COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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Answers provided by

CONSULTATION PAPER

CESR Technical Advice to the European Commission in the Context of the MiFID Review – Equity Markets

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Dear Sir or Madam,

Optiver supports CESR's proposed changes which will significantly enhance transparency in equity markets. We appreciate the opportunity to comment on the proposals. Please do not hesitate to contact us at +31 20 708 7600 if you have any questions.

Consultation CESR/10-417 - Investor protection and intermediaries

Optiver does not have a view on the subjects of the consultation that we wish to address to CESR. Therefore, we do not want to comment on this consultation.

Reason:

The consultation deals with client related subjects and has no direct relevance to us.

Consultation CESR/10-292 - Transaction Reporting

Optiver does not see any need to respond to this CESR consultation.

Reason:

The purpose of the consultation is to improve the quality of transaction reporting across Europe. The majority of the suggestions affect client related items and are irrelevant to Optiver. The consultation only includes one suggestion that may have an impact on Optiver and, that would require IT adjustments of our current transaction reporting.

Consultation CESR/10-394 - MiFID review on Equity Markets

Introduction

Optiver would like to address its general support to all of the CESR proposals, which will enhance transparency in the European markets and contribute to a further harmonisation of the requirements for RM, MTFs and other trading platforms, ensuring a level playing field for trading platforms. As only some of the questions as addressed by CESR in the consultation paper are of relevance to Optiver, a limited number of them are answered in this document.

Pre-trade transparency

Optiver widely supports any efforts to increase the transparency of the European markets. The existing exceptions on pre-trade transparency are opposing that goal. However, it seems that the majority of operators of trading platforms and market participants find it necessary to exempt certain transactions from pre-trade transparency requirements as those transactions would otherwise have a negative or disturbing impact on liquidity and the price formation process. Optiver proposes to critically review the scope and conditions of the current waivers and reduce the conditions for waivers as much as acceptable to the market participants.

Optiver disagrees with point 48, where other CESR members do not share the concerns expressed about a potential unlevel playing field between RM/MTF and investment firms as regards to order management. Optiver believes that investment firms and trading platforms do run the same business and are expected to comply with the same rules.

Systematic Internaliser (SI)

Optiver response to questions 10 to 13

The entire regime of systematic internalisation is not very advantageous to the transparency of markets and the insurance of sufficiently transparent price building. It is questionable, whether this regime is protecting client interests sufficiently as the current criteria which define a SI leave flexibility for individual by the investment firm. This flexibility could be used by investment firms to 'escape' the definition of a SI, so that the application of the requirements on SI could be avoided.

In contrast to our critical view on the concept of systematic internalisation in general, we state our support of CESR's analysis of the deficiencies of the current regime and therefore support its proposals to further tighten the requirements for SIs.

Optiver response to questions 14

With a more transparent market in practice, Optiver supports the proposal to require SIs to identify where they publish post-trade information. SIs should be required to not 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) but they should be required to identify all trades.

Post trade transparency

Optiver response to questions 17

Optiver broadly supports CESRs suggestions to improve the quality of post trade transparency and the aim of implementing a consolidated tape. Therefore, Optiver does support CESRs multi-pronged approach as illustrated in the consultation document, despite the fact that the cost impact is not yet predictable.

In addition to this, a uniform format should be clear, due to a changing format; costs for users could expand significantly. The matter of "who has to disclose" should also be clear, in order to prevent the double counting of trades.

With regards to this question, Optiver would also like to mention a non-disclosure rule recently adopted by a regulated exchange. Optiver would like to stress that there aren't concessions to be made here; all trades of all sizes should be reported as soon as possible after the trade and intraday. As already mentioned, (post trade) transparency serves all investors in the end. Besides all members of an exchange pay for a Central Clearing therefore all members should have the same information to calculate risks.

Optiver response to questions 18

Optiver supports the suggestion to address concerns regarding the timely (real-time) publication of post-trade transparency information. In general, the market as a whole is served by timely (real-time) publication of trades.

Optiver response to questions 19

The realisation of a 1-minute deadline is not expected to cause significant problems for Optiver. Although we have not performed an in-depth assessment, we are of the opinion that the realisation of that deadline would not lead to a required restructuring of processes or IT infrastructure and that therefore no substantial increase of costs is expected.

Deferred publication regime

Optiver response to questions 20 to 23

In general Optiver opposes maintaining a deferred publication framework. Possible exceptions should only be made for very large trades and for a more limited period of time. Optiver views the current proposal as an important step in the right direction.

Application of transparency obligations to equity-like instruments

Optiver response to questions 24

Optiver supports the proposal to apply transparency requirements to further equity-like instruments as this will contribute to the improvement of market transparency. Optiver strongly agrees with all the instruments as suggested in point 74.

Optiver response to questions 25

Yes, it should absolutely be ensured that the same MiFID equity transparency regime is applied for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). The usage of different regimes would drive costs upwards, make the technical realisation and maintenance more resource intensive and bears the risk of more failures due to uncertainty, which regime applies.

Optiver response to questions 26

Optiver proposes to expand the list of DRs, ETFs, ETCs and certificates with structured products like warrants, turbo's as well and Contract for Difference (CFDs). Optiver thinks it could be dangerous for the financial markets if reporting arbitrage, between instruments, would be possible.

Consolidation of transparency information

Optiver response to questions 27 to 29

Optiver agrees with and supports the aim of the implementation of a consolidated European tape. We also agree with the suggested regime of Approved Publication Arrangements (APA) for the publication of post trade transparency information and see it as the right step to the development of a consolidated European tape.

Optiver response to question 30

Competition and lower prices, provided it is the same data format.

Optiver response to question 32

Yes Optiver thinks publication arrangements should be required to make pre- and post-trade information available separately.

Optiver response to question 34

Yes, Optiver supports 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.

Optiver response to question 34II to 37

In principle, Optiver beliefs that a Mandatory Consolidated Tape (MCT) would substantially contribute to more price transparency and therefore supports the suggestions. However, as the current post trade transparency arrangements are far from being harmonised and thus eligible for further consolidation, we believe that a MCT should be achieved in a two-tier approach. While the first step would be a substantially improved post-trade transparency by means of the introduction of APAs and an increase of data quality. While in a second step a further consolidation into a mandatory consolidated tape could be realised.

Regulatory boundaries and requirements

Out of the position of a participant of exchanges and MTFs, Optiver would probably support the further harmonisation of the requirements between RMs and MTFs and an increase of the organisational, technical and risk standards of a MTF. Optiver therefore would want to support the proposals of CESR.

Investment firms operating internal crossing systems/processes

Optiver believes that the matching of orders means to operate a trading system, in case the activity is commercially driven, is happening on a regular and continuous basis and reaches a certain daily volume. Therefore, the matching activity of an investment firm should be subject to the same requirements as applicable to RM and MTFs. A respective equalisation should be the aim of CESR. Optiver supports the current proposals with the aim of further steps towards a level playing field between all types of trading systems and venues.