

CESR's Consultation Paper
Equity markets
(CESR/10-394)
Comments by AMAFI

The Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

As a preamble, AMAFI regrets that the time allowed to respond to the consultation was not set at the three-month standard applicable to significant issues (see CESR's consultation policy – CESR/01-009). This is especially so since many consultations are on-going at EU level but also at national level, including the four consultations that CESR has launched at the same time with similar deadlines. We regret that the short response time does not allow for a thorough examination of the questions raised and does not enable firms and associations to think of and propose thought out alternative solutions that meet the regulatory objectives at stake.

Importantly as well, these timing constraints did not enable AMAFI to share views with their European counterparts. As a result, the positions that we put forward in this paper are representative of our members' but have not been benchmarked with others'.

Lastly the time allowed did not give us the time to assess technical issues such as the adequacy of the existing deferred publication framework or the enlargement of the MIFID transparency regime to equity-like instruments admitted to trading on a RM. On these two subjects, AMAFI suggests CESR to carry out deeper analysis in relationship with the financial industry.

TRANSPARENCY

PRE-TRADE TRANSPARENCY

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

AMAFI supports the general approach adopted by CESR on pre-trade transparency. In particular, AMAFI welcomes the "ruled based" approach which should facilitate market integration.

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

AMAFI has always considered that pre-trade transparency is a key element of a sound equity market. Having saying that, the current four types of waivers from pre-trade transparency obligations do not raise major concerns.

Large in scale orders

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

For AMAFI, there is no objective reason to change the current calibration for large in scale orders. The diminution of the average trade size observed on the regulated markets in the recent years does not mean that the average size of client's orders has diminished. The development of algorithm trading and high frequency trading explains the trend in the reduction of the average trade size. As such, these kind of trading can not justify the modification of the calibration for large in scale orders.

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

As stated above, there is no evidence that the current calibration should be changed.

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

Option 2 is more appropriate. The LIS waiver is calibrated to protect large orders from adverse market impact. As soon as the size of the "stub" is under the size of the waiver, there is no longer potential adverse market impact.

AMAFI welcomes CESR's initiative to have a constituent rule on this subject.

Reference price waiver

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

AMAFI believes that there is no need to include minimum thresholds for orders submitted to reference price systems. These thresholds would prevent investment firms from providing retail clients better prices and executions costs than those of the regulated market or MTFs.

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

AMAFI welcomes the clarification on the reference price waiver suggested in Annex 1. AMAFI considers that CESR should also clarify that the reference price could be different than the EBBO or the midpoint of the reference price system price system. Any price inside the "European BBO" or the "Reference BBO" should be allowed as it improves the price for both of the counterparts.

Negotiated trades

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

Even before MIFID, the negotiated trade waivers were in place in France. AMAFI considers that there is no reason to modify these waivers.

Order management facilities

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

AMAFI does not have any specific comment on this waiver.

Systematic Internalisers

AMAFI's members have not put in place systematic internalisers arrangements offered by MIFID. Anyway, the rules of this regime were deeply discussed during the elaboration of the MIFID regulation on the basis that an investment firm which wants to put in place an "internal market" should be submitted to equivalent rules (in terms of pre-trade transparency and quotes) than those applicable to RMs or MTFs.

Therefore, AMAFI considers that there is no reason to change the systematic internaliser framework today. If some minor changes are considered necessary by the regulators or other part of the industry, it cannot be at the expense of the original purpose of the regulation.

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

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

See statement above.

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

See statement above.

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

See statement above.

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

See statement above.

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

See statement above.

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

See statement above.

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

See statement above.

POST-TRADE INFORMATION

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

AMAFI fully approve the multi-pronged approach proposed by CESR and the setting up of CESR/Industry Working Group to finalise the development of standards and clarification amendments.

Publication delays

Question 18: Do you agree with CESR's proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.

AMAFI is in favour of a publication "as close as to instantaneously as technically possible". In our view, this should be the standard applied and enforced for all participants. Therefore AMAFI welcome CESR's proposal to clarify the rule.

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

AMAFI considers that the one minute deadline is not an issue, and approves this reduction.

Deferred publication

AMAFI considers that it is necessary to maintain a differed publication regime in order to limit the risk taken by investment firms. The first priority should be to enforce the good application of the rule, that is to say to verify that the investment firm publishes its transaction as soon as the risk is already unwound and not at the end of the delay.

AMAFI does not have today sufficient information to assess whether the regime is well calibrated or not but would not be opposed to shorten of the delays. AMAFI considers that the re-calibration of the differed publication thresholds and delays should be assessed by the CESR/Industry Working Group.

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

See statement above.

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

See statement above.

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

See statement above.

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

See statement above.

TRANSPARENCY OBLIGATIONS FOR EQUITY-LIKE INSTRUMENTS

AMAFI is not against CESRs' approach. But first, that there is a need for a fully harmonised classification of Equity-like instruments in Europe. Then, for each financial instrument, CESR's should carry out a deep analysis before requesting a transparency regime. For instance, the process of trading in ETF is completely different than the process of trading in equities. It is not assumed that the current transparency regime fits all equity-like instruments.

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

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

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

See statement above.

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

See statement above.

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

See statement above.

CONSOLIDATION OF TRANSPARENCY INFORMATION

AMAFI strongly believes that the issue of the consolidation of post trade data can only be solved by the setting up of the Mandatory Consolidated Tape (MCT). Given that, AMAFI considers that the mandatory use of an “Approved Publication Arrangement” (APA) is not appropriate because it introduces a new entity in the consolidation process. Investment firms should be authorised to send directly their trades to the MCT provided that they fulfil the rules of the MCT

Approved Publication Arrangements.

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

See statement above.

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?

See statement above.

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

See statement above.

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape (as described under 4.1.2 below)?

See statement above.

Cost of market data

AMAFI’s members are concerned about the current costs of trading data. CESR’s proposal that it should be possible to acquire pre- and post-trade data separately from each other would be a helpful improvement. In addition, data sets are in some markets similarly bundled for a number of countries, preventing users to acquire only the data pertaining to country A but forcing them to purchase the data sets for countries B and C at the same time. AMAFI would request that such forced “bundling” of data should also be undone.

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

See statement above.

Question 32: In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.

See statement above.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.

AMAFI welcomes this proposal in order to have a harmonisation of the market practises in this area.

MiFID Transparency Calculations

Question 34: Do you support the proposal to require RMs, MTFs and OTC reporting arrangements (i.e. APAs) to provide information to competent authorities to allow them to prepare MiFID transparency calculations?

AMAFI as always considered that MIFID transparency calculations should be based on all the market (RMs, MTFs and OTC). Therefore it is important that the competent authorities receive all the information necessary for the calculations. Anyway and as stated above, the AMAFI considers as a priority the implementation of a centralised database for post-trading data supervised by ESMA. In this perspective, all the data will be available on the MCT.

Mandatory consolidated tape

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

As stated above, AMAFI strongly supports the approach to a European mandatory consolidated tape. Generally speaking, AMAFI agrees with the main characteristics of the MCT proposed by CESR.

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

AMAFI considers that investment firms should be allowed to send their trade reports directly to the MCT and not through an APA.

Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?

It is commonly shared that the quality of post trade information is a key element in a fragmented market and that, as today, the current MIFID rules have not deliver an acceptable result for all the stakeholders. Compared to "multiple approved publication arrangements" solution, the setting up of a MCT would permit, in a reasonable time scale, to have a common and reliable data base and restore confidence in the efficiency of the equity market.

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

AMAFI's considers that a consolidated base of post trade information would necessary lead to reduce the costs of post trade data.

REGULATORY BOUNDARIES AND REQUIREMENTS

Regulated markets vs. MTFs

Even if the question of the level playing field between RM and MTFs (operated by a RM or an investment firm) seems to be due to a difference in the supervision of the various entities rather than a loophole in the regulation, AMAFI approves the additional requirements proposed by CESR.

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

See statement above.

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

See statement above.

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

See statement above.

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

See statement above.

Investment firms operating internal crossing systems

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

AMAFI agrees with the approach of CESR concerning internal crossing systems.

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

In general, AMAFI agrees with the bespoke requirements. However, AMAFI considers that the identification of the crossing system should not be part of real time post trade information. This information could be display on a period basis that is yet to be determined.

AMAFI wonders whether the BIC code proposed by CESR to identify the crossing system is the BIC code of the investment firm or a specific one.

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

AMAFI is in favour of this proposal but considers that CESR should be more explicit on the goals of the proposal. Is it to provide the market a "fair access" to the system, to enlarge pre trade transparency or both? If the goal is pre trade transparency, therefore the MTFs which use pre trade transparency waiver based on reference price system should also be subjected to the same limit..

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

The threshold should be put at 0.5 % of the total average daily turn over of the stock

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

There is no reason to consider that a different limit should be given for systems resulting from linkages of various brokers' internal systems.

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

Investment Firms will need to review their execution policies and will have to implement a declutching system in their crossing engine.