APCIMS

Working for the Investment Community

CONSULTATION PAPER

CESR TECHNICAL ADVICE TO THE EUROPEAN COMMISSION IN THE CONTEXT OF THE MIFID REVIEW

EQUITY MARKETS

RESPONSE FROM THE ASSOCIATION OF PRIVATE CLIENT INVESTMENT MANAGERS AND STOCKBROKERS (APCIMS)

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) represents firms acting on behalf of investors[1]. Member firms deal primarily in stocks and shares as well as other financial instruments for individuals, trusts and charities and offer a range of services from execution only trading (no advice) through to full portfolio management. They operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, employing over 30,000 staff. Around £365 billion of the wealth of these territories is under their management.

We set out below our response to the questions in the CESR consultation document on equity markets, which forms part of CESR's technical advice to the European Commission on the MiFID Review. Before getting into detail, however, APCIMS wishes to offer some general comments related to equity market fragmentation following the implementation of the MiFID in the UK.

APCIMS' member firms have faced significant up-front and ongoing costs in terms of both time and money in the implementation of parts of the MiFID relating to equity markets. We made clear in our January 2009 submission in response to CESR's call for evidence on the impact of the MiFID on the functioning of secondary markets that the benefits of MiFID have been slow to accrue to firms such as our members which are required to be MiFID-compliant on the one hand but lack the size or client base on the other to be truly cross-border operators.

In the secondary markets area the costs of internal compliance have included the design and development of new IT systems such as those related to undertaking and monitoring the ongoing operation of new best execution requirements, connecting to new trading venues and price information feeds, revising and putting into practice new internal policies and procedures, putting in place express written consent arrangements for often many thousands of retail clients (not all of whom have responded expeditiously and efficiently to relevant requests from firms) relating to

[1] APCIMS has around 190 members, of which about 130 are private client investment managers and stockbrokers and the rest are associate members providing relevant services to them.

possible off-market trading where this achieves the best outcome for them, and ensuring execution quality.

However, the enduring relationships that APCIMS' members have with their clients, and in some cases the personal nature of that relationship, mean that clients' best interests were already being catered for. So it has not been clear that, to date, the added costs of MiFID have brought commensurate net client benefit.

A high proportion of the issues relate to market fragmentation and the detrimental effect of this on pre- and post-trade data available in relation to on-market equity trading. This has brought extra costs and increased difficulty of establishing that in executing trades the best outcomes have necessarily been achieved for the client because of uncertainty about whether prices on all possible execution venues had been fully ascertained. In turn this has been because the relative costs to the smaller firms of accessing all the data feeds necessary to ensure certainty is prohibitive and largely offsets the gains from greater competition which has resulted in the lowering of trading fees, narrower spreads greater liquidity, and reduced clearing costs.

These problems have been particularly acute in London where fragmentation due to the proliferation of execution venues and price competition has been most keenly felt. This has been disruptive to best price discovery since firms cannot afford connectivity to every venue (and no attempt should be made to mandate this) and there are clear costs involved in seeking liquidity on competing venues, especially with the need then to assemble available liquidity into a useable and justifiable (in terms of getting best outcomes) form for clients. Fragmentation also makes it less easy and more expensive to comprehend trading volumes in a consolidated and timely manner and to undertake appropriate transaction cost analysis.

A consolidated trade report tape could improve the situation by simplifying matters and strengthening the possibility of competition between venues, bringing ready price benefits to the execution of client orders rather than difficulties in establishing where the benefit lay and its dimensions. The market should decide – and is deciding – on a commercial basis how such a tape could be formed. The CESR paper addresses this issue. However, as the paper recognizes, even such a tape brings its costs and it is not clear at present what such a cost might be nor how it might be managed.

CESR recognised concerns about the lack of discernible benefits of the MiFID for smaller agency brokers in its feedback statement of July 2009, particularly the third bullet point of paragraph 153.
In the light of this APCIMS believes that CESR should take very careful account in its advice to the Commission of the likely costs of different policy proposals designed to improve the equity market situation and in particular be aware of where such costs might disproportionately fall, especially if one-size-fit-all solutions (which we oppose) are deployed. Firms will do all they can to implement efficiencies to absorb additional regulatory costs but in the APCIMS sector there will inevitably be some costs that are passed on to the retail consumer of financial services. This extra burden can only be justified if it brings clear regulatory benefit and as noted above that has not been an obvious gain for our firms and their clients from the MiFID hitherto.

Pre-trade transparency

Question 1: Do you support the generic approach described above?

Yes, to the extent that what is proposed is for the most part a continuation of the status quo with regard to pre-trade transparency as a whole, while the change in the waiver régime to a more rule-based approach to bring greater precision will not directly affect APCIMS firms.

Question 2: Do you have any other general comments on the MiFID pre-trade transparency regime?

The general points about the costs of implementation and operation have been made above.

Waivers

Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.
Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal?
Question 5: Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1 or 2)? Please provide reasoning for your views.
Question 6: Should the waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.
Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?
Question 8: Do you have any specific comments on the waiver for negotiated trades?
Question 9: Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?

We have no comment on the above questions since they are not directly relevant to APCIMS' firms; our members do not normally trade in sufficiently large orders to be directly affected by the waiver régime.

Systematic internaliser regime

Question 10: Do you consider the SI definition could be made clearer by:

i. **removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation?**
ii. **providing quantitative thresholds of significance of the business for the market to determine what constitutes a 'material commercial role' for the firm under Article 21(1)(a) of the MiFID Implementing Regulation.**

Question 11: Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?
Question 12: Do you agree with the proposed minimum quote size? If you have a different suggestion, please set out your reasoning.

Question 13: Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.

Question 14: Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?

Question 15: Have you experienced difficulties with the application of 'Standard Market Size' as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify.

Question 16: Do you have any comments on other aspects of the SI regime?

We have had no feedback to suggest that any APCIMS' member firm will be caught under the SI régime and we are therefore not in a position to respond to the above questions.

Post-trade transparency

Question 17: Do you agree with this multi-pronged approach?

Yes.

Question 18: Do you agree with CESR's proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.

APCIMS' member firms would not be directly affected by these proposals.

Question 19: In your view, would a 1-minute deadline lead to additional costs (e.g. in terms of systems and restructuring of processes within firms)? If so, please provide quantitative estimates of one-off and ongoing costs. What would be the impact on smaller firms?

There could be some systems costs to APCIMS' members. We have made the plain above that in trade reporting and execution area the costs of MiFID have fallen disproportionately on smaller firms and would be concerned that this could be the case if they are required to change systems again to support a new regulatory requirement.

Question 20: Do you support CESR proposal to maintain the existing deferred publication framework whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?

Question 21: Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.

Question 22: Should CESR consider other changes to the deferred publication thresholds so as to bring greater consistency between transaction thresholds across categories of shares? If so, what changes should be considered and for what reasons?

Question 23: In your view, would i) a reduction of the deferred publication delays and ii) an increase in the intraday transaction size thresholds lead to additional costs (e.g. in ability to unwind large positions and systems costs)? If so, please provide quantitative estimates of one-off and ongoing costs.

APCIMS' member firms do not engage in large trades of the kind indicated so we have no comment on the above questions

<u>**Equity-like Instruments**</u>

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):

- **DRs (whether or not the underlying financial instrument is an EEA share);**
- **ETFs (whether or not the underlying is an EEA share);**
- **ETFs where the underlying is a fixed income instrument;**
- **ETCs; and**
- **Certificates**

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

Question 25: If transparency requirements were applied, would it be appropriate to use the same MiFID equity transparency regime for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). If not, what specific aspect(s) of the MiFID equity transparency regime would need to be modified and for what reasons?

Question 26: In your view, should the MiFID transparency requirements be applied to other 'equity-like' financial instruments or to hybrid instruments (e.g. Spanish participaciones preferentes)? If so, please specify which instruments and provide a rationale for your view.

No comment.

<u>**Consolidation of transparency information**</u>

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for APAs? If not, what changes would you make to the proposed approach?

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape (as described under 4.1.2 below)?

As we have made clear, we are concerned about the imposition of further disproportionate regulatory costs on APCIMS' member firms and their clients without clear justification including evidence of necessity on the basis of market failure and an appropriate cost benefit analysis. In this context we note that the Approved Publication Arrangements (APAs) have not been subjected to cost-benefit as required and represent an unnecessary mandatory regulatory step which at some point will have to be paid for by the industry. We see no evidence to convince us that the APAs will be any more effective than the current growing market arrangements for bringing post-trade reporting together across venues. There is for example no guarantee that they will work at all in reducing fragmentation: this will remain but within a CESR-approved mechanism. The question has not been answered as to how the costs of accessing the data on all the APAs will be managed effectively, and whether a standardised approach to data publication would limit innovation and competition.

Question 31: Do you believe that MiFID provisions regarding cost of market data need to be amended?

There is probably a case for CESR to advise the Commission amend the MiFID so that consolidated post-trade data can be handled as set out in paragraph 96 of the CESR paper. There will be a need to avoid centralised control and to be clear about costs, such as defining what a "reasonable cost" for transparency information made available to the public on a non-discriminatory might be.

Question 32: In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.

Yes. This will encourage competition, particularly in terms of service offering and price.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.

We agree that this objective should be met. We would prefer that this should not happen on a mandatory basis but through market forces in that those seeking to gain a competitive advantage with information flow in this area should in any case aim to achieve the benchmarks as set out.

Question 34: Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?

This seems appropriate if the competent authorities are to have as accurate and full a picture as possible of trading in the relevant stocks.

Question 34 bis: Do you support the proposed approach to a European mandatory consolidated tape?
Question 35: If not, what changes would you suggest to the proposed approach?
Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?

Question 37: In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

APCIMS' member firms provide services to retail clients predominantly within the UK and undertake little or no cross-border business within the EEA or indeed anywhere else. They deal primarily in shares and do so almost entirely on-exchange rather than OTC. They are not institutional and pan-European in any sense and do not have the need for the same range and quantity of trade information as some of the larger firms. They also have much smaller resources than the big institutional players. It follows that they may not need such a large or expensive consolidated tape, and if they are forced to pay for the same amount and type of information as the larger firms the price will be proportionately much greater for them, adding considerably to costs in the domestic retail trading sector. This is a situation where one size most definitely does not fit all and careful consideration should be given to the needs of small retail brokers and the retail end of the market, for example in terms of lower access fees to be charged, in assessing how they could fit into the MCT scheme and make use of it. This would imply some clear differentiation at paragraph 99j of the CESR paper where the reference to "*The MCT would need to make its services available to any person wishing to subscribe to its data*" should be adapted to read, for example, "*The MCT would need to make its services available to any person wishing to subscribe to its data at a price level suited to their data requirements and resources for payment*". In this context it would be helpful to know what "mandatory" may mean in the context of a European Consolidated Tape: does everyone have to use it, and if so could the use still differentiate between a retail broker and a large global investment bank in terms of the cost of accessing data given that their requirements will be very different?

<u>Regulated markets vs. MTFs</u>

Question 38: Do you agree with this proposal? If not, please explain.

Question 39: Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.

Question 40: In your view, what would be the benefits of the proposals with respect to organisational requirements for investment firms and market operators operating an MTF?

Question 41: In your view, do the proposals lead to additional costs for investment firms and market operators operating an MTF? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

APCIM's firms do not operate MTFs or RMs and we have no comments on these questions.

Crossing Systems

Question 42: Do you agree to introduce the definition of broker internal crossing process used for the fact finding into MiFID in order to attach additional requirements to crossing processes? If not what should be captured, and how should that be defined?

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring

investment firms to establish an MTF for the execution of client orders ('crossing systems/processes becoming an MTF)?

a. **What should be the basis for determining the threshold above which an investment firm's crossing system/process would be required to become an MTF? For example, should the threshold be expressed as a percentage of total European trading or other measures? Please articulate rationale for your response.**
b. **In your view, should linkages with other investment firms' broker crossing systems/processes be taken into account in determining whether an investment firm has reached the threshold above which the crossing system/process would need to become an MTF? If so, please provide a rationale, also on linking methods which should be taken into account.**

Question 45: In your view, do the proposed requirements for investment firms operating crossing systems/processes lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

APCIMS' members do not operate crossing systems so we have no comments on this section.

<u>**MiFID options and discretions**</u>

Question 46: Do you think that replacing the waivers with legal exemptions (automatically applicable across Europe) would provide benefits or drawbacks? Please elaborate.

Questions 47: Which reasons may necessitate the application of both criteria?

Questions 48: Is a unique definition of liquid share for the purposes of Article 27 necessary?

Questions 49: If CESR were to propose a unique definition of 'liquid share' which of the options do you prefer?

a. **apply condition a) and b) of the existing Article 22(1), or**
b. **apply only condition a), or**
c. **apply only condition b) of Article 22(1)?**

Please elaborate.

Questions 50: Is this discretion (for Member States to decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market and/or an MTF) of any practical relevance? Do you experience difficulties with cross-border business due to a divergent use of this discretion in various Member States?

Question 51: Should the discretion granted to Member States in Article 22(2) to establish that the obligation to facilitate the earliest possible execution of an unexecuted limit order could be fulfilled by a transmission of the order to a RM and/or MTF be replaced with a rule?

Question 52: Should the option granted to Member States in Article 36(2) of the MiFID Implementing Regulation be deleted or retained? Please provide reasoning for your view.

These areas in general do not affect APCIMS members directly and we have no comment.

ANNEX II – PROPOSED STANDARDS FOR POST-TRADE TRANSPARENCY

<u>Reference data</u>

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

Yes.

Question 2: Do you agree that the unit price should be provided in the major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.

Yes.

<u>Exchange of shares determined by factors other than the current market valuation of the share and non addressable liquidity</u>

Question 3: Do you agree that each of the above types of transactions would need to be identified in a harmonised way in line with table 10? If not, please specify reasons.

No comment.

Question 4: Are there other types of non addressable liquidity that should be identified? If so, please provide a description and specify reasons for each type of transaction.

No comment

<u>Identification of dark trading</u>

Question 5: Would it be useful to have a mechanism to identify transactions which are not pre-trade transparent?
Question 6: If you agree, should this information be made public trade-by-trade in real-time in an additional field or on a monthly aggregated basis? Please specify reasons for your position.
Question 7: What would be the best way to address the situation where a transaction is the result of a non-pre-trade transparent order executed against a pre-trade transparent order?

No comment

<u>Unique transaction identifier</u>

Question 8: Do you agree each transaction published should be assigned a unique transaction identifier? If so, do you agree a unique transaction identifier should consist of a unique transaction identifier provided by the party with the publication obligation, a unique transaction identifier provided by the publication arrangement and a code to identify the publication arrangement uniquely? If not, please specify reasons.

We have no difficulty with the suggested arrangement.

<u>Cancellations</u>

Question 9: Do you agree with CESR's proposal? If not please specify reasons.

Yes.

<u>Amendments</u>

Question 10: Do you agree with CESR's proposal? If not please specify reasons.

Yes.

<u>Negotiated trades</u>

Question 11: Do you agree with CESR's proposal? If not please specify reasons

No Comment.

ANNEX III – CLARIFICATIONS OF THE POST-TRADE TRANSPARENCY OBLIGATIONS

Question 1: Do you agree with CESR's proposals? Are there other scenarios where there are difficulties in applying the post-trade transparency requirements?

We broadly agree.

APCIMS, May 2010