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TECHNICAL ADVICE

**CESR Technical Advice to the
European Commission in the
Context of the MiFID Review –
Equity Markets**

**Post-trade Transparency
Standards**



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Executive Summary

In order to enhance the quality and consistency of post-trade transparency data on shares admitted to trading on a regulated market (RM) under MiFID, CESR proposed in its April Consultation Paper on MiFID Equity Markets Review (Ref. CESR/10-394) to use common standards and provide further guidelines to clarify the transparency obligations. CESR also proposed to establish a joint CESR/Industry Working Group to assist CESR with refining proposals for detailed standards for post-trade transparency and shaping the clarifications of the MiFID post-trade transparency obligations with a view to minimising the extent of duplicative trade publications.

Based on the discussions within the CESR/Industry Working Group, CESR makes recommendations for legally binding post-trade transparency standards and guidelines. These are summarised below:

Standards for Post-Trade Transparency

Regarding the extent of harmonisation of standards, CESR outlines two options in the Technical Advice which will both improve the quality of post-trade data and interoperability of data formats and protocols. Subject to the outcome of a proper cost/benefit analysis, CESR has an initial preference for the option to require a common message protocol (Option 2) instead of only mapping the data of RMs, MTFs and APAs against the harmonised standards (Option 1).

Reference data

CESR recommends – in line with its previous Level 3 guidelines and recommendations on publication and consolidation of market transparency (Ref.: CESR/07-043) - to amend MiFID to make the use of ISO standards and other harmonised formats mandatory for the following transparency publication fields: day, time, instrument identification, price notation, unit price, quantity and venue identification.

Transaction type standards and other trade flags

CESR recommends using the following trade flags.

'B'	Benchmark trade flag	OTC
'X'	Agency cross trade flag	OTC
'G'	Give-up/give-in trade flag	OTC
'E'	Ex/cum dividend trade flag	OTC
'T'	Technical trade flag	OTC
'D'	Dark trade flag	RM, MTF
'N'	Negotiated trade flag	RM, MTF
'C'	Cancellations flag	Publication arrangements (RM, MTF, APA)
'A'	Amendment flag	Publication arrangements (RM, MTF, APA)

The use of a unique transaction identifier along with a unique code identifying the publication arrangement should also be required to help reconciling cancellations and amendments with the original trade reports and to facilitate the consolidation of the data. Cancellations and amendments should be published with a 'C' or 'A' flag together with the unique transaction identifier of the original transaction as soon as possible and no later than 1 minute after the decision to cancel or amend is made.

Further CESR/ESMA work on trade flags

Since some of these flags have been developed with OTC trades in mind, it should be further explored whether the specific flags proposed for OTC trades, if appropriate and as far as relevant, should also be applied for trades executed on RMs and MTFs. CESR also supports greater harmonisation of flags used by RMs/MTFs for on-order book trades and proposes that work by CESR in collaboration with the industry should continue to determine whether it is possible to develop a minimum set of standard flags.



Once the recommendations have been implemented, CESR intends to conduct further work together with the industry to provide guidelines, as necessary, on the use of each of the flags outlined above. Going forward, it will also be necessary for ESMA to be able to establish an efficient, on-going process with the industry to react quickly to new developments and provide guidance as needed to the market.

Clarifications of post-trade transparency obligations

CESR recommends the following amendments and clarifications of MiFID in order to ensure a consistent application of MiFID for transactions executed OTC without duplicative publication of OTC trades.

Article 27(4) of the MiFID Implementing Regulation should be amended to clarify that where a trade is not executed under the rules of the RM or an MTF the following applies, only one investment firm should make the information public which is determined by proceeding sequentially from point (i) to (iii) below unless there is a divergent standing agreement between the parties:

- (i) the EEA investment firm which acts as the executing broker in the transaction
- (ii) in the case that two EEA executing brokers are involved in the transaction or in the absence of an EEA executing broker, the EEA investment firm which sells the share or acts on behalf of or arranges the transaction for the seller
- (iii) in the absence of a selling EEA investment firm, the EEA investment firm which buys the share or acts on behalf of or arranges the transaction for the buyer.

It is also recommended to amend Article 27(4) of the MiFID Implementing Regulation to strengthen the requirement to report two matching trades as one single transaction and to clarify that 'two matching trades' would include the situation where an investment firm acts on its own account and on behalf of a client and simultaneously executes a buy and a sell transaction with no change in price.

Transactions on behalf of a client

CESR recommends clarifying in MiFID that, in the situation where an investment firm acts on behalf of a client (whether on its own account or on an agency basis) and executes a market-side leg and a client-side leg, only the market side leg should be published to avoid double publications (if there is no change in price). If the transaction is executed on a RM or MTF, the market itself will publish the trade. If the market-side transaction involves two or more investment firms, there is no change in price and the investment firms are not putting their capital at risk, the trade should be published in accordance with the recommendation for a new rules on the responsibility for trade publications (falling back to the EEA executing broker) unless the investment firms have a standing agreement that deviates from this.

CESR also recommends a solution for trade publications in the specific situation where the client demands that the client-side leg of a trade be undertaken under the rules of a RM/MTF as a negotiated trade.

Chain of transactions

CESR recommends clarifying in MiFID that a chain of transactions that does not involve a change in price should be considered as one single transaction. The responsibility for the trade publication should be determined in accordance with proposed cascade of responsibilities for Article 27(4) of the MiFID Implementing Regulation.

Further work of CESR/ESMA

Once the standards and obligations under MiFID are agreed, CESR stands ready to conduct further work together with the industry to provide guidelines specifying other worked scenarios and providing further clarification, as needed.

1. Introduction

1. In February 2007, CESR published Level 3 guidelines and recommendations on publication and consolidation of MiFID market transparency data (Ref. CESR/07-043) in order to facilitate the understanding of MiFID requirements and to guard against potential adverse impacts of fragmentation of transparency information post-MiFID.
2. However, in its April Consultation Paper on Technical Advice to the European Commission concerning equity markets in the context of the MiFID Review¹ CESR observed that there were concerns among market participants that the quality of post-trade transparency data had deteriorated significantly since the implementation of MiFID in November 2007. These concerns were particularly pronounced in jurisdictions where all equity transparency information was previously published by the main regulated market (RM) and where the main RM not only consolidated equity data but monitored the quality and took appropriate remedial action as necessary. The concerns particularly related to the OTC market where it was considered that the current MiFID legislation did not provide a sufficient level of granularity in publication standards, leading to a lack of consistency in their application.
3. Among the measures which CESR proposed to address these concerns was to establish a joint CESR/Industry Working Group (“the Group”). The purpose of the Group was to assist CESR in:
 - i) refining proposals for detailed standards for post-trade transparency; and
 - ii) helping shape the clarifications of the MiFID post-trade transparency obligations with a view to minimising the extent of duplicative trade publications.
4. The Group met five times under the joint chairmanship of the UK FSA, as the Chair of CESR’s Secondary Markets Standing Committee, and the CESR Secretariat. The membership of industry members of the Group is shown at Annex 1. The Group took account in its work of the responses to CESR’s Consultation Paper. The final Technical Advice to the Commission represents CESR’s conclusions from the discussion within the Group and the submissions of industry members of the Group.

2. Proposed Standards for Post-Trade Transparency

5. The issues considered by the Group were mainly those set out in Annex II of CESR’s April Consultation Paper:
 - Reference data
 - Transaction type standards for the exchange of shares determined by factors other than the current market valuation of the share and non-addressable liquidity
 - Identification of dark trading
 - Unique transaction identifier
 - Cancellations and amendments of trades
 - Negotiated trades
6. The Group also discussed the possibility of harmonising publication prices as ‘gross prices’ and a minimum set of harmonised flags for trades conducted on-exchange and on-order book, particularly in respect of certain ‘market conditions’ (i.e. the flags which indicate whether a transaction was executed in a period of continuous trading or occurred in an auction period).

¹ Ref. CESR/10-394, available at <http://www.cesr.eu/popup2.php?id=6548>.

Extent of Harmonisation

7. A general question relating to the above issues is the extent to which the harmonisation of post-trade transparency standards should be pursued. At present, the level of data standardisation within the EEA securities industry is not very high. RMs, MTFs and investment firms publish quotes and prices of trades executed using a variety of protocols, flags and formats. While the market is clearly already dealing with many different standards and sources of data in order to consolidate the information in a fragmented post-MiFID trading environment, the cost of market data management can be significant for those retrieving direct data feeds from all the sources and may contribute to higher overall information cost for the market as a whole. When thinking about simplifying trading across different systems, harmonisation of standards and facilitation of consolidation of data, there are two basic options.
- The first and less radical option is to prescribe the standards to which the post-trade data needs to be mapped for dissemination to end users but not require all primary data providers (RMs, MTFs, APAs) to use a common message protocol employing these standards. Under this option individual data providers could continue to provide post-trade data using their own protocols, codes and symbols. However, the data would need to contain all the information prescribed by the standards and would need to be 'mappable' to the standards. The data providers would also need to supply to data consolidators and individual users of direct data feeds a key which would enable the latter to map the data to the agreed standards. End users would thus get the data in the standardised form via data vendors or publications of primary data providers. This option would not require primary data providers to make costly efforts to develop and implement a standard protocol and changes to their systems but data consolidators, as well as individual investment firms who wished to take feeds from multiple data providers, would – similar to the current situation – still have to incur the costs for the conversion of the data to the agreed standards. This could act as a barrier to entry and impede competition. There would also be greater potential for errors given the need to undertake mapping from multiple sources.
 - The second and more sweeping option would be not only prescribe the standards but also require the use of a common message protocol for the post-trade data by RMs, MTFs and APAs, preferably based on a non-proprietary open protocol. Under this option, all those data providers would need to use the same protocol conforming to the agreed standards for the agreed minimum set of post-trade information. It would be up to each RM, MTF and APA to decide whether they want to provide this common protocol as a replacement for their current protocol or provide an additional feed conforming to the prescribed standards and common message protocol. Importantly, though, if they opted for the latter the two feeds should not be subject to significantly differing latency (i.e. the additional feed should be no slower than the existing feed). There would thus be no requirement for data consolidators to map the data they receive into the standards since it would already be in the prescribed form. The costs and benefits of this option are the opposite of the first option. Data providers would face costs in changing their systems to comply with the additional standard protocol but the data would be easier to consolidate. Data vendors may also face additional costs for adapting their systems to the new feeds in the common protocol. On the other side, users of the data would not face the costs of mapping the data to the standards (at least for the set of standardised post-trade data), reducing the barriers to entry, and there would be less scope for mistakes given that there would be no requirement for data conversion.
8. The industry members of the Group unsurprisingly did not have a unanimous view on which option should be pursued.

Recommendation

9. CESR is of the view that the implementation of either option would help to improve the quality of post-trade data and interoperability of data formats and protocols but has an initial preference for the second option (noting that if the dual feed variation is pursued there should not be different latency between the two feeds). However, in the time available CESR has not been able to carry out a proper cost/benefit analysis of the two options. CESR stands ready to provide the Commission with assistance in a comprehensive cost/benefit analysis which needs to take into account that there are two possible ways of implementing option 2 and, if necessary, to further work with the industry on the technicalities of either solution.

i) Reference Data

10. MiFID requires a transaction in shares admitted to trading on a RM to be published using a unique code to identify the instrument; the price notation to identify the currency in which the price is expressed; and the unique harmonised identification code to be used to identify the venue. However, MiFID does not specify what codes or identification methods should be used. Although CESR has published Level 3 recommendations in February 2007 to promote the use of consistent formats, contents and protocols across the EEA, different identifications for instruments, price notations and venues are used in the marketplace. To fill these gaps CESR proposed in its Consultation Paper that International Organisation on Standardisation (ISO) standard formats for post-trade transparency information should be used. As regards the currency code, CESR considered that - deviating from its Level 3 advice - the unit price should be provided in major rather than the minor currency (e.g. Euros rather than Euro cents).
11. Industry members of the Group agreed with most of CESR's proposals. In respect of instrument identification it was noted that some financial instruments (a very small number of shares and ETFs) had the same International Securities Identification Number (ISIN) but were settled in different Central Securities Depositories (CSDs) and therefore might trade at different prices. However, the Group did not believe this was a significant problem which would warrant using another instrument identifier than ISIN. Nor did they see the need for requiring any additional fields in order to identify the settlement venue of such a share.
12. The Group also agreed with the use of the ISO Market Identifier Code (MIC) as the method to identify a trading venue. To avoid the problem of multiple trading venues operating under a single MIC code it was noted that each trading venue should have a unique identifier with the trading venues being separately identified with different MICs (e.g. an operator of a RM also operating an MTF has a MIC for its RM and a separate one for its MTF). Some members of the industry suggested that it would make smart order routing more efficient if each individual order book operated by a single entity could also be separately identified, but overall this was not considered to be necessary and CESR does not recommend pursuing this option.
13. On price notation the industry members of the Group took the view that the ISO currency code (i.e. major currency) should be used except for stocks quoted in Sterling where standardisation should be on the basis of the minor currency (i.e. pence). This reflected the current market practice for the prices of these stocks to be quoted in pence rather than pounds. Little value was seen in requiring the conversion of prices into pounds when data consolidators would then need to provide an additional data feed turning the prices back into pence in order to make them meaningful to end users of data concerning stocks quoted in Sterling as long as the quotes are not standardised in the major currency. Harmonisation to the major currency for all shares admitted to trading on an EEA RM was also questioned in the context of the current practice of MTFs on the continent that admitted shares in Sterling as they tend to quote and publish trades in Sterling in the minor unit too.

14. CESR considers that full harmonisation of trade publication standards in accordance with ISO standards requires the prices of all EEA securities to use the major currency. Using the minor currency for one category of shares while the remainder used the major could cause confusion for market participants and increase the risk of mistakes when reporting the prices of shares to trade publication arrangements particularly when transaction reporting requirements are aligned on the basis of the major currency throughout the EEA. The expectation is that pre-trade quotes would also then be converted. However, CESR recognises that this change would involve a major move away from an established market precedent for Sterling-denominated securities and that the issues associated with doing so should be included in a cost-benefit analysis on the proposed changes to post-trade transparency standards.

Recommendation

15. To ensure that the relevant details to be published in accordance with Article 27(1)(a) and table 1 of Annex I of the MiFID Implementing Regulation, particularly the financial instrument, the price notation and the venue, are identified in a consistent way, CESR recommends – in line with its previous Recommendation 2 of CESR's Level 3 guidelines and recommendations on publication and consolidation of market transparency (Ref.: CESR/07-043) - to amend MiFID to make the use of the following ISO standards (and content where relevant) and proposed harmonised formats mandatory:

Transparency publication field	Standard²
Day	ISO 8601 – 8 character numeric code YYYY-MM-DD
Time	ISO 8601 – 6 character numeric code HH:MM:SS
Instrument identification	ISO 6166 International Securities Identification Number (ISIN) – 12 character alpha-numerical code
Price notation	ISO 4217 – 3 character alpha currency code identifying the major currency
Unit price	ISO 4217 – identification of the major currency to the appropriate number of decimals (e.g. 2.00 EUR)
Quantity	Use of integer numbers of whole units
Venue identification	ISO 10383 - Market Identifier Code (MIC) where the venue is a regulated market or multilateral trading facility, with separate identifiers where a group operated different venues (e.g. an RM as well as an MTF) ISO 9362 - Bank Identifier Code (BIC) where the transaction is executed by an SI or the acronym 'SI' if the SI publishes periodic reports. The acronym 'BCS' where a transaction is executed by a broker crossing system; where an investment firms operates an SI business that interacts with its BCS, the trade should be reported as 'SI' if the investment firm has committed its capital on one side of the trade, otherwise as 'BCS'. The acronym 'OTC' for all other trades executed OTC.

16. The relevant detail to be published when a trade has been executed by a systematic internaliser which publishes periodic reports should be the acronym 'SI' and, for trades executed by a broker crossing system, the acronym 'BCS'. If the investment firm's SI business interacts with its BCS, a trade executed on the respective system needs to be reported as either SI or BCS depending on whether the investment firm committed capital when executing the trade. However, in line with CESR's advice to the European Commission in the Context of the MiFID Review – equity

² CESR notes that the amendment to MiFID will need to provide for the adjustment of these standards in case subsequent changes to the relevant ISO standards are made.

markets (CESR/10-802), a BCS needs to identify itself with a Bank Identifier Code (BIC) in accordance with ISO 9362 when it makes public aggregate information about the number, value and volume of transactions executed in its internal crossing systems at the end of each trading day. The same applies to periodic reports of SIs. If an investment firm is operating an SI as well as a BCS, it is necessary to use separate BIC codes.

17. Since no ISO standard exists to express the quantity, in line with its previous Recommendation ² of CESR's Level 3 guidelines and recommendations on publication and consolidation of market transparency (Ref.: CESR/07-043), it is also recommended to express the quantity in an integer number of whole units.

ii) Transaction Type Standards

18. MiFID³ requires RMs, MTFs and investment firms to publish additional information in relation to some transactions. This includes an indication that the exchange of shares is determined by factors other than the current market valuation of the share. MiFID requires that this information is included in the trade report. However, there is no legally binding requirement to identify such transactions in a standard way and there is no consistency in the way these transactions are identified⁴. This is considered to adversely affect the quality of post-trade information.
19. It has also been suggested that an OTC transaction where another investment firm could not have been a party to the transaction should be identified. An example would be where a firm providing the service of portfolio management transfers the beneficial ownership of a share from one fund to another, acting on behalf of both buyer and seller, and where consequently no other investment firm is involved (i.e. inter-fund transfers). Other types of 'non addressable liquidity' would include 'give up/give in' transactions⁵. It was considered that distinguishing such 'non-addressable liquidity' transactions would be useful for the purposes of transaction cost analysis and assist the operation of the best execution obligation as it would allow for those trades to be excluded from the analysis that are not considered "new" liquidity or liquidity that could have been traded against.
20. To deal with these two issues CESR put forward in the Consultation Paper proposals for each type of transaction to be identified in a harmonised way by using standard identifiers for various categories of transaction - e.g. 'P' for portfolio trades. The intention was to ensure both consistency in the application of the relevant identifiers and to provide useful information to the market that is beneficial to the overall market efficiency.
21. Industry members of the Group fully supported CESR's intentions in this area but there was some debate on the identifiers which should be recommended as the standard ones. Unnecessary granularity in the identifiers should be avoided. However it would be useful for market participants to have additional information in relation to certain trades for their transaction analysis purposes. The industry members of the Group concluded that the following three transaction type standards were likely to be the best means of meeting CESR's objectives.

B "Benchmark" trade flag to be used to report trades where the price was derived over a period of time from post-trade prices according to a specified benchmark and hence did not

³ Article 27(1)(b) of the Implementing Regulation.

⁴ As non-binding rules see Recommendation ³ of CESR's Level 3 guidelines and recommendations on publication and consolidation of market transparency (Ref.: CESR/07-043), available at <http://www.cesr.eu/popup2.php?id=4228>.

⁵ A 'give-up/give-in' transaction occurs where an investment firm transfers a hedge position acquired on a client's instruction to another investment firm who is selling that client a derivative contract. The volume is typically traded on external venues and (re)reported with price adjustment for the give up to a prime broker.

reflect the current price of the stock. VWAP trades would be one example of this Benchmark category.

- X Agency cross trade flag to be used for trades⁶ where an intermediary had brought together two clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
- T "Technical" trade flag to be used to mark other trades based on factors which indicate that they generally should not be considered as addressable or were ones not directly relevant for price formation purposes. This generic category would include ex/cum dividend trades; give up/give in; OTC hedges of a derivative where, by agreement between the parties, the pricing of the equity and derivative legs are inter-dependent; equity hedge trades related to the creation/redemption of Exchange Traded Funds; Exchange for Physical trades⁷; and inter-fund transfers.

A trade could be marked with more than one flag according to its nature – e.g. BX.

22. CESR agrees that the proposed set of flags for OTC transactions outlined above would help enable consumers of post-trade data to identify what kinds of liquidity were non-addressable for them and/or which trades were determined by other factors than the current market valuation of the share, and would allow for improved execution quality and transaction cost analyses to be undertaken. However, CESR sees value in separately flagging (and therefore excluding from the "T" box) two categories of trades – ex/cum dividend trades and give-up/give-in trades. These two types of trade are easily defined and it is considered that the additional granularity does not seem to be harmful to the market but would allow market participants to better exclude or include certain trades for volume and/or price analysis.
23. In addition, CESR recommends that it should be further explored whether the specific flags proposed for OTC trades if appropriate and as far as relevant should be also applied for all trading mechanisms, including organised trading venues (i.e. RM and MTFs) in order to facilitate the consolidation of data. (The issue of a general standardisation of the flags used for trading on RMs and MTFs is considered in paragraph 39 below.)

Recommendation

24. CESR recommends amending MiFID to:

- a) include the following OTC transaction type standards:

- 'B' A flag for "benchmark trades" including all kinds of VWAP⁸, TWAP⁹, CVWAP¹⁰ and all other trades where the price is calculated over multiple time instances according to a given benchmark.
- 'X' A flag for 'agency crossing trades';
- 'G' A flag for 'give-up/give in trades';

⁶ Some industry members of the Group consider that crossing trades can also represent non-addressable liquidity and while this was not a unanimous view, it was considered that there would be benefit in having crossing trades separately flagged.

⁷ Exchange for Physicals, known by their acronym -- EFPs, are transactions in which the buyer of a security or a basket of securities transfers to the seller a corresponding amount of long derivatives contracts, or receives from the seller a corresponding amount of short futures, at a price difference mutually agreed upon.

⁸ Volume-weighted average price.

⁹ Time-weighted average price.

¹⁰ Consolidated volume-weighted average price.

‘E’ A flag for ‘ex/cum dividend trades’; and

‘T’ A “technical trades” flag as a generic category covering trades which either represented non-addressable liquidity or were ones where the exchange of shares is determined by factors other than the current market valuation of the share. Non-exhaustive examples of such trades include OTC hedges of a derivative; inter-fund transfers; equity hedge trades related to the creation/redemption of ETFs; Exchange for Physical trades.

A non-standard settlement trade should not be published with a ‘T’ flag. The financing costs should be included in the commissions and the reported as a normal trade.

A trade should be marked with more than one flag according to its nature – e.g. ‘BX’ for a VWAP cross.

b) adjust Articles 3 and 27(1)(b) of the MiFID Implementing Regulation to the new structure.

25. If this recommendation is implemented, CESR intends to conduct further work together with the industry to provide guidelines on clarification of the content of each of these flags, as necessary. It will also be necessary for ESMA to be able to establish an efficient and on-going process with the industry to quickly react to new developments and provide guidance as needed to the market.

iii) Identification of dark trading

26. There is currently no requirement under MiFID for transactions on RMs and MTFs that were the result of orders that were not pre-trade transparent to be flagged as such. CESR proposed in the Consultation Paper that a transaction that resulted from a dark order should be identified. The Group agreed.

27. There was an overall view that where a dark order executes against a lit order, the transaction should be reported according to the state of the order resting in the order book (i.e. an aggressive dark order executing against a resting lit order would not be flagged as dark).

28. Regarding Iceberg orders, one industry participant of the CESR/Industry WG argued that a trade involving the hidden part of an Iceberg in a hybrid order book (i.e. when dark orders can interact with lit orders in the order book) should be published with a ‘dark’ flag. The main argument was that in a hybrid order book it would otherwise be easy to identify an Iceberg because market participants would not have seen the respective volume quoted on the order book before. However, in CESR’s view the hidden part of the Iceberg always rests in an order management facility which is distinct from the order book and the consecutive peaks of an Iceberg are lit when they come onto the order book even if they are immediately executed. Thus, CESR considers - in line with the current practice at most RMs and MTFs – that the parts of an Iceberg order executed when disclosed to the order book are to be considered as lit and the resulting trade should not be flagged as ‘dark’.

Recommendation

29. CESR recommends amending MiFID to require the identification of ‘dark trading’ with a ‘D’ flag in post-trade transparency reports. This requirement should include trades on RMs and MTFs under the reference price waiver and the large in scale waiver. Where a dark order executes against a lit order, the transaction should be reported according to the status of the resting order in the order book. The parts of an Iceberg order executed in the moment they are disclosed to the order book are to be considered as lit.

iv) Unique transaction identifier

30. MiFID does not currently require that each transaction published has to be assigned a unique transaction identifier (UTI). While many publication arrangements already use an identifier of this type, not all do. Without a UTI, it is impossible to determine which transactions were later subject to amendment or cancellation, and so post-trade data analysis is made more difficult and imprecise.
31. The Group agreed that a UTI should be required provided that this did not publicly identify the parties to the trade. Some industry members noted that some trading platforms use an identifier that is unique within each trading day, but may be used again on different trading days. The Group agreed that this was an acceptable procedure as long as all reports of cancellations and amendments included the date of the original trade along with the transaction identifier so that the original trade can be positively and uniquely identified. CESR notes that the requirement to provide a UTI would apply at the point at which the information is made public. This means the identifier could be provided by the Approved Publication Arrangement (APAs) in the case of OTC transactions. This does not need to be the same identifier as that provided by the investment firm that executed the underlying trade, as long as the publication arrangement is able to determine the underlying transaction for each trade made public. When made public the UTI would need to be accompanied by a unique code identifying the trading venue (RM/MTF) or the publication arrangement.

Recommendation

32. CESR recommends amending MiFID to require the use of a unique transaction identifier along with a unique code identifying the publication arrangement.

v) Cancellations and Amendments

33. Article 27(1)(d) of the MiFID Implementing Regulation requires any amendments to previously disclosed information to be made public. However, there is no legally binding requirement that specifies how this obligation should be met and so there is not consistency in the way information related to amendments is made public¹¹. CESR has proposed in its Consultation Paper that information relating to the cancellations or amendments would need to be published together with the unique transaction identifier of the original transaction as soon as possible and no later than 1 minute after the decision to cancel or amend is made and with a “C” or “A” flag (for cancellation or amendment).
34. The Industry members of the Group agreed with the overall proposal that cancellations and amendments be published within 1 minute and with the unique transaction identifier included. There was agreement that these publications should be made with a “C” or “A” flag. Similarly to the general discussion in paragraph 7 above, a decision will need to be taken as to whether this should also be included in the underlying publication message communicated by the RM, MTF or APA to the publication arrangement or data vendor, or whether the requirement is only that the end user must see a ‘C’ or ‘A’ in the cancellation or amendment trade-report.

Recommendation

¹¹ As non-binding rules see Recommendation 3 of CESR’s Level 3 guidelines and recommendations on publication and consolidation of market transparency (Ref..CESR/07-043), available at <http://www.cesr.eu/popup2.php?id=4228>.

35. CESR recommends amending MiFID to include an obligation that cancellations and amendments should be published together with the unique transaction identifier of the original transaction as soon as possible and no later than 1 minute after the decision to cancel or amend is made and with a 'C' or 'A' flag (for cancellation or amendment). Where a trading venue (RM/MTF) or an approved publication arrangement (APA) uses the same transaction identifiers over multiple days, the date of the original trade would also need to be published along with the UTI when publishing a cancellation and the amended trade. The cost/benefit analysis recommended in paragraph 9 above should also extend to the flags for cancellations and amendments.

vi) Negotiated Trades

36. Article 27(1)(c) of the MiFID Implementing Regulation requires that an indication be provided where a trade was a negotiated trade. However, there is no legally binding requirement that specifies how this obligation should be met and so there is no consistency in the way this information is made public. CESR proposed in its Consultation Paper that where a transaction is a negotiated trade, in accordance with the CESR Level 3 Recommendation, the flag "N" would need to be used.
37. The Group agreed that a standard flag for negotiated trades would be beneficial. It was clarified that the negotiated trade flag should only be used for trades which occurred under the negotiated trade waiver in Article 18(1)(b) of the MiFID Implementing Regulation. Thus, this flag only needs to be used by RMs and MTFs making use of this exemption from pre-trade transparency. A negotiated trade could also be marked with an additional flag according to its nature, e.g. NB for negotiated trade relating to a benchmark price.

Recommendation

38. CESR recommends amending MiFID to oblige RMs and MTFs to use an 'N' flag indicating a negotiated trade as of the waiver under Article 18(1)(b) of the MiFID Implementing Regulation and to clarify in Article 27(1)(c) of the said Regulation that it only applies to RMs and MTFs. The cost/benefit analysis recommended in paragraph 9 above should also extend to the negotiated trade flags.

vii) Standardisation of flags for trading on RMs and MTFs

39. The Group also discussed whether a minimum set of other standard identifiers for trades conducted on the order books of RMs and MTFs should be developed. Particularly some buy-side and sell-side members of the Group felt that some standardisation in respect of market condition flags would be of value. In this respect, it was noted that, for example, there were no standard flags used by RMs and MTFs to distinguish those trades which had been conducted in auctions (e.g. opening and closing auctions) from those executed in continuous trading which were considered by some members of the Group as having the greatest informational content for buy-side and sell-side market participants. In the time available it has not been possible to formulate a definitive recommendation in this area.

Recommendation

40. CESR supports greater harmonisation of flags used by RM/MTFs for on-order book trades and proposes that work by CESR in collaboration with the industry should continue to determine whether it is possible to develop a minimum set of standard flags which can be used for on-order book trading in RMs and MTFs.

3. Clarifications of the post-trade transparency obligations

41. Article 27(4) of the MiFID Implementing Regulation currently provides that where a transaction is executed OTC there are arrangements under which the transaction should be disclosed by one of the investment firms involved. The objective is to ensure that the trade is published whilst avoiding duplicative publications. However, it is recognised that there are difficulties in applying the requirements to complex trading scenarios and that trades are sometimes being published more than once, leading to a distorted picture of the market and adverse effects for both firms and regulators.
42. To deal with these problems CESR proposed that the reporting obligation should be strengthened by stressing that trades should be made public by only one of the investment firms involved.
43. CESR also put forward various proposals to clarify which party should provide for the trade publication in three particular scenarios:
- two matching trades;
 - transactions on behalf of a client; and
 - where ownership of a share is transferred from one investor to another via a chain of investment firms with no change in price and no own capital at risk ('chain of transactions').
44. The Group fully supported the objective of eliminating duplicative reporting and agreed that these were relevant scenarios where reporting obligations needed clarifying to avoid multiple reports of the same transaction. The industry members of the Group noted that the most common reason for duplicative reporting was that an investment firm would not know how its counterparty had handled a particular trade (e.g. whether as part of the transaction chain the counterparty had traded on a regulated market/MTF and thus the trade was already published). The first investment firm would therefore not know whether or not it should make a report and to avoid the risk of there being no report would itself often report the trade to be safe. The Group considered that as a general rule in these situations the onus should be on the investment firm which executed the trade – the executing broker¹² - to make the report, defaulting to the selling firm reporting if it was not clear which firm was the executing broker.
45. The Group agreed with CESR's proposed clarification in the April Consultation Paper that, where a transaction is executed outside the rules of a RM or MTF and one of the parties is not an investment firm (e.g. retail client or proprietary trading firm exempted from MiFID), the information shall be made public by the investment firm.

Recommendation

46. CESR recommends amending Article 27(4) of the MiFID Implementing Regulation to clarify that where a trade is not executed under the rules of the RM or an MTF the following applies:

Only one investment firm should make the information public which is determined by proceeding sequentially from point (i) to (iii) below unless there is a divergent standing agreement between the parties:

¹² An executing broker is the investment firm which executes the 'market leg' of an order whether this is via a transaction carried out on an RM or MTF or concluded OTC with another counterparty or by crossing the order with an order from another client of the investment firm or from its own inventory. An investment firm which merely receives and transmits an order to another investment firm for execution would not be the executing broker. An example of a situation involving an executing broker would be where an investment firm (A) acting on behalf of a client was seeking to purchase shares on a market where it was not a member. A therefore approaches another investment firm (B) which is a member of that market to carry out the transaction. B buys the shares from a counterparty on the market and sells them to A which in turn sells them on to its client. In this example B would be the executing broker. Firm A would only be responsible for making a trade report in the event that there was any change in terms from the execution received from B.

- (i) the EEA investment firm which acts as the executing broker in the transaction;
- (ii) in the case that two EEA executing brokers are involved in the transaction or in the absence of an EEA executing broker¹³, the EEA investment firm which sells the share or acts on behalf of or arranges the transaction for the seller;
- (iii) in the absence of a selling EEA investment firm, the EEA investment firm which buys the share or acts on behalf of or arranges the transaction for the buyer.

i) Two matching trades

47. The last paragraph of Article 27(4) of the MiFID Implementing Regulation states that two matching trades entered at the same time and price with a single party interposed shall be considered as a single transaction for trade reporting purposes and the parties ‘shall take all reasonable steps to ensure’ it is made public as such. CESR proposed in its Consultation Paper that this latter requirement should be strengthened and be turned into the obligation that the parties ‘must ensure’ that the trades are published as one single transaction.
48. The industry members of the Group debated whether a collective requirement that the ‘parties must ensure’ would work without an agreement between the parties. The concerns were mitigated by the fact that it is unlikely that a regulator will enforce this requirement as a ‘collective’ one and seek to take action against an investment firm which actually had no duty to report.
49. As regards clarification of the obligation, CESR proposed to clarify that ‘two matching trades’ would include the situation where an investment firm acts on its own account and on behalf of a client and simultaneously executes a buy and a sell transaction and where there is no change in price (see example 1 below).

Example 1 – Riskless principal¹⁴

Investment firm A has an order to sell 100 shares on behalf of client A. In order to execute this order, investment firm A buys these shares on its own account from client A and sells the shares to investment firm B on own account.

Client A (selling) ↔ (buying) Investment firm A (selling) ↔ (buying) investment firm B

Publication: Investment firm A publishes the ‘matched trades’ as one single transaction

Market sees: Total volume of 100 shares

A transaction should be published as a single matching trade only if it involves one counterparty on each side of the trade. So, for example, a buy order for 100 shares from one client cannot be matched with two sell orders each for 50 shares from two different clients and then published as one single trade.

50. The industry members of the Group agreed that these clarifications would be helpful. The Group considered that the trades should only be regarded as matched – and published as a single trade marked with a cross flag – if the price, the size and the time are the same.

¹³ An example of a situation where an EEA execution broker is absent would be where two EEA investment firms are trading bilaterally on own account without any clients involved.

¹⁴ CESR’s Technical Advice to the European Commission in the Context of the MiFID Review – Transaction Reporting (Ref. CESR/10-808), p.6, proposed to use the term ‘client facilitation trade’ for the concept of riskless principal.

51. Where an investment firm acts for the account of and on behalf of both the buyer and seller and where there is no change in price (see example 2 below), for the purposes of trade publication this should be considered as one trade which needs to be published (no matter how the investment firm has booked the two sides of the trade).

Example 2 – Agency cross

Investment firm A has an order to buy 100 shares on behalf of client A and an order to sell 100 shares of the same issuer on behalf of client B. Investment firm A crosses both orders OTC in order to execute the trade.

Client A (buying) ↔ Investment firm A ↔ (selling) client B

Publication: The investment firm crossing the ‘matched trades’ should make them public as one single transaction.

Market sees: Total volume of 100 shares

Recommendation

52. CESR recommends amending Article 27(4) to strengthen the requirement to report two matching trades as one single transaction by obliging the parties to ensure this and to clarify the obligation (as set out in paragraph 49 above).

ii) Transactions on behalf of a client

53. CESR is concerned about the broader application of the post-trade transparency requirements where an investment firm executes one or more transactions on behalf of one or more clients.
54. CESR’s objective regarding transactions on behalf of a client is to avoid double-reporting of OTC transactions where there is an OTC ‘market-side’ leg (the buying investment firm purchases the shares from a selling counterparty) and a ‘client-side’ leg (the buying firm then sells the shares to the client) but there is no change in the price of the shares¹⁵. To achieve this, CESR proposed that the default position to be adopted (unless the two investment firms in the market-leg of the transaction agreed other arrangements) was that only the selling investment firm should report the ‘market-side’ trade between the two investment firms (see examples 3 and 4).
55. Where one leg of the transaction is executed under the rules of a RM or an MTF and the client-leg is executed OTC, CESR proposed to clarify that only the transaction undertaken on the RM/MTF should be made public (by the platform in question). The client-side leg should not be published provided that there is no change in price (see example 4).

Example 3 – Single over the counter transaction on behalf of a client¹⁶

Investment firm A buys 100 shares over the counter on behalf of a client (whether on its own account or on an agency basis) from investment firm B:

Client (buying) ↔ (selling) Investment firm A (buying) ↔ (selling) Investment firm B

Publication: Investment firm B (unless investment firms A and B have a standing agreement about who makes information public)

¹⁵ The
not be

¹⁶ The

Market sees: Total volume of 100 shares

Example 4 – Multiple transactions on behalf of a client

Investment firm A buys 100 shares on behalf of a client (whether on its own account or an agency basis), 80 on a RM or MTF and 20 over the counter from Investment firm B:

Client (buying) ↔ (selling) Investment firm A (buying) ↔ RM or MTF (80 shares)

Client (buying) ↔ (selling) Investment firm A (buying) ↔ (selling) Investment firm B (20 shares)

Publication: RM or MTF makes information public in relation to 80 shares

Investment firm B makes information public in relation to 20 shares (unless investment firms A and B have a standing agreement about who makes information public).

Market sees: Information related to 80 shares and information related to 20 shares

56. The Industry members of the Group agreed with CESR's proposals here.
57. It was also noted that in some cases the client would require the 'client leg' of the trade (even though the market leg had been conducted OTC) to be formalised as a negotiated trade by a RM or MTF. This might be for tax reasons or because this was considered to provide greater certainty in the event of default. If such a negotiated trade was published by a RM/MTF in the same way as any other negotiated trade without further granularity, this could lead to misleading indication as to the actual trading volume due to the publication of both the market and the client sides of a transaction. To deal with this circumstance, it was proposed to specify that if the market-side leg of the transaction was executed OTC or on a RM/ MTF and the client wishes to bring the client-side leg under the rules of a RM or MTF as a negotiated trade, publication of the latter trade by the RM/MTF should be with an 'N' flag and an additional flag indicating that the negotiated trade is the client-side of a trade of which the market-side was already published.
58. The Group also suggested that it would be helpful to investment firms in complying with their post-trade reporting obligations under MiFID if as comprehensive a list as possible of worked scenario examples of how to meet the obligations was produced by CESR/ESMA (in consultation with the industry) and published. CESR agrees this would be helpful but notes that work on such guidelines would probably need to wait until the revised MiFID obligations on post-trade reporting were clear.

Recommendation

59. CESR recommends clarifying in MiFID that, in the situation where an investment firm acts on behalf of a client (whether on its own account or on an agency basis) and executes a market-side leg and a client-side leg, only the market-side leg should be published to avoid double publications (if there is no change in price). If the transaction is executed on a RM or MTF, the market itself will publish the trade. If the market-side transaction involves two or more investment firms, there is no change in price and the investment firms are not putting their capital at risk, the EEA investment firm should publish the trade which is determined in accordance with the recommendation in paragraph 46 above (falling back to the EEA executing broker) unless the investment firms have a standing agreement that deviates from this.
60. In the case that the client demands that the client-side leg be undertaken under the rules of a RM (as a negotiated trade) and the market-side leg of the transaction was executed OTC or on a



RM/MTF, publication of the client-side trade by the RM/MTF should be with an 'N' flag and an additional flag indicating that the trade is the client-side of trade the market-side of which was already published.

iii) Chain of transactions

61. As noted in paragraph 38 above CESR's objective is to avoid multiple reports in a transaction chain where there is no change in price and investment firms are not putting their capital at risk¹⁷.
62. CESR proposed in its Consultation Paper that the 'chain' should be considered as one transaction with the default position being that the initiating seller has the reporting responsibility. The Group noted that placing the obligation on the executing broker was the best option in this respect (although if the chain of transactions involved an inter-dealer broker this could not ensure there would not be multiple reports as the involvement of an inter-dealer broker would mean that it was not always possible to identify the executing broker).

Example 5 – Chain of investment firms

An order for 100 shares passes through a chain of investment firms where there is no change in price.

Selling client (selling) ↔ (buying) Investment firm A (selling) ↔ (buying) Investment firm B (selling) ↔ (buying) Investment firm C (selling) ↔ Buying client

Publication: Investment firm A (unless the investment firms have a standing agreement who shall make information public)

Market sees: Information related to 100 shares

Recommendation

63. CESR recommends clarifying in MiFID that a chain of transactions without change in price should be considered as one single transaction. The responsibility for the publication of the trade should be determined in accordance with the recommendation in paragraph 46 above.

v) Other issues

64. The Group also examined whether there were other types of transaction which should be considered as duplicative or which could be excluded from trade reporting requirements for other reasons. Examples of duplicative transactions included give-ups and trades reported for tax purposes (i.e. where it was necessary for the trade to be reported to avoid the imposition of a tax liability). However, it was noted that give-ups are not considered as transactions in all jurisdictions. The Group considered that the best solution in respect of the two categories was to report the transaction but flag it as 'Technical' (see paragraph 24 above).
65. Furthermore, a question was raised whether a trade should be published when investment firms trade in shares that have a main listing outside the EU but are also admitted to trading on an EEA RM. Where these trades are executed and published on the main market outside the EEA, the question was raised whether these would still need to be published inside the EEA. There was particular concern for OTC trades between an EU investment firm and non-EU investment firm. CESR notes that MiFID does not distinguish between a primary listing inside and outside

¹⁷ Mere receipt and transmission of an order does not, of course, require a trade report to be made.

the EEA in terms of transaction reporting requirements to competent authorities and trade publication requirements. Trades executed in the EEA in all shares admitted to trading on an RM in the EEA are therefore included in the MiFID transparency regime¹⁸. If the trade is executed on an EEA RM/MTF, it always needs to be published. OTC trades need to be published if they are executed in the EEA and one of the parties to the trade is an EEA investment firm.

66. Industry members of the Group also noted that there will be a need for ongoing arrangements to consult representatives of market participants (sell-side, buy-side, trading platforms, approved publication arrangements and data consolidators) when interpreting the application of the post-trade transparency standards in the light of market developments.

Recommendation

67. Once the standards and obligations under MiFID are agreed, CESR stands ready to conduct further work together with the industry to provide guidelines specifying other worked scenarios and providing further clarification, as needed.

¹⁸ The shares admitted to trading on EEA RMs are included in the CESR MiFID database.

ANNEX I: INDUSTRY MEMBERS OF THE WORKING GROUP

Stakeholders	Association	Firm	Representatives
Exchanges	Federation of European Securities Exchanges (FESE)	• NYSE Euronext • Deutsche Börse • BME • NASDAQ OMX	• Laurent Fournier • Combie Cryan • Michael Schaedel • Christiane Baumgarten • Julian Navas • Randall Hopkins • Ludovic Aigrot
Exchanges		• London Stock Exchange	• Jarod Hillman
MTFs		• Chi-X: • BATS	• Enzo Stingone • Paul O'Donnell • Anna Westbury
Sell-side firms	European Banking Federation (EBF) European Association of Cooperative Banks (EACB) European Association of Public Banks (EAPB) European Forum of Securities Associations (EFSA) Association for Financial Markets in Europe (AFME)	• JPMorgan Chase • Société Générale • Crédit Agricole Cheuvreux • Dexia Bank • Grupo Santander • Nomura International • Morgan Stanley • Deutsche Bank AG	• Mark Goulden • Stéphane Giordano • Stéphane Loiseau • Philippe Guillot • Charles Lehalle • Stefaan Simaey • Gabriel Alvarez de Toledo • Andrew Bowley • Gareth Carrol • Eleanor Jenkins • Stephen McGoldrick
Buy-side firms	European Fund and Asset Management Association (EFAMA)	• Blackrock GI • Fidelity International • DWS Investments • JP Morgan Asset	• Scott Cowling • Mark Northwood • Silvia Wagner • Kristian West



		Management • Schroder Investment Management	• Rob McGrath
Data vendors		• Thomson Reuters • Bloomberg	• Andrew Allwright • Alex Clode
Trade data monitors		• Markit BOAT	• Sophia Kandylaki