

REMARKS BY A WORKING GROUP OF INVESTMENT FIRMS (THE GROUP) CREATED WITHIN THE AMBIT OF FOGAIN (SPANISH INVESTORS COMPENSATION SCHEME FOR INVESTMENT FIRMS) ON CESR TECHNICAL ADVICE TO THE EUROPEAN COMMISSION IN THE CONTEXT OF THE MIFID REVIEW- TRANSACTION REPORTING

1. Do you agree with the above analysis on trading capacity and the proposal to introduce a third trading capacity (riskless principal) into transaction reports?

The Group considers that the current system, where two transactions in which an entity is a counterparty are reported two times, once when the buy takes place and another time when the sale takes place, provides sufficient information on these transactions.

The inclusion of the proposed field (riskless principal) implies:

- Amendments in the systems used by the entities and by third party suppliers for reporting information on transactions to supervisors, and these systems were recently implemented. This may entail costs which are not sufficiently justified.
- It would not be clear how the second transaction, in which the securities are delivered to the client for whom they were acquired, is to be reported. If the first transaction is declared as a riskless principal, how is the second transaction to be declared? Will the riskless principal concept be sufficient to combine one transaction with the other one? It does not seem to be the case, unless additional requirements and amendments are included in the reporting formats.

2. Do you have any comments on the distinction between client and counterparties?

No, but in any case the reply to question 1 above should be taken into consideration.

3. Do you agree with the above technical analysis?

The Group coincides with CESR's analysis on the advantages of including a client ID number in the transaction reporting.

4. Do you see any additional advantages in collecting client ID?

No.

5. Do you agree with the above technical analysis?

Generally we do, but please see reply to question 6.

6. Do you see any additional disadvantages in collecting client ID.

Identifying the client in transaction reporting must always be done by the entity that has a direct relationship with that client. Establishing the obligation of one entity reporting to another entity so that the latter reports to the supervisor causes problems. Thus:

- Data on own clients are being furnished to third party entities. This not only raises issues on the protection of personal data but also of a commercial nature in respect of the clients and regarding the legitimate reserve that each entity is entitled to apply regarding its relations with its clients.
- In the event of incidents on reports, there should be a direct relationship between the supervisor and the entity that did not declare the client ID (because another entity did it). There does not seem to be much sense in imposing reporting obligations on an entity regarding data on clients who are not its own clients, because if a clarification is requested that entity will not be able to do anything. Because of this, from the start the communication and subsequent clarification should be channelled through the entity that has a direct relationship with the client—this applies to each level of the relationship in the event of different levels.
- The reporting obligation incorporates an unfair added level of responsibility for the entity doing the reporting, and a potential complication in terms of finding out who made the mistake in the event there is an incorrect report.

In light of the foregoing, the Group considers that the entity in respect of which the client has client status should be the one providing the supervisor with the client ID.

7. Do you agree with this proposal?

Yes.

8. Are there any additional arguments that should be considered by CESR?

Please see reply to question 6.

9. Do you agree that all counterparties should be identified with a BIC irrespective of whether they are an EEA investments firm or not?

The Group considers that any progress in terms of establishing a European identification mechanism to be applied to entities providing investment services, companies and individuals would be of interest.

10. Do you agree to adapt coding rules to the ones available in each country or do you think CESR should pursue a more ambitious (homogeneous) coding rule?

Please see reply to question 9.

11. Is there any other available existing code that should be considered?

Please see reply to question 9.

12. When a BIC code has not been assigned to an entity, what do you think is the appropriate level for identification (unique securities account, investment firm, national or pan-European)?

Please see reply to question 9.

13. What kind of problems may be faced at each of these levels?

The establishment of a pan-European coding system surely represents a substantial task requiring costs to be borne by the entities and national governments. But in the medium term it seems like an interesting feat that should be sought.

14. What are your opinions on the options presented in this section?

In keeping with our reply to question 6, the remittance of client ID reports via a third-party entity (the executor of the transaction) by the receiver and transmitter of an order should be avoided.

The responsibility of furnishing client data to supervisors (regardless of who the supervisors are) should lie with each entity in respect of its own clients.

However, although this is the general approach that is considered most appropriate, the Group considers, in any case, that this would represent a significant amendment of the current system, entailing higher costs for entities receiving and transmitting orders, therefore the implementation of the reporting obligation should be preceded by a thorough analysis of these implications.

Meanwhile, the Group considers that national supervisors' power to request information from their supervised entities is sufficient for the purpose of having access to the necessary information.

15. Do you agree with CESR's proposal on the extension of reporting obligations? If so, which of the two alternatives would you prefer?

The Group considers that CESR's proposal is reasonable.