

International Swaps and Derivatives Association (ISDA)
International Capital Market Association (ICMA)
Asociación de Mercados Financieros (AMF)
Bankers and Securities Dealers Association of Iceland (BSDAI)
Bundesverband der Wertpapierfirmen an den deutschen Börsen e.V. (BWF)
Danish Securities Dealers Association (DSDA)
Euribor ACI European Commission Working Group
Finnish Association of Securities Dealers (FASD)
Futures and Options Association (FOA)
London Investment Banking Association (LIBA)
Norwegian Securities Dealers Association (NSDA)
Swedish Securities Dealers Association (SSDA)

Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Posted on-line to www.cesr-eu.org
24th April 2006

Dear Mr Demarigny,

RE: CESR Call for evidence on Consolidation of Market Transparency Data

1. The International Swaps and Derivatives Association (ISDA), International Capital Market Association (ICMA), Asociación de Mercados Financieros (AMF), Bankers and Securities Dealers Association of Iceland (BSDAI), Bundesverband der Wertpapierfirmen an den deutschen Börsen e.V. (BWF), Danish Securities Dealers Association (DSDA), Euribor ACI European Commission Working Group, Finnish Association of Securities Dealers (FASD), Futures and Options Association (FOA), Norwegian Securities Dealers Association (NSDA), London Investment Banking Association (LIBA), and Swedish Securities Dealers Association (SSDA) welcome the opportunity to comment on CESR's Call for evidence on Consolidation of Market Transparency Data (March 2006, CESR/O6-134).
2. The following remarks are provided on the assumption that the European Commission's draft Regulation's requirement that market transparency data have to be published in a way that facilitates consolidation (Article 31) is to be interpreted in a way that is consistent with and supports Recital 34 of the level 1 directive. Recital 34 merely introduces an obligation on Member States to remove obstacles which may prevent the consolidation at European level of the relevant information and its publication.

3. In its call for evidence CESR envisages a risk of data fragmentation following the implementation of the MiFID, with possible negative repercussions on the price discovery and, thereby, on the quality of orders execution. Such a risk seems to be associated by CESR with the end of the concentration rule in Article 14.3 of the Investment Services Directive.
4. It is true that in the Member States where a concentration rule does exist at present regulated markets have so far played the role of consolidators of market data. Being the only venue where orders could be executed, they would also provide for an un rebuttable (and uncritical) presumption of best execution. To a lesser extent the same is true in those member states where other legislative incentives, such as tax incentives, have been in force to boost concentration of trading on RMs.
5. We consider that one of the primary objectives of the MiFID was to introduce competition among trading venues and thereby reduce transaction costs for the benefit of both the final investors and issuers. This result was meant to be achieved, among others, by removing the concentration rule and, at the same time, introducing specific pre and post-trade transparency requirements for listed shares coupled with a detailed best execution regime for investment firms which execute clients' orders.
6. Recognising that the introduction of MiFID will put an end to the concentration rule we are confident that any fragmentation of trading venues that may occur from the new regime will not lead to a lower quality of execution and that any fragmentation of data that may occur can be controlled by market forces. We consider that the market forces and commercial incentives to make trading information available are able to overcome the effects of a more diversified landscape for execution in the future. As a matter of fact, the relevant competent authorities of the Member States where no concentration is currently mandated have never identified any market failure in terms of poor quality of execution.
7. As a result of the best execution regime introduced by the MiFID, market intermediaries will need to collect the trading data necessary for them to identify the best trading opportunities consistently available on the market. At the same time, trading venues will need to advertise the terms at which they are willing to enter into transactions, and in order to gain market share will want to be included in the execution policies of as many executing firms as possible. It is also not true that best execution would work as a market incentive only for newcomers (namely Regulated Markets, Multilateral Trading Facilities and Systematic Internalisers which need to be included for the first time in the execution policies). Additionally because of the obligation on executing firms to route their clients' orders to the appropriate venues which enable them to obtain best execution on a consistent basis, and to monitor and update the quality of their execution policies, trading venues which have consolidated their position as market leaders in one or more listed shares will continue to have incentives to advertise their business.
8. Already at present, as expressly recognized by the European Commission in its Background Note to the Draft Directive¹, "*data vendors ... consolidate*

¹ See paragraph 7.7.1.

information from a multitude of venues. Technology is available which is capable of consolidating pan-European quotes and order books as well as identifying in real time, for example, the best available price, including any related explicit costs (commissions, exchange transactions fees, taxes, clearing, settlement) and allowing for currency conversion where necessary”.

9. Among the signatory associations for example, and not specifically relating to equity market data, ISDA has promoted a specific initiative (ISDAFIX²) aimed at consolidating and providing market intermediaries worldwide with information necessary to assess the terms at which they propose to enter into OTC interest rate swaps, while ICMA, via its TRAX trade-matching and reporting system consolidates bond trades executed by its reporting dealers and other member firms and publishes them widely on a next day basis.
10. On the specific questions raised in CESR’s call for evidence we have the following comments:

Publication

- Page 2, 2nd para. We agree that the transparency data published must be accurate and capable of being readily understood. There is a strong market incentive for firms to comply with this requirement in order to remain competitive and gain market share. We also agree that transactions should be made public as a single transaction and that multiple reporting of post trade data relating to the same trade should be avoided.
- Page 2, 3rd para, 1st indent. We agree that the issues raised by CESR are of importance. However, it is not realistic to expect that all market participants in 28 EEA states will be using the same standards from 1st November 2007 even if they will be fully compliant with the requirements of the directive in making data easy to understand and to consolidate. The use of interfaces that exist on the market will function as a consolidator of data in standardised formats. Such interfaces are already provided by information vendors.
- Page 2, 3rd para, 2nd indent. The time for which transparency data needs to be accessible is another issue that each market already has solved and that may be altered by use of an interface layer between raw data provided and market data published.
- Page 2, 3rd para, 3rd indent. There is a strong commercial incentive for the firm to publish accurate and reliable data in order to retain its reputation as a trusted execution venue.

Consolidation

- Page 2, 4th para. We do not think there is a particular need for access to information from all trading venues consolidated in one single place. Firms need to have access to the information of venues they have selected in their execution policy. However, for any particular share there are likely to be only a few liquid venues within the EU and likewise only a few venues which -

² ISDAFIX was established by ISDA in 1998 in cooperation with Reuters and Intercapital Brokers (now ICAP plc.). ISDAFIX is a leading benchmark for fixed rates on interest rate swaps worldwide. This screen service provides average mid-market swaps rates for six major currencies at selected maturities on a daily basis.

when all relevant best execution factors are considered – are of interest to access. Furthermore, while consolidation of information can be helpful provided that other variables are uniform, consolidation of prices may well not provide useful information, or even be misleading, if for example prices are not comparable because of different clearing and settlement costs or other conditions of trading on a venue which were not included in the consolidated information.

- Page 2, 5th para. We believe the issue of what specific information the market participants need is out of the scope of CESR's mandate and should be left to the market forces to work out.
- Page 3, 1st para. We agree with the statement that there will possibly be several competing 'consolidating centres' and we believe this is consistent with the intention of MiFID itself to encourage competition.
- Page 3, 2nd, 3rd, and 4th para (obstacles). It remains to be seen how market participants will respond to the new landscape that MIFID will introduce for equity market transparency. They will need to take account of their role as users of market data, as well as providers of it. As CESR implies, before any regulatory action is contemplated, there should be reasonable certainty that any particular obstacle will arise, and that market participants cannot solve it. Furthermore, the Directive's provisions on publication of information on a reasonable commercial basis should not be considered as an obstacle to the consolidation of information, but as enabling market participants through commercial means to determine the optimal transparency arrangements.
- Page 3, 6 para (costs). We agree that specific action to facilitate consolidation would involve costs on certain market participants. This is an important reason why the Level 1 directive focuses on publication on reasonable commercial terms, and why CESR would be right to be wary of intervening in this area.
- Page 3, 7 para (CESR's role). CESR is right that the consolidation process is meant to be market driven. CESR members have an interest in the availability of information to enable them to monitor market participants' compliance with transparency obligations and best execution obligations. But CESR has an important role in keeping itself and other data users informed about market-driven developments, for example by surveying, in consultation with market experts, the current range of arrangements, methodologies, and standards for making information available in a consolidated format, and by organising periodic hearings to review how new developments are progressing and publishing the proceedings. CESR should not seek to lead them in particular directions, and should intervene only where there is clear evidence of an obstacle which cannot be addressed by the market and which needs regulatory attention. For example, CESR could have a role in helping to remove obstacles to consolidation of data under Recital 34, for example if CESR members imposed regulatory requirements that themselves imposed barriers to market-led consolidation.

11. To conclude, we believe that availability of trading data is beneficial to the market. We consider, however, that the present level of consolidation of these data is sufficient for a smooth and efficient price discovery. Moreover, the MiFID itself provides for sufficient market incentives which will prompt further consolidation of trading data both in those member states that currently require concentration on

regulated markets of trading in listed shares and those that do not. As a consequence, it is highly unlikely that the end of the concentration rule will ever result in fragmentation of trading data, as market forces will work towards consolidation of the relevant information. Accordingly, in the absence of a demonstrated market failure, we do not consider that there is any need for a public intervention in this sector. In particular we believe that neither at national nor at EU level should competent authorities dictate standards in terms of the format of the trading data to be published, which would then be instrumental to their consolidation. Any external intervention in this field would entail the risk that the costs of its implementation could overcome the consequent benefits for the market as a whole and favour particular participants in a competitive market for information.

Bill Eldridge
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European Regulatory Committee