

Set up in 1960, the European Banking Federation is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

Response to CESR Consultation Paper on its draft technical advice to the European Commission in the context of the MiFID review – equity markets

Key Points

- The EBF supports CESR's proposals to improve the quality of post-trade transparency. It is appropriate to undertake a number of steps to facilitate commercial solutions. Further-going measures should only be considered if these steps do not prove successful.
- The EBF also supports many of the additional measures proposed by CESR. This includes, amongst other things: the adaptation of the Large in Scale pre-trade transparency waiver to the changed trading environment; the extension of transparency obligations to equity-like instruments; and efforts to bring down the cost of market data.
- On the competition between different trading venues, the EBF believes that the distinction between regulated markets, Multilateral Trading Facilities and Systematic Internalisers is clear in theory. Some banks are concerned that the differences are becoming blurred in practice. For the EBF, this is mainly a matter of the proper enforcement of the applicable rules.
- The EBF is concerned about CESR's proposal to shorten the publication delays from three minutes to one minute. Banks believe that printing within one minute would not be possible for manually handled trades. The current rules are clear, in requiring publication as soon as possible.

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Related documents: CESR consultation document: <http://www.cesr-eu.org/popup2.php?id=6548>

General remarks

The European Banking Federation welcomes CESR's thorough work to review the issues addressed in the current consultation paper. At the same time, the EBF would like to express disappointment about the short timeframes given to the industry to respond to this and other consultations that are ongoing in parallel. The Federation is aware that this is a result of the Commission's timetable and that CESR has already extended the timelines, as compared with the Commission's initial request. Nevertheless, such short timing inevitably impinges on the quantity of input that can be collected for the EBF's responses, and therefore ultimately also on the quality of the industry's feedback.

On the general functioning of the equity markets, the EBF would like to make the following three observations:

- Pre-trade transparency is overall working well, in the view of European banks. If any, only a few adjustments are needed.
- Significant improvements are needed in the area of post-trade transparency. The EBF welcomes CESR's proposals in this respect, of undertaking a comprehensive number of steps intended to facilitate commercial solutions. Further-going measures should only be considered should these steps ultimately not prove successful.
- In considering any changes to the current regime, CESR should be mindful not to undermine the significant improvements that have been achieved with the introduction of MiFID. This is in particular with regard to the diversity of trading platforms, which the European banking industry considers an important achievement.

On the already much-discussed question of the distinction between regulated markets, Multi-lateral Trading Facilities (MTFs), Systematic Internalisers, and broker-dealer crossing networks, the EBF believes that, as an overarching principle, the same rules must apply to the same business models. The key factor that distinguishes crossing networks from the former three functions lies in the discretionary aspect in the execution of trades. While European banks feel that this distinction is clear in theory, some banks have made the experience that the distinction is becoming blurred in practice.

The EBF sees this mainly as a matter of proper enforcement of the rules. It should be clear, for example, that deals facilitated OTC must only involve orders made by the broker's clients and must not be executed against the broker's own books; as this latter sort of trading is clearly defined as Systematic Internalisation. Neither would it be acceptable that market makers operate on crossing networks.

European banks furthermore agree that the size of trading conducted through crossing networks must be monitored. CESR's statement, at its open hearing of 17 May, that the relative percentage of OTC-conducted trading of total trading has remained stable since the introduction of MiFID is considered reassuring in this respect. As opposed to this, strong relative growth of the OTC markets at the expense of pre-trade transparent markets would be considered problematic, in view of the negative impact on the price-finding process.

The EBF notes, in this context, that six banks with important internal crossing operations launched on 24 May an initiative whereby they will regularly publish the volumes of cash equity trades crossed in their automated crossing systems.¹ The EBF is hopeful that this initiative will help to clarify some aspects of the crossing-networks discussion.

Responses to CESR's specific questions

Transparency

Question 1: Do you support the generic approach described above?

The EBF agrees in principle with CESR's proposals. It is important that exemptions from pre-trade transparency requirements are continuously available under certain circumstances. At the same time, the EBF concurs with CESR's statement that the waivers were designed under different market circumstances than today and warrant adjustments.

The EBF also supports CESR's proposals to clarify the application of the waivers, thereby achieving greater certainty for market participants and facilitating supervisory convergence. Ideally, the EBF would however welcome that greater flexibility be introduced in the Level 1 rules so that potential subsequent adjustments to the waivers could be achieved through rules changes at either Level 2 or Level 3 of the Lamfalussy process.

Question 2: Do you have any general comments on the MiFID pre-trade transparency regime?

European banks are of the view that the MiFID's pre-trade transparency regime is overall working well. Improvements are primarily necessary in the area of post-trade transparency.

Large in scale orders

Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.

Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal?

As a general remark, European banks believe that the LIS waiver remains an important exemption for certain types of trading, and that it should be retained in principle. Inevitably, large in scale is however a relative concept and must be applied with a sufficient degree of flexibility. While the waiver must not be used in an inflationary way, it is true that average order sizes have declined dramatically over the last two to three years. A reduction in the calibration of this waiver would therefore be appropriate. The order of 25% suggested by CESR seems an appropriate proposal.

¹ Cf. <http://www.markit.com/en/media-centre/press-releases/detail.page?dcr=/markit/PressRelease/data/2010/05/24>.
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At the same time, the EBF notes that the present rules impose the highest LIS threshold on shares with the lowest average daily turnover (ADT). For shares with comparatively lower turnover rates, the LIS waiver is defined at 10% of ADT. This is as compared to 1% for the most liquid shares. Some EBF members have expressed the view that the proportionate difference between the thresholds should be reviewed.

Question 5: Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1, applying the LIS waiver to stubs; or 2, not applying the waiver to stubs)? Please provide reasoning for your views.

The treatment of stubs is of secondary importance, in the view of European banks; as long as the proper treatment of and exemption for the parent order is ensured. It is the main order that is subject to the risk of market impact and must be protected. Once that is ensured, the EBF does not see a problem in subjecting the stub to pre-trade transparency (i.e., Option 2).

Reference price waiver

Question 6: Should the reference price waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?

As rightly set out by CESR, the rationale for applying a reference price waiver is different from the large in scale waiver and from concerns about market impact. Rather, the reference price waiver is granted because pre-trade information for passive price taking systems does not add any value to the markets. This consideration has not changed since the introduction of MiFID. However, maintaining the reference price waiver is of course subject to the exceptional use of the waiver.

Negotiated trades

Question 8: Do you have any specific comments on the waiver for negotiated trades?

The EBF agrees that the negotiated trades waiver should be retained, although clarification by CESR on the use of this waiver would be welcomed.

Order management facilities

Question 9: Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?

The EBF agrees that the order management facility waiver should be retained.

Systematic Internalisers

Question 10: Do you consider the SI definition could be made clearer by:

- i) removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation?*
- ii) providing quantitative thresholds of significance of the business for the market to determine what constitutes a ‘material commercial role’ for the firm under Article 21(1)(a) of the MiFID Implementing Regulation.*

The EBF supports a clarification of the circumstances under which investment firms would or would not be considered Systematic Internalisers. The criteria CESR has identified for further clarification are also the right ones, i.e. what constitutes materiality and what is meant by non-discretionary rules and procedures.

However, European banks do clearly not believe that option i) would be helpful in any way. The discretionary aspect of order execution is precisely what distinguishes OTC business from other ways of order execution, including systematic internalisation.

As regards CESR’s question ii), the EBF believes that market share must be taken into account.

Question 11: Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?

Question 12: Do you agree with the proposed minimum quote size? If you have a different suggestion, please set out your reasoning.

Question 13: Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.

Question 14: Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?

Question 15: Have you experienced difficulties with the application of ‘Standard Market Size’ as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify. Question 16: Do you have any comments on other aspects of the SI regime?

The small number of brokers who have chosen to become SIs makes it difficult, if not impossible, to adjust the SI requirements at this point. Further experience must be gathered to assess these questions. Of course, proper enforcement of SIs’ compliance with the existing obligations must be ensured.

More generally however, there does indeed seem to be a good deal of confusion around the definition of SIs and even around the overarching intention of the SI regime. The EBF would

welcome further clarification in this respect, including considerations as to the specific type of business that is meant to be captured by the definition.

Post-trade information

Question 17: Do you agree with the proposed multi-pronged approach to improve the quality of post-trade information?

The EBF concurs with CESR that high quality of post-trade transparency is of utmost importance to ensure the proper functioning of the equity markets. The EBF also welcomes CESR's considerate deliberations. European banks agree, in particular, that there is not a single solution to improve the quality of data, but that there is rather a number of different issues to be addressed in a targeted way.

The EBF furthermore agrees with the proposals made by CESR in this respect, including amendments to MiFID to set out standards for the publication of post-trade transparency information and other amendments to MiFID, intended to provide greater clarity on the disclosure requirements.

Publication delays

Question 18: Do you agree with CESR's proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.

Question 19: In your view, would a 1-minute deadline lead to additional costs (e.g. in terms of systems and restructuring of processes within firms)? If so, please provide quantitative estimates of one-off and ongoing costs. What would be the impact on smaller firms?

European banks do not agree with these proposals. As clearly set out by CESR, the difficulties that have been observed are due to shortcomings in the enforcement of the current rules, rather than any shortcomings with the existing legal texts. The EBF would call on CESR and its member authorities to address such problems directly at the source.

In particular, the EBF would be opposed to reducing the publication deadlines to one minute for all trades. Automatically executed trades should be reported much quicker. In the experience of European banks, this is already the case. If competent authorities however detect that automatically executed trades are not printed within seconds, this is a clear case of enforcement.

Reporting within one minute would however not be possible for manually handled trades. The EBF would be greatly concerned if CESR were to recommend the application of a one-minute reporting delay for these trades. Besides, it is not clear to the EBF what would be the added value of their reporting within one minute, instead of three.

Deferred publication

Question 20: Do you support CESR's proposal to maintain the existing deferred publication framework, whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?

Question 21: Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.

Question 22: Should CESR consider other changes to the deferred publication thresholds so as to bring greater consistency between transaction thresholds across categories of shares? If so, what changes should be considered and for what reasons?

Question 23: In your view, would i) a reduction of the deferred publication delays and ii) an increase in the intraday transaction size thresholds lead to additional costs (e.g. in ability to unwind large positions and systems costs)? If so, please provide quantitative estimates of one-off and ongoing costs.

CESR should bear in mind the objective of the possibility to defer publication, i.e. to allow market participants to offset risk without having a market impact. This is of great significance for large trade sizes, measured in relative terms as compared to the average daily turnover of a share. The proposed time limits of 60 and 120 minutes are seen as too short to cover the risks especially for shares with low ADT. Some EBF members have suggested that 180 and 240 minutes would be more appropriate.

In any case, once the risk is unwound, publication should be immediate. This is in the first instance a matter of enforcement, rather than revealing any shortcomings of the rules as such.

The functioning of the current regime should be assessed, in a first instance, on the basis of whether or not deferred publication remains the exemption rather than the rule, as it should be. The EBF therefore believes that quantitative findings are necessary to inform the further debate.

In any case, the EBF is concerned about CESR's proposal to reduce the publication delay for the largest trades from three days to the end of the trading day. For these largest trades, the end of the trading day would not allow for sufficient time to unwind risk. Rather, the current rules already require trade publication as soon as the risk is unwound, and publication is often done faster than after three days.

Should CESR nevertheless pursue the proposal to shorten the publication delay from three days to the end of the trading day, the EBF suggests that "end of trading day" is changed to a 24 hours-timeframe in order to accommodate Large in Scale trades, which are often executed close to the end of the trading day.

Application of transparency obligations for equity-like instruments

Transparency obligations for equity-like instruments

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):

- DRs (whether or not the underlying financial instrument is an EEA share);
- ETFs (whether or not the underlying is an EEA share);
- ETFs where the underlying is a fixed income instrument;
- ETCs; and
- Certificates.

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

Question 25: If transparency requirements were applied, would it be appropriate to use the same MiFID equity transparency regime for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). If not, what specific aspect(s) of the MiFID equity transparency regime would need to be modified and for what reasons?

Question 26: In your view, should the MiFID transparency requirements be applied to other 'equity-like' financial instruments or to hybrid instruments (e.g. Spanish participaciones preferentes)? If so, please specify which instruments and provide a rationale for your view.

The EBF would support the extension of transparency obligations to the above-mentioned products.

However, any change in scope needs to be well communicated to the industry, be consistently defined and interpreted by all Member States, and be implemented on a timescale which allows sufficient time for the required system enhancements. There should be a central CESR process for ensuring that questions relating to product coverage can be resolved easily and consistently. Furthermore, it might be necessary to thoroughly analyse pre-existing national legislation for the mentioned products in order to avoid any duplicative or worse, contradictory rules.

Consolidation of transparency information

Approved Publication Arrangements

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for Approved Publication Arrangements (APAs)? If not, what changes would you make to the proposed approach?

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If

so, what changes would you make to the requirement?

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape (as described under 4.1.2 below)?

The EBF agrees with CESR's general considerations in respect of consolidation of transparency information, including in particular the significance of full and meaningful access to post-trade transparency data. While the EBF does not at this stage exclude the possibility of further-reaching regulatory intervention such as a publicly sponsored consolidated tape, it believes that alternative and lighter measures should first be tried. In any case, improvements to the quality of information are a necessary pre-condition for any further steps.

CESR's proposals in respect of Approved Publication Arrangements certainly go in the right direction, and the EBF would support further work along the lines proposed by CESR. Going forward, it should lie in the responsibility of the newly to be founded European Securities and Markets Authority to clarify and enforce the standards.

In addition, the EBF believes that a vital condition for a sustainable solution lies in the clarification of the ownership of data, in order to enable consolidation without prohibitive costs. In particular, it must be defined who owns which data, from which moment onwards. In the view of the EBF, investment firms own information pertaining to their trades from the time when the order is entered into the trading system. The trading system then confirms the order with a timestamp, which determines the priority of the order. It is currently unclear who owns the order once a timestamp has been attached to it. It is also unclear who owns information when an order has been (partly) executed and the information of this (partial) execution has been sent to the investment firm. Again, the EBF's view is that such information should be understood to belong to the investment firm, enabling this investment firm to consolidate all information of trades executed by itself and by other investment firms without being charged for this information by the trading venue.

Trading costs

Question 31: Do you believe that MiFID provisions regarding cost of market data need to be amended?

Question 32: In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.

European banks are indeed concerned about the current costs of trading data. CESR's proposal that it should be possible to acquire pre- and post-trade data separately from each other would be a helpful improvement. In addition, the EBF has in the past pointed out that data sets are in some markets similarly bundled for a number of countries, preventing users to acquire only the data pertaining to country A but forcing them to purchase the data sets for countries B and C at the same time. Banks would request that such forced "bundling" of data should also be undone.

MiFID Transparency Calculations

Question 34: Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?

The EBF is unconvinced about the added value of such requirements.

European mandatory consolidated tape

Question 34: Do you support the proposed approach to a European mandatory consolidated tape?

Question 35: If not, what changes would you suggest to the proposed approach?

Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?

Question 37: In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

The EBF does not consider the introduction of a European mandatory consolidated tape appropriate at the current point in time. Whilst not excluding such a solution altogether, the European banking industry requests that less interventionist measures first be duly tested. This includes for example CESR's proposal of Approved Publication Arrangements. Banks expect, indeed, that such solutions – in combination with additional measures such as those suggested by CESR in respect of greater standardisation in the way of publication – might be sufficient to allow data vendors to provide the market with the desired substance and quality of information.

Regulatory boundaries and requirements

Regulated markets vs. MTFs

Question 38: Do you agree with this proposal? If not, please explain.

Question 39: Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.

Question 40: In your view, what would be the benefits of the proposals with respect to organisational requirements for investment firms and market operators operating an MTF?

Question 41: In your view, do the proposals lead to additional costs for investment firms and market operators operating an MTF? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

European banks have not experienced any problems related to the proposals made by CESR. The EBF would be interested to understand better the rationale of CESR's proposals. On the basis of the information currently available, banks do not see any added value in the above suggestions.

Investment firms' internal crossing systems

Question 42: Do you agree to introduce the definition of broker internal crossing process used for the fact finding into MiFID in order to attach additional requirements to crossing processes? If not what should be captured, and how should that be defined?

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring investment firms to establish an MTF for the execution of client orders ('crossing systems/processes becoming an MTF)?

a) What should be the basis for determining the threshold above which an investment firm's crossing system/process would be required to become an MTF? For example, should the threshold be expressed as a percentage of total European trading or other measures? Please articulate rationale for your response.

b) In your view, should linkages with other investment firms' broker crossing systems/processes be taken into account in determining whether an investment firm has reached the threshold above which the crossing system/process would need to become an MTF? If so, please provide a rationale, also on linking methods which should be taken into account.

Question 45: In your view, do the proposed requirements for investment firms operating crossing systems/processes lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

The EBF welcomes CESR's recognition that internal crossing networks are indeed different from MTFs, and that investment firms should not be forced to alter their systems so as to match the definition of alternative systems. However, the definition applied by CESR for broker operated crossing systems (cf. footnote 21 of CESR's paper) seems too broad to the EBF. Specifically, client orders executed against brokers' own account orders should not be

captured, as this rather constitutes systematic internalisation. Instead, the definition of crossing systems is mainly based on the discretionary aspect in the execution of orders.

Therefore, the EBF also supports CESR's proposals of adopting a specific regime for internal crossing networks.

MiFID options and discretions

Waiver of pre-trade transparency obligations

Question 46: Do you think that replacing the waivers with legal exemptions (automatically applicable across Europe) would provide benefits or drawbacks? Please elaborate.

The EBF supports the objective of harmonisation. However, it seems difficult to encode these exemptions into hard law, without undermining the necessary flexibility in their interpretation. Certainly, such definitions could not be part of the Level 1 texts, but might rather be defined at Level 2 or Level 3.

Determination of liquid shares

Question 47: Which reasons may necessitate the application of both criteria?

Question 48: Is a unique definition of liquid share for the purposes of Article 27 necessary?

Question 49: If CESR were to propose a unique definition of 'liquid share' which of the options do you prefer?

- a) apply condition a) and b) of the existing Article 22(1), or*
- b) apply only condition a), or*
- c) apply only condition b) of Article 22(1)?*

Please elaborate.

While consistency of approach in the determination of liquid shares is important, it must be borne in mind that volatility and liquidity are not absolute concepts. Rather, they depend on specific markets and market situations. The EBF is therefore unsure about the criteria proposed by CESR for the determination of liquid shares.

Immediate publication of a client limit order

Question 50: Is this discretion (for Member States to decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market and/or an MTF) of any practical relevance? Do you experience difficulties with cross-border business due to a divergent use of this discretion in various Member States?

Question 51: Should the discretion granted to Member States in Article 22(2) to establish that the obligation to facilitate the earliest possible execution of an unexecuted limit order could be fulfilled by a transmission of the order to a RM and/or MTF be replaced with a rule?

The EBF supports CESR's tentative conclusions, i.e. that the discretion be directly granted to investment firms. While the discretion is of varying importance in different markets, it should in any case not be abandoned.

The EBF is however unsure about the intention and implications of §123, which seems to invite investment banks to ignore client instructions. The EBF would be grateful for clarification in this respect. Many clients do not want their orders to be automatically transmitted to regulated markets or MTFs, and banks should therefore not be forced to do so.

Requirements for admission of units in a collective investment undertaking to trading on an RM

Question 52: Should the option granted to Member States in Article 36(2) of the MiFID Implementing Regulation be deleted or retained? Please provide reasoning for your view.

RESPONSES TO QUESTIONS - ANNEX II

Reference data

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

Yes. The identification of trade venues should however be limited to regulated markets, MTFs and Systematic Internalisers. Requiring the identification of OTC venues would in effect mean to reveal one counterparty of the trade, which would in many cases have a disturbing effect on the price formation process.

Question 2: Do you agree that the unit price should be provided in the major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.

Yes.

Exchange of shares determined by factors other than the current market valuation of the share and non addressable liquidity

Question 3: Do you agree that each of the above types of transactions would need to be identified in a harmonised way in line with table 10? If not, please specify reasons.

Question 4: Are there other types of non addressable liquidity that should be identified? If so,

please provide a description and specify reasons for each type of transaction.

The EBF believes that these requirements should be subject to a proper cost-benefit analysis before being implemented. A priori, banks do rather not see any added value in these proposals. Instead, banks would expect substantial costs arising from them, mostly due to the necessary adaptations to the IT infrastructure. Adding the requested information is also expected to lead to substantially increased operational risk.

Identification of dark trading

Question 5: Would it be useful to have a mechanism to identify transactions which are not pre-trade transparent?

Question 6: If you agree, should this information be made public trade-by-trade in real-time in an additional field or on a monthly aggregated basis? Please specify reasons for your position.

Question 7: What would be the best way to address the situation where a transaction is the result of a non-pre-trade transparent order executed against a pre-trade transparent order?

With respect to question 5, the EBF would welcome a mechanism to identify transactions which are not pre-trade transparent.

With respect to question 6, European banks have a preference for the second option, i.e. publication on a monthly aggregated basis. Banks believe that trade-by-trade information is not necessary. Aggregated data would rather provide a better overview.

Unique transaction identifier

Question 8: Do you agree each transaction published should be assigned a unique transaction identifier? If so, do you agree a unique transaction identifier should consist of a unique transaction identifier provided by the party with the publication obligation, a unique transaction identifier provided by the publication arrangement and a code to identify the publication arrangement uniquely? If not, please specify reasons.

Yes. The EBF believes that the unique transaction identifier should be provided by the party holding the publication obligation.

Cancellations

Question 9: Do you agree with CESR's proposal? If not, please specify reasons.

No. The EBF does not see any value in this requirement. If CESR nevertheless decides to pursue the proposal, the Federation would request that this include a thorough cost-benefit analysis. Banks would foresee substantial costs resulting from such requirements, mostly due

to the necessary IT changes and due to substantially increased operational risk linked to the additional information.

Amendments

Question 10: Do you agree with CESR's proposal? If not, please specify reasons.

Again, the EBF does not at this stage see any value in this requirement, but only additional costs. If CESR continues to see merit in this proposal, the EBF believes that a cost-benefit analysis will be necessary.

Negotiated trades

Question 11: Do you agree with CESR's proposal? If not, please specify reasons.

At present, as well described by CESR, regulated markets, MTFs and OTC publication arrangements already provide indications as to whether or not the transaction is a negotiated trade (cf. MiFID implementing regulation art. 27 (1) (c)). A harmonised requirement for market participants to indicate negotiated trades would require extensive system changes, which the EBF expects would imply more costs than added value. Alternatively, CESR could consider encouraging some standardisation in the way in which the regulated markets, MTFs and OTC publication arrangements publish this information.

RESPONSES TO QUESTIONS - ANNEX III

Question 1: Do you agree with CESR's proposals? Are there other scenarios where there are difficulties in applying the post-trade transparency requirements?

Yes.