

REPORT BY THE CNMV ADVISORY COMMITTEE ON CESR DOCUMENT

“PUBLICATION AND CONSOLIDATION OF MIFID MARKET TRANSPARENCY

PUBLIC CONSULTATION”

Ref.: CESR/06-551

The CESR consultation regarding publication and consolidation of market transparency as a result of MiFID focuses on four broad areas and raises questions with a varying degree of specificity. The principal objective of the consultation is to try to eliminate barriers to access to the information, and to ensure that such information is published in accordance with certain basic standards of quality, availability and format.

This Advisory Committee wishes to emphasise that it considers CESR needs to perform extensive and absolutely vital Level 3 work in this area as many of the areas requiring specification may be very relevant when applying the rules contained in MiFID.

These areas, and the main issues mentioned in connection with each one, are as follows:

1.- DATA QUALITY.

1.1- Avoid publication of erroneous pre- and post-trade information.

The proposed options are aimed at:

- o Development and maintenance of monitoring tools.
- o Identification of errors in prices and volumes (at least).
- o Verification procedures that are proportional to the business itself.

Q1: In your opinion, will this additional guidance help to ensure high quality data monitoring practices?

This Advisory Committee considers that establishing systems that enable systematic monitoring will help to minimise the risk of erroneous information being published. We believe it is not necessary that such verification be external; however, if it is internal, the monitoring procedures must be specified in as much detail as possible.

1.2.- Duplication of post-trade information.

The CESR consultation document poses the problem that trades may be published twice, and it offers three options for addressing this problem:

- o Option 1.: The use of only one publication arrangement.
- o Option 2.: Designing a unique trade identifier.
- o Option 3.: Recording trading time to milliseconds.
- o Establishing rules assigning the responsibility for publication of trades that take place outside RMs and MTFs.

The questions in this area are set out below and, because they are inter-related, they are answered as a block:

Q2: 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 a prerequisite (supported by other requirements), (d) Would this option limit unnecessarily the choice of publication channels for firms?

Q3: 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 bear them? (f) Would this solution request a recommendation on a common and single format for the trade identifier?*

Q4: 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 the 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 firms trading OTC or should it also apply to RMs? (f) What costs would be involved and who would bear them?*

Q5: *What is your preferred solution? Do you believe that a combination of these different options is viable? Are there alternative solutions?*

Although options 1 and 3 would help to mitigate the problem, either of them alone would be insufficient and, therefore, inadvisable. Option 2 is the only one that would solve the problem definitively; therefore, it is the most advisable option. It should also apply to all participants. Firms already use internal codes to identify trades. The cost of adapting is difficult to estimate since it depends on factors in each firm.

CESR should intensify the work aimed at standardising trade identifiers.

Q6: *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?

The existence of specific rules, applicable to all participants, regarding the responsibility for publishing a trade performed outside RMs and MTFs would minimise the risk of duplicate publication.

This Advisory Committee considers that the CESR should take responsibility for defining such rules.

Q7: 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?

The existence of specific rules, applicable to all parties, regarding the definition of the terms referred to in the question would make it easier to specify the transparency obligations of firms and other participants, and it would minimise the risk of publishing confusing trade data.

This Advisory Committee considers that CESR must take responsibility for defining those rules, although they should be confined to the area of transparency obligations, without entering into the sphere of substantive law (e.g. defining what a trade is, etc.).

(THERE IS NO Q8 IN THE CESR DOCUMENT)

2.- PUBLICATION ARRANGEMENTS.

This section makes the following distinction:

2.1.- Contingency arrangements for pre- and post-trade publication

This Advisory Committee welcomes the idea that all parties that are obliged to publish data should have contingency plans. It also considers that, when that obligation is fulfilled via a RM, the RM's own contingency arrangements may suffice to fulfil this obligation.

This Committee also considers that, when establishing the contingency arrangements, the initial investment and maintenance investment by the RM in each case should be considered so as to take advantage of scale economies.

Since the possibility is envisaged of firms using their proprietary systems, a similar cost-benefit analysis should be performed with respect to the systems that those firms implement.

2.2.- Websites as a publication arrangement.

In this section of the document, CESR states that, in principle, the publication obligation may be complied with via a static website, which reduces publication costs; however, this solution increases the barriers to information access. The quantum leap from static web site (with no facility for downloading information in a machine-readable format) to a dynamic site (where information is downloadable in machine-readable form) is assumed by the CESR to represent only a small additional cost. Also, static web sites may raise additional problems, such as duplicate content, incomplete content, and search costs. According to CESR, a static web site would not fulfil MiFID's publication requirements.

Q9: Do you agree with our proposed approach for dealing with static websites?

Q10: In your view, is this necessary and reasonable? What additional costs would be involved? Who would bear the costs?

This Advisory Committee agrees that a static web site does not fulfil MiFID's requirements. Nevertheless, it is doubtful that the transition from a static site to a dynamic site is as simple or cheap as CESR suggests, and this should be considered carefully before it is made obligatory for parties required to provide transparency. This Committee considers that it would be advisable to encourage parties that use web sites to provide information in the form of a real-time feed.

3.- AVAILABILITY OF TRANSPARENCY INFORMATION.

3.1- Timing of publication and information availability.

In accordance with articles 28, 30 and 45 of MiFID, information must be published as close to real-time as possible, and only one exception is allowed for publication (within a limit of 3 minutes), which should not be considered industry-standard in any event, and whose use just be suitably justified and be very exceptional, particularly since it might clash with the best execution principle.

The Advisory Committee considers it logical that the publication of information within the required deadlines, which entails an additional cost, should be on a fee basis, i.e. that publication should be on a reasonable commercial basis, and that the commercial conditions might vary depending on the level of service or information required by the user. This Committee also considers that the availability of the service (and, therefore, of the information) should not be conditional upon acceptance by users of services they do not wish to receive.

3.2.- Identification of new information sources.

The CESR document refers to difficulties in suitably identifying information sources. In particular, this is an evident problem for information aggregators since, if they cannot clearly identify new data sources, it becomes impossible for them to obtain that information and consolidate it appropriately.

Q11: Do you foresee any difficulties in aggregators identifying key sources of data?

Q12: Do you have a preferred means by which to identify sources of data/ collection points?

Q13: Do you agree with our approach to facilitate the identification of new sources of transparency data?

This Advisory Committee shares the CESR's concerns about identifying information sources. Consequently, we consider it would be unacceptable not to specify the form of identifying new information sources. The information source of every party bound to transparency must be perfectly identified, and that information must be made public. It would be logical that all parties should be obliged to clearly define the information sources, and that the competent authorities should report on each participant's method of complying with the publication obligations.

4.- PUBLICATION STANDARDS.

4.1.- Data format, content and protocols.

The CESR document states that the very varied formats of the content to be handled by aggregators makes processing costly, in terms of both time and money. The content offered by RMs and MTFs is considered to be valuable enough to make that effort worthwhile. The question is whether the effort will also be worthwhile with respect to new OTC data sources. Hence, the CESR considers it advisable to limit the formats and protocols and tend to convergence in this area; it proposes adapting current formats to ISO standards, at least with regard to the changes to be made once MiFID comes into force. It also considers it necessary to clearly identify certain transaction types (VWAP) and corrections to previously-published trade information.

Q14: Do you agree with our recommendation to use ISO formats (and reference data where applicable) to ensure consistent publication of transparency information?

Q15: Do you agree with our suggested flagging (i.e. C, N and A)?

Q16: 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)?

Q17: Do you agree with our assessment that there is a need for sources of data to have continuity in the structure of the transparency information they publish?

Q18: Is re-publication the best approach for dealing with amendments?

Q19: Is 'A' an appropriate flag for amendments?

Q20: This approach implies that publication arrangements would need a mechanism for uniquely identifying trades to allow data aggregators and data users to effectively discard the 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?

This Committee agrees that some content could be standardised, such as data and time fields, in order to facilitate processing on the part of producers and users of the data. Nevertheless, certain more technological aspects (communication protocols, etc.) have much a more commercial nature, i.e. they may benefit or be detrimental to certain producers, so that there is no justification for adopting one or another as an industry standard.

This Committee considers that certain minimum requirements could be imposed as regards information organisation and structure which do not necessarily touch on commercial issues. A clear example is the definition of "real time" for primary sources. After an extensive study, it was decided in the past that 15 minutes would be the maximum delay applicable to information so as not to classify it as "real time". However, parties which already applied a shorter period were not forced to conform to this new "standard", though it did affect those which were applying a lag of more than 15 minutes.

All parties bound to transparency should be required to provide continuity in the structure of the data. Also, it might be beneficial to identify certain trade types and amendments to previously-published trades, as CESR suggests. In the case of amendments (which must never involve cancellation of completed trades), it is clear that the best approach is re-publication of the corrected data.