



Ref.: CESR/07-319

**CESR Level 3 Guidelines on MiFID Transaction Reporting**  
**Feedback Statement**

*May 2007*



## 1. INTRODUCTION

In February 2007, CESR published a consultation document (ref CESR/07-047) on MiFID transaction reporting. The consultation included a public hearing which took place on 1 March.

The goal of the document was to provide guidance to three aspects of transaction reporting: practical solutions for the reporting obligations for branches; an answer to what constitutes “execution of a transaction” for transaction reporting purposes; and operational solutions for some aspects on reporting channels.

During the consultation period, which expired on March 2 2007, CESR received 28 comment letters from various organisations. The list of the respondents to this consultation, with an indication of the sector of activity of the respondents is attached in appendix 1. Comment letters received have been published on CESR website ([www.cesr.eu](http://www.cesr.eu)).

The comments collected through the public consultation have been duly considered by CESR and have informed the redrafting and finalisation by CESR of its Level 3 guidelines on transaction reporting.

The purpose of this feedback statement, which is published along with the final guidelines (ref CESR/07-301) is to provide CESR’s views on the most important points arising from the consultation and explain the most important changes introduced in the final guidelines.

CESR also would like to take the opportunity of this feedback statement to thank all respondents for their fruitful and constructive contributions.



## 2. GENERAL COMMENTS

Respondents considered the approach of favouring practical solutions helpful. Apart from the specific issues raised in the consultation document, they raised also other issues relating to transaction reporting.

The respondents expressed a wish to make available a consolidated list of instruments which are admitted to trading and which are subject to the transaction reporting requirement. They also raised some concerns about the readiness of all CESR members to be able to receive transaction reports in November and asked for more harmonised approach in relation to the use of client IDs. Finally they expressed reservations on the suitability of MiFID transaction reporting regime in relation to commodity derivatives markets and, more specifically, on the requirement to use ISIN codes for these instruments. They also asked whether there remain any other issues to be addressed with respect to transaction reporting. Several respondents raised the issue of the intention of some CESR members to request additional information to the information included in the table of the Regulation and called for CESR work to limit requests of such information. Otherwise firms active in several jurisdictions would be required to report different types of transaction and different data fields to different CESR members. That will require different technical systems, which is contrary to their attempt to centralise such functions.

As noted already in the open hearing CESR has no current plans on publishing the list of instruments and that the use of client IDs is a national option and at least in the short term there is no CESR work going on. Regulated market already have business relationships with a number of information vendors and other distributors of information that allow the markets to gain access to up to date information on instruments. CESR understands that similar channels are already emerging to facilitate the identification of instruments admitted to trading. CESR therefore sees no need to try to interfere in and to duplicate the efforts of the private sector. The issues on national requirements are not addressed by the current guidelines. CESR notes that the Implementing Regulation allows certain limited national information to be collected. Any possible need for CESR action needs to be evaluated on the basis of evidence on the operation of the transaction reporting system.



### 3. PROPOSALS RELATING TO THE REPORTING BY BRANCHES

CESR proposed a practical solution which was intended to ease the burden for reporting firms in cases where a branch might be required to split its trades to be reported to two competent authorities instead of one.

Respondents generally supported the proposals which aim to reduce their burden. According to their view it should be clear that a branch needs to report only to one regulator.

It was widely pointed out that in order to be helpful for the industry the agreement between CESR members should be a general one and not case-by-case agreements.

The proposed "booking test" was supported by several respondents. However, in this respect response was mixed. While there were respondents who would as such find the clarification useful, they considered the precise proposals unclear. In terms of the content of the proposal some favoured the "characteristic performance test" or other considerations. Some provided more detailed comments on the meaning of booking (FBF). Finally, some did not find the proposal useful at all.

Finally, some respondents raised a general concern about the consistency with these proposals and home/host relationship in article 32(7) and related work by the intermediaries group and the Commission.

CESR has taken the comments into account and clarified the final guidelines in two respects. First, it does not include a case-by-case approval of the branches' possibility to send all the transaction reports to the host Member State competent authority. Approval of the guidelines indicates members' approval for such arrangements. Second, the final text does not include any application of a 'booking test' and simply refers to 'all transactions executed by branches'.

On the relationship with other work streams CESR notes that this work is complementary, not overlapping with the home/host work. It is intended to provide a practical solution in cases where a branch would otherwise be required to report to two authorities.



#### **4. WHAT CONSTITUTES A TRANSACTION (TO BE REPORTED)**

Participants welcomed the clarification that reception and transmission of orders are not considered to be reportable transactions. They however had strong concerns regarding the content of the proposal to require "the client facing part" of the transaction to be reported. They also pointed out that the "at least" structure allowing members to ask additional information to be reported should be removed. Some respondents requested a cost-benefit analysis for the additional information that CESR members would want to be reported.

Asset managers noted that, in most cases, they are not covered by the reporting regime (they execute only in exceptional circumstances). They propose to amend the "reception and transmission" text to include also "placing orders for execution". They noted as well that in the rare cases they would be obliged to report they would like to delegate that function and asked for clarity on the requirements.

According to responses the purpose and actual use of the reports by CESR members should be clarified more.

Respondents considered the wording of the proposal to be unclear (instead of "immediate market facing firm" the proposal should refer to the firm that "actually brings about and finalises the transaction" – i.e. different from the entity originating the transaction by placing the order). It was also noted that the distinction between own account and market facing is not clear.

CESR has evaluated the comments and the final text has been extensively revised. As regards the use of the transaction reports, CESR would like to emphasise that MiFID sets a requirement for CESR members to monitor their markets. Article 25 transaction reporting is a key tool for that. Taking into account the possible changes in market structure after the implementation of MiFID, the trading may well be fragmented in various Member States. Transaction reporting is a vital tool to collect the necessary information.

The final guidelines incorporate the needs of CESR members and the concerns expressed by respondents by limiting the content of the proposal. No "at least" solution is any more proposed. The guidelines include information relating to transactions conducted by the investment firms transacting directly with an execution venue. They include further information on other transactions where the firm is undertaking the transaction on its own accounts. Finally, they include information which is necessary to identify the ultimate client on whose behalf the transaction is undertaken or that information which is necessary to establish the identity of the investment firm which is dealing with the ultimate client. That information may be collected as part of transaction reporting if the relevant CESR member is not already in possession of such information or where it could not obtain such information in a sufficiently timely manner.

An important element of the guidelines is, that having collected one full year's experience of the operation of the MiFID transaction reporting regime (and indeed the possible changes in market structure), CESR will review the proposals and, if needed, propose additional guidance aiming at converging practice between CESR members.



## **5. APPROVAL OF THE REPORTING CHANNELS**

The proposals were widely supported by the respondents to the consultation. Therefore no changes are made to the proposal in the consultation document.