

Brussels, 9 March 2007

Response to CESR's Consultation on Level 3 Guidelines on MiFID Transaction Reporting

Ref: CESR/07-047

I. Introduction

1. The Federation of European Securities Exchanges (FESE) is a not-for-profit international association (AISBL), representing the operators of the European regulated markets and other market segments, comprising the markets for not only stocks and bonds, but also financial, energy and commodity derivatives. Established in 1974 as a small forum of stock exchanges in Europe, FESE today has 24 Full Members representing close to 40 securities exchanges from all the countries of the EU and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.
2. FESE's members support broadly the objectives of CESR with respect to those aspects of transaction reporting detailed in this consultation and want to see a transaction reporting regime that is efficient, cost-effective and clear. It is important that the various national regimes governing the matters detailed in the consultation are consistent across Europe. In this response we provide our views on one specific element of the proposed Level 3 guidelines: the **definition of a transaction (Question 3)**.

II. Detailed Remarks

3. In its proposed Level 3 Guidelines, CESR states:
CESR members have agreed to commit themselves to collecting and, where required, exchanging information about at least the following set of transactions:
(a) Those conducted by the immediate market facing investment firm; and
(b) Transactions not covered by (a) above but where the investment firm is undertaking the transaction on its own accounts (either on RM, MTF or OTC).
4. We note the discussion during the Open Hearing on 1 March 2007, during which several participants urged CESR to refrain from opening the door to a divergent national application of the rules related to what constitutes a transaction. We also note the explanation provided by CESR to the effect that the inclusion of the client-facing firms had to be allowed since Level 2 explicitly allowed client identification as a field of transaction reports.
5. While we note CESR's efforts to ensure that the Level 3 Guidelines give effect to this specific point of Level 2, we also think that this should not come at the expense of the greater principles underpinning MiFID, in particular the objective of encouraging greater supervisory convergence and consistency where these are properly justified and based on a thorough cost-benefits analysis. Therefore we urge CESR to amend the above proposed text by deleting the phrase "**at least**", since the inclusion of this phrase would have the effect of inducing divergent national regimes. Moreover, while we agree that in certain cases the inclusion of client-facing firms will be necessary and useful, we encourage CESR to find a way of ensuring that the resulting implementation of this definition is consistent across the EU and that separate reports are avoided when a chain of transactions in fact constitutes only one: market/firm - firm - client for same quantity same price.

III. Conclusion

6. As has been discussed, FESE will be coming back to CESR shortly with regard to issues more specific to our members in relation to the reference data to be provided by exchanges and in respect of the CESR proposal to require the use of ISO standards in the reporting of commodity derivatives transactions. In the meantime, we remain at CESR's disposal for any feature inquiries on this subject.