

## IRISH ASSOCIATION OF INVESTMENT MANAGERS

### **Response to the CESR's Consultative Concept Paper Ref. CESR/04-073b**

***Q1 Do you agree with the approach suggested above to determine the methods and arrangements for reporting financial transactions in one set of criteria applicable to, both, the conditions for a trade matching and reporting system to be considered valid to report transactions to competent authorities, and the criteria allowing for a waiver? If you do not agree, what other approach would be more appropriate in your view?***

In our view, there is a certain lack of clarity in the approach in relation the primary objective of transaction reporting. However, subject to further clarification, we would broadly agree with the approach suggested. The methods and arrangements for reporting financial transactions should be output/objective driven rather than concentrating on format. The methods and arrangements should not however be excessively prescriptive.

***Q2 What requirements should such an inventory contain?***

Such an inventory should be cost effective. The inventory further should be flexible and should provide that any system be able to interface with IT systems currently in use. It should not place an additional burden on those firms reporting transactions and should be subject to rigorous cost/benefit and impact analysis.

***Q3 What other issues, if any, should CESR take into account when responding to the Mandate concerning the "methods and arrangements for reporting financial transactions?"***

CESR should have regard to possible double counting and completeness of data should be taken into account when responding to the Mandate. In respect of off-exchange transactions, reporting should only be made by one party to the transaction i.e., only one of either the buy or sell side should actually be required to report instances of off-exchange transactions.

Furthermore a de minimis provision should be considered to avoid the requirement to reporting insignificant transactions. This de minimis provision should be stated in both absolute monetary terms and in terms of the value of the transaction relative to the market valuation of the instrument/issue concerned.

***Q4 What would general criteria for measuring liquidity be?***

We are of the view that it would be difficult to decide upon meaningful general criteria for assessing liquidity. In this regard, we feel that the measurement of liquidity will be a function of the nature of instrument which is being examined. In general, the more complex the instrument, the more complex the mechanism for assessing liquidity.

***Q5 What specific criteria could be useful in measuring liquidity? Should they be prioritised?***

This should depend of the instrument and its complexity. For more simple instruments we would imagine the following, or variations thereof, to be appropriate:

- For equity instruments; Market Cap/Free Float measures.
- For Sovereign/Credit Fixed Income; Size of Issue.
- For Futures; Open Contracts measures
- For Derivative Instruments; Appropriate measures having regard to U/L.

***Q6 What could be an appropriate mechanism for assessing liquidity in a simple way for the purposes of this provision?***

Please see responses to Q4 and Q5.

***Q7 What other considerations should guide CESR in its work regarding the assessment of liquidity in order to define a relevant market in terms of liquidity?***

We feel that CESR should consider the purpose, scope, risk of conflict/market abuses, type of transaction and type of firm involved in conducting the transaction. A risk analysis could be carried out to assist in this. In this regard, the potential/motivation for market abuse varies significantly between a non-trading book portfolio manager following a stringent (e.g. indexed) client mandate and a transaction involving a private placement by a significant shareholder or a transaction involving a stockbroker that has a large position in the instrument or acts as adviser to the issuer.

**Q8 Do you agree with the approach proposed by CESR for determining the minimum content and common standard/format for transaction reports? Are there other approaches that could usefully be considered?**

We would agree with the approach proposed by CESR subject to the above comments about the nature of the participant, purpose of the trade and risk analysis.

**Q9 Apart from the types of information set out in Art. 25 par. 4 and the Mandate, what other information might be usefully included in transaction reports?**

The type and authorisation of the entity reporting the transaction would be useful if included in the transaction reports.

**Q10 Do you agree that the content of transaction reports has to be equal irrespective of the entity reporting the transaction? What considerations could justify a different treatment of reporting parties?**

We feel that the content should not be equal irrespective of the entity reporting the transaction. Consideration should be given to the risk profile of the entity conducting the transaction. For example a simple analysis of the risk spectrum of participants could be, in order of perceived ascending risk, as follows:

1. Discretionary Portfolio Manager (Index Manager)
2. Discretionary Portfolio Manager (Active Manager)
3. UCITS Investment Manager with narrow investment mandate.
4. Proprietary trading Discretionary Portfolio Manager
5. Stock brokers who trade on their own account
6. Stock brokers who act for a company which is due to be listed
7. Speculative Short term traders/Hedge Funds

Please also see response to Q 7 above.

Further, per Art 25.5, we are of the opinion that the obligation on firms to report transactions should be waived in all cases where such reports are made by a trade matching or reporting system approved by the competent authority or by the regulated market or MTF. In this regard, the Article states that reporting obligations may be waived, giving rise to the possibility of superfluous reporting.

## **Co-operation**

At a high level, we believe that co-operation between competent authorities is to be welcomed and encouraged but should be limited to instances of necessity and should be proportionate. Commercially sensitive information should not be exchanged among competent authorities unless it deemed necessary, in which case appropriate secrecy provisions should apply.

***Ann Fitzgerald***  
***Secretary General***  
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**8<sup>th</sup> April 2004**