

CESR Technical Advice on Equity Markets, Ref.: CESR/10-394. Response by Burgundy AB

Note: Burgundy only responds to the questions relevant to our business.

Section 2: Transparency

Pre-trade transparency

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

Answer: Yes, Burgundy supports the generic approach of retaining the requirement that all trading on organized markets must be pre-trade transparent. All types of waivers of pre-trade should be more detailed and Burgundy support a more "rule based" approach than a "principle based" approach: to leveling the rule arbitrage between different FSAs.

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

Answer: No comments.

Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.

Answer: No, the current calibration for large in scale orders is not appropriate; the thresholds should be lowered. The reason is that the tick size harmonization has cut in half the liquidity in the lit order book, which has made it very difficult to trade large orders. The order size for market impact in lit order book has decreased and if a large order is displayed in the order book: front running of that order will happen immediately. Another problem is the FX-rating, which is only updated once time per year, by CESR. On the back of this, block trading is disappearing from the organized marketplaces and an increased number of trades are executed OTC.

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?

Answer: Yes, the thresholds should be changed and Burgundy support 25% reduction of the minimum order sizes for each liquidity band. The right calibration of the liquidity bands is not an exact science, but 25% reduction would be a start to see the effects on the dark trading.

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.

Answer: Burgundy support option 1; that partially executed LIS orders (stubs) continue to benefit from the LIS waiver following partial execution. The main reason for allowing a partial LIS order still being dark; it is because lit orders have higher priority in the matching engine than dark orders (On most

organized markets). If the trader keeps the partial LIS order dark, then the LIS order will be punished and need to wait after the lit order has been executed. A second reason why letting a partial LIS order still being dark, is that the trader himself/herself will be in control when he/she thinks it is appropriate to switch the order to the lit order book or whether to keep it dark: then the order will get behind all lit orders.

Question 6: Should the reference price 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.

Answer: No, there should not be any minimum thresholds for orders submitted to reference price systems. The reference price waiver is very restrictive as it is and adding more restriction to the waiver will not increase the use of it.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?

Answer: Burgundy have no further comments on the proposal stated in Annex I, regarding reference price waiver.

Question 8: Do you have any specific comments on the waiver for negotiated trades?

Answer: The waiver should be retained.

Question 9: Do you have any specific comments, on the waiver for order management facilities, or the clarifications provided in Annex I?

Answer: The waiver should be retained. Regarding iceberg orders; it should be allowed that the peak size of the iceberg order could differ from update to update (when one peak have been executed). This would be in-line with treating the new updates as new order (time-stamp).

Post-trade transparency

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

Answer: Yes. It should be noted though that the standard to be applied should be an existing industry standard where possible, preferably FIX.

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.

Answer: Yes.

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?

Answer: Burgundy does not agree with these proposals. As clearly set out by CESR, the difficulties that have been observed are due to shortcomings in the enforcement of the current rules, rather than any shortcomings with the existing legal texts. Burgundy calls on CESR and its authorities to address such problems directly at the source.

In particular, Burgundy would be opposed to reducing the publication deadlines to one minute for all trades. Most trades are already now reported much quicker, but there is an important number of trades for which reporting within one minute would not be possible with firms' current tools and technology. An example is manually handled trades.

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?

Answer: Yes.

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.

Answer: Yes, Burgundy is of the opinion that all trades should be disclosed not later than end of day.

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.

Answer: No, other changes are needed.

Section 3: Application of transparency obligations for equity like instruments

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); Yes
- 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.

Answer: Burgundy agrees with the proposal.

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?

Answer: Yes.

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.

Answer: No, start with the instruments mentioned above.

Section 4: Consolidation of transparency information

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?

Answer: In order to achieve a consolidated tape Burgundy would prefer a solution as described in this chapter, however in order for this to actually work pricing of post trade data from RMs and MTFs must be able to be retrieved at a reasonable cost.

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?

Answer: Yes, what reasonable cost means must be defined and controlled. RMs, MTF cannot be allowed to use a market domination to charge unreasonable costs for data.

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

Answer: Only if pricing issue of data can be solved.

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)?

Answer: Competition and the possibility to have APA;s in different regions serving the local markets. Competition will lead to better product at a reasonable price. The time delay in network transfers between different locations in Europe will bring a disadvantage for the users furthest away from the hub.

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

Answer: Yes, See question 28.

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.

Answer: Only if separation leads to a more inexpensive way to consolidate pre and post trade information.

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.

Answer: Yes.

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?

Answer: No – Burgundy do not see any value in such calculations – only costs.

Question 34: Do you support the proposed approach to a European mandatory consolidated tape?

Answer: Burgundy prefers the solution described in chapter 4.1.1 but only if pricing of data can be resolved in acceptable way. If not Burgundy supports a mandatory consolidated tape.

Question 35: If not, what changes would you suggest to the proposed approach?

Answer: See above

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? The problem with cost of data is resolved

Answer: The problem with cost of data is resolved in this suggestion.

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.

Answer: Additional costs both one-off and ongoing will be added as a connection to the MCT must be developed. No estimation of costs has been done.

Section 5: Regulatory boundaries and requirements

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

Answer: Since we have not seen any evidence that support the need of additional regulation of MTFs, Burgundy does not believe this step should be taken at this point in time.

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

Answer: We do not believe there is an unlevel playing field across RMs and MTFs, when taking the different business models into account.

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

Answer: See question 38 and 39.

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.

Answer: See question 38 and 39.

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?

Answer: Yes, we support the idea of definition for broker internal crossing process.

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

Answer: Yes, Burgundy supports the proposal.

Section 6: MiFID options and discretions

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

Answer: Yes, it removes the uncertainties and the administrative costs.

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

Answer: Yes.

Annex II - Proposed standards for post-trade transparency

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

Answer: 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.

Answer: Yes, Burgundy agrees that the unit price should be provided in major currency (with decimal points).

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.

Answer: Yes. However harmonization should follow the FIX protocol. The suggested parameters do not follow the parameters in FIX. In FIX the above is defined in tag 828 and if needed 829.

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.

Answer: Yes. Transaction related to Derivatives Exercises/Expiration should be added since price can deviate from market price.

Question 5: Would it be useful to have a mechanism to identify transactions which are not pre-trade transparent?

Answer: No.

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.

Answer: What would be the value of such information?

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?

Answer: No comments.

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.

Answer: Yes.

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

Answer: Not fully, the identification of a cancellation should follow FIX standard as far as possible. Besides the identification Burgundy agrees.

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

Answer: See question 9 above.

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

Answer: See question 9 above.

Annex III - Clarification 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?

Answer: Yes.