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*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.*

## **MiFID**

### **EBF Response to CESR Consultation Paper on the Classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR members (CESR/09-618)**

#### **Key Points:**

- The EBF is not convinced that the exchange of transaction reports for OTC derivatives instruments would generate any considerable benefits. There is today little experience with the reporting of such transactions to regulators, and with the use of data received through these reports by regulators.
- If CESR insists on the need to establish a mechanism for the exchange of such data between regulators, the proposed system for the classification and identification of instruments seems appropriate in most aspects.
- Given the uncertain added value from the proposed OTC derivatives transaction report mechanism, the introduction of such a mechanism should however not lead to changes to firms' current reporting requirements and should avoid any additional costs – direct or indirect – for industry participants.
- Furthermore, care must be taken to thoroughly coordinate a possible OTC derivatives transaction report mechanism with other initiatives concerning the reporting of and information requirements around OTC derivatives. Specifically, the evolving role of data repositories must be taken into account.

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Related documents: CESR consultation document: <http://www.cesr-eu.org/popup2.php?id=5876>

### General remarks

The European Banking Federation (EBF) supports regulators' and policy-makers' efforts to ensure that sufficient information is available to the public authorities to supervise the OTC derivatives markets, which have experienced important growth over the past years. A few Member States have therefore chosen to extend the MiFID transaction reporting requirements to some kinds of derivatives. **The EBF remains however to be convinced of the added value that CESR would expect from the exchange of such data between regulators.**

If CESR nevertheless deems it useful to extend its Transaction Reporting Exchange Mechanism (TREM) for the supervisory exchange of reported data to thus reported derivatives transactions, this must be done bearing in mind the **questions that have arisen over the past two years with the reporting of derivative transactions from firms to supervisors.** As the largest number of OTC derivatives are not standardised financial instruments, but contracts concluded bilaterally between buyer and seller, automated reporting is difficult to achieve in a meaningful way. More experience has to be gained with the reporting of OTC derivatives to regulators in a way that is both manageable to process for regulators, and sufficiently automated in nature and clear in structure to be efficiently handled by firms.

With regard to the current consultation, European banks would therefore caution that the **extension of TREM to OTC derivatives should not – certainly at this stage – lead to any changes for banks as regards their reporting (where currently required) to regulatory authorities.** Even limited changes to the existing OTC derivatives reporting systems could imply a need for significant adjustments. The resulting costs would not be justified, in the view of banks, as long as the precise objective of the exchange of transaction reports between regulators remains to be clarified. As one example, if systemic stability was identified as the main objective in exchanging transaction reports, then it might be appropriate to consider ways of exchanging aggregated data, rather than individual trade data.

**Besides direct costs, the EBF would also caution that the extension of TREM to OTC derivatives should neither lead to indirect costs on banks, through the detour of the regulatory community.** In the absence of a clearly defined objective for the exchange of transaction reports, no additional costs resulting from the introduction of such a mechanism would be justified.

The Federation would furthermore like to point out the need for coordination with other initiatives concerning OTC derivatives and reporting and information requirements. Specifically, the evolving role of data repositories must be taken into account. In the interest of supervisory authorities and firms alike, any duplication of reporting requirements should be avoided.

Specific comments

***Question 1: Do you agree with CESR's proposal for the classification of OTC derivatives?***

From a technical point of view, European banks believe that the approach suggested by CESR for the classification of OTC derivatives is the right one. Since the ISO standard for the classification of financial instruments (CFI) is not fully applicable to OTC derivatives, it seems the most pragmatic solution to build on the classification system already in use by those regulators that currently require the reporting of transactions for some types of OTC derivatives.

The EBF also agrees with the specific categories defined by CESR. In the further implementation of these categories, care will however have to be taken to ensure that there is a clear and common understanding across market participants and regulators about the classification of instruments in the respective categories.

With regard to warrants and futures, it is the EBF's understanding that the classification of warrants and futures under the proposed new system would be limited to those kinds of instruments that are purely traded OTC. Warrants that already have an ISIN code and futures and options with an ISIN or AII should not be subject to two different classification systems.

***Question 2: Do you agree with CESR's proposal for the identification of OTC derivatives?***

The EBF would in principle support CESR's proposal of adding to the usual fields exchanged in TREM a set of characteristics to describe the main elements of the respective OTC derivative instrument. The Federation concurs in particular that neither the ISIN nor the Alternative Investment Identified (AII) would be appropriate alternatives.

The seven fields identified by CESR for additional descriptions seem overall pertinent for this purpose. This is however with the exception of element 2, the "underlying instrument type". This category has proven to be of little meaning in practice. It is also not currently used in the UK FSA's transaction reporting system, and would hence lead to considerable unjustified additional costs. The EBF therefore suggests that field 2 be dropped, as the most relevant information is provided through the "ultimate underlying ISIN" field.

In addition and more generally, it should be clarified that not all fields would need to be filled in for each instrument.

On the other hand, CESR might reconsider the necessity of a blank field to freely describe the instrument, independently of any prescribed "multiple choice" boxes. Given the wide variety of instruments with the same underlyings, the current proposal would likely lead to the grouping together of quite different instruments. It is questionable whether such a simplifying structure would ultimately serve CESR's objective.