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CESR
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13 December 2006

Dear Sirs

RESPONSE TO CESR'S PUBLIC CONSULTATION ON THE PUBLICATION AND CONSOLIDATION OF MIFID MARKET TRANSPARENCY

Thank you for the opportunity to respond to your paper on the publication and consolidation of MiFID market transparency (CESR/06-551).

Our overall view in regard to this area is that the most appropriate mechanisms for defining solutions in relation to the publication and consolidation of MiFID market transparency are best provided through the operation of market forces. Given the already extant competitive nature of the industry infrastructure in this area of the market, our position is that extensive, detailed guidance from CESR is not required at this stage of MiFID implementation. We feel that at the moment it is too early for CESR to produce detailed guidance.

Our position is that market participants should have a free choice of the medium through which they disseminate information, given that there is an open and competitive market, with no regulatory or other anti-competitive barriers to entry.

Equally, this should apply to the question as to who should provide data consolidation services: our members would welcome an open and dynamic market in this area, in which competition can produce technical innovation and also drive down costs, to the benefits of European financial markets as a whole. Clearly, it is in the interests of industry that pre-trade and post-trade data are treated in the same way, so an industry solution would be of high importance to all relevant market participants.

We believe that market forces should also predicate how long transparency data should be kept available, especially as such a period is not set down within MiFID itself. Flexibility would be more helpful than detailed, “one size fits all” guidance here, in order that the needs of the market and its different participants can be taken into account, whether this applies to larger or smaller firms, different investor classes, or more as opposed to less liquid markets.

We also believe that a robust cost-benefit analysis should be required before detailed CESR guidance is put in place, in order that any such guidance exists to cure any market failures that have been noted.

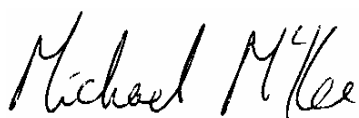
We would welcome CESR’s support in encouraging and facilitating an industry solution in this complex and technical area. Certainly, input from CESR would be invaluable in breaking down existing barriers, and encouraging its constituent members to work together to catalyse workable and consistent cross-border industry solutions.

We recommend that a review is carried out of the efficacy of market solutions in this area after a suitable interlude once MiFID requirements have been properly established. The purpose of this would be to ascertain whether any such market failures have been observed that require that appropriate and proportionate CESR guidance should be put in place. However, we start from the assumption that guidance will not necessarily be required. Any guidance that is developed should clearly be developed in full consultation with industry.

Our answers to the specific questions posed in the paper are presented in the appendix to this letter.

If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours faithfully



Michael McKee
Executive Director



Philip Buttifant
Director

Appendix – answers to questions within the paper

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

We agree that it is important that trade information is reliable, in order that it can properly contribute towards the price formation process, inform implementation of best execution requirements and facilitate accurate trend analysis.

However, there already exists a strong commercial incentive for firms to ensure high quality data monitoring practices, given the already extant competitive environment for firms. Given this environment, we do not believe that further guidance is necessary in this field. We certainly do not believe that there is a need for an independent data verification process, as this would simply add extra costs without any concomitant benefits to either investors or market practitioners.

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 as a prerequisite (supported by other requirements)? (d) Would this option limit unnecessarily the choice of publication channels for firms?

As we note in the main body of our response, we believe that market forces have sufficient incentives to provide an industry solution.

Therefore, detailed CESR guidance is not necessary at this stage, and CESR should carry out a review of how industry solutions are functioning in practice after a reasonable interlude, in order to ascertain whether regulatory intervention is required to correct any significant market failures.

However, we point out that given that Article 27.4 of the implementing Regulation states that only one party in any transaction is required to fulfil transparency obligations, the risk of duplication should be minimal. A clear choice of publication venue should be permitted for all reporting entities. Given this, Option 1 appears the most workable and simple in practice.

[Members' views are sought on whether there are any areas where they feel that CESR guidance would be helpful at this early stage, and the period before which a CESR review of MiFID implementation should occur.]

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 bear them? (f) Would this solution request a recommendation on a common and single format for the trade identifier?

We refer to our answer to Question 2 above. We do not think that a unique trade identifier is a straightforward solution, and it could be costly for the industry to implement.

We would not support the introduction of a unique identifier, as this would predicate against the operation of market forces, as well as being problematical to institute and maintain from a technical perspective.

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 should bear them?

We refer to our answer to Question 2 above. We do not think that CESR guidance is necessary at this stage.

As we note in the main body of our response, CESR should undertake a rigorous cost-benefit analysis before proposing solutions that may impose considerable systems development costs on industry without a concomitant investor protection benefit.

We consider that the use of time to milliseconds would involve a very high cost that is completely disproportionate to any benefits that might arise. In addition, complications are likely to arise owing to time zone differences and clock synchronisation. A better solution to limit duplication is to rely upon the Article 27.4 requirement of one entity only to report, coupled with a choice of CESR's Option 1.

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

Option 1 appears the most appropriate solution, as this is already essentially required by the MiFID implementing Regulation, and therefore further regulatory intervention is not required by EU law.

Q6: In your opinion, is the list 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 appears sufficiently adequate and clear so as not to require further guidance from CESR.

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?

[Members' views are sought on this issue – initial views are that no further guidance is necessary, given the variety of market practices in different member states. Is the current FSA approach satisfactory to members, in order that we can refer to this positively?]

Q8: There is no Question 8 within the Consultation Paper.

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

We would agree that the publication of information on “static websites” (i.e. non-machine readable websites that preclude accessing of information through an automated process) may pose barriers to data consolidation. We therefore agree with CESR’s proposal that pre- and post-trade publications should be accessible by automated electronic means in a machine readable manner, without requiring human intervention.

Such information should, of course, be available on a reasonable commercial basis, as MiFID requires. There is also an issue as to who defines the format and the standards for any such website.

Q10: In your view, is this [proposal that publication arrangements should ‘push’ information out to anyone who wants a feed, rather than being simply machine-readable] necessary and reasonable? What additional costs would be involved? Who would bear the costs?

This is a commercial rather than a regulatory issue. So no further guidance is required.

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

Again, we believe that this issue is best left to market forces, as there is a clear commercial incentive for a solution to this to be found by industry. It appears unlikely that there would be any difficulties in aggregators identifying key data sources if the information in question is made publicly available.

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

We refer to the answer to Question 11 above.

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

It is to firms’ advantage to publish data on a reasonable commercial basis. Therefore, providing prescriptive regulatory guidance on how firms should inform the market of new sources of transparency data would be redundant.

Q14: Do you agree with our recommendation to use ISO formats (and reference data where applicable) to ensure consistent publication of transparency information?

Although we would not advocate CESR mandating specific data formats, the ISO standards are well respected in the market (and also a European convention)^v, and it would therefore appear likely that they may be used by the market.

[Members’ views are sought on this.]

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

Common standards in this area of flagging should be developed by industry, rather than imposed by regulators, as it is clearly in the interests of market participants to have common procedures in place.

[Members' views are sought on this.]

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 value of the share (e.g. cum dividend, etc.)?

We have not received any input from members that indicates either a need or appetite for additional guidance in this area.

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?

Our view is that firms should have the choice of whichever format best suits their own needs and those of other market participants with whom they interact, albeit this format should be known in advance to other market participants.

Industry standards are likely to develop in accordance with demand for them.

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

[Members' views are sought on this.]

Q19: Is “A” an appropriate flag for amendments?

We refer to our answer to Question 15 above.

Q20: This approach implies that publication arrangements would need a mechanism for uniquely identifying trades to allow data aggregators and vendors 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?

We refer to our answer to question 3, that does not favour the introduction of a unique identifier.