

London, January 9<sup>th</sup>, 2009

The Committee of European Securities Regulators  
Submitted via [www.cesr.eu](http://www.cesr.eu)

Dear Sirs,

**Re: Call for evidence on the impact of MiFID on secondary markets functioning**

Markit welcomes CESR's *Call for Evidence on the Impact of MiFID on Secondary Markets Functioning* and we appreciate the opportunity to provide you with our feedback and suggestions.

Markit is a London-based financial information services company with over 1,000 employees in Europe, North America, and Asia-Pacific. More than 1,000 institutions use our independent services to value financial instruments, manage risk, improve operational efficiency and meet regulatory requirements. Our main business lines are Data, Valuations, Trade Processing and Distribution. In December 2007, Markit acquired BOAT, the MiFID compliant pre- and post-trade reporting platform.

Markit BOAT was established in 2006 by nine investment banks seeking a collective way to satisfy some of their regulatory obligations that would come into place under MiFID. In particular, BOAT sought to provide pre- and post-trade reporting as well as market data services to support best execution policies. BOAT was launched on 1 November 2007 and was acquired by Markit soon thereafter. Markit BOAT consolidates pre- and post-trade data from over 25 leading financial institutions that use the platform to meet their MiFID-related OTC equity reporting obligations for approximately 8,000 stocks listed across Europe. We publish an average daily turnover of € 20bn, which accounts for an estimated 60% of the total OTC equity trade volumes reported in the EEA and around 20-25% of the entire equity trading in Europe. Markit BOAT collects, validates, stores and publishes an average of 100,000 trades on a daily basis with an aggregate order quantity of more than 1.5 billion shares.

Markit BOAT has been awarded Trade Data Monitor (TDM) status by the UK Financial Services Authority. A TDM is required to meet a minimum set of standards when providing a trade reporting service. Trade information must be monitored securely to prevent it from being misused. Markit BOAT data is distributed to end users through Market Data Vendors (MDVs). We have committed significant resources to working with trade reporting firms and data vendors alike to improve the quality, accuracy and timeliness of MiFID reported trade data.

Given our experience, we feel that Markit is well placed to comment on the issues related to the impact of MiFID on secondary markets functioning. Please find below our comments and responses to your questions.

## Benefits

### **1. What do you think are the key benefits for yourself or the market more generally that have arisen as a result of MiFID provisions relating to equity secondary markets?**

We strongly support the view that MiFID has delivered on its key objective to increase competition in European equities trading. On the back of increased competition, MiFID has provided a significant reduction in the cost of both trading and trade reporting, which is beneficial to everyone who trades European equities.

MiFID has increased transparency in the area of OTC equities trading, especially at the pan-European level. Shares that used to be traded only on a regional level can now be traded and viewed on a single venue, e.g. on a Multilateral Trading Facility (MTF) such as Chi-X. While there has been significant discussion in the public domain about the "fragmentation" that MiFID has caused in the trading arena, MiFID has actually "de-fragmented" the European landscape by allowing users to trade all European shares on a single venue, regardless of the country where the shares are listed. This development has clearly increased ease of execution.

The MiFID pre- and post-trade transparency requirements for OTC and MTF transactions have ensured that investors can now access a much wider dataset, which they can use to perform a best execution analysis. OTC and MTF trade data is available to support a firm's best execution requirements and it has become increasingly important in assessing best execution for illiquid stocks.

Finally, we believe that MiFID has also had a beneficial impact in reducing the cost of compliance as it has reinforced the trend towards a system centralisation. This has been demonstrated, for example, by the establishment of bank consortia which have driven the creation of the Markit BOAT trade-reporting platform and the Turquoise MTF.

### **2. Do you consider that there are any remaining barriers to a pan-European level playing field across trading venues? If so, please explain.**

Whilst MiFID has gone a long way towards creating a pan-European level playing field, we are of the view that there are still a number of important remaining barriers that need to be addressed - some of those as a matter of urgency:

- Some remaining exchange concentration rules still limit trading and trade reporting solely to the venue where the stock is listed, e.g. Exchange Rules applied to the AIM market. While the AIM market is not currently within the scope of MiFID, in our opinion the abolition of such rules is required in order to achieve a truly pan-European level playing field across both trading and trade reporting venues. Furthermore, the current rules force firms to incur additional expense as they need to maintain multiple systems to support the varied trade reporting regimes.
- A second important barrier in introducing competition to the AIM market is the lack of UK stamp duty relief for OTC AIM share trading, as a result of which trading and therefore trade reporting away from the listing venue is not encouraged. We are of the view that the MiFID rules which aim to increase competition, transparency and ease of execution should also be extended to the AIM market.
- Finally, regional legislation hinders a truly pan-European level playing field. Taking the UK settlement rules as an example, and more specifically Part 7 of the Companies Act 1989, legislation does not currently cover default arrangements for the OTC business. In light of the recent market turbulence and as a result of this inadequacy, there has been increasing pressure on counterparties to avoid reporting trades as OTC, and to report OTC business as "on-exchange" solely to exchanges. Although we, along with other market participants, are exploring a market based solution to this deficiency, we

are of the view that the remit of UK settlement legislation needs to be extended to cover OTC transactions as well. Failure to do so will continue to maintain a barrier to creating a truly pan-European level playing field.

**3. Do you think that MiFID has supported innovation in the equity secondary markets? Please elaborate.**

MiFID has clearly unleashed a wave of innovation in the secondary European equity markets, as demonstrated by the creation of a whole range of new MTFs as well as the establishment of Systematic Internalisers (SIs). These MTFs have introduced new trading methodologies and approaches to trading. New algorithmic trading strategies that have been created for example by dark pools, have demonstrated the innovation spurred by MiFID, to the benefit of all market participants looking for alternatives to the traditional exchange-based trading models.

**Downsides**

**4. Have you faced significant costs or any other disadvantages as a result of MiFID relating to equity secondary markets? If so, please elaborate. Have these been outweighed by benefits or do you expect that to be the case in the long run? If so, please elaborate.**

Although most firms that are associated with European Equity trading will have incurred some costs, the majority of those have probably been marginal. Only a few organisations such as exchanges, MTFs, MDVs, Trade Reporting Firms and a small group of investment banks have borne a larger share of the costs. Much of the innovation has focused on the establishment of market platforms and their costs were shared by participating firms. One example is the creation of Markit BOAT where project costs were shared amongst fifteen investment firms and the platform may now be used by any firm seeking to comply with its trade reporting obligations.

Whilst individual firms would have incurred internal implementation, connectivity and system set up costs, these should have been largely one-off costs that were incurred only when MiFID was first implemented. Over the long term we believe that the cost borne by the market will allow efficiencies to be reaped across trading, reporting and processing.

**5. Have you seen/experienced any unexpected consequences in terms of level playing field arising from the implementation of MiFID provisions relating to equity secondary markets? If so, please elaborate.**

One of the oddities of MiFID is that while it does apply to AIM stocks listed in an EEA Regulated Market, it does not apply to the AIM market as a whole. As a result, trades on AIM stocks solely listed with a Regulated Investment Exchange cannot be reported to venues other than the exchange. We would strongly encourage CESR to look into this issue and address it by extending the application of MiFID to AIM shares.

**Trading Costs**

**6. What impact do you consider that increased competition between equity trading venues is having on overall (i.e. implicit and explicit) trading costs? Please elaborate.**

The increased competition caused by MiFID has had a positive impact on anyone who trades European equities by reducing trading costs. A key factor in achieving this has been the advent of MTFs that have lowered transaction costs from execution to settlement. As evidence, trading of UK equities can now be done at a cost of 0.3 basis points for a price taker as opposed to 0.75 basis points prior to MiFID. Costs for price makers in UK equities have also moved lower.

While the market for data at least temporarily might have become more fragmented, the overall cost of data across Europe has not increased. Indeed, the market dynamics since the advent of MiFID have caused a price drop in many datasets from exchanges, and, at least for now, certain datasets from MTFs are being offered for free. On the trade reporting side, costs have dropped in some instances by more than 90%.

Finally, some venues, including Markit BOAT, have implemented Multi Instance Single Use (MISU) pricing structures, ensuring that users will only be charged once, regardless of the number of systems over which they receive the same information, hereby eliminating multiple data charges.

## Potential fragmentation

**7. Do you think that there has been significant fragmentation of trading and/or liquidity in European equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs, best execution requirements)? If so, please elaborate on those concerns.**

Whilst fragmentation has occurred in the trading of European equities, given that it is a logical outcome of increased competition and listings, in one sense it should be regarded as a measure of the success of MiFID.

Although market data has become more fragmented as a result of the fragmentation in trading, MDVs have successfully consolidated trade data in line with market demand, by offering products combining various data sources in single data feeds and screens.

Since the extent to which the market would fragment was unknown prior to the launch of MiFID, stakeholders have taken much of 2008 to adjust to this new paradigm. Clearly this evolution is a result of principles-based regulation but a process that, we believe, will over the medium term create a truly dynamic and innovative market.

**8. Do you think that MiFID pre- and post-trade transparency requirements adequately mitigate potential concerns arising from market fragmentation?**

In our opinion, any problems over the implementation of the pre- and post-trade transparency requirements have either been addressed already or will be overcome by the market as more sophisticated systems are developed.

## Transparency

**9. Is the categorisation of shares appropriate in relation to: the definition of liquid shares; 'standard market size'; 'orders large in scale'; and 'deferred publication'? If not, please elaborate.**

We are of the view that in general the categorisation of shares is appropriate. However there have clearly been serious issues with the administration of the *CESR Instrument List* that need to be addressed. Over the last year there have been numerous cases where de-listed stocks as well as instruments not even within the scope of MiFID, such as Exchange Traded Funds (ETFs) or AIM stocks, have been added to the CESR list. Markit BOAT continuously monitors the CESR list in order to publish accurate instrument data to its clients and is also in direct contact with regional regulators actively highlighting errors and seeking their correction in each case. That said, to address this issue properly, we are of the view that the introduction of an instrument validation process before official admission of a stock to the CESR list should be implemented.

**10. Do you see any benefits (e.g. no market impact) to dark pools of liquidity (to be understood as trading platforms using MIFID pre-trade transparency waivers based either on the market model or on the type or size of orders)? If so, what are they?**

We are of the view that dark pools of liquidity are important trading venues that perform a beneficial role in European equities trading. In particular, dark pools allow large blocks of shares to be traded with little market impact. Crucially, they will assist overall market liquidity.

**11. Do you see any downsides to dark pools of liquidity (e.g., impacts on the informational content of light order books)? If so, what are they?**

We cannot see any noteworthy downsides to dark pools of liquidity. Whilst some market participants are of the opinion that the volume that is transacted in dark pools might have reduced transactions in light order books, it is our view that these trades have not migrated from light pools but rather from the bilateral OTC market.

**12. Do you consider the MiFID pre- and post-trade transparency regime is working effectively? If not, why not?**

Whilst the MiFID transparency regime generally works effectively, we are of the opinion that there are a couple of issues, particularly in relation to Systemic Internalisers (SIs), that should be investigated and addressed by the regulators:

- Quotes by Systemic Internalisers are mostly regarded as indicative only, given that they generally cannot be interacted with electronically.
- As quotes by Systemic Internalisers are not electronically executable, they are not actively used for price discovery.
- Given the way MiFID is worded, certain firms believe that they can meet their MiFID pre-trade obligations by only quoting in single shares. This would not appear to benefit any market participant.
- Provisions around Systemic Internalisers have not been uniformly interpreted by firms, with some firms classifying over 90% and others classifying just 10% of their flow as SI.

Consequently, we are of the view that some additional work is required around the standardisation of the definition of SIs and the requirements for a firm to report the venue of a trade as SI rather than OTC. We think that these topics need to be investigated and addressed by the regulators, specifically taking into account the beneficiaries as well as the objectives of the SI legislation.

## Data

**14. Do you think that MiFID pre- and post-trade transparency data is of sufficient quality? If not, please elaborate why and how you think it could be improved.**

Prior to MiFID coming into force in November 2007, market participants had not been able to perform extensive testing of systems and procedures. It was hence not surprising that data quality initially suffered to a certain extent, and some of the quality of reporting did not meet expectations. That said we are of the view that data quality has improved significantly over the last year and we would expect it to continue to improve on the back of additional clarification of trade reporting principles. Most data quality issues that could be observed at the beginning of last year were actually related to teething technology issues during new system implementation and have now been successfully addressed.



Markit BOAT is continuously investing significant resources in data surveillance systems and we also maintain a close relationship with all reporting firms in order to seek correction of data where required. Examples of trade surveillance include the review of trade details such as price, quantity and currency as well as monitoring of reporting activity per firm to capture potential over-reporting. In addition, Markit BOAT provides data quality reports to all reporting firms every month as well as on an ad hoc basis when required. Data quality reports are discussed with the reporting firms to reveal and address any specific issues that we may have identified.

Apart from the aforementioned data quality feedback, our reports also track the timeliness of reported trade data with a focus on deferred publication of large trades. Markit has a track record of working with the industry to define best practice and, as a result of our continuous review and dialogue with our contributors, we managed to decrease the percentage of aggregate delayed reported turnover from approximately 40% in April 2008 to less than 15% in November 2008.

**15. Do you think that there has been significant fragmentation of market data in the EEA equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs)? If so, please elaborate on those concerns.**

Whilst there certainly has been some fragmentation of market data, for the majority of shares more than 90% of the data can be found on less than five venues. As a result, MDVs have been able successfully to address the issue and now have systems and pages in place that consolidate the data.

**16. Does the current availability of data facilitate best execution? If not, please elaborate.**

The MiFID pre- and post-trade transparency requirements governing OTC and MTF transactions ensure that investors are now able to access a much wider dataset, which they can use to perform best execution analysis. OTC and MTF trade data can be used in line with a firm's best execution policy and becomes increasingly important when assessing best execution for illiquid stocks.

**17. Do you think that commercial forces provide effective consolidation of data? If not, please elaborate.**

There is no doubt that soon after the implementation of MiFID, data was not aggregated as well as many viewers of market data required. Over the past year, MDVs have responded to their customers' requests and now offer screens and feeds that provide a consolidated view of the data. In helping MDVs to achieve mutual clients' goals, Markit BOAT has produced data implementation guidelines to ensure that data is represented as accurately and consistently as possible. Ultimately, commercial forces have spurred Markit and the MDVs to achieve such consolidation.

## General

**18. Do you think that the implementation of MiFID is delivering the directive's objectives in relation to equity secondary markets (e.g., fostering competition and a level-playing field between EEA trading venues, upholding the integrity and overall efficiency of the markets)? If not, why do you think those objectives have not been met?**

We are of the opinion that MiFID has delivered on its goals of increasing competition, reducing trading costs, and creating a level playing field for the different trading venues, whilst upholding the integrity of the market and increasing its efficiency. Whilst issues such as the definition of Systemic Internalisers, AIM trading and trade reporting, regional settlement provisions and administration of the CESR list require additional attention by regulators, we are of the view that the issue of data fragmentation is being successfully resolved by the industry.

We hope that our comments are of value to you. Please do not hesitate to contact us if you require additional information or if you would like to discuss any of our comments further.

Kind regards,



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