International
Capital
Market
Association


Mr. Jean-Paul Servais
Chair of MiFID Level 3
**CESR**
11-13 avenue de Friedland,
75008 Paris
France

London, 26 February 2009

*By email*

Dear Mr. Servais,

**CESR Call for Evidence on the technical standards to identify and classify OTC derivative instruments for TREM.**

The International Capital Market Association (ICMA) is the self-regulatory organisation and trade association representing the investment banks and securities firms issuing and trading in the international capital market worldwide.

ICMA welcomes the opportunity to comment on the CESR call for evidence CESR/09-074. We hope that our response will provide more clarity to the method of reporting OTC derivatives. The response advocates a pan-European approach consistent with existing super-equivalent regimes. More detailed points are set out below.

**Question 1: What technical standards do you use or intend to use to classify and identify OTC derivatives?**

**Question 2: If you do not use standards, how do you classify and identify OTC derivatives within your IT systems? Please provide your classification and identification systems where possible?**

1. Transaction reports must contain specific information which is relevant to the type of financial instrument in question and which the competent authority declares is not already in its possession or is not available to it by any other means. The MIFID required reporting fields when completing a transaction report to a competent authority are appropriate from a cash message reporting perspective. However MiFID does not adequately consider the complexity of OTC derivatives.

2. Significant industry concerns highlight the discrepancies with requirements in respect to transaction reporting. The cost incurred by the industry is considerable in this context. The industry is concerned in respect to the potential increase regarding the reporting requirement across the EU for OTC derivatives which the UK regulatory authority requires from a super-equivalent perspective. This again highlights the variance in reporting requirements. The industry again believes appropriate cost benefit analysis should be conducted if this is being considered for implementation across the EU.

3. As a result of the wide range of additional information requirements that competent authorities are able to make under MiFID, obstacles remain to a consistent approach being applied to transaction reporting across the European Union. It was widely understood that MiFID was to provide a common approach to the requirement in this regard. However this does not appear to have been achieved and therefore is resulting in confusion, potential regulatory risk and significant cost to the industry in an attempt to meet differing requirements. If reporting OTC derivatives was to materialise across member states, a pan-European approach in OTC derivative reporting would be needed for the financial impact on firms to be reasonable.

4. It must be stressed that any additional reporting requirement can mean that the industry faces potentially 30 different reporting obligations. Competent authorities therefore need to adopt a consistent approach across the EU and approach the relevant regulator for the information required so that the information obtainable will meet the local requirements in line with the reporting obligation. The requests, and the handling of these requests, need to be consistent across the EU. Failure to ensure this will lead to multiple reporting requirements to different competent authorities which will go against the spirit of MiFID transaction reporting requirements.

5. In this context, some member states have already implemented super-equivalent requirements as regards OTC derivatives. These member states have therefore gained expertise and experience in this area. For instance, given the UK FSA super-equivalent regime and the significant level of activity already reported to this competent authority, we would urge CESR to seriously consider the current FSA approach when designing a consistent European approach.

6. The standards for identifying and classifying OTC derivatives for regulatory reporting purposes must also be fully aligned with the corresponding standards used for proposals for central clearing of OTC derivative trades, such as the McCreevy initiative for credit derivatives clearing. The inefficiencies of doing otherwise are obvious.

**Question 3: What characteristics do you use to create identifiers for OTC derivative contracts for your system (if relevant)? Please provide practical examples.**

7. Although the industry is keen to support regulators to ensure they have at their disposal the appropriate market abuse capability, the cost of any additional requirement needs to be proportionate to the expected benefit of such changes.

8. The CESR consultation paper does not specifically refer to AII. We believe that the industry partnership with regulators to reach the AII method was vital in order to obtain a satisfactory solution supported by the industry for the purpose of transaction reporting. Substantial discussions have already occurred regarding exchange-traded derivatives in this context. The initial regulatory approach to the requirements was not considered appropriate by the industry, which highlighted the potential costs and complexities of the suggested approach to CESR and the regulators.

9. The OTC derivatives market is even more complex than the exchange-traded derivatives one. This market relies on bespoke instruments that may be created for one trade only. The additional cost and the time spent on sourcing an identification code for example for such instruments would be disproportionate in comparison of the expected benefits. OTC derivatives are complex instruments which are often difficult to input into what is effectively currently a cash message system. Interestingly the UK transaction reporting regime provides a descriptive field for free text describing the instrument being traded (e.g. xxx). Such considerations need careful attention to avoid heavy additional costs on the industry.

10. Given the bespoke nature of OTC derivatives, the members we represent therefore favour a method whereby a comprehensive cost benefit analysis would be conducted on the impact of reporting OTC derivatives. It is perceived by the industry that using ISINs or CFIs is an inappropriate approach to address this issue and would create significant cost which is perceived disproportionate to the benefit of reporting. This was highlighted by the industry with the potential costs for reporting exchange traded instruments, as communicated to CESR by FESE and the industry. This analysis would serve as a basis for further work between the industry and regulators on finding an appropriate solution at a reasonable cost for the industry.

We remain at your disposal for any further questions you may have regarding this issue,

Yours faithfully,

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