



Call for evidence on transaction reporting

**RESPONSE TO THE
CALL FOR EVIDENCE**

04 JUNE 2012

This document contains the views of NYSE Euronext with regard to ESMA's call for evidence on transaction reporting.

NYSE Euronext is grateful for the opportunity to contribute to this call for evidence as part of an ongoing and open dialogue with all key stakeholders, including legislators, policymakers, and regulators, as well as our trading customers and issuer. We remain at ESMA's disposal should it require any further information on the topics discussed below, or any other related matters.

GENERAL COMMENTS

NYSE Euronext understands that a transaction reporting regime was first introduced into EU law by the Council Directive 3/22/EC of 10 May 1993 on investment services.

MiFID added clarifications particularly via Article 25 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and Articles 9 and the following of the Implementing Regulation 1287/2006 of 10 August 2006. Member States have also referred to Recital 45 of MiFID to extend the scope of transaction reporting to OTC derivatives instruments where the underlying is an instrument admitted to trading on a regulated market.

In parallel, CESR issued, on October 8, 2010, guidance on 'How to report transactions on OTC derivative instruments' (CESR/10-661)¹ (hereafter "CESR Guidance Terms"). These CESR Guidance Terms set out standards for collection of OTC derivatives and defines and explains, for each derivative type, how the fields of transaction reports should be populated.

NYSE Euronext agrees that these terms have to be updated however NYSE Euronext has different concerns in relation to ESMA's procedure and timing of the review of these guidelines as further explained below.

Timing in relation to MiFID review

NYSE Euronext acknowledges that other initiatives are running in parallel in the area of transaction reporting and that the OTC market is an extremely dynamic market. Therefore the timing of the review of the CESR Guidance is of utmost importance.

The MiFID current review proposes important changes in transaction reporting in order to improve the transparency and quality of OTC derivatives data reporting and data consolidation through, amongst others, proposed articles 66 and the following on Approved Publication Agreements.

¹ http://www.esma.europa.eu/system/files/10_661.pdf

NYSE Euronext is concerned that the proposed changes in MIFID, MIFIR, as well as in MAD, MAR and EMIR Directives may create important and unnecessary duplication of reporting and of costs related to the different reporting schemes.

Hence, NYSE Euronext suggests that the CESR Guidance Terms should only be changed and/or replaced by new ones when necessary, depending on the future outcomes of parallel studies and the evolution of the market and especially after more certain outcomes are known as to the potential final texts of MiFID 2.

Supervisory convergence

NYSE Euronext however wishes to add, if ESMA decides to proceed with the proposed review in the upcoming months, that supervisory convergence is the most important objective that needs to be achieved in such said review. In fact, recent experience has demonstrated that there have been important differences in the collection and exchange of supervisory information by national competent authorities. A more coherent and convergent standard for reporting needs to be put in place, that will benefit investment firms and Authorised Reporting Mechanisms (ARMs) operating cross-border that report to several supervisors in different countries. It is crucial that a common approach is used by all national competent authorities when it comes to the content of transaction reports for a more efficient cross-border market surveillance and cost-effective solution. NYSE Euronext further believes that a standardized and transparent process of recognition of ARMs should be put in place including a strict procedure of approval including justification of the decision taken by the competent authority in a formal delay instructed by ESMA. This process could be implemented through a mutual recognition passport system to better insure efficiency and cost control as well convergence and harmonization of requirements.

NYSE Euronext also believes that authorities need to perform their monitoring tasks and obligations in a more efficient way in an objective of integrity and orderly functioning of financial markets. Regulators need to be available and detain sufficient resources to put these harmonized procedures of monitoring in place, to test them and to constantly insure their optimal functioning.

Harmonisation of transaction reporting information

NYSE Euronext agrees with ESMA that the main information sets that need to be harmonized include (1) harmonized reports to be submitted by the reporting firm to the competent authorities and (2) the content of every report, which may include at least the following:

- the reporting firm identification
- the trading day,

- the trading time,
- the time identifier,
- the buy/sell indicator,
- the trading capacity,
- the instrument identification,
- the unit price,
- the price notation,
- the quantity,
- the counterparty code,
- the counterparty code type,
- the venue identification,
- the venue code type,
- the client code and
- the client code type.

However, NYSE Euronext further believes that additional fields of information asked by other local authorities should remain optional. NYSE Euronext understands that this situation, however, shall not apply if all fields become fully harmonized through all jurisdictions.

Passporting for Authorised Reporting Mechanism

Harmonised reporting information and standards should allow ARMs when authorised by one EU Member State competent authority to be able to passport their activity in other Member States.

In conclusion, NYSE Euronext believes that the CESR guidance on how to report transactions on OTC derivative instruments shall not, at this time, be reviewed nor supplemented at this time.