COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Date: 10 July 2009

Ref.: CESR/09-349

FEEDBACK STATEMENT

Transparency of corporate bond, structured finance product and credit derivatives markets

CESR, 11-13 avenue de Friedland, 75008 Paris, France - Tel +33 (0)1 58 36 43 21, web site: www.cesr.eu

Table of contents

PART I: Corporate bonds 3
PART II: Structured finance products and credit derivatives 15

PART I: Corporate bonds

Questions Q1 to Q12 of the Consultation paper - Recent financial market turmoil: evidence of market failures in the corporate bond market and lack of post-trade information available in this market

Questions Q1 and Q2 of the Consultation paper address the potential market failures:

Q1: Do you believe the situation described above may be symptomatic of a market failure?

1. Most of the respondents recognised the difficulties in the functioning of corporate bond markets over the previous months with a severe retreat of liquidity accompanied by widening of bid/offer spreads, reduced availability of information and difficulties in valuing positions. On such a common background, two different positions emerged:

   a) on one side, some respondents argued that the reaction of bond markets from summer 2007 onwards has been a rational one and indicative of a proper functioning market. In other words, the developments show that the market works and the reactions are understandable and prove that the market has not failed. This was mostly the position of the sell-side representatives responding to the consultation;

   b) on the other side, most of the respondents underlined how collectively the events may be perceived to be symptomatic of market failure. In particular, the initial retreat in liquidity was reflective of investors' concerns over risk exposure and uncertainty on valuations. This had a spiraling effect whereby the disappearance of liquidity led to heightened investor concerns, fuelling a further retreat in liquidity. The self-reinforcing nature of these events was considered by some to be a symptom of a market failure in that the market mechanism was not able to equilibrate itself. This was the view of some buy-side respondents together with exchanges, entities representing investors and committees on market integrity.

2. Beyond the issue of transparency, one respondent highlighted the issue that the corporate bond market has demonstrated to be highly dependent on the capacity of dealers to ensure the function of market making and the problems in the market occur at a time where access to fixed income securities is most needed for issuers to fulfill their funding needs and for investors to actively manage their portfolios.

3. Some respondents did not consider themselves to be in a position to evaluate whether the situation may be described as a market failure but nevertheless considered the situation to be severe. Some of them, although not providing any response to the specific question, indicated post-trade transparency as one factor, among others, that could help restore market confidence.

CESR notes the difficulties in the functioning of corporate bond markets over the past months and considers that collectively the events may be perceived to be symptomatic of market failure. Therefore, in combination with other measures, CESR believes that additional post-trade transparency would be able to contribute to improving current market conditions in the corporate bond market. In addition, CESR also recognises the issues experienced by some market participants and specifically retail investors, small market participants and buy-side industry. CESR acknowledges that the current structure of the corporate bond market makes it highly dependent on the capacity of dealers to ensure the function of market making.

Q2: Have you perceived a potential asymmetry of information between market participants?

4. Some respondents stated that there is no information asymmetry between market participants since wholesale participants appear to have a sufficient level of transparency in the market. Furthermore, even where a clear distinction between retail and wholesale clients was made in terms of access to information, some respondents pointed out that these concerns are not new. Asymmetry of information is a feature of most dealer markets and intrinsic to the existing organisation of the OTC market, and it has been successfully addressed by the various transparency enhancing industry initiatives. In addition, it was noted that different types of participants have access to different levels of price information and the existence of such

information asymmetries is not a market failure per se. Differences in trading information may efficiently continue to exist if the person who might benefit from that information does not perceive the benefit as sufficient to compensate the person generating the information. Therefore, in their view, mandated transparency, without appropriate compensation, will remove the incentive to generate information. This is mostly the position of the sell-side representatives responding to the consultation.

5. Most of the respondents, particularly representatives of the buy-side, retail investors, exchanges and committees on market integrity stipulated that there is a perceived existence of asymmetry of information between market participants, especially with regard to the limited access to trade information by retail investors compared to wholesale ones. The conclusions of CESR's 2007 report on transparency in the corporate bond markets already mentioned the existence of information asymmetries between retail and wholesale investors. The responses received to this consultation confirmed the existence of information asymmetries between retail and wholesale investors and added that the financial crisis has extended the information asymmetries to some institutional investors, in particular to collective investment schemes, which have experienced great difficulties in valuing corporate fixed income assets in their portfolios.

6. In other words, smaller market participants and retail investors are considered to have limited access to trade information on corporate bond markets that is necessary for their investment decisions. This is the view of buy-side respondents together with exchanges, entities representing investors and committees on market integrity who also underlined that there are indications that this is even more the case during the current market turmoil, given the difficulties experienced by the buy-side market participants.

CESR acknowledges the existence of asymmetry of information between market participants, especially with regard to the limited access to trade information by retail investors and small market participants compared to wholesale investors. CESR also notes that the financial crisis extended the information asymmetries to buy-side market participants, who have experienced great difficulties in valuing corporate fixed income assets in their portfolios.

Market liquidity

Questions Q3 and Q4 of the Consultation paper address issues of market liquidity:

Q3: In your view, what were the key reasons which have led to sharply reduced liquidity in secondary trading of European corporate bonds since 2007?

7. Respondents were broadly in agreement as to the key reasons for the sharp decline in liquidity. Amongst the principal reasons respondents cited the deteriorating economic environment and a general decline in confidence which led to a tightening of credit conditions. Respondents also noted the withdrawal of capital from both market making and trading activities and the reduction in market counterparties active in these markets which, when combined with widespread deleveraging by the hedge fund community, all contributed to having an adverse impact on liquidity. Some respondents also noted difficulties encountered in hedging portfolios in the CDS market and the impact of the loss of credibility in ratings and risk assessment methodologies.

8. Very few respondents thought that the decline in liquidity was directly attributable to a lack of post-trade information although a couple of respondents noted the impact on liquidity as a result of poor product disclosure and the lack of prices to properly value products.

CESR notes the multi-faceted nature of the financial crisis and the subsequent impact on liquidity and that a lack of post-trade transparency does not appear to be one of the main reasons for the decline in liquidity.

Q4: Do you believe that additional post-trade transparency of European corporate bonds would have helped maintain liquidity in stressed market conditions? Can you please explain why?

9. Overall respondents were mixed with a very slight majority of the view that additional post-trade information would have helped maintain liquidity in stressed market conditions. Respondents with a retail interest were strongly of the view that additional post-trade transparency would have helped, whereas sell-side respondents did not think that this was the case. The view from the buy-side was mixed with respondents noting that post-trade transparency could have helped, but this was likely to be only marginal in impact.

10. Those who responded positively were of the view that post-trade transparency would have provided greater certainty around prices which in turn would have helped to minimise the retreat in liquidity. Some expressed the view that an absence of information led to participants withdrawing quotes from the market.

11. At the same time some respondents were of the view that liquidity is a function of capital and confidence rather than post-trade transparency and so greater post-trade information would not have had a positive impact. Indeed some respondents expressed concern that mandatory post-trade transparency, especially for illiquid products and in current market conditions, would have exacerbated the reduction in liquidity.

12. Some respondents remarked that in stressed market conditions there are a number of factors at play.

CESR notes the mixed view from respondents but acknowledges that greater post-trade transparency might have provided greater certainty around prices during the crisis which in turn might have had a positive impact on liquidity, although it is difficult to quantify the extent of any impact.

Bid/offer spread

Questions Q5 and Q6 of the Consultation paper address the relationship of post-trade transparency with bid/offer spreads:

Q5: In your view, what were the key reasons for the widening of the bid/offer spreads for European corporate bonds?

13. Respondents generally agreed on the key reasons for the widening of bid/offer spreads. The main explanations included a withdrawal of liquidity provision by market markers and banks, overall market volatility and sharply reduced risk appetite. In addition, capital constraints, an imbalance between supply and demand with hedge fund redemptions and bank deleveraging lead to excessive supply. The widespread lack of confidence, the reduction in the number of market counterparties and increased uncertainties regarding credit spreads and likely defaults were also noted.

14. A few respondents were of the view that such a reaction was to be expected given the prevailing market conditions.

15. One respondent thought the widening of the bid/offer spread was due to a lack of transparency, and a few respondents stated that it was due to defensive measures used by market makers to protect themselves.

CESR notes the inter-linked reasons for the widening of bid/offer spreads during the financial crisis and that a lack of post-trade transparency does not appear to be one of the main reasons for the widening of spreads.

Q6: Do you believe that greater post-trade transparency would have been helpful in limiting the widening of the bid/offer spreads we have observed for European corporate bonds?

16. More than two thirds of respondents were of the view that greater post-trade transparency would not have been helpful in limiting the widening of bid/offer spreads. Representatives from both the buy and sell-side expressed the view that the spread widening was a result of a lack of liquidity.

17. Respondents who felt that additional post-trade transparency would have helped to limit the widening of bid/offer spreads were from a variety of institutions including retail representatives and exchanges.

18. A number of respondents highlighted that spread widening is not necessarily indicative of a lack of liquidity.

CESR is of the view that additional post-trade transparency, in isolation, would have been unlikely to limit the widening of bid/offer spreads during the crisis.

CDS/corporate bonds relationship

Questions Q7 to Q10 of the Consultation paper address the relationship of the corporate bond market with the CDS market:

Q7: Do you use CDS prices for pricing European corporate cash bonds? If so, what are the key benefits?

19. Most respondents considered that in the current situation, the CDS market is no longer a reliable indicator for bond price valuation. Although a number of respondents consider that the CDS market is useful in normal market conditions as a means to obtain some price information, they nevertheless expressed the opinion that with today's financial turmoil, the link between prices provided by CDS and prices for cash bonds have uncoupled so that the CDS market is no longer considered to be a reliable indicator for bond price valuation. One respondent stated that the CDS market has never been a reliable indicator. Furthermore, another respondent considered that CDS have become a factor of distrust. Conversely, only two respondents to the consultation expressed the view that CDS prices are an important indication when determining bond prices, e.g. for the prediction of default risk.

Q8: Which methods of bond price valuation do you use in the current market turmoil? Do you think that the CDS market is still a reliable indicator for bond price valuation?

20. Most respondents stated that in the recent months, corporate bonds were increasingly valued directly on the basis of market quotes or direct price quotes from market makers, spreads to governments bonds or spreads to asset swaps or on the basis of relative value such as the attractiveness measured in terms of the return of one instrument relative to another. However, most respondents noted that all valuation methodologies presented difficulties in terms of their reliability, especially due to the inactive bond market coupled with the drop in liquidity.

Q9: The spreads between the CDS and corporate cash bonds have widened significantly in the first quarter of 2008. Did this widening of the spreads make it more difficult to price European corporate bonds? If so, do you think that additional post-trade transparency of corporate bond prices would have helped you to price European corporate bonds? How do you assess the situation since mid-September 2008?

21. Most respondents agreed with the fact that the widening of the spreads between CDS and cash bond markets made it more difficult to price European corporate bonds. Some respondents stated that it was the lack of liquidity that made pricing more difficult. On the other hand, one respondent expressed the view that the widening of spreads in March 2008 was explained by the fact that the CDS market continued to function with a bearish view on credit and that CDS and bonds are not true equivalents.

Q10: Do you expect that the relationship between the CDS market and the cash bonds market will return to what has been observed historically once market conditions stabilise? If not, can you please articulate the reasons?

22. Regarding the expectation of a normalisation of the relationship between the CDS market and the cash bond market, although few respondents expected that in the long term these markets will be re-linked, most respondents stated that it will depend on various factors such as the future evolution of the CDS market itself (e.g. the clearing house project).

CESR has come to the following conclusions:

- Although the CDS market has been useful as one factor in normal market conditions as a source of price information, it is not a reliable indicator for bond price valuation in times of reduced liquidity under the current market conditions;
- The widening of the spreads between CDS and cash bond markets has made it more and more difficult to price European corporate bonds; and
- All valuation methodologies present difficulties in terms of their reliability, especially due to the combination of inactive markets and major liquidity problems.

Valuation

Questions Q11 and Q12 of the Consultation paper address issues relating to valuation:

Q11: Have you experienced difficulties in valuing corporate bond holdings? If so, what were the main reasons?

23. Regarding the difficulties in valuing corporate bond holdings, most respondents underlined the fact that they have experienced difficulties in valuing corporate bond holdings. These difficulties were caused by the very wide spreads, a general lack of trading and where trades were taking place a lack of information in the market about actual trading activity. Consequently, most of the respondents stated that they have had to make greater use of model-based valuations in order to determine the fair value. Some respondents stated that the subjective nature of these types of valuations can result in a wide dispersion of valuations that undermines confidence and exacerbates illiquidity. One respondent noted the lack of a central body aggregating closing prices and limited confidence from both buy-side and sell-side in prices that are currently published.

Q12: Would additional post-trade transparency in distressed market conditions help valuation?

24. A large number of respondents to the consultation explicitly welcomed the idea of a greater amount of post-trade information which would assist in properly valuing European corporate bonds. Nevertheless, some market participants stated that much of the problem for the investor was i) the lack of readily available comparable market information and ii) that the dealers did not have sufficient capital allocation to deal in the normal way or even at all.

25. Regarding the role of post-trade transparency for valuation in distressed market conditions, most respondents considered that post-trade transparency might be helpful for valuation purposes. For example, in a situation where there is more access to price information, the confidence of market participants to trade as well as investor confidence will both improve.

26. On the other hand, some respondents stated that additional post-trade transparency in distressed market conditions would not necessarily help valuation as trade prices can reflect various views such as fair price, liquidation value or distressed value. Additional post-trade transparency should not be imposed at the expense of liquidity. Accordingly they considered that a number of valuation methodologies have been developed that the market is starting to use and CESR may be best placed to carry out a separate in-depth consultation on valuation difficulties.

CESR came to the following conclusions:

- Some market participants have experienced difficulties in valuing corporate bonds due to, inter alia, the lack of post-trade information;
- Model based valuations are more and more frequently used to determine fair value, although they are subjective and/or could result in wide divergence of opinion as to the correct valuation; and

- Even in distressed market conditions, although the possible drawback on liquidity should also be considered, a greater amount of post-trade information might strengthen the reliability of corporate bond valuations.

Questions Q13 and Q14 of the Consultation paper - Potential benefits and drawbacks of increased post-trade transparency

Questions Q13 and Q14 of the Consultation paper address potential benefits and drawbacks of increased post-trade transparency:

Q13: Do you agree with the potential benefits and drawbacks described above? Please provide evidence supporting your opinion. Please explain how the potential drawbacks might be mitigated.

27. Most of the respondents agreed with the potential benefits and drawbacks as described by CESR. Regarding improving the access to information available to all market participants, some respondents from the sell-side argued that investors that are interested in selling can easily access prices of concluded transactions or contact their banks in order to get the price information. In fact one of the respondents added that commercially driven publication of quotes has been prevalent for many years and retail investors have benefited from this access to information.

28. Regarding the negative impact on liquidity, while some of the respondents do not agree with the statement that more transparency could have negative impact on liquidity, some of them stated that greater post-trade transparency would clearly lead to a decline in liquidity.

Q14: Are there other main benefits or drawbacks of increased post-trade transparency in the bond markets which CESR needs to consider?

29. Some of the respondents stated that there are other benefits or drawbacks which CESR needs to consider. One of the main drawbacks that needs to be taken into account could be the considerable cost that the implementation of a greater transparency solution could generate. One respondent also stated that CESR should be aware of the potential damaging effect that post-trade reporting might have on the overall health of the financial sector once the mark to market obligations are again in place as the publication of a transaction at a lower price might force holders to take that price into account even if the transaction was not representative.

Questions Q15 to Q17 of the Consultation paper - Experience in the U.S market: the TRACE system

Questions Q15 to Q17 of the Consultation paper address issues related to TRACE:

Q15: What are your personal experiences with TRACE? Please specify whether you are directly trading in the US corporate bond markets on the buy or sell-side.

30. Respondents to the consultation had only very limited practical experience with TRACE. Only two of those who responded (one representing the buy-side, one representing sell- and buy-side) stated that they or their members directly participate in the US corporate bond market and use TRACE data one or the other way.

31. The buy-side experience seems to be that they use TRACE data as an input to pricing but still ask a number of brokers for quotes. Thus, TRACE is considered to be a useful negotiation tool but not critical for price formation. The decrease of bid/offer spreads and costs of trading was also mentioned as a benefit. However, sell- and buy-side representatives complained at the same time that TRACE made trading much more difficult because dealers' ability to commit capital and to execute quickly was also diminished. Even the buy-side views in the US were split regarding whether the benefits have outweighed the disadvantages and costs.

32. Apart from this, one information provider gave its view on the benefits and drawbacks of TRACE for the US market. In its view TRACE has not mitigated the negative effect of the crisis such as wider bid/offer spreads and sharp reduction of liquidity, instead TRACE has reduced liquidity.

CESR notes that respondents had limited direct experience with TRACE. Those with practical experience did not perceive TRACE as helpful during the crisis and noted that in normal times there is scope for benefits as well as drawbacks for the US markets.

Q16: Do you see other benefits or drawbacks of the introduction of a TRACE-like post-trade transparency regime for OTC trades in corporate bonds in Europe?

33. The assessment of the current research on the impact of TRACE was also not unanimous. Some argued that the benefits of TRACE clearly prevailed. Others found that the research papers provide an ambivalent and inconclusive picture as to the effect of TRACE in the US, particularly on liquidity. There were also doubts whether the perceived positive effects of TRACE would be transferable to the EU market because of historically tighter bid/ask spreads and more competition among dealers. Furthermore, the fact that there is no single body to report to, that the EU consists of different jurisdictions with different markets and that there is no monopoly on information dissemination under MiFID were regarded as obstacles to the introduction of a TRACE like system in the EU. However, others rejected possible drawbacks (i.e. that real time disclosure reduces market makers' ability to supply immediacy and that already tighter bid/ask spreads exist in the EU) as unconvincing.

34. Many of the respondents who answered the TRACE questions took also the opportunity to give their general opinion on the desirability of such a system in the EU. Views expressed were also mixed. Half of the respondents were in favour of a post-trade transparency system (mostly exchanges), half of them did not see a need for a post-trade transparency regime similar to the one in the US. Some claimed that the benefits of any further transparency regime in the EU have not been sufficiently demonstrated and the potential costs were not properly analysed. A copy of the TRACE system was supported by some respondents.

CESR notes that for various reasons a copy of the TRACE system does not find broad support from market participants in the EU corporate bond markets. Thus, any enhancement of post-trade transparency should be calibrated to meet the needs of the EU environment.

Q17: Are you of the view that the more notable volume declines experienced for 144a securities, compared to securities which are covered by TRACE, is due to a lack of post-trade information? Please provide a rationale.

35. Only very few respondents answered this question; almost all disagreed. Where the answer was explained in more detail, other reasons than a lack of post-trade transparency were mentioned as the cause of the more notable volume declines of Rule 144A securities.

36. Reasons put forward included that Rule 144A securities always tended to be more complex and less liquid bonds. Trading volumes are generally more closely tied to new issuance with most significant volume traded in the first weeks post issuance. The pool of purchasers is smaller, investors in this segment of the market generally have a "buy and hold" strategy and the securities trade at a discount to public bonds of the same issuer which tends to increase the "yield premium" holders charge to hold the bond. In the crisis, investors therefore rather traded larger, more liquid bonds if willing to trade at all.

37. One respondent considered the 144A volume declines as symptomatic of a lack of readily available terms and conditions. Thus, buy-side clients still interested in buying in today's market would lack underlying Rule 144A securities data for their risk profile or rich/cheap analysis.

CESR acknowledges that the lack of post-trade information is not the key reason for the more notable volume decline of Rule 144A securities compared to securities covered by TRACE.

Questions Q18 and Q19 of the Consultation paper - Market-led initiatives in the trade transparency area: ICMA and SIFMA

Questions Q18 and Q19 of the Consultation paper deal with market-led initiatives:

Q18: Please provide information on your experience, if any, in terms of timing, content and access to information of the market-led solutions outlined above. What is your assessment of the effectiveness of the present self-regulatory initiatives?

38. On one hand, some respondents considered that the market-led initiatives in place do create a level of transparency that could assist retail investors without impacting wholesale markets. In terms of scope and timing of the information provided, it was noted that:

a) bonds that do not trade often may not be liquid and displaying out-of-date prices may imply a level of liquidity that does not exist. Real-time prices are more likely to cause confusion when a retail client is negotiating a trade;

b) the threshold identified has been chosen not to discriminate between retail and wholesale but to avoid disclosing large trades and price distortions.

39. On the other hand, most of the respondents and namely those from the buy-side together with exchanges, entities representing investors, committees on market integrity and few from the sell-side were of the opinion that the information made available by market-led solutions currently in place is quite limited and need further efforts in terms of scope, content and timing. In particular, some respondents noted that although market-led initiatives are well intended, they have appeared to be insufficient in terms of comprehensiveness of information provided (financial instruments covered and financial institutions providing trade information) as well as timeliness and delay of publication they envisage.

CESR considers that market-led solutions currently in place, although well intended, do not provide a sufficient level of transparency, in terms of scope, content and timing and further efforts are needed to create a level of transparency that could assist retail investors and small market participants.

Q19: Please provide comments on the characteristics that market-led initiatives should, in your view, have.

40. Those who responded to the specific question are divided in two positions:

a) on one side, some respondents indicated the importance of greater coverage and real-time (or near to real-time) information for market-led initiatives to be efficient. In this respect, some respondents also questioned the ability of the market to deliver efficient solutions and recommend policy-mandated solutions or initiatives coordinated by regulators in order to have a homogeneous framework in the EU;

b) on the other side, some respondents indicated the importance of the initiatives remaining market-driven so that market participants can shape them to better reflect the costs and drawbacks associated with any transparency regime.

Questions Q20 to Q29 of the Consultation paper - Conclusions and recommendations

Questions Q20 and Q21 of the Consultation paper address the possible helpful role of additional post-trade transparency for restoring market confidence, maintaining liquidity in future crisis and contributing to liquidity in normal times:

Q20: Do you think that the introduction of additional post-trade information on prices could help restore market confidence and maintain market liquidity in times of future crisis?

41. A slight majority of respondents were of the view that additional post-trade information could help restore market confidence and maintain market liquidity in times of future crisis.

42. Those who responded positively included both buy-side and retail representatives who were of the view that greater post-trade information would provide greater certainty around prices and valuations which in turn could lead to positive consequences for market confidence and liquidity. But amongst this group of respondents some noted that additional post-trade information is not necessarily the key factor in delivering this.

43. Respondents representing the banking sector did not agree that additional post-trade information could help restore market confidence and liquidity in times of crisis and some expressed concern that mandatory post-trade requirements could have an adverse impact in crisis times.

44. Generally some respondents acknowledged that there are a variety of factors at play in times of crisis.

CESR concludes that additional post-trade transparency, provided that it is sensibly calibrated to minimise any negative impact on liquidity, might be helpful in restoring market confidence.

Q21: Do you believe that additional post-trade transparency of European corporate bond markets would contribute to liquidity in normal market conditions? Can you please explain why?

45. Again the majority of respondents thought that additional post-trade transparency would contribute to providing liquidity in normal times. This largely represents the view expressed by the investor community and those with a retail interest according to which there is scope to increase market confidence by providing information to assist with valuations.

46. The sell-side did not agree with this, again highlighting concerns regarding an adverse impact on liquidity. Some respondents noted that sufficient information is currently available in the market.

47. When comparing responses to Q20 a slightly higher percentage of respondents were of the view that post-trade information could be more helpful in normal times rather than crisis times.

CESR recognises that a greater level of post-trade transparency than is currently available may contribute to supporting liquidity in normal times, provided that additional post-transparency is structured in a way as not to have an adverse impact on liquidity.

Questions Q22 and Q23 of the Consultation paper address a possible differentiation between wholesale and retail markets:

Q22: To what extent can corporate bond markets be characterised as wholesale or retail markets? How would you distinguish between wholesale and retail markets? What are the differences across the EU?

48. Almost all respondents indicated that, with the exception of a few domestic markets, retail investors are not particularly present in EU markets and corporate bond markets can be considered mainly wholesale.

49. On the question of distinguishing between retail and wholesale markets, almost all the respondents stated that the main differences rely on:

a) the size of trades, where wholesale markets are characterised by larger volumes;

b) whether the issues are aimed to retail or institutional investors and, therefore, on the distribution policy designed for the target market segment. In this respect, the criteria laid down in the Prospectus directive could be taken into account.

50. In this respect, some respondents considered Italy's approach as one possibility to satisfy the needs of retail investors without major impacts on wholesale sizes.

CESR acknowledges the relevant role played by wholesale investors in EU corporate bond markets and notes it is characterised by larger traded volumes than those of retail investors.

Q23: What would be the benefits and the downsides of a harmonised pan-European transparency regime for: a) the wholesale market; b) the retail market. Please provide arguments and fact-based data on the potential impact.

51. Most of the respondents indicated that a harmonised transparency regime would contribute to improving the efficiency and liquidity of corporate bond markets, the valuation of bond portfolios and investor confidence. In this respect, a harmonised approach appears to be

preferred by market participants to different regulatory regimes in this area adopted by Member States on the basis of Recital 46 of MiFID. However, some respondents also underlined the importance of a "targeted" approach to a post-trade transparency regime, which:

a) differentiates between the needs of retail and wholesale investors by taking into account large transactions and possible delays; and

b) considers the different characteristics in terms of liquidity of corporate bond markets.

52. Some sell-side respondents believe that a transparency regime would not be of any benefit to wholesale markets and are sceptical about the benefits that the retail segment might have from it.

CESR agrees with the importance of a "targeted" approach which differentiates the needs of retail investors and small market participants from those of wholesale investors and large market participants.

Questions Q24 to Q25 of the Consultation paper address issues regarding valuation:

Q24: Is the reduced reliability of the CDS market as an indicator/proxy for calculating the value/price in the cash market under certain market conditions an issue which calls for more post-trade transparency of cash corporate bonds?

53. Most respondents pointed out that they would have preferred to be cautious about the impact that post-trade transparency would have on the reliability of the CDS market as a proxy for pricing the cash bond market. However, if most of the respondents agreed on the potential impact of a better post-trade transparency of cash bond markets (e.g. for the valuation of bonds), a number of respondents considered that greater post-trade transparency would not increase the reliability of CDS as a proxy for the price in the cash market. Having said that, a number of respondents stated that generally, more post-trade transparency in both the cash corporate bond and CDS markets would improve the price discovery mechanism. Nevertheless, a few respondents considered that CDS market has proven its efficiency in the crisis while certain others considered that the creation of a European clearing house would be much more efficient than post-trade transparency requirements.

Q25: Do you think that transparency requirements could help address wider issues such as those relating to accurate valuations?

54. Regarding the impact of the transparency requirements, the majority of respondents stated that post-trade transparency would help in creating greater accuracy for bond valuations. On the other hand, some respondents stated that post-trade transparency does not make portfolio valuation easier or more objective and that in extreme circumstances, price information would be misleading. The same respondents argued that post-trade transparency would not provide fair value in an illiquid market.

CESR is of the view that:

- Greater post-trade transparency of cash bond markets would not necessarily increase the reliability of CDSs in the evaluation of the prices in the bond markets; and
- Post-trade transparency could contribute to greater accuracy for bond valuations, although in some circumstances, price information could be misleading, e.g. for trades in extremely illiquid bonds.

Question 26 of the Consultation paper addresses the methods to obtain additional post-trade transparency (industry-led solution vs. mandatory regulation)

Q26: What would be the most cost-effective way of delivering additional transparency an industry-led solution, possibly based on a road map set by regulators, or mandatory regulatory post-trade transparency requirements?

a) the retail market.

b) the wholesale market.

Please, provide a rationale.

55. Views of the 34 different responses on the kind of post-trade transparency needed were very mixed. They ranged from the introduction of a mandatory regime for pre- and post-trade transparency in the one end to the negation of a market failure and the consequent rejection of any additional post-trade transparency requirements in the other end of the spectrum. Approximately half of the respondents who favoured additional post-trade transparency expressed a preference for a somehow mandatory EU regime. The other half was either in favour of a market-led solution or did not see any necessity to further enhance post-trade transparency above the level achieved by current market led initiatives.

56. Some argued for a mandatory regime which could be built on the experience with TRACE. Mostly exchanges, issuers and retail/shareholder representatives emphasised the need for a full harmonisation which could only be achieved by a mandatory regulatory regime with the same regulatory requirements. The regime should apply to listed and unlisted bonds. It was argued that a market-led solution can never provide the optimal level of transparency for issuers and investors because the interest of intermediaries entrusted with a market led-solution deviates from the interest of the former. Two representatives of retail investors even saw a necessity for mandatory pre- and post-trade transparency while one exchange recommended a regulatory approach to "aggregated post-trade data". Some regarded a mandatory regime for the retail market as the most cost-effective solution.

57. Another large group of respondents opined that a market-led solution would be the most cost-effective solution because the industry could determine what implementation/infrastructure is the most appropriate one. Amongst these respondents, some respondents only saw a need for a regime for retail investors, if any. Others found market-led solutions appropriate for both markets. Three respondents of this group favoured a clear roadmap from regulators for these market-led solutions.

58. Mostly representatives from the sell-side argued that the need for a market-led solution under a roadmap from regulators should be subject to the condition that a market failure and a failure of the market led solution has been established which, in their view, has not yet been the case. These respondents felt there was no evidence of a market failure in the wholesale market, nor have the problems in the market been caused or exacerbated by a lack of post-trade transparency. Furthermore, current industry-led initiatives should be sufficient to enhance general public's understanding of the market.

59. One exchange advocated the trading of corporate bonds on RMs and MTFs as the most cost-effective way for additional transparency which should be supported by a regulatory framework. A similar approach was also supported by a representative of shareholders.

CESR is of the view that current market-led initiatives have not provided a sufficient level of transparency. CESR considers that an increased level of transparency would be beneficial to the market and that a harmonised approach to post-trade transparency would be preferable to national initiatives taken in this area on the basis of the flexibility allowed by MiFID. A harmonised approach was also preferred by the majority of respondents to the consultation. Therefore, CESR has considered it necessary to inform the European Commission on the main conclusions reached and to recommend that the Commission considers the adoption of a mandatory trade transparency regime for corporate bonds in the context of the future MiFID revision.

Technical issues

Questions Q27 to Q29 of the Consultation paper address these issues:

Q27: Which should be in your view the key components of a post-trade transparency framework for corporate bonds? Please provide your view with respect to depth and breadth of information as well as to timeliness of data as described above.

60. The respondents that are not in favour of a post-trade transparency regime agree with the framework already in place and therefore did not provide views on the key components of a future regime. Some of the key components that respondents which specifically answered this

question are: date and time of execution, currency, trade size, price/spread, yield, standardised format for identification (ticker, coupon, maturity), settlement date and commission. Two respondents presented instead some principles that any post-trade transparency framework should meet: homogeneousness, universality, real-time, maximum coverage and free access.

In terms of content of post-trade transparency, CESR believes that the following is the most relevant information to be made public:

i) Description of the bond: standardised format of identification (e.g. ISIN code); maturity; coupon; rating; currency; issuer name;
ii) Price/yield at which the transaction has been concluded;
iii) Volume of the executed trade; and
iv) Date and time when the trade has been concluded.

Q28: Should the information on the volume be reported only below a certain size, what would be the threshold to avoid any risk of market impact?

61. Most of the respondents in favour of increased post-trade transparency consider that CESR should carefully evaluate the merits of introducing a segmented transparency regime to differentiate between the needs of wholesale and retail investors adding that it is important that post-trade publication takes account of the different needs of both types of investors. A series of specific delays and limits should be established for fixed income assets. The issue underlined in almost all of the responses was how to determine the value of what is retail, wholesale and what is large in size. One of the proposals established that anything over €1 million should be treated as large in scale, retail trades below €50.000 should be subject to 15 minutes publication delay and trades between €50.000 and €1 million should be subject to end of day publication. Some others established a €500.000 threshold above which trades shuld be subject to lower post-trade transparency obligations in terms of content of information and timing of its publication.

CESR considers that a post-trade transparency regime for corporate bonds should minimise any potential drawback on liquidity. CESR is of the view that, as with the transparency regime for equity markets under MiFID, specific attention should be paid to an approach that allows for delayed publication and/or the disclosure without specified volumes if the transaction exceeds a given threshold. When setting the thresholds, the initial issuance size (total value) and/or turnover of a particular corporate bond would need to be taken into account in a similar way as in the case of shares under the existing MiFID regime.

Q29: Would you see some benefits in a step-by-step implementation, starting with the most liquid bonds, as employed when TRACE has been introduced?

62. Almost all of the respondents who answered this question (approximately a quarter of respondents) were of the view that a phased implementation of a post-trade transparency regime would be most appropriate and cost-effective.

In CESR's view a post-trade transparency regime for corporate bonds should cover corporate bonds for which a prospectus has been published (i.e. including all corporate bonds admitted to trading on a regulated market) or which are admitted to trading on an MTF.[1]

---

[1] The Swedish Finansinspektionen, the UK FSA, the Irish Financial Regulator and the German BaFin do not agree with this scope. Finansinspektionen, the FSA and the Financial Regulator consider it should be limited to the more liquid bonds. BaFin suggests limiting the scope to deal with bonds for which a prospectus has to be published and which exceed a moderate initial issuance size as a practicable liquidity filter.

PART II: Structured finance products and credit derivatives

Questions Q30 and Q61 of the Consultation paper – Description of the markets for structured finance products and credit derivatives and the role of post-trade transparency

Questions Q30 and Q31 of the Consultation paper address the correctness of CESR's analysis regarding current sources of trading information in the market:

Q30: Does this analysis represent your practical experience regarding information relevant and available for pricing of each of the products covered by this consultation paper?

63. Only few responded to this question. All respondents considered that overall CESR's analysis can represent the practical experience regarding information relevant and available for pricing each of the products covered by the consultation paper. However, one respondent indicated that the dealer community has been active in reducing access to key information for investors in order to maintain a certain lack of information. This respondent would therefore support initiatives that increase transparency for structured finance products.

Q31: Are there other sources of information available which you use for pricing and valuation purposes? Can you provide details regarding the respective role of pricing services using proprietary models and consensus pricing services?

64. Almost all the respondents did not indicate additional sources of information available for pricing and valuation purposes. Only one respondent provided an updated and complete set of major pricing sources for structured finance products. In this respect, it was underlined how it is generally necessary for a market participant to subscribe to more than one information source to obtain sufficient information to monitor and value securities.

ABS

Questions Q32 and Q39 of the Consultation paper address the ABS market:

Q32: What do you think are the benefits and/or downsides of a post-trade transparency regime for ABS? Please support your arguments with evidence and explain how the possible downsides could be mitigated.

65. The main potential benefit of a post-trade transparency regime for ABS was seen as the provision of greater information which would assist with valuations as well as information on market activity. Some respondents noted the scope for positive impacts on liquidity.

66. In terms of downsides some respondents noted the risk of dealers being unwilling to commit capital and the possible impact on liquidity. This was particularly seen as an issue for more illiquid markets.

67. A general concern was the likely cost of any such regime, especially as it may only deliver marginal benefits to a small number of securities.

68. One third of those who responded to this question did not see any benefit in a post-trade transparency regime for ABS. Some respondents noted that there was already a sufficient level of post-trade information commercially available.

CESR agrees that greater post-trade transparency could assist with valuations of ABS and could generally provide greater transparency of market activity to assist with price formation. However, CESR is mindful of the current uncertainties surrounding the ABS market and is of the view that a transparency regime should be calibrated to ensure that market liquidity does not retreat further as a result of introducing increased post-trade transparency. CESR acknowledges the potential benefits arising from an increased level of post-trade transparency as well as concerns from market participants regarding potential cost and is committed to delivering post-trade transparency in the most cost-effective way.

Q33: Do you believe that post-trade transparency would be desirable for all types of ABS? If not, can you explain which types of instruments/tranches (e.g. AAA RMBS) should be subject to post-trade transparency?

69. Responses received to this question were mixed. On the one hand some respondents were of the view that post-trade transparency would be desirable for all types of ABS noting the risk of regulatory arbitrage if some instruments were to be excluded. Two respondents noted concern at differentiating by rating and another noted that whilst the underlying risk of the different product types varies the structural mechanics remain the same.

70. On the other hand some respondents thought that a post-trade transparency regime could only apply to the section of the market which is deemed to be reasonably liquid, which has a higher credit quality and a greater degree of standardisation, for example large AAA issues.

71. One trade association response urged CESR to consider this issue further and highlighted the risk of creating an artificial two-tier market where low liquidity ABS could be priced conservatively and higher liquidity ABS priced too optimistically.

72. Two respondents to this question expressed the view that post-trade transparency should not apply to any type of ABS and some noted that is should not apply to bespoke securities.

Q34: Would it be meaningful to segment a post-trade transparency regime between "higher liquidity" ABS (i.e. commoditised products, standardised structures, higher credit quality and homogeneous collateral) from "low liquidity" ABS (i.e. bespoke products, non-standardised structures, lower credit quality, heterogeneous collateral)? In this case, could you explain what could be considered as low liquidity ABS?

73. CESR received limited responses to this question and there was no consensus view. On the one hand some respondents expressed concern in using a definition of liquidity to segment a regime (noting current general illiquidity) whereas others thought this was the correct approach.

CESR acknowledges that a clear-cut answer has not arisen as a result of the consultation. CESR appreciates the view that it may be more helpful to provide post-trade transparency for all types of ABS. However, CESR recommends that a phased approach would be used so that the regime would gradually apply to all ABS that are commonly considered as standardised. The details of the phased approach will need to be developed, but some CESR Members have suggested that the initial issuance size of an ABS could form a basis for this approach. This view is however not supported by some other CESR Members, who consider that other criteria are likely to be more appropriate as bases for developing a graduated approach.

Q35: What post-trade information should be published? In addition to information about the price at which the transaction was executed, the volume and the time of the transaction, would there be any benefit in publishing information about portfolio composition, asset class, the initial interest (seller or buyer)? Is there any other information which would be relevant?

74. In general respondents agreed that price, volume, time of transaction and ISIN should be published. Others suggested that information on whether the transaction is a purchase or sale should be published as well as the spread, maturity, currency, settlement date and the main characteristics of the product.

75. One respondent noted that any regime for ABS should follow the same approach as for corporate bonds.

CESR considers that the following is the most relevant information to be made public:

i) Standardised format of identification;
ii) Issuer name;
iii) Price at which the transaction was concluded;
iv) Volume of the executed trade;
v) Date and time when the trade was concluded;
vi) Currency;

vii)	Maturity; and
viii)	Rating.

Q36: When should post-trade information be published? Should it be published immediately after a trade has been concluded? Please explain rationale.

76. CESR received limited responses to this question but in general respondents thought that post-trade information should be published as soon as possible after the trade has taken place and no later than the close of the trading day after trade execution.

77. One respondent noted that publication of large trades should be deferred. Another one noted the relevance in following a similar approach as for corporate bond markets. Again CESR was urged to further engage with industry to consider this issue further.

CESR considers that a post-trade transparency regime for ABS would need to minimise any potential drawback on liquidity. CESR is of the view that specific attention should be paid to an approach that allows for delayed publication and/or disclosure of trades without indication of the exact volume if transactions exceed a given threshold. When setting the thresholds, the initial issuance size (total value) and/or turnover of a particular instrument would need to be taken into account in a similar way as in the case of shares under the existing MiFID regime.

Q37: Do you believe that a post-trade transparency regime should or could be implemented in connection with other regulatory interventions at the same time (e.g. relating to the quality of information of the underlying assets, standardisation of reporting)?

78. CESR received mixed responses to this question. On the one hand some respondents thought that it would be helpful for a post-trade transparency regime to be implemented in connection with other regulatory interventions whilst others thought that these work streams should be kept separate to prevent time delays.

In CESR's view any post-trade transparency regime for structured finance products should be seen as complementary to existing initiatives designed at improving transparency earlier in the transaction chain. In order to avoid slowing progress of these initiatives the work on post-trade transparency would need to be taken forward separately while continuing to monitor the progress of other initiatives.

Q38: Would you like to make any other observations relevant for CESR work on the need for post-trade transparency for ABS?

79. Some industry participants expressed willingness to further work with CESR on this issue. There were no other significant responses received to this question.

Q39: Please indicate whether you represent an organisation which is involved in: a) originating ABS b) selling ABS; c) buying ABS d) providing pricing information on ABS; or e) rating ABS

80. Respondents generally did not answer this question.

Collateral Debt Obligations

Questions Q40 to Q50 of the Consultation paper focus on post-trade transparency for the CDO market:

Q40: What do you think are the benefits and/or downsides of a post-trade transparency regime for CDOs? Please support your arguments with evidence and explain how the possible downsides could be mitigated.

81. Respondents were mixed as to whether a post-trade transparency regime would deliver benefits for the CDO market, such as attract new participants, who may contribute to improving liquidity. Some noted the scope for positive impact on liquidity as well as for assisting with valuations.

82. On the other hand some respondents noted that due to the illiquid nature of CDO markets there was a risk that such a regime could further damage liquidity. The potential cost of a post-trade transparency regime was also highlighted as a concern.

CESR notes that the main concerns of a post-trade transparency regime for CDO markets relate to the complexity and non-standardised nature of many CDOs, the scope for an adverse impact on liquidity and potential cost implications. It is important that a post-trade transparency regime is delivered in the most cost-effective way and limits the potential for a negative impact on liquidity of already fragile markets.

Q41: Do you believe that post-trade transparency would be desirable for all types of CDOs? If not, can you explain which types of structures/tranches (e.g. cash CDOs vs. synthetic CDOs) should be subject to post-trade transparency?

83. Responses received to this question were mixed. In general respondents noted the illiquid nature of CDO markets, more so than in the case of markets for other types of structured finance products. Some respondents noted that due to the bespoke nature of CDOs they do not lend themselves to post-trade transparency and for standardised index tranched CDOs there is already a high level of information published.

84. On the other hand some respondents thought that post-trade transparency should apply to all types of CDOs and in particular it would be important not to differentiate by rating.

85. One respondent urged caution that a differentiated regime could create an artificial two-tier market where low liquidity CDOs are priced conservatively and higher liquidity CDOs are priced too optimistically.

Q42: Would it be meaningful to segment a post-trade transparency regime between „vanilla" CDOs (i.e. comparable to the ABS with standardised structures, higher credit quality and homogeneous collateral) from Structured Finance CDOs (i.e. bespoke products, non-standardised structures, lower credit quality, heterogeneous collateral)? In this case, could you explain what could be considered as less "vanilla" CDOs?

86. Again CESR received mixed responses to this question. A number of respondents noted that in general CDOs are more complex products so it is not meaningful to distinguish between "vanilla" and "non-vanilla" CDOs. A number of respondents thought that it would be more appropriate to differentiate by liquidity/degree of secondary trading but at the same time noted the current general illiquidity of the market. Some participants were of the view that this segmentation should be combined with the separation between investors and dealers for cash deals or between swap counterparties for synthetics.

CESR notes that liquidity problems have been acute for some sections of the CDO market. Therefore, the calibration of any post-trade transparency regime will need to be considered. CESR recommends that a phased approach would be used so that the regime would gradually apply to all CDOs that are commonly considered as standardised. The details of the phased approach will need to be developed, but some CESR Members have suggested that the initial issuance size of a CDO could form a basis for this approach. This view is however not supported by some other CESR Members, who consider that other criteria are likely to be more appropriate as bases for developing a graduated approach.

Q43: To what extent would post-trade transparency be helpful to reduce the bid and ask spread or price dispersion for a particular transaction/instrument?

87. Respondents expressed differing views as to the potential for post-trade transparency to reduce bid/offer spreads or price dispersion. Some thought that it would be helpful whereas others thought it would have little impact or could, conversely, have an adverse impact (if liquidity was to further reduce as a result).

CESR notes the feedback from respondents that the scope for reducing bid/offer spreads or price dispersion is likely to be limited, but CESR remains of the view that additional post-trade transparency could deliver other benefits.

Q44: What post-trade information should be published? In addition to information about the price at which the transaction was executed, the volume and the time of the transaction, would there be any benefit in reporting information about portfolio composition, asset class, the initial interest (seller or buyer)? Is there any other information which would be relevant?

88. As mentioned before, the respondents that are not in favour of a post-trade transparency regime do not provide any views on the key components as they agree with the status quo. Most of the respondents which answered this question agree on some of the key components, such as information about the date and time of execution, currency, trade size, price/spread, yield and standardised format for identification (ticker, coupon, maturity). One also added that more information about the characteristics of the assets used in the structure, portfolio composition, asset class and initial interest should also be published.

CESR considers that the most relevant information to be made public is the same as for ABS (see above).

Q45: When should post-trade information be published? Should it be published immediately after a trade has been concluded? Please explain rationale.

89. All five of the respondents who answered this question were of the view that post-trade information should be published as soon as possible after the trade has been concluded, or anyhow, the deadline should be prior to close of trading on the first business day after the transaction was executed.

CESR is of the view that the same considerations regarding delayed publication as noted above for ABS are relevant also for CDOs.

Q46: When facing inactive markets, to what extent would a post-trade information regime be applicable? If not, could you detail the rationale for an alternative system when markets are no longer active?

90. Most of the few respondents stated that a post-trade transparency regime would be applicable even when facing inactive markets.

Q47: To what extent can observable prices in the secondary market help to test or promote internal valuation models?

91. Whilst some of the few respondents to this question do not consider that observable prices in the secondary market do help to test or promote internal valuation models, as they are not an indication of where a dealer would go for a transaction, some of the responses to the consultation stated that observable prices are useful to test the goodness of theoretical internal models as well as the calibration of the internal models. One respondent is of the view that any arrangers or dealers of CDOs should commit in running a secondary market e.g. in quoting on a bid/offer spread basis the transactions that they have promoted and/or sold.

Q48: Do you believe that a post-trade transparency regime should or could be implemented in connection with other regulatory interventions at the same time (e.g. relating to the quality of information of the underlying assets, standardisation of reporting)?

92. Some of the respondents believe that a post-trade transparency regime should be implemented in connection with other regulatory interventions at the same time (e.g. relating to the quality of information of the underlying assets, standardisation of reporting). Some others just believe that it is not possible to answer this question without a clear understanding of the proposed additional regulatory intervention.

In CESR's view any post-trade transparency regime for structured finance products should be seen as complementary to existing initiatives designed at improving transparency earlier in the transaction chain. In order to avoid slowing progress of these initiatives the work on post-trade transparency would need to be taken forward separately while continuing to monitor the progress of other initiatives.

Q49: Would you like to make any other observations relevant for CESR work on the need for post-trade transparency for CDOs?

93. Whilst some of the respondents just consider that post-trade transparency would not be relevant for CDOs, some recommend suitable transparency measures for both ABS and CDOs.

Q50: Please indicate whether you represent an organisation which is involved in: a) originating CDOs b) selling CDOs c) buying CDOs d) providing pricing information on CDOs; or e) rating CDOs

94. Just four respondents answered this question. These include organisations which are involved in buying and selling CDOs, as well as a data vendor.

Asset Backed Commercial Papers

Questions Q51 to Q55 of the Consultation paper address post-trade transparency regarding the ABCP market:

Q51: What do you think are the benefits and/or downsides of a post-trade transparency regime for ABCPs? Please support your arguments with evidence and explain how the possible downsides could be mitigated.

95. A broad majority of the twelve different responses received did not see tangible benefits of a post-trade transparency regime for ABCPs. Where considered beneficial, mostly very general comments about the positive effect of increased post-trade transparency were made. Even these respondents were mostly cautious about the dissemination of the possibility to identify the buyer's sensitive market positions and rather advocated a certain timelag (e.g. on the next day).

96. Seven respondents raised doubts about the benefits of further post-trade transparency because of the structure of the ABCP market. In this respect, it was mentioned that ABCPs are short term securities that mature anywhere between overnight and monthly/quarterly (main maturity between 1 and 30 days). Many investors buy and hold until maturity. Pricing is impacted not only by the interest rate level and creditworthiness of the issuer but also by the exact maturity, size and demand for the issuance by specific names. Investors are focused to discover fair price when they buy. Furthermore, trading post-issuance is very limited (pre-crisis less than 2% of European ABCPs reached the secondary market) and information on the pricing level is already available on an anonymous basis from brokers and issuers/originators. At least before the crisis, it was easy to determine the price of new issuance based on the maturity and issuer. Short maturity and high ratings caused most of ABCPs to trade close to par anyway. Thus, according to the respondents disclosure which was considered necessary and of most benefit would relate to the structure of the ABCP and its underlying collateral as well as the performance of the underlying assets in an ABCP conduit.

97. As regards trading, a more fundamental concern of respondents was the absence of a secondary market. However, this would not be resolved by additional post-trade transparency but was considered to be a more deep seated concern about credit quality and liquidity of the asset.

98. As a real drawback, it was mentioned by the buy-side that publication of trade-by-trade data about volumes and prices would give rise to a competitive advantage for subsequent traders who would be able to see details of completed transactions and therefore competitors' portfolios. The spotlight of positions and activities of individual participants would neither be in the interest of investors, issuers nor dealers.

99. One data provider mentioned that limited turnover and current dislocated nature of the ABCP market would imply that neither consensus service nor post-trade transparency can be applied to ABCPs.

Q52: Do you believe that post-trade transparency would be desirable for all ABCPs, whatever their structures or maturities? If not, can you explain which types of structures should be subject to post-trade transparency?

100. Only three respondents of those in favour of post-trade transparency answered this question. One proposed to differentiate post-trade transparency regimes for structured securities by the rating of these securities, the other concluded that the ABCP type would not alter the desirability of transparency.

Q53: What post-trade information should be published?

101. Respondents advocating a post-trade transparency regime for the ABCP market noted the following common pieces of information: price, volume, date and time. Furthermore yield, buy or sell, and ISIN were mentioned as necessary information to be disclosed.

Q54: Would you like to make any other observations relevant for CESR work on the need for post-trade transparency for European ABCPs?

102. Several respondents mentioned that the priority in the ABCP market would be more on "general transparency" (e.g. structure of the conduit, risks involved, means for guaranteeing liquidity). In this respect, one respondent supported some kind of "post-issuance" information about ABCP programmes such as size of programme, asset breakdown by sector and type including underlying asset quality, credit and liquidity support, its size and providers, and asset performance data (e.g. charge offs/defaults, seller level credit enhancement coverage). This information should be made available to program investors exclusively in order to limit the disclosure of sensitive information about the buyer. The majority of this information would be disclosed by issuers who will adhere to the ICMA/ESF Code of Conduct for ABCP.

103. Similarly, another respondent proposed that the programme sponsor should daily publish the current size of all outstanding issues of a relevant programme including currencies to help fund managers to comply with regulatory obligations (e.g. prohibition to hold more than a certain percentage of a given ABCP).

104. One respondent representing promoters of AAA rated money market funds said that administrators of ABCP programmes should be utilised more often to have a more independent source of information about the performance of the programme than CRAs.

Q55: Please indicate whether you represent an organisation which is involved in: a) originating ABCP b) selling ABCP; c) buying ABCP; d) providing pricing information on ABCP; or e) rating ABCP

105. Only four respondents explicitly stated that they represent market participants active in the ABCP market.

In light of the broad majority of responses which did not see tangible benefits of a post-trade transparency regime for ABCP and considering the specific market structure of the ABCP market, CESR came to the conclusion that additional post-trade transparency is not one of the pressing topics for participants in these markets. However, CESR sees value in further exploring what other "general transparency" or "post-issuance information" could be helpful in the current market conditions and beyond for investors in ABCPs (e.g. information on the structure of the ABCP, its underlying collateral, performance of the underlying assets) and in monitoring respective industry initiatives. Therefore CESR does not currently see a need for a post-trade transparency regime for ABCPs.[2] However, CESR will monitor the experiences reached with the post-trade transparency regime for other structured finance products and will reconsider its position in this regard at a later stage, if needed.

Credit Default Swaps

Questions Q56 to Q61 of the Consultation paper relate to additional post-trade transparency for the CDS market:

Q56: What do you think are the benefits and/or downsides of a post-trade transparency regime for CDS? Please support your arguments with evidence and explain how the possible downsides could be mitigated.

[2] The AMF does not agree with this view.

106. Regarding the benefits and/or downsides of a post-trade transparency regime for CDS, most respondents stated that transparency of these products is important insofar as it would provide information about the scale of credit transfers. In addition, having regard to the importance of this market for reference pricing in other markets and the additional transparency measures, these same respondents stated that these factors would help to create more liquidity. On the other hand, a few respondents stressed the downsides of this initiative in terms of costs and damages for market liquidity and were more in favour of self regulatory initiatives rather than regulatory intervention in this area.

In light of the responses received to the consultation, CESR reached the conclusion that a post-trade information regime for CDS would provide information on the scale of credit transfers and may contribute to increase liquidity.

Q57: Do you believe that post-trade transparency would be applicable to all types of CDS? If so, can you explain the rationale for which types of CDS (e.g. single name CDS) should be excluded from post-trade transparency?

107. Concerning the types of CDS potentially covered by post-trade transparency requirements, some respondents stated that this should be applicable to all kinds of contracts or at least, as stated by certain respondents, to those contracts that have a secondary market (e.g. some single-name CDS contracts and index contracts). On the other hand, a few respondents were against post-trade transparency requirements for CDS contracts while admitting that if applicable, it should only apply to the most liquid contracts such as index contracts.

CESR is of the view that a post-trade transparency regime should cover all CDS contracts which are eligible for clearing by a CCP due to their level of standardisation, including single name CDS, although there may not yet be an offer for clearing of these CDS by a CCP.

Q58: What post-trade information should be published? CDS spread, notional amount, reference entity, maturity?

108. Regarding the information to be published, most respondents which supported additional post-trade transparency were in favour of the publication of transaction dates, reference entity, type of underlying risk, CDS premium, notional amount and maturity.

In terms of content of post-trade transparency for CDS, CESR believes that the following is the most relevant information to be made public:

i) Standardised format of identification;
ii) Issuer name;
iii) Price at which the transaction was concluded;
iv) Volume of the executed trade;
v) Date and time at which the trade was concluded;
vi) Currency;
vii) Maturity;
viii) Rating; and
ix) Reference entity.

Q59: When should trade information be published? Should it be published immediately after a trade has been concluded? Please explain rationale.

109. Although most respondents considered that information should be published as soon as possible, a few respondents considered that it is essential that this information is put into the public domain at least by the close of the trading day after the trading day during which the execution took place. On the other hand, others were against the disclosure of any information based on a mandated post-trade transparency regime because of the damaging effect on intermediaries and market liquidity. They preferred to maintain the status quo and rely on existing forms of information which are not real-time but end-of-day.

CESR is of the view that the same considerations regarding delayed publication as noted above for ABS are relevant also for CDS.

Q60: Do you believe that a post-trade transparency regime should or could be implemented in connection with other regulatory interventions at the same time (e.g. relating to the quality of information on the underlying assets, standardisation of reporting)?

110. While most of the seven respondents stated that it would be inappropriate to supplement the post-trade transparency regime with additional regulatory interventions, few respondents considered that it could be efficient to supplement post-trade transparency with additional measures to improve the quality of information disclosed.

Q61: Would you like to make any other observations relevant for CESR work on the need for post-trade transparency for CDS?

111. Certain respondents stated that a separate post-trade transparency regime would not add value and could jeopardise the related benefits from establishing a CCP in Europe for CDS. However, one respondent argued that the possibility to create liquid financial instruments (e.g. for each name a standardised CDS with fixed premium) as well as an European data warehouse could be studied.