



May 31st, 2010

CESR'S CONSULTATION EQUITY MARKETS

FRENCH BANKING FEDERATION'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 authorised 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 were directly and highly impacted by the enforcement of the MiFID on their main business lines, since this directive was the cornerstone of the first Financial Services Action Plan, insofar as it sought to address the entire financial-intermediation sector, from trading activities to distribution to retail investors. Thus they are very interested in the incoming reform and are happy to share views on their experience with the regulators.

2. The FBF has always believed and still believes that the reform of the MIFID must focus on the markets' architecture and supports CESR works in this area.

In this perspective, the FBF very welcomes this consultation paper which is dedicated to the transparency of Equity markets and the regulation of the different competing market operators.

While considering that micro-structural issues have to be addressed at level 2 or 3 by CESR and future ESMA, the FBF also strongly believes that the transparency and the regulation of the market operators have to be regulated at level 1.

3. The French banking community has already expressed some views on the regulation of Equity markets and would like to recall these positions.

- **Extension of pre-trade transparency to all but blocks orders**, regardless of the venue on which they are executed, which has the advantage of contributing to equal

information among all investors. The priority is to improve pre- and post-trade transparency, except for block trades, with analysis needed to define block thresholds.

- **Reinforcement of ex-post supervision for all trading venues, including dark pools.**
- **General implementation of post-trade transparency based on a common infrastructure, which can serve as a reference for both public data and the regulator, thereby leading to:**
 - Clarification and harmonization of reporting rules.
 - Creation of a European entity charged with consolidating execution data in real time. This single, central organization would also be responsible for making data available, collecting associated revenues and defining a method for redistribution to the infrastructures based on the volumes and quality of the information collected.
- **The US solution of routing orders is not desirable for Europe**

In fact, the implementation of a system for strengthening pre-trade transparency accompanied by mandatory routing of orders to the market offering the best price is not desirable: a European Best Bid Offer (EBBO) mechanism, based on the RegNMS operating method, does not appear to offer clear benefits. Restrictive for all players in terms of investments, it puts up significant barriers to entry for both markets and intermediaries (via necessary investments in the SOR). Moreover, in the absence of consistent post-trade regulation, this can mean that trades are cleared in clearinghouses with weak guarantees.

4. Except in some specific cases, and due to the short timeframe of this consultation, the FBF expresses general views and does not answer each question raised by CESR.

SPECIFIC REMARKS

TRANSPARENCY

PRE-TRADE TRANSPARENCY

The FBF supports the general approach adopted by CESR.

Exemptions from pre-trade transparency requirements are will very important in order to allow the execution of orders which would disturb the normal functioning of the market. This said, the FBF underlines that the waivers which were designed four years ago have not proven their relevance regarding the evolution of equity markets and the volatility.

This is the reason why they have to be adjusted at level 2 or 3 with regard to the average size of orders executed on the different markets and with regard to the capitalisation of the issuers.

As a consequence, the FBF would welcome that greater flexibility be introduced in the Level 1.

Question 1: Do you support the generic approach described above?

Yes

Question 2: Do you have any general comments on the MiFID pre-trade transparency regime?

The general observation that market participants would like to express is that improvements are necessary in the area of post-trade transparency, especially with normalisation and centralisation of post-trade data, more than in the area of pre-trade transparency.

Large in scale orders

The FBF agrees with CESR's analysis on the decrease of average rated size on regulated markets since the enforcement of the MIFID. The FBF also agrees with the fact that alternative trading platforms, including dark venues, have allowed a good quality execution of large orders when the regulated are no more able such execution without disturbing the price discovery and the functioning of the markets.

This said, it is difficult to make up its mind of the calibration of large in scale orders regarding the existing regime. The FBF would support either option 1 or option 2 provided that the regulators still have a possibility to react as regards the evolution of the reference market and some factors like liquidity and volatility. Thus flexibility at level one is needed.

Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.

Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal?

Question 5: Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1, applying the LIS waiver to subs; or 2, not applying the waiver to stubs)? Please provide reasoning for your views.

Reference price waiver

Question 6: Should the reference price waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?

As rightly set out by CESR, the rationale for applying a reference price waiver is different from the large in scale waiver and from concerns about market impact. Rather, the reference price waiver is granted because pre-trade information for passive price taking systems does not add any value to the markets. This consideration has not changed since the introduction of MiFID.

Negotiated trades

Question 8: Do you have any specific comments on the waiver for negotiated trades?

The FBF agrees that the negotiated trades' waiver should be retained, although clarification by CESR on the use of this waiver would be welcomed.

Order management facilities

Question 9: Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?

Systematic Internalisers

French banks consider that systematic internalisation is less efficient than crossing networks, either for the business models of the banks or for the clients, for the following reasons:

- The systematic commitment of won funds of the banks in the context of systematic internalisation implies a higher risk, all the more that the internaliser is expected to permanently propose public bid and ask prices close to the lit order book
- On the contrary, the bank does not commit its own funds in a crossing network and allow execution at mid-spread price, which is more interesting for the client than systematic internalisation (for the client, the average saving is about 5 bps)

For these reasons, the FBF would neither support nor oppose evolution of systematic internalisation, provided that the possible removal of the reference to non-discretionary rules does not imply an inclusion of crossing networks (which are discretionary) inside the systematic internalisation regime.

Question 10: Do you consider the SI definition could be made clearer by:

- i) removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation?**
- ii) providing quantitative thresholds of significance of the business for the market to determine what constitutes a 'material commercial role' for the firm under Article 21(1)(a) of the MiFID Implementing Regulation.**

Question 11: Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?

Question 12: Do you agree with the proposed minimum quote size? If you have a different suggestion, please set out your reasoning.

Question 13: Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.

Question 14: Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?

Question 15: Have you experienced difficulties with the application of 'Standard Market Size' as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify.

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

POST-TRADE INFORMATION

In this area, the FBF would mainly express three ideas:

- First, market participants definitely need centralisation of post-trade data, since it is currently highly difficult to access to good quality post-trade data. In this perspective, the French banking industry estimates that this centralisation should be organised by future ESMA around normalised reporting data
- Second, the real-time or 1 minute delay reporting is clearly not useful and practically not only very costly but also quite impossible since it needs human intervention (except for HF Traders which report in real-time but without any human intervention). Real-time reporting is no use for investors and would not be more useful for regulators than a three minutes delay for tracking possible market abuses.
- Third, the FBF welcomes the creation of a working group by CESR dedicated to post-trade transparency and has proposed the nomination of a French industry representative through the European Banking Federation

Question 17: Do you agree with the proposed multi-pronged approach to improve the quality of post-trade information?

Publication delays

Question 18: Do you agree with CESR's proposals outlined above 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 may face difficulties fulfilling this proposed requirement.

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

The FBF does not agree with these proposals. As clearly set out by CESR, the difficulties that have been observed are due to shortcomings in the enforcement of the current rules, rather than any shortcomings with the existing legal texts. The FBF would call on CESR and its member authorities to address such problems directly at the source.

In particular, The FBF would be opposed to reducing the publication deadlines to one minute for all trades. Automatically executed trades should be reported much more quickly. In our experience, this is already the case.

Reporting within one minute would however not be possible for manually handled trades.

Deferred publication

Question 20: Do you support CESR's proposal to maintain the existing deferred publication framework, whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?

Question 21: Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.

Question 22: Should CESR consider other changes to the deferred publication thresholds so as to bring greater consistency between transaction thresholds across categories of shares? If so, what changes should be considered and for what reasons?

Question 23: In your view, would i) a reduction of the deferred publication delays and ii) an increase in the intraday transaction size thresholds lead to additional costs (e.g. in ability to unwind large positions and systems costs)? If so, please provide quantitative estimates of one-off and ongoing costs.

CESR should bear in mind the objective of the possibility of deferring publication, *i.e.* allowing market participants to offset risk without having a market impact. Once this is ensured, publication should be immediate.

The functioning of the current regime should be assessed, as a first step, on the basis of whether or not deferred publication remains the exemption rather than the rule, as it should be. The FBF therefore believes that quantitative findings are necessary to inform the debate further.

In any case, the FBF is concerned about CESR's proposal to reduce the publication deadline for the largest trades from three days to the end of the trading day. For these largest trades, the end of the trading day would not allow for sufficient time to unwind risk. Rather, the current rules already require trade publication as soon as the risk is unwound, which is often done faster than after three days.

TRANSPARENCY OBLIGATIONS FOR EQUITY-LIKE INSTRUMENTS

The FBF supports CESR's approach provided that:

- First, there is a fully harmonised classification of Equity-like instruments
- Second, there is no existing transparency requirement already implemented for the considered instruments (for example, listed ETFs are already submitted to transparency rules)

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):

- ***DRs (whether or not the underlying financial instrument is an EEA share);***
- ***ETFs (whether or not the underlying is an EEA share);***
- ***ETFs where the underlying is a fixed income instrument;***
- ***ETCs; and***
- ***Certificates.***

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

Question 25: If transparency requirements were applied, would it be appropriate to use the same MiFID equity transparency regime for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). If not, what specific aspect(s) of the MiFID equity transparency regime would need to be modified and for what reasons?

Question 26: In your view, should the MiFID transparency requirements be applied to other 'equity-like' financial instruments or to hybrid instruments (e.g. Spanish participaciones preferentes)? If so, please specify which instruments and provide a rationale for your view.

CONSOLIDATION OF TRANSPARENCY INFORMATION

Approved Publication Arrangements

As stated above, the FBF agrees with CESR's considerations in respect of consolidation of transparency information, including in particular the significance of full and meaningful access to post-trade transparency data.

The FBF supports the idea of a publicly sponsored consolidated tape and therefore fears that APAs would not lead to the needed centralisation.

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for Approved Publication Arrangements (APAs)? If not, what changes would you make to the proposed approach?

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?

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

Question 30: In your view, 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 (as described under 4.1.2 below)?

Trading costs

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

Question 32: In your view, 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.

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? Please provide reasons for your response.

French banks are concerned about the current costs of trading data. CESR's proposal that it should be possible to acquire pre- and post-trade data separately from each other would be a helpful improvement.

In addition, the FBF has in the past pointed out that data sets are in some markets similarly bundled for a number of countries, preventing users to acquire only the data pertaining to country A but forcing them to purchase the data sets for countries B and C at the same time. Banks would request that such forced "bundling" of data should also be undone.

MiFID Transparency Calculations

As stated above, the French banking industry considers as a priority the implementation of a centralised database for post-trading data. In this perspective, the French banking federation estimates that this centralisation should be organised by future ESMA around a public consolidated tape.

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?

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

Question 35: If not, what changes would you suggest to the proposed approach?

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?

Question 37: In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

REGULATORY BOUNDARIES AND REQUIREMENTS

Regulated markets vs. MTFs

The FBF supports the regulatory alignment between regulated markets and MTFs, being underlined that the economic efficiency and profitability of MTFs, after two and a half years during the industry has experienced the MiFID, is doubtful.

This alignment appears very important in terms of improvement of the safety of the markets since it has been proved that the problems in the settlement process in the context of short selling transactions are always seen on MTFs and not on the regulated markets.

The FBF also supports the proposed regulatory definition and regime for crossing networks.

Question 38: Do you agree with this proposal? If not, please explain.

Question 39: Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.

Question 40: In your view, what would be the benefits of the proposals with respect to organisational requirements for investment firms and market operators operating an MTF?

Question 41: In your view, do the proposals lead to additional costs for investment firms and market operators operating an MTF? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

Question 42: Do you agree to introduce the definition of broker internal crossing process used for the fact finding into MiFID in order to attach additional requirements to crossing processes? If not what should be captured, and how should that be defined?

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring investment firms to establish an MTF for the execution of client orders ('crossing systems/processes becoming an MTF)?

a) What should be the basis for determining the threshold above which an investment firm's crossing system/process would be required to become an MTF? For example, should the threshold be expressed as a percentage of total European trading or other measures? Please articulate rationale for your response.

b) In your view, should linkages with other investment firms' broker crossing systems/processes be taken into account in determining whether an investment firm has reached the threshold above which the crossing system/process would need to become an MTF? If so, please provide a rationale, also on linking methods which should be taken into account.

Question 45: In your view, do the proposed requirements for investment firms operating crossing systems/processes lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

Crossing engines created by intermediaries have reached (and can not structurally exceed) a marginal market share (less than 5 %) and do not have, as a consequence, a material impact on the price discovery mechanism. Such systems offer innovative and much appreciated solutions to institutional investors as they allow for execution at the average of the « bid ask » price, which is available on lit markets (such as regulated markets), while limiting possibilities of arbitrage.

It must be stressed that *crossing networks* form part of the discretionary treatment of clients' orders by brokers, which corresponds to a service very different from the one provided by regulated markets and MTFs (non discretionary matching of members' orders).

Indeed, there is a fundamental difference between :

- on the one hand, multilateral platforms (regulated markets and MTFs), the role of which is to match and execute buying and selling interests in a non-discretionary way ;
- on the other hand, intermediaries (*brokers*) who execute their clients' orders, necessarily in a discretionary manner, as it is their duty to choose, together with their clients, the way the orders will be executed (facilitation , *execution agency*, search for blocks, VWAP...), their limits being the respect of best execution and the management of conflicts of interests.

In this context, brokers have always tried to match their clients orders internally, with their clients' prior consent and when technically or legally feasible. To this extent, new methods of crossing only optimize the broker's job, by using algorithms, without fundamentally changing the nature of this job.

Thus, the absence of pre trade transparency for *crossing networks* is just the consequence of this fundamental difference.

In conclusion, the FBF welcomes CESR's recognition that internal crossing networks are different from MTFs, and that investment firms should not be forced to alter their systems so as to match the definition of alternative systems.

Therefore, the FBF also supports CESR's proposals of adopting a specific regime for internal crossing networks.

We also supports the specific proposals, such as the notification requirements for investment firms and the disclosure requirements for competent authorities.

MiFID OPTIONS AND DISCRETIONS

The French banking industry notices that the French regulator has not used the offered options and discretions and then is not in a position to assess their efficiency. The FBF thus would neither support nor oppose the partial or complete removal of these options and discretions but considers that the current crisis has had some unintended consequences on equity markets (mainly the high volatility) that cannot be completely analysed for the moment. The it would be prudent to maintain some discretions about the functioning of the markets.

Waiver of pre-trade transparency obligations

Question 46: Do you think that replacing the waivers with legal exemptions (automatically applicable across Europe) would provide benefits or drawbacks? Please elaborate.

Determination of liquid shares

Question 47: Which reasons may necessitate the application of both criteria?

Question 48: Is a unique definition of liquid share for the purposes of Article 27 necessary?

Question 49: If CESR were to propose a unique definition of 'liquid share' which of the options do you prefer?

- a) apply condition a) and b) of the existing Article 22(1), or
- b) apply only condition a), or
- c) apply only condition b) of Article 22(1)?

Immediate publication of a client limit order

Questions 50: Is this discretion (for Member States to decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market and/or an MTF) of any practical relevance? Do you experience difficulties with cross-border business due to a divergent use of this discretion in various Member States?

Question 51: Should the discretion granted to Member States in Article 22(2) to establish that the obligation to facilitate the earliest possible execution of an unexecuted limit order could be fulfilled by a transmission of the order to a RM and/or MTF be replaced with a rule?

Requirement for admission of a UCIT to trading on a RM

Question 52: Should the option granted to Member States in Article 36(2) of the MiFID Implementing Regulation be deleted or retained? Please provide reasoning for your view.

ANNEX II – PROPOSED STANDARDS FOR POST-TRADE TRANSPARENCY

Reference data

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

Yes.

Question 2: Do you agree that the unit price should be provided in the major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.

Yes.