

RESPONSE

Publication and consolidation of MiFID Market Transparency

CESR Public Consultation - Ref: CESR/06-551

1. The European Banking Federation (EBF)¹ welcomes the opportunity to comment on CESR's consultation on publication and consolidation of MiFID market transparency. The EBF also supports CESR's wider efforts at Level 3 of MiFID and generally agrees with the revised priorities and timing of the specific consultations it sets out.
2. Whilst recognising that timing for the MiFID Level 3 priority areas is necessarily very tight, we urge the Committee to continue to consult stakeholders in the most meaningful way possible. The EBF stands ready therefore to provide input to CESR's work at Level 3 at relatively short notice.

I. General remarks

3. By way of general principle, the EBF believes that **market forces** must be allowed to define the solutions for consolidating pre- and post-trade data. This opinion was apparently shared by CESR in its workshop of 14 December 2005 in which the EBF took part and restated in its subsequent call for evidence in preparation for the current consultation.
4. Since we consider market forces to be capable of delivering in the area CESR sets out to work, we do not foresee an immediate need for CESR guidance to the extent it is proposed in the consultation. However, CESR's consultation paper is a useful contribution to the debate and we will work with the Committee constructively in developing its thinking on this issue.
5. Below we set out the general considerations EBF considers to be important in terms of publication and consolidation of MiFID market transparency data.

Publication

6. In respect of publication, in an open market, institutions should have a **free choice of the medium** through which to distribute information, based on a commercial rationale, be it through Stock Exchanges, 3rd party providers or through proprietary means. Industry has a responsibility to ensure that the solutions it develops are neutral in respect of the distribution medium.

¹ The European Banking Federation (EBF) is the voice of the European banking and securities sectors representing the vast majority of investment business carried out in Europe. It represents the interests of over 5,000 European banks, large and small, from 29 national banking associations, with assets of more than €20,000 billion and over 2.3 million employees.

7. In respect of the **costs and benefits** of firms publishing their transparency information, we anticipate that in line with the wider implications of implementing MiFID, the costs will be front end loaded with the benefits becoming evident over time. The EBF estimates that if the costs of data publication and transparency are disproportionately large compared to the benefits they bring then this could in itself create a barrier to entry for the small players to enter the investment business market. Therefore, the standardisation of date and time recording, instrument identifier and the display of price and quantity should be developed with common market practices in mind.
8. MiFID does not require data to be kept available for a certain period of time. Rather, it should be left to the **market to assess for how long transparency data needs to be kept available for a reasonable amount of time**. Through basing the default solution on common practices in Europe's major markets it would be possible to assess for how long data needs to remain accessible for the more liquid shares. However, the solutions developed also need to take into account the needs of less liquid markets, so some flexibility could be necessary in this regard.
9. Proportionality is the key concept for ensuring that the data that reaches the market is accurate. However, this is also the **responsibility of the firm**. Whilst the efficiency of the price formation process and the adequate protection of investors hinges on transmitting accurate data to the market, the costs of performing these important tasks must be proportionate and in no way prohibitive to even the smallest players.

Consolidation

10. In terms of the **market needs for consolidation**, the EBF would welcome competition in the data consolidation market and competition between providers.
11. The **EBF remains neutral in respect of who should provide data consolidation services or even the shape the initiatives should take**, so long as the underlying principles (i.e. free choice of market-led solutions) that banks consider to be important are upheld. It is recognised that the market would benefit from handling pre- and post-trade data in the same way. Beyond that, an open dynamic market in which competition between providers flourishes and costs are driven down is the overarching consideration for Europe's banks.
12. In respect of the **obstacles to data consolidation**, from a Single Market point of view industry is particularly concerned with the ease at which data could be consolidated. From a Single Market perspective, this is a priority issue. There is a risk that industry solutions could, in the future, also be inhibited by legal issues, intellectual property rights and the privilege of own data source. However, the most significant potential obstacle to the uptake of industry solutions would be where national supervisors seek to impose requirements that go beyond the solution provided by industry. CESR can help to mitigate this risk by encouraging its members to respect the role that market forces must be left to play.

13. As for the **removal of these obstacles**, industry best practice and standards must be given chance to play a role in the removal of barriers. When industry develops solutions it would be prudent to consider potential barriers and mitigate them at source, for example by considering issues, such as the presentation of clean, unbundled data well in advance.
14. Notwithstanding **CESR's** previously stated commitment to letting market forces prevail, we believe that the Committee's role should be to ensure that its members facilitate the removal of barriers in this area and do not then work against the Committee and industry by seeking to impose their own domestic requirements in this field. CESR should therefore work with its members to facilitate the development of industry solutions which will come forward as the market in data publication and consolidation evolves.

II. Specific remarks

Question 1: In your opinion, will this additional guidance help to ensure high quality data monitoring practices?

15. Article 32 of the implementing Regulation places a clear **obligation on firms** to fulfil their obligations in respect of transparency of data. We do not believe that the additional process would improve the processes and checks that already exist in the market and under MiFID.
16. We also remind CESR that **there is a strong commercial incentive for firms to publish accurate information** and at present counterparties provide a reliable check on that information. Counterparties ordinarily inform the firm without delay if the information is found to be inaccurate. Requiring additional checks could, we believe, impede the efficiency of straight through processing of trades.
17. In relation to CESR's proposed guidance, **the fact that there is an obligation on firms, rather than a choice, renders the focus on incentives redundant** in our opinion. Investment firms must ensure that all reasonable steps are taken but it goes against the letter and spirit of MiFID to define what those reasonable steps might be. This is especially the case when considering the systematic process or the verification process which banks will undertake irrespective of CESR's guidance in this area.

Question 2: Option 1: – (a) would publishing each trade to only one publication arrangement help to address our concerns about duplication? (b) would this option be sufficient on its own to address the issue, or should it be coupled with another solution? (c) rather than being an option, should this option be seen as a prerequisite (supported by other requirements)? (d) would this option limit unnecessarily the choice of publication channels for firms?

- Question 3: Option 2: - (a) would a unique trade identifier address our concerns about duplication? (b) do you think this is an appropriate solution? (c) how would the industry achieve this? (d) in your view, should this only apply to MTFs and investment firms trading OTC or should it also apply to RMs? (e) what costs would be involved and who would bare them? (f) would this solution request a recommendation on a common and single format trade identifier?
- Question 4: Option 3: - (a) would the use of time to milliseconds contribute to the identification of duplicate trades? (b) do you think this is an appropriate solution? (c) how would industry achieve this? (d) are there circumstances where legitimate multiple identical trades (to the detail of milliseconds) could exist? (e) in your view, should this option only apply to MTFs and investment funds trading OTC or should it also apply to RMs? (f) what costs would be involved and who would bare them?
- Question 5: What is your preferred solution? Do you believe that a combination of these different options is viable? Are there alternative solutions?

18. As a general principle and in line with our general remarks, we believe that **it would be premature for CESR to intervene at this level of detail** before MiFID has been implemented and relevant experience can be established.
19. However in response to questions we ask CESR to take note of the following points:
- question 2: Article 27.4 of the implementing Regulation clearly states that only one party in a trade is required to fulfil transparency obligations in respect of that trade. This has important implications for the options CESR sets out since it implies that if the rules are adhered to then duplication will not occur. Following this line of argumentation, **Option 1 would appear to be a viable solution.** In respect of point d) a choice can be made for every single trade so taking this option would not unnecessarily limit the choice of publication channels for firms;
 - question 3: **the unique identifier (Option 2) could also be considered a viable option** assuming that it is up to the firm to generate the number itself (e.g. a number of 25 to 30 digits generated a random) based on an algorithm that the firm has defined.
 - question 4: even if milliseconds could be used, this high level of granularity **could still not guarantee with 100% accuracy that no two trades could be matching** (we appreciate that the incidence of this occurring is however unlikely). In everything CESR does we urge it to have regard to current market practice with a view to ascertaining what would constitute European best practice. However, we are not aware of any current trading systems where the time stamp records milliseconds. We do not therefore support this option on the basis that it would imply a

significant systems cost without the necessary benefits to justify the investment; and

- question 5: in light of the above **we could support Options 1 and/or 2**. We do not see Option 3 however as a viable alternative either by itself or in combination with the other options.

Question 6: In your opinion, is the list as set out by the article 27(4) of the regulation sufficient to alleviate confusion over whose responsibility it is to publish a trade (where there has been no agreement over who should publish)? Is there a need for CESR guidance? If so, in your opinion, what should that guidance cover?

20. The list set out by Article 27.4 of the implementing Regulation is sufficient to alleviate possible confusion over whose responsibility it is to publish a trade. **There is not, therefore, any need for additional CESR guidance in this area.**

Question 7: Is there a need for CESR to put in place guidance to define more precisely what should be considered as a “single transaction” and a “matched transaction”? Additionally is there a need to define the “reasonable steps” that firms should take in order to comply with their publication obligations?

21. Some members would **benefit from CESR developing guidance** to define more precisely what should be considered as a “**single transaction**” and a “**matched transaction**”. Both definitions require an analysis of the local prevailing market conditions which we feel must be adequately reflected in any pan-European guidance from CESR.
22. However, there would be **no need for CESR to define the “reasonable steps”** that firms should take in order to comply with their publication obligations. A definition of “reasonable” will vary from market to market and under different circumstances and conditions. A single pan-European definition therefore would not be appropriate in this case.

Question 8: *There is no question 8 in CESR’s consultation paper*

Question 9: Do you agree with our proposed approach for dealing with static websites?

23. We agree with CESR’s proposed approach insofar as websites must enable data aggregators to use it for their purposes. However, **it is not the responsibility of banks to deliver the data in the most convenient format for aggregators**. Notwithstanding the requirement on firms under MiFID to make information public it is particularly important for CESR not to impinge on the freedoms MiFID allows but to respect the reasonable commercial terms condition to enable firms to realise the value of data.

24. As regards the location of websites, we take this to mean **the physical location of the website address**, and not necessarily whether the host is geographically situated.
25. Specifically in respect of publication arrangements, the final phrase in brackets of paragraph 5.27 goes **beyond the Level 2 requirements and is we believe based on a misunderstanding**. At Level 2, for trade (rather than transaction) reporting, the Reporting Firm Identification (point 1 table 1 annex 1) is not necessary (Art 27.1(a) starts at point 2). There is no "unique harmonised identification code" (UHIC) for an investment firm - only for RMs, MTFs and their central counterparties: consequently there are only four possible trading venue identifiers under table 1 point 21 - the RM UHIC, the MTF UHIC, 'OTC' or 'SI' (which is a choice within the OTC subset).
26. For a systematic internaliser dealing as such the choices for this field are just 'SI' and quarterly aggregate reporting, or 'OTC' with no reporting obligation. CESR appears to be adding a requirement at Level 3 that is not required (and is actually excluded) at Level 2. We therefore fear that CESR is adding additional requirements in this area based on what we believe to be a misunderstanding of the Level 2 text. This being the case **we ask CESR to delete this requirement from its proposed guidance**.

Question 10: In your view, is this necessary and reasonable? What additional costs would be involved? Who should bare those costs?

27. **We do not believe that CESR's proposals in this area are necessary or reasonable**. The issue is purely a commercial one and does not have a legal basis at Level 2 of MiFID. Therefore the market alone should judge whether or not there would be a market to 'push' the information out to anyone who wants it via a 'feed' the details of which would be worked out in the respective bilateral agreements.

Question 11: Do you foresee any difficulties in aggregators identifying key sources of data?

Question 12: Do you have a preferred means by which to identify sources of data / collection points?

Question 13: Do you agree with our approach to facilitate the identification of new sources of transparency data?

28. We **do not foresee any difficulties** in aggregators identifying key sources of data; and the **preferred means to do so should be left to the market**.
29. Moreover, **we do not agree with CESR's approach to facilitate the identification of new sources of transparency data**. Since firms do not gain an advantage from not publishing data so there is little justification for CESR action in this area. Instead, firms could simply inform their home supervisory authority which information media they use which could in turn be passed on to interested parties.

Question 14: Do you agree with our recommendation to use ISO formats (and reference data where applicable) to ensure consistent publication and transparency information?

30. In this case **we would favour the suggested ISO** standards being used to ensure consistent publication and transparency information. However, as a principle we do not favour CESR mandating specific formats or protocols, rather the market should decide.
31. With reference to Table 3 on page 22 **the “quantity” item is not always expressed as an integer** in today’s market. Some funds for example are expressed in decimals of up to five figures after the coma. We ask CESR to take this into account when drafting its final guidance.

Question 15: Do you agree with our suggested flagging (i.e. C, N and A)?

Question 16: Is there a need and appetite for additional guidance on what other trades should be regarded as being determined by factors other than the current market valuation of the share (e.g. cum dividend etc.)?

32. Members consider that a reference to old data is necessary and that the old data should be re- released with flag C (correction). Releasing flag A (amendment) as suggested would not be sufficient therefore; only the correct data should be released with the flag A. We understand that this is a **common procedure for corrections**.
33. **There is no need or appetite for additional guidance** on what other trades should be regarded as being determined by factors other than the current market valuation of the share.

Question 17: Do you agree with our assessment that there is a need four sources of data to have continuity in the structure of the transparency information they publish?

34. The format that a firm chooses **must be known in advance** but this is without prejudice to the firm having a **free choice of format**.

Question 18: Is re-publication the best approach for dealing with amendments?

Question 19: Is ‘A’ an appropriate flag for amendments?

Question 20: This approach implies that publication arrangements would need a mechanism for uniquely identifying trades to allow data aggregators and data users to effectively discard inaccurate trades. Is this necessary? In your view, would the unique identifier and millisecond options discussed under the ‘data quality’ section above be effective identifiers?

35. By way of principle we believe that **the number of signals to the market should be as few as possible**. There should be enough to alert market participants that they should not rely on such trades as they do on other trades but no more.
36. Specifically in response to question 20, as highlighted above **the unique identifier could be considered a viable option** assuming that it is up to the firm to generate the number itself (e.g. a number of 25 to 30 digits generated a random) based on an algorithm that the firm has defined.