

**EBF RESPONSE TO THE CESR's CALL FOR EVIDENCE ON THE TECHNICAL
STANDARDS TO IDENTIFY AND CLASSIFY OTC DERIVATIVE
INSTRUMENTS FOR TREM****CESR Ref.: 09-074****General remarks**

1. The European Banking Federation¹ (EBF) welcomes the opportunity to respond to the call for evidence of the Committee of European Securities Regulators (CESR) on the technical standards to identify and classify over the counter (OTC) derivative instruments for CESR's Transaction Reporting Exchange Mechanism (TREM).
2. The EBF sees the CESR's consultation in the light of the Committee's and the European Commission's concerns of enhancing the information available about the markets in derivative instruments. Whilst the Federation shares the objective of enhancing financial stability it therefore wishes to make at this occasion some general comments about the extension of the MiFID reporting requirements to OTC derivative instruments.
3. As it currently stands, this extension has been undertaken with regard to certain kinds of derivatives in just a few countries, meaning that there is limited experience within the broader membership of the EBF about the more technical aspects of the CESR's consultation. As concerned institutions will respond directly to the CESR's consultation the current paper refrains from commenting on the technical aspects of the CESR's consultation.

Reporting of derivatives trading under the MiFID

4. OTC derivatives are traded directly between the counterparties, meaning that they are tailor-made products which lack standardisation. OTC derivatives are typically also not sold on but held to maturity by the initial buyer. Standardisation of these instruments would be near-impossible in most cases and is not seen as desirable by market participants.
5. On the basis of the option provided by the MiFID a few Member States have decided to extend reporting obligations to OTC derivatives. In these countries there is still uncertainty about how to implement the reporting requirements in practice. Reporting is mostly done by filling the MiFID's standardised reporting fields with free text, which is contrary to the intention of the reporting fields of facilitating automatic analysis.

¹ Set up in 1960, the European Banking Federation is the voice of the European banking sector, with 2.4 million employees in 31 EU & EFTA countries. The EBF represents the interests of some 5000 European a.i.s.b.l. banks: large and small, wholesale and retail, local and cross-border financial institutions.

6. It is therefore **unclear that the extension of the MiFID reporting requirements to OTC derivatives will indeed lead to the desired result**, which is understood to lie mainly in the identification of potential insider trading. Before a mechanism for the exchange of information about OTC derivative trading between regulators could usefully be considered **a discussion should first be held about the functionality of the reporting from market participants to supervisors**. This can be done on the basis of the experience that is currently being gained in those Member States where the MiFID reporting requirements have been extended to OTC derivatives.

Central Counterparty clearing of OTC instruments

7. The European Banking Federation supports the creation of central counterparty (CCP) clearing in Europe for credit default swaps (CDS), which has the objectives of ensuring adequate regulatory oversight of the infrastructure by European supervisors, of helping to reduce counterparty risks, and of increasing market transparency.
8. It is not entirely clear from the CESR's consultation whether its objectives in requiring the reporting of OTC trades lie primarily in issues around financial stability, detection of market abuse, or other purposes. To the extent that these objectives might overlap with those of reporting OTC trades to supervisors and of exchanging such information between national supervisors, it should be considered whether they are at least partly achieved for those significant parts of the CDS market that are sufficiently standardised to be susceptible for central clearing.
9. Once that central counterparty clearing has been established for credit default swaps, depending on the set-up of the clearing structure it might also be more straight-forward to establish reporting solutions for these instruments as a result of the degree of standardisation that will be necessary for central clearing. However, this should be explored in more depth at a later point in time.

Concluding remarks

10. The European Banking Federation esteems that it is **premature to consider ways of exchanging information about OTC derivatives between national authorities where there is little experience with the initial reporting of such information from market participants to the national supervisory authorities**. More experience with the initial reporting should therefore be gained at this stage. This should in particular include an assessment of product categories and main product characteristics to establish a common basis of understanding between market participants.
11. In the absence of such clarification OTC derivative reporting requirements would involve the double danger of meaningless reporting, or worse, misleading reporting and mis-interpretations by the markets where the categorisation of products is interpreted in different ways.

12. In the meantime, the EBF supports efforts of establishing central clearing for credit default swaps which might be conducive to at least some of the intended objectives in the shorter term, and might help to identify appropriate reporting solutions in the medium term.