COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Date: 29 July 2010
Ref.: CESR/10-796

FEEDBACK STATEMENT

CESR Technical Advice to the European Commission in the context of the MiFID Review – Transaction Reporting

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Executive Summary

This Feedback Statement (FS) summarises the responses to CESR's Consultation Paper (CP) on the Technical Advice to the European Commission in the context of the MiFID Review on transaction reporting (Ref. CESR/10-292) that CESR received and sets out CESR's feedback on those responses and any changes to its Technical Advice in the light of them. It should be read in conjunction with CESR's Final Advice to the European Commission in the context of MiFID Review on transaction reporting (Ref. CESR/10-808).

The first part of the paper sets out the background to this FS, together with high level information on CESR's key modifications and elaborations to the original proposal.

The second section of the paper summarises, on a question by question basis, the responses that CESR received and provides CESR's feedback to those responses.

BACKGROUND

1. Within the overall MiFID framework and with regard to CESR members' obligation to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, Article 25(3) of MiFID obliges investment firms to report executed transactions to their competent authorities.
2. Transaction reporting data is needed to enable supervisors to detect and pursue suspected instances of market abuse, client abuse or other breaches of relevant MiFID provisions.
3. Since the drafting of the MiFID Implementing Regulation CESR members have been aware of the difficulties in achieving an entirely homogeneous transaction reporting system across Europe. To address the impact on market participants that the lack of a more convergent approach could cause, CESR published the CESR Level 3 Guidelines on MiFID Transaction Reporting (Ref. CESR/07-301) in May 2007. These guidelines were considered an interim solution. In addition, CESR launched a Call for Evidence on 3 November 2008 (Ref. CESR/08-873), inviting all interested parties to submit their views as to what CESR should consider when conducting the review of the scope of the MiFID transaction reporting obligation.
4. From the responses to the Call for Evidence and internal discussions within CESR, the existence of significantly different interpretations of some key terminology relating to transaction reporting also became evident.
5. Another issue identified at this stage was the need to analyse whether information helping to identify the beneficiary of a transaction should be included in the transaction reporting requirements (the so called 'client-side' reports described in category c) of the Level 3 Guidelines).
6. Jointly with the consideration of the benefits and drawbacks of including such client-side information in transaction reports in order to meet the market monitoring obligations of competent authorities described in Article 25(1) of MiFID, the eventual harmonisation of the standards for the use of client and counterparty identifiers within a transaction report would have to be analysed.
7. To proceed with this work and assist the MiFID review currently undertaken by the European Commission, CESR published the CP "CESR Technical Advice to the European Commission in the context of the MiFID Review – Transaction Reporting" (Ref. CESR/10-292).
8. The following issues were examined in the CP:
   - Key terminology supporting the concept of transaction reporting – trading capacity and distinction between clients and counterparties;

- Factors impacting the collection of client and meaningful counterparty identifiers;
- Possible standards for client and counterparty identifiers; and
- Client ID collection when orders are transmitted for execution

9. CESR received 48 responses to its CP. The single largest group of respondents was comprised of national trade associations, but pan-European trade associations, individual trading firms, exchanges and MTFs were all well represented as well.
10. This paper summarises, on a question by question basis, the responses that CESR received and provides CESR's feedback on those responses.

SUMMARY OF RESPONSES AND CESR'S FEEDBACK

1. Key terminology on transaction reporting

Trading Capacity

Question 1: Do you agree with the above analysis on trading capacity and the proposal to introduce a third trading capacity (riskless principal) into transaction reports?

11. A number of respondents (exchanges and other trading platforms but also banks and investment firms) supported CESR's proposal on the third trading capacity, noting the advantages that could be derived in the surveillance of the markets and in the reduction in the number of reports sent by firms and processed by competent authorities.

12. However, a majority of respondents expressed great concerns regarding CESR's proposal to introduce the third trading capacity (riskless principal). Amongst the concerns expressed by the respondents, there appeared to be two key themes:

    a) Lack of clear definition for the new trading capacity

    b) The difficulty firms face in distinguishing "riskless principal" transactions from "pure principal" transactions

13. Respondents specifically emphasised the very high costs associated with such an amendment to the existing systems and insisted that any major changes should be supported by explicit cost/benefit analysis.

14. Among downsides of the proposal, the absence of a common legal definition was also named. Many respondents noted that there were legal definitions for "principal" and "agency" transactions in their jurisdictions, but not for the proposed third category. Some respondents noted that transactions intended to be caught in the riskless principal category were legally defined as two transactions (under their local legislation) and should not be reported as one.

15. One respondent claimed that "riskless principal" is a purely cash equity market concept[1] which occurred as a result of stamp duty exemption linked to this type of activity. Therefore, "riskless principal" term is not commonly used outside cash equity markets. Thus, introduction of such a concept without precise definition might lead to different interpretations and misunderstandings. Many other respondents agreed with this latter point and warned that such misunderstandings could result in more transaction reporting errors and inconsistencies in reporting across the EEA.

16. Moreover, respondents insisted that current trading and booking systems are not able to differentiate "riskless principal" transactions from pure principal ones. This stems from the fact that there is no legal difference between the two transactions hence the booking of these trades is identical. Coupled with the fact that there is no operational link between the market side and client side of a riskless principle transaction, many respondents believed the introduction of this third trading capacity would be impractical. The fact that many "riskless principal" transactions are split into multiple market side transactions compounds this difficulty to the point where many see it as unworkable.

17. Some respondents noted that the addition of the third trading capacity could actually hinder CAs' monitoring as it makes it more difficult to calculate intermediaries' net risk positions.

18. Some respondents noted that back-to-back transactions may be in the form of completely different instruments, such as derivatives. As a single transaction cannot represent separate instruments, such transactions cannot be represented in a single report. Another respondent also noted that the trading venue for such transactions may also be different (typically a regulated market and off-exchange), causing problems when populating the trading venue field in a single transaction report.

[1] It should also be noted that the majority of respondents recognised this terminology.

19. Several respondents insisted that current systems already provide sufficient information. Should the decision to collect information on the third trading capacity be taken, this information may be generated from the present data reported.

20. Some respondents also asked for further clarity on any impact the introduction of this third trading capacity might have on trade reporting and also upon capital adequacy, market risk, credit risk and counterparty risk requirements.

21. Respondents from, or representing, the asset management business noted that the proposed third trading capacity had no relevance for most of their industry.

22. On the other hand, some respondents reasserted the advantages of introducing a new trading capacity into transaction reports. It was mentioned that the inclusion of a third category recognises a current market norm and is meaningful, in that it contributes to the ultimate purpose of transaction reporting, particularly in the communication of transactions between supervisors. Some respondents pointed out that the introduction of this new trading capacity in the context of MiFID transaction reporting could also increase the clarity in other areas, such as capital adequacy requirements and risk management responsibilities, or post-trade transparency.

23. Only a few respondents commented on the discussion on adding a separate trading capacity for market-making. The majority that did comment agreed with CESR's conclusion that transactions conducted in a market making capacity need not be flagged as such. Other respondents noted that information on the volume and nature of market-making would be useful if disseminated to the market, but this would require further work on the precise definition of "market-making" and would need to be justified on a cost benefit analysis. However, it should also be noted that one respondent stated that a market maker or liquidity provider flag is crucial to the good monitoring of financial markets.

24. Of the respondents that expressed a view on the alternatives to the riskless principal trading capacity, a majority believed that the use of two principal transactions was appropriate.

25. CESR is pleased that some respondents noted the advantages that adding a third trading capacity could bring. However, CESR also notes the strong opposition to the proposal of adding a riskless principal trading capacity with the potential imposition of significant additional costs and the difficulties in formulating a precise definition for the new category. CESR therefore considers a solution to be appropriate where the current "principal" trading capacity would be split into "principal as part of a client facilitation" and "principal for own account (proprietary)". The new "principal as part of a client facilitation" capacity should be used to represent any principal transactions undertaken by investment firms as a result of a client order. CESR no longer requires the "market side" transaction to be linked to the "client side" transaction in a single report as detailed in the CP. Instead, there will typically be two transaction reports from the investment firm for client facilitation trades; one showing the "market side" transaction and the second showing the "client side" transaction with both having as trading capacity "principal as part of a client facilitation". Examples of how this new trading capacity should be used are given in the final advice to the European Commission (Ref. CESR/10-808). It should be noted that the new trading capacity in no way replaces the "agency" capacity which remains a distinct trading capacity.

Client and Counterparties

Question 2: Do you have any comments on the distinction between client and counterparties?

26. No major comments were provided to this question and respondents were generally supportive of the CESR analysis.

27. One respondent noted that the analysis does not cover the proposed "riskless principal" trading capacity.

28. One respondent specified that it is important that clarity is maintained between counterparty and client definitions. This respondent also noted that in considering the application of

identifiers, especially the cost and complexity issues, the situation of the client is treated independently and separately from that of the counterparty.

29. Two respondents, though, expressed the firm belief that the client field should not be used for other purposes than the identification of professionals/institutionals (BIC).
30. One respondent from the asset management business asked for some clarification on the distinction between "liquidity providers / price makers" and "liquidity takers / price takers"
31. Two responses identified the existence of agency cross transactions, where both the counterparty and client fields are actually used to identify clients.
32. On the basis of the feedback received it became evident that respondents were generally supportive of the CESR analysis on distinguishing the terms "client" and "counterparty" for transaction reporting purposes. CESR, therefore, does not see any need for suggesting amendments in this regard to the European Commission.

2. Collection of the client identifier/ meaningful counterparty identifier

Advantages and disadvantages of collecting client identifiers

Question 3: Do you agree with the above technical analysis?

Question 4: Do you see any additional advantages in collecting client ID?

33. Most respondents globally agreed with CESR's analysis on the benefits of collecting client/counterparty identifiers even though some others insisted that current market functioning does not appear to be so problematic that a general use of client IDs would be required. Though acknowledging the potential benefits of collecting client identifiers, respondents insisted that such benefits should be weighed against the costs which would be incurred by reporting firms, both to implement the necessary system adjustments and to maintain the system on an ongoing basis. Requests to provide supporting cost/benefit analysis were also provided.
34. Elements of the CESR technical analysis were questioned by a few respondents who found the argument that the introduction of the client identifier would help competent authorities in policing short selling rules not convincing. One respondent questioned the argument of expected decrease in the number of ad hoc requests, as they usually aim at gathering much more information than the mere identity of the client.
35. Some acknowledged the opportunities (provided by the collection of client identifiers) for better automation of the regulators' surveillance system. Furthermore,, an additional advantage for investment firms was named: assistance for complying with other regulatory obligations which involve the management of client data (e.g. single customer view, large exposures, liquidity risk reporting, anti-money laundering and credit exposures reporting). Besides, it was indicated that the collection of meaningful client identifiers used by all member states may also act as deterrent to unlawful behaviour as well as ensure a level playing field between Members States.

Question 5: Do you agree with the above technical analysis?

Question 6: Do you see any additional disadvantages in collecting client ID?

36. Almost all respondents agreed with CESR's analysis on the disadvantages of collecting client ID. Some reasserted the statement that client identifier is not a prerequisite for effective supervision. Many shared the view that the legal framework for the introduction of mandatory client identifications ought to be closely analysed and insisted that legal considerations and especially data protection concerns are of great significance and should be carefully considered. A few even inquired whether in each Member State there would be a legal base to authorise the transmission of client information cross-border (via transaction reporting or via TREM).
37. Several of the respondents, though agreeing with the analysis of the disadvantages, insisted that collecting transaction reporting without client identifier is not reasonable and believed that

technical constraints to collect the client ID should not be the reason for not imposing reporting of client identifiers.

38. Attention was paid to underlying costs. Respondents expressed serious concerns that the current proposal does not fully account for and, thus, underestimates the involved expenditures.

39. In the view of several respondents, a major disadvantage of collecting client IDs is that the current MiFID discretion for competent authorities to allow firms to rely on the reporting performed by a regulated market or an MTF (MiFID Article 25(5)) will be of no use anymore because, for commercial reasons, firms will be reluctant to transmit their client IDs to such markets. Similarly, it was stressed that firms who currently rely on other firms or external service providers to do their reporting could no longer maintain this arrangement due to competitive issue (unwillingness to provide access to client IDs to the reporting entity) or technical issues due to the complexity of integrating custody data to obtain the client ID with the trade execution/trade confirmation date usually used to generate transaction reports. Besides, the reporting arrangements within groups, in particular when branches are concerned could be disorganised.

40. Another issue not covered in CESR's analysis was raised in relation to the treatment of investors from outside the EEA. Some of the respondents believed that it is important that CESR strives for a solution where competent authorities (CAs) would be able to apply the extended scope of transaction reporting to non-EEA investors and investment firms.

41. In terms of major banks that deal with a great number of counterparties across the world (often through a chain of intermediary banks), a requirement to disclose the underlying client for all the transactions could eventually lead to material impact on the functioning of the European markets.

42. Among additional disadvantages information noise and false positives for the CA as well as data leakages were named.

Question 7: Do you agree with this proposal?

Question 8: Are there any additional arguments that should be considered by CESR?

43. Most of the respondents agreed with CESR's proposal to recommend that the European Commission amends MiFID so as to make mandatory the collection of client IDs and meaningful identifiers for all counterparties. Some reasserted that after being implemented, it would improve market supervision and detection of market abuse as well as reduce the time and resources required by firms during the investigations. However, they noted that it will be essential how the new requirements will be implemented in practice.

44. Others opposed the introduction of compulsory client ID for the reasons of efficiency, data protection and proportionality and in light of the arguments against client ID set out in the CP, insisting in particular on costs and burden for the industry.

45. Two respondents indicated that they would agree to collecting counterparty identifiers if they were meaningful, standard and coordinated but opposed to the systematic collection of client or individual IDs.

46. CESR was particularly asked to consider conducting a thorough cost/benefit analysis before introducing the requirement to collect client IDs.

47. Data protection was an argument raised in several responses. Attention was particularly drawn to Article 8 of the Charter of Fundamental Rights of the European Union (2010/C80/02).

48. Among additional arguments to be considered respondents named: a unique international client ID for clients operating on a global basis, the scope of use of the ID and its granularity over the lifecycle of the identifier's existence, compatibility with transaction and other reporting regimes in non-EEA jurisdictions, consistency with relevant European standards and the ISO process, banking secrecy issues, compatibility with other regulatory initiatives, legal liability and consequential losses in the event of possible data leakage, and the necessity to ensure the client identifier would not become outdated any time in the foreseen future.

49. A few respondents wondered how a firm should report a Dividend Reinvestment Plan transaction, or any similar 'bulked transaction', which may have tens of thousands of clients for one transaction. Given the passive nature of these types of transaction, the additional costs of providing this information will impact on small investors disproportionately. Therefore, CESR should consider possible exemptions from the reporting obligations or introduce a *de minimis* limit, above which individual transactions become reportable. Another respondent suggested to exclude publicly traded covered bonds (such as Danish mortgage bonds) as they are already subject to extensive public regulation thus minimising the risk of insider dealing.

50. A few also suggested that the identification of the client in the transaction report should be the duty of the entity that is in relationship with the clients (cf. question 14 below).

51. In case of discretionary or fund management, firms noted that they would appreciate further clarification concerning the definition of "ultimate client". Market participants insisted on collecting the client ID at the level of the initiator of the trade, i.e. portfolio manager to whom the investment decisions are delegated by the investors.

52. Based on the feedback received and CESR's internal analysis, CESR members believe that the anticipated advantages of collecting client identifiers overweigh possible disadvantages. The provision of client identifiers and meaningful counterparty identifiers could lead to greater efficiencies in market surveillance and detection of market abuse. The vast majority of CESR members aim, from a surveillance perspective, at increasing the accuracy of the information on clients and exchanging it on a regular basis, since their experience proves this information to be extremely useful for surveillance activities.

3. Standards for client and counterparty identifiers

Question 9: Do you agree that all counterparties should be identified with a BIC irrespective of whether they are an EEA investment firm or not?

Question 10: Do you agree to adapt coding rules to the ones available in each country or do you think CESR should pursue a more ambitious (homogeneous) coding rule?

Question 11: Is there any other available existing code that should be considered?

Question 12: When a BIC code has not been assigned to an entity, what do you think is the appropriate level for identification (unique securities account, investment firm, national or Pan-European)?

Question 13: What kind of problems may be faced at each of these levels?

53. Many admitted the obvious advantages of the wide spread use of BIC, which was considered as sufficient though not perfect. Moreover, several referred to the SWIFT proposal to extend BIC to cover those legal entities that do not currently have identifiers (including issuing firms, entities acting as guarantors, selling firms (i.e. broker/dealers), buying firms (i.e. asset managers), clearing and settlement organisations, custodian and agent banks, payment system participants, distributors of financial products, exchanges and other trading system operators, collective investment vehicles acting as issuers, hedge funds and fund managers, partnerships, government bodies and supra-national organisations.

54. However, they noted that CESR should be mindful of the facts that i) one firm might have multiple BICs, ii) BICs are assigned by SWIFT and there is no general right to obtain a BIC, iii) BIC only identifies an entity at aggregated level, but does not fully allow for granularity, iv) BICs may not always be up to date. Respondents emphasised that due to obvious shortcomings it should not be the only possibility and a range of solutions at national level should be allowed.

55. In their view, BIC could be suitable provided also that the BIC database is free to access for all market participants, market data providers and the public and that it offers full traceability back in time of the changes that occurred (mergers, change of name, etc.).

56. Views were almost evenly split between those who considered that the coding rules available in each country should be adopted (national or at investment firm level) and those who considered

that CESR should pursue a more ambitious (homogeneous) coding rule, through a pan-European or even global code.

57. As possible alternatives to the BIC, FSA reference code and EU wide register of investment firms containing machine-readable identification numbers (based on the register of investment firms Member States are required to set up pursuant to Article 5(3) MiFID) were named.

58. Regarding the appropriate level for identification if BIC has not been assigned, though agreeing with CESR's view that a code type as universal and global as possible and beyond the level of the investment firm (codes assigned at pan-European level) would enable more efficient supervision, many respondents noted that it would be highly problematic to implement. Thus, an approach was suggested where identifiers at investment firm level should be used as the harmonised method of collection of client/counterparty identifiers.

59. Reference was also made to the recently released Bloomberg Open Symbology ("BSYM") identifiers dedicated to the public. BSYM is now available as a non-proprietary, open security identification system that anyone can adopt. Some existing codes were suggested to cater for the specific situation of portfolio management: ISIN code for investment funds and internal ID for discretionary mandate.

60. Some suggested instead to use a national coding such as a mix of corporation name, incorporation/registration date, incorporation/registration number or registered location. A few considered that the securities account number is appropriate.

61. Except significant cost concerns relevant for any of the possible future client identification levels, respondents identified these difficulties that might arise for every level of the code proposed:

    a) Pan-European level: i) administrative costs related to the introduction, maintenance and operation, ii) data privacy and data protection issues, iii) problematic implementation (incl. time needed – seen by some as a medium to long term solution).

    b) National level: i) potential reluctance of clients to provide the required information, ii) anticipated different quality standards of the code in different Member States might result in gold plating, iii) difficulties in achieving a homogeneous approach due to the lack of consistency of data available in different jurisdictions, (iv) data protection issues, (v) how to deal with non EEA natural persons.

    c) Investment firm level: (i) differences in specific codes used by firms resulting in aggregation problems for the regulators and ad hoc requests addressed to firms, (ii) need to assign only one code to each client across trading activities.

    d) Securities account level: (i) not effective as one client can have several accounts, (ii) no clear benefit for market surveillance.

62. Following the consultation CESR considers that the ideal solution would be a unique pan-European code for each person (natural or legal) used for transaction reporting. However, due to the inherent technical difficulties arising from the creation of such a code and the lack of harmonised national codes in all Member States, CESR is of the opinion that each Member State should be free to decide which codes should be used for these purposes, taking into account national regulations and practices, as long as they fulfill the aforementioned requirements. Nonetheless, for the purpose of exchanging transaction reports between CESR Members, CESR relies on the use of BIC codes for counterparties and clients (whenever such codes exist) and strongly encourages their use at national level.

4. Client ID collection when orders are transmitted for execution

Question 14: What are your opinions on the options presented in this section?

63. A number of respondents strongly opposed CESR's suggestion to amend MiFID to enable CAs to require that when orders are transmitted for execution, the transmitting firm either transmits the client ID to the receiving firm or reports the trade, including full client ID. These

respondents argued that CESR´s proposal would lead to duplicated efforts in reporting, would raise data protection issues, and also would produce high implementation costs.

64. One of these respondents also explained that reporting the client ID to the CA results in significant costs and added complexity for firms with branches in several Member States. On the other hand, requiring the firms to transmit the client ID along the chain would not be workable because it would cause concern to many transmitters for commercial reasons. As a consequence, this respondent concluded that none of the proposed options should be pursued.

65. Another respondent stated that regarding retail clients this would either create costs to produce reports or there would be the risk of leakage of information. In these cases, only the fact that the order was placed by a retail client should be transmitted.

66. One respondent noted that the reporting obligations proposed would have the effect of increased costs and the reporting of thousands of additional small transactions such as the "Dividend Reinvestment Plans" (DRIPs) or "Share Holders Reduction Programmes" (SRP). For these specific cases, this respondent proposed to introduce a *de minimis* limit, above which a transaction should be reportable or consider an exemption to cover these types of aggregated data.

67. Some others agreed with CESR´s analysis and did not provide specific comments on which option would be more appropriate. Those who supported the proposal insisted that the choice of either option to be used should be left to the investment firm. Two of them expressed their preference to report the trade, including full client ID, to the CA. One of these respondents proposed to create a more ambitious coding system that should be anonymously allocated to each investment firm or investor. The coding system should be in a standard anonymous format, in order to protect client anonymity and eliminate client data transfer concerns.

68. One respondent expressed that this regulatory option should only be considered after the implementation of the current regime and the definition of a code valid at least at a national level.

69. With one member having a dissenting view, CESR remains of the view that an amendment of MiFID is needed to enable CAs to require that when orders are transmitted for execution, the transmitting firm either transmits the client ID to the receiving firm or reports the trade, including full client ID to the CA.

70. In response to the views expressed about duplicated efforts in reporting and high implementation costs, CESR is still of the opinion that it is necessary to try to make the reporting regime as accurate and efficient as possible. There is a consensus among CESR that the additional costs associated to ad hoc requests, misleading supervisory signals created by the current reporting system and the need to improve the quality of information sent through TREM are sufficient arguments to justify the amendments proposed. Respondents also explained that reporting the client ID to the CA results in added complexity for firms with branches in several Member States. In this regard CESR still believes that both proposals are also workable for firms with branches in several Member States as the new regime should work in a similar manner as the one that is in place, except for the identification of the orders passed.

71. On the other hand CESR understands respondents´ concerns about the ability of each CA to allow only one or both alternatives described in the CP. CESR is not proposing, as a general rule, to pass the client ID to the executing firm or the following firm in the execution chain and is aware of the legitimate commercial concerns explained by some respondents. However, the impact of this information being passed to the next (executing) firm will be proportionate to the amount of information that the code carries and the possibility to extract the real identity of the client from such a code. This would be clearly different across Member States. Therefore, since the decision to require to transmit the client ID to the receiving firm or to report the trade to the CA would depend on the final coding structure of client identifiers to be adopted by each CESR member, each Member State could be given the ability, after proper public consultation, to allow the options described above for the firms in its jurisdiction or just one of the alternatives in case the structure of client identifiers makes the other one not advisable or workable.

72. CESR acknowledges that the introduction of a mandatory and meaningful client ID in the context of transaction reporting (Article 25 of MiFID) raises questions on data protection that will need to be properly addressed, taking into account existing data protection legislation.

5. Transaction reporting by market members not authorised as investment firms

Question 15: Do you agree with CESR's proposal on the extension of reporting obligations? If so, which of the two alternatives would you prefer?

73. The proposal was generally supported by the respondents. No strong objections were expressed.

74. As to the possible reporting alternatives, many failed to find the rationale why the obligation to report transactions of market members who are not authorised as investment firms should be imposed on the regulated market or MTF (an argument mostly used by exchanges and MTFs), while treating market members authorised as investment firms of the same regulated market or MTF differently. Trading venues might be prepared to provide commercial services for submitting transaction reports, but this should not be mandatory or affect the legal and regulatory responsibility and liability of the firm to submit transaction reports.

75. Some questioned though whether local supervisors have sufficient authority in their respective jurisdiction to be granted access to such information given the potential extraterritorial and ultra vires implications.

76. CESR understands respondents´ comments on the fact that the reporting of trades could be done by the members who conducted them. However, CESR is of the view that since these are firms exempted from the application of the directive as a whole, applying only certain aspects of the MiFID regime to them (Article 25 and 57 of MiFID, relevant articles of Regulation 1287/2006, articles related to supervision and enforcement capabilites by supervisors, etc.) could prove a complex exercise.

77. CESR has proposed alternatively that these trades could be reported to the competent authorities by the regulated markets and MTFs where those trades were finalised. Of course, CESR considers appropriate that those trading venues that assume that obligation should incorporate in their rules such a provision and could charge these firms the cost of reporting the transactions to supervisors.

78. CESR has perceived a general support of the amendments proposed and therefore suggests amending MiFID by introducing a transaction reporting obligation in Article 25(3) applicable to regulated markets and MTFs that admit as members undertakings currently falling under the Article 2(1)(d) exemption for all the transactions carried out by those members on the respective regulated market or MTF.

6. Other comments received

What constitutes execution of a transaction for transaction purposes?

79. Some respondents claimed that it was still unclear from the CP what exactly constitutes execution of a transaction for transaction reporting purposes and that this must be addressed by CESR. Some of the fund manager respondents questioned whether the obligation to transaction report should apply to them at all.

80. As noted in the introduction of the CP, one of the main purposes of transaction reporting is to enable competent authorities to detect and pursue suspected instances of market abuse or client abuse. As a result, transaction reports must always be submitted by firms not only when they are transacting directly with an execution venue but also to identify the client that the firm has undertaken the transaction for or with. In this respect, the proposed extension to orders transmitted for execution is a way to gain access to meaningful client ID data, not a re-definition of what constitutes an execution.