28 May 2010

CESR

Dear Sir

CESR/10-292: CESR Technical Advice to the European Commission in the context of the MiFID Review – Transaction Reporting

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £3 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised investment funds (i.e. unit trusts and open-ended investment companies). In managing assets for both retail and institutional investors, IMA Members are major investors in companies whose securities are traded on regulated markets. The IMA's authoritative Asset Management Survey shows that in 2008 IMA Members managed holdings amounting to 43% of the domestic equity market.

We welcome the opportunity to comment on the proposals made in the paper. Please find our detailed comments attached below.

We would appreciate it if CESR could clarify the reporting party where a portfolio manager places an order with a broker for execution (as in Article 45 of MiFID Level 2 Implementing Directive). It would seem that it should be the broker who reports, but the FSA in the UK places the requirement on the portfolio manager. This imposes considerable avoidable and unnecessary costs on the portfolio managers concerned.

We would also like CESR to ensure that a public list of financial instruments is provided by national regulators (or via the CESR Database), as required by Article 11 of the MiFID Implementing Regulation.

We look forward to hearing from you if there is any clarification that you would find useful on the points we have raised.

65 Kingsway London WC2B 6TD
Tel: +44(0)20 7831 0898 Fax: +44(0)20 7831 9975

www.investmentuk.org

Yours sincerely

Adrian Hood
Regulatory Adviser

CESR Technical Advice to the European Commission in the context of the MiFID Review – Transaction Reporting

We provide below answers only to those questions from the consultation that fall within IMA's remit

Section 2

Q1: Do you agree with the above analysis on trading capacity and the proposal to introduce a third trading capacity (riskless principal) into transaction reports?

Our members would never act in this capacity, nor would they have to include it in any of their reporting systems, so we have no comment to make on this proposal.

As regards the discussion on Market Makers, we have yet to see a comprehensive definition of Market Maker, and generally fail to see why they should be treated differently to the rest of the market. While our members would be entirely unaffected by the change we see no need for it.

Q2: Do you have any comments on the distinction between client and counterparties?

No comment.

Section 3

Q3: Do you agree with the above technical analysis?

Yes, particularly with the comment that the main purpose is to help identify those committing market abuse, thus needing to identify the *initiator* of a trade, that is the party who had the discretion to originate the trade.

Q4: Do you see any additional advantages in collecting client ID?

No, in our opinion it can only be justified on market abuse identification grounds.

Q5: Do you agree with the above technical analysis?

In general, yes.

Q6: Do you see any additional disadvantages in collecting client ID?

CESR must avoid extending the collection beyond those who initiate the trade, as this would go beyond the bounds of the stated purpose of meeting the MAD obligations.

Q7: Do you agree with this proposal?

In general, yes.

Q8: Are there any additional arguments that should be considered by CESR?

We would be interested to know how a firm should report a Dividend Reinvestment Plan transaction, or any similar 'bulked transaction', which may have tens of thousands of clients for one transaction.

Typically, the amounts invested for individuals are relatively small, and in some cases are merely dividend reinvestments, where bulking up the transaction is often the only economically viable method to reinvest the dividend. Given the passive nature of these types of transaction, the additional costs of providing this information will impact on small investors disproportionally. It is highly unlikely that these types of schemes could be used to perpetrate market abuse, which is the rationale that CESR states for these proposals.

We believe it is imperative that CESR strikes the right balance between establishing a set of harmonised conditions for transaction reporting and the need to avoid an unnecessary administration burden and costs for small transactions.

Section 4

Q9: Do you agree that all counterparties should be identified with a BIC irrespective of whether they are an EEA investment firm or not?

This seems reasonable. The Business Identifier Code ("BIC") is freely available to all financial institutions, whether an EEA investment firm or not. The BIC standard has recently been amended so that some non-investment businesses can obtain a BIC, where they use the SWIFT messaging system.

The use of BICs would not cause a problem for our members, as they would easily be able to acquire a BIC, if they do not already have one.

The only problem would arise for other business models where private individuals, or firms ineligible for a BIC, are the initiator of the deal. Other types of identifier would be required for these.

Q10: Do you agree to adapt coding rules to the ones available in each country or do you think CESR should pursue a more ambitious (homogeneous) coding rule?

Where BIC codes would be appropriate then these should be used. As noted above, this would not be appropriate where the trade initiator is an individual.

Q11: Is there any other available existing code that should be considered?

We are not aware of any appropriate code other than those discussed in the paper.

Q12: When a BIC code has not been assigned to an entity, what do you think is the appropriate level for identification (unique securities account, investment firm, national or Pan-European)?

No comment.

Q13: What kind of problems may be faced at each of these levels?

We have nothing to add to the discussion in the paper.

Section 5

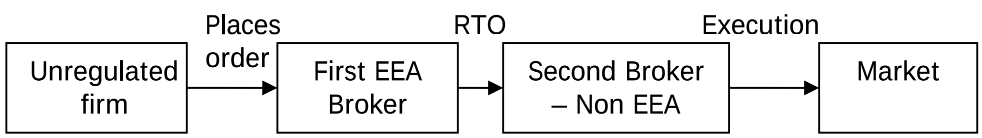
Q14: What are your opinions on the options presented in this section?

Para 91 states that MiFID requires investment firms to report executed transactions, whereas it actually requires 'investment firms which execute transactions to report them', which is slightly different.

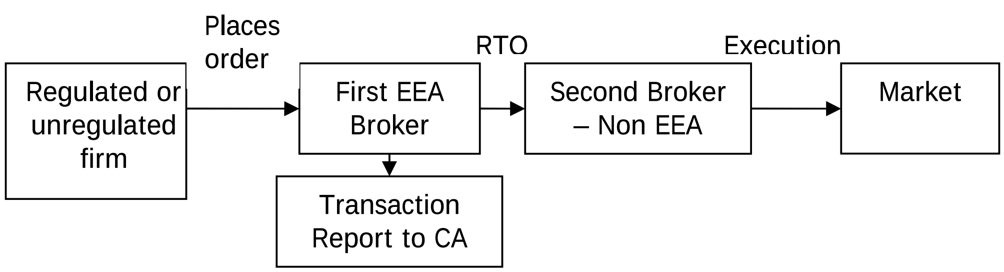
We understand why the CAs want the identification code of the client who is initiating the deal, in order to comply with their Market Abuse obligations. As we stated above, we support these objectives.

As such we agree with the analysis (in paragraph 97 of the paper) that the last investment firm in the order chain with the full information should report it to the CA, whether they are executing the trade or merely Receiving and Transmitting it for execution. Where an investment firm chooses to transmit an order outside the EEA then they would be the last firm in the order chain with the full information, so should Transaction Report to the relevant CA.

If this is not the case then important information would be lost, for example where the corporate treasury of a non-regulated firm places an order in a dual listed stock with an EU broker for execution but the broker passes the order to an affiliated broker outside the EU to execute.



As can be seen, no-one would be required to report in this scenario. Thus the only system which will capture all the reports and ensure that they are reported to the FSA, as they want, is as follows:



We agree with both of the options set out in paragraph 97. As we read it either would result in the last investment firm with the full client information, to whom the rules apply, being required to Transaction Report. This would be the case whether the firm is placing an order, transmitting it or executing it. Of these the second option is the more proportionate, allowing firms the choice of whether they pass the information along for the next firm in the chain to report, or retain it and report themselves.

It is important that where investment firms chose to send a deal outside the EEA that they fulfil the Transaction Reporting requirement, so that this information is not lost to the CAs. If this is not the case, then this provides a clear loophole for market abusers.

We would suggest that in paragraph 102 the proposal should be that MiFID '*require* (not enable) CAs to require…'

Section 6

Q15: Do you agree with CESR's proposal on the extension of reporting obligations? If so, which of the two alternatives would you prefer?

We have no objection to the proposal.