

**REPORT BY THE CNMV ADVISORY BOARD ON THE CESR
CONSULTATION PAPER "TECHNICAL ADVICE TO THE EUROPEAN
COMMISSION IN THE CONTEXT OF THE MIFID REVIEW –
TRANSACTION REPORTING"**

The Advisory Board of the National Securities Market Commission is the Commission's advisory body. The Advisory Board consists of representatives of market members in the official secondary markets, securities issuers, investors and bodies with powers in the area of the securities markets. CESR has issued a consultation paper on technical advice to the European Commission in the context of the MiFID review dealing with transaction reporting.

The document refers basically to the following issues:

- Whether or not it is appropriate to introduce a third trading capacity to the existing Principal (P) and Agent (A), by establishing the category of "riskless principal" to identify cases where the entity is acting on its own account and on behalf of a client.
- Whether or not it is appropriate to incorporate a client or counterparty identification code in transaction reporting.
- Whether or not it is advisable to establish European-level identifiers for clients and counterparties.
- The form of identifying the end client in a transaction when there is a chain of execution in which entities receive and transmit orders.
- The establishment of a reporting requirement for members of organised markets that are not financial institutions.

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?

The Committee is aware that entities have recently had to adapt to the transaction reporting system. Consequently, any amendments proposed to this new system should be of evident utility and limit costs as far as possible.

Within this framework, the Committee considers that the inclusion of a third reporting category, riskless principal, is meaningful in that it contributes to the ultimate purpose of transaction reporting, particularly in the communication of transactions between supervisors.

2. Do you have any comments on the distinction between client and counterparties?

The Committee considers that CESR's comments on the concept of client and counterparty are appropriate and it agrees with the proposal to identify the status in which each one is acting vis-à-vis the reporting entity.

3. Do you agree with the above technical analysis?

The Committee agrees with CESR's analysis as regards the advantages of including a client identifier in transaction reporting.

4. Do you see any additional advantages in collecting client ID?

See previous reply.

5. Do you agree with the above technical analysis?

The Committee considers that the analysis of the weaknesses of including client ID in transaction reporting is correct. We refer to our reply to question 6.

6. Do you see any additional disadvantages in collecting client ID.

The identification of clients in transaction reporting should always be the duty of the entity with which the client has the relationship. It would be problematic to require one entity to report the ID to another so that the latter could inform the supervisor. Specifically:

- Firms would be giving the names of their clients to other firms. This raises not only issues of data protection but also issues of a commercial nature regarding the client and would jeopardise firms' legitimate right to confidentiality with regard to their relations with clients.
- In the event of problems with reporting, the supervisor should have a direct line to the entity that failed to identify its client (without intermediaries). It is meaningless to require an entity to report the identity of clients other than its own since, in the event of problems, it will not be able to provide clarification. Therefore, from the outset, the disclosure and subsequent clarification should be done by the entity that has the relationship with the client, at each level of the relationship (if there are several levels).
- The reporting entity would be given an added level of responsibility, which is unfair and is a potential complication when trying to ascertain who was at fault in the event of an incorrect disclosure.

For all the foregoing reasons, this Committee considers that the entity which has the client directly is the one that should report the client's identity to the supervisor.

7. Do you agree with this proposal?

Yes. The Committee agrees with CESR that it would be useful to include a client or counterparty ID code in transaction reporting.

8. Are there any additional arguments that should be considered by CESR?

See reply to question 6.

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

The Committee would welcome any progress with regard to establishing a European ID mechanism, both of investment firms and of companies and individuals.

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?

See reply to question 9.

11. Is there any other available existing code that should be considered?

See reply to question 9.

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)?

See reply to question 9.

13. What kind of problems may be faced at each of these levels?

Establishing a Europe-wide coding system is a major task and would undoubtedly generate costs for firms and governments. However, it would be an interesting medium-term objective.

14. What are your opinions on the options presented in this section?

Based on the answer to question 6, it is not recommendable for a firm that receives and transmits an order to report the client ID through a third entity (the one executing the transaction).

Each entity should be responsible for providing the supervisor with the identity of its own clients only.

In any event, the Committee believes that imposing this new obligation on entities that receive and transmit orders is a significant modification of the current system and would increase those entities' costs; accordingly, it should be preceded by a detailed analysis of those implications.

Meanwhile, the Committee considers that the powers that national supervisors currently have to request information from supervised entities is sufficient to enable them to obtain the necessary information.

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

The Committee agrees with CESR's position in this regard.