

BME SPANISH EXCHANGES COMMENTS ON THE PUBLIC CONSULTATION CESR/06-551 (OCTOBER 2006)

BME Spanish Exchanges integrates the companies that direct and manage the securities markets and financial systems in Spain. It brings together, under a single activity, decision-making and coordination unit, the Spanish equity, fixed-income and derivatives markets and their clearing and settlement systems.

In response to CESR's kind invitation to analyse document CESR/06-551 and with the purpose of contributing to the clarification of certain areas, BME Spanish Exchanges would like to raise some issues.

Firstly, we will point out some aspects subsumed within the consultation paper that in our opinion should be explicitly tackled by CESR activity in this field. Secondly, we will follow the list of subjects and questions as set in the consultation paper.

I. The purpose and scope of the consultation paper

The consultation paper outlines CESR members position with respect to the application of MiFID pre and post transparency arrangements with the aim of removing the eventual obstacles that may exist to the consolidation of the transparency information.

The document begins with the review of the current situation in member States for domestic shares as regards existing market structures, transparency regimes, quality, availability and data publication standards.

It moves on to the MiFID transparency publication rules, underlining the new situations that will arise, the different possibilities for publishing the information and the potential risks as a result of the greater flexibility, as it may be the eventual deterioration in the price formation process and in the data quality.

The consultation brings to mind the different contributions and feedbacks received in the consultation process.

Finally, the paper tackles the areas where CESR proposes a common guidance in order to eliminate the potential barriers to data consolidation and to promote high-quality market data and formulates some questions.

II. The monitoring and supervisory convergence

As shown, the consultation paper arises very relevant issues for the European securities markets and the financial community.

In some aspects, as the data quality, the paper follows a client oriented approach and does not make any distinction between an initial compliance of the trading venue with the pre and post transparency requirements and the effect of the transparency consequences for the subsequent publications by the aggregators.

Perhaps there is not a clear distinction because the information is published at the same time through different means but it seems that, in any case, there should be some kind of monitoring in place.

Even though the aim of the consultation is to facilitate the consolidation for the purposes indicated in the paper and this approach is a key element, as outlined in the consultation paper, the approach and criteria to enable CESR members to monitor and supervise pre and post transparency basic arrangements put in place by the trading venues is essential too.

In addition, there should be a convergence in the monitoring activity in place and CESR should contribute to it.

At present, the supervisory authorities do not focus mainly in data vendors or aggregators as they have more direct means for carrying out their supervisory activity. Nevertheless, if some of the primary obligations of transparency are going to be carried out by data vendors or third parties, then, as an activity subject to regulatory obligations, it will have to be monitored. If the trading venue has already complied with the pre and post transparency obligations and the publication are not the initial ones but just the activity of a data aggregator it will not have to be monitored.

III. Data Quality

Reliability of the trading information is a key point for the sake of integrity of the market sought by MiFID Directive 2004/39.

As the paper highlights, data quality affects directly the price formation process and the implementation of best execution requirements.

There may be many types of inaccurate information. In some cases it could even be considered, from a regulatory point of view, as a situation of market abuse, according to the categories and definitions within the market abuse Directives.

As pointed out before, there is not a distinction between initial compliance with the pre and post transparency requirements and its monitoring and the successive publication of the transparency information.

Being a critical issue, the regulatory approach and the requirements for data quality and its monitoring should be equivalent for every trading venue. The primary arrangements put in place by the trading venues for complying with the transparency requirements should also be previously taken into account by the supervisory authority and, in order to grant its authorisation to the entity or activity and according to common standards.

1. Inaccuracy of pre and post trade information

The consultation paper puts forward that some guidance will be required to ensure minimum quality standards are upheld and that it would be reasonable to the publication arrangements of regulated markets, multilateral trading facilities and firms trading OTC to include a verification process, independent from the trading process, systematic, with the capability to identify price and volume anomalies and conducted continuously, as quotes and trades are published.

Q1.: ¿In your opinion, will this additional guidance help to ensure high quality data monitoring practices?

Yes.

It should be kept in mind that regulated markets already have in place tools for ensuring high quality data and that they have carried out investments in that respect. If there should be an standard in place, these facts should be considered in order to determine it.

In any case, taking into account the potential prejudices that may arise from any sort of inaccurate information, it should be considered that before granting an authorisation for an activity subject to transparency requirements, the tools and means in place were revised, assessed and approved by the supervisory authority. This could be linked to the part of the consultation that refers to the publication arrangements where the issue of reliability of the information could be included.

Additional guidance should be given in order to prevent inaccuracies in the subsequent publication by the data aggregators.

2. Duplication of pre trade transparency information

CESR concludes in a footnote in page 13 of the consultation paper that duplication of pre-trade transparency information would not be sufficiently problematic to the market so as to warrant CESR intervention.

We find that the considerations made above regarding inaccuracy of information should apply as well to this type of inaccuracy.

3. Duplication of post trade transparency information

The paper describes two situations: one where a single trade is counted more than once during the consolidation process and another, where a single trade is published by both parties of a trade.

a) Single trade is counted more than once during the consolidation process

The consultation document presents three options for avoiding duplication: we anticipate that Options 1 (one publication arrangement) and 3 (trading time identifier) are not enough to solve the potential problem while option 2 (unique trade identifier) does and should be applicable to all the players.

Q2: Option 1:

(a) Would publishing each trade to only one publication arrangement help to address our concerns about duplication? No.

(b) Would this option be sufficient on its own to address the issue, or should it be coupled with another solution? It would not be sufficient. It should be coupled with, at least, another solution.

(c) Rather than being an option, should this option be seen a prerequisite (supported by other requirements) Not necessarily.

(d) Would this option limit unnecessarily the choice of publication channels for firms? Yes.

Q3: Option 2:

(a) Would a unique trade identifier address our concerns about duplication? Yes

(b) Do you think this is an appropriate solution? Yes

(c) How would the industry achieve this? By setting concrete and easy rules to define the unique trade identifier.

(d) In your view, should this only apply to MTFs and investment firms trading OTC or should it also apply to RMs? It should apply to every trading venue.

(e) What costs would be involved and who would bare them?

It would depend on the platform and system but the costs associated to the situation that could arise from the lack of control would be bigger. It should be put in place by any trading venue and then assumed by each one of them.

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

Q4: Option 3:

(a) Would the use of time to milliseconds contribute to the identification of duplicate trades? No.

(b) Do you think this is an appropriate solution? No.

(c) How would the industry achieve this? It would require messages formats changes that imply costs for the information source and the receptor, not being a definitive solution at all.

(d) Are there circumstances where legitimate multiple identical trades (to the detail of milliseconds) could exist? Yes. Trades carried out in different trading venues.

(e) In your view, should this option only apply to MTFs and investment firms trading OTC or should it also apply to RMs? To every trading venue.

(f) What costs would be involved and who would bare them? The scope of this measure and its costs should be studied.

Q5: What is your preferred solution? Option 2.

Do you believe that a combination of these different options is viable? Are there alternative solutions?

As pointed out before, Options 1 (one publication arrangement) and 3 (trading time identifier) do not resolve the potential problem while option 2 (unique trade identifier) will reduce to the minimum duplicity risk. CESR should be responsible of setting such rules.

b) Single trade published by both parties to a trade

Q6: In your opinion, is the list as 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 establishment of specific rules, applicable to all the parties, regarding responsibility in the reporting of transactions executed outside the regulated market and MTF would reduce the risk of duplication of transactions reported. CESR should assume the definition of those rules.

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"?

We think it is not relevant but, if such a guidance were put in place, it could in no way affect or supersede the definition of the respective jurisdiction.

Additionally, is there a need to define the 'reasonable steps' that firms should take in order to comply with their publication obligations?

We think this measure will be very useful, not only for firms under this obligation, but also to avoid any misunderstanding by the industry's participants about how they should receive the information.

III. PUBLICATION ARRANGEMENTS

1. Contingency arrangements

Although CESR states in advance that RMs have already in place recovery mechanisms to guarantee contingency issues, and also that these mechanisms could be used as the answer by these companies which must to have this kind of mechanisms, we think that it should be valued in some way, which will be the commercial terms applicable to this kind of services.

2. Websites as a pre and post-trade publication arrangement

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

We think that an “static” Web site does not fulfil MiFID requirements. We do not see that a migration process from a “static” Web site to a dynamic model is so easy and cheap as it is mentioned in the Consultation. It would be very useful to encourage those which are using these kind of platforms, to distribute the data on a “Feed” model basis.

Q10: In your view, is this necessary and reasonable? What additional costs would be involved? Who would bear the costs?

RMs already use this method (“Feed”) to disseminate transaction information originated at their venues, and any investment incurred in to maintain these services, including contingency issues, etc. should be valued in some way.

IV. AVAILABILITY OF TRANSPARENCY INFORMATION

1. Timing of post-trade publication

The fact of distributing the information according to the timing requirements laid down by MiFID, seems a reasonable measure and will enable its administrator to apply a fee for it.

2. At what point is a trade considered concluded / executed for post trade transparency purposes?

As the definition may be given by the respective jurisdiction or trading venue, it should be limited to the transparency aspect.

3. Identifying new sources of pre and post trade transparency data

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

Yes. We think that the industry is not structured as it should, in this sense.

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

To identify clearly the Markets and its contents would be very useful.

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

Yes. New sources have to be identified not only by the respective Competent Authority but also by all market participants. New sources should provide the market with the technical information necessary to use and consolidate the information provided by the source. This must be a requirement in order to define a source as valid.

In addition to the mechanism in place to inform the market of where to collect, it seems important that through the same or other mechanism additional information necessary to assess the source and its characteristics is made public. It could be information such as how to get pre-trade transparency positions, policy with clients, commissions, eventual guarantees in place and any other circumstance that may be relevant to evaluate the consolidated information for purposes like best execution or surveillance.

V. PUBLICATION STANDARDS

1. Data, formats, content and protocols

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

Yes, but to be considered in future modifications and developments. For current platforms it would suppose a big investment, which is not probably justified.

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

It should be assessed if it involves modifications to current platforms.

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

It could be expected that some other factors might be taken into account.

2. Structure of pre- and post-trade transparency information

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?

Yes, but it is very difficult to fulfil as there is not Industry standards at all, and Aggregators use to set their own proprietary standards.

3. Amendments to post-trade published information

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

Yes.

Q19: Is 'A' an appropriate flag for amendments?

Yes, but it could be any other code.

Q20: This approach implies that publication arrangements would need a mechanism for uniquely identifying trades to allow data aggregators and data users 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 think that identifier is enough.

Madrid, 15th December 2006