



Deutsche Börse's Response

to

**CESR's Call for Evidence
(Ref.: CESR / 06-134)**

Consolidation of Market Transparency Data

Executive Summary

We welcome the opportunity to respond to this call of evidence regarding data consolidation and CESR's contribution to the level 3 process.

Equity price formation within Europe is already very transparent, mainly due to the dissemination of real-time data by regulated markets, thereby providing the necessary high standard of data in order to avoid misleading the market in its price formation processes. With the introduction of MiFID in 2007 additional data sources will enter the arena providing for additional transparency from OTC trading. Data quality standards for OTC information will however need to be addressed and it could therefore be advisable for CESR to **promote data quality standards for OTC data**.

There already exist innumerable active interfaces between relevant parties (Investment Firm's -IF's-, Regulated Market's -RM's- and Data Vendors) where data is consolidated and disseminated. The utilization of this existing data infrastructure for OTC data could provide for both efficiency as well as MiFID compliance. The introduction of new European-wide technical standards such as standard protocols - as discussed at the recent CESR hearing in Paris - would initially escalate the implementation costs of MiFID, if it also targets existing data infrastructures. We therefore welcome CESR's decision to **leave technical standards to market forces**.

We would like to reiterate that MiFID level 1 Directive does not request overall market data consolidation; it rather requests for market data **to be easily consolidated**. It seems questionable whether reporting via internet solutions falls into this category.

MiFID requires market participants to make public market data and allows to charge for it on reasonable commercial terms. As the **level 1 text explicitly allows for being paid at "reasonable commercial terms" and we see no reason to question this principle**.

MiFID still provides for an array of grey areas open to different interpretations by the market. It is in this context that we would appreciate CESR's support in establishing consistency and legal certainty as to the interpretation of **MiFID obligations regarding market transparency, as well as the expectations of the EU regulators**.

An **exact definition of which trades need to be trade reported according to MiFID remains unclear**. In those markets which already provide for an OTC Trade-Reporting, such as the UK, RM's have specified exact reporting rules in line with their requirements. This may, however vary from market to market and may not meet overall MiFID requirements. We would welcome CESR's support in providing a discussion platform to identify potential deviations between existing trade reporting requirements and those of MiFID.

We would like to request CESR to **elaborate on Best Recommendations regarding MiFID interpretations** in order to support efforts in establishing a pan European harmonized market led solution. This would support minimum data quality standards for trade reporting, thereby ensuring that the market is not misled.

Deutsche Börse looks forward to providing more detailed contribution to CESR as it continues its work on Market Transparency Data Consolidation.

Trade Publication

1) What common criteria could be developed for trade publication systems to fulfill the publication requirements ?

In order to facilitate easy consolidation of market data, the requirements for trade publication systems should be well harmonized. A minimum set of standard data fields as described within MiFID will support consolidation whilst allowing for flexibility within national trading market models. Data quality is essential to prevent disturbance of the market price formation process; minimum requirements should focus on the real-time supervision of incoming trade data, with the ability to detect erroneous trades. Exclusive contracts between consolidators and reporting parties should not be permitted, as this would prevent other consolidators from providing overall consolidation. Real-time information from all reporting channels to a single point of information would facilitate overall consolidation.

We see value in CESR developing guidelines on these issues in order to support consolidation of reliable market data.

Harmonized European Reporting Model

So as to enable fair competition as well as a maximum degree of data consolidation, it is crucial to achieve **maximum harmonization in the area of trade reporting**. Different requirements for reporting within each EU country would interfere with easy consolidation of data and may even lead to regulatory arbitrage.

Standard data fields

To support consolidation of market data from all EU markets it is essential to establish a **defined set of standard data fields** which would apply to each EU member state, whilst allowing for some flexibility in national market models. We believe that this requirement has been met by the current level 2 text.

Reliable market data

Regulated Markets are already providing real-time transparency to a high standard, thereby ensuring an efficient price formation process and a reliable basis for investment decisions. Trade publication systems should ensure that published data is accurate and reliable. The minimum requirements should, as a minimum, include the real-time monitoring of incoming trade data with the ability to detect erroneous trades.

Non-exclusivity

Exclusive contracts between reporting liable parties and consolidators should not be permitted as this would hamper the ability of other consolidators to provide overall consolidation. Data should be available to all interested parties.

Consolidation

We would like to reiterate that MiFID level 1 Directive does not request overall market data consolidation, it rather requests for market data **to be easily consolidated**. Reporting via internet solutions, however, seems to be contradictory as it would render data consolidation particularly difficult.

Single Point of Information

In order to facilitate data consolidation, we would like to encourage CESR to maintain a list of all active reporting channels.

2) What are the costs and benefits of firms publishing their transparency information in a uniform format?

Remaining time until the introduction of MiFID is short and any amendments to existing and well-functioning market data infrastructures would require additional time consuming and costly changes by all connected parties to the existing systems, e.g. IF's, RM's, as well as Market Data Vendors. **A technical standard protocol should not be promoted by regulation but should be left to market forces.**

Existing market data infrastructures

There is already, within Europe an **existing and well functioning market data infrastructure** which should not be disrupted and/or replaced. This existing structure provides global markets with high quality real-time equity market data transparency. Usage of this infrastructure would be efficient and timely in terms of MiFID timelines.

Additional technical requirements as recently discussed at the CESR hearing in Paris, would require additional major changes by all connected parties to existing functioning systems, e.g. IF's, RM's, as well as Market Data Vendors. If the market requires such a protocol, the market will move towards it. Any decision regarding a **technical standard protocol should be left to market forces.**

*3) What is the minimum length of time transparency information needs to remain published and accessible?**

Usually price and volume per share from an execution venue is overwritten when it is updated – this should be sufficient for a real-time price formation process in the market. However, trading volumes per share over the day also represent a valuable information for the market, reflecting the liquidity of a particular share. Cumulated volumes per share over the day, as is already the practice for RM data, would provide this information. A best practice recommendation for OTC data could provide for guidance, although we expect market forces to prevail.

**We assume that the question refers to real-time market data, as the storage of historical transactions and quotes is already defined within the MiFID level 2 text.*

Consolidation

1) What are the obstacles to consolidation, and what is needed to remove them ?

Regulatory uncertainty and different interpretations of MiFID requirements could make for difficulties with regard to data consolidation: CESR could provide support in establishing certainty regarding the requirements of EU regulators versus the members. Exclusive contracts between Market Data Vendors and reporting parties would interfere with overall data consolidation and should therefore be disallowed. Proprietary means should not be misinterpreted as a synonym for data publication via the internet, as it is highly unlikely that such data will be consolidated. MiFID level 1 Directive explicitly allows for payment at reasonable commercial terms. We see no reason to question this principle.

Regulatory uncertainty and lack of common interpretation of MiFID requirements

The MiFID level 2 Draft still leaves room for various interpretations which could lead to difficulties regarding data consolidation, e.g. the requirement to “monitor **reported data constantly for errors**” leaves open the interpretation of “constantly” which potentially could be stretched.

Uncertainty exists regarding the prioritization of timeliness and/or correctness in case an error is detected: is a timely publication (although potentially flagged as suspicious) more important than the corrected trade potentially being published outside the maximum three minute limit? What implications would this have for the reporting party? A mutual interpretation and overall consistency would be supportive in this regard.

There furthermore appears to be considerable uncertainty amongst market participants with regard to **which trades in particular are due to trade reporting and which ones are not**. Even in markets which already provide OTC trade transparency, such as the UK, the requirements may potentially differ from those of MiFID.

We therefore encourage CESR to elaborate on a common interpretation of MiFID requirements in order to provide market participants with certainty regarding their precise responsibilities.

Charging at reasonable commercial terms is explicitly allowed for in MiFID level 1 Directive

Amongst other issues CESR's Call for Evidence seems to call into question the principle of making available market data at reasonable commercial terms. However, we see no reason to do this especially as selling market data at **reasonable commercial terms is explicitly allowed in MiFID level 1 Directive**. We believe that, in most cases, execution venues create value with the published information. This value is relative to the use made of it by the different consumers of that information (e.g. crossing networks). It is a fact that data has different values for different entities. The principle of “reasonable commercial basis” takes this fact into account by allowing for the necessary flexibility in adapting to the needs of all market participants.

Single Point of Information

Consolidation of MiFID relevant data could be fostered by providing a single point of information for a **consolidated list of all active reporting channels** which would be easily accessible for all interested parties at EU level. In this way it could be guaranteed that a

consolidator interested in providing a complete consolidation would not accidentally omit any reporting channel. Active reporting channels would be requested to inform the single point of information about its activity.

For the consolidation of pre-trade transparency, a **list of all active Systematic Internalizers including an overview of all EU shares which are deemed as liquid**, should be available from the same source. Systematic Internalisers should be requested to inform the Single Point of Information about their activities.

Exclusive contracts of reporting parties with consolidators

In this context, any discussion of **exclusive distribution contracts with regard of reported data** needs to differentiate between the flow of data from the reporting party to the reporting channel, which, if exclusive, would have the advantage of ensuring that data is not reported more than once. Furthermore, the flow of data from the reporting channel to the consolidators should not be exclusive as this would harm the ability of other consolidators to provide overall consolidation. Exclusive contracts between reporting liable parties and consolidators should therefore be disallowed.

Post-Trade Reporting via Internet

Post-Trade Reporting via “proprietary means” as defined in the level 1 text, should not be interpreted too narrowly, giving rise to the definition of internet solutions only. “Proprietary means” could also materialize in an IF's consortia, collecting trade data of all members and making them available to the public. This would add value to the data and enhance the likelihood of it being incorporated in further overall consolidation.

We deem it highly unlikely that reporting via the internet will meet the MiFID requirement to be easily consolidated. Even consolidator's access to the IF's web server instead of it's web-sites, security keys to prevent reporting data to be manipulated from external parties, and data access in push instead of pull modus, will not change this. Data quality should inevitably suffer. Due to the difficulties involved in connecting to innumerable internet sites we regard it as extremely doubtful that this data will attract the interest of consolidators at all. **Internet solutions would likely result in the fragmentation of market data.**