed order books which in turn can prevent or mitigate information leakage, thereby reducing market impact. Dark pools also complement algorithmic, computer-executed strategies that allow brokers and customers to divide an order into smaller pieces for optimal efficiency of execution. Overall, with the reservations noted below, we believe dark pools provide an innovative and sensible approach for certain types of trading activities.

11. Do you see any downsides to dark pools of liquidity (e.g., impacts on the informational content of light order books)? If so, what are they?

The recent credit crisis calls attention to certain concerns voiced over dark pools. Dark pools have increased in popularity partly because hedge funds and institutional clients view them as an opportunity to shield trading strategies. Dark pools, to the extent they represent a significant portion of the trading activity in a given security, also present serious questions concerning the reliability of public pricing mechanisms. Another potential risk that dark pools may pose, given the very opacity of the quotation information they house, is to hinder the ability of institutional investors to comply with best execution obligations.

Our greatest concern remains with the transparency of dark pool trades and the ability to consolidate these trades with other post-trade information. If dark pools are reported instantaneously and it is clear which venue they have been traded on, that would significantly resolve concerns about their possible adverse impact on the reliability of the public markets as a pricing mechanism. If, however, we cannot differentiate dark pool trades from normal OTC trades, we are unable to verify whether dark pool trades are being published correctly. Data quality may be compromised under these circumstances.

12. Do you consider the MiFID pre- and post-trade transparency regime is working effectively? If not, why not?

We have observed certain distortions that may be traced to the provisions of MiFID relating to pre- and post-trading regulations. This is illustrated by considering, as an example, the pre- and post-trade analysis of an OTC trade on a security listed on the London Stock Exchange (“LSE”). Prior to MiFID’s enactment, such a trade would have been reported to the LSE and included in the LSE’s Level 1 data feed (priced at \$80 per month). Such data would have been made available to a non-real time data provider on a delayed basis after 20 minutes. The LSE would charge a license fee to vendors, who would receive the data on standardised terms with no restriction on the analytics or applications on such vendor’s use of the LSE data.

With the enactment of MiFID, an OTC trade on an LSE-listed security could be reported to a number of venues requiring additional real-time subscriptions, the most severe of which is priced at \$170 per month. Data regarding the trade reported by this particular trade data publisher, could be made available on a delayed basis of two hours. Moreover, the publisher now charges a license fee and an additional set of license fees for the ability to use the data in different applications. This significantly raises the cost to the vendor and would have a deleterious impact on the ability of an end-user to understand and apply the data in achieving best execution. Unlike data feeds generated by on-exchange trading, post-MiFID data feeds are not necessarily standardised (for example trades in the same security are sent in GBP and GBp requiring the vendor to standardise these trades into one or the other format in order to present a consistent data set to the end user). Additionally, because quotes and trades that were originally available from a single (concentrated) exchange are now reported to a range of different venues, a user may now have to subscribe to up to twenty different venues to get the full picture for a specific security.

While we welcome goals of opening liquidity and increasing choice of venue execution in the context of secondary equities market trading, we respectfully recommend that CESR

remain vigilant on MiFID's potential unintended consequences in refracting the availability of data in equity trades and attempts by trade data publishers to leverage market data fragmentation in order to exact anti-competitive fees and onerous usage provisions.

Please see the discussion of this issue in our response to Questions 15.

13. What MiFID pre- and post-trade transparency data do you use, and for what purpose? Does the available data meet your needs and the needs of the market in general?

Most of the market data that we provide has been purchased from or made available to Bloomberg by exchanges or Regulated Markets, MTFs, or Systematic Internalisers. For instance, there are also U.K.-specific entities approved by the U.K. Financial Services Authority (the "FSA") such as Trade Data Monitors or Primary Information Providers which make data available for purchase and/or supply.

Since MiFID prevents the multiple reporting of the same trade we have in some cases lost the direct contribution of market data from the original source and instead only receive that data via an intermediary publisher. This market data is displayed and integrated in a variety of ways on the BLOOMBERG PROFESSIONAL service in order to help give our users the best possible insight into what is going on in those markets in order that they may be able to best devise their optimal trading strategies and achieve best execution on their orders.

Examples of functionality fed by market data on the BLOOMBERG PROFESSIONAL service include: intra-day graphs, technical analysis studies, volume at price analysis, volume at time analysis, volume weighted average analysis, volume at bid vs. ask analysis, broker activity summary (where data available) and quote montage (comparing prices and market share between venues).

14. Do you think that MiFID pre- and post-trade transparency data is of sufficient quality? If not, please elaborate why and how you think it could be improved.

We do not believe that MiFID pre- and post-trade transparency data is of sufficient quality. For example, systematic internaliser ("SI") data is fairly worthless due to its wide spreads, low size and non-specificity of which SI executes the trades. The quality of some publication venues is poor and the lack of enforcement power over issues of data quality and transparency obligations allows for this. In addition, the lack of best practices or guidelines on when trades should be reported and when in practice it may be possible to report essentially the same trade more than once, as well as the lack of requirements for "condition codes" and the provision of more information on the type of trade (e.g., cross or hedge for contract for difference) undermines any practical approach to transparency.

Under current conditions, recognising the limits to transparency under MiFID, the market data that we are able to collect and aggregate from various disparate sources we make available to our users in a consistent way either through the BLOOMBERG PROFESSIONAL service or

through our various data feeds. There are, however, a number of necessary steps that need to be fulfilled in order for specific post-trade data to be made available:

- We need to know where the data is being reported. On the whole, most exchanges, MTFs and reporting venues actively engage with us but this is not always the case and there is no central repository describing where each of the various players are publishing their trades (and thereby fulfilling their post-trade publication requirements).
- Connecting to and parsing a new source needs to meet some minimal commercial requirements. Even if we knew exactly where everyone was reporting, a large number of these sources are evidently web-sites. Connecting to each of these sources to extract infrequent trade information would be almost impossible to justify when set against the background of a huge pipeline of competing exchange-related projects that all vendors face.
- Where we do take a feed from a specific venue we need to be able to agree a contract with that venue, put in lines, understand the specifications, test the feed, etc. This is an area in which more subtle obstacles can exist leading to significant delays in being able to integrate market data from a particular source.

Potential shortcomings in respect of the accessibility of market data include, but are not limited to, the following observations: some significant re-publishers of data appear not to be performing robust quality checks on the data submitted by financial institutions. A common problem from certain data feeds occurs when some trade prices have been submitted erroneously in pence but are passed through by the publisher along with other trade prices that have been correctly submitted in GBP. The trade feeds consequently show some prices which are *100 times higher* than the expected trading range. Another common problem from certain feeds is massive swings in prices (e.g., for the same security 15.90, 0.88, 1.11, 15.85 as successive prices).

Poor data clearly has a huge potential distorting effect on all of the pre-trade and post-trade analytics (including VWAP) on which dealers are relying to help them achieve and prove best execution.

We believe it is important for good market practice that this data be reliable and we consider that the data aggregators are in a better position than other market participants to take steps to improve this reliability. Because there is no transparency into which financial institutions are submitting incorrect trade reports, it is nearly impossible for market participants to identify the source of incorrect data, obtain corrected data, and encourage better data in the future. Unfortunately, many of these publishers do not seem particularly interested in resolving these issues believing that it is the responsibility of the financial institutions to submit correct data.

Similarly, it is difficult to be confident that particular trade reports are not being reported multiple times. Certainly there seems to be a considerable amount of inconsistency in terms of trade reporting with many trades being reported for a second time when 'booked-out' to a client and even a third time when 'given-up' to a prime broker as part of a CFD transaction. This is

another area in which MiFID transparency objectives stress effective integration of market information.

An additional area in which we have observed delays is in the use of block trades. In comparison to the United Kingdom rules that it replaced, MiFID permits financial institutions to delay reporting trades for a larger share of their block trades. MiFID permits financial institutions to delay certain trades and it appears that firms are using that to automatically delay *any* trade that fits the “delay” criteria whereas previously (in the United Kingdom at least) they would have picked trades as appropriate.

For example, risk trades are being delayed even if the risk has been off-set. When a broker enters into an above-standard market size, block trade which entails risk, the broker should report the trade when the risk has been offset completely, rather than waiting until the maximum possible MiFID-delay is reached. While the financial institutions may be in compliance with the letter of MiFID when delaying reporting for block trades, the end result is a reduction in the value of the real-time data being published to the market.

Another example is feeds with significant delays in excess of the market standard; this means that all other vendor's composite data must also be delayed for those users that are not subscribing to *all* components of that composite in real-time. Furthermore, we believe this will likely set a precedent that will be followed by other sources of similar data (including the exchanges), which would reverse the recent trend towards smaller delay times (and greater overall transparency) in relation to share trade data.

The consolidation of trade and quote data into a meaningful data set is impeded by the absence of common reporting protocols and of a common, or universal, clock to time trade and quote reports. As a result, the consolidated data that can be amassed cannot be properly sequenced and investors and other market participants cannot properly evaluate intra-day market movements and trends. We note that some commentators on MiFID objected strenuously to the proposition that reporting entities make their reports in a fashion that would facilitate consolidation. We believe that it is important for regulators to take the lead in promoting data consolidation.

Please also see the discussion of this issue in our response to Question 3.

15. Do you think that there has been significant fragmentation of market data in the EEA equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs)? If so, please elaborate on those concerns.

We believe that there has been significant fragmentation of market data in the EEA equity markets. We addressed the costs of fragmentation in response to **Question 4**, where we expressed our concern that trade data publishers are not making data available “on a non-discriminatory commercial basis at a reasonable cost,” as Article 32 of the MiFID Implementing Regulations require.

We would like to bring to CESR's attention several obstacles we have observed with respect to data consolidation.

A. Restrictions on Data Usage

We display and integrate market data in a variety of ways in order to provide our users with the best possible insight into current market activities to enable optimal trading strategies and the best execution on orders.⁹

Increasingly, publishers of market data have sought to impose unprecedented restrictions on the applications in which the data can be used. We believe that if each source of similar data has varying conditions pursuant to which publishers make such information available, it will effectively become impossible to consolidate the data in anything apart from the *least* useful type of applications, thereby resulting in a decrease in transparency. If this trend is allowed to continue unchecked, we believe that competition to add the most value to (and derive the most insight from) commonly available data sets will devolve into competition to own and control those data sets. That, in turn, may well lead to further fragmentation, less consolidation, substantially increased costs and, ultimately, less transparency.

We note that, during the course of the past year, exchanges have become more aggressive in imposing restrictions on Bloomberg's and/or its customers' rights to use exchange data. The following is a list of new requirements imposed by exchanges which we would like to highlight.

A few exchanges, through enactments of new information policies and/or revisions of fee schedules, require Bloomberg and/or its customers to pay the exchanges for the right to create/distribute derived data and/or the right to use exchange data in non-display applications (e.g., black-box, algorithm trading applications, etc.) In some instances, creation of derived data alone is subject to the additional fee and in other instances, creation of derived data is not subject to the additional fee until such derived data is externally distributed to other third parties. Derived data is normally defined as pricing data or the information that is created in whole or in part from the exchange data and cannot be reverse engineered to recreate the exchange data or cannot be used to as a substitute for the exchange data. In addition to the exchanges that already impose derived data/non-display application fees, there are a few exchanges that stated explicitly in their agreements that while creation of derived data and/or ability to run non-display applications are not subject to any fee now, the exchanges reserve the right to charge for such usage in the future.

Most exchanges charge a fixed license fee for the right to create derived data and/or run non-display applications, but one of the exchanges actually imposed new fees based on "per

⁹ Examples of our functionality fed by market data include intra-day graphs, technical analysis studies, volume at price analysis, volume at time analysis, volume weighted average analysis, volume at bid vs. ask analysis, broker activity summary (where data available) and quote montage (comparing prices and market share between venues).

Application ID” basis (“**Application ID**” is defined as “an individual identification for an application that enables the application to access data in a closed user environment”). Even though the definition of Application ID is not clear, it seems the exchange’s intention is to charge based on each application that uses exchange data. Under another agreement, while creation of derived data is permitted with additional payment to the exchange, the exchange has, under its agreement and market data policies, affirmatively asserted all intellectual proprietary rights to derived data created based on exchange data.

B. Limited Data Publication

The minimum data fields required under Article 27, Annex I, Table I of the MiFID Implementing Regulations for purposes of post-trade reporting include information on trading day and time, instrument, instrument identification, unit price, price notation, quantity and venue identification. Article 27 does not include, for example, identification of the investment firms reporting individual trades. A core objective of MiFID is to promote greater transparency through the supply of pre- and post-trade data. We believe that information such as the identification of the brokers associated with trades (while not included in Article 27 of the implementing regulations) is required by a full reading of MiFID.

As part of the competition for collecting and monetizing market data we believe that venues and Trade Data Monitors will make only the very minimum required amount of data available on a non-discriminatory and commercially reasonable basis. This will then allow the venue or TDM to monetize the retained data. Several exchanges currently identify publicly the brokers associated with trades (on a non-discriminatory basis) so that users can identify market share and which brokers to direct business towards for specific securities in order to minimise market impact (and thereby get better execution). We might expect these exchanges to “retire” these data sets in the future and make them available instead on an exclusive, monetized basis (or themselves become the monopoly provider of market-share analysis).

C. Reporting Venues

MiFID’s overarching transparency objectives require that firms be able to facilitate the consolidation of data in a reasonable manner to promote the effective integration of the markets. In order to facilitate the transmission of data to our customers, we need to know where the data is being reported. On the whole, most exchanges, MTFs and reporting venues actively engage with us but this is not always the case and there is no central repository describing where each of the various players are publishing their trades (and thereby fulfilling their post-trade publication requirements).

D. Quality Checks

Please see the discussion of this issue in our response to Question 14.

E. Multiple Reporting

A pan-European regulator could institute some simple rules to avoid multiple trade reporting. For example, for a single-fill proprietary trade, where a broker executes an order of 100 shares in a proprietary capacity on an MTF, the MTF should report the trade, not the broker. If both parties report, the market sees 200 shares, which is a distortion of the actual share volume. We note CESR's recent call for evidence regarding transaction reporting, but we wish to raise this point here as an illustration of the consequences of fragmentation of market data, and the uncertainty regarding who is now responsible for reporting transactions which are covered by MiFID's transparency regime.

F. Reduced Transparency of Block Trades

As discussed in our response to **Question 14**, MiFID permits financial institutions to delay reporting trades for a larger share of their block trades. It appears, however, that firms are using that to automatically delay any trade that fits the "delay" criteria, whereas previously they would have picked trades as appropriate.

For example, risk trades are being delayed even if the risk has been off-set. When a broker enters into an above-MiFID, block size trade which entails risk, the broker should report the trade when the risk has been offset completely, rather than waiting until the maximum possible MiFID delay is reached. While the financial institutions may be in compliance with the letter of MiFID when delaying reporting for block trades, the end result is a reduction in the value of the real-time data being published to the market.

G. Delayed Data/Common Clock

Most trade data publishers currently provide data to non-subscribers on a delay. The delay is usually about 15-20 minutes, but we have experienced further delays ranging from 30 minutes to two hours depending on the data provider. In such instances, all other vendor's composite data must also be delayed by two hours for those users that are not subscribing to all components of that composite in real-time. We are concerned that this will likely set a precedent that will be followed by other sources of similar data (including the exchanges), which would reverse the recent trend towards smaller delay times (and greater overall transparency) in relation to equity trade data.

Additionally, as noted above in our response to **Question 3**, the consolidation of trade and quote data into a meaningful data set is impeded by the absence of common reporting protocols and of a universal, or common clock to time trade and quote reports. Smart order-routing algorithms, trading programs, and individuals watching the "tape" in connection with making investment and trading decisions need to be assured that the data they are watching correctly reflects market trends in a given security. If the quotation changes and trades are not timely reported with reference to a common clock that measures to at least the hundredth of a second and are not placed in proper time sequence, they will seriously mislead those trying to figure out what is happening in the market and what trading or investing strategies to employ. For that reason, the data may well be worse than useless if there is not a robust and rigorous method of ensuring timely reporting and proper sequencing.

16. Does the current availability of data facilitate best execution? If not, please elaborate.

The entire purpose of the MiFID transparency requirements is to ensure that trade information from different sources is brought together in a way which allows for comparison and to provide investment firms with an efficient means of monitoring and analysing both the state of the market and the means of best execution:

“In order to achieve efficient price discovery and facilitate achievement and monitoring of best execution, trade information published through different sources needs to be reliable and brought together in a way that allows for comparison between the prices prevailing on different trading venues. It should be available in a format that is easy to consolidate and that is capable of being readily understood and be available at a reasonable cost.” (Reference: CESR, *Publication and Consolidation of MiFID Market Transparency Data*, CESR 07/043 at 1.5 (February 2007)).

Investment firms use market data in a number of ways to establish and implement their execution strategies and to achieve consistent best execution. Average volume data enables a dealer to compare the size of an order with the daily average volume in order to determine the likely impact price of executing that order over different time frames. Time interval volume analysis enables the dealer to adjust average volume data analysis by identifying whether the day's volume so far is currently more or less than the average at the same point; it identifies the extent of available liquidity. As noted above, multiple reporting of trades has been problematic in that it distorts volume analysis. Similarly, the lack of a common clock results in quotation changes and trades being reported out of their proper sequence, which gives misleading signals as to market direction, price trends and other market indicia.

Comparison of post-trade data enables a dealer to understand what type of liquidity is available in order to determine what broad strategy for executing an order would be the most appropriate. If, for example, the majority of trades are taking place on electronic order books (Regulated Markets or MTFs) then the dealer would probably be able to best execute the order by interacting with that liquidity. If, on the other hand, the majority of trading in a particular security appears to be occurring away from those order books and therefore over-the-counter (“OTC”), then the dealer would most likely receive better execution by interacting with that liquidity (if they can find it). Where there is no central reporting venue for MTF and OTC transactions, or when their reporting venues are unclear, dealers will have a more difficult time obtaining the information they need to ascertain what type of liquidity is available.

Dealers also need to determine exactly where or with whom to direct their order. For example, if executing electronically — which Regulated Markets and MTFs should they be sending orders into? Which have the best prices? On which platform is most of the trading occurring? If OTC, the information identifying the most active trading parties in the security would help the dealer increase its chances of directing its order to the broker that is most likely to be able to find the natural “other side” to the trade. Only some exchanges provide this

information and , unfortunately, it is not mandated by MiFID. Clearly the effort of liquidity centers to monetize this information in a manner that diminishes the quality and availability of data undermines best execution.

Investment firms acting for clients need the most accurate and recent information in order to facilitate best execution by using any of the strategies mentioned above, and they need to be able to analyse that information by using technology. For that reason, delayed data, reduced transparency of block trades, poor data quality, and restrictions on data usage also impede a dealer's efforts to effect best execution.

17. Do you think that commercial forces provide effective consolidation of data? If not, please elaborate.

Ultimately, that will depend on the type of data and how data is made available. For example, data aggregators need to know where post-trade transparency obligations are being carried out if they are to have any chance of accessing and aggregating that data. If the data consists of a small volume reported on a website then it is likely that it would not be commercially viable to access and aggregate that data. The consolidated data may still be "effective" if not fully complete.

Commercial forces will most likely continue to provide several solutions rather than a single standard one. For example, Bloomberg provides a European data composite of over 8,000 securities and includes approximately fifty venues (so it has very comprehensive coverage). Our best bid and offer is determined only by the best bid or offer on a Regulated Market or MTF. Another vendor may offer a composite on a smaller subset of securities and venues and while this may not be as comprehensive it may be cheaper for users to subscribe to and may be closer in practice to some users' execution policy. There is no right or wrong methodology or guarantee that a diverse marketplace will adopt a single solution. The same is true with transaction cost analysis with different standards as to what should or should not be included in, for example, VWAP calculations (depending on the audience).

One major challenge is how benchmark indices and related derivatives contracts will be priced in the future. Recent experience when the LSE went down for a day showed that liquidity dried up across the marketplace (rather than moving to those venues still functioning properly) because the benchmark indices were not pricing. A similar reliance on a single venue should be avoided in future if at all possible and could be achieved by switching these to composite pricing.

We would hope that commercial forces can be relied upon to the maximum extent possible to determine market structure and to promote the introduction of innovative technology and other beneficial market changes. Nonetheless, we believe some governmental intervention is required to deter cartelization, and the tendency of market participants to favor their own short-term commercial advantages over market improvements. For that reason, we believe the efforts to achieve useful and accurate consolidation of market data will not be fully successful unless the respective governments at the E.U. level and the Member State level work together to promote

market transparency. It may be necessary in that regard to amend MiFID to reverse some of the legislative compromises that have worked against the goal of increased transparency.

18. Do you think that the implementation of MiFID is delivering the directive's objectives in relation to equity secondary markets (e.g., fostering competition and a level-playing field between EEA trading venues, upholding the integrity and overall efficiency of the markets)? If not, why do you think those objectives have not been met?

On the whole we believe that MiFID is delivering the directive's objectives in relation to secondary equity markets with the caveats discussed above.

We appreciate the opportunity to make our views known to CESR. Please contact me at +44 20 7330 7676 or by email at aclode@bloomberg.net should you wish to discuss our response further or have any additional questions or comments.

Respectfully submitted,

Alexander Clode by R.D.B.