



Ref.: CESR/07-086

**PUBLICATION AND CONSOLIDATION  
OF MIFID MARKET TRANSPARENCY DATA**

**Level 3 CESR's guidelines and recommendations for the  
consistent implementation of the Directive 2004/39/EC  
and the European Commission's Regulation n° 1287/2006**

**Feedback Statement**

**February 2007**



## 1. INTRODUCTION

- 1.1 In October 2006, CESR published a Consultation Paper (ref CESR/06/551) on its proposed recommendations and guidelines on publication and consolidation of MiFID market transparency information<sup>1</sup>.
- 1.2 The proposed objective of the guidelines and recommendations was to facilitate the understanding of certain requirements of the MiFID and the implementing regulation on publication and consolidation of market information, to facilitate a consistent implementation of the concerned provisions, without imposing further obligations on investment firms, MTFs or regulated markets, and finally to help investment firms, MTFs and regulated markets to assess on the way in which these provisions are interpreted by competent authorities.
- 1.3 The Consultation Paper was drafted after several consultations with the industry, which started in December 2005, when CESR held a roundtable with market participants to discuss these issues for the first time.
- 1.4 In March 2006, CESR sought broader market participant views by issuing a call for evidence (CESR/06/134) accompanied by an open hearing.
- 1.5 Based on the responses to the call for evidence<sup>2</sup> and feedback we received from the roundtable, open hearing and subsequent discussions with market participants, CESR decided in May 2006 that it would consider what action it could take to help remove the barriers to transparency data consolidation.
- 1.6 During the consultation period on the paper (ref CESR/06/551), which expired on December 15th 2006, CESR received 28 comment letters from various organisations. The list of the respondents to this consultation, with an indication of the sector of activity of the respondents is attached in appendix 1. Comment letters received have been published on CESR website ([www.cesr-eu.org](http://www.cesr-eu.org)).
- 1.7 The comments collected through the public consultation have been duly considered by CESR and have informed the redrafting and finalisation by CESR of its Level 3 guidelines and recommendations on publication and consolidation of market transparency data.
- 1.8 The purpose of this feedback statement, which is published along with the final guidelines and recommendations (Ref.CESR/07-043) is to provide CESR's views on the most important points arising from the consultation and explaining the most important changes introduced in the final guidelines and recommendations.
- 1.9 CESR also would like to take the opportunity of this feedback statement for thanking all respondents for their fruitful and constructive contributions.

---

<sup>1</sup> Recital 34 of MiFID.

<sup>2</sup> Responses to the call for evidence are available on the CESR website at [www.cesr-eu.org/index.php?page=responses&id=72](http://www.cesr-eu.org/index.php?page=responses&id=72)

## 2. DATA QUALITY

### Introduction

- 2.1 This section summarises the responses to our proposals on data quality concerns, and in particular erroneous/ inaccurate information (which might result from the transmission of incorrect data to the trade publication arrangement, or an error trade) and duplicate information.
- 2.2 The Level 2 Implementing Regulation requires all trading venues and investment firms trading OTC to take all reasonable steps necessary to ensure that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected. It is paramount that trade information is reliable to properly contribute to the price formation process, inform implementation of best execution requirements and facilitate accurate trend analysis.
- 2.3 The majority of respondents agreed that data quality is an important issue and many strongly encouraged us to address duplication of data.

### Inaccurate pre- and post-trade publication

- 2.4 We proposed that publication arrangements of RMs, MTFs and firms trading away from an RM or MTF should include a verification process. We said that this process should be independent from the trading process, systematic, have the capability to at least identify price and volume anomalies, and be conducted continuously as quotes and trades are published.
- 2.5 We clarified that in this context, it is not necessary for the independent verification process to be external from the organisation, and we expect the chosen process to be reasonable and proportionate in relation to the business.

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

- 2.6 The majority of respondents supported the proposed guidance, and our proportionate approach to its implementation. CESR will therefore implement the guidance and, based on responses received, tried to clarify the guidance in relation to the independence of the verification process.

### Duplication of post-trade transparency information

- 2.7 CESR identified, in its Consultation Paper, that the risk of post-trade information being duplicated may arise from (i) a single published trade is counted more than once during the consolidation process and/or (ii) a single trade is published by both parties to a trade

*i) Single trade is counted more than once during the consolidation process*

- 2.8 CESR proposed three possible solutions to avoid duplication during the consolidation process arising from (i) and we encouraged respondents to consider potential alternative solutions:

Option 1: Investment firms to use only one publication arrangement (for each trade). We noted that this option might not totally remove the possibility of duplication, if aggregators acquired information from several sources at different points in the processing chain for instance.

Option 2: A unique identifier to be allocated to each trade by the source of the information. If a data aggregator or market participant saw an identical trade publication with the same unique identifier, they would know to disregard one of them.

Option 3: Use of a timestamp (to milliseconds) on each trade could act as a quasi unique identifier. This would enable data aggregators and market participants to detect potential duplicated trades and disregard them.

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?

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 bare 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 bare them?

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

2.9 The majority of respondents commented that the issue of avoiding duplication should be addressed by CESR and favoured the adoption of Option 1, as the most realistic and practicable option in terms of cost efficiency and timely implementation for the 1<sup>st</sup> of November 2007. A significant number of respondents also favoured a combination from option 1 and 2. One answer considered that option 2 should be retained, as a unique option. CESR therefore retained Option 1 but wishes to emphasise that Option 2 - a unique trade identifier - may be reconsidered in the future if practical experience acquired with the MiFID regime should indeed prove the adoption of such a solution as necessary.

2.10 Option 3 was widely rejected by consultees for cost and practicability reasons and is, therefore, not pursued any further by CESR.

*ii) Single trade published by both parties to a trade*

2.11 Where the transaction is executed outside the rules of an RM or an MTF, the Level 2 Implementing Regulation provides that the parties to a transaction should agree on who will be entitled to publish the trade. In the absence of such an agreement, it specifies a default list to determine where responsibility for publication should lie.

2.12 CESR was concerned that at times there may be a question on the way this article should be implemented, potentially resulting in both parties publishing the trade and asked consultees if they consider there would be a need to clarify the list as set out by article 27(4) of the implementing regulation, and to describe the possible clarification.

Q6: In your opinion, is the list as set out by the Article 27(4) of the Level 2 Implementing 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?

2.13 A significant number of respondents commented that further guidance in this area would be helpful but few actually identified specific areas to be covered. A number of respondents commented that it is current market practice for brokers/dealers to publish transactions concluded with buy-side

firms - so buy-side firms do not currently have the necessary systems. They welcomed industry-wide arrangements that allowed the buy-side to rely on sell-side firms to publish post-trade information. An also significant number of respondents commented that the Level 2 text is sufficiently clear. As a result CESR refrains from establishing guidance in this area.

- 2.14 There was also a comment that it would be difficult for brokerage firms to ascertain which of their clients would and wanted to be reporting firms, suggesting in practice it would be almost impossible to deal with on a trade by trade basis and if dealt with upfront it would require thousands of bilateral clarifications between firms and their clients which would be time consuming and difficult to achieve in full. It was recommended there should be one central register of reporting firms. CESR does not deem a central register of reporting firms as necessary at this stage.

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?

- 2.15 Parties to a trade must take all reasonable steps to ensure that the trade is made public as a single trade. For those purposes, two matching trades entered at the same time and price with a single party interposed shall be considered to be a single trade<sup>3</sup>.
- 2.16 Respondents commented that further guidance on "single transaction" and "matched transaction" would be helpful but few actually identified specific areas. Some suggested that we should confirm that only the end transaction itself should trigger a publication obligation. They also suggested that only transactions with the same quantity, as well as the same time and price, should be considered 'matched transactions'. The majority of respondents commented that no guidance was needed on "reasonable steps". CESR, therefore, decided not to issue any guidelines in this area.

---

<sup>3</sup> Article 27(4) Level 2 Implementing Regulation.

### 3. PUBLICATION ARRANGEMENTS

#### Introduction

- 3.1 This section summarises the responses to our proposals on publication arrangements, and in particular, treatment of static websites, third party arrangements and contingency arrangements.
- 3.2 The majority of respondents here focused on the treatment of websites, acknowledging that publications on websites which preclude accessing of information through an automated process would pose a significant barrier to consolidation.

#### Third parties offering post-trade publication services

- 3.3 A need to clarify this area through a guideline has not been pointed out by consultees. However, CESR confirms that third parties who offer a publication arrangement to investment firms trading OTC (i.e. trades that do not fall under the rules of an RM or MTF) must use the acronyms 'OTC' or 'SI' (or the identity of the systematic internaliser if it has not published aggregate quarterly data on its trades<sup>4</sup>) for the venue identification.
- 3.4 Some respondents commented that CESR had incorrectly interpreted the Implementing Regulation on this point, and that a systematic internaliser would never need to identify itself in a post-trade publication. CESR disagrees with this assertion and reiterates its view that under Article 33 of the Implementing Regulation, a unique harmonised identification code must be used to identify a systematic internaliser where it has not published aggregate quarterly data on its trades.

#### Contingency arrangements for pre- and post-trade publication

- 3.5 We suggested that all entities with a transparency publication obligation should have adequate contingency arrangements in place in case their preferred publication arrangement becomes unavailable. We said this should cover publication and data quality monitoring.
- 3.6 Only a very small number of respondents disagreed with our position on this. CESR therefore issued a guideline as proposed in the Consultation Paper.

#### Websites as a pre- and post-trade publication arrangement

- 3.7 In the Consultation Paper, CESR outlined our concerns that publication to 'static' non-machine readable websites (i.e. websites which preclude accessing of information through an automated process) would pose a significant barrier to consolidation.

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

- 3.8 Almost all respondents supported our proposal so CESR believes it is appropriate to retain it.

Q10: It had been suggested to us that publication arrangements should go one step further than being machine readable – they should 'push' the information out to anyone who wants it via a 'feed'. In your view, is this necessary and reasonable? What additional costs would be involved? Who would bare the costs?

- 3.9 The vast majority of respondents rejected this on the basis that it would go further than MiFID intended. A number of respondents, however, advocated using a push-service as a necessary prerequisite in order for websites to facilitate the consolidation of transparency information. CESR

---

<sup>4</sup> See Article 27(2) of the Level 2 Implementing Regulation



does not see a legal basis for demanding such a push-service based on the Level 1 and Level 2 legislation and accordingly, has not added any guidance.

## 4. AVAILABILITY OF TRANSPARENCY INFORMATION

### Introduction

- 4.1 This section summarises the responses to our proposals on the availability of transparency information. We clarify the timing of post-trade publications, availability within the community, the point at which a trade should be considered concluded/ executed for publication purposes, problems with bundling of information and identifying new sources of information. The Implementing Regulation says that pre- and post-trade information shall be considered to be made public if it is made generally available to investors in the community.

### Timing of post-trade publication

- 4.2 In the Consultation Paper CESR clarified that RMs, MTFs or investment firms taking up to three minutes to publish their post-trade information (and who do not benefit from delayed publication) should be able to explain it based on technology not being available or the complex nature of allocating prices to portfolio trades.
- 4.3 Many respondents considered that the approach in the Consultation Paper was too strict an interpretation of what may constitute “exceptional circumstances”. CESR still considers that the use of three minutes should remain exceptional, and retained a guideline stating that investment firms using frequently this three minutes delay should be able to explain the reason why they do so.

### Availability of pre- and post-trade transparency information in the Community

- 4.4 In making pre- and post-trade transparency information available to investors located in the Community, as required by Article 30 of the Level 2 Implementing Regulation, we proposed that published information should be accessible to all interested parties on a non-discriminatory and reasonable commercial basis and be accessible with reasonable effort, whether or not they are located in the same Member State as the entity publishing the information.
- 4.5 On the whole, respondents were happy with this clarification.

### At what point is a trade considered concluded/ executed for post-trade transparency purposes?

- 4.6 We proposed that for order book and other automated trades, a trade is concluded/ executed as soon as a buy and a sell order are automatically matched and confirmed. Post-trade information should be published immediately after automatic execution. Where trades are conducted outside RMs and MTFs and for trades executed under the rules of RMs or MTFs but outside a central order book or other automated trading systems, the trade should be published as soon as the terms of the trade with regards to the price and volume are agreed between the buyer and the seller. Where a trade includes multiple legs and where an agreement on the terms of each of the leg is a pre-condition to the completion of the trade, the trade is completed when all the legs have been put in place and agreed.
- 4.7 Very few respondents commented on this, but those that did supported our interpretation.

### Bundling of pre- and post-trade information

- 4.8 We proposed that the supply of pre- and post-trade information by RMs, MTFs, and investment firms should not be conditional on the purchase of other bundled services and/or data.
- 4.9 Those who commented on CESR’s approach in this area, in general, supported CESR’s views. However, consultees asked for some clarification to be certain that a CESR guideline in this field would not alter their commercial policy (e.g. possibility to propose different packages of



information, or to group the information from several investment firms and sell it). CESR maintained the proposed guideline while trying to address the concern expressed.

**Identifying new sources of pre- and post-trade transparency data**

4.10 CESR commented in the Consultation Paper that it may be difficult to consolidate transparency data from different investment firms if consolidators do not know where to source the information. CESR, therefore, proposed that investment firms that use proprietary publication arrangements or arrangements that are relatively unknown to the market should have a mechanism in place to inform the market where to collect their transparency information.

4.11 CESR suggested some examples to achieve this goal. Among those examples were issuing a press release or other corporate media notification, or informing data aggregators directly.

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?

4.12 Some respondents indeed indicated that it may be difficult to source transparency data from investment firms for the purpose of consolidating it with other data. However, there was no support to the CESR propositions to solve this issue, and no clear consensus on the way the goal could be achieved.

4.13 A number of consultees suggested that investment firms should inform their competent authorities of the publication channels they are using. Competent authorities should then compile and publish a complete list of active publication channels in that country with a view to establishing a consolidated European list, possibly on the CESR webpage. Other consultees considered that a solution to this issue, if proven necessary, should be left to market forces.

4.14 CESR decided, for the time being, to refrain from formulating a guideline in this area. Should future practical experience with the MiFID regime indicate that compiling such a list would indeed facilitate consolidation, CESR reserves the right to re-open this issue.

4.15 One respondent raised a concern about the potential for a proliferation of new and varied contracts, policies and commercial models as investment firms exercise their right to establish new sources of data. It was suggested that they may become unnecessarily diverse and unworkable. CESR recognises this as a potential impediment to consolidation of information. While RMs, MTFs and investments firms trading away from RMs or MTFs are entitled to determine the best commercial model for themselves, they need to be mindful of their obligations to make information available on a reasonable commercial basis and in a manner which is easily accessible to other market participants.

**Structure of pre- and post-trade transparency information**

4.16 We proposed that information that is made public should conform to a consistent and structured format based on industry standards.

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?

4.17 The vast majority of respondents supported the proposal. Some respondents suggested continuity of structure should be left to market forces to deliver. We have confirmed in our guidance that the aim is to ensure continuity within entities with publication responsibilities rather than between entities.

## 5. PUBLICATION STANDARDS

### Introduction

- 5.1 This section summarises responses to our proposals on data formats, content and protocols, the structure of and amendments to published information, and time zone issues. MiFID requires that information be made available in a manner which is easily accessible to other market participants. The Level 2 Implementing Regulation adds that any arrangement to make information public must facilitate the consolidation of the data with similar data from other sources.
- 5.2 On the whole, respondents were supportive of our recommendations to encourage market participants to converge to open industry protocols and International Standard Organisation (ISO) formats, provided it remained a recommendation.

### Data formats, content and protocols

- 5.3 The Consultation Paper suggested that the industry should avoid the introduction of new standards, and in particular, that new entrants should use, as far as possible, an existing open protocol for publishing pre- and post-trade information. We also proposed that the International Standards Organisation (ISO) standard formats (and content where relevant) should be used, as far as possible.

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

- 5.4 Some respondents sought for CESR to take a more prescriptive and pro-active approach by mandating common standards and structures. Other respondents commented that implementing different treatment for incumbents and new entrants may distort competition. CESR is conscious to avoid where possible influencing competition and does think the industry is better placed to select the preferred protocols at this stage. We have amended the recommendation to encourage all entities – new and old – to consider open industry proposals and ISO formats when they are making systems changes.

### Amendments to post-trade published information and trade type flags

- 5.5 RMs, MTFs or investment firms are required to correct errors in published information as soon as they are detected<sup>5</sup>. They are also required to publish an indicator for amendments to published information, where the exchange of shares is determined by factors other than the current market valuation of the share and negotiated trades.
- 5.6 CESR proposed that entities should make a new publication including the full and correct details of the trade and flag the new publication with "A" for amendment. We also recommended the adoption of the following specific flags:

Determined by other factors	Flagged as 'C' for condition
Negotiated trade	Flagged as 'N' for negotiated
Amendments	Flagged as 'A' for amendment

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)?

<sup>5</sup> Article 32 (a) of the Level 2 Implementing Regulation.

- 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?

- 5.7 Many respondents indicated that efficient procedures for dealing with amendments already existed and it would be costly to introduce changes here and proposed the re-publication of the original trade with a “C” for cancellation in addition to the corrected trade with an “A” for amendment. CESR therefore modified its initial approach to take these concerns into account and proposed different flags.
- 5.8 Few respondents, however, indicated that the harmonisation of flags may be burdensome since some different flags may already exist. CESR considers that this harmonisation is not strictly necessary in order to have a consistent application of article 27(1) of the implementing regulation as long as the use of different flags does not impede the consolidation of market transparency data.

**Time zones for pre- and post-trade transparency information**

- 5.9 Where a share is traded in more than one time zone, there is a need to take account of the different time zones in transparency publications. According to the Annex 1 to the Implementing Regulation, the time should be expressed as UTC +/- hours. There were no comments on this point.

**Atomic clock for pre- and post-trade transparency information**

- 5.10 There is a risk that, once consolidated, post-trade publications may not appear on the consolidated tape in the correct sequence in which they were executed because of discrepancies in the clocks of sources of publications. It was suggested to us during our pre-consultation that trading venues and investment firms could synchronise their clocks in order to ensure trades are published in the correct sequence. We suggested that connecting to an atomic clock would add cost without necessarily resolving the issue.
- 5.11 Very few respondents commented on this point. A couple of respondents supported our assessment. One respondent disagreed with our assessment and suggested that connecting to an atomic clock is not necessarily cost-prohibitive and commented that it would substantially contribute to the quality of information. We are not convinced that the benefits would outweigh the associated costs at this stage, given connecting to a network time protocol would not necessarily solve all the latency issues.

## Appendix 1 – List of respondents to public consultation

Date	Name	Activity
18 Dec. 2006	ABI	Banking
18 Dec. 2006	Banca Intesa	Banking
18 Dec. 2006	British Bankers' Association	Banking
18 Dec. 2006	European Banking Federation	Banking
18 Dec. 2006	FIX Protocol Ltd.	Banking
18 Dec. 2006	ZKA ZENTRALER KREDITAUSSCHUSS	Banking
18 Dec. 2006	Bank and insurance division of the Austrian Federal Economic Chamber	Government regulatory & enforcement
18 Dec. 2006	EFAMA	Insurance, pension & asset management
18 Dec. 2006	Investment Management Association	Insurance, pension & asset management
18 Dec. 2006	AFEI	Investment services
18 Dec. 2006	APCIMS	Investment services
18 Dec. 2006	Joint response by ISDA, ICMA,, AMF, ASSOSIM, BSDAI, BWF, DSDA, Euribor ACI, FASD, FOA, NSDA, LIBA, SIFMA, SSSA	Investment services
18 Dec. 2006	Deutsches Aktieninstitut e.V.	Issuers
18 Dec. 2006	EALIC	Issuers
18 Dec. 2006	CNMV (SPANISH SECURITIES COMMISSION)	Others
18 Dec. 2006	Danish Shareholders Association	Others
18 Dec. 2006	FISD/SIIA	Others
18 Dec. 2006	SWIFT	Others
28 Dec. 2006	Bloomberg	Press
18 Dec. 2006	BME Spanish Exchanges	Regulated markets, exchanges & trading systems
05 Jan. 2007	Borsa Italiana	Regulated markets, exchanges & trading systems
18 Dec. 2006	Deutsche Börse Group	Regulated markets, exchanges & trading systems
27 Dec. 2006	Euronext	Regulated markets, exchanges & trading systems
22 Dec. 2006	FESE	Regulated markets, exchanges & trading systems
29 Dec. 2006	Irish Stock Exchange	Regulated markets, exchanges & trading systems
18 Dec. 2006	London Stock Exchange	Regulated markets, exchanges & trading systems
18 Dec. 2006	virt-x Exchange Limited	Regulated markets, exchanges & trading systems