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Committee of European Securities Regulators
11-13 avenue de Friedland
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France

For the attention of the Secretary General

Dear Mr Demarigny

On behalf of the FISD, I would like to submit the attached document in response to CESR's call for evidence on market transparency.

The FISD is the Financial Information Services Division of the Software and Information Industry Association. FISD is a global industry association that serves as a neutral forum for the financial market data industry. Our members include (1) major investment banks such as Credit Suisse, Merrill Lynch, Deutsche Bank and HSBC; (2) market data vendors such as Reuters, Bloomberg, Dow Jones and Thomson Financial, and (3) exchanges such as Deutsche Boerse Group, Euronext, London Stock Exchange and Nasdaq.

As you may be aware, the FISD (along with FIX Protocol Ltd., ISITC Europe, and RDUG) was one of the founding organizations of the collaboration known as the MiFID Joint Working Group. The FISD is the sponsor and leader of the Real-time Market Data Subject Group ("RTMDSG") within the MiFID Joint Working Group.

The FISD is submitting the RTMDSG's *White Paper on publication of post-trade data under MiFID* - version 1.2 ("White Paper"). This White Paper documents the discussions of the members of the RTMDSG regarding the market transparency implications of MiFID, especially those related to post-trade data. It seeks to describe the post-MiFID market transparency environment and to promote potential industry best practices for data publishing. The White Paper is intended to be a resource for investment firms, market data vendors, regulated markets and other parties as they evaluate their obligations and opportunities related to MiFID. Similarly, it is intended to be a resource to help governmental bodies understand the implications of MiFID on the publishing of real-time market information.

While the White Paper is focused primarily on post-trade transparency, the RTMDSG has also been actively engaged in discussions regarding pre-trade transparency and expects to update the White Paper to reflect these discussions. One area of interest to the market data community is the designation of liquid shares and how this designation is communicated to the market on a fair and timely basis. The securities markets and market data industry need clarity and timely information regarding which shares have been designated as liquid, especially in the areas of how the lists of liquid shares are made public and how frequently they are updated, the time period over which the qualifying calculations are made and, finally, how mergers are handled.

Please note that this White Paper is a consensus recommendation of the individuals who have participated in the RTMDSG but does not necessarily reflect the view of any individual organization that participates in this group.

Thank you for this opportunity to provide feedback. If you have any questions on the White Paper or FISD's activities related to MiFID, please do not hesitate to contact me (tdavin@siia.net, +1 202-789-4465).

Yours sincerely,

Tom Davin
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Financial Information Services Division
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**MiFID Joint Working Group
Real-time Market Data Subject Group**

White Paper on post-trade transparency under MiFID

**Version 1.2
April 2006**

Document control

Author	Date	Version	Changes
Teresa Siemaszko	9 th Nov 2005	0.1	Original
Tom Davin	10 th Nov 2005	0.2	Amendments
Subject Group	2 nd Dec 2005	0.3	Feedback from Subject Group
Teresa Siemaszko	7 th Dec 2005	1.0	Version 0.3 approved by Subject Group plus wording and consistency changes from Chris Pickles, JWG Chair
Teresa Siemaszko	9 th Mar 2006	1.1 DRAFT	Incorporating feedback to version 1.0 and to reflect that no changes are required following publishing of new level 2 documents on 6 th Feb 2006
Teresa Siemaszko	19 th April 2006	1.2 DRAFT	Title changed and document broadened to cover other aspects of trade reporting

Disclaimer

This White Paper is a consensus recommendation of the MiFID Real-time Data Subject Group but does not necessarily reflect the view of any organisation that is participating in this group.

If you have feedback or comments on this White Paper, please send them to the Chair of the Real-Time Market Data Subject Group, Tom Davin via e-mail at tdavin@siia.net.

Table of Contents

1. INTRODUCTION AND EXECUTIVE SUMMARY	1
2. POST-TRADE TRANSPARENCY	2
2.1. Trade report publishing process	2
2.2. Trade report information	9

1. Introduction and Executive Summary

This paper is the result of discussions that have taken place within the Real-time Market Data Subject Group of the MiFID Joint Working Group (JWG) on the requirements for post-trade transparency under MiFID. This paper is intended as a document for discussion and is not the final recommendation of this Subject Group or the MiFID Joint Working Group.

The paper is being distributed to the competent authority in each of the 25 EU countries, the 2 accession countries (Romania and Bulgaria) and the three European Economic Area countries (Iceland, Norway and Liechtenstein) that have also signed up to MiFID. Additionally, it is available to all participants of the MiFID JWG and can also be distributed to other interested parties.

The decision was made by the Subject Group to discuss post-trade publication, leaving pre-trade data to the next stage, for two main reasons:

- the requirements were more defined at the starting point of these discussions,
- the FSA in the UK had focused on it and it was felt that the Subject Group needed to respond to the FSA's proposals.

The dissemination of pre-trade data will be discussed, and that model defined, in a future revision of this document. The Subject Group will try to use the same principles and model for the dissemination of pre-trade data, but there may need to be some adjustments and additions to achieve this.

The proposed post-trade publication model has had input and comment from the following types of market practitioners:

- sell-side investment firms
- exchanges
- data vendors
- industry associations
- software houses
- network service providers
- consultants.

The main provisos on which the model is based include the following:

- the model is implemented equally in all the participating countries,
- all data is disseminated on non-discriminatory and reasonable commercial terms,
- there is a level playing field for all participants,
- there is no monopoly situation that restricts new entrants,
- there is no discrimination relating to the distribution of data.

2. Post-trade Transparency

2.1. Trade report publishing process

Summary of MiFID regulations relating to the publication of post-trade transparency

The information in this section has been taken from the Commission Regulation implementing Directive 2004/39/EC, the draft of which was published on 6th February 2006.

The text below either summarises the text of the above document or reproduces its exact wording.

Post-trade transparency applies to regulated markets, MTFs and investment firms.

Investment firms, regulated markets, and investment firms and market operators operating an MTF shall make public the details of the transactions in respect of shares admitted to trading on regulated markets concluded by them or, in the case of regulated markets or MTFs, within their systems.

Where the transaction is executed outside the rules of a regulated market or an MTF, one of the following investment firms shall, by agreement between the parties, arrange to make the information public:

- a) the investment firm that sells the share concerned,
- b) the investment firm that acts on behalf of or arranges the transaction for the seller,
- c) the investment firm that acts on behalf of or arranges the transaction for the buyer,
- d) the investment firm that buys the shares concerned.

Post-trade information relating to transactions taking place within normal trading hours shall be made available as close to real-time as possible and in any case within three minutes of the relevant transaction.

Post-trade information is considered to have been made public or available to the public if it is made available through:

- a. the facilities of a regulated market which has admitted the instrument to trading or an MTF where the share is traded,
- b. the facilities of a person not mentioned in point a),
- c. proprietary arrangements.

Proposed Publishing Model

The proposed model for publishing post-trade data is the result of discussions between the participants of the MiFID Real-Time Market Data Subject Group who cover almost the whole spectrum of the financial services industry.

The model is pan-European and needs to be implemented equally in all the participating countries.

The following organisation types or functions play a role in the model:

- ***Investment Firms (IF)***

Investment Firms include MTFs and Systematic Internalisers, etc. that are required to publish post-trade data under MiFID.

- ***Data Aggregators (DA)***

A Data Aggregator is a service provider that provides trade report publishing facilities to any IF wishing to outsource its MiFID trade reporting obligations. DAs are likely to be:

- IFs, MTFs or regulated markets that themselves have to comply with MiFID trade reporting obligations and wish to share their infrastructure,
- third party service providers that currently provide this type of service in other areas of the financial services industry,
- network service providers,
- consortia of IFs,
- exchanges and other regulated markets.

- ***Data Distributors (DD)***

A Data Distributor receives post-trade data from one or more Data Aggregators and distributes that data to Data Consumers (see below). DDs are likely to be data vendors, exchanges and other companies already in the area of data dissemination.

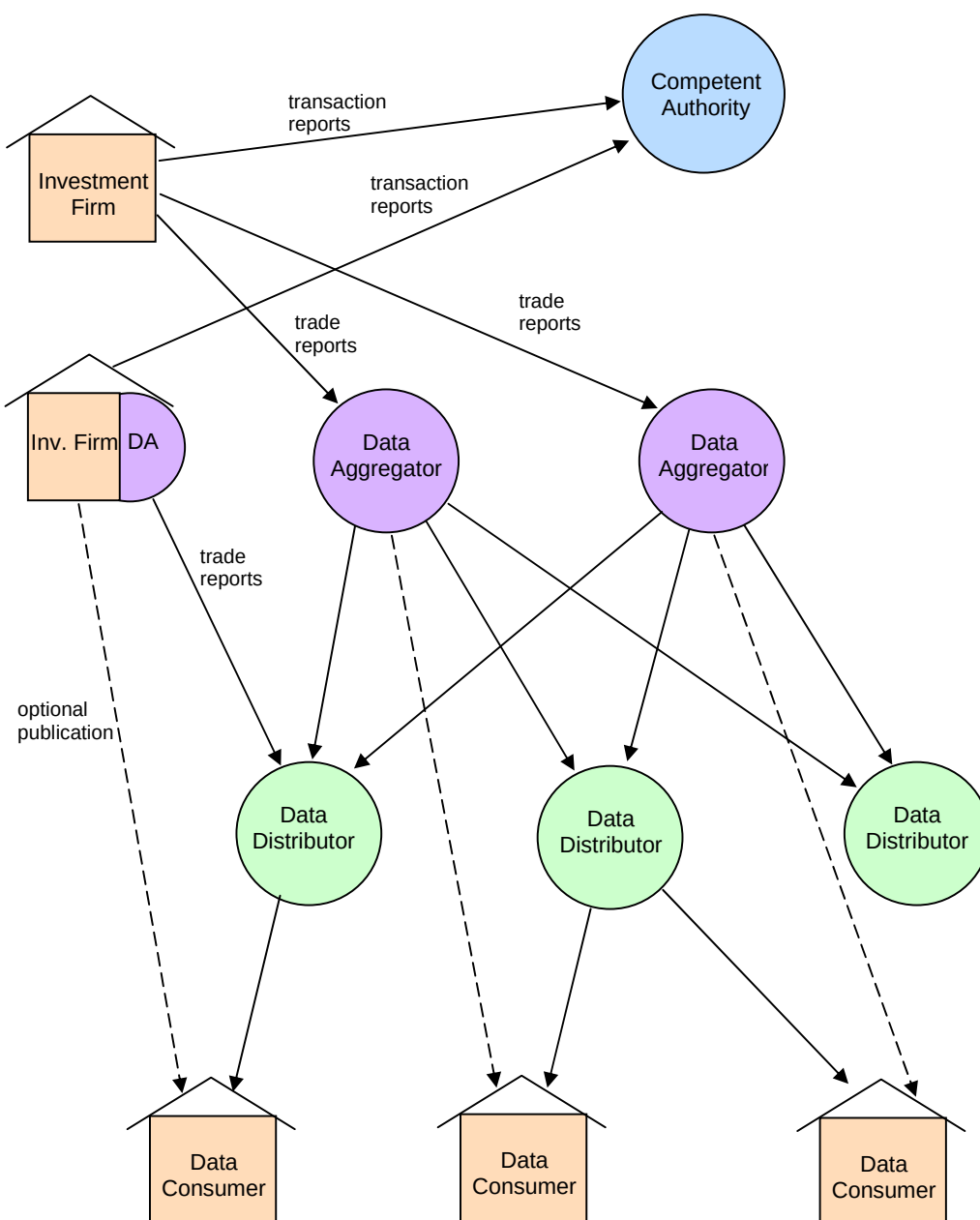
- ***Data Consumers***

Data Consumers are all entities and individuals that wish to receive post-trade market data including investment firms, other buy-side firms, individual investors, etc.

- ***Competent Authorities***

Competent Authorities are the market regulators in each country.

The publishing model is illustrated in the diagram below. It shows the flow of data and the function of each stage in the data publishing process.



Responsibilities and actions of each type of organisation

• *Investment Firms*

1. An Investment Firm publishes all its post-trade data to one or more Data Aggregators (DAs) or must make proprietary arrangements to publish this data.
2. An IF can deliver its post-trade data to more than one DA. There are several reasons why an IF might follow this path including:
 - to reduce dependency on any one DA,
 - to prevent a single point of failure. In this scenario, the connections from the IF to each DA may be either concurrently live so that no switching is required in the event of failure or live to a 'primary' DA with hot-standby connections to one or more backup DAs to ensure it meets the MiFID requirements of 'immediate' publication.
 - DAs may choose to compete more aggressively for post-trade data relating to specific asset classes or subsets of these, making it attractive for IFs to use different DAs for different instruments.
3. Each trade report is delivered by an IF to only **one** DA to ensure that there is no downstream duplication of trade information. The use of unique trade identifiers was discussed within the Subject Group but was rejected due to the perceived difficulty of maintaining such a system across all 28 jurisdictions.
4. An IF may choose to operate as a DA either on its own or as a consortium with other IFs, since it may see business opportunities in providing DA services to other IFs, setting up a consortium DA operation or investing in a DA
5. An IF may choose to make proprietary arrangements for post-trade publication. If it does so, it must make its data available to all DDs and Data Consumers on non-discriminatory and reasonable terms and through a means and in a format that facilitates easy consolidation.
6. An IF must keep the Independent Party (see below) informed at all times of which DA or DAs it is using to deliver its data.
7. Contracts between an IF and its DA(s) need to include clauses which ensure that access to the IF's data will be provided on a non-discriminatory and reasonable commercial basis and that the DA will adhere to all of the MiFID obligations regarding transparency.
8. Once an IF has delivered its post-trade data to a DA, it is considered to have met its publishing requirements under MiFID. The IF should not be required to provide the data directly to any DD or Data Consumer.
9. An IF can provide its post-trade data directly to its own clients irrespective of any use that it may make of a DA. In this instance, it is the responsibility of the IF's own client's to ensure that any data duplication issues are resolved.

- **Data Aggregators**

1. There should be no requirement for Data Aggregators to be regulated by any Competent Authority or other body. Normal commercial processes should ensure that DAs will provide services appropriate to their role and a non-discriminatory and reasonable commercial basis.
2. A DA can provide services across one, several or all of the 28 participating countries.
3. A DA must be non-discriminatory and reasonable in providing the data that it receives from IFs to DDs. This needs to be set out in the contracts between each DA and its client IFs.
4. The primary role of a DA is to provide the facility to deliver trade reports to DDs on behalf of its client IFs but it may also provide other value-added services and facilities to its client IFs such as transaction reporting to the Competent Authorities.
5. As part of its remit to publish data, a DA will perform data quality checks on the data received consistent with competitive and commercial demands.
6. A DA will handle contracts between itself and the IFs and between itself and the DDs.
7. If a Regulated Market, the operator of a Regulated Market or a data vendor chooses to be a DA, it must operate on a non-discriminatory and reasonable commercial basis.
8. If a Regulated Market or the operator of a Regulated Market chooses to operate as a DA, this function should not be subject to any additional regulatory obligations beyond those applied to non-exchange DAs. A Regulated Market or operator of a Regulated Market or Markets should be permitted (but not required) to act as a DA for instruments not admitted to trading on their Market without having to meet any additional legal requirements.
9. There is nothing to prevent a DA from providing data directly to a Data Consumer on the same non-discriminatory and reasonable commercial basis as it provides data to a DD. The Data Consumer needs to accept that the data received from one DA will be a subset of all the data and will need to perform any required consolidation with data from other DAs itself.
10. A DA should not demand that a DD pays for other products or services provided by the DA or any other party in order for the DD to have access to post-trade data that is available from the DA.

- **Data Distributors:**

1. There should be no requirement for Data Distributors to be regulated by any Competent Authority or other body. Normal commercial processes should ensure that DDs will provide services appropriate to their role and on a non-discriminatory and reasonable commercial basis.
2. A DD will receive data from as many DAs as it wishes. There should be no regulatory obligation for a DD to take data from all DAs.
3. A DD will perform data quality checks on the received data consistent with competitive and commercial demands.
4. A DD will handle contracts between itself and the DAs and also between itself and its clients. A DD will also control downstream access to the data it receives through the use of permissioning systems.
5. There is no need for data transmission between one DD and another unless a DD also operates as a DA.

- **Competent Authorities:**

1. Competent Authorities are responsible for any regulator-required market data monitoring or surveillance for trading abuse regarding all trades executed within their jurisdiction.
2. There should be no requirement for a CA to qualify or accredit any DA or DD. Market forces will determine the optimal number of DAs and DDs operating within a jurisdiction.
3. Where a CA wishes to examine trade reports, it can obtain these from a DD or from as many DAs as necessary or directly from IFs.

- **Independent Party:**

The Independent Party would be a non-discriminatory, reliable, central, non-governmental entity, such as an industry group (e.g. one of the pan-European associations that represents financial institutions) or other neutral party, serving as the consolidation point for the list of DAs used by each IF.

1. The Independent Party will maintain a list of the available DAs, this list will be made available through the Independent Party's website. This will enable market participants (primarily DDs and IFs) to identify the available DAs to which they can deliver data or which they can approach to receive data.

Other potential models that were considered

Before arriving at the above recommended model, the Subject Group considered other possible models and elements of models.

These included a possible approach suggested by the FSA for imposing accreditation of “Market Monitors” that would act as collectors and distributors of post-trade data while also performing market monitoring. The Subject Group felt that there would be practical issues if CAs were to impose accreditation and that it was unclear what market monitoring would involve beyond the data quality checks required to meet their clients’ competitive and commercial demands. It was also felt that such accreditation schemes would result in a greater degree of dis-aggregation than if commercial forces are allowed to play out.

The Subject Group also considered the suggestion that there should be a single consolidated provider of pan-European trade reporting data – a suggestion advocated by some buy-side firms. However this was not felt to be compatible with the wording of the Level 1 MiFID text concerning openness, competition and the prevention of monopoly situations.

2.2. Trade report information

The Commission Regulation currently states that the following details need to be published as part of a trade report:

- trading day
- trading time
- instrument identification
- unit price
- quantity notation
- venue information

In the list of fields in Table 1 of Annex 1 of the Commission Regulation, there is a field called a Transaction Reference Number. It is the recommendation of this Group that this field is always included as part of a trade report since without it it will not be possible to relate any subsequent corrections that need to be made to an already published trade report, for example an error in the quantity, so that cumulative volume fields and VWAPs can correctly reflect the executed volume. There is a cancellation flag field listed in the table; this, together with a reference number, would allow erroneous trades to be cancelled and correct updates sent to replace them.

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If you have feedback or comments on this White Paper, please send them to the Chair of the Real-Time Market Data Subject Group:

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