



FEDERATION BANCAIRE DE L'UNION EUROPEENNE

European Banking Federation

Le Secrétaire Général

N°0275
SF/AB
R6073AER

Monday, 24 April 2006

Mr Fabrice DEMARIGNY
Secretary General of CESR
CESR, 11-13 avenue de Friedland
F- 75008 PARIS
fdemarigny@cesr-eu.org

Subject: FBE's Response to CESR's Call for Evidence on the consolidation of market transparency data under MiFID

Dear Mr Demarigny,

The European Banking Federation (FBE) welcomes the opportunity to comment on CESR's Call for Evidence on the consolidation of market transparency data under MiFID.

Following the interventions the FBE made during the very useful CESR Roundtable on this subject of 14 December 2005, CESR will be clear that Europe's banks consider that the issue of data consolidation and publication merit further considered study since market transparency is an important feature of the MiFID both in respect of price formation and for the protection of investors. Many of the remarks made in this paper support the comments we sent to CESR in December last year following the Roundtable discussion.

In brief, the FBE believes that:

- **market forces** must be allowed to define the solutions for consolidating pre- and post-trade data;
- in respect of publication, in an open market, institutions should have a **free choice of the medium** through which to distribute information;
- as regards consolidation of data, free choice of the medium through which to publish data would only be feasible where there would be **consensus around the format** in which to publish consolidatable data;
- those institutions which seek to **develop solutions** must do so in a **careful and considered manner**; and
- **CESR** should work closely with its members to facilitate the development of industry solutions which will come forward as the market in data publication and consolidation evolves.

I would be happy to discuss any aspect of this response with CESR in detail and look forward to the Committee taking due account of the recommendations we highlight in this paper. Alternatively, please contact Mr Stephen Fisher, Financial Markets Adviser, (Stephen.Fisher@fbe.be; +32 2 508 37 45).

Yours sincerely,



Guido RAVOET

Enclosure: 1



Fédération Bancaire Européenne
European Banking Federation

R6068BER
SF
19/04/06

FBE RESPONSE

Call for Evidence - Consolidation of Market Transparency Data

1. The European Banking Federation (FBE)¹ welcomes the opportunity to provide formally the view of Europe's banks in respect of the consolidation of market transparency data under MiFID.
2. Following the interventions the FBE made during the very useful CESR Roundtable on this subject of 14 December 2005, CESR will be clear that Europe's banks consider that the issue of data consolidation and publication merit further considered study since market transparency is an important feature of the MiFID both in respect of price formation and for the protection of investors. Many of the remarks made in this paper support the comments we sent to CESR in December last year following the Roundtable discussion.

I. GENERAL REMARKS

3. The FBE, like CESR, believes that **market forces** must be allowed to define the solutions for consolidating pre- and post-trade data. In this way, data publication and consolidation should not be forced but a market be allowed to develop over time.
4. 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.
5. As regards consolidation of data, free choice of the medium through which to publish data would only be feasible where there would be **consensus around the format** in which to publish consolidatable data.
6. As there appears to be a good deal of consensus around industry finding the solutions to data publication and consolidation, so comes the responsibility to ensure that they work. Those institutions which seek to **develop solutions** must do so in a **careful and considered manner**, striking the right balance between the need to make progress in implementing MiFID and not being too hasty in finding IT solutions to problems that could have otherwise been worked around in dialogue with supervisors. Industry *fora* that seek to find solutions to this issue must therefore be representative, consultative and conscious of the need for a plurality of solutions.
7. Notwithstanding **CESR's** stated commitment to letting market forces prevail, it still has a crucial role to play in data consolidation by ensuring that its members

¹ The European Banking Federation (FBE) is the voice of the European banking sector 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.

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. DETAILED REMARKS

Publication

8. The FBE strongly supports the development of common criteria for trade publication systems to fulfil the publication requirements.
9. 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 FBE 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.
10. 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**. 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.
11. 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

12. In terms of the **market needs for consolidation**, the FBE would welcome competition in the data consolidation market and competition between providers.
13. The FBE is 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.
14. 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.
15. 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.

16. 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.
17. 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.
18. If a demonstrable market failure occurs, then there would be grounds to develop appropriate public policy solutions. The intervention of public policy should therefore be considered only as an option of the last resort.
19. Regarding the **timing and prioritisation of the necessary actions**, it is extremely important, in view of the priorities we have identified in our general remarks that the data consolidation space is left open for common solutions to emerge. This is the reason why it is important for the regulators to facilitate solutions rather than seek to impose their own solutions.
20. However, it is equally important that common solutions are not designed in an inflexible way before the finalisation of the implementing measures for MiFID, since these will determine the legal obligations of firms with regards to data dissemination.
21. CESR is right to identify that **moves to facilitate consolidation would result in additional costs** and that one party or several would have to bear them at some stage. The costs of consolidation would be borne in the first instance by data consolidators, which we anticipate would in turn, be factored into the price of the service offered to the market.
22. In light of the additional costs consolidation would incur, the FBE urges data consolidators to have regard to the costs that would be passed on during the development of solutions. As far as possible data consolidators are encouraged to realise economies of scale by developing as generic a solution as possible. Competition in an open data consolidation market will also play an important role in driving down cost.
23. The FBE welcomes **CESR's role in the process** to date. The Committee's pragmatic approach to this issue reflects a welcome, open, and co-operative approach to the relationship between the regulated community and its regulators. We therefore support CESR's approach thus far, allowing the industry to find solutions in a dialogue facilitated by CESR.
24. In line with the importance of CESR's wider role at Level 3, where it seeks to narrow a band of supervisory divergence into a convergent approach amongst supervisors, CESR has a critical role to play by ensuring 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.