

Mr. Carlo Comporti
Secretary General
CESR
11-13 avenue de Friedland
F - 75008 Paris
ccomporti@cesr.eu

Brussels, 5 December 2008

Subject: CESR Call for Evidence on the Review of the Scope of the MiFID Transaction Reporting Obligation

Dear Mr Comporti,

The European Banking Federation¹ (EBF) welcomes the opportunity to respond to CESR's call for evidence with regard to the scope of the MiFID transaction reporting obligations. In view of the significance of transaction reporting questions in a cross-border context, we much welcome the work that CESR is undertaking to bring more clarity to the definition of transactions to be reported.

Question 1 – Have the differences in the scope of the transaction reporting obligation between CESR Members caused problems for you?

On a general note we agree with CESR's own assessment that uncertainties remain and that practices between Member States vary considerably.

At the same time, we note that the practical problems that have arisen from these differences in the scope of the transaction reporting obligation between Member States have overall remained manageable.

Question 2 – Please provide information on your practical experiences in reporting transactions that fall under each of the items a) – c) above.

Our members do believe that there is some overlap between in particular the categories a) and b). We find especially the specification under b) unclear, which states that transactions

¹ Set up in 1960, the European Banking Federation is the voice of the European banking sector, with over 30 000 billion EUR assets and 2.4 million employees in 31 European countries. The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions.

should be covered regardless of whether they are executed on a regulated market or multi-lateral trading facility or outside them. In our understanding, transactions executed on a regulated market or multi-lateral trading facility are already covered under a), i.e. would be excluded under b). b) should instead only cover transactions that are agreed bilaterally.

For the sake of clarification we would welcome that CESR confirm this understanding. CESR might also wish to distinguish between transactions carried out either on behalf of a client, or on the firm's own behalf, or to establish a broader categorisation of all possible kinds of transactions.

Question 3 – In your opinion, what are the advantages and disadvantages of competent authorities systematically receiving transaction reports covering the information referred to in item c) above versus acquiring the information on an ad-hoc basis by other means?

We would caution against an obligation to systematically report to the competent authorities all entities or persons involved along the transaction chain, which would overload the authorities with information and would involve risks of duplicative reporting instead of allowing to identify the most meaningful pieces of information. Where trades are deemed to be suspicious, additional information should in our view indeed be requested case-by-case.

Question 4 – What would be the preferred solution in relation to the possible convergence of the scope of the transaction reporting obligation (regarding what constitutes 'execution of a transaction')?

As noted above, our members are not of the view that the differences in the scope of the transaction reporting obligation have caused major practical difficulties. We do also not perceive a risk of regulatory arbitrage, as it would indeed be far-fetched to assume that banks would structure their business in relation to reporting requirements.

We are therefore not convinced that additional CESR guidance would be of added value at this stage, but would instead suggest that more experience should be acquired on the basis of the rules and guidance as they currently stand. Should CESR itself or other stakeholders perceive difficulties at this stage we believe that these are best approached in a pragmatic way, on the basis of a clear identification of and restricted to the technical problem to be addressed.

We remain at your disposal for any questions you might have.

Yours sincerely,



Guido RAVOET