



FEEDBACK STATEMENT

*on the consultation on guidance to report transactions on
OTC derivative instruments (Ref. CESR/09-768) and subsequent CESR decisions*

Executive Summary

The consultation was well received by respondents and most of them welcomed the opportunity to respond to the questions and to provide CESR Members with their knowledge and view on the subject.

For each of the 25 questions in the consultation, this feedback statement presents a summary of the responses received and the subsequent decision taken by CESR. A summary of the other issues raised by respondents is also included in the last section of this document.

1. Introduction

1.1. Transaction reporting in Europe

Competent authorities (“CAs”) throughout the European Economic Area are committed to detecting market abuse and maintaining the integrity of their markets. The receipt and examination of transaction reports are essential elements in enabling CAs to detect market abuse and the Market in Financial Instrument Directive (MiFID) gives CAs the power and obligation to collect transaction reports on instruments admitted to trading on regulated markets. However, many CAs have noted that there are a range of OTC (over the counter) financial instruments that mirror instruments admitted to trading on regulated markets that can equally be used for the purposes of market abuse. Many CAs extended the collection of transaction reports to include OTC instruments whose value is derived from instruments admitted to trading on a regulated market to enhance their ability to detect suspicious activity and maintain the integrity of their markets. Some other competent authorities are currently investigating this option as well.

1.2. The Transaction Reporting Exchange Mechanism

CESR implemented an IT system in November 2007 to facilitate the exchange of transaction reports amongst regulators. The system, called the Transaction Reporting Exchange Mechanism (TREM), was built based on the request from the MiFID level 2 Regulation to organize the exchange of transaction reports amongst European financial regulators.

TREM is currently limited to the scope of the MIFID Level 2 regulation, i.e. exchange of transaction reports on instruments admitted to trading on regulated markets in Europe. After one and a half years of running and studying different practices within CESR membership, CESR decided to launch



a project to amend TREM to facilitate the exchange of transaction reports on OTC derivative instruments amongst CESR members.

1.3. Transaction Reporting on OTC derivative instruments

CESR decided (CESR/09-129) that only transactions on derivatives whose underlying instrument is traded on a regulated market should be exchanged, focusing on single-name derivatives, except when different underlying instruments all refer to the same issuer.

In line with the above, CESR decided to exchange transactions on the following OTC derivatives:

- Options
- Warrants
- Futures
- Contract for Difference and Total Return Swap
- Spreadbets
- Swaps (except CfDs, TRS and CDSs)
- Credit Default Swaps (CDSs)
- Complex derivatives

CESR decided to go for a more comprehensive approach where derivatives that would not fall within plain-vanilla general categories would still be reported under a common “complex derivatives” label. The boundaries between “plain-vanilla” and “complex” derivatives will be further defined in harmonised guidelines, as well as other useful common standards for consistent collection of data between participating Member States.

In February 2009, CESR ran a Call for Evidence (CESR/Ref.09-074) and then a first consultation to get the market participants’ views on the technical standards to be used for classification and identification of OTC derivative instruments for the purpose of this exchange (ref. CESR/09-618).

CESR took a subsequent decision (ref. CESR/09-1036) on the fields to identify and classify the instruments. The MiFID Level 2 Regulation set the foundations for the other fields to be exchanged for the drafting of the functional specifications of this new release of TREM exchange interface and especially the definition of the business fields to be populated.

On the 29th of January 2010, a second consultation was issued which was aimed at defining guidelines for population of fields in transaction reports from investment firms (ref. CESR/09-768). This Consultation Paper (CP) defined and explained, for each derivative instrument type, how the fields in transaction reports should be populated to represent in a harmonised manner the execution of a transaction on such instrument.

2. Number of responses and range of stakeholders

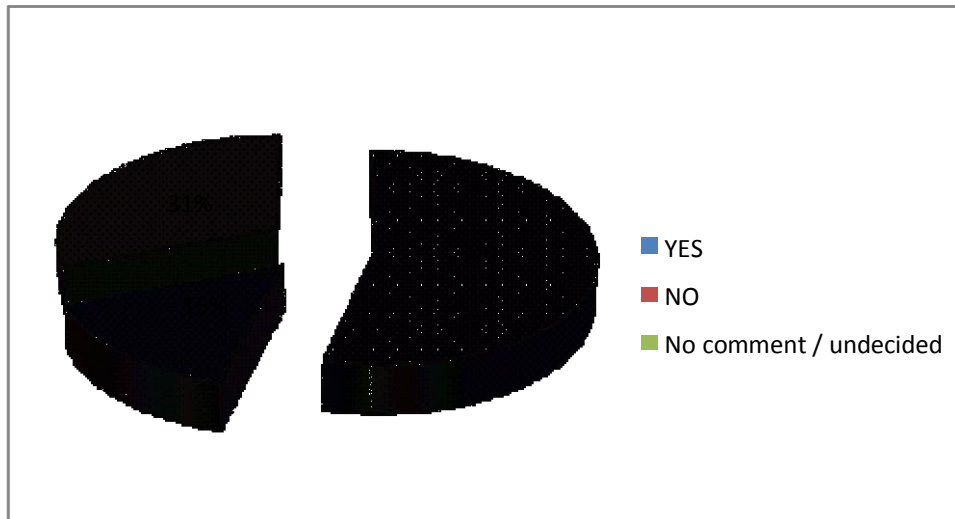
CESR received 13 responses to the consultation; these were largely split between banks and banking associations and financial information services providers. Also, there was one exchange amongst the respondents.

The full list of respondents (and the acronyms used to denote them in this summary) is the object of Annex 1.

3. Feedback statement

3.1 Population of fields per type of derivative

“Q1: Do you agree that the Unit Price should be the premium per single underlying of the contract as it is in market practice and not per contract?”



Most of respondents agreed with the fact that the Unit Price should be the premium per single underlying of the contract.

BBA/Xtrakter explained that there is no unanimous view amongst their membership on whether the Unit Price should be the premium per single underlying of the contract or per contract.

EAPB and ZKA specified that the base, fixed or starting price is listed per unit in practice, but per share in this case.

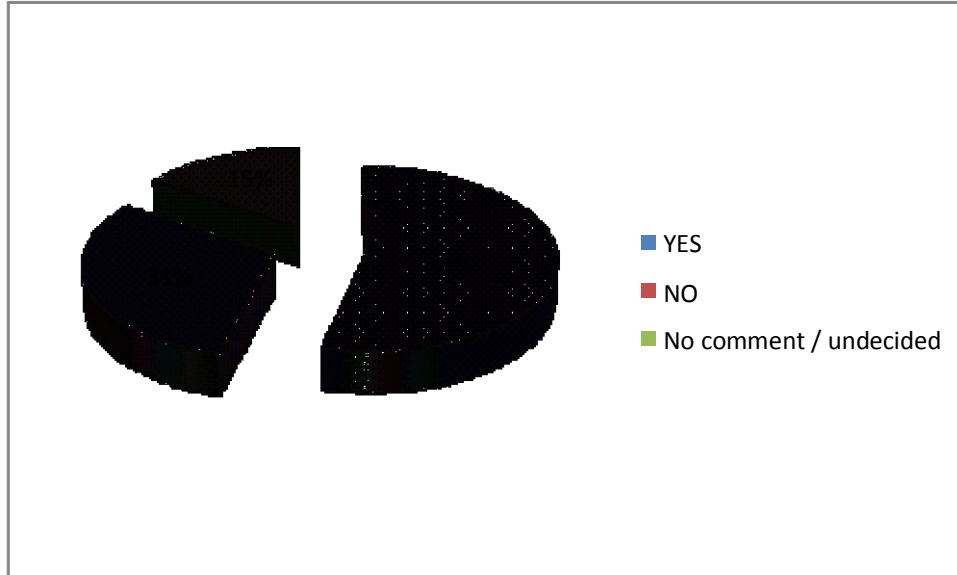
AMAFI/BBF were of the view that the Unit Price should be provided per contract as it is currently the case for listed options. They argued that it is not even possible to calculate the premium per underlying in some cases (CDSs and other swaps), as the contracts are traded in terms of nominal amount and without a reference to a number of underlying securities.

To NSA, the Unit Price should always be the actual price of the trade as agreed with the client. If the price agreed is “premium per derivative contract”, that price should be reported, and if the price agreed is “premium per underlying”, that price should be reported.

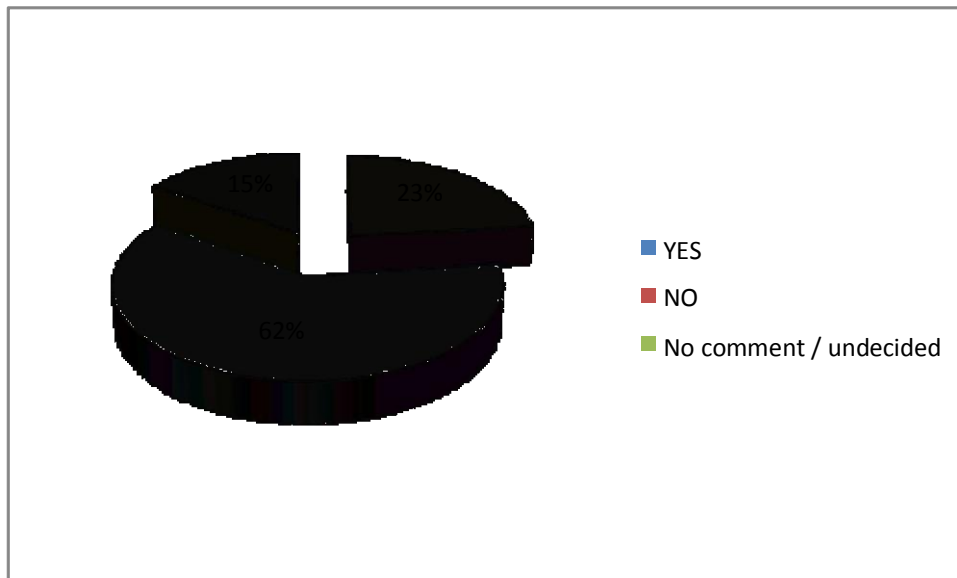
Subsequent CESR decision:

The premium per single underlying of the contract should be populated in the Unit Price field.

“Q2: Do you agree that the Venue Identification should be XXXX in order to differentiate transactions on OTC derivative instruments from off-market transactions of instruments admitted to trading, marked as XOFF?”



“Do you think this should also be the case if the transaction is executed on an MTF?”



The widespread opinion was to use the code “XXXX” to identify the venue of a transaction on an OTC derivative instrument but to populate the relevant Market Identifier Code when it is executed on a MTF.

ISDA and La Caixa favoured the use of “XXXX” for the venue code for OTC derivatives, whether or not they are executed on a MTF.

BBA/Xtrakter, BVI, Deutsche Bank, the FOA and the SBA supported the idea to use the code “XXXX” as the description of the trading venue for OTC derivatives as it is included in the ISO 10383 MIC Standard; on the other hand, they recommended that transactions executed on a MTF are differentiated by their assigned Market Identifier Code (MIC).



AMAFI/FBF explained that if the OTC reporting feed is distinct to the current reporting for listed instruments, there is no need to provide such information because, by nature, this feed will only contain transactions traded OTC. They also specified that for listed derivatives that may be traded OTC, it is likely that firms will not be in a position to identify that the instrument is a listed one, hence these transactions are likely to be flagged “XXXX” instead of “XOFF”.

EAPB and NSA did not see the added value of introducing a new Venue Identification type “XXXX” and proposed to stick to the current definition of the MiFID Level 2 Regulation.

Subsequent CESR decision:

The Venue Identification should be XXXX in order to differentiate transactions on OTC derivative instruments from off-market transactions of instruments admitted to trading, marked as XOFF. CESR acknowledges the comment from AMAFI/FBF and confirms that a transaction on a derivative that is solely admitted to trading on a MTF or platform and not on a regulated market is not subject to reporting as an OTC derivative.

“Q3: Any other views on the above?”

AFG pointed out the need to clarify that OTC options with two or more strikes need to be reported in the Complex Derivatives section.

BVI recommended the use of the ISO standard for all relevant data fields.

EAPB, NSA and ZKA put forward that the description of the Quantity field should be extended to include the term notional amount of OTC derivatives, for clarity reasons.

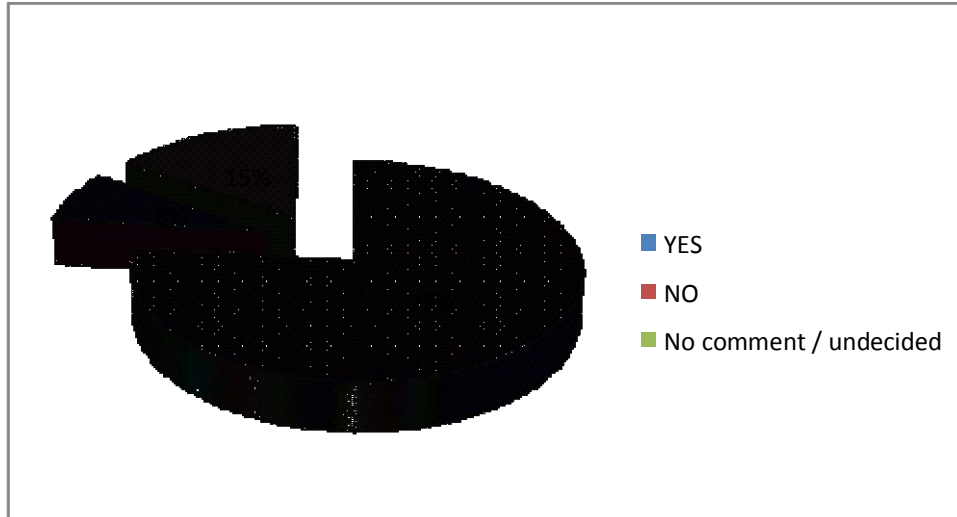
SBA suggested extending the list of derivative types to include the spread bets on an option on an equity and the CfDs on an option on an equity, to be in line with the current reporting requirements in place in the UK.

The population of fields per type of derivative would then become:

	Options	Warrants	Futures	CFD – equity option	Other CfDs and TRS	Spread bets – equity option	Others spread bets	Swaps (other than CfDs, TRS and CDS)	CDS	Complex derivatives
Put/call identifier	M	M	N	M	N	M	N	N	N	O
Price multiplier	M	M	M	O	O	M	O	M	N	O
Strike Price	M	M	N	M	N	M	N	N	O	O
Expiration date	M	M	M	M	N	M	O	M	O	O

3.2 OTC options

“Q4: Do you agree that in the case of multiple expiration dates, the field should be filled in with the latest expiration date?”



The great majority of respondents agreed that the latest expiration date should be populated.

BVI suggested reporting the expiration date agreed between the parties to the documented trade details and to have a set of fields in case of multiple expiration dates.

Subsequent CESR decision:

In the case of OTC options with multiple expiration dates, the field should be filled in with the latest expiration date.

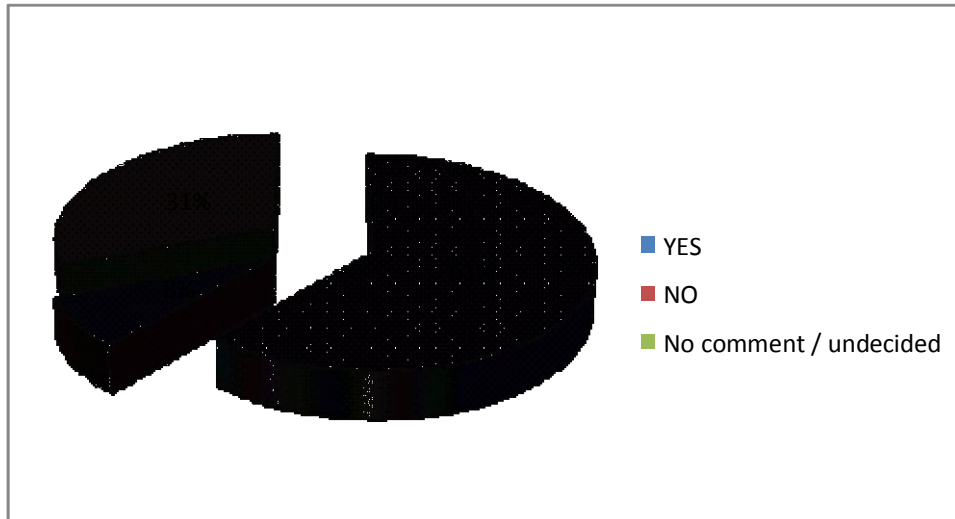
“Q5: Any other views on the above?”

AFG recommended that trading time should be indicative given that the only time recorded in the systems is the trade insertion time which can happen hours after the real trading time.

The trading time being only recorded in the telephone system / e-mails / BBG confirm, they argued that only the trade date is important.

3.3 Contracts for Difference (CfDs)

“Q6: Do you agree that an option on a CfD on an equity is not a complex derivative as the terms of the bet can be accommodated in the transaction reporting fields?”



Most of respondents agreed that an option on a CfD on an equity is not a complex derivative.

In addition, FOA believed that the instrument is more accurately described as a “CfD on an option on an equity” as opposed to an “option on a CFD on an equity”.

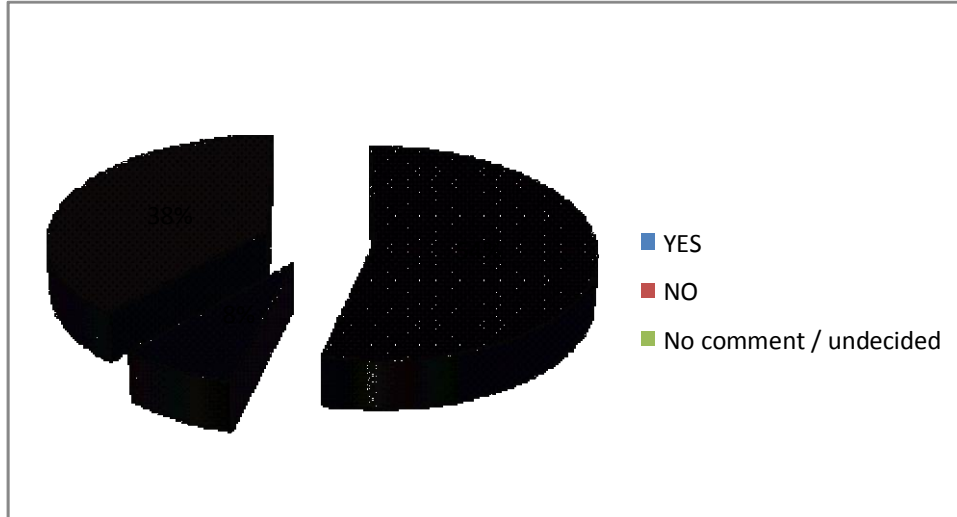
AMAFI/BBF considered that it is a complex derivative because if it is reported as a CfD, the optional aspect of the trade will be lost and if it is reported as an OTC option, data related to the underlying CfD will be lost as well.

Subsequent CESR decision:

CfDs on an option on an equity should not be reported in the Complex Derivatives category and should therefore simply be classified as a CfD.

3.4 Spread Bets

“Q7: Do you agree that the Quantity field should contain the amount of the ‘bet’?”

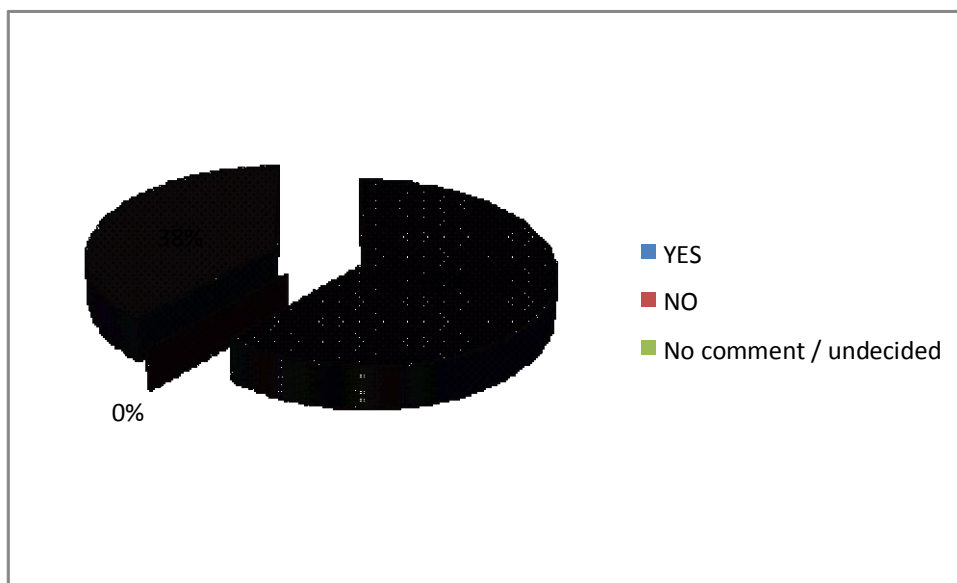


Only EAPB expressed that a general clarification for all CfDs, TRS and spread bets is needed, according to which the purchase amount and/or the notional amount must be reported in the Quantity field.

Subsequent CESR decision:

For spread bets, the Quantity field should contain the amount of the bet.

“Q8: Do you agree that the Unit Price field should contain the reference price for the transaction?”

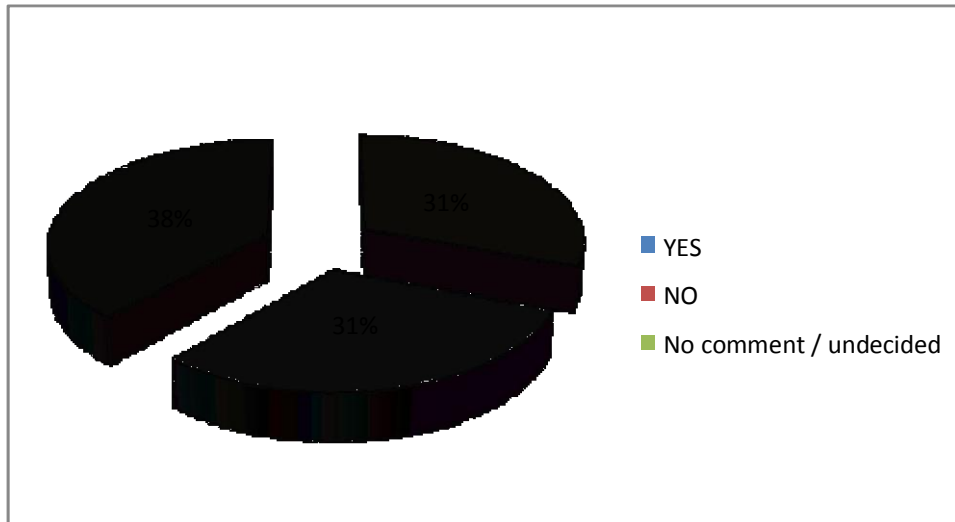


All respondents agreed that the reference price, meaning the initial agreed price, should be populated in the Unit Price field.

Subsequent CESR decision:

For spread bets, the Unit Price field should contain the initial agreed price for the transaction.

“Q9: Do you agree that the Unit Price should be in the currency of the underlying instrument?”



The respondents' opinions were divided on this question.

BBA/Xtrakter, FOA, La Caixa and SBA agreed that the Unit Price should always be reported in the currency of the underlying instrument.

AMAFI/BBF were of the view that this field should indicate the currency of the derivative transaction and that another field should be added in case the currency of the underlying instrument has to be provided.

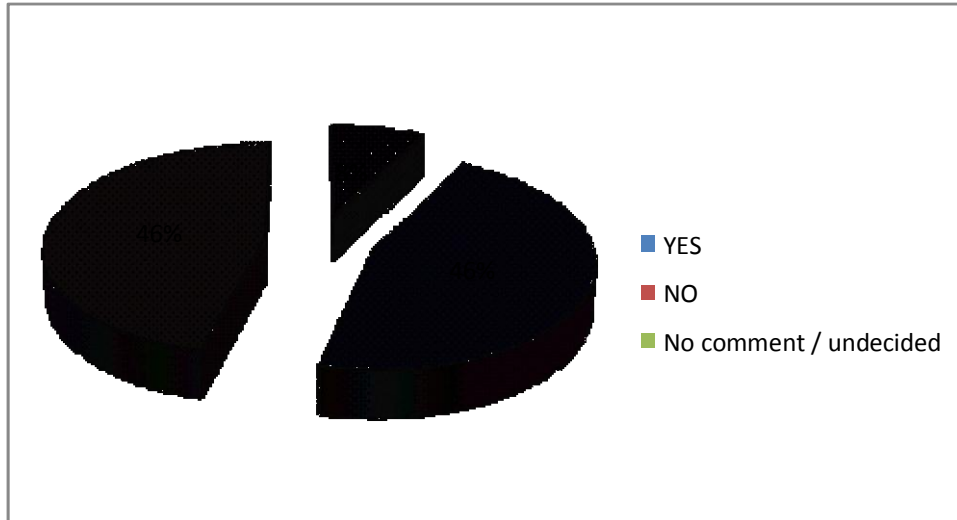
EAPB and ZKA shared the same point of view and argued that the currency of the base value plays no role and does not even exist in some cases.

NSA considered that the reporting should always be as the trade is done and agreed with the client regardless of the currency for the underlying financial instrument.

Subsequent CESR decision:

For spread bets, the Unit Price should be in the currency of the underlying instrument.

“Q10: Do you agree that the Price Notation field should reflect the currency of the underlying instrument even when the spread bet is made in a different currency?”



The great majority of respondents favoured the currency of the spread bet instead of the currency of the underlying instrument.

EAPB, FOA, SBA and ZKA strongly argued that the currency of the initial price should always be decisive, no matter whether the OTC derivative covers one or multiple currencies.

NSA reiterated that the reporting should always mirror the agreement with the client and not some specific characteristics of the underlying financial instrument.

As for the previous question, AMAFI/FBF believed that the Price Notation field should reflect the currency of the derivative transaction and that another field should be added in case the currency of the underlying instrument has to be provided.

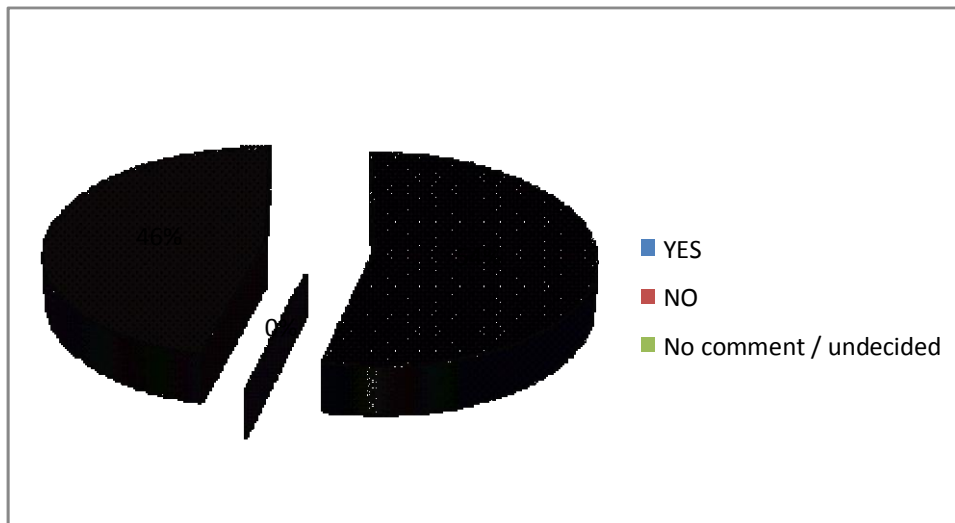
Subsequent CESR decision:

For spread bets, the Price Notation field should contain the currency of the spread bet, also known as the stake.

“Q11(a): Do you agree that the Price Multiplier field should be populated to validate what movement in the price of the underlying instrument the spread bet is based on e.g. 100 for 1 point (cent/penny); 1 for 1 Euro/Pound movement?”

&

“Q11(b): Do you agree that the spread bet will normally be based on a movement of one point (cent/penny) movement in the price of the underlying instrument and the Price Multiplier field should only be populated when the spread bet is not based on a movement of one point?”

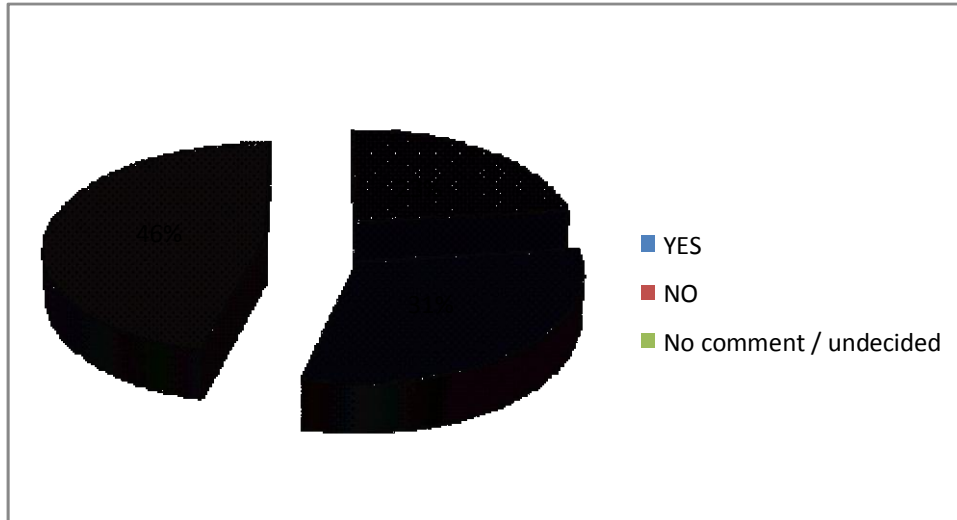


All respondents agreed with the two suggestions above.

Subsequent CESR decision:

For spread bets, the Price Multiplier field should be populated to validate what movement in the price of the underlying instrument the spread bet is based on. It should only be populated when the spread bet is not based on a movement of one point.

“Q12: Do you agree that a transaction report is required for opening and closing a spread bet and for the expiration of a spread bet?”



The respondents expressed different point of views on this question.

FOA, La Caixa and SBA agreed, with the exception of daily rolling spread bets.

For daily rolling spread bets, FOA and SBA believed firms should just report once when the bet is opened, and again when the bet is eventually closed.

AMAFI/BBF also agreed that a report is needed for opening and closing a spread bet because they are similar to sales and purchases. On the other hand, they considered that the simple expiration of a contract is out of scope and would not bring any new information that the regulator would not be able to infer from the data provided at inception.

EAPB, NSA and ZKA explained that the starting point for a report always being a purchase or a sale, closing transactions should not be subject to compulsory reporting.

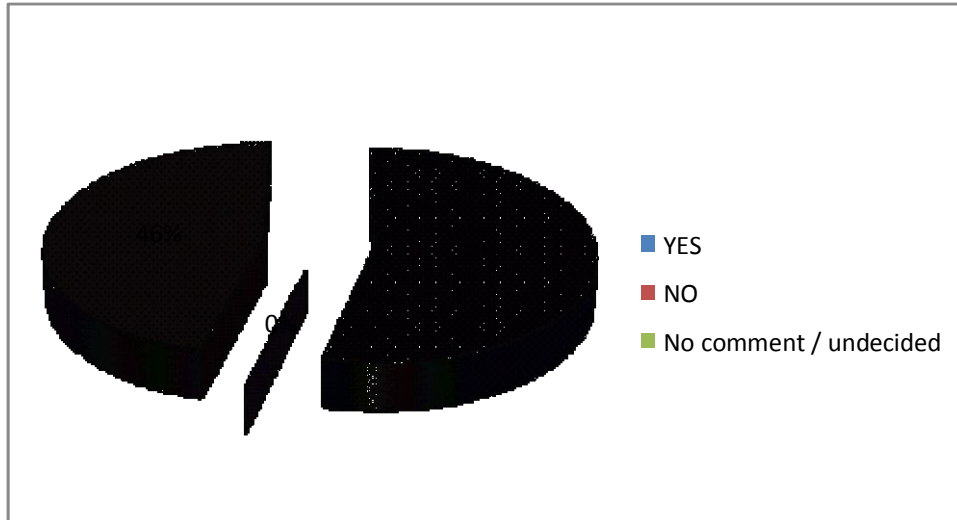
However, they added that in case a position is liquidated by the development of an offsetting position, this is a purchase or a sale subject to compulsory reporting.

They also shared the view that expiration of derivative contracts should not require compulsory reporting.

Subsequent CESR decision:

A transaction report is required for opening and closing a spread bet and for the expiration of a spread bet, with the exception of daily rolling spread bets.

“Q13: Do you agree that an option on a spread bet on equity is not a complex derivative as the terms of the bet can be accommodated in the transaction reporting fields?”



All respondents agreed that an option on a spread bet on an equity is not a complex derivative.

Subsequent CESR decision:

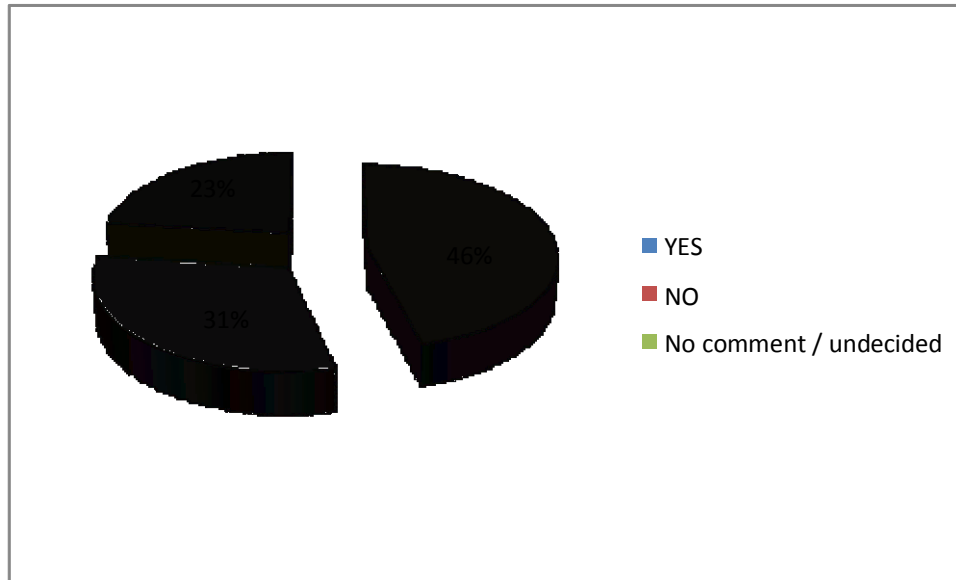
Spread bets on an option on an equity should not be reported in the Complex Derivatives category.

“Q14: In relation to spread bets on other MiFID instruments, do you have any views on how the fields in a transaction report should be populated?”

EAPB and NSA promoted that any compulsory reporting should be limited to those OTC derivatives whose base value is a financial instrument traded on a regulated market, and therefore the proposed fields in the reports should be designed so as to reflect this in a sufficient manner.

3.5 Equity Swaps

“Q15: Do you agree that the buyer of the Equity Swap (Buy/Sell Indicator field, B) should be the Fixed Rate Payer, i.e. the one who receives the equity performance?”



The majority of the respondents agreed that the buyer of the Equity Swap should be the Fixed Rate Payer, meaning the one who receives the equity performance.

AMAFI/FBF, BBA/Xtrakter, FOA and ISDA emphasised that the buyer is the one who receives the equity performance and pays the interest, and the seller is the one who pays the equity performance and receives the interest.

EAPB, NSA and ZKA specified that equity swaps are exchange transactions where there are neither buyers nor sellers, and therefore recommended that the “Buy-Sell Indicator” field should be left empty for equity swaps.

Alternatively, NSA would accept the above definition of buyer/seller.

EAPB also pinpointed that the term “Equity Amount Payer” is preferred to the term “Fixed Rate Payer” for the equity leg in contracts.

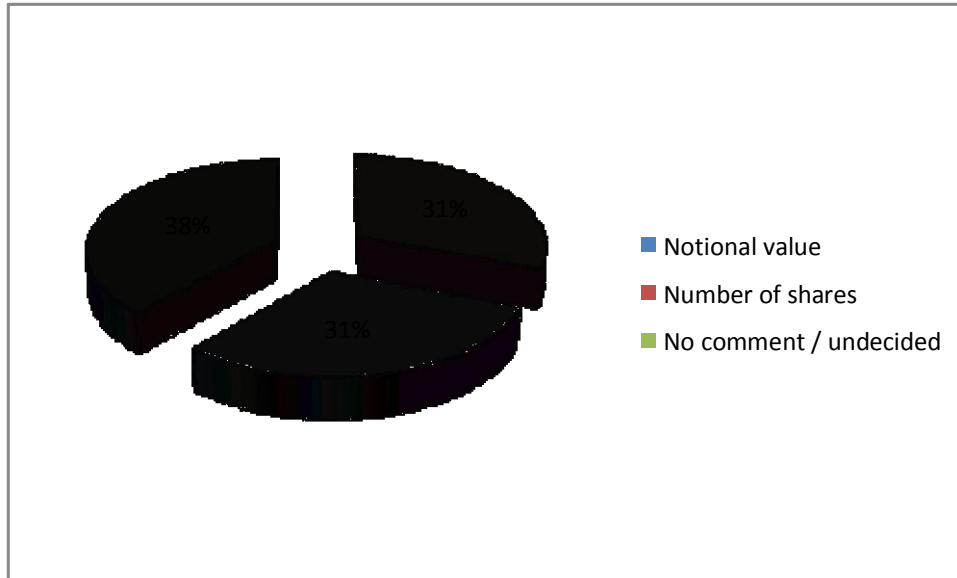
BVI recommended that the trading parties decide in their bilateral agreement who should be the Fixed Rate Payer.

Deutsche Bank and La Caixa agreed with CESR’s proposal.

Subsequent CESR decision:

The buyer of an equity swap should be the Fixed Rate Payer, meaning the one who receives the equity performance.

“Q16: Do you agree that the Quantity field should be the notional value of the Equity Swap or the number of shares subject to the agreement?”



Half of respondents favoured the number of shares for the Quantity field, and the other half favoured the notional value of the Equity Swap.

BBA/Xtrakter and FOA added that the use of the notional would require the agreement of standard calculations.

ISDA specified that the number of units should be used for an Equity Swap with an underlying basket or index that is in scope.

NSA repeated that the reporting should mirror the trade and agreement with the client, meaning that the number of shares or the notional value could be reported depending on how the trade is done.

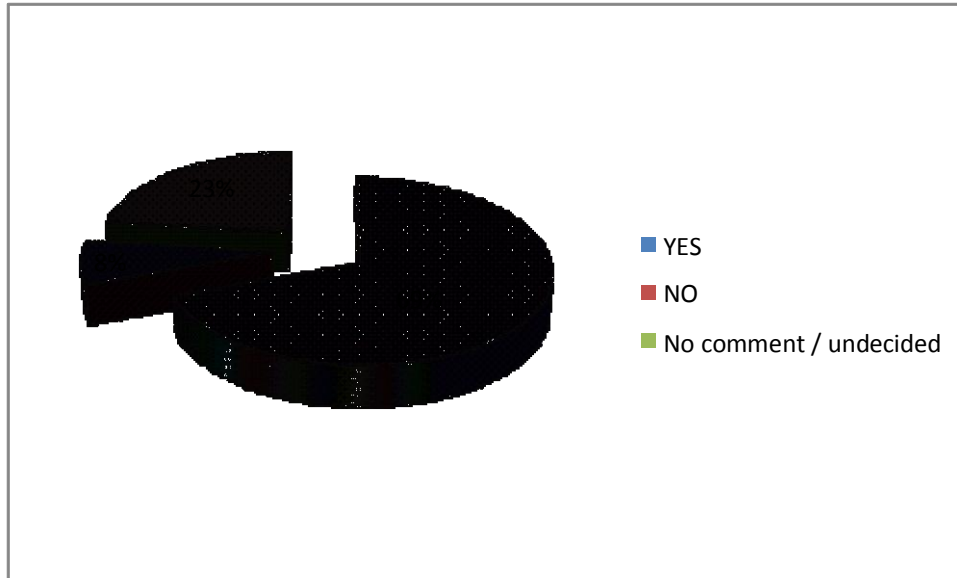
Deutsche Bank, EAPB, La Caixa and ZKA agreed that the notional value should be populated in the Quantity field.

BVI would go for two fields as there are different data necessary.

Subsequent CESR decision:

In the case of equity swaps, the Quantity field should show the number of shares subject to the agreement.

“Q17: Do you agree that the Unit Price field should contain the reference price of the underlying equity on which the equity returns are calculated, i.e. the initial agreed price?”



The great majority of the respondents agreed with CESR’s suggestion.

AMAFI/FBF, BBA/Xtrakter, FOA, Deutsche Bank and La Caixa believed the Unit Price field should contain the reference price of the underlying equity on which the equity returns are calculated.

EAPB, NSA and ZKA were of the view this field should be filled in with the initial price, which is the agreed price.

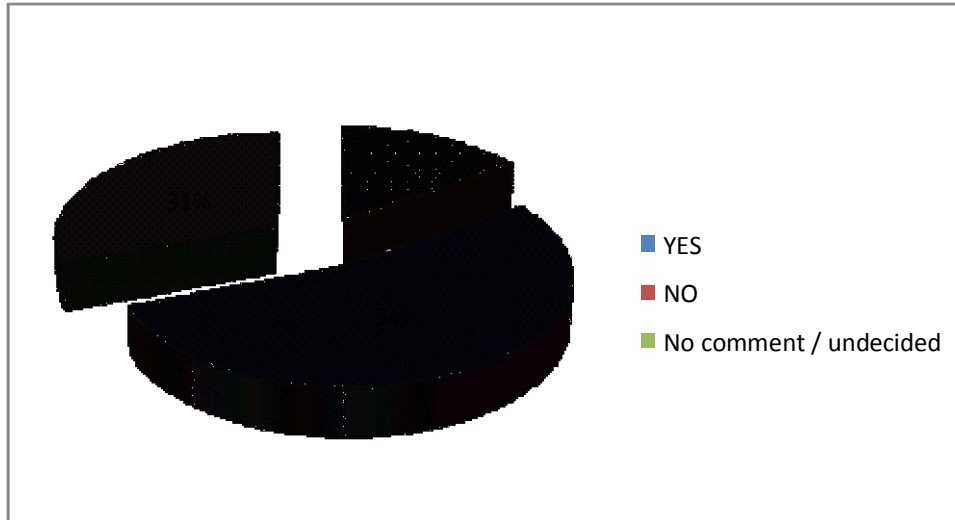
ISDA stated that the Unit Price should contain the initial reference price of the underlying instrument, not the current market price, in cases where reporting occurs some time after the trade was executed.

BVI would go for two fields again as there are different data necessary.

Subsequent CESR decision:

For equity swaps, the Unit Price field should contain the initial agreed price of the underlying equity on which the equity returns are calculated.

“Q18: Do you consider that when the initial reference price is not known when the Equity Swap is traded, this product should be considered a Complex Derivative?”



The great majority of respondents did not consider that an Equity Swap should be considered a Complex Derivative when the initial reference price is not known when the trade occurs.

BBA/Xtrakter and FOA considered that it is still an Equity Swap with a forward setting reference price. NSA also shared this opinion.

AMAFI/BBF pointed out that when the initial reference price is not set at inception, there is at least a reference that is set on the basis of which the price will be calculated, and hence it should be possible to populate the price field with this reference.

EAPB and ZKA suggested that the Price field should be left blank. Also, they believed a later reporting of the price in the form of a second notification should likewise not take place because this would create problems in reporting (the plausibility check would not permit such a second report).

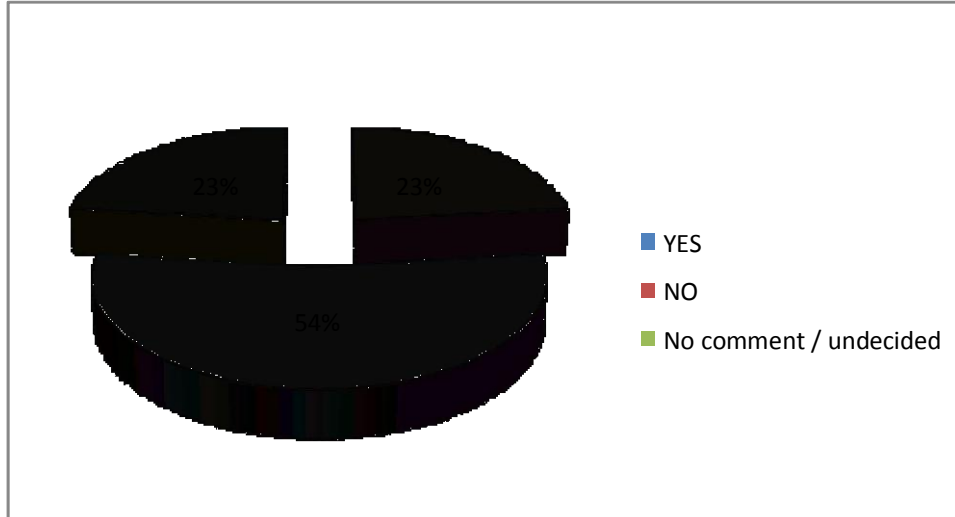
ISDA also suggested that the reference price should be omitted in such cases, or replaced with a code meaning “forward setting”.

Deutsche Bank and La Caixa replied positively to the question.

Subsequent CESR decision:

An equity swap should not be considered a Complex Derivative when the initial reference price is not known when the trade occurs.

“Q19: Do you agree that Equity Swaps with two Equity legs should be reported with two different transaction reports with the same Transaction Reference Number for both reporting firms?”



Most of respondents fundamentally disagreed with this proposal.

AMAFI/FBF argued that each counterparty should report both equity legs. If each counterparty is to report only one leg, they feel there is a risk that the regulator never receives one of the legs (if the counterparty is not based in the EU or is not an entity with an obligation to report transactions). In addition, they believed it is very unlikely that both reporting firms could report the same Transaction Reference Number.

They did not favour two reports for each transaction. They considered it may be very complex to report two transactions for the investment firms, one for each leg as it will be necessary to develop a specific module to duplicate the transaction.

BBA/Xtrakter and FOA explained that an Equity Swap usually has one equity leg and one interest rate leg and that only the first of them makes the object of a reportable transaction. They also were of the view that the issues associated with implementing the infrastructure required to make two transaction reports would be insurmountable.

BVI believed that it is useful to have only one report which contains all trading details with the same Transaction Reference Number.

Deutsche Bank also disagreed due to data validation issues in case two reports would be sent with the same Transaction Reference Number. If the proposed structure were to be implemented, they argued there would be a technical challenge in differentiating those transaction reports reflecting a two Equity legged Swap from duplicate reporting.

ISDA believed a single record with a unique transaction reference number should be able to cover the full product representation.

NSA considered that it is better to treat the individual swap legs as separate transactions with individual and unique Transaction Reference Numbers since the current reporting schema cannot handle multi leg transactions.

EAPB and ZKA considered that an equity swap with two equity legs will always trigger two reports of the two swap partners involved. To them, both partners will each report a purchase and a sale with two different reference numbers and a plausibility check would reject two different reports with



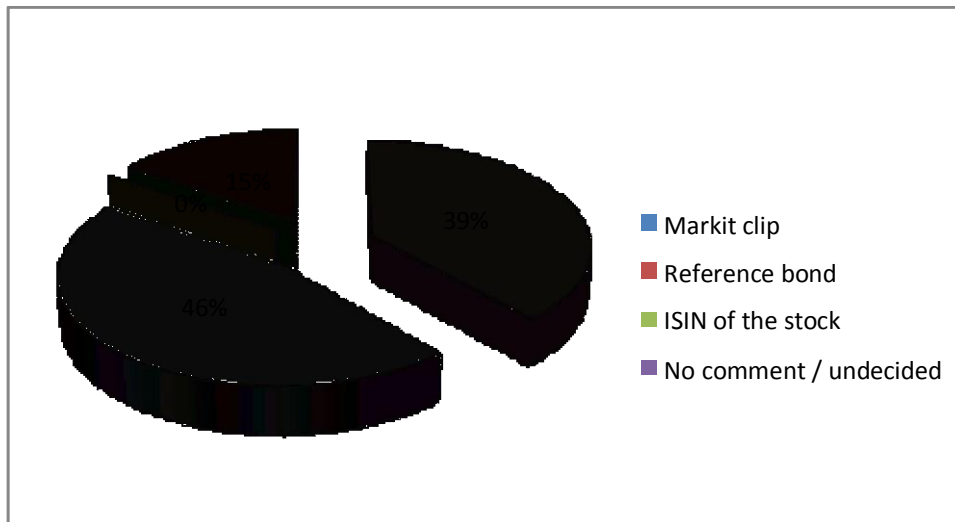
the same reference number as erroneous. Even if there will be four different transaction reference numbers for technical reasons, they insist on the fact that the unique number is necessary for purposes of unambiguous referencing.

Subsequent CESR decision:

An equity swap with two equity legs should be reported with two different transaction reports (both counterparties to report both legs).

3.6 Credit Default Swaps

“Q20: Which instrument should be reported as the ultimate underlying instrument for a CDS? The market clip, the reference bond if any, or the ISIN of the stock of the issuer? (Warning: these are mutually exclusive options, i.e. participants would not have the choice between different reporting options. Once one of them has been selected, it would become the only standard for reporting)”



The market clip and the reference bond got half of the votes each.

AFG, Deutsche Bank, AMAFI/FBF, ISDA and NSA had a preference for the Markit clip. AFG and AMAFI/FBF added that the RED code on 6 characters could be mandatory and the one on 9 characters optional (where there is a reference obligation). That said, all of them strongly insisted on having ensured beforehand the availability of the RED data for transaction reporting purposes in a cost effective way for all market participants. The Deutsche Bank also warned that consideration of its benefits should be weighed against the required system changes to accommodate the new code.

BBA/Xtrakter, BVI, EAPB, FOA, La Caixa and ZKA favoured the reporting of the ISIN of the reference bond as the ultimate underlying for CDS trades. BBA/Xtrakter and FOA urged CESR to carefully consider the use of proprietary information as a mandatory transaction reporting requirement. BVI was also of the view that the Markit clip should only be used if the competitive issues surrounding the use of a commercial identifier are clearly solved.

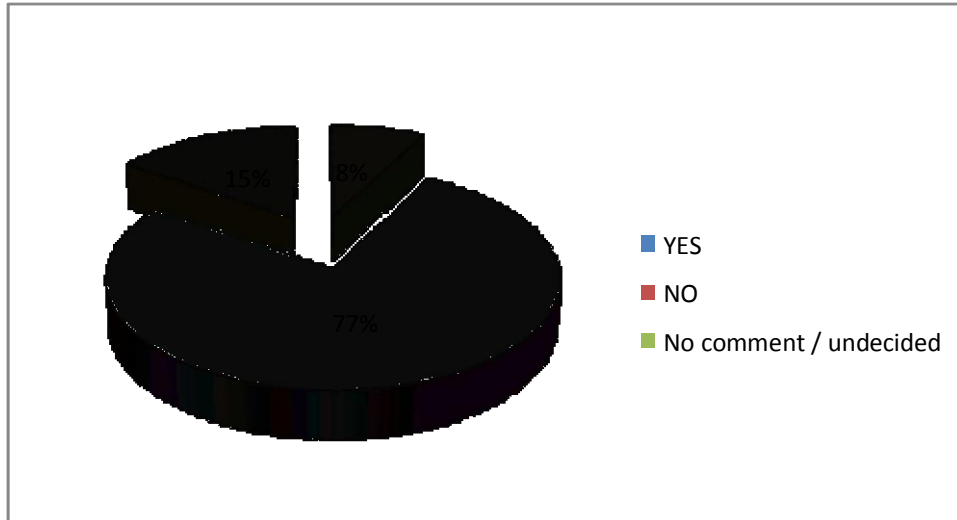
EAPB and ZKA would exclude the CDS from the scope of compulsory transaction reporting but if subject to compulsory reporting, they consider that only those CDS should be covered in which the parties have agreed a reference obligation and the reference obligation is a listed security. They argued it should be avoided referencing anything not reflected in the contract.

Subsequent CESR decision:

For CDS, the ISIN of the reference bond should be reported for the identification of the ultimate underlying instrument. If there is more than one reference bond then the ISIN of one of the reference bonds should be used. If the reference entity has no issued bonds admitted to trading on a regulated market then the CDS is not reportable.

CESR will keep under review the option to facilitate the exchange of both ISINs and the Markit clip.

“Q21: Do you agree that the price should be an equivalent all-running payment price expressed in basis point?”



The respondents were almost unanimously against the reporting of an equivalent all-running payment price expressed in basis point.

AFG, AMAFI/BBF, EAPB, NSA and ZKA recommended adding an additional field to report the upfront payment and the fixed spread as these are the fields matched with the counterparty.

AMAFI/BBF explained that the equivalent all-running payment is used by front-office systems but is not always fed to the back-office systems from which reporting are done. Hence, the price should be expressed in basis points without the upfront payment. This latter information should be populated in a different field.

In order to record the CDS price, BBA / Xtrakter and FOA supported the reporting of both running spread in basis points and the upfront fee.

NSA believed that the price should not be the all-running payment price but the standard coupon plus the upfront premium that has been agreed by the counterparties.

Those respondents agreed on the fact that populating the equivalent all-running payment price would require a calculation by the reporting system, which could be costly, error prone and difficult to achieve in any case, as the upfront payment does not always feed the back-office systems.

Deutsche Bank, BBA/Xtrakter and FOA argued as well that accomplishing this requirement would require a standardised methodology to be agreed. Deutsche Bank proposed the alternative solution to report the spread for non-standard CDSs and report the upfront premium divided by the notional for standard CDSs.

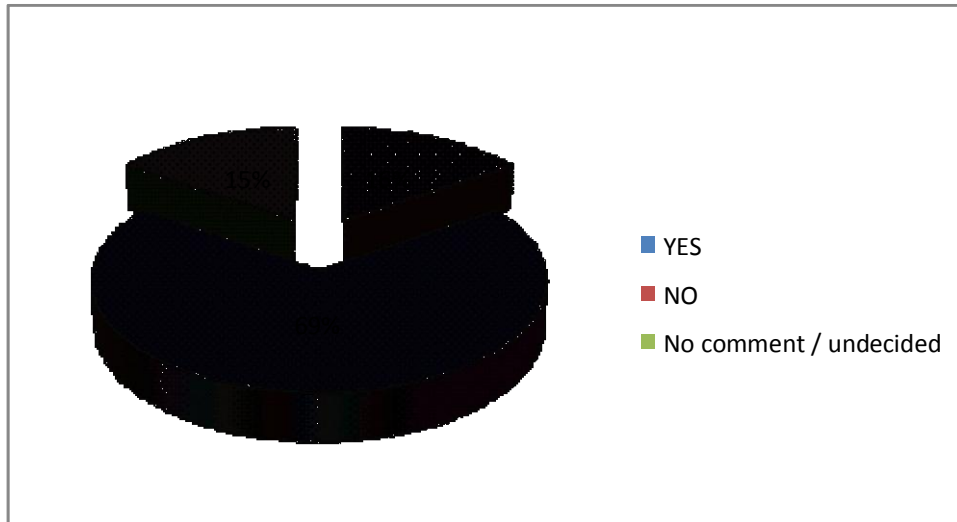
ISDA recommended that the coupon be recorded in the Strike Price field and the initial payment (if any) expressed in basis points of notional, not annualized, should be reported in the Unit Price field.

BVI recommended that the decision should be left to the trading parties.

Subsequent CESR decision:

For CDS, the Price field should contain the upfront/initial fee expressed in basis points and the Strike Price field should contain the coupon in basis points.

“Q22: Do you agree the price notation should be the currency of the debt protected by the CDS?”



The great majority of respondents disagreed with this proposal.

They all were of the opinion that the currency of the CDS should be reported.

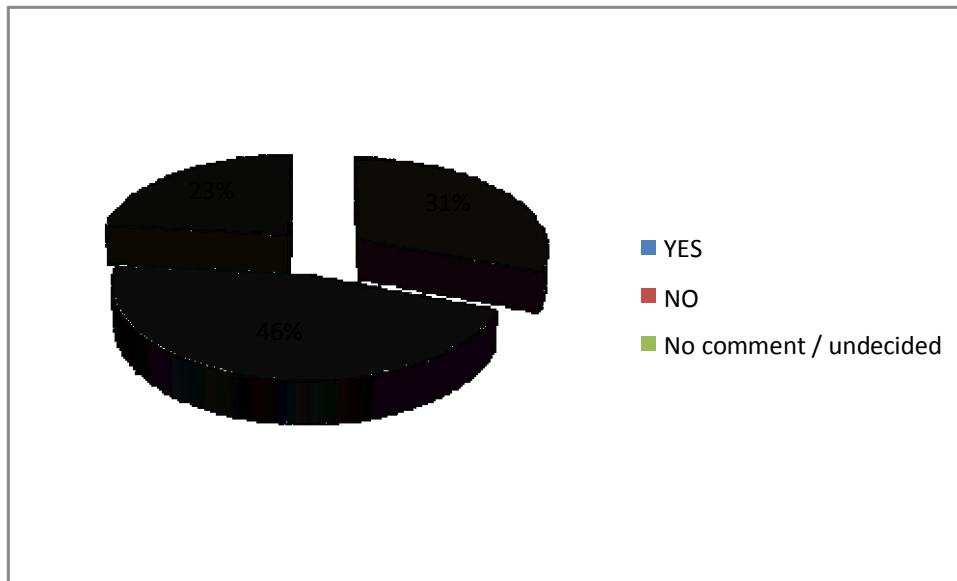
Several of the respondents raised the example of sovereign CDSs which are usually traded in USD.

NSA also added an additional issue in case the currency of the debt protected by the CDS would have to be reported, which is that the underlying may consist of several different currencies.

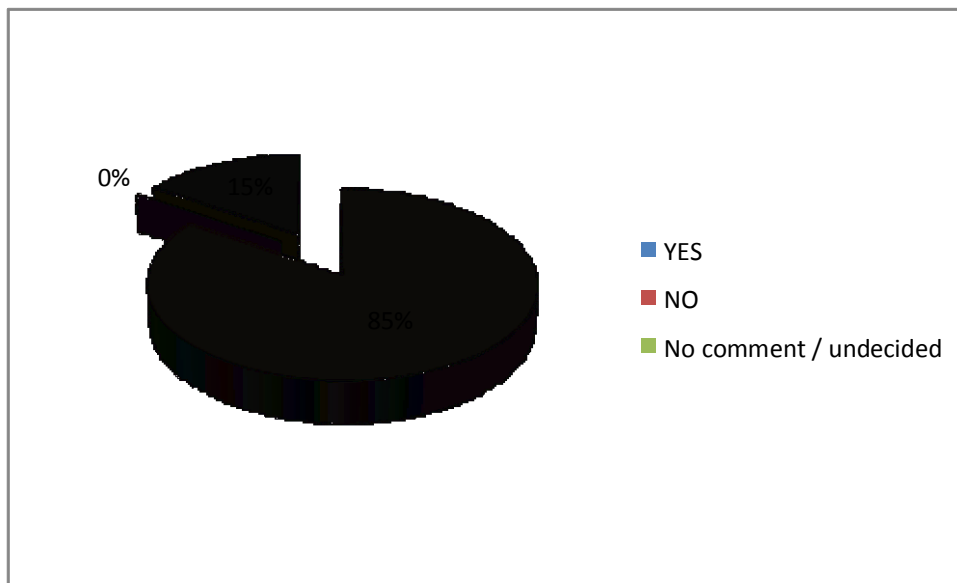
Subsequent CESR decision:

The Price Notation field should reflect the currency of the CDS.

“Q23: Do you agree that early terminations should be reported?”



“Do you agree that assignments and compressions should not be reportable?”



Most of respondents agreed with the fact that early terminations, assignments and compressions should not be reportable. However, many of them argued that if early terminations should be reported then assignments should also be reportable for the sake of consistency.

BVI, AMAFI/BBF and La Caixa supported CESR’s proposal to make early terminations reportable, unlike assignments and compressions.

AFG explained that there are different views on the subject within their membership as early terminations and assignments are considered by some market participants as an alternative answering to the same wish of a counterparty to close a position under the best conditions. They were not against the fact of not reporting compression trades. They also raised that some market participants remark that “collapse trades” are not mentioned whereas they should be quoted and excluded from the scope of the reporting (counterparty risk reduction relating to an underlying commitment already netted).

BBA/Xtrakter, FOA and Deutsche Bank did not consider that the reporting of early terminations of CDS should be made mandatory because they represent a reduction in the notional amount of the contract, and therefore are not reportable under MiFID.

For the same reason, they concurred with CESR that the reporting of compressions in the CDS space should not be made mandatory.

They also were of the view that if early terminations are to be reported, assignments should also be collected, for the sake of consistency and clarity.

EAPB, NSA and ZKA did not consider reporting of early terminations necessary, as this would result in disproportionately high costs in their opinion. The same applied to assignments and compressions.

ISDA also disagreed and strongly recommended early terminations not to be included in the scope of the reporting, because they consider they do not represent new positions. If, however, early terminations should be reported, ISDA commented that other post trade events such as novations are of similar economic importance.

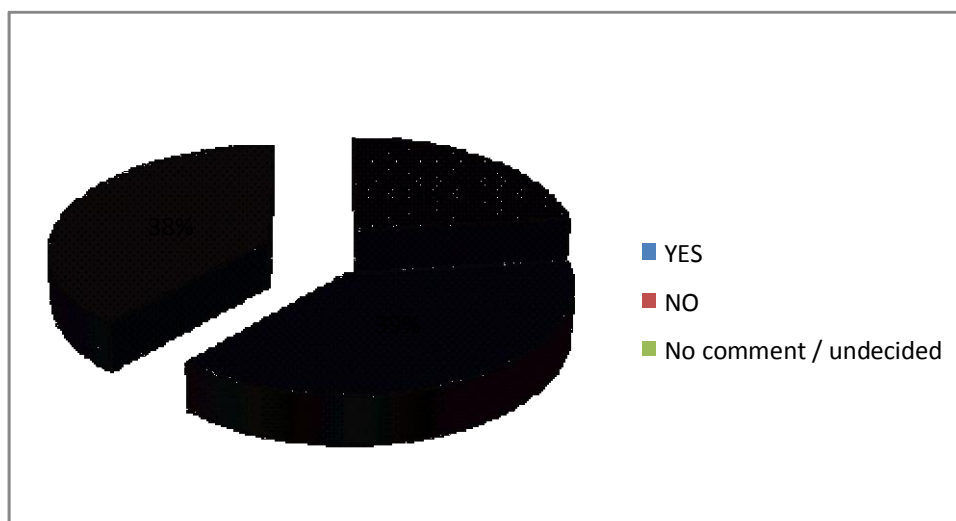
ISDA believed that any participant that is required to report unwinds/early terminations should also be required to report novations/assignments that represent trading activity, in order to present a complete picture of the trading activity. They agreed that early terminations or other post-trade events resulting from portfolio compression have no economic impact and should not be reportable.

Subsequent CESR decision:

Since these operations allow a change in exposure and can therefore be used for the purpose of market abuse just as a new CDS contract, early terminations, partial terminations and assignments should be reported. On the contrary, compressions should not be reported.

3.7 Complex derivatives

“Q24: Do you have any other relevant examples that should be added into CESR guidelines? Please give detailed explanations of the example.”



AMAFI/FBF reiterated that an option with several strike prices at different dates should feed the complex derivatives category. They also wondered whether some swaps (volatility swaps, dispersion

volatility swaps and dispersion variance swaps) would be reportable and if so, should be reported in this category.

BBA/Xtrakter and FOA gave further examples they consider can be classed as complex, which are options with forward start dates and cliquet options (options in which the strike price periodically resets before the final expiry is reached).

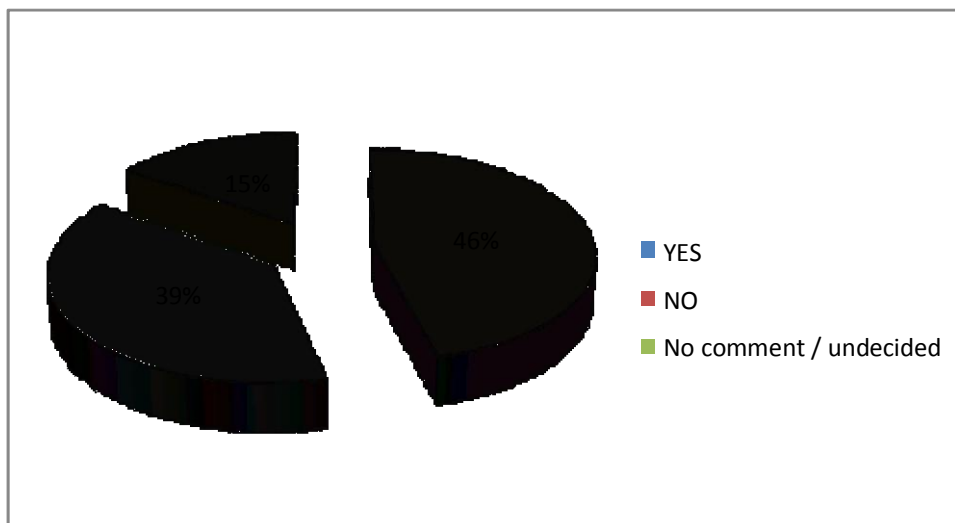
Deutsche Bank suggested that any regulatory definition should allow reporting firms to self-identify those products that they view as complex, rather than being bounded by a prescriptive definition, in order to ensure that any newly developed financial products can be accurately reported to the Competent Authorities.

NSA evoked some transactions through Agent (Trading Capacity) and the transactions that a CfD has during its lifetime (e.g. when multiple trades are done during a day to build a position).

Subsequent CESR decision:

OTC derivatives with multiple potential strike prices, OTC options with a forward start date and cliquet options where the strike price periodically resets before the expiry date should be reported in the Complex Derivatives category.

“Q25: Do you agree that the Instrument Description field should be required to be populated at local level, in order to explain the derivative being reported?”



Respondents were divided regarding the Instrument Description field.

AMAFI/FBA, BVI and Deutsche Bank considered that this field is necessary understand which instrument is reported, even if it is populated in various languages.

BBA/Xtrakter and FOA also believed that a free text instrument description field would be definitely of use and should both be populated at a local level and exchanged through TREM.

AFG argued that the instrument description field should be optional as it is impossible to have a common description language across all market participants.

ISDA believed that terminology is likely to vary widely between firms in the absence of standardized naming, and consequently the value of this field is likely to be limited.



NSA proposed instrument description to be optional for all reportable instrument types. They also proposed to define guidelines, for voluntary use, stating how to fill in the instrument description field including preferred language (English) to minimize costs for cross border reporting. However for Complex Derivatives, they recommended instrument description to be compulsory to be able to understand the nature of the complex derivative instrument.

EAPB and NSA argued that the cost/benefit ratio would be disproportionate.

Subsequent CESR decision:

CESR strongly recommends that the Instrument Description field should be required to be populated at local level, in order to explain the derivative being reported.

4. Other issues raised by respondents

Consultation timeline

AMAFI/FBF regretted that the time allowed to respond to this very technical consultation was so short, as a more detailed analysis would have been required to check that each derivative type can be mapped to the proposed fields. Importantly as well, these timing constraints did not enable AMAFI/FBF to share views with their European counterparts. As a result, they warned that the positions that they put forward were representative of their members but have not been benchmarked with others.

Central Counterparties (CCPs)

AFG expressed that investment firms should be authorised to appoint DTCC as a reporting agent, given that the scope of Transaction Reporting on OTC derivatives includes instruments that are being more and more cleared (CDS for instance).

AMAFI/FBF encouraged CESR to engage into a close collaboration with DTCC to examine which data are available through it and assess whether some changes are necessary either to TREM or to the DTCC feed to enable trade reporting through it.

ZKA argued that databases such as the central trade repository for CDSs of the DTCC could be used for various regulatory purposes, including the detection and investigation of potential market abuse cases.

Duplication of reporting

AMAFI/FBF explained that there are still diverging interpretations of whom a transaction should be reported to among regulator, especially as regards branch reporting, and that the consequence is duplication of reporting to regulators, which is costly and inefficient.

Therefore they claimed that this issue should be addressed before extending the reporting scope.

Transaction Reporting on OTC derivatives

AMAFI/FBF re-stressed that the best reporting solution would be a system centrally managed in the EU with remote connections by authorities and based on the requirements of the most demanding authority. They reiterated that such a system would provide the flexibility needed, would avoid multiple exchanges in different languages and under different formats across the EU and would provide each CESR's Member the information needed.



They were of the opinion that the objective of the reporting of transactions on OTC derivatives should be carried out in parallel to a concerted effort among regulators to try and minimise the duplication of reporting.

BBA/Xtrakter warned that any pan-European 'Users Pack' designed to help guide firms in their reporting of OTC Derivative Instruments would need to be accompanied by a suitably responsive industry working group at European level. They were of the view that this is necessary to ensure the guidance remains relevant, up-to-date, and able to deal with new issues as and when they emerge in the transaction reporting arena. Therefore, they considered that firms need to be fully included in this process, enabling supervisors to harness their expertise in this area.

NYSE Euronext considered CESR should look at the feasibility of using existing transaction reporting mechanisms to report OTC transactions and thereby reduce costs to investment firms, regulators, Approved Reporting Mechanisms and regulated markets alike.

Transaction Reporting impact on costs and planning

AFG reminded that data exchange on OTC derivative transactions is still poorly automated between market participants. Therefore, they warned CESR should closely consider that this new mandatory transaction reporting should ensure minimal developing costs for the asset management industry. Indeed, the intended reporting will require a lot of analysis and IT developments for asset managers. The internal organisation and reporting chain from front to back will also need to be amended. The industry clearly needs sufficient time to properly prepare the implementation. A good idea would be to start with a limited number of OTC instruments and then extend to other OTC derivatives.

AMAFI/BBF encouraged CESR to envisage a phased implementation of the new reporting obligation to allow firms to correct errors before moving on to another type of derivatives and to plan in advance their IT developments.

BBA/Xtrakter outlined that mandatory reporting of early terminations in the CDS space would be an extension to the current requirements, and would require firms to make significant systems changes. As they understood, informally, that CESR are hoping to begin the exchange of OTC Derivative transaction reports by quarter four 2010, they indicated that this is not nearly sufficient enough time for their membership to have the correct systems in place to begin reporting early terminations. They argued that the industry would require a minimum lead time of 6 months for systems developments upon publication of the final specification from their home competent authority.

Scope of OTC derivatives Transaction reporting

AFG kindly requested to clarify that a basket starts with 2 securities and therefore an OTC derivative on a basket of 2 securities is out of scope.

EAPB and ZKA considered that the list of categories does not reflect the practice of the entire internal market. They were of the view that the number of product categories should be reduced to: OTC options including warrants, Forwards, Contracts for Difference (CfD), Total Return Swaps (TRS) and Spread Bets, Credit Default Swaps, Equity swaps, and Other Derivatives.

EAPB also advised that introducing a category named "complex derivatives" is not advisable. The term "Other OTC derivatives" should be used because, currently, the term "Complex Derivatives" is used to describe derivatives which could have adverse effects on the market and should be subjected to special equity capital requirements or even completely prohibited.

EAPB also strongly suggested that CDS should be exempted from compulsory reporting because of Article 25 MiFID. They argued that CDS usually refer to general categories such as borrowed money or bonds, the term bonds generally referring to a debt security, including those which are not listed on the stock exchange.



They added that they consider the definition of an OTC derivative for CDS listed in the glossary is not correct. To them, the value of a CDS does not depend on the value of the underlying base value, but it depends on the probability of default of the reference debtor and the recovery expected for bonds or borrowed money.

They also mentioned that the term “Futures” is usually used exclusively for contracts traded on stock exchanges. For reasons of clarity they suggested this category should be named “Forwards”. They recommended that the three instruments CfD, TRS and Spread Bet should be combined in a single category.

AMAFI/FBF identified a number of other derivative types which should be reported as separate categories: options on CDS, equity linked swaps, options on variance swap and asset swaps callable.

NSA requested the clarification of the fact that swap legs of OTC derivatives based on commodities, rates and currencies should not be reported, and that if however one swap leg fulfils the demand for reporting that swap leg should be reported.

NYSE Euronext did not understand why CESR excluded OTC transactions involving derivatives based on stock indices from the reporting requirements.

Several respondents recommended that the categories of OTC Options and OTC Warrants be bundled together.

Several respondents warned that the classification under the Complex Derivatives category should be avoided as far as possible.

Current design of OTC derivatives Transaction Reporting

AFG supported CESR’s decision to use a simple model with 8 proposed categories of instruments and a globally limited number of fields. They were of the view that the reporting mechanism should therefore be simple to use by the reporting entities and simple to process for the supervisory authorities.

Although they understood that CESR aimed to keep the number of reporting fields to a minimum for budgetary reasons and to minimise adaptation efforts for regulators who have already implemented this reporting, AMAFI/FBF were of the view that this could create complexity and would be prone to misinterpretations.

Consequently, they suggested adding fields for all types of options and swaps in order to avoid the creation of other new categories.

AMAFI/FBF pointed out that some products are the combination of vanilla derivatives and are therefore likely to be reported by firms as a number of vanilla OTC derivatives. However, as firms do not necessarily maintain a unique transaction reference number for the various constituents of this packaged product, they argued that providing such a reference number should not be a requirement.

ISDA was disappointed that their previous inputs were not able to be accommodated more fully by CESR, because they felt that a number of the issues raised in this current paper could be handled better if CESR’s standards were more closely aligned with post-trade OTC derivative position reporting being developed by ISDA’s members and reporting repository vendors. In particular they were concerned from an industry perspective not to be able to leverage the under development or existing OTC derivatives reporting infrastructure.

Instruments Reference Data

AMAFI/FBF strongly recommended that a list of instruments admitted to trading on a regulated market or a MTF of the EU be made available to investment firms.



Annex 1 – List of respondents

#	Respondent	Country	Acronym (where applicable)
1.	Association Française de la Gestion financière	France	AFG
2.	British Bankers Association and Xtrakter	UK	BBA and Xtrakter
3.	Bundesverband Investment und Asset Management e.V.	Germany	BVI
4.	Deutsche Bank	Germany	
5.	European Association of Public Banks	>1	EAPB
6.	Fédération Bancaire Française – Association française des MArches FIanciers	France	FBF – AMAFI
7.	Futures and Options Association	>1	FOA
8.	International Swaps and Derivatives Association	>1	ISDA
9.	La Caixa	Spain	
10.	Nordic Securities Association	>1	NSA
11.	NYSE Euronext	>1	
12.	Spread Betting Association	>1	SBA
13.	Zentraler KreditAusschuss	Germany	ZKA