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FEEDBACK STATEMENT

**CESR Technical Advice to the
European Commission in the
Context of the MiFID Review:
Non-equity markets
Transparency**



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Executive Summary

The Markets in Financial Instruments Directive (MiFID) came into force on 1 November 2007. It introduced significant changes to the European regulatory framework for equity secondary markets, leaving open to Member States the possibility to extend transparency requirements to financial instruments other than shares according to Recital 46.

CESR analysed the eventual extension of MiFID transparency requirements to non-equity financial instruments in CESR's response to the Commission on non-equity transparency (Ref. CESR/07-284b) in August 2007 and CESR's report on transparency of corporate bond, structured finance product and credit derivatives markets (Ref. CESR/09-348) of July 2009.

CESR concluded in CESR/07-284b that at that time there was no evident market failure in respect of market transparency in corporate bond markets and that there was no need for a mandatory pre- or post-trade transparency regime. When CESR re-examined the need for additional transparency in the wake of the financial crisis (Ref. CESR/09-348), it focused solely on post-trade transparency. In that report, CESR concluded that additional post-trade information would be beneficial to the market.

This Feedback Statement provides feedback to the views expressed by respondents to CESR's consultation paper (CP) on non-equity markets transparency (Ref. CESR/10-510) and should be read in connection with the CP and CESR's technical advice (Ref. CESR/10-799). In the CP CESR presented possible ways of developing the recommendations in the July 2009 report in the context of the upcoming MiFID Review to be launched by the European Commission. Since derivatives were not analysed in the past, CESR also explored the possibility of a post-trade transparency regime for the most significant subset of these financial instruments: interest rate derivatives, equity derivatives, foreign exchange (FOREX) derivatives and commodity derivatives.

At the request of the European Commission, CESR also reconsidered whether there is a need for pre-trade transparency for corporate bonds, asset-backed securities (ABS), collateralized debt obligation (CDOs), credit default swap (CDS) and the derivatives mentioned above.

The main outcomes of this exercise can be found below. CESR has given considerable thought to the issue of transparency of non-equity markets. As outlined in CESR's previous advice to the Commission, the transparency of these markets should be enhanced and, in CESR's view, the most appropriate way of doing so is through the introduction of a harmonised pan-European mandatory post-trade transparency regime.

The review of MiFID now presents the ideal opportunity to introduce far-reaching measures designed to improve the transparency of a broad range of asset classes and CESR strongly recommends to the Commission to take forward the recommendations as outlined in its Technical Advice.

Post-implementation review

Introducing these requirements will obviously mean significant changes to the markets in question. A recurring theme from a broad range of market participants is the scope for an adverse impact on liquidity.

CESR is of the view that the calibration of thresholds and time delays for the proposed regime should ideally be based on the liquidity of the asset in question. However, due to the largely OTC nature of these markets there is currently an absence of trading data which can reliably be used to robustly calibrate a regime. CESR therefore recommends at this stage that calibration should be based on the average trading size of each of the markets in question.



However, once the regime is implemented this information will quickly become available. Therefore at the core of CESR's recommendations to the Commission is the need to undertake a post-implementation review (for all asset classes) with a view to reaching conclusions one year after introducing the new transparency obligations. CESR stands ready to assist the Commission in collecting and analysing the available data and to amend the regime if deemed necessary.

It is important to stress that the purpose of this review would not be to alter the scope of the regime. However, alterations to take into consideration the liquidity of the instrument and/or to increase or decrease the size thresholds and time delays may be considered necessary.

Post-trade transparency

In relation to the calibration of a post-trade transparency regime CESR recommends the following approach:

Corporate bonds

Transaction size (net value)	Information to be published	Timing of publication
To be further refined but the upper threshold should be in the region of €500,000 to €1 million	Price and volume of transaction	As close to real time as possible
Between €500,000/€1 million and €5 million	Price and volume of transaction	End of trading day
Above €5 million	Price but no volume (but with an indication that the transaction has exceeded the €5 million threshold)	End of trading day

Public bonds

Transaction size (net value)	Information to be published	Timing of publication
Below €1 million	Price and volume of transaction	As close to real time as possible
Between €1 million and €5 million	Price and volume of transaction	End of trading day
Above €5 million	Price but no volume (but with an indication that the transaction has exceeded the €5 million threshold)	End of trading day

Structured finance products covered by the first phase

Transaction size (net value)	Information to be published	Timing of publication
Below €5 million	Price and volume of transaction	End of trading day
Above €5 million	Price but no volume (but with an indication that the transaction has exceeded the €5 million threshold)	End of trading day



Clearing eligible single name and sovereign CDS

Transaction size (net value)	Information to be published	Timing of publication
Below €5 million	Price and volume of transaction	As close to real time as possible
Between €5 million and €10 million	Price and volume of transaction	End of trading day
Above €10 million	Price but no volume (but with an indication that the transaction has exceeded the €10 million threshold)	End of trading day

Clearing eligible index CDS

Transaction size (net value)	Information to be published	Timing of publication
Below €10 million	Price and volume of transaction	As close to real time as possible
Between €10 million and €25 million	Price and volume of transaction	End of trading day
Above €25 million	Price but no volume (but with an indication that the transaction has exceeded the €25 million threshold)	End of trading day

Phased approach for a post-trade transparency regime in structured finance products

CESR recommends that the transparency regime should cover all ABS and CDOs for which a prospectus has been published (i.e. including all ABS and CDOs admitted to trading on EEA regulated markets) or which are admitted to trading on a MTF. Due to the perceived illiquidity of these markets CESR recommends that the transparency requirements should be introduced in a two step approach:

1. In the first phase all the instruments rated as AAA, AA or A¹ (or any equivalent terminology used by other credit rating agencies) should be covered.
2. In the second phase, the rest of the universe of SFP as outlined above should be covered.

Post-trade transparency for other types of derivatives

CESR recognises that the current stage of the analysis, given the heterogeneity of all the OTC derivative segments included in the consultation paper, is still in an early phase. Nevertheless CESR is strongly of the view that enhancing post-trade transparency for derivatives other than CDS will assist market participants in making investment decisions as well as in supporting more resilient and transparent markets in general.

CESR therefore recommends to the Commission that a harmonised post-trade transparency regime for these assets should be further developed. CESR stands ready to assist the Commission in

¹ At the time of implementation of the regime for existing instruments, or at the time of issuance for instruments issued after implementation of the regime.



calibrating a regime for these assets which, takes into consideration the different features of the markets in question.

Pre-trade transparency for bonds, structured finance products, credit default swaps and derivatives

CESR is of the view that there is currently an unlevel playing field in the EEA with respect to the provision of pre-trade transparency for instruments other than shares. CESR therefore recommends that current voluntary arrangements are put on a formal footing and that a compulsory harmonised pre-trade transparency regime be introduced. The regime should apply to organised trading platforms (RMs and MTFs) with respect to the non-equity instruments traded on these platforms. Similar to the pre-trade transparency regime for equity, this regime needs to be refined to provide appropriate pre-trade transparency standards for various market structures and trading models, taking into account the various instruments and asset classes traded. As for equity, this may also involve the provision of appropriate waivers.

Given the different characteristics of the wide range of products concerned, each with its respective market microstructure and the varying degree of liquidity exhibited in these markets CESR does not, at this stage, propose to introduce mandatory pre-trade transparency requirements to the OTC space. Nevertheless CESR would welcome that any future regime allows Member States to introduce local requirements if they deem them to be necessary given the specificities of their markets in question.



I. GENERAL ACCESS TO PRE- AND POST-TRADE INFORMATION

1. In addition to the work already undertaken by CESR to consider the sources of pricing information for non-equity instruments which are available to market participants² and following a request from the Commission, it was decided to reassess the current level of pre- and post-transparency available to the market for corporate bonds, structured finance products and credit default swaps. CESR also decided to consider the availability of pricing information for other OTC derivatives.

2. In the consultation paper, CESR asked the following questions:

Q1: 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?

3. A summary of the responses to this question has been made public in CESR's responses to the Commission's request for additional information in relation to the review of MiFID (Ref. CESR/10-1254) with a view to question 14 thereof.

II. CORPORATE BONDS

1. Scope of corporate bonds transparency regime

4. As noted by CESR in its July 2009 Report to the Commission, the proposed scope of a transparency regime for corporate bonds covers those corporate bonds for which a prospectus has been published (i.e. including all corporate bonds admitted to trading on EEA RMs) or which are admitted to trading on an MTF.

5. In the CP, CESR proposed to define the term 'corporate bond' as a transferable debt security issued by a private corporation to raise capital with a maturity of at least 12 months. CESR expressed the view that corporate bonds issued by banks and secured by certain assets (generally mortgages or public sector loans) i.e. 'covered bonds'³ should be covered by this review.

CESR view

6. After further consideration, CESR proposed to amend the definition of 'corporate bond' to make clear that bonds issued by both privately and publicly owned companies are included. Therefore, CESR recommended that for the purposes of the transparency regime, 'corporate bonds' should be defined as "transferable debt securities issued by a corporation (either privately or publicly owned) to raise capital with a maturity of at least 12 months". For these purposes, the concept of 'publicly owned' encompasses not only public corporations but also

² For example, please see in CESR Consultation Paper on Transparency of Corporate Bond, Structured Finance Product and Credit Derivatives Markets (Ref. CESR/08-1014) references to ABS [page 53], CDOs [page 54] and CDS [pages 55 and 56].

³ For example German "Pfandbriefe" and Spanish "cedulas hipotecarias" and "cedulas territoriales".



unincorporated enterprises that function as if they were corporations (the so-called quasi-corporations).

7. In relation to covered bond, CESR remained of the view that bonds issued by banks and secured by certain assets (generally mortgages or public sector bonds), i.e. 'covered bonds' should be considered within the scope of the concept of 'corporate bonds'.

Q2: Are there other particular instruments that should be considered as 'corporate bonds' for the purpose of future transparency requirements under MiFID?

Sovereign bonds

8. Whilst not explicitly covered in the consultation paper, CESR agreed to explore how to extend the proposed transparency regime for corporate bonds to sovereign bonds. At the public hearing on 27 May 2010, views on a possible regime for sovereign bonds were also solicited.
9. From the 16 responses that considered sovereign bonds, all but one were supportive of including sovereign/government bonds into the transparency regime and most of them under the corporate bond framework. One respondent remarked that there was enough pre and post trade transparency for sovereign bonds, but did not oppose having a mandatory transparency regime.
10. None of the respondents gave a definition of the term 'sovereign bond' but sovereign/government bonds were generally not distinguished.

CESR view

11. Whilst not covered in the consultation paper, CESR decided to go beyond sovereign CDS and include public bond markets within the scope of its Technical Advice. This has a two-fold aim: to address certain concerns raised in light of recent market events, and to provide a fully consistent approach to post-trade transparency in instruments related to the public sector.

Other particular instruments that should be considered as 'corporate bonds' for the purpose of future transparency requirements under MiFID

12. Two Spanish respondents were of the view that "participaciones preferentes", should be included within the corporate bond regime.
13. Two respondents addressed convertible bonds, exchangeable bonds and preference shares. Whilst one respondent suggested the equity transparency regime would be appropriate for these securities, both respondents believed that these instruments should be explicitly covered by any future transparency regime.

CESR view

14. After taking into account the responses from market participants, CESR is of the view that the following instruments should be considered as 'corporate bonds' for the purpose of future transparency requirements under MiFID:
 - Convertible and exchangeable bonds - due to their similarities in secondary market trading (platforms where they are traded, frequency, and information available); and
 - Spanish "participaciones preferentes" - for their special structure and secondary trading in Spain.



Q3: 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.

15. From the 29 respondents to this question, half were in favour of including covered bonds under the corporate bond transparency regime due to their similar structure (but with an extra level of protection) and similar trading; the other half (mostly UK respondents) considered it more appropriate for covered bonds to fall under the structured finance products (SFP) transparency regime again because of similarities of underlying structure. However, whereas two respondents thought covered bonds should have their own regime, four others were of the view that covered bonds could fall under the corporate bond or SFP regime (depending on their structure).

CESR view

16. CESR remains of the view that bonds issued by banks and secured by certain assets (generally mortgages or public sector bonds), i.e. “covered bonds” should be considered within the scope of the concept of “corporate bonds”.

2. Pre-trade transparency for corporate bonds

17. MiFID does not mandate pre-trade transparency for instruments other than shares admitted to trading on EEA RMs⁴. Whilst operators of organised trading platforms (i.e. RMs and MTFs) for non-equity instruments are not subject to MiFID pre-trade transparency obligations, they must ensure that there is fair and orderly trading on their platforms. In order to fulfil this obligation they publish information about buying and selling interests on corporate bonds traded on their platforms. However, there are no similar pre-trade transparency requirements for corporate bonds traded outside organised trading platforms, i.e. where the majority of the corporate bond trading takes place.

18. Before the recent market turmoil CESR sought the views of market participants on the availability of pre-trade transparency. Wholesale participants generally seemed to be content with the way in which corporate bond markets worked and their level of access to pre-trade transparency information. However, pre-trade transparency information was considered to be less accessible for small participants, including retail investors.

19. In CESR’s response to the Commission on non-equity transparency published in July 2007 (Ref. CESR/07-284b), CESR concluded that there was no evidence of market failure in respect of market transparency on corporate bond markets and that there was no need for mandatory pre-trade transparency. In line with that, CESR report on Transparency of corporate bond, structured finance product and credit derivatives markets (Ref. CESR/09-348) did not cover pre-trade transparency for these instruments.

20. At the request of the European Commission, CESR reconsidered in the CP whether there is a need for pre-trade transparency for corporate bonds.

⁴ Very few Member States have exercised the option to extend the MiFID transparency regime to other financial instruments under Recital 46 of MiFID. Italy has required RMs, MTFs and systematic internalisers (SIs) to set up and maintain a pre-trade transparency regime for financial instruments traded on systems operated by these trading venues. The trading venues are allowed to design their pre-trade transparency rules, taking into account the microstructure, the nature of the financial instrument, the amount traded and the type of market participants involved with specific attention to retail investors’ involvement. Investment firms which are not SIs are not required to provide pre-trade transparency on corporate bonds,



21. In the consultation paper, CESR asked the following questions:

Q4: 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?

22. From the 39 entities who responded to this question, a small majority did not perceive there to be a lack of pre-trade transparency. It was considered that the level of pre-trade transparency available (in terms of access and content) is sufficient as pre-trade market data on bonds is available through a number of sources to market participants from commercial pricing providers, especially for the most liquid and frequently traded corporate bonds. For illiquid corporate bonds, clients are able to raise requests for quotes to multiple dealers and select the best price from the received quotes. Although the existence of a retail corporate bond market in certain European countries is acknowledged and the need for adequate pre-trade transparency for these markets was recognised, it was claimed that in fact the corporate bond market is predominantly institutional investor-based. Concerns were raised that transparency could give retail investors false comfort, encouraging them into a market for which their understanding may be inadequate.

23. However, many respondents did perceive a lack of pre-trade transparency. These respondents emphasised that the lack of high standards of pre-trade transparency leads to market anomalies and that the financial crisis has contributed to deep and extended information asymmetries. Some categories of institutional investors have experienced great difficulties in valuing corporate fixed-income assets in their portfolios. In this respect, buy-side and sell-side participants who were in favor of additional pre-trade transparency ranked pre-trade transparency as more important than post-trade transparency, since knowing the best price at which market participants can do a trade is more important than knowing the price at which someone else has traded. Finally, the different levels of access to pre-trade transparency information between retail and wholesale investors were noted. Whereas market participants providing liquidity seem to get easy access to relevant trading data, retail investors and small market participants have limited access to this information. This makes it more difficult to make trading decisions or even to verify that they have received best execution.

Q5: 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.

24. 37 entities responded to the specific question. In general, the same arguments as outlined above were provided. Noted below are the additional issues raised.

25. The majority of respondents did perceive there was an unequal access available for different market participants to pre-trade information. This was considered, at least in part, to be due to the microstructure of the corporate bond market (which is a dealer-driven market dominated by large banks who primarily conduct over-the-counter transactions) and the typical nominal value of corporate bond trades largely excludes retail investors. It was also noted that the sell side seemed to have access to more information than the buy side. It was underlined that pre-trade transparency would help not only retail investors but professional investors to achieve best execution in fixed income securities.

26. Those respondents that considered that all market participants do have access, either directly or indirectly, to the necessary pre-trade information underlined how, for wholesale market participants, accessibility is through the various platforms that virtually all market participants have access to and, while such services may be costly, they are nevertheless widely accepted as one of the costs of doing business in this market. For retail clients, there is

access to OTC markets through private banking services, with these banks having the same level of access to the OTC market information as dealers and other market participants.

Q6: Is pre-trade transparency efficiently disseminated to market participants? Should pre-trade information be available on a consolidated basis?

27. 38 entities responded to this question, 31 of which specifically addressed the issue whether pre-trade information is efficiently disseminated.
28. A small majority of respondents were of the view that pre-trade information is not efficiently disseminated since: i) regular quotes are mostly provided for the more actively traded bonds and rarely sent for the less liquid ones; ii) the availability of quotes varies from day to day and also depends on the hour of the day; and iii) the quality and nature of quotes that are provided by market makers may vary both by product and by counterparty.
29. Therefore, it appears that currently only limited pre-trade transparency for corporate bonds is available to selected market participants.
30. Some respondents were satisfied with current dissemination of pre-trade information. In their view pre-trade transparency mechanisms in place today do provide a significant amount of information to market participants and it is efficiently disseminated within the context that most bonds are highly illiquid and trade very infrequently. There is better information on those bonds which are more liquid and trade more often.
31. As to the desirability of consolidated pre-trade information, most of the respondents either did not consider it necessary and even desirable to require pre-trade transparency to be provided on a consolidated basis, or they underlined how consolidated pre-trade information is already provided to the market. It was considered that consolidation of pre-trade information might challenge some commercial business models and providing pre-trade information on a consolidated basis would place a disproportionate cost on market participants which inevitably would be passed on to the end investor. Respondents highlighted that where sufficient market depth and liquidity exists to make aggregation or consolidation desirable, there are many commercial services currently available which provide pre-trade information either directly to participants or via a number of electronic means on a continuous basis. Furthermore, the presence of a range of providers means that in their view differing needs can be catered for and differing areas of expertise developed, with the market benefiting from competition between providers.
32. Some respondents would encourage the provision of consolidated pre-trade information as they considered that pre-trade transparency is not efficiently disseminated (above all in cases of low liquidity) and standardisation of how information is to be disseminated was considered desirable. The provision of consolidated data was supported on the basis that it aggregates liquidity across markets and thus provides investors with a clear and complete picture of prices and trading interest across the trading network.

Q7: 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.

33. There were 30 responses to this question.
34. The following table indicates the main benefits and drawbacks of a pre-trade transparency regime mentioned by entities specifically responding to this question.

Benefits	Drawbacks
<ul style="list-style-type: none"> • <u>Efficient price formation process and increased liquidity</u> by ensuring that all players have comparable access to information and by lowering transaction costs • <u>Mitigation of information asymmetry between retail and institutional investors</u> and access to information on an equal basis • <u>Possibility to better gauge the depth of the market</u> (thus improving the quality of price discovery and quantity discovery); • <u>Access to the market to a broader range of investors</u> (rendering it more efficient) • <u>Reduction in transaction costs</u> (as a result of increased transparency) • <u>Market innovation</u> (new products and operational tools) as a result of <u>greater competition between dealers</u> • <u>Restoration of investor confidence</u>. Driven by access to more information about the 'true' price, more choice between different providers, possibility to verify ex post that they have received best execution and greater safety and risk reduction. 	<ul style="list-style-type: none"> • <u>Damage on participants' willingness to provide an execution service for illiquid market segments</u>. • OTC markets function largely on the principle that market makers are willing to take risk on their balance sheet in order to provide liquidity on a market. Requiring dealers to publish executable quotes, could <u>harm their ability to execute transactions without moving the market</u> and creating significant risk in the execution of the subsequent hedging transaction. • <u>No identified market failure related to pre-trade transparency</u> with respect to the corporate bond market • <u>Misleading information for illiquid securities as to a price at which a trade could be executed</u> • <u>Costs</u> to create and publish pre trade transparency for a far greater number of corporate bonds • <u>Polarised corporate bond market</u>, with trading focusing on liquid bonds (with further reduction for illiquid bonds)

Q8: What key components should a pre-trade transparency framework for corporate bonds have? What pre-trade information should be disclosed?

35. 24 entities responded to this specific question. The following factors were noted:

Scope - it was emphasised that any regime should be limited to the most liquid issues. One respondent considered that the only case where the benefits of a pre-trade transparency regime would outweigh its costs is for corporate bonds which meet the two following criteria: the bonds are traded on electronic platform and the orders are below €1 million. On the contrary, one respondent noted that a mandatory pre-trade transparency framework should be introduced for all fixed income securities whether or not listed on a RM or MTF with a specific aim of providing greater protection to retail investors.

Content of trade information to be published - time stamping, ISIN code, short name, order type (buy or sell), size, price, best/bid ask, lot sizes and spread against a reference curve. It was also mentioned that depth of information should depend on the "free float" of bonds available for trading and it should be cross-border.

Other information to be published - reference was made to making available the prospectus, information on the web pages of data providers and standardised term sheets from rating agencies where the decision process to each rating conclusion is explained.

Timing - disclosure of information should be as close to real-time as possible

Cost - pre-trade data should be available at reasonable cost on non-discriminatory commercial terms



Waivers - allow exemptions from displayed quotes for market participants dealing in sizes that are large in scale relative to standard market sizes.

CESR view

36. CESR is of the view that there is currently an unlevel playing field in the EEA with respect to the provision of pre-trade transparency for instruments other than shares. CESR therefore recommends that current voluntary arrangements are put on a formal footing and that a compulsory harmonised pre-trade transparency regime be introduced. The regime should apply to organised trading platforms (RMs and MTFs) with respect to the non-equity instruments traded on these platforms. Similar to the pre-trade transparency regime for equity, this regime needs to be refined to provide appropriate pre-trade transparency standards for various market structures and trading models, taking into account the various instruments and asset classes traded. As for equity, this may also involve the provision of appropriate waivers.
37. Given the different characteristics of the wide range of products concerned, each with its respective market microstructure and the varying degree of liquidity exhibited in these markets, CESR does not, at this stage, see benefits in introducing mandatory pre-trade transparency requirements to the OTC space. Nevertheless CESR would welcome that any future regime allows Member States to introduce local requirements if they deem them to be necessary given the specificities of their markets in question.

3. Post-trade transparency for corporate bonds

38. CESR concluded in 2009 (Ref. CESR/09-348) that existing market-led initiatives had not provided a sufficient level of post-trade transparency, leading to a market information asymmetry and that an increased level of transparency would be beneficial to the market. CESR also concluded that a harmonised approach would be preferable to national initiatives taken in this area on the basis of the flexibility allowed by MiFID. Such an approach was also preferred by the majority of respondents to the consultation. On this basis, CESR recommended to the Commission to consider the adoption of a mandatory post-trade transparency regime for corporate bonds in the context of the future MiFID revision.
39. To ensure that benefits outweighed costs, CESR also concluded that additional post-trade transparency should be sensibly calibrated to minimise any negative impact on liquidity. At the same time, CESR recognised that a greater level of post-trade transparency than is currently available might contribute to supporting liquidity in normal times and in restoring market confidence.
40. CESR considered it important to reiterate the need that trade information is made available on a non-discriminatory commercial basis at a reasonable cost and in a manner which is easily accessible by all investors. This approach should apply to regulated markets, MTFs and investment firms trading OTC.
41. In the consultation paper, CESR asked the following questions:

Q9: 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?

42. A significant number of respondents did not consider that the notional value was a meaningful piece of information to publish or proposed that it should be published only with limitations (such as providing this information only for retail trades). Some sell-side respondents argued



that it would display too much information, which would have a detrimental effect on available liquidity. However, the majority of the respondents against the inclusion of notional value appeared to be largely indifferent. On the other side of the spectrum market participants, especially trading platforms stated that notional value is a vital piece of information to have.

43. In relation to other information which should be published there were proposals made to publish data on an aggregate basis in order to minimise scope for an adverse impact on liquidity. A considerable number of sell-side respondents also opted for the inclusion of parameters such as high, low and median prices.

CESR view

44. Despite the feedback received, CESR considers that a post-trade transparency regime for corporate bonds should also include information on the notional value of the bond traded in order to provide a thorough picture to the market. Therefore, CESR recommends that the notional value of the bond should also be made public in addition to the fields that were recommended in the former report on this topic (Ref. CESR/09-348).
45. In line with the overall goal to enhance transparency CESR recommends that the transparency regime should be transaction based and should therefore focus on the specific data of the transaction rather than aggregate or high, low and average prices

Calibration

46. Specifically on the calibration of post-trade transparency regime, in order to minimise a potential adverse impact on liquidity, CESR proposed a simple calibration whereby the thresholds for delayed publication would be based solely on the size of transactions, as this is considered to be more indicative than the initial issuance size. This approach differed from the MiFID approach for shares admitted to trading on EEA RMs which takes into account the liquidity of the share⁵ as well as the size of the transaction⁶.
47. For transactions below €1 million, CESR considered an approach whereby the price and the volume of the transaction would be published as close to real-time as possible. If adopted, this proposed approach would ensure that all participants (including retail investors) would have access to real time information about prices and volumes on sizes commonly traded by smaller market participants.
48. For transactions between €1 and €5 million, CESR proposed to require the publication of the price at which the transaction took place and the volume of the trade executed. This information would have to be published by the end of the trading day.
49. For transactions larger than €5 million, CESR proposed that the price at which the transaction took place should be published. However, it would not be mandatory to publish the volume of the trade executed, provided that an indication that the transaction has exceeded such threshold is given. This information would have to be published at the end of the day.

⁵ Shares admitted to trading on EEA RMs are divided in four liquidity bands.

⁶ In its Report (Ref. CESR/10-394), CESR proposed to maintain the existing framework for post-trade transparency of shares admitted to trading on a RM.

Table 1: Initial proposal for calibration of a post-trade transparency regime for corporate bonds

Transaction size (net value)	Information to be published	Timing of publication
Below €1 million	Price and volume of transaction	As close to real time as possible
Between €1 million and €5 million	Price and volume of transaction	End of day
Above €5 million	Price but no volume (but with an indication that the transaction has exceeded the €5 million threshold)	End of day

50. In the consultation paper, CESR asked the following questions:

Q10: 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).

51. Respondents put forward a wide spectrum of proposals for calibrating the proposed post-trade regime. Only a minority of respondents fully agreed with CESR proposal.

52. A number of respondents suggested a more granular calibration taking into account factors such as individual product liquidity, bond type, issuance size, maturity and rating.

53. In addition a considerable number of market participants supported lowering the threshold for retail size trades, proposed were sizes from €50,000 to €500,000. A few respondents also supported a lowering of the threshold for large in size trades from €5 million to €1 million. On the other hand one respondent proposed an increase to €7 million.

54. In relation to the timing and information to be published, there was concern among the sell-side about the publication of the volume and the timing of publication particularly for large trades. It was argued that it would be preferable not to publish the exact volume for large and medium size trades, for which an aggregation of volume was suggested. Also, a number of respondents among the sell-side were in favour of having longer publication delays for large trades; many suggested T+3, some until settlement. At the other end of the spectrum some respondents proposed a delay for large trades of only 15 minutes.

Q11: Should other criteria be considered for establishing appropriate post-trade transparency thresholds?

55. Some respondents mentioned the frequency of trading and the type and rating of bond. There were other differing views on this question, with several respondents arguing in favour and against the concept that post-trade transparency requirements should be limited to trades executed on RMs and MTFs.

CESR view

56. CESR is mindful of the concerns, particularly from buy-side participants, which were raised in relation to the proposed requirements for real time reporting for all trades up to €1 million. At the same time, CESR is of the view that a proportion of trading must be reported in real time in order to assist in a meaningful way with the price formation process.



57. Since there is not an established set of trading data upon which to base the thresholds (unlike when MiFID introduced post-trade transparency requirements in the equity space), CESR has reached the conclusion that the data collected as part of this consultation process needs further refinement in order for CESR to recommend the exact calibration for trades which must be reported in real time. At this stage, CESR therefore recommends to the Commission that further work should be undertaken in this area but in the first instance recommends that calibration for real time reporting would be in the region of €500,000 to €1 million.

Q12: 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”?

58. Again there was a wide spectrum of different answers ranging from 2 to 3 minutes to overnight reporting or even until settlement. However, the proposed time frame of 15 minutes received relatively broad support.

CESR view

59. Taking into account that secondary trading in corporate bonds is less frequent and less automated than for shares, CESR recommends 15 minutes as the appropriate benchmark for real-time publication for post-trade transparency information of corporate bonds, i.e. that all trades should be reported as close to real time as possible but no later than 15 minutes after execution of the trade.
60. The 15-minute delay should only be used in exceptional circumstances where the systems available do not allow for a publication in a shorter period of time.

III. STRUCTURED FINANCE PRODUCTS (ABS AND CDOS)

1. Pre-trade transparency for structured finance products (SFPs)

61. CESR assessed whether the existing level of pre-trade transparency in the markets for structured finance products was considered to be sufficient. The analysis concentrated on markets for Asset Backed Securities (ABS), including Residential Mortgage Backed Securities (RMBS) and Commercial Mortgage Backed Securities (CMBS), and Collateralised Debt Obligations (CDOs).

a) ABS

62. In the consultation paper, CESR asked the following questions:

Q13: 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 ABS?

63. There were 13 responses to this question. Of these, seven argued there is enough pre-trade transparency for wholesale participants through the current mechanisms of dealer and broker quotes (including dealer runs) and services from data vendors (such as parsing systems). Given the more complex nature of pricing ABS and CDOs, dealers tend to provide pricing to investors on request. There are also model providers and evaluators who provide pricing to SFP market participants. As European SFPs generally do not trade frequently, the amount of pricing data available will be rather limited compared with the more liquid products. For this reason, it is less likely that quotes on SFP will actually be live and tradable.

64. Four respondents were of the opinion that pre-trade information is not enough because it is not accessible (by not being disseminated or distributed effectively), it is not reliable or it lacks information about available market depth. However, one buy-side participant stressed that it would be difficult to provide pre-trade transparency as the nature of each deal would have an impact on the price being offered. It was also noted that SFPs are almost never traded electronically and this is part of the explanation for the lack of pre-trade transparency. One respondent noted that, until there is a degree of further standardisation, the value of pre-trade information is likely to be limited.

Q14: Is pre-trade transparency information readily available to all potential market participants?

65. There were eight responses to this question. Four participants indicated that there are considerable information asymmetries. Differences in the availability of pre-trade information create uncertainty in the valuation for ABS and CDOs. Also, it was mentioned that pre-trade transparency is not efficiently disseminated to market participants.
66. Three respondents believed there is enough pre-trade information available to market participants and that there are competitive pressures in the industry to optimise the dissemination of information.
67. One buy-side association pointed out that, if the concern was whether retail investors can get access to transparency information, this is extremely unlikely given its complexity, and that this is generally not an appropriate market for direct participation by retail investors anyway.
68. Also, some respondents encouraged the disclosure of better collateral information.

Q15: Is pre-trade information currently available in the ABS market consolidated and effectively disseminated to those market participants who make use of it?

69. There were 7 answers to this question. Six of them pointed out that pre-trade information is not generally consolidated and effectively disseminated. One respondent indicated that cash flow information and investor reports are only available on expensive platforms.
70. Two participants indicated that investors who specialise in ABS do have access to enough information

Q16: 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.

71. Some respondents saw potential benefits from a pre-trade transparency regime, including improvement in secondary liquidity, reduction in bid/offer spreads, reduction in asymmetric information patterns, improvement in the reputation of securitisation and improvement in investor valuations. Other participants highlighted drawbacks such as reductions in available liquidity and reduced incentives for dealers, who may choose to exit the market.
72. One respondent indicated that the market is too fragmented and illiquid for pre-trade transparency to be meaningful.
73. One participant also noted that it would be important to consider, at inception, an alternative trading facility (e.g. electronic trading platforms) to mitigate adverse effects on liquidity.

Q17: Which key components should a pre-trade transparency framework for ABS have? Which pre-trade information should be disclosed?

74. Six participants responded to this question. Those who were in favour of a pre-trade transparency regime for ABS, proposed the following components : bond characteristics, detailed cash flows with the aim to facilitate a thorough understanding of the underlying risk, both in terms of legal structure and the securitised asset pool.
75. In addition it was noted that pre-trade price transparency should be accompanied by an indication of the source and scope of the valuation, that it is either based on a quote that may or may not represent a firm bid, a result of a model approach, or a consensus price. It was also noted that for a trading price to be used for mark to market purposes, a cash price should be accompanied by the pricing provider's discount margin (DM) and weighted average life (WAL) assumption. For a model-based price, the pricing provider should supply accompanying information as to the modelling input assumptions used and the full analysis details.
76. One respondent indicated the need to disclose the following elements: risk/return profile, size of the deal to be offered, expected existence of a secondary market for the deal, as well as the following information, that should be mandatory: prospectus, term sheet and dealer information (including contact details).

b) CDOs

77. In the consultation paper CESR asked the following questions:

Q18: 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?

78. Five responses were received in relation to this question. Only one respondent did not perceive a lack of pre-trade transparency based on the fact that CDOs are complex, non homogeneous products with limited liquidity and trading frequency where the vast majority of participants are dealers and institutional investors with very little retail presence.
79. One participant suggested that it is very difficult to gain access to information on these instruments unless one happens to be an actual investor in the deal.
80. Two respondents indicated that, as for ABS, pre-trade information is not publicly disseminated and is not consistently distributed due to the inherent complexity of structured finance products that makes that they hardly trade electronically.

Q19: Is pre-trade transparency information readily available to all potential market participants?

81. One participant answered positively to this question, while another indicated that discrepancies in pre-trade information create uncertainty in the valuation for ABS and CDO.

Q20: Is pre-trade information currently available in the CDO markets consolidated and effectively disseminated to those market participants who make use of it?

82. One respondent noted that, given the lack of standardisation, pricing information is often not available for many tranches. CDOs prices are disseminated to market participants directly.

83. Another response stated that pre-trade information is not generally consolidated and effectively disseminated.

Q21: 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.

84. In terms of drawbacks one respondent pointed out that a pre-trade transparency regime may create a false sense of transparency that may impair the judgment of some market participants and would also have a negative impact.

85. One response indicated that pre and post-trade transparency brings benefits to investors for valuations and above all for a better execution of their fiduciary duties. Pre-trade price transparency should be accompanied by an indication of the source and scope of the valuation that it is either based on a quote that may or may not represent a firm bid, a result of a model-based approach, or a consensus price. Also, one participant foresaw a more efficient and better operated market under a pre-trade transparency regime.

Q22: Which key components should a pre-trade transparency framework for CDOs, have? Which pre-trade information should be disclosed?

86. One respondent pointed out that pre-trade price transparency should be accompanied by an indication of the source and scope of the valuation that it is either based on a quote that may or may not represent a firm bid, a result of a model approach, or a consensus price. Also this participant stated that, for a trading price used for mark to market purposes, a cash price should be accompanied by the pricing provider's discount margin and weighted average life (WAL) assumption. For a model-based price, the pricing provider should supply accompanying information as to the modelling input assumptions used and the full analysis details.

87. Another response indicated the need to disclose the following elements: risk/return profile, size of the deal to be offered, expected existence of a secondary market for the deal as well as the following mandatory information: prospectus, term sheet and dealer information (including contact details).

Joint summary of the responses received on Q13 to Q22 (ABS and CDOs)

88. In general, sell-side respondents stated that there is enough pre-trade information for wholesale participants through dealers quotes (dealer runs) and data vendors (parsing systems) whereas buy-side respondents thought there is not enough pre-trade information because it is not accessible or disseminated enough.

89. Most of respondents pointed out that pre-trade information is not available to all potential market participants. However, some of them were of the opinion that investors who specialise on ABS do have access to enough information through a number of channels.

90. Some respondents, in general buy side, stressed the following benefits of pre-trade transparency: improve secondary liquidity, reduce bid/offer spreads, reduce asymmetric information patterns, improve reputation of securitisation, improve investor valuations. On the contrary other respondents, in general sell-side, pointed out the following drawbacks: reduce liquidity and reduce incentives for dealers, who may choose to exit the market. Some other respondents thought that disclosure of information on the structure and collateral of the products was very important as well. Many of them recognised that the SFP market may be considered mostly illiquid due to complexity and lack of standardisation of the products; also, it was stated that the market is not suitable for retail investors.



91. One sell-side association pointed out that the CDO market is more complex than the ABS market, information is even more limited and prices are disseminated to participants directly, therefore would not favour a mandatory pre-trade regime for CDOs. Nevertheless, one buy-side association had a similar opinion as for ABS and would support an increase on pre-trade transparency for CDOs.

CESR View

92. CESR is of the view that there is currently an unlevel playing field in the EEA with respect to the provision of pre-trade transparency for instruments other than shares. CESR therefore recommends that current voluntary arrangements are put on a formal footing and that a compulsory harmonised pre-trade transparency regime be introduced. The regime should apply to organised trading platforms (RMs and MTFs) with respect to the non-equity instruments traded on these platforms. Similar to the pre-trade transparency regime for equity, this regime needs to be refined to provide appropriate pre-trade transparency standards for various market structures and trading models, taking into account the various instruments and asset classes traded. As for equity, this may also involve the provision of appropriate waivers.
93. Given the different characteristics of the wide range of products concerned, each with its respective market microstructure and the varying degree of liquidity exhibited in these markets CESR does not, at this stage, see benefits in introducing mandatory pre-trade transparency requirements to the OTC space. Nevertheless CESR would welcome that any future regime allows Member States to introduce local requirements if they deem them to be necessary given the specificities of their markets in question

2. Post-trade transparency for structured finance products

a) Scope of post-trade transparency regime

94. CESR's report on non-equity markets transparency (Ref. CESR/09-348) concluded in relation to ABS and CDO markets that greater post-trade transparency could assist with valuations and could generally provide greater transparency of market activity to assist with price formation. However, mindful of the current uncertainties surrounding the ABS and CDO markets, CESR was of the view that a transparency regime should be calibrated to ensure that market liquidity is not negatively impacted as a result of introducing increased post-trade transparency.
95. In terms of scope, CESR recommended that the regime should gradually apply to all ABS and CDOs that are commonly considered as standardised, and in terms of implementation, CESR recommended that a phased approach should be used. Therefore, and as outlined in its previous report (Ref. CESR/09-348) CESR proposed that post-trade transparency requirements are introduced, as a first phase, to an initial subset of standardised ABS and CDOs and to gradually extend the post-trade transparency requirements in a second phase to all other subsets of standardised ABS and CDOs.
96. In addition, in relation to the concept of 'standardised', CESR proposed to include ABS and CDOs for which a prospectus has been published (i.e. including all ABS and CDOs admitted to trading on EEA RMs) or which are admitted to trading on an MTF.
97. In the consultation paper (CP), CESR asked the following questions:



Q23: 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?

98. CESR consulted on the relevance of the following criteria to be taken into account to determine the first phase of the phased approach: rating of the instrument, issuance size, and frequency of secondary trading. Many respondents favoured the criteria proposed. Most of them found the “frequency of secondary trading” (i.e. liquidity) as a key criterion to take into account; some respondents however highlighted the difficulty to measure it. Liquidity proxies mentioned were tranche issuance size, rating, asset class or maturity. The outstanding amounts and public issuance (vs private placement) were also noted. It was highlighted that these criteria may change over the asset life.
99. However some concerns regarding proposed criteria were raised:
- Rating: the role of credit rating agencies is questionable. In addition to that, as most securitisations contain tranches with different ratings, there should be available information for the whole structure disregarding individual tranches.
 - Issuance size: for these respondents it is unclear whether the CP refers to the total issuance size of a securitisation or individual tranche sizes. If the CP refers to the latter, in their opinion it would mean that the largest and most senior tranches (i.e. the less risky ones) would be included within a first phase.
 - Frequency of secondary trading: it is considered difficult to observe; in addition, the more complex the structure, the most difficult to find secondary trading information. It was thought that underlying transparency of more complex structures needs to be improved first.
100. Two respondents believed that there should be no market fragmentation in a phased approach and that all ABS/CDOs should be covered.
101. One response said that CDOs should be excluded given their low liquidity and lack of standardisation.

CESR View

102. Whilst all proposals for determining phases are subject to limitations, CESR has reached the conclusion that the most practicable criterion to determine a “phased approach” to implement a post-trade transparency regime for structured finance products will be the rating of the instrument at the time of implementation of the regime for existing instruments, or at the time of issuance for instruments issued after implementation of the regime.

Q24: Do you have specific ideas on which kind of ABS and which kind of CDOs should be covered by the first phase?

103. The majority of respondents agreed that the most liquid and frequently traded instruments should be covered in the first phase. According to one response, some specific instruments could also be selected, e.g. CDOs, CLOs, CMBS.



104. One respondent believed that in a first phase deals could be limited to those of a USD 100m notional value and higher.
105. For ABS, one respondent said the most liquid categories of these assets are: UK prime RMBS, Dutch prime RMBS, Spanish RMBS, and UK non-conforming RMBS. According to this respondent, the first two categories represent approximately 70-80% of the market.
106. Some participants said it is doubtful that there are enough ABS/CDOs with the necessary degree of liquidity to result in a meaningful transparency regime. It was also noted that banks feel generally that transparency of the underlying assets is of greater interest to the market than transparency of the trading activity.

CESR View

107. In line with the majority of the responses, CESR recommends a two-step approach to introducing post-trade transparency for structured finance products:
 - a. CESR recommends that the first phase of the post-trade transparency regime encompasses the most heavily traded SFPs, i.e. all the instruments rated as AAA, AA or A⁷ (or any equivalent terminology used by other credit rating agencies).
 - b. In the second phase, the rest of the universe of 'standardised' SFPs (as outlined in the Technical Advice) should fall under the post-trade transparency regime.

b) Calibration of post-trade transparency regime

108. CESR put forward for consultation the possibility to apply the framework proposed for corporate bonds to structured finance products, whereby transactions are broken down in three different size bands. Each of these size bands would be subject to different obligations in terms of what needs to be published and timing of publication. Market participants were also asked whether the calibration parameters proposed for corporate bonds (i.e. transaction size thresholds, information to be published and timing of publication as described in Section IV) were considered appropriate for structured finance products.
109. In the consultation paper CESR asked the following questions:

Q25: 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.

Q26: 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?

Joint summary of the responses received to Questions 25 and 26 (ABS and CDOs)

110. Opinions were split on this point. Whereas some believed that corporate bonds and structured finance products are similar enough for the same calibration parameters to be applied to both products (especially insofar as the framework proposed for corporate bonds differentiates on the basis of transaction sizes), many other responses stated that it is not appropriate to use the same framework as proposed for corporate bonds due to the very illiquid nature of structured finance products and to the fact that their investor base is generally represented by sophisticated institutional investors.

⁷ At the time of implementation of the regime for existing instruments, or at the time of issuance for instruments issued after implementation of the regime.



111. One respondent did not support different parameters for corporate bonds and SFPs, but considered that for ABS/CDOs, information should be published in an aggregated way only (prices, volumes and time ranges), so that market participants are not able to see how competitors were able to trade.

Joint summary of the responses received on Q23 to Q26 (ABS and CDOs)

112. There were two main themes in the responses received to this question. One theme urged caution and argued that mandatory post-trade transparency requirements would adversely impact market participants and ultimately investors. The other theme recognised that further transparency on standardised SFPs is needed and would have value for the market.
113. Further analysis by regulators with the industry to identify the contracts that will potentially benefit from more transparency (and proper calibration) was encouraged.

CESR View

114. Due to the specific nature and level of liquidity of structured finance products CESR does not recommend a real time reporting requirement for these instruments. Instead, CESR proposes the following framework and publication parameters:
- a. Transactions up to €5M: publication of price and volume at the end of the trading day;
 - b. Transactions above €5M: publication of price but no volume at the end of the trading day, with an indication that the threshold of €5 million has been exceeded.

IV. CREDIT DEFAULT SWAPS (CDS)

1. Pre-trade transparency for CDS

115. CESR assessed whether the existing pre-trade transparency for CDS is considered to be sufficient, keeping in mind the importance of this market for reference pricing in other markets (corporate bonds) and the current market situation.
116. In the consultation paper, CESR asked the following questions:

Q27: 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?

117. Out of 26 answers received, two-thirds of respondents indicated there is enough pre-trade information available. A sell-side association estimated that 90% of all quotes are received over electronic means by a number of market data providers, e.g. Bloomberg, Markit, CMA etc. Most of the respondents from different businesses mentioned the high importance of CDS clearing through a CCP for these purposes. One respondent mentioned that transparency of CDS underlying is much more important than information on the CDS themselves.
118. One participant argued that compulsory pre-trade transparency would not be meaningful since it is common practice to offer different prices to different counterparties on the same underlying. Therefore, as such counterparty information could not be part of any pre- or post-trade report, it reduces the value of the information and could provoke unnecessary discussions in the markets.
119. Some other participants expressed that derivative markets would benefit from increased pre-trade transparency stressing the importance of its careful calibration. These statements were



supported on arguments such as an insufficient transparency of available depth or customer complaints on an alleged lack of transparency of these products.

Q28: Is pre-trade transparency information readily available to all potential market participants?

120. Most respondents to this question believed that there is sufficient pre-trade transparency information available to market participants.

Q29: Is pre-trade information currently available in the CDS market consolidated and effectively disseminated to those market participants who make use of it?

121. There is again broad consensus about the good level of information dissemination. Only five respondents indicated that the data is not consolidated but at the same time the information is provided in a way that fits the functioning of the markets (delivered by message from each market maker). Despite this, users seemed to feel comfortable with the amount and format of the information currently available.

Q30: 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.

122. According to the majority of respondents, the drawbacks would outweigh the benefits. The following drawbacks were mentioned: possible arbitrage, market-inefficiency, lower margins, crowding out of small participants, widening bid/offer spread and reduction of liquidity, followed by a reduction of risk appetite as market makers would be discouraged from taking large positions.

123. The main benefits reported were improved control of the trades executed (i.e. the ability to check if a trade has been executed in-the-money or out-of the-money) and more confidence of market participants based on equal access to information.

124. None of the responses received provided ways for these drawbacks to be mitigated.

Q31: Which key components should a pre-trade transparency framework for CDS have? Which pre-trade information should be disclosed?

125. Respondents considered that their responses to previous questions substantially answered this question. Ideally, market participants should receive real time quotes from multiple dealers and it was claimed that this is already in place today.

CESR View

126. CESR is of the view that there is currently an unlevel playing field in the EEA with respect to the provision of pre-trade transparency for instruments other than shares. CESR therefore recommends that current voluntary arrangements are put on a formal footing and that a compulsory harmonised pre-trade transparency regime be introduced. The regime should apply to organised trading platforms (RMs and MTFs) with respect to the non-equity instruments traded on these platforms. Similar to the pre-trade transparency regime for equity, this regime needs to be refined to provide appropriate pre-trade transparency standards for various market structures and trading models, taking into account the various instruments and asset classes traded. As for equity, this may also involve the provision of appropriate waivers.

127. Given the different characteristics of the wide range of products concerned, each with its respective market microstructure and the varying degree of liquidity exhibited in these



markets CESR does not, at this stage, see benefits in introducing mandatory pre-trade transparency requirements to the OTC space. Nevertheless CESR would welcome that any future regime allows Member States to introduce local requirements if they deem them to be necessary given the specificities of their markets in question.

2. Post-trade transparency for CDS

128. As outlined in its previous report (Ref. CESR/09-348), CESR is of the view that a post-trade transparency regime should cover all CDS contracts which are eligible for clearing by a CCP due to their level of standardisation. At the moment, the universe of CDS eligible for clearing includes index and some single name (corporate) CDS. In the future, the universe may expand to include a broader range of single name CDS, as well as sovereign CDS.
129. As for other asset classes considered in the consultation paper, CESR tabled the framework described in Section IV for corporate bonds (whereby transactions are broken down in three different size bands (i.e. below €1 million, between €1 million and €5 million and above €5 million), each of which with different obligations in terms of the information to be published and the timing of publication) to collect the views of market participants. The paper also asked the question on whether the specific calibration parameters proposed (i.e. transaction size thresholds, information to be published and timing of publication) for corporate bonds were also appropriate for CDS.
130. Whilst CESR did not explicitly cover sovereign CDS in previous reports, it was recognised that these instruments are expected to become eligible for clearing in due course and therefore fall within the proposed scope of the post-trade transparency regime. Therefore, CESR also tabled the question on whether this was the correct approach and if so whether there were differences between the corporate and sovereign CDS markets which would justify a different approach either in terms of framework and/or calibration parameters (i.e. transaction size thresholds, information to be published and timing of publication).
131. In the consultation paper CESR asked the following questions:
- Q32: In your view, would the post-trade transparency calibration parameters (i.e. transaction size thresholds, information to be 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).**
132. Respondents generally agreed with CESR's proposal. Out of the 15 respondents who directly answered this question (note that many more responded but did not specifically address the issue) nearly half supported the same calibration approach for corporate bonds and single name CDS.
133. Three responses supported a different approach for index CDS. One was of the view that thresholds for index CDS could be higher given the larger average trading size, another was of the view that the liquidity of the index in question would need to be taken into consideration.
134. Five respondents (including representatives from both buy and sell-side organisations) did not support adopting the same approach as outlined by CESR. Concerns were expressed in relation to real-time reporting and whether this was needed given the lack of retail participation in this market or suggesting a threshold lower than €1m for real-time reporting. In addition a number of respondents thought the proposed €5m threshold for 'large' trades should be lowered to €1m.



135. Two additional respondents did not support the approach outlined by CESR but instead favoured more aggressive reporting – both in terms of what is reported in real time as well as increasing the thresholds for large trades.

CESR View

136. In line with the feedback received in consultation CESR is of the view that the framework for the proposed regime is appropriate for single-name CDS. However, CESR's analysis of average trading size shows that the proposed thresholds are insufficient and would not capture a sufficient degree of trading. CESR is therefore of the view that both the thresholds for real time reporting and for 'large' trades should be increased. This will ensure a greater degree of price transparency is provided to the market. CESR recommends to the Commission that the post-trade transparency regime for clearing eligible single name CDS, regardless of maturity, be calibrated in the following way:
- For trades up to €5m, the price and volume should be published in real time
 - For all trades from €5m to €10m the price and volume should be published at the end of the trading day
 - For all trades above €10m the price should be published at the end of the trading day with an indication that the transaction has exceeded the €10m threshold.
137. CESR recognises the concerns expressed regarding the changing profile of liquidity of clearing eligible single name CDS. However, CESR is of the view that the daily publication of an end of day settlement price by the relevant clearing house (and the associated auction process) will ensure that a sufficient degree of price transparency continues to exist in the market for all clearing eligible CDS. This should sufficiently mitigate the concerns raised by some respondents.
138. CESR agrees that the calibration of the regime for single name CDS is not appropriate for index CDS given their larger average trade size. CESR's analysis confirms that the average trading size for the Itraxx Europe index is in the region of €25m. However CESR acknowledges that this differs between maturity and by index with the average trade size for other indices in the region of €10m
139. In order to provide the appropriate degree of transparency to the market, CESR recommends to the Commission that the calibration parameters for index CDS should be set at a higher threshold than for single name CDS. CESR recommends the following approach for CDS indices:
- For trades up to €10m the price and volume should be disclosed in real time.
 - For trades between €10m and €25m the price and volume should be published at the end of the trading day.
 - For trades above €25m the price but not the volume should be published at the end of the trading day with an indication that the transaction has exceeded the €25m threshold.
140. CESR acknowledges that the liquidity profile for on-the-run and off-the-run CDS indices differs significantly. In order to address this point CESR recommends to the Commission that the proposals for single name CDS (as outlined above) should apply to off-the-run CDS index trades.
- Q33: 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).**



141. The majority of respondents who directly answered this question were in favour of the inclusion of sovereign CDS within a post-trade transparency regime (13 out of 20 respondents).
142. In addition half of all respondents thought that the same approach for single name CDS should be adopted for sovereign CDS.
143. Three respondents who were in favour of including sovereign CDS within the regime favoured a different approach to the one outlined by CESR. None of these supported real time reporting and one respondent favoured lowering the proposed threshold from €5m to €1m.
144. However, a number of respondents (including both buy and sell-side representatives) did not support inclusion of sovereign CDS within the proposed regime. Out of these respondents some felt that sovereign CDS should not be included outright (mostly buy-side) whilst others thought that further work was needed to consider and ultimately to determine what the calibration should be.

Joint summary of responses received to Questions 32 and 33

145. A number of respondents whilst not expressly answering the questions above expressed their concern regarding an eventual inclusion of CDS within a post-trade transparency regime. In addition to that, a number of respondents were of the view that in calibrating the thresholds and timing of an eventual post-trade transparency regime for CDS, the liquidity of the instrument should be taken into consideration. Examples were given both in terms of the level of trading activity but also in terms of the tenor (with the 5 year maturity seen as the most liquid) and specifically for indices whether the index was on or off-the-run with the latter seen as illiquid.
146. Whilst most respondents thought that a scope of clearing eligible CDS was most appropriate, some respondents did note that what might currently be considered as liquid may not be liquid further down the line.

CESR View

147. CESR fully supports enhancing the transparency of the CDS market. In order to reflect the anticipated move of sovereign CDS to central clearing, CESR is of the view that it is appropriate now to put forward recommendations in this space. CESR therefore recommends to the Commission that the regime be calibrated as for single name:
 - For trades up to €5m the price and volume should be disclosed in real time.
 - For trades between €5m and €10m the price and volume should be published at the end of the trading day.
 - For trades above €10m the price but not the volume should be published at the end of the trading day with an indication that the transaction has exceeded the €10m threshold.

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

148. CESR was assessing eventual failures and shortcomings in the level of pre-trade transparency for the following derivatives: equity derivatives, interest rate derivatives, commodity derivatives (including energy derivatives) and foreign exchange derivatives.
149. In the consultation paper, CESR asked the following questions:

1. Pre-trade transparency for derivatives

Q34: 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?

150. The majority of respondents (22 answers from buy side, sell side and exchanges) saw no lack of pre-trade transparency in derivatives market especially for RM or MTF traded instruments and more liquid derivatives like interest rate derivatives and FOREX derivatives.
151. One respondent argued that there is no lack of pre-trade transparency for exchange traded derivatives, but this same level of transparency does not apply for standardised products traded OTC.
152. In particular, some respondents proposed existing systems that help ensure transparency, such as requests for quotes (RFQ) electronic platforms, trade execution venues which compete for the best price, or through traditional voice broking.

Q35: Is pre-trade transparency readily available to all potential market participants?

153. The large majority of respondents (25 out of 31) believed that pre-trade transparency is easily available to market participants. Nevertheless, buy side respondents recognized that the sell-side has more information than the buy side.
154. Regarding interest rate and FOREX derivatives, no additional pre-trade transparency was considered necessary as a sufficient degree of information and accessibility was reported. In the equity derivatives space less transparency was perceived by respondents, but information on this may be obtained through the underlying prices or futures markets behaviour. In these participants' opinion this is not a major concern since most investors are professional.

Q36: 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.

155. On the consolidation of pre-trade information, the buy side and the sell side agree that in general information on interest rate derivatives, exchange traded instruments and more standardised derivatives is consolidated. However, only five respondents considered that no further consolidation is needed.
156. The main reported difficulties in consolidation are in equity derivatives and bespoke contracts. Nevertheless, data vendors are trying to develop solutions to disseminate aggregate data in those specific areas. In FOREX derivatives consolidation is already planned and two respondents mentioned that there are existing data vendors who calculate composite prices by consolidating data from a large number of feeds.
157. The buy side reported that non-standardised contracts do not have consolidated data available, but of these respondents, three also believed this information is of little interest to the rest of the market because it cannot be aggregated and it is not easily comparable anyway.
158. On the dissemination of information, respondents stated that pre-trade information is disseminated through a large range of providers like banks and brokers, who consolidate data individually but not at the market level. Three respondents advocated competition through multiple providers and platforms. This would result in valuable pricing information and ensure more efficient information flows than would be provided by a data consolidation

regime. Two respondents highlighted that investors who seek more aggregated data may use data vendors software tools to fulfil their needs.

Q37: 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.

159. Three respondents believed there were no drawbacks in a mandatory pre-trade transparency regime, although two of them felt prescribing this regime has no added value. The potential benefits were considered to be the additional confidence pre-trade transparency would provide to investors and improved pricing.
160. The sell side respondents expressed concerns in relation to the impact on liquidity, potential signalling of proprietary positions and higher concentration of exposures if a pre-trade transparency regime is prescribed for derivatives. For equity derivatives one respondent noted that pre-trade information contributes to more efficient prices but that solution should be balanced with the loss of anonymity.
161. Other problems referred by some participants include an eventual negative impact on the ability to hedge specific risks if more standardisation or homogenisation is prescribed on OTC transactions in order to achieve a pre-trade transparency regime.
162. One respondent mentioned that a pre-trade transparency regime for plain vanilla derivatives should not impose more constraints than rules already prescribed for RMs or MTF.

Q38: 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?

163. 19 respondents saw no added value in a pre-trade transparency regime for derivative markets. In fact, sell side respondents' feared that pre-trade transparency may have negative impacts on interest rate derivatives and FOREX derivative markets, particularly in the ability to price derivatives.
164. Three respondents thought that in a pre-trade transparency framework, information like bid price, ask price and volume could be disclosed for all derivatives. However, two respondents argued that no identification of the bidder and offeror should be made. One respondent saw value in identifying the dealer and providing additional information like the price history, if available, and the size of the offer.
165. One respondent presented a pre-trade transparency framework and argues that it should be tested and not assumed that the same solution proposed for cash equities would be suitable to derivatives. Inefficiencies in markets should be identified and solutions are not only provided by a transparency regime. Finally, the solution adopted should be designed to avoid a harmful impact in market liquidity, price formation and best execution.

Joint summary of the responses received on Q34 to Q38

166. The majority of entities and associations that submitted responses seemed to be satisfied with the current level of pre-trade transparency available to participants that actually trade. The reasons they exposed rank from the preference of market led solutions to the particularities in



quoting bespoke contracts or the possible inclusion of the credit quality in the pre-trade prices and the wholesale profile of investors.

167. Those respondents who supported strengthening pre-trade transparency saw it as a way to increase competition and facilitate efficient price formation. In general, the respondents indicated that pre-trade transparency is not offered in a consolidated manner. However, it was argued that this fact does not result in any negative impact as wholesale participants should have the capacity to integrate different sources and bespoke contracts are not easily quoted in advance of an indication of interest.
168. General drawbacks of pre-trade transparency measures were noted to be: reductions of liquidity, signalling proprietary positions or information, higher concentration, etc.
169. General benefits of pre-trade transparency measures mentioned were: gaining in investors' confidence, more efficient price formation, help to avoid mispricing contracts, etc.
170. In a similar way, the majority of respondents did not feel pre-trade transparency necessary for any derivative class. However, there were some respondents that considered that standardised contracts would be more suitable for strengthening any pre-transparency regime.

CESR View

171. CESR is of the view that there is currently an unlevel playing field in the EEA with respect to the provision of pre-trade transparency for instruments other than shares. CESR therefore recommends that current voluntary arrangements are put on a formal footing and that a compulsory harmonised pre-trade transparency regime be introduced. The regime should apply to organised trading platforms (RMs and MTFs) with respect to the non-equity instruments traded on these platforms. Similar to the pre-trade transparency regime for equity, this regime needs to be refined to provide appropriate pre-trade transparency standards for various market structures and trading models, taking into account the various instruments and asset classes traded. As for equity, this may also involve the provision of appropriate waivers.
172. Given the different characteristics of the wide range of products concerned, each with its respective market microstructure and the varying degree of liquidity exhibited in these markets CESR does not, at this stage, see benefits in introducing mandatory pre-trade transparency requirements to the OTC space. Nevertheless CESR would welcome that any future regime allows Member States to introduce local requirements if they deem them to be necessary given the specificities of their markets in question.

2. Post-trade transparency for derivatives

173. In the consultation paper CESR asked the following questions:

Q39: 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?

Q40: 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?

Q41: Is post-trade transparency readily available to all potential market participants? Does this vary by asset class?

Q42: 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.

Q43: 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?

Q44: 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?

Joint summary of the responses received on Q39 to Q44

174. From the variety of responses received on the perception of a lack of post-trade transparency in terms of access to the relevant information, the majority of responses seem to be satisfied with the current level of post-transparency. The reasons given for this range from the possible constrictions they could have to transfer risk to the eventual existence of trade repositories.
175. Others respondents, by contrast, are supportive of a strengthening of the current level of post-transparency as they perceive that there is a lack of data in OTC derivatives markets.
176. The responses vary on the current level of information available to all potential markets participants.
177. General drawbacks of pre-trade transparency measures were given as: decrease of liquidity, eventual difficulties for hedging, loss of anonymity, etc.
178. General benefits of pre-trade transparency measures are: increases of credibility of the market, restoration of market confidence, higher comfort for small players, give useful price signals.

CESR View

179. CESR recognises that the current stage of the analysis undertaken, given the heterogeneity of all the OTC derivative segments included in the consultation paper, is still in an early phase. Nevertheless CESR is strongly of the view that enhancing post-trade transparency for these assets will assist market participants in making investment decisions as well as in supporting more resilient and transparent markets in general.
180. CESR therefore recommends to the Commission that a harmonised post-trade transparency regime for these assets should be further developed. CESR stands ready to assist the Commission in calibrating a regime for these assets which, takes into consideration the different features of the markets in question.



ANNEX I: RESPONDENTS TO THE CONSULTATION PAPER (NON-CONFIDENTIAL RESPONSES)

ABI (Association of British Insurers)
ACI (The Financial Markets Association)
Af2i(Association Française des Investisseurs Institutionnels)
AFME (Association for Financial Markets in Europe), BBA (British Bankers' Association) and ISDA
(International Swaps and Derivatives Association)
APCIMS (Association of Private Client of Investment Managers and Stockbrokers))
AXA INVESTMENT MANAGEMENT
BDEW (Bundesverband der Energie- und Wasserwirtschaft e.V.)
Bloomberg L.P.
BME (Bolsas y Mercados Espanoles)
Bundesverband Investment und Asset Management e.V.
BVR
CFA Institute
CNMV Advisory Board
Danish Mortgage Bank Association
Deutsche Börse
EACB (European Association of Co-operative Banks)
EBF (European Banking Federation)
EFAMA (European Fund Management Association)
ESBG (European Savings Banks Group)
Euroclear
EuroInvestors (European Federation of Investors)
FBF (French Banking Federation)
FESE FEDERATION OF EUROPEAN SECURITIES EXCHANGES (Federation of European
Securities Exchanges)
FOA (Futures and Options Association)
ICMA (International Capital Market Association)
IMA (Investment Management Association)
Interactive Data
Legal and General Group, plc.
London Stock Exchange Group
Markit
NASDAQ OMX
NBIM
NYSE EURONEXT
Schroders Investment Management
SWEDISH SECURITIES DEALERS ASSOCIATION
Thomson Reuters
Tradeweb
Wholesale Market Brokers' Association (WMBA) & London
Energy Brokers' Association (LEBA)
Zentraler Kreditausschuss