



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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CESR Level 3 Guidelines on MiFID Transaction reporting

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Introduction

1. Article 25 of MiFID establishes a transaction reporting regime where investment firms shall submit reports of executed transactions to their competent authorities regarding financial instruments admitted to trading on regulated markets. The reports can be made either by investment firm itself, a third party acting on its behalf, or by a trade matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed. Competent authorities shall further exchange the reports between themselves.
2. The purpose of transaction reporting is to enable competent authorities to monitor the activities of investment firms and to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.
3. CESR-Tech and TREM project are preparing the technical system for exchanging the data between CESR members. In addition to the technical work, some issues have been identified where there is a need for harmonised approach by CESR members. This document provides guidance to three aspects of transaction reporting; practical solutions for the reporting obligations for branches; an answer to what constitutes “execution of a transaction” for transaction reporting purposes; and operational solutions for some aspects of reporting channels.
4. The outcome of CESR’s work is reflected in the common guidelines set out in this paper which do not constitute European Union legislation and will not require national legislative action.
5. CESR members will apply the guidelines in their day-to-day regulatory practices on a voluntary basis. Even if they do not directly apply to market participants, there is a general commitment by all CESR members to consider that these entities would fulfil their requirements when following the recommendations set out in this paper.
6. The manner in which the guidelines will be applied will be reviewed regularly by CESR. These guidelines will not prejudice, in any case, the role of the Commission as guardian of the Treaties.
7. This document is based on a consultation paper published in February 2007 (CESR/07-047). The outcome of this consultation is summarized in the feedback statement (CESR/07-319).



Reporting by branches

8. CESR has considered the issue of the transaction reporting obligations of branches of investment firms under the MiFID framework. Parallel work on passporting issues has been under way by CESR and the Commission. Apart from that discussion and especially given the technical impact it would have on investment firms' systems, the specific question of reporting by branches is also handled in this paper. These two work streams are not conflicting with each other. Depending on the outcome of the passporting discussion, the issues discussed in this paper may become less relevant. In any case, there may still be situations where the MiFID transaction reporting requirements would request the branch to send transaction reporting to two authorities. The proposals are intended to solve those potential practical difficulties.
9. Article 32(7) of MiFID provides that the competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down, among others, in article 25. However, in respect of services provided by the branch outside the territory of the host Member State, the branch would have to report transactions to its home regulator under the home Member State reporting requirements.
10. While it should be highlighted that MiFID provides for clear split of responsibilities in this respect, CESR notes that in practice it may cause unnecessary difficulties for branches to split their reporting between two authorities. Therefore CESR members are committed to seeking for flexible practical solutions to the extent permitted by MiFID.
11. CESR notes that according to Article 25(6) of MiFID the competent authorities of the home Member States will be forwarded, should they so choose, all transaction reports received from branches by the competent authorities of the host Member States. Hence, home state authorities will have access to all information about transactions carried out by branches of entities under their supervision.
12. Taking into account the rules of MiFID, CESR notes that practical solutions aiming at reducing the potential splitting of transaction reports by branches should be based on co-operation between members. It should also be noted that according to Articles 25(6) and 32(7), a solution where reports by branches would only be channelled to the "home" authority of the firm is not possible.
13. Against this background, and without prejudice to the requirements of MiFID and the national laws implementing it, CESR members have agreed that they should adopt a concrete and practical solution in respect of the transaction reporting obligations of branches of investment firms, which would allow the branch to send reports of any transactions carried out by the branch to the "host authority" according to the format in use in that jurisdiction. That would require a choice by the branch in question as well as an agreement by both competent authorities. By issuing these guidelines CESR members express their agreement to such arrangements. On the other hand CESR recognises that this possibility for firms does not prevent them using two reporting channels and splitting their reporting accordingly.

Level 3 Guideline:

CESR acknowledges that all transactions executed by branches where the service is provided within the territory of the Member State where the branch is located, shall be reported to the host Member



State competent authority, whereas other transactions executed by branches shall be reported to the home Member State competent authority.

However, CESR recognizes that, from a practical point of view, it would be burdensome for branches of investment firms to be obliged to report their transactions to two competent authorities. Where an investment firm however chooses to use two reporting channels this choice should not be challenged by the host competent authority.

Therefore, all transactions executed by branches could be reported to the host Member State competent authority, if the investment firm elects to do so. In these cases transaction reports should follow the rules of the competent authority to which the report is made.



What constitutes execution of a transaction (to be reported)

14. According to Article 25(3) of MiFID investment firms shall report executed transactions to their competent authorities. Article 5 of the implementing Regulation specifies that for these purposes "transaction" means the purchase and sale of a financial instrument and excludes specifically securities financing transactions; exercise of options or of covered warrants as well as primary market transactions.
15. The MiFID transaction reporting regime is based on reporting of executed transactions and not directly information on individual orders. It is therefore necessary to separate execution of a transaction from reception and transmission of orders.
16. CESR notes that there will be many different circumstances in which transactions take place. In some cases a client will go to an investment firm who then executes a transaction with a market counterparty. However, there may also be more complicated situations where more than one investment firm is involved in the transaction chain (e.g. the client goes to Firm A who then goes to Firm B who in turn deals with market counterparty). Such a chain may involve several transactions between intermediaries or it may include passing of an order by an investment firm to another investment firm for execution.
17. CESR members have considered the conditions under which, in such a transaction chain, the investment firms involved may be said to be executing transactions as opposed to simply receiving and transmitting orders. CESR members note that based on current differences in market structures (including the size of the market) the treatment of such a chain may, to some extent, differ from Member State to another.
18. The goal of Article 25 is to facilitate the supervision by competent authorities. Transaction reporting data is needed to enable supervisors to detect and pursue suspected instances of market abuse, client abuse or other breaches of relevant MiFID provisions.
19. Within the overall MiFID framework and with regard, in particular, to their obligation to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market (Art. 25(1) of MiFID), CESR members recognize that competent authorities have a justifiable need to specify under which circumstance transactions are executed and hence need to be reported. In addition to transaction reports, CESR members need other information on the different steps of executing a transaction. In this regard practices differ from member to member. This information (including for example the identity of the originator of the order) may be collected as part of the transaction report or it may be acquired by other means (for example *ad hoc* requests that can take place ex-post).
20. These differences are due to different supervisory techniques, in relation to different structures and sizes of the markets and will probably continue to exist after the implementation of MiFID. This does not mean that certain supervisory methods are superior to others. It also remains to be seen what impact the possible changes in market structures post MIFID will have on the supervisory methods.
21. Therefore it seems inevitable that certain differences in the collection and exchange of supervisory information will exist at the time of the implementation of MiFID.



22. However, in order to enhance convergence on transaction reporting obligations for firms, CESR members have agreed a common treatment of collecting transaction information. CESR members commit themselves to collect transaction reports of those transactions which are conducted by the firms transacting directly with or as an execution venue (immediate market facing investment firms) and those transactions where the investment firm is undertaking the transaction on its own accounts (either on market or off-market). Additionally they have agreed they should be able to exchange the information necessary to identify the ultimate client or the investment firm which is dealing with the ultimate client
23. This has been seen as an interim solution in order to avoid disruptions in current reporting and supervision systems. Following one year's experience of full operation of the MiFID transaction reporting regime (including the operation of the exchange mechanism, the effect of changing the reporting lines and the choices of requiring or not the client identification in the reports) CESR will review the reporting regime with a view to achieving further convergence.

Level 3 Guidance:

As an interim solution CESR members have agreed to commit themselves to collecting the following:

- (a) Information relating to transactions conducted by the investment firms transacting directly with an execution venue (immediate market facing firm);**
- (b) information relating to transactions not covered by (a) above but where the investment firm is undertaking the transaction on its own accounts (regardless whether the transaction is executed on RM or MTF or outside them) and**
- (c) information which is necessary to identify the ultimate client on whose behalf the transaction is undertaken or that information which is necessary to establish the identity of the investment firm which is dealing with the ultimate client where the competent authority is not already in possession of such information or where it could not obtain such information in a sufficiently timely manner.**

CESR members shall exchange the information in points (a) and (b) and, if requested and when available the information in point (c).

After there has been a year's experience of full operation of the MiFID transaction reporting regime, CESR will launch a review of the scope of the transaction reporting obligation with a view to producing definitive guidance in this area which aims at converging practice between CESR members.



Approval of reporting channels

24. According to the Article 25(5) of MiFID, transaction reports can be made by different means: by the investment firm itself, by a third party acting on its behalf, or by a trade matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed.
25. Article 12 of the implementing Regulation further specifies what requirements reporting channels shall meet and the conditions for approval of the systems (where relevant) by competent authorities.
26. Although these provisions require that some of these reporting systems are approved by a competent authority, the process of approval is not specified in details, nor do the reporting systems benefit from a European Passport. A reporting system willing to operate in several CESR members need to obtain the necessary approval individually in these jurisdictions and relevant local procedures apply.
27. CESR members however recognise that the market would benefit if the approval processes could be streamlined so that national process in one CESR member would recognise if a prior approval in another CESR member has been granted. This is especially relevant for requirements (a) – (d) of Article 12 of the Implementing Regulation. Issues which relate to the ability of the reporting channel to submit the reports according to the relevant national requirements, like point (e) of Article 12 need to be evaluated nationally in each case.

Level 3 Guideline:

CESR members agree to take account of any prior approval by another CESR member (home competent authority of the reporting channel) for reporting channels when conducting their work under Article 25 of MiFID and Article 12 of the Implementing Regulation. To the extent permitted by national law, they will adapt their internal processes to rely on the evaluation of other members and to avoid unnecessary duplication documents.