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CESR TECHNICAL ADVICE TO THE EUROPEAN COMMISSION IN THE CONTEXT OF THE MIFID REVIEW: NON-EQUITY MARKETS TRANSPARENCY

FBF'S RESPONSE

GENERAL REMARKS

1. The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and service 48 million customers.

As universal banks, French credit institutions are directly and highly impacted by the enforcement of the MiFID on their main business lines: corporate and investment banking, intermediation, distribution.

2. The previous consultations on non equity markets transparency. In this context, the FBF had given its views on the possible implementation of transparency on financial markets other than equities.

Three years ago, the FBF sent responses to the calls for evidence published by the European Commission and by CESR in the context of the article 65 (1) of the Level 1 Directive.

On this occasion, while the main part of the reflection was concentrated on the bond markets (even if the derivative markets were theoretically in the scope), the FBF expressed several opinions on the specificities of the bond markets[1], of the Equity markets[2] and on their main

[1] From FBF's point of view, the main characteristics of Bond markets are the following:
- By nature, Bond markets are largely wholesale markets on which the intermediaries are remunerated by spreads, since they act on their own account, and not by commissions;
- The integrity of the market and the prevention of market failure depend on the competition between the dealers who bring liquidity and not on transparency.
- In most cases, the very few retail investors in France keep bonds until maturity; the reason why there is no secondary market for retail investors reflects the fact that these investors are only looking for a stable and annual remuneration of their investment.

[2] From FBF's point of view, the four main characteristics of Equity markets are the following :
- The liquidity and price discovery depend on the centralisation of the transactions (except for block trades) even on price driven market;
- The transactions are largely centralized and the trading venues are mature;
- There is a permanent flow of financial information concerning issuers (from both Medias and publication of periodic accounts) which largely defines the investors' behaviour on the sell side or on the buy side;

differences. It was clear that these specificities justified the high level of pre and post-trade transparency implemented by the MiFID on the Equity markets, transparency being considered as a tool to protect both retail and professional investors. However, identical transparency rules would be irrelevant for bond markets, especially pre-trade transparency. The conclusion was that the prevention of market failure on bond markets depended on two factors: fair competition between dealers and liquidity. Thus transparency is a consequence of the combination of these two factors, but is not a precondition for them.

3. The distinction between "investor markets" and "coverage markets"

The investors, which it is better to call the sell-side in this context, are looking for:

- Either an annual remuneration of a return on their investment: Corporate bonds and structured securities are the instruments done for this purpose and their market are "investor markets"; in this context, a collective approach as regards transparency could be possible.
- Coverage instruments in order to hedge some risks: derivative markets (credit derivatives, commodity derivatives, interest rate derivative and so on) are done for this purpose; they are not investor markets but coverage markets which functioning is not collective but led by individual and OTC needs and behaviors.

Both bond and derivative markets are characterized by a large primary market and a more limited (and sometimes inexistent) secondary market. As an example, for many bonds, most of the trading during their lifetime would be concentrated in the first few weeks after issue, with liquidity drying up thereafter. In order to provide corporate bonds to their clients, market makers usually have to keep large books of securities.

Equity markets function the other way round; the primary market is far less important than the secondary market encompassing most of the trades.

In short, there are thousands of share issues listed globally, but there are millions of bond issues still outstanding around the world. The vast majority of bond issues trades very rarely, if ever. Price transparency only makes sense for the tiny minority of bonds that trade on a regular basis.

The FBF maintains that the equity markets must not be used as the yardstick against which other markets shall be judged. In that regard, one of the few ways to impose a common pre-trade transparency regime to corporate bonds and derivatives would be to require trades to be published in an order book kept by an exchange or another organized trading venue. The "Cassiopee" experience in France (development of a trading platform for corporate bonds) shows that for "buy and hold" markets such as corporate bonds, one has to make a trade-off between an efficient market making and an organized trading platform with firm orders. Therefore, the FBF is the opinion that a one-size-fits-all pre-trade transparency system could not be imposed at a European level for corporate bonds, and even less for derivative markets.

4. The purposes of pre and post-trade transparency

First, the distinction between market transparency and reporting to the regulators must not be blurred.

The reporting to regulators is always legitimate in order to make them able to trace possible market abuses, beyond other controls (best-execution and so on).

- There is an significant retail market (on Euronext markets, for example: almost 30% of transactions and 10% of the volumes traded).

The FBF generally supports every move that will improve the functioning of the financial markets. Transparency to the market is one of the elements that should be used to reach this goal. However, transparency is not an end in itself, and the appropriate level of transparency (including timing of reporting requirements) should be dictated inter alia by considerations of the effect on liquidity.

Pre-trade transparency covers all the available information for the investor accurately indicating the size and price of prospective trading interest, such as quotations in representative size, and resting limit orders, both at the best firm bid and ask quotations and away from such quotations. Prices information can be available in various ways. Some markets have developed automated trading platforms that display the content of the limit order book for a particular security, but that is only viable where it does exist a sufficient liquid secondary market In the OTC world, pre-trade transparency does not derive in general from a central order book (except for listed corporate bonds) but from many other sources. In corporate bond markets, dealers act as market makers by quoting prices at which they will sell (ask) or buy (bid) to other dealers and to their clients or customers. Consequently, pre-trade transparency in order to ensure price discovery is already offered in this market, either through voice, electronic platforms (Bloomberg, Market Axess, Tradeweb, TLX, etc) or quotes/runs/axes in electronic format.

Post-trade transparency refers to the dissemination of trade price and volume of completed transactions from all markets trading that security.

On derivatives, only post-trade transparency can make sense with case by case calibration and with limited information on the counterparties and underlyings as regards the complete information which is done to Trade repositories. In this area, a collective approach as regards transparency does not make much sense and certainly not a common pre-trade transparency regime.

Post-trade price transparency in relation to liquid OTC derivatives to regulators should be supported on a trade-by trade basis, and to the public on an aggregated basis, via a single trade repository per asset class (to avoid fragmentation of data).

SPECIFIC REMARKS

GENERAL ACCESS TO PRE- AND POST-TRADE INFORMATION

Q. 1. On the basis of your experience, could you please describe the sources of pre- and post-trade information that you use in your regular activity for each of the instruments within the scope of this consultation paper:
a) Corporate bonds
b) Structured finance products (ABS and CDOs),
c) CDS,
d) Interest rate derivatives,
e) Equity derivatives,
f) Foreign exchange derivatives,
e) Commodity derivatives?

Pre Trade Transparency

From FBF's perspective, adequate pre-trade price transparency for liquid bonds, and most liquid OTC derivatives, already exists *via* market makers and voice, electronic platforms Bloomberg, Market Axess, Tradeweb, TLX, and so on, and quotes/runs/axes in electronic format (and is not necessary or appropriate for less liquid assets/underlyings).

This is true on old and mature markets such as Interest rate derivatives and Forex, and also for younger and less mature markets such as credit derivatives and securitization products. There is a doubt on Commodity derivative markets since these markets are very heterogeneous with very different kinds of underlying assets (energy, goods, cereals, textile, and so on.)

However, each market participant who needs to access a good level of pre-trade transparency gets it through multiple venues and formats. For example, in the Interest Rate Derivatives market

- Bloomberg and TradeWeb live trading platforms – providing Request for Quote (RFQ) functionality that allows multiple dealers to be put in competition to allow for best price execution in an efficient manner.

- Clients have the ability to access live pricing information on Bloomberg and Reuters and download into their proprietary systems/spreadsheets.

- Broker screens are widely available on variety of public access platforms including Bloomberg and Reuters. These screens cover a broad selection of benchmark instruments - e.g. swaps, xccy swaps, basis swaps, block futures, inflation swaps, strategy trades etc.

- Single dealer pricing and execution screens on both Bloomberg and TradeWeb that provide live "click to trade" functionality

- Single dealer proprietary platforms – live pricing, execution, analysis tools, news etc, often with a wider range of product than the multi-dealer venues.

As a consequence, a mandatory pre-trade transparency would clearly be useless and the FBF does not support any regulatory regime in this area.

Post-Trade Transparency

Significant effort has been put over the last few years to enhance the post-trade information.

On Corporate bond markets, for example, ICMA's system has already been implemented (transactions under 1 M€, reporting at the end of the day), with results to be assessed, but this could be a first step. The TRACE system in the USA should also be assessed, since it appeared that it resulted in a tightening of spreads but no increase in liquidity, as it was recognised by CESR in 2009.

On derivatives, there is also the example of the infrastructure in the Interest Rate Derivatives markets– same day electronic confirmation tools (e.g. MarkitWire) and clearing (e.g. SwapClear) would be two prime examples.

Regulators are starting to receive reports from the Global Interest Rate Derivatives Trade Reporting Repository and will soon have direct access to that database to conduct their own analysis.

There is no *public* venue to access trade data although in purely professional markets the value of this is questionable anyway (as will be described in later questions). For end users, on an intra-day basis the same pre-trade transparency access points mentioned above can be, and are, used as post trade transparency venues since they will typically update to reflect the price, and implicitly the size, of the most current transaction price executed in the market.

Q.2 Are there other particular instruments that should be considered as 'corporate bonds' for the purpose of future transparency requirements under MiFID?

No.

Q.3 In your view, would it be more appropriate, in certain circumstances, to consider certain covered bonds as structured finance products rather than corporate bonds for transparency purposes? Please explain your rationale.

The FBF underlines that it would definitely be appropriate to consider covered bonds as structured finance products for the following reasons:

- first, the investor does not take a credit risk on the issuer but on an underlying basket of credits as on structured products (securitization for instance); the life of the covered bond depends on the quality of the underlying assets while the life of a Corporate bond depends on the issuers' situation;
- second, the credit rating agencies will use, for the rating of the issuance, the same methodology as for a structured product.

CORPORATE BONDS

Q. 4 On the basis of your experience, have you perceived a lack of pre-trade transparency either in terms of having access to pre-trade information on corporate bonds or in terms of the content of pre-trade transparency information available?

There is no consensus at this stage for a pre-trade transparency regime for corporate bonds.

In the equity market, pre-trade transparency is reached mostly though the existence of a limit-order book that allows information disclosure for retail investors. However, even in the equity world, the level of pre-trade transparency differs markedly according to the liquidity of the equity concerned and the size of the transaction. For less liquid equities and/or large-size deals (e.g. €1M in a microcap equity) one would not expect pre-trade transparency from the order book to be sufficiently reliable to make a deal. Whilst an order-book system allows a certain degree of transparency for price and volumes, other transaction costs (e.g. execution costs) must be added to get the real price of a deal.

All markets need a certain degree of trade transparency to function effectively and efficiently. In the OTC world, pre-trade transparency does not derive in general from a central order book (except for listed corporate bonds) but from many other sources.

In corporate bond markets, dealers act as market makers by quoting prices at which they will sell (ask) or buy (bid) to other dealers and to their clients or customers. Consequently, pre-trade transparency in order to ensure price discovery is already offered in this market, either through voice, electronic platforms (Bloomberg, Market Axess, Tradeweb, TLX, etc) or quotes/runs/axes in electronic format.

Moving to exchange-like platforms is only possible for the most liquid bonds and listing some bonds and not others for the same company may have an adverse impact on its yield-curve. Large tickets should remain OTC otherwise it could have negative effect on price discovery and execution.

As a conclusion, the FBF members did not perceive asymmetry of information between market participants, or only with regard to the products themselves rather than their trading, and has not given an evidence of specific problems in the classical corporate bond markets.

In terms of market prices and volumes, market participants have access to sufficient information and existing structures deliver these in a cost effective way, though there is a clear distinction between retail and wholesale market.

Q. 5 In your view, do all potential market participants have access to pre-trade transparency information on corporate bonds on equal grounds (for example, retail investors)? Please provide supporting evidence.

It is critical to distinguish retail vs. institutional investor transparency framework: pre-trade transparency through organized venues is appropriate for retail investors but post-trade transparency is sufficient for wholesale investors.

Judgments by intermediaries may include perfectly reasonable decisions that the transactional costs of accessing particular parts of the corporate debt market, including pricing information costs (*e.g.* to ensure best execution), may outweigh the benefit to the retail investor of a particular trade, given the size of the trade. This is not a market failure; this is a perfectly

normal part of the wholesale and retail divide in any financial and non-financial market. More to the point, it leads to the expected outcome that retail investors will not be active in less liquid markets.

As a consequence, the FBF supports the view that pre-trade transparency for corporate bonds outside of contracts traded on organised trading venues is not really an option for the industry or the regulators.

Q. 6 Is pre-trade transparency efficiently disseminated to market participants? Should pre-trade information be available on a consolidated basis?

The FBF is unsure about the objective of such an exercise. The number of bonds that can be obtained from several brokers or dealers is very limited. Price quotes can be obtained directly from these brokers or dealers. The cost of consolidating such information would be very large, and the potential benefits would largely be offset by the negative impact on liquidity for market-makers.

Q. 7 What are potential benefits and drawbacks of a pre-trade transparency regime for: a) the wholesale market; and b) the retail market? If you consider that there are drawbacks, please provide suggestions on how these might be mitigated.

As the majority of corporate bonds trade very infrequently, there is rarely a constant supply of buyers and sellers looking to trade sufficiently to sustain a central pool of investor-provided liquidity, the FBF is of the opinion that pre-trade transparency requirements should apply only to contracts traded on exchanges or other organised trading venues.

A mandatory pre-trade transparency measure is not desirable because of the very negative impact it could have on liquidity. It may have serious adverse consequences, as players are disincentivised from acting as a market-maker since the market-maker's positions could be hedged against by other players as soon as they become public thus potentially increasing costs for market-makers.

Q. 8 What key components should a pre-trade transparency framework for corporate bonds have? What pre-trade information should be disclosed?

The FBF underlines that the only case where the benefits of a pre-trade transparency regime would not outweigh its benefits is on corporate bonds which meet two eligibility criteria: the bonds are traded on electronic platform and the orders are below €1 million.

Q. 9 Do you think that notional value would be a meaningful piece of information to be made accessible to market participants? Is there any other information that would be relevant to the market?

As a general concern, the FBF understands that CESR's objective in mandating in post-trade transparency regime for corporate bonds is to enhance the general public's understanding and easy access to information about the financial markets. In establishing such a regime, the specificities of the fixed-income markets must be borne in mind. The FBF welcomes CESR's considerations about the risks of a negative impact of additional post-trade transparency on liquidity.

The implementation of a greater post-trade transparency solution could generate considerable cost (in time and infrastructure). Market participants may not have existing capacity to accommodate those. Any regulatory move towards post-trade transparency would likely not have a profound impact on the market. There is already a good deal of price transparency through the inter-dealer broker platforms (with around 30 participants in Europe). Thus, if post-trade transparency should become mandatory, it would have to be, at least, a self-regulatory approach.

Moreover, this could actually make liquidity worse if confidential information was disclosed.

Q.10 Do you agree with the initial proposal for the calibration of post-trade transparency for corporate bonds? If not, please provide a rationale and an alternative proposal (including supporting analysis).

From their market experience, French banks fully supports the conclusions of CESR in its July 2009 report: "*CESR confirms its view that the lack of post-trade transparency is not considered to be the key reason behind the difficulties experienced in the corporate bond markets during the past months, nor does it believe that additional post-trade transparency would be able to solve the different problems as a singular measure. However, in combination with other measures, CESR believes that additional post-trade transparency would be able to contribute to improving current market conditions in the corporate bond market*."

Indeed, post-trade transparency on corporate bonds may be helpful but it must be carefully defined to avoid bringing TRACE-like negative externalities in the EU bond market.

CESR examined carefully the TRACE experience in its 2009 consultation paper on non-equity markets transparency. In short, TRACE has caused spreads to narrow, although US corporate bond spreads remain wider than for the European bond markets [Bessembinder-Maxwell 2008] and the dispersion of valuation was reduced. However, liquidity was materially reduced. As one economist said in his article on TRACE: "*excessive price transparency impedes quantity discovery, which impedes the coordination process of trading, and in turn impedes the efficient allocation of capital in the marketplace*" [Templemen 2009].

As a consequence, post-trade transparency in the European Union should be introduced in a way that takes into account TRACE lessons-learned:

- Large size trades should not be penalised by post-trade transparency as it is on the TRACE system; in that regard, there should be a sufficient delay between the transaction date and the positions disclosure, of at least a day or more, so that the entity having an exposure could have time to turn that position around. In that regard, the calibration proposed by CESR is not relevant for trade over than 5 € million as it would lead to disclose to the market the same information whether the trade is 6 million or it is 60 million. Furthermore, if such a volume happened to be disclosed fastly to the market, it would create issues towards the hedging operation.

- The post-transparency framework should not include all corporate bonds for which a prospectus has been published or which are admitted to trading on an MTF. The scope of post-trade transparency would be far too large and could be damaging for bonds where a very limited liquidity exist in the market (eg where there is less than 3 trades per day). The universe of bonds subject to price transparency should not be defined based on the availability of a bond prospectus but rather on bonds traded on regulated public venue/exchange or bonds traded on electronic platforms for which there are more than 'x' price contributors in consensus price services (e.g. Markit End of Day) or (eventually) on bonds eligible for clearing.

Our view is that the post-trade transparency framework should be more orientated towards and end-of-day price consensus for the most liquid bonds.

As a consequence, the suggested metrics should only be applicable to bonds traded on electronic markets or regulated markets. In addition, the initial proposal is ill-calibrated if we bear in mind the normal size of tickets traded in corporate bonds (based on traded volumes stats in 09-10, the average e-ticket size being around 100k-200k Eur whereas voice trades average is usually above 500k). To avoid a negative impact on liquidity, the metrics should be as per below:

Transaction size (net value)	**Information to be published**	**Timing of publication**
Below Eur 0.25 million	Price and volume of transaction	As close to real time as possible (<15 mins)
Between Eur 0.25 million and Eur 1 million	Price and volume of transaction	End of day
Above Eur 1 million	Price but no volume (but with an indication that the transaction has exceeded the Eur 1 million threshold)	End of day + 3

This proposal would be able to match the legitimate interest to enforce post-trade transparency for small orders where potential retail users concentrate, and the necessity to maintain liquidity in the European corporate bond market.

Larger block trades would be traded OTC/voice, hence should not be subject to post-trade transparency obligations.

Q.11 Should other criteria be considered for establishing appropriate post-trade transparency thresholds?

No

Q.12 Given the current structure of the corporate bond market and existing systems, what would be a sensible benchmark for interpreting "as close to real time as possible"?

- For transactions below Eur 0.25 million, as suggested in the previous metrics, the FBF would support a Trace-like regime of 15 minutes.
- For transactions between Eur 0.25 million and Eur 1 million, a post-trade transparency at the end of the trading day, as a general rule, would seem appropriate to the FBF. However, certain exemptions might have to be foreseen.
- For transactions above Eur 1 million, an End of day + 3 timing is appropriate to let dealers to turn their position around, as for block trading in the equity markets.

In the view of the FBF, market makers should generally be exempted. Deferred publication should also be possible for less frequently traded instruments.

STRUCTURED FINANCE PRODUCTS (ABS AND CDOs)

As stated above, the FBF supports the inclusion of covered bonds among structures finance products. These instruments are based on a system close to securitization.

Pre-trade transparency

As traded on OTC, there is clearly no need, neither for the issuers nor the investors to enhance the pre-trade transparency regime for non standardized structures finance products. The FBF does not support any initiative on pre-trade transparency in this area.

The FBF does not see any benefits in a pre-trade transparency regime for the ABS and COD markets. These products are traded voice only, and they trade much more infrequently than more vanilla bond or CDS due to the bespoke nature of the underlying. Besides the inevitable and considerable costs it would impose on the industry, such a regime would rather read to be misleading. It would invite market observers to focus on limited information, where instruments should be analyzed in detail, and it would invite comparisons between quite different products.

Post-trade transparency

1. **Post-trade transparency for structured finance products**

The FBF acknowledges CESR's intention of providing greater market transparency for structured finance products and to assist with product valuation. French banks believe that greater post-trade transparency on these instruments could have some value for the markets; as opposed to a pre-trade transparency regime which would not be of any meaning, in the view of the French banking industry.

In this context, the most relevant approach for the scope of post-trade transparency is the liquidity assessment: a certain degree of liquidity, or a minimum trading frequency, is most important (*i.e.*, criterion of frequency of secondary trading). It would not make sense to mandate post-trade liquidity to products that do not experience any trading activity.

Such a regime would only make sense for sufficiently liquid instruments. It is doubtful that there is at all a certain number of ABS and CDOs that have the necessary degree of liquidity to feed into a meaningful transparency regime.

As noted above, banks feel generally that transparency on the products themselves is of genuine interest to the market, not transparency on the trading activity. The market failure of securitized products was mainly due to a lack of transparency of the underlying assets and not of the market.

Q. 13 On the basis of your experience, have you perceived a lack of pre-trade transparence in terms of access to and the content of pre-trade information available in the market for ABS?

Concept of pre-trade transparency is unclear for ABS as electronic trading is almost inexistent, but there is no lack of pre-trade transparency actually perceived as creating some form of hindrance on ABS. Questions have rather arisen sometimes due to the lack of consistency of available information between two comparable trades or, on the same trades, between "information providers" (such as rating agencies).

Q. 14 Is pre-trade transparency information readily available to all potential market participants?

On these markets, FBF members are dealing almost entirely with professional clients and counterparties. It is a wholesale market, where ABS and CDOs are specifically issued with large minimum denominations exceeding EUR 50,000 to ensure there is no direct retail involvement in the market. Therefore the FBF is the opinion that all professional players active in the market have access to the pre-trade information they need.

Q. 15 Is pre-trade information currently available in the ABS market consolidated and effectively disseminated to those market participants who make use of it?

With the same caveat as above, yes.

Q. 16 Which potential benefits and drawbacks of a pre-trade transparency regime do you see for the ABS market? If you see drawbacks, please explain how these might be mitigated.

There would be no specific benefits expected compared with current situation. A main drawback could be the distraction from the essential analysis that should focus on the transaction itself given relative complexity, number of moving parts and participants, etc. Furthermore, practical issues can be difficult to combine with the type of “pre-trade transparency” process modeled on equity.

Q. 17 Which key components should a pre-trade transparency framework for ABS have? Which pre-trade information should be disclosed?

We see no specific components.

Q. 18 On the basis of your experience, have you perceived a lack of pre-trade transparency in terms of access to and the content of pre-trade information available in the market for CDOs?

In the past yes, due to the complexity of the transaction itself. The information regarding the performance data of CDOs and CLOs is indeed available within prospectus and investor report information, but investor reports are not always easily accessible and they are not always publicly distributed by trustees or issuers. A timely public dissemination in electronic format of prospectuses and investor reports should improve the situation. This does not imply having a European pre-trade information system on prices and trades.

Q.19 Is pre-trade transparency information readily available to all potential market participants?

Please refer to answer 14.

Q. 20 Is pre-trade information currently available in the CDO markets consolidated and effectively disseminated to those market participants who make use of it?

Yes, as market participants already disseminate CDO prices for both cash and synthetic transactions.

Q. 21 Which potential benefits and drawbacks of a pre-trade transparency regime do you see for the CDO market? If you see drawbacks, please explain how these might be mitigated.

Imposing pre-trade transparency would be irrelevant as the level of liquidity in the market is relatively low and dealers will be probably leave their market making activities. What is key is the level of information on the transaction itself, that is capital in trades such as CDOs that could present a lost of complex aspects (see point above on investor reports).

Q. 22 Which key components should a pre-trade transparency framework for CDOs, have? Which pre-trade information should be disclosed?

See answer 18 above.

Q. 23 Which of these criteria to determine the first phase of the phased approach do you consider most relevant? Are there other criteria which should be taken into account?

a) Rating of the instrument;
b) Issuance size; and
c) Frequency of secondary trading

Regarding post-trade transparency, any kind of initiative should first be focused on most liquid, frequently traded and standardised securities.

Compulsary trade reporting may actively discourage participants from trading mezzanine tranches of ABS or CDOs, where due to the small sizes of tranches, there may be only two or three investors in the whole tranche, unless there is a considerable delay permitted in reporting. Otherwise there may be significant signalling to the market of a change in positions, to the detriment of the investor's other holdings.

Q. 24 Do you have specific ideas on which kind of ABS and which kind of CDOs should be covered by the first phase?

a) Information to be published
In terms of content of post-trade transparency for CDOs, CESR concluded in 2009 that the following is the most relevant information to be made public
i) Standardised format of identification;
ii) Issuer name;
iii) Price at which the transaction was concluded;
iv) Volume of the executed trade;
v) Date and time when the trade was concluded;
vi) Currency;
vii) Maturity; and
viii) Rating.

All relevant trade information for the frequently traded and standardized securities should be disclosed within a few days of a trade for SFP. i) and ii) would be the minimal requirements. ii) does not present an actual benefit or relevance, especially for primary trades.

Q. 25 Do you consider that it would be appropriate to use the same framework for post-trade transparency for corporate bonds and structured finance products? Please elaborate.

The FBF definitely consider that the framework for corporate bonds' post-trade transparency is not appropriate for structured products. Fundamental differences exist between the nature of the trades, their complexity, the overall size of the market, etc.

Q.26 If so, do you agree that the same calibration parameters should be used for structured finance products as for corporate bonds? Or do you think different size and time thresholds should apply?

Except for liquid ABS transactions, the potential benefit of post trade reporting for structured finance products would be offset by the market distortion and the decrease in liquidity induced by such obligation.

CREDIT DEFAULT SWAPS (CDS)

Taking into account the ongoing discussions with the European Commission on the European Market Infrastructure Legislation (EMIL) and on short selling regulation, including CDS, the FBF would welcome clarification from CESR as to how its work on the below issues will feed into this work.

Furthermore, the industry believes that the objective of greater transparency in the CDS and derivatives market should be that of providing the necessary tools to supervisory authorities to monitor systemic risks. *I.e.*, the main recipient of information should be the Regulators. Market participants overall feel that they have good access to all relevant and meaningful information, even though banks would see merit in some aggregate information, which could relatively easily be provided through the new EMIL structures.

Detailed information to the markets, as opposed to this, could be problematic. In particular, there is a risk of "cornering" were the transparency framework to allow market participants to identify or guess the positions held by other market participants. This risk would be particularly acute if there were to be a requirement to publish the issuer name. Any regulatory proposals must be mindful of this risk in order to avoid negative consequences and in particular, a decrease of liquidity on these markets.

1. Pre-trade transparency

Q.27 On the basis of your experience have you perceived a lack of pre-trade transparency both in terms of access to and the content of the information available in the CDS market?

As evidenced by CESR's own description of the market functioning, French banks do not believe that there is any problem with pre-trade transparency for CDS:

- Sell-side already offers pre-trade transparency in CDS/Index CDS, either through voice or quotes/runs/axes in electronic format. Two types of price information are currently available to participants in European CDS market: dealer quotations and dealer average/consensus price. Brokers and wholesale banks are a significant source of pricing information for their clients.
- Electronic tools put in place to enable investors to trade bid lists electronically by putting various sell-side in competition (e.g. QWIXX).

In addition, it must be borne in mind that there is a large number of non-standardized CDS, with all sorts of features. Transparency on the products underlying these CDS is much more important than information on the CDS themselves.

Q. 28 Is pre-trade transparency information readily available to all potential market participants?

The CDS markets are mostly professional markets. Sufficient information targeted at these investors is available, reflecting in form the functioning of the markets.

Equity derivatives, as a specific part of the markets, are standardized and often traded on exchanges, meaning that the trading platform's respective pre- and post-trade transparency requirements apply to them.

Q. 29 Is pre-trade information currently available in the CDS market consolidated and effectively disseminated to those market participants who make use of it?

Market participants feel entirely comfortable with the amount and format of the information available.

Q. 30 Which potential benefits and drawbacks of a pre-trade transparency regime for CDS do you see? If you see drawbacks, please explain how these might be mitigated.

French banks believe that the current, commercially-driven structures are functioning well and that there is no need for a mandatory pre-trade transparency framework for CDS.

Q. 31 Which key components should a pre-trade transparency framework for CDS have? Which pre-trade information should be disclosed?

2. Post-trade transparency

Q.32 In your view, would the post-trade transparency calibration parameters (i.e. transaction size thresholds, information to the published and timing of publication) proposed for corporate bonds in Section IV be appropriate for a) Single name CDS? and b) Index CDS? If not, please elaborate the reasons and propose alternative parameters (including justifications).

Post-trade transparency in the CDS market should be considered in relation to other regulatory initiatives impacting this market, such as the creation of central clearing counterparties (CCPs), the standardization process of CDS and the development of a worldwide CDS trade repository.

Under the current market structure (no retail investors, few sell-side participants, block trades over several millions), the FBF does not believe stronger post-trade transparency regime would be relevant for CDS (see below).

The FBF is supportive however of post-trade transparency to regulators, on a trade-by-trade basis. Regulated entities are currently obliged to report on T+1 all their transactions to their local regulators. In addition, all trades confirmed electronically (98-99% of vanilla CDS trades) are available in the DTCC Trade Warehouse.

Implementation and roll-out of CCPs for standard vanilla CDS contracts will provide the appropriate level of post-trade transparency at an aggregated level: consensus end-of-day prices used for contract margin settlement, and cleared volumes per instrument reported by CCP.

The CDS trade repository should help providing market aggregated data to investors in terms of volumes traded, averaged traded spreads, etc. To achieve this, it is important that a single trade repository is selected.

The FBF does not recommend enlarging post-trade transparency for corporate bonds to CDS because:

- The corporate CDS markets are generally less liquid than the underlying bond markets (even if it is not always the case),
- There are much less market participants than for bonds, only professional dealers and no retail investor is these markets.

Therefore, applying the above grid would be detrimental for the CDS liquidity and for the ability to re-hedge a dealer's position.

For these reasons, the right approach seems to leverage off CCP to provide post-trade transparency at aggregate level (as opposed to transaction level). It will provide investors with an aggregated view on volumes cleared per instrument as well as consensus settlement price.

Q.33 In your view, should sovereign CDS be included within the post-trade transparency framework for CDS? And if so, should the calibration parameters for single name and sovereign CDS be aligned? If not, please explain why they should be different and propose an alternative approach for sovereign CDS (including justifications).

The FBF fully understands the regulators' concerns on the sovereign CDS market, in the wake of the recent financial turmoil on the European sovereign markets. However, we would like to draw CESR attention on the potential negative externalities a post-trade transparency for sovereign CDS could create. In that regard, two elements should be kept in mind:

- Sovereign CDS markets are even less liquid than corporate CDS markets, and the liquidity between a sovereign CDS and the underlying bond is never comparable.

- There is a very high degree of sensibility to all kind of information regarding sovereign bond. As a consequence, any important movement reported to the market on sovereign CDS (eg : a large trade for hedging purpose) could be interpreted as a movement of suspicion vis-à-vis the underlying sovereign bond. The low liquidity of the CDS market will exacerbate those "wrong signals" on the sovereign debt market.

Once again, the objective pursued by the regulator (fighting against potential market abuse) is legitimate, and it necessitates a proper post-trade information regime adapted for their needs (through trade repositories and CCPs) but it does not necessary require establishing a post-trade transparency system to the market.

DERIVATIVES (Interest rate derivatives, Equity derivatives, Commodity derivatives and FOREX derivatives)

1. Pre-trade transparency for derivatives

Q. 34 On the basis of your experience have you perceived a lack of pre-trade transparency in terms of access to pre-trade information on a) interest rate derivatives, b) equity derivatives, c) commodity derivatives and/or d) FOREX derivatives and the content of the information regarding these products available in the market?

General response

French banks do not believe that there are any shortcomings with respect to pre-trade transparency for derivatives. CESR rightly notes that transparency already exists for contracts traded on regulated markets or Multilateral Trading Facilities (MTFs). It is estimated that this covers 20-30% of single-name equity options and about 70% of index equity options.[3]

Products that are traded OTC, on the other hand, are typically bespoke, as also rightly mentioned by CESR. Pre-trade transparency on such products would have limited informative value for the wider markets.

The FBF recognizes the legitimate interest of investors for an adequate level of transparency on the derivatives markets. Electronic trading platforms are being set up for this reason, sometimes in combination with traditional voice broking on the phone. These platforms allow for pre-trade transparency information, similar to exchanges. In the IRD market for example the pre-trade transparency level is extremely high, electronic platforms such as Bloomberg offering consolidated 'best-of' price screens.

Equity derivatives

As a bottom line, it is important to note that, compared with other asset classes, a relatively large proportion of equity derivatives takes the form of listed (*i.e.* exchange traded) instruments, to which exchange-type transparency applies.

In the OTC Equities Derivatives Market, as opposed to the Exchange Traded Market (future or option markets), users are institutional only (the retail market is usually structured through various wrappers- warrants, certificates or ETF- which already receive full MIFID protection). The pre-trade information varies from one product to the other:

- Look-alike OTC (serves as substitution of Equity Listed Products): the price discovery is based on public screen prices available for Equity Listed Products, and supplemented by request for quote process that allows competition between dealers. In addition, voice prices can be given by wholesale brokers, upon request,

- Equity swaps and other delta 1 products: they synthetically replicate long or short positions on an listed equity underlying (stock or index both listed): the price discovery is based on the foloowing two components:
  - (i) the price of the underlying stock or index for which exists a full pre-trade transparency regime pursuant to MiFID; and

[3] http://www.ft.com/cms/s/0/9c87fd58-1a67-11df-a2e3-00144feab49a.html

- (ii) the price of the “financing service” offered by the dealers and brokers when selling such products (ie: the direct long/short position on a given underlying being replaced by a synthetic exposure on this underlying, the financing cost of this exposure is transferred to the dealer and included in the price of the Equity swap) is negotiated privately and is dependent upon specific aspects of the client/dealer relationship. Hence, this price is not made public. Nevertheless, clients can still ask request for quotes and put dealers in competition.

- Bespoke and structured products: as these trades are privately negotiated (OTC derivatives) and do not exist prior to their request, there is no specific data to transmit. Clients can still ask request for quotes and put dealers in competition.

Forex derivatives

The pre-requisite for a pre-trade transparency regime, whatever its definitive form, is the capacity to get sufficient comparable information across a series of instruments identified as similar (e.g. FX forwards, FX options, major currency pairs, etc…).

There are two closely inter-related elements to characterize comparable information: Product features (characteristics) and product prices.

In particular for the FX industry:

1. There is a high degree of standardisation of the FX products and their associated contracts (ISDA…), and within this frame, there is infinity of outputs to match the real cash flows (real economy) on which the FX markets are based.

2. As for any product type, it is commonly accepted that the prices of FX products have a level of transparency directly linked to their respective liquidity: the more liquidity, the more transparent is the pricing (more sources, more updates)

Q. 35 Is pre-trade transparency readily available to all potential market participants?

Market participants feel that they have sufficient pre-trade information. Pre-trade information on standardized products is already required today for all products traded on regulated markets or MTFs. Pre-trade information for bilaterally negotiated products would be of rather limited interest to the wider market, in the absence of detailed information about the underlying products.

Forex derivatives

FX products (Forwards, Options) are bilaterally negotiated products, and due to the variety of possibilities, the gathering of all data is done at the market participant level.

This is the added value of a trading desk (towards client satisfaction) to determine the price that matches each institution’s short, medium and long term goals, themselves depending on client flows and associated risk appetite.

1. FX Forwards:
   The pre-trade transparency is already achieved in the great majority of FX Forwards (e.g. all ECN FX platforms include a large spectrum of tradable currency pairs, majors and emerging markets currencies).

2. FX Options:
   The pre-trade transparency in FX Options is accessible, though on a limited scale, to the market participants having established a battery of adequate systems and an organisation able to gather and analyse multiple sources of information from the public domain on “raw” products such as FX Spot & interest rates and on model-based elements such as volatility.

Q. 36 Is the pre-trade information currently available in these markets consolidated and effectively disseminated to those market participants who make use of it? If necessary, please specify your answer by product.

There is no generically available source of consolidated data. The FBF does not believe that consolidated information is of particular significance for these markets, in view of their specific functioning and the bespoke nature of the traded instruments. Individual dealers have various mechanisms, both electronic and otherwise, whereby they may provide quotes and dealing sizes to clients and other dealers. There are a number of vendors who are looking to develop applications that allow a more efficient means to display multi-dealer pre-trade information on vanilla products.

Forex derivatives

1. FX Forwards

   The pre trade information is currently available from the combination of many sources, internal and external.

   - Internal pre trade information includes mostly the risk profile of the existing books and the level of accepted risk (e.g. VaR)

   - External pre trade information includes Reuters, Bloomberg, dedicated research & brokers, client and bank queries, etc…

   There is a consolidation of the information in the pre-trade environment at the level of each individual market participant.

   There is no consolidation of the information at the market level.

2. FX Options

   The pre trade information is currently available from the combination of many sources, internal and external.

   - Internal pre trade information includes past data & models, risk profile of the existing books and the level of accepted risk (e.g. VaR)

   - External pre trade information includes Reuters, Bloomberg, dedicated research & brokers, client & banks queries, etc…

   There is a consolidation of the information in the pre-trade environment at the level of each individual market participant. There is no consolidation at the market level due to the too large variety of elements constituent of an FX Option.

   There is no consolidation of the information at the market level.

Q. 37 Which potential benefits and drawbacks of a pre-trade transparency regime for a) interest rate derivatives, b) equity derivatives, c) commodity derivatives and/or d) FOREX derivatives do you see? If you see drawbacks, please explain how these might be mitigated.

The efforts that are currently ongoing to provide greater pre-trade transparency on the derivatives markets are primarily intended to improve the supervisory oversight of these markets. From a market participant perspective, banks do not see any need or added value from a pre-trade transparency framework over and above the situation as it presents itself at the moment.

Forex derivatives

The pre-trade transparency regime faces the challenge of meeting the objectives of identifying and combining sufficient comparable information across the series of instruments without oversimplifying such information that would result in banks not being able to propose the adequate products the clients are aiming for.

More particularly in the FX Markets, the nature of the clients' transactions is driven by the real economy: how to pay & how to hedge the conversion risk.

In an environment where the currency are in majority free-floating, the cash flows payments & hedging possibilities of the real economy are as numerous as the solutions proposed by the banks to their clients.

Q. 38 Do you believe that pre-trade transparency would be desirable for some or all types of OTC derivatives (i.e. equity, interest rate, forex and commodity derivatives)? Which key components should a pre-trade transparency framework for any of these above mentioned derivatives have? Which pre-trade information should be disclosed?

Pre-trade transparency already exists for those instruments that are traded on regulated markets.

The FBF does not see any need or added value from an additional, mandatory pre-trade transparency framework for derivatives, from a market perspective.

Equity derivatives

For vanilla OTC products in respect of which a pre-trade transparency regime exists for an equivalent Exchange-traded derivative (see above), if a specific pre trade-transparency regulation should be defined, then this regulation must not impose more constraints than the one existing of the existing Exchange-traded derivatives markets. We note in this regard that liquidity in Exchange-traded derivatives is often sourced in the OTC market via a price-request mechanism, and only after the trade has been agreed is it then reported to the Exchange and given up to the clearing house.

For non-vanilla equity OTC products, defining a pre-trade transparency regime would be much more challenging, as these products by their nature are made-to-measure and do not exist until a specific price request has been made. Imposing a pre-trade transparency regime could consequently substantially impair the bespoke market and consequently hinder investors' ability to hedge a specific risk or to take on a specific indexation.

Forex derivatives

CESR shall first establish a more granular set of objectives for the proper answer to be of added value.

2. Post-trade transparency for derivatives

Q.39 On the basis of your experience have you perceived a lack of post-trade transparency, both in terms of access to relevant information and the content of this information for any of the following markets: a) interest rate derivatives, b) equity derivatives, c) commodity derivatives and d) FOREX derivatives?

The FBF recognizes that the OTC markets generally have been perceived as opaque. The French banking industry believes that greater post-trade transparency for derivatives could be beneficial primarily for supervisors, so as to provide supervisors with the necessary tools to monitor risk taking by market participants as well as concentrations of exposures to individual market participants or to specific asset classes. We fully support full transparency to regulators concerned on condition that a relevant confidentiality framework is clearly defined. In that regard, the industry developed the Rate Trade Reporting Repository that went live in December 2009, and the supervisors will soon have direct access to the relevant information.

Regarding post-trade transparency to the market, in view of the fact that a large part of the derivatives instruments is non-standardized, post-trade transparency is of lesser importance to the market more widely. This is as opposed to the equity markets, where transparency is crucial for the price discovery process.

Nevertheless, some aggregated information would also be informative to the markets more widely and would allow market participants to include macro-economic considerations in their investment decisions. It would complete the existing post-trade information available for end users on the same electronic platforms mentioned above.

The FBF however believes that this would best be provided by building on the work that is currently being undertaken to a) centrally clear a greater share of the derivatives markets through central counterparties (CCPs); and b) to record data about non-centrally cleared derivatives deals in trade repositories. These approaches are the right ones, in that they address, at the same time, the heightened counterparty risk of derivative deals, and in that they approach the identified need for greater transparency on the derivatives markets primarily from a supervisory perspective.

The information gathered through these two approaches could usefully be disseminated to the markets more widely, in an aggregated way. The dissemination could be undertaken directly by the trade repositories and by CCPs. Information of interest to the market would for example include aggregated trade volumes.

However, the FBF considers that this objective does not necessarily need to be achieved through any amendments to MiFID, but might better be included in the forthcoming legislation on market infrastructures.

Vanilla OTC derivatives

For vanilla OTC derivatives in respect of which a post-trade transparency regime exists for an equivalent Exchange-traded derivative, any consideration of a post-trade transparency regime

must not impose more constraints than the one existing of the existing Exchange-traded derivatives markets. We note in this regard that existing Exchange-traded derivatives markets in Europe already impose limitations on post-trade transparency:

- Eurex non-disclosure on large-sized trades (Eurex circular 236/09) under BaFin regime;
- Bclear No-Posting option (London Notice No. 2697, section 2.1e) under FSA regime.

Non vanilla OTC derivatives

For non-vanilla OTC derivatives public disclosure would be complex to disseminate intelligibly and could compromise client or product confidentiality.

Commodity derivatives

There is a robust post-trade process with adequate transparency. The Commodity Derivatives market has a significant number of central counterparty and clearing infrastructures in place today, examples include:

- *Agriculture* — *CME Clearing / ICEClear US*
- *Base Metals* — *LCH / CME ClearPort*
- *Coal* — *CME ClearPort*
- *Crude Oil* — *ICEClear / CME ClearPort*
- *Emissions* — *ICEClear / NOS Clearing / ECC*
- *Freight* — *NOS Clearing / LCH*
- *Gas* — *European Commodities Clearing (ECC) / ICEClear / CME ClearPort / APX*
- *Oil Products* — *ICEClear / CME ClearPort*
- *Plastics Products* — *LCH*
- *Power* — *European Commodities Clearing (ECC) / APX*
- *Precious Metals* — *LCH / CME ClearPort*
- *Weather* — *CME ClearPort*

In addition, a number of the institutions named above provide for central counterparties for non-exchange traded transactions

Forex derivatives

FX derivatives are generally very short dated (average maturity in the order of two [2] weeks) and, at the same time entail physical delivery (in effect, being deferred spot transactions). This represents the liquid part of the market, as well as the part with the greatest volume. 80% of volume is considered to have a maturity of seven (7) days or less.

Pre-trade transparency is freely available in highly electronic form, with the established commercial data vendors channeling aggregated quotes for spot, forwards, swaps, options and NDFs. We estimate that the vast majority of transactions (95%) is wholesale and OTC, with 3% exchange traded and 2% retail.

Because of the physical delivery dimension of FX contracts such as forwards, the transparency in cash transactions (both pre- and post-trade) is a significant component of market transparency in those related transactions.

Post-trade transparency should be applied carefully, with particular regard to the sensitive nature of information about strike prices and barrier-trigger levels.

Please note that industry is working on a trade data repository specifically for FX, to provide full transparency to supervisors.

Q.40 Do you believe that additional post-trade transparency would be desirable for all of the above instruments? If not, which ones would benefit from greater post-trade transparency?

The FBF believes that a post-trade transparency regime for derivatives should be limited to instruments that are widely traded, in sufficient volume to provide adequate liquidity.

Forex derivatives

The liquidity aspect is essential to ensure a proper handling of the post trade processes.

- o Where the level of liquidity is deemed appropriate: FX Forwards and FX Options shall be in a CCP and in a trade repository when CCP is not applicable (Corporates).

The valuation of these products shall be made by the contribution of a certain number of banks (criteria to be determined) which output will be a blended post-trade market price.

- o These valuations shall be used for CCPs' margin calls and collateral management.

Q.41 Is post-trade transparency readily available to all potential market participants? Does this vary by asset class?

Currently, there is no systematic post-trade transparency in the European derivatives space. Banks would therefore see benefit in the above proposals, with the objective of providing market participants with aggregate data, based on information gathered by CCPs and trade repositories.

Q.42 Which potential benefits and drawbacks of a post-trade transparency regime for a) interest rate derivatives, b) equity derivatives, c) commodity derivatives and d) FOREX derivatives do you see? If you see drawbacks, please explain how these might be mitigated.

Generally, the FBF believes that the objective of a post-trade transparency regime should mainly be that of enhancing supervisors and market participants' understanding of the macro-economic background. *I.e.*, the benefit of such a regime, if well functioning, would be that of greater financial stability.

On the other hand, there would be multiple dangers in a too granular regime: it would invite comparisons between products that are essentially different; it might distract the attention from the market fundamentals; and it would impose considerable costs on the industry, while not achieving the intended objectives.

Forex derivatives

The benefits of a set up via CCPs with an aggregated valuation methodology to manage effectively counterparty risk will enable a better allocation of the bank's core capital, and if the

associated operating costs of the new infrastructure are less than the corresponding cost of capital of not doing anything (opportunity cost), then market participants shall strongly adhere to the project.

Q.43 Which are the key components (e.g. qualitative or quantitative criteria) which should be taken into consideration when designing such a post-trade transparency framework?

The most important criterion, in the view of the FBF, would be that of a certain level of liquidity for instruments to be included in the consolidated information.

Q.44 Do you think that a post-transparency regime could have some additional valuable externalities in terms of valuation, risk measurement and management, comparability and other uses in price discovering process on related underlying reference instruments?

French banks would not primarily see the rationale of greater post-trade transparency in the derivatives markets in such micro-economic considerations. The scope for comparison between derivatives is limited, due to the bespoke nature of the contracts. Where derivatives are comparable, they are to a large extent already traded on regulated markets and MTFs.

Banks would however perceive possible drawbacks of such a regime. Derivatives are open position, meaning that their publication involves the risk of “cornering” of the position-holders, especially if the issuer name was to be mentioned.

More generally, there can be too much transparency. Certain information would make it unattractive for market participants to take risks and to provide liquidity. Any regulatory proposals but be crafted with a great deal of sensitivity towards this risk, as well as bearing in mind the great variety of and large differences between derivatives.

Forex derivatives

The use of a CCP will enable to mitigate the counterparty risk, hence lowering the capital allocated to the activity dealing through CCP.