

CESR
The Committee of European Securities Regulators

Submitted via www.cesr.eu

CESR Consultation Paper *Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets*

London, May 31st, 2010

Dear Sirs,

Markit welcomes the publication of CESR's Consultation Paper on its *Technical Advice to the European Commission in the Context of the MiFID Review – Equity Markets* and we appreciate the opportunity to provide you with our views on this topic.

Markit is a financial information services company with over 1,500 employees in Europe, North America and Asia Pacific. More than 1,500 institutions use our independent services to value financial instruments, manage risk, improve operational efficiency and meet regulatory requirements. Markit is actively involved in the creation of price transparency both through our pricing services for a whole range of financial products as well as through Markit BOAT, the trade reporting service that we operate for European equities.

Markit BOAT consolidates pre- and post-trade data from over 40 leading financial institutions that use the platform to meet their MiFID OTC equity transparency obligations for approximately 8,000 stocks listed across Europe. We publish an average daily turnover of €20bn, equivalent to an estimated 65% of the total OTC equity trade volume reported in the EEA and around 20-25% of the entire equity trading in Europe. Markit BOAT collects, validates, stores and publishes an average of 160,000 trades on a daily basis with an aggregate order quantity of more than 1.5 billion shares. Markit BOAT has been awarded Trade Data Monitor (TDM) status by the UK Financial Services Authority; a TDM is required to meet a minimum set of standards when providing its trade reporting services.

Given our involvement in reporting OTC equity trades in Europe we feel well placed to comment on the questions that you raised related to the quality and consolidation of post-trade data. We hope you will find our comments helpful.

2.1.2 Systematic Internaliser Regime

Question 16: Do you have any comments on other aspects of the SI regime?

Markit BOAT facilitates pre- and post-trade transparency on behalf of eight Systematic Internalisers, all of which are listed on our web page. In addition, Markit BOAT publishes quarterly post-trade transparency reports that identify all the trades that were executed by investment firms in their capacity as Systematic Internalisers.

Even though all pre- and post-trade transparency data for these Systematic Internalisers is published via leading market data vendors, there has unfortunately been very little user interest in either dataset to date. We therefore welcome all initiatives around the reform of the Systematic Internaliser regime but would urge CESR to complete a thorough cost-benefit analysis of all proposed changes before making any decisions.

2.2.1 Quality of post-trade information

Question 17: Do you agree with this multi-pronged approach?

We strongly support CESR's proposed multi-pronged approach of setting publication standards, providing clarification of reporting obligations, and forming a joint CESR/Industry Working Group to finalise the development of standards and clarification amendments by July 2010. We are of the view that all of these issues have to be addressed no matter how the actual consolidation of data will eventually be facilitated, be it mandatory or through competitive offerings.

When developing the standards, and in an effort to promote consistency, simplicity and clarity should be the main underpinning principles. Any proposed standards should be specific and detailed enough to be implemented by complex and constantly evolving technology systems.

We are also of the view that it would be beneficial to maintain the joint CESR/Industry Working Group beyond July 2010 to continue to address any additional emerging challenges related to post-trade transparency standards. The ongoing existence of this group would facilitate the evolution of the newly proposed standards in line with technological trading advancements in a consultative, transparent and consistent manner.

Question 18: Do you agree with CESR's proposals to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you face difficulties fulfilling this proposed requirement.

We welcome all initiatives that address existing concerns about real-time publication of post-trade data in order to promote transparency and enhance data quality. However, the analysis of our data has not shown any evidence of firms not publishing their trades "as close to real time as possible" intentionally.

By way of background, investment firms and MTFs connecting to Markit BOAT can submit their trade reports either automatically via FIX or manually via an online GUI. Markit BOAT monitors the timeliness of reported trade data continuously to highlight potential issues to investment firms. Our data shows that on average, 99% of all trades that are reported to Markit BOAT within 3 minutes of the execution time are actually received and published within milliseconds after trade execution whilst the remaining 1% are received and published at different points in time before the current 3 minute deadline. There is therefore no evidence in our dataset to suggest that these reports have been routinely or systematically withheld. In practice, any reporting delays seem to occur mainly due to the fact that the firm generating the report is using a manual, rather than an automated, interface.

On the face of it the proposal to reduce the reporting delay would not seem to have a significant impact on those firms that are reporting their trades to Markit BOAT automatically. However, CESR seems to suggest that it is the enforcement of the existing principle which requires transactions to be published “as close to real time as possible” that proved to be challenging. Therefore, we would recommend that instead of focusing on the extent of the permissible delay, more thought should be devoted to the question of how to enforce this principle.

Question 19: In your view, would a 1-minute deadline lead to additional costs (e.g. in terms of systems and restructuring of process within firms)? If so, please provide quantitative estimates of one-off and ongoing costs. What would be the impact on smaller firms?

Markit BOAT currently maintains manual connections with six firms whose respective trading volumes do not seem to justify the cost of implementing a fully automated solution. We are of the view that depending on the time it takes these firms to input the trade manually, the 1 minute deadline for reporting may indeed prove challenging for them to meet.

An impact analysis should take any additional costs into account, if those firms were forced to switch to an automated solution to enable them to satisfy the 1 minute reporting requirement. Although we do not have visibility into the actual costs that would be incurred by a firm to establish automated reporting, some ongoing costs that need to be considered are those related to a leased line, firewalls and routers, as well as FIX gateway and servers.

Question 24: Do you agree with the CESR proposal to apply transparency requirements to other equity-like instruments?

We do agree with CESR’s proposal to apply transparency requirements also to other equity-like instruments.

In this context it is worth noting that a growing number of market makers in ETFs and some other equity-like instruments are already, on a voluntary basis, reporting their trades through Markit BOAT to promote transparency in these market segments. Markit BOAT has reported an average quarterly turnover of €500mm or 8,000 trades in ETFs over the last couple of years in addition to an average turnover of €60mm or 500 trades in ETCs over the past year.

4. Consolidation of transparency information

Question 27: Do you support the proposed requirements/guidance for APAs? If not, what changes would you make to the proposed approach?

Markit BOAT operates as an approved Trade Data Monitor (TDM) which is supervised by the UK FSA. As such, we have been subject to requirements that are similar to, and in some aspects probably more stringent than the proposed APA regime.

We are fully supportive of both the TDM and APA regimes as these standards go a long way to ensure not only the quality of post-trade data, but also the resilience and quality of the operation of reporting mechanisms. The introduction of such requirements will therefore ultimately be to the benefit of all market participants as well as to the regulatory authorities.

As we mentioned before, any proposed standards, including those requirements that are applicable at the time of approval as well as throughout ongoing monitoring, should be detailed, specific and not subject to differing interpretation by publication arrangements and national regulators alike. Any deviation from these principles could easily jeopardise the success of the APA regime and would have a detrimental effect on the quality and consistency of reported trade data.

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?

We are of the view that as a high level principle MiFID should require post-trade data to be published in a manner that facilitates its consolidation with similar data from other sources. This is because the appropriate formatting of data publication represents a pre-condition for achieving the actual consolidation of trade data, no matter whether through a competitive or a utility-run consolidation mechanism.

As such, we do strongly support CESR's proposal of setting technical standards for the formatting and reporting of trade data, as well as defining the appropriate channels of publication through APAs rather than proprietary means.

Questions 29 and 30: In your view, would the approach described above contribute significantly to the development of a European consolidated tape? What would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape?

We do indeed believe that the setting of standards related to APAs represents a necessary pre-condition for the creation or the evolution of a post-trade consolidated tape for equities in Europe.

We would expect a regime with multiple APAs to result in harmonised and standardised trade reporting practices while maintaining competition between reporting mechanisms both from a commercial and service level perspective. These factors would be beneficial in significantly improving the quality of post-trade data and laying the foundations for data consolidation.

It is worth emphasising that we do not see the APA and the MCT proposals as mutually exclusive. In contrast, we believe that the introduction of the APA regime will be beneficial to the market no matter how the actual data consolidation is achieved, be it under a competitive or a mandated utility model.

Cost of Market Data

Question 31: Do you believe that MiFID provisions regarding cost of market data need to be amended?

We are of the view that the elevated cost of post-trade data for European equities constitutes a major hurdle that currently prevents the successful and affordable consolidation of data, and largely caused the failure of any previous attempts to create a consolidated tape.

We therefore believe that issues related to the cost of post-trade data need to be addressed through regulatory intervention, both as part of the MiFID revision and outside of it. The successful unbundling of pre- and post-trade data that could be achieved through regulatory intervention ahead of the actual implementation of the MiFID review might already solve the problem. However, there might also be a need to add or amend provisions related to the cost of post-trade data as part of MiFID itself.

Question 32: Should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.

We think that the cost of post-trade data has been one of the main reasons why the existing consolidating solutions have not fully addressed the concerns of end users and that the unbundling of pre- and post-trade data for European equities is one of the necessary pre-conditions for successfully achieving data

consolidation. Unless pre- and post-trade data is offered by all reporting venues in an unbundled format, a post-trade consolidated tape will continue to be prohibitively expensive, i.e. €450 per user per month currently.

We therefore support the proposal to address the cost of data, and specifically the unbundling of pre- and post-trade data, in MiFID provisions. However, in order for this unbundling of data to result in a commercially viable outcome, careful consideration needs to be given to the following parameters:

- The cost of each component of the unbundled dataset should not exceed the cost of the bundled dataset as this would clearly defeat the objective of this requirement.
- The fee allocation ratio should be determined by reference to the perceived commercial value of the pre-trade versus the post-trade data, with for example 70% of the total fee assigned to pre-trade versus 30% to post-trade data.
- The completion of the unbundling exercise might well reveal some data pricing anomalies, where the data fee determined by a publication venue might not be proportionate to its market share. In such a situation, a separate effort might be required to ensure pro-rata distribution of fees according to the volumes of post-trade data published by each venue.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes?

We are of the opinion that a harmonised approach around the distribution of delayed data would promote post-trade data consolidation in the European equity markets. With this in mind, and in an effort to advance the discussions around the creation of a consolidated tape in Europe, Markit BOAT has made its data freely available for display applications 15 minutes following its publication.

It is worth highlighting though that the time value of post-trade data is different to that of pre-trade data. The value of pre-trade data published with a 15 minute delay is virtually nil, which seems to explain why exchanges that will typically offer pre- and post-trade data in bundled form have set the delay period for this dataset at 15 minutes.

We therefore believe that CESR should avoid placing any restrictions around the monetisation of derived and historical data and analytics if the data is used on a delayed basis, as such a proposal would have a detrimental effect on publication venues that solely rely on data revenues and do not provide execution services.

Question 34: Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?

We agree that all post-trade data should be taken into account to ensure the accuracy of MiFID transparency calculations. The same principle should also apply to industry post-trade analytics, including processes around the creation and maintenance of tradable indices as well as the performance of transaction cost analysis, valuations and compliance monitoring.

4.1.2 EU mandatory consolidated tape

Question 34: Do you support the proposed approach to a European mandatory consolidated tape?

A number of vendors currently already offer consolidation tools, which in our opinion have not succeeded because the necessary pre-conditions had not been in place. We are of the view that once the issues related to data quality, interpretation of reporting requirements, formatting of data, and, crucially, the cost of data, have been successfully addressed, the consolidation of data through existing market channels is likely to become more effective and should be expected to address investors' needs.

We would therefore urge CESR to pursue the above goals in dialogue with the industry first before considering a mandatory approach to consolidation.

Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?

A Mandatory Consolidated Tape (MCT) could potentially provide some benefits: it could serve as the complete record of all trades reported across all European equity markets; it would be expected to address the real-time data cost issues through the commercial structure around it; and last but not least it could provide visibility for the smaller publication venues.

Whilst we recognise the potential benefits of an MCT, we would stress again that the two proposed solutions of APA and MTC should not be regarded as being mutually exclusive. Also, we are of the view that given the more intrusive nature of the MCT, its implementation should only be considered once the introduction of the APA regime has failed to deliver a successful result based on the competitive model.

Question 37: In your view, would providing trade reports to a MCT lead to additional costs?

Whilst the explicit technology costs that a publication venue will experience to connect to a MCT do not seem to be prohibitive, one should also give careful consideration to the implicit costs and potential revenue loss incurred by publication venues, market participants and redistributors alike depending on the commercial model around data dissemination. Furthermore, it is unclear what the demand curve for a MCT real-time product is compared to the one for direct exchange feeds or value-added products. That said we are of the view that a thorough impact analysis must be an essential pre-requisite to calibrate the business case for the financial viability of a MCT project.

Annex II – Proposed Standards for Post-Trade Transparency

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue?

Markit supports all efforts that are related to the harmonisation of trade data, including the setting of specific reference data standards to facilitate effective trade data consolidation.

It is worth noting that Markit BOAT already utilises ISO standard formats for data publication, although our member firms will also have the option to report trades with minor currencies and in particular GBX. This approach is in line with current industry standards that are also applied by Regulated Markets for those securities that are tradable in GBX.

We are generally supportive of the use of ISO standard formats as it will definitely facilitate consolidation of data and we would not expect the technical implementation of the proposed standards to be challenging or costly for our platform. However, one needs to keep in mind that the implementation of these standards by itself is unlikely to improve data quality if it was not accompanied by further trade data validation processes that should be applied by the publication arrangement to ensure the accuracy of reported trade prices.

Question 3: Do you agree that each of the above types of transactions would need to be identified in a harmonised way in line with table 10?

We view condition codes as a crucial element of any transparency regime as they form the basis for accurate model computation and correct determination of relevant traded volumes. Well defined and harmonised usage of condition codes across Europe would facilitate the creation of a consolidated tape, enhance user experience and ensure accuracy when measuring the total market size. Whilst we welcome CESR's initiative of harmonising condition codes, we are of the view that in order to ensure the best possible outcome CESR's focus on some additional parameters is warranted:

1. Condition Code Universe

European publication venues currently use quite a diverse set of condition codes with little consistency between them, whilst a number of publication venues use a set of condition codes that is wider than the one proposed by CESR. It is unclear from CESR's proposal whether all existing condition codes should be retired and replaced with the six that were suggested or if those will be published in addition to any existing ones. In any case, we see some drawbacks in both proposals and would therefore propose conducting a wider market practice review to ensure that all existing and new condition codes will be harmonised across publication venues.

2. Purpose of Condition Codes

In addition to identifying the type of trade that is reported by the investment firm to the market, condition codes are also used by the publication venues to facilitate trade data validation and to ensure high standards of data quality. For example, a publication venue would normally apply different validation thresholds to a set of trades flagged as being executed away from the then current reference price which makes such an indicator a vital component of a platform's operations. This factor needs to be taken into account when calibrating the correct regime.

3. Definition of Addressable Liquidity

Markit BOAT has been working on standardising the usage of our Market Condition (MC) flag with a view to identifying trades where the trade price and/or trading process does not reference or correlate with the then current market price. However, during the discussions that we have had with our reporting firms, it became apparent that not only did they apply differing interpretations of what constitutes addressable liquidity but also of when each type of the listed transactions would need to be flagged as non-addressable. To address these issues, CESR should create and publish a specific definition of "non-addressable liquidity" as well as accompanying use cases detailing when a condition code should be populated.

4. Number of Condition Codes

It seems debatable whether a variety of individual condition codes is really required or whether a single one will suffice to identify non-addressable liquidity. During previous discussions, Markit BOAT reporting firms indicated that the latter would not only be more cost effective, but also easier to implement and more flexible, by allowing firms to incorporate additional trade types under this condition code without incurring significant system costs should the definition of non-addressable liquidity evolve over time. Regardless of the actual number of condition codes that will ultimately be used, we are of the view that detailed and clear use cases will still be an absolute necessity.

Question 8: Do you agree that each transaction published should be assigned a unique transaction identifier? If so, do you agree that a unique transaction identifier should consist of a unique transaction identifier provided by the party with the publication obligation, a unique transaction identifier provided by the publication arrangement and a code to identify the publication arrangement uniquely?

Markit strongly agrees that a unique transaction identifier should be assigned to each transaction that is published. Such a practice will not only facilitate the correct publication of trade cancellations and amendments but can also ensure that a transaction is not published more than once by the same publication arrangement.

Whilst Markit BOAT has implemented all three proposed levels of identifiers, our dissemination standards somewhat differ to the ones that are proposed by CESR: Markit BOAT requires the submission of a unique transaction identifier by the reporting firm in order for the trade report to be considered as complete. The platform then validates the data and publishes the trade report to the market attaching a unique transaction identifier that has been automatically generated by Markit BOAT. Markit BOAT does not actually disseminate the unique transaction identifier that was provided by the reporting firm as the format of these identifiers is inconsistent between investment firms and they include characters that could enable end users to identify the reporting firm.

We are of the view that requiring the publication arrangement to disseminate a unique transaction identifier that was generated upon receipt and validation of a unique transaction identifier from the party with the publication obligation will be beneficial to promote transparency and to ensure the accurate processing of trade data.

Questions 9 & 10: Do you agree with CESR's proposal on cancellations and amendments? If not, please specify reasons.

Markit welcomes CESR's proposal to harmonise the standards related to the publication of trade cancellations and amendments. As a matter of fact, Markit BOAT publishes both cancellations and amendments of previously disclosed information. While all firms that are reporting trades through the platform are required to use this functionality, Markit BOAT also monitors the data continuously to ensure that trade cancellations and amendments are published in both an accurate and a timely fashion.

That said differing standards are currently used across publication venues when it comes to applying retrospective changes to published data, with some venues not allowing any changes once a certain number of days have passed. We believe it would be beneficial to the marketplace if CESR were to introduce common standards around the treatment of cancellations and amendments of published transactions after a certain timeframe. Arguably, materiality of the changes to the transaction should hereby be balanced against the overall benefit to the real-time tape.

We are also of the view that clarification should be provided around the publication responsibility of the proposed condition codes "C" and "A". It is worth noting that publication venues would normally disseminate the data in a machine readable format which is then normalised and published by the data vendors. It is at the data vendor processing stage where harmonisation of the condition codes should take place. Therefore, clarification around publication responsibilities should specify that all cancellation and amendment messages disseminated by each publication venue should be displayed with the standard condition code attached.

Question 11: Do you agree with CESR's proposal on negotiated trades?

With Markit BOAT facilitating trade reporting on behalf of six MTFs the negotiated trade condition code is already available for use on our platform. We welcome all efforts to clarify and harmonise the use of this condition code whilst we would stress again that harmonisation of the flag display should lie with the data vendors.

Annex III: Clarifications of the Post-Trade Transparency Obligations

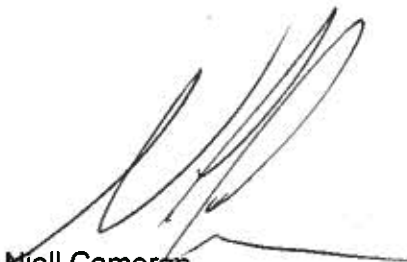
Question 1: Do you agree with CESR's proposals? Are there other scenarios where there are difficulties in applying the post-trade transparency requirements?

Markit supports the further clarification of reporting obligations. Based on our experience, CESR should also review the trade reporting requirements for dual-listed stocks when the order is filled and reported out of the EEA on behalf of a European client and the reporting of trades that were transacted between affiliate companies.

In any case, as the list of possible scenarios is unlikely to ever become exhaustive, we are in favour of establishing a dynamic mechanism whereby investment firms and publication venues can seek advice and address any emerging questions. The creation of such a process will be instrumental in ensuring that clarification is provided on an ongoing basis as the market and trading practices evolve.

We hope that our comments are useful for you. Please do not hesitate to contact us if you require any additional information.

Kind regards,



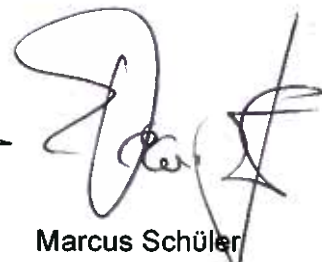
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