



January 2009

TR response to CESR call for evidence on 'the impact of MiFID on secondary markets functioning' (CESR/08-872)

Thomson Reuters is the world's leading provider of financial information to financial professionals worldwide, helping to ensure that the world's financial markets are transparent and well-informed. We supply information from over 160 exchanges and OTC markets globally and maintain over 12 million data records. Our financial data is updated on average 60,000 times per second and, at peak times, more than 200,000 times per second.

Thomson Reuters strongly supports the MiFID goals of boosting competition and transparency in EU financial markets. We therefore welcome the opportunity to provide comments to CESR and stand ready to provide any further assistance that may be useful. Our comments are designed to provide answers to the questions on transparency (question 12) and data (questions 13 to 17). Finally, we provide a response to question 18, relating to the implementation of MiFID.

Data quality

Under MiFID, firms are obliged to make certain details of their equities trades available to the public. MiFID grants them a number of options over how to carry out this responsibility in practice. One option is to use a third-party trade publisher as envisaged in Article 30 (b) of the Implementing Regulation. A third-party trade publisher is a company that collects, collates and disseminates post-trade reports from investment firms and/or regulated markets and MTFs. Such third-party trade publishers include financial information suppliers such as Thomson Reuters and Markit BOAT and the information arms of regulated markets and MTFs.

Financial markets depend on accurate and timely financial information, especially post-trade data, to ensure they remain transparent, orderly and clean. This is particularly the case during stressed market conditions. However, the trade reports of OTC equities trades published by a number of third-party publishers regularly contain a significant volume of apparent errors. Examples of the kinds of errors that we have come across include the following:

- Incorrect currency denominations, where trades are reported as having taken place in, say, USD, when the true currency was in fact EUR.
- The price of the shares that are involved in the trade are reported inaccurately due to a missapplication of the decimal point, so that the apparent value of the trade is magnified or diminished by 100 times its true price.
- In some instances, trade reports are published of trades that never actually took place. These are subsequently cancelled but not until the next trading day.

While it is, of course, inevitable that some errors will persist in any trade publishing system, the number and frequency of these kinds of errors are substantially higher than would be expected of reports of trades executed on a regulated market.

Under the MiFID provisions, investment firms are responsible for ensuring the accuracy of their OTC equities trade reports (Article 32 of the Implementing Regulation). It is therefore important for investment firms to have adequate checks in place in order to ensure they transmit accurate data to third-party publishers. We believe that it would be helpful for CESR to confirm that investment firms retain the responsibility to ensure accurate trade reports and to correct errors rapidly. National regulators should provide specific guidance to firms where this obligation is not well understood. This would help to ensure that market participants have clarity and certainty over their relevant MiFID compliance requirements. Moreover, it is unclear what mechanisms are available to regulators to ensure that investment firms properly comply with these requirements.

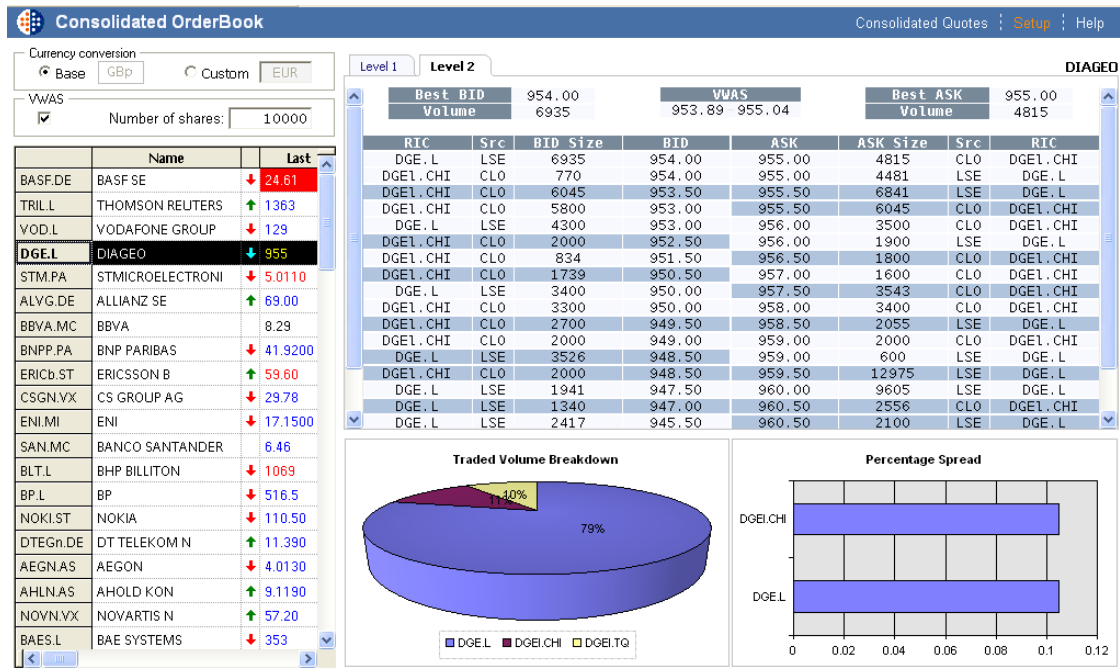
Data fees

The overall cost of receiving real-time trade data feeds has risen significantly post-MiFID. Certain third-party trade publishers impose fees for receiving data that are substantially higher than the average charges applied by other publishers, in one case as much as four times as high. This means that investors wishing to have a comprehensive picture of European equities markets must allocate a much greater proportion of their budget to data fees than was the case prior to the introduction of MiFID. If they are unable to afford the fees they are forced to trade from a disadvantageous position of information asymmetry. This increased fee burden therefore disproportionately affects smaller investors with more modest budgets. (See Appendix 1 for a table of current end-user fees charged by trading venues.)

In this way, third-party publishers have a monopoly over the data that they publish. In this regard, we note that third-party publishers should comply with Article 32 (c) of the Implementing Regulation, which provides that post-trade data must be made available to the public “on a non-discriminatory commercial basis at a reasonable cost”. We believe that certain third-party publishers may not currently be compliant with this requirement. Third-party trade publishers should not be able to extract monopoly rents from the data they provide.

We believe that if the issues of data quality and cost are resolved, market-led initiatives will be able to meet the current demand for market data consolidation. Thomson Reuters provides a number of consolidation solutions to the market and we understand that other data vendors provide equivalent offerings.

Firstly, within Thomson Reuters market data desktop product, 3000 Xtra, we provide a Consolidated Order Book model, that users can access (see example screenshot below). It provides a real-time consolidated view of top of book and depth of book pricing across the trading venues chosen by the user. We understand other vendors provide similar user-configurable tools within their own products.



Secondly, we also believed that the market would need a standardised consolidated view of quotes and trades across markets similar to that mandated by the SEC in the US and provided by SIP & SIAQ. We have responded to this need by supplying consolidated data within our “.x” consolidated Reuters Instrument Codes (RICs). These cover the 1500 most actively traded European equities and provides a Best Bid & Offer across the multiple trading venues and a consolidated tape of all trades published through exchanges, MTFs & the pure OTC reporting venues such as Markit BOAT.

In order to access this consolidated data, users must first already be permissioned to receive all the feeds that contribute to the “.x”. Permissioning requires the agreement of the various data sources to receive the data and to pay fees (detailed in Appendix 1) where applicable. Unfortunately, uptake and use of the “.x” RICs have been limited by the total cost of these feeds and in particular the perception that OTC data is both costly and of poor quality. At the same time demand for a European “consolidated tape & EBBO (‘European Best Bid & Offer’)” at reasonable cost is self evident. So, in response, we decided to split the “.x” into two new consolidated feeds represented by a “.xbo” and a “.xt”.

The “.xbo” will provide a European BBO and all trades from the main trading venues and excludes all trades from the pure OTC venues. This will substantially reduce its cost.

The “.xt” will provide a feed of all trades including those from the pure OTC venues but will only be available on a streaming delayed basis. The delay has to match that of the maximum delay of all the contributing venues, which is the two hour delay required by

Markit BOAT. This means that the data can be provided at minimal cost but will only be useful in performing historical analysis of the trade data.

There are few major technical issues relating to market-driven consolidation, along the lines mandated by the SEC in the US. The real obstacles relate to the aggregate cost of accessing the underlying data feeds, which is very high. Regulators will need to be prepared to take action in cases where data is not being made available at a reasonable cost or in ways that do not facilitate consolidation. If these obstacles are overcome, market-led initiatives for consolidating data will, in our view, provide solutions to the current demand.

Related data issues

Thomson Reuters also highlights the following issues that relate to data transparency.

- Certain third-party trade publishers have sought to impose **restrictive terms and conditions on how their data may be used**, for example by prohibiting its use in some analytical applications. We believe that such restrictions are unjustified and will limit the usefulness of trade data to investors, ultimately leading to reduced transparency. One specific issue relates to the period of time after which data is made available without charge. Prior to MiFID, the industry standard was that trade data was made available for free after a delay of 15 to 20 minutes following the execution of the trade. One third-party trade publisher (Markit BOAT), however, has refused to make its data available until two hours post-trade, reducing transparency further, particularly for smaller firms and retail investors who rely on free delayed data to track the evolutions of their investments. This also means that feeds of consolidated delayed data on equities trades are now necessarily delayed by two hours.
- CESR Level 3 Guidance (CESR/07-043) and the UK FSA Handbook (MAR 7.2.12A) indicate that a trade report should be published through only one primary publication channel. Nevertheless, we understand there are numerous instances of reporting of a **single trade through multiple channels**. This can happen, for example, when an investment firm executes a trade on a regulated market and also reports that trade through a third-party trade publisher, so that both the publisher and the regulated market report the trade. Thomson Reuters has been engaged in discussions the UK FSA in an initiative to limit multiple reporting of trades and we hope this will help to reduce the frequency of duplicate reporting.
- CESR guidance (CESR/07-043) also indicates that the publication of trade data solely to an investment firm's **proprietary 'static' website** would not meet the requirements of the MiFID Implementing Regulation. Nevertheless, we believe that some firms may be continuing to publish in this way.
- The **CESR MiFID Database** was the subject of a helpful consultation by CESR launched in December 2007. This led to a clarification that responsibility for updating and maintaining accurate records in the Database lay with the relevant national competent authorities. Since then we have seen significant improvement in the accuracy and timeliness of data in the Database. However, we note that several



regulators appear to continue to take the view that the Database needs to be updated only once per year, neglecting the MiFID requirements to update in case of substantial changes that affect shares already listed or the introduction of new shares (Implementing Regulation, Articles 33 & 34). We reiterate the crucial role that the Database plays for both supervisors and market participants and therefore the need to ensure reliable data is consistently maintained in the Database.

Implementation of MiFID

The introduction of MiFID presented new challenges to market participants, regulators and policymakers alike. While it is clear that a number of issues have arisen since the launch of MiFID in November 2007, we caution against misguided policy responses that may, in reality, prove counterproductive to their stated aims. In that regard, we would like to highlight one example of an ill-judged proposal from the UK FSA.

In the run up to the implementation of MiFID, the UK FSA was concerned that the proliferation of sources of post-trade data in Europe might result in data that was fragmented, more difficult to consolidate and more prone to error. It was concerned that this might result in diminished market transparency.

In order to avoid this possible risk, the FSA introduced the Trade Data Monitor (TDM) regime. This regime imposed certain obligations on third-party publishers, in relation, for example, to network security and data dissemination. Upon verification that its systems were in compliance with the TDM criteria – an expensive requirement – a third-party publisher would receive TDM certification. The FSA said that any investment firm choosing to publish through a certified TDM would be deemed to be in compliance with its obligations under Article 32 of the Implementing Regulation to ensure *inter alia* that its reports were reliable and continuously monitored for errors.

Even though the TDM regime is an instance of gold-plated transposition that was not required under MiFID or its implementing measures, the FSA declined to submit a notification of the TDM regime to the European Commission, as required under Article 4 of the Implementing Regulation. The TDM regime is also unique in Europe, since no other member state sought to take a route similar to the FSA's in this area.

The key problem with imposing the entirety of MiFID quality checking obligations on TDMs is that it is impossible in practice for TDMs to verify data with the same degree of certainty as investment firms. In an equities transaction that takes place away from a trading venue (OTC trading) only the counterparties to the transaction are present at the time of its execution. There is no 'intermediating' exchange or other trading venue within which the trade takes place. Therefore, trade publishers cannot ever know *with certainty* whether a trade report is fully accurate; only the counterparties to the transaction have this knowledge. While it may be possible, for example, to identify a major deviation in price relative to the preceding trade in an equity (for example if the decimal point is misplaced), it is not necessarily possible to identify errors that are not of a significant magnitude.

The TDM regime effectively aimed to transfer certain MiFID obligations from one set of firms (regulated investment firms) to another (TDM-certified third-party publishers). It is

unclear whether transposing directives in such a way as to effect this kind of transfer of regulatory obligations away from the investment firm is in accordance with the requirements of MiFID. More importantly, however, it took responsibility for ensuring accurate data away from investment firms who alone, in the case of OTC transactions, are able to assure data accuracy.

By taking away from investment firms direct responsibility for their trade reporting responsibilities under MiFID, the FSA TDM regime has had an effect that is counterproductive to its stated aims. We counsel CESR members to avoid similarly inappropriate policy responses in the future and to encourage the FAS to remove it anomalous regime.

Appendix 1: Current end-user data fees

The table below presents a list of the fees currently charged by the respective trading venues (as we are currently aware) to receive market data across Europe. The figures represent the fees paid by end-users per month to receive real-time data.

Exchange / Data supplier	End-user costs
Markit BOAT	Euro 120.00
Deutsche Boerse	Euro 56.00
Euronext	Euro 59.00
Euronext	Euro 73.00
Italian Stock Exch	Euro 12.00
London Stock Exch	£26.50
SIBE Mercado Continuo Espanol	Euro 34.00
Plus Markets	£15
NASDAQ OMX	Euro 22.00
NASDAQ OMX Europe MTF	No charge
Turquoise MTF	No charge
Wiener Borse	Euro 33.00
Stuttgart Stock Exch	Euro 5.00
Chi-X	No charge
Irish Stock Exch	Euro 12.00
Oslo Stock Exch	NKR 342.00
SWX & SWX Europe	CHF 14.86