KBL EUROPEAN PRIVATE BANKERS

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

**Question 1: Do you agree with the above analysis on trading capacity and the proposal to introduce a third trading capacity (riskless principal) into transaction reports?**

*Under the current system, we did not experience any difficulties in distinguishing our capacity when reporting transactions. Therefore, we do not really see a use for this third trading capacity.*
*It would rather implicate higher costs for us, in adapting our systems.*

**Question 2: Do you have any comments on the distinction between client and counterparties?**

*No.*

**Question 3: Do you agree with the above technical analysis?**
**Question 4: Do you see any additional advantages in collecting client ID?**
**Question 5: Do you agree with the above technical analysis?**
**Question 6: Do you see any additional disadvantages in collecting client ID?**
**Question 7: Do you agree with this proposal?**
**Question 8: Are there any additional arguments that should be considered by CESR?**

*We are not in favour of introducing such a client ID, for the following reasons:*

1. *Efficiency:*

*We believe that current market abuse rules, and the obligation imposed on banks to control and report any suspicious transactions (under the AML Laws), and to collaborate with competent authorities are already of a high level of efficiency. Indeed, our monitoring framework is not only on the awareness of our front office and dealing room, but also on third level controls. In case of a suspicious transaction, the necessary suspicious transaction reports are filed, containing the client ID. Furthermore, we reply promptly to requests from our competent authorities, who can thus easily obtain the client ID when necessary. Finally, we believe that an efficient system of collaboration between authorities currently exists.*

*We are of the opinion that the existing measures, as described above, meet the objective of fighting against market abuse. Moreover, the consultation paper does not clearly establish a failure of the system, which would implicate a need to strengthen the existing measures.*

*Finally, in order to enable authorities to cross order flow with the objective to detect market abuse by the same client, the only efficient measure would be to introduce one unique ID for clients. Indeed, if national ID's are allowed, or internal ID's per institution, the crossing of orders for the same person, but with different institutions, would be impossible.*

*Another argument against the introduction of such an ID, is the fact that banks would need to perform a "regularisation" exercise, in order to collect such an ID from existing clients. This represents a very heavy workload and would without any doubt take a lot of time to be finalised. And what to do in the meantime with clients for whom no ID has been collected?*

*Two further problems are the cases of orders that are introduced for 1) joint accounts; which ID should be mentioned? and 2) bulk orders; again, which ID should be mentioned?*

*Also, banks often execute or transmit orders for other institutional parties (who in their turn may act for private clients). It will be very difficult and require extensive IT developments, to capture the ID of the end-clients and include it in the transaction reporting (as the system would need to replace the ID of the institutional party by that of its end client). These measures are likely to endanger the "Straight Through Processing" of orders, resulting in a lesser quality of execution for the end clients.*

*Finally, timely execution could be endangered, if our institutional clients would need to transmit (for example, when sending an order by fax) the ID's of underlying clients. They would need to collect these ID's, mention them on the fax order. We would need to copy them (with an operational risk of error) and include them in our transaction reporting. This is very likely to have an impact on timely execution.*

2. *Data protection:*

*Transmitting the ID of our clients is more than likely to constitute a breach of data protection rules. Our clients have a right to privacy and the systematic and automatic transmission of their ID will clearly violate this right. Given the fact that these data would go to a relatively long chain, with several parties intervening, a problem of discretion cannot be excluded.*

*Furthermore, for intermediaries who transmit their clients' orders for execution, there might also be a commercial risk, as their counterparties could identify the most "interesting" clients and try to approach them directly.*

3. *Proportionality:*

*Taken into account the fact that it is not proven that current measures are insufficient, we believe that the obligation to systematically disclose our clients' identity is* ***disproportionate****.*

*This obligation would implicate important costs (IT development) and a risk of harming execution quality for the end client and, even worse, would violate applicable data protection rules.*

**Question 9: Do you agree that all counterparties should be identified with a BIC irrespective of whether they are an EEA investment firm or not?**

*Yes, but we would like to underline that this is quite difficult from a practical point of view. It would only be realistic if ALL firms would have a BIC.*

**Question 10: 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?**

*In order to be efficient, this should probably be done at EU level.*

**Question 11: Is there any other available existing code that should be considered?**

*Not to the best of our knowledge.*

**Question 12: 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)?**

*We would be in favour of the unique securities account, as this would allow us to distinguish between different sub-accounts for institutional clients (for example between their proprietary account and an "omnibus" account).*

**Question 13: What kind of problems may be faced at each of these levels?**

- *Collecting the codes;*
- *Collaboration with non EEA firms: As they will not be subject to the same rules, they will probably not provide with the necessary information. This might result in a system blocking, endangering STP and the quality and speed of execution for the end client;*
- *Problems regarding implementation: IT costs, what to do in case of absence of a code? etc.*
- *Transmission problems, as explained above, might create problems regarding best and timely execution.*

**Question 14: What are your opinions on the options presented in this section?**

*We do not think that they pass the proportionality test. We believe that the new constraints and costs will be a disadvantage for clients and firms and that the added value of these options, compared to the existing system, is not established.*

**Question 15: Do you agree with CESR's proposal on the extension of reporting obligations? If so, which of the two alternatives would you prefer?**

*We think this proposal will ensure that there is a true level playing field. Ad to the two alternatives, we have no preference.*

Ph. Van Dooren
Directeur-Adjoint

M-P. Gillen
Directeur