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For information: WG2 – Securities (Members & Paper-recipients)
Joint Focus Group on OTC derivatives and market infrastructures

Subject: *For information: final response to CESR on non-equity markets
transparency*

Dear member,

For your information, please find attached the EBF's final response on non-equity market transparency, which was today submitted to CESR. We would like to thank all members for their contributions to this response.

Yours faithfully,

Robert Priester
Head of Department

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Enclosure: 1 (D0875D-2010)

Set up in 1960, the European Banking Federation is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

Response to CESR Consultation Paper on its draft technical advice to the European Commission in the context of the MiFID review: Non-equity markets transparency

Key Points

- The EBF acknowledges CESR's intention to increase transparency in the fixed-income markets. The EBF would support a post-trade transparency regime for products with a sufficient degree of liquidity. Such a regime must however be thoroughly designed to avoid negative effects on market liquidity.
- The regime would most importantly include sovereign bonds and corporate bonds. It could be extended to structured finance products with a sufficient degree of liquidity, although it is rare for structured finance products to be traded on the secondary markets.
- Such a post-trade transparency regime could be informative for retail investors and the wider public. The focus in its design should therefore be on ease of understanding, rather than on the level of detail.
- The EBF would oppose any additional mandatory pre-trade transparency regime for the fixed-income markets. Pre-trade transparency is already mandatory for all products that are traded on regulated exchanges. For other products, it essentially takes the form of price quotes. Any requirements beyond that would risk having a detrimental effect on market liquidity.
- For derivatives including Credit Default Swaps, the EBF believes that greater transparency should primarily facilitate market oversight and should be directed at supervisors, rather than the market as a whole. A range of initiatives is already under way for that purpose, including the upcoming regulation on European Markets Infrastructure which is currently being drafted by the European Commission.
- Some aggregate information could helpfully be extracted from these initiatives to be provided to the wider markets.

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Related documents: CESR consultation document: <http://www.cesr-eu.org/popup2.php?id=6629>

GENERAL REMARKS

The European Banking Federation welcomes CESR's thorough work to review the issues addressed in this consultation paper. At the same time, the EBF would like to express disappointment about the short timeframes given to the industry to respond to this and other consultations that are ongoing in parallel. The Federation is aware that this is a result of the Commission's timetable and that CESR has already extended the timelines, compared with the Commission's initial request. Nevertheless, such short timing inevitably impinges on the quantity of input that can be collected for the EBF's responses, and therefore ultimately also on the quality and detail of the industry's feedback.

As a general remark on the transparency regimes considered by CESR, the EBF would note that non-equity markets have different structures in the retail and in the wholesale markets, respectively. Transparency rules must be tailored to these specificities, as well as clarifying the objective of a transparency regime. The EBF, overall, believes that:

- Market transparency in the bond markets is entirely satisfactory for professional investors. It is also satisfactory in the derivatives markets, even though aggregate information to the market, as a by-product of the European Market Infrastructure Regulation, would be considered helpful.
- As per structured finance products, it should be recognised that until recently, intermediaries have generally packaged and sold these assets to third parties in a less than optimal way, measured in terms of transparency. That said, recent initiatives, both public-driven (CRD, ECB) and from the industry are already strongly contributing to increasing the levels of market transparency for these instruments.
- Ways of providing greater transparency to retail investors and to the public as a whole can be considered. This must however be limited to post-trade transparency for liquid products, in order to be meaningful and in order to avoid an adverse impact on the market. Indeed, additional mandatory pre-trade liquidity would force investment firms to continuously maintain two-sided quotes for products which are unlikely to trade for weeks or months. This would be costly, burdensome and without any added value.
- The EBF does not believe that additional transparency should be mandated in terms of market efficiency. Rather, spreads are already comparatively tight (taking into account product liquidity). A mandatory transparency regime, depending on its design, would rather risk leading to increased spreads.

RESPONSES TO CESR'S SPECIFIC QUESTIONS

Scope of corporate bonds transparency regime

Q. 1. 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?

In general, industry participants feel that there is a large range of pre- and post-trade information. This includes information provided by market makers and voice; electronic platforms such as Bloomberg, Market Axess, Tradeweb, TLX and others; and quotes/ runs/ axes in electronic format.

Pre-trade transparency

In the area of pre-trade transparency, the interest rate derivatives market is a good example of what information is already available for market participants:

- Bloomberg and TradeWeb entertain live trading platforms with a 'Request for Quote' (RFQ) functionality. The RFQ allows to put several dealers in competition in respect of a potential order, thereby allowing best price execution in an efficient manner.
- Clients have the possibility to access live pricing information on Bloomberg and Reuters and to download this information into their proprietary systems/ spreadsheets.
- Broker screens are widely available on a variety of publicly accessible platforms, including e.g. Bloomberg and Reuters. These screens cover a broad range of benchmark instruments, for example swaps, xccy swaps, basis swaps, block futures, inflation swaps, strategy trades and others.
- Single dealer pricing and execution screens are available on Bloomberg and TradeWeb, which provide live 'click to trade' functionality.
- Individual dealers' proprietary platforms provide live pricing, execution, analysis tools, news and other information; often on a wider range of products than the multi-dealer venues.

This wide range of information is considered entirely sufficient. Mandatory pre-trade transparency would not add any value and is therefore opposed by the EBF.

As opposed to this, some improvements can be considered in the area of post-trade transparency.

Post-trade transparency

Significant efforts have been made over the past few years to enhance post-trade information.

On corporate bond markets, for example, the International Capital Markets Association has implemented a system which reports at the end of the trading day all transactions under € 1 million. This is a first important step, in the view of the EBF, which deserves greater consideration.

In the area of derivatives and specifically, interest rate derivatives, post-trade transparency is provided through same-day electronic confirmation tools (e.g. MarkitWire) and clearing (SwapClear).

Regulators, for their part, are starting to receive reports from the Global Interest Rate Derivatives Trade Repository and will soon have direct access to that database to conduct their own analysis.

Apart from regulated markets, it is true that there is no *public* venue to access post-trade data. European banks do not believe that there is a need for such a single public venue. Generally, pre-trade transparency information gives good indications about the markets as a whole, as it already incorporates adjustments made to reflect the trade details of the most recently executed transactions (especially the price, but also the size). Nevertheless, the EBF acknowledges the supervisory intention to increase wider transparency on the non-equity markets.

As a general remark, the EBF would oppose that the US TRACE system be copied in the EU. While there is certainly merit in analysing its functioning and market impact, it must be borne in mind that the market conditions in the US are quite different from those in the EU.

Q.2 Are there other particular instruments that should be considered as ‘corporate bonds’ for the purpose of future transparency requirements under MiFID?

None, in the experience of the EBF.

At CESR’s public hearing of 27 May, the EBF noted however CESR’s intention of applying the transparency regime to sovereign bonds, in addition to corporate bonds. The EBF believes that this might be a good idea, if the objective of the regime is to provide greater transparency about the fixed-income markets to retail investors and the wider public. Sovereign bonds, depending on their type and issuance size, are amongst those types of fixed-income instruments that retail investors are most likely to invest in.

Pre-trade transparency for corporate bonds

Q.3 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.

Covered bonds are different from both corporate bonds and structured finance products. In design, they can be simple products and they do not embed derivatives. Typically, they are low-risk products. The specific structure of covered bonds varies between Member States. Often, the first line of defence is the issuer’s creditworthiness. In such case, the underlying assets only provide a back-up guarantee against the issuer’s potential default.

In the case of the issuer’s default, the investor’s claim is however on the underlying backed of credits. In this aspect, covered bonds may appear similar to structured products.

Q. 4 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?

In the corporate bond markets, dealers act as market makers by quoting prices at which they are willing to sell to (ask) or buy from (bid) other dealers and their clients. Consequently, pre-trade transparency ensuring price discovery is already available in this market (cf. the above description of sources).

Moving to exchange-like platforms is only possible for the most liquid bonds. In addition, listing some bonds and not others by the same issuer may have an adverse impact on the issuer's yield curve. Large tickets should remain OTC. Otherwise, a negative effect on price discovery and execution could be expected. Concretely, if other investors are aware that an investment firm acting as a market maker has built a large position in a certain instrument, they will build up price pressure to force this firm to sell below market price.

Therefore, banks do not perceive any shortcomings in the classical corporate bond markets.

Q. 5 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.

Equal access to pre-trade information exists for bonds that are traded on regulated exchanges. Price quotes are also available to all investors potentially interested to acquire a certain bond, including retail investors who can obtain quotes from their brokers.

Commercial data sources are by definition only available to those that pay for them, but would also not be of any use for retail investors. This is in view of the format of information, but also in view of the natural fact that prices for lower volumes (i.e., retail investors) differ from the prices for higher volume investments (i.e., wholesale investors).

Q. 6 Is pre-trade transparency efficiently disseminated to market participants? Should pre-trade information be available on a consolidated basis?

The EBF is unsure about the objective of such an exercise, in light of the market structure and the infrequent trading of bonds. The number of bonds that can be obtained from several brokers or dealers is very limited. Price quotes can be obtained directly from these brokers or dealers. The cost of consolidating such information would be very large, for no apparent benefit.

Generally, it must be borne in mind that the markets for fixed-income instruments function quite differently from the equity markets. Investors typically adopt a 'buy-and-hold' strategy towards bonds. Transactions are therefore much less frequent than on the equity markets, but are typically of a larger size.

Also, the industry feels that post-trade information is of much greater value than pre-trade information.

Q. 7 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.

The EBF is unsure about the objective that would be pursued with such a pre-trade transparency regime. As noted above, both wholesale and retail investors have easy access to price quotes for all bonds available to them for investment. The EBF does not see any benefits from consolidated pre-trade transparency, while banks would expect major costs from such a regime.

Instead, European banks are concerned about the potential negative effects of pre-trade transparency requirements. There is in particular a serious risk that market makers would be ‘cornered’, i.e. that other market participants would take advantage of pre-trade transparency information to identify the holders of certain positions and offer deteriorated trading terms.

If CESR’s objective is that of encouraging retail participation in the bond markets, the EBF believes that this should rather be pursued in a targeted manner, e.g. through the use of educational tools and possibly, facilitated access to post-trade information.

Q. 8 What key components should a pre-trade transparency framework for corporate bonds have? What pre-trade information should be disclosed?

European banks do not believe that a consolidated framework for pre-trade transparency on corporate bonds should be established.

Post-trade transparency for corporate bonds

The EBF understands that CESR’s objective in mandating a post-trade transparency regime for bonds is to enhance the general public’s understanding and easy access to information about the financial markets. In establishing such a regime, the specificities of the fixed-income markets must be borne in mind. The EBF welcomes CESR’s considerations about the risks of a negative impact of additional post-trade transparency on liquidity. The timing for post-trade transparency requirements must be thoroughly considered.

Furthermore, the EBF notes that there is a large variety of corporate bonds, including for example government bonds, eurobonds, convertible bonds, and floating rate bonds. Any mandatory transparency regime will have to be clear on which types of bonds are meant to be covered by the regime and might have to take account of product specificities.

Q. 9 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?

The EBF does not see any added value in the inclusion of the notional value, but also no harm. The EBF would not suggest any other information to be included in the post-trade transparency regime.

Q.10 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).

The EBF has a number of objections to the proposed approach. Specifically:

- In the view of the EBF the regime should not capture all corporate bonds, but instead be limited to the most liquid bonds; at least in a first step. This is especially if CESR's objective is to enhance market transparency for retail investors. On the basis of some experience with such a regime, it can in a second step be considered to what extent an extension would be appropriate and beneficial to the broader public.
- Furthermore, transactions below a certain threshold should not be included. It would in practical terms be near-impossible to disclose every fixed-income instrument transaction that is carried out. Furthermore, an unlimited scope would not be of genuine value to the broader public.
- Large-trade sizes should not be penalised by the post-trade transparency regime. Therefore, there must also be a sufficient delay between the transaction date and the disclosure of the positions, in the order of at least one day or longer. This would allow the entity holding the exposure to turn the position around.

Generally, transactional data should be provided on an aggregated basis. The EBF would not support trade-by-trade reporting, except for trades executed on a regulated public venue/exchange. Too much transparency, otherwise, could have a negative impact on market liquidity, in particular for large OTC trades.

Especially, the calibration proposed by CESR would not be workable for trades over € 5 million, as it would give the market the same information whether a trade takes the size of € 6 million or € 60 million. Furthermore, disclosing such volumes swiftly to the markets would greatly hinder the hedging operations. The EBF therefore suggests that post-trade information for trades above € 5 million should only be published once settlement has taken place.

Subject to these limitations of the regime, European banks believe that the information proposed in paragraph 23 of CESR's consultation paper is the right one and could be helpful in serving the wider public's interest in increased transparency on the bond markets.

Generally, and based on the understanding that the regime is mainly intended for non-professional investors and the wider public, the EBF recommends that CESR focus on easy accessibility and ease of understanding of the transparency regime, rather than a great level of detail of information.

The EBF welcomes CESR's sensitivity with respect to the potential negative effect of a transparency regime on liquidity and CESR's proposals for delayed publication for transactions above certain thresholds.

Q.11 Should other criteria be considered for establishing appropriate post-trade transparency thresholds?

As noted above, the EBF does not believe that the objective of enhancing the wider public's understanding of and information about the bond markets would justify an unlimited scope of the transparency regime. Rather, the transparency regime should be limited to the most liquid bonds. On the basis of the experience that can be gathered with such a regime, an extension should be considered at a later stage, on the basis of a thorough impact assessment.

Q.12 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'?

Given the lower levels of liquidity on the bond markets and the objective of enhancing the wider public's understanding of the bond markets, the EBF does not believe that fast publication of the post-trade information is a priority for the regime. Instead, the focus should be on easy access and ease of understanding of the regime.

Publication at the end of the trading day, as a general rule, would seem appropriate to the EBF. As noted above, this is with the exemption of block trades above € 5 million, which should not be disclosed before settlement. Price transparency for these trades without information about the volume, in turn, would be irrelevant. Furthermore, in the view of the EBF, market makers should generally be exempted. Deferred publication should also be possible for less frequently traded instruments.

Structured finance products (ABS and CDOs)

Q. 13 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?

CESR rightly sets out the specificities of the markets for structured finance products. These markets indeed function quite differently from the corporate bonds markets, and there is virtually no retail participation in them.

The structured finance products have certainly experienced great difficulties over the past two to three years. However, these difficulties are not the result of a lack of either pre- or post-trade information. Instead, for the market the uncertainties that arose were with regard to the products themselves, individually. In respect of regulatory oversight, the EBF acknowledges supervisors' legitimate interest in having access to all relevant information necessary for comprehensive market oversight.

Conceptually, the EBF believes that the above-discussed post-trade transparency regime could be extended to ABS and CDOs. However, this is subject to a minimum degree of liquidity of these products. The EBF would not see any value in pre-trade transparency for structured finance products, nor in mandating post-trade transparency for products that do not experience any trading activity.

Q. 14 Is pre-trade transparency information readily available to all potential market participants?

As for the corporate bond markets, pre-trade information essentially takes the form of price quotes. Market participants have access to price quotes available to them for investment.

In the context of securitisation, CESR is certainly aware of the fundamental change to the level of market pre-trade transparency that the amendments to the CRD (CRD II) that entered into force on 7 December 2009 will bring about starting 2011. Article 122a(7) of the Directive mandates that sponsor and originator banks must ensure that ‘investors and prospective investors’ in ABS and other instruments have ‘readily available access’ to:

- ‘all materially relevant data’ on: (i) credit quality and performance of the individual underlying exposures; and (ii) cash flows and collateral supporting the underlying exposures, and;
- such information as is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures.

In that context, the European Central Bank is also assessing the possible roll-out of transparency standards in order to gain a better insight of the underlying assets of the ABS that it receives as collateral. The ECB has hinted at the possibility of distributing this information to the wider market.

Q. 15 Is pre-trade information currently available in the ABS market consolidated and effectively disseminated to those market participants who make use of it?

ABS are individualised products and lack standardisation. Each product must be carefully analysed in isolation before an investment decision is made. This is all the more so in light of the typically large transaction sizes. The scope for comparison of different transactions is therefore limited.

That said, market participants receive data from a range of data providers to inform their investment decisions. This information is perceived to be appropriate and sufficient for these markets.

Q. 16 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.

The EBF does not see any benefits in a pre-trade transparency regime for the ABS markets. Besides the inevitable and considerable costs it would impose on the industry, such a regime would rather risk being misleading. It would invite market observers to focus on limited information, where instruments should be analysed in detail, and it would invite comparisons between quite different products.

Q. 17 Which key components should a pre-trade transparency framework for ABS have? Which pre-trade information should be disclosed?

The EBF does not believe that a pre-trade transparency regime for ABS should be established.

Q. 18 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?

The difficulties that have been encountered in these markets during the financial crisis resulted from several sources of uncertainty, including general uncertainty about the future economic outlook and uncertainty about the prospects of individual firms. Market participants were understandably reluctant to invest in structured finance products, even though all applicable information was in principle available.

Q.19 Is pre-trade transparency information readily available to all potential market participants?

Against the background and further to response to question 14 the EBF would like to recall that already in February 2008 the EBF, in association with other European and global trade associations formally committed vis-a-vis the European Commission to improve the transparency of European securitisation¹. This commitment still holds today.

Furthermore, upcoming, industry-driven improvements will progress the level of simplicity and standardisation of certain securitisation structures:

- On the one side, the European Financial Roundtable and the Association for Financial Markets in Europe (AFME) are developing a new, prime securitisation market segment. Work is in progress the expectation being that the instruments fulfilling certain high level principles (i.e. quality, transparency, simplicity and standardisation) can be issued in 2011.
- On the other side, some national markets (Germany, France) have been actively promoting initiatives to strengthen transparency standards in many securitisation market segments.

Q. 20 Is pre-trade information currently available in the CDO markets consolidated and effectively disseminated to those market participants who make use of it?

CDOs are even more diverse in nature than ABS. The scope for comparison between different products is limited. Nevertheless, commercially provided data is available and seen to be sufficient.

Q. 21 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.

Cf. response to question 16.

Q. 22 Which key components should a pre-trade transparency framework for CDOs, have? Which pre-trade information should be disclosed?

The EBF does not believe that a pre-trade transparency regime for CDOs should be put in place.

¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/123&format=HTML&aged=0&language=EN&guiLanguage=en>

Post-trade transparency for structured finance products

The EBF acknowledges CESR's intention of providing greater market transparency for structured finance products and to assist with product valuation. European banks believe that greater post-trade transparency on these instruments could have some value for the markets; as opposed to a pre-trade transparency regime which would not be of any meaning, in the view of the European banking industry.

In light of CESR's objectives, it is also right to focus on ABS and CDOs that are considered as standardised. The definition of 'standardisation' will be essential to evaluate the merits of the regime.

Q. 23 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?

The EBF believes that some degree of liquidity, or a minimum trading frequency, is most important (i.e., criterion c)). It would not make sense to mandate post-trade liquidity to products that do not experience any trading activity.

Q. 24 Do you have specific ideas on which kind of ABS and which kind of CDOs should be covered by the first phase?

The EBF is uncertain about the very possibility to introduce a post-trade transparency regime for structured finance products. Such a regime would only make sense for sufficiently liquid instruments. It is doubtful that there is at all a certain number of ABS and CDOs that have the necessary degree of liquidity to feed into a meaningful transparency regime.

As noted above, banks feel generally that transparency on the products themselves is of genuine interest to the market, not transparency on the trading activity.

Q. 25 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.

Cf. our response to Question 24.

Q.26 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?

Please indicate whether your response is relevant for both ABS and CDOs.

Cf. our response to Question 24.

Credit default swaps (CDS)

The EBF is surprised about the below questions in respect of CDS and derivatives, in view of the work that is currently ongoing within the European Commission to propose a regulation on European Market Infrastructure (EMIR) and to propose legislation on short selling,

including on CDS. The EBF would welcome clarification from CESR as to how its work on the below issues will feed into the Commission's ongoing work.

On all of the below questions, the EBF would furthermore note that there is a large variety of very different CDS and derivatives, forming very different markets. This diversity must be borne in mind in proposing any regulatory measures.

Furthermore, banks believe that the objective of greater transparency in the CDS and derivatives market should be that of providing the necessary tools to supervisory authorities to monitor systemic risks. I.e., the main recipient of information should be the supervisory authorities. Market participants overall feel that they have good access to all relevant and meaningful information, even though banks would see merit in some aggregate information, which could relatively easily be provided through the new EMIR structures.

Detailed information to the markets, as opposed to this, could be problematic. In particular, there is a risk of 'cornering' were the transparency framework to allow market participants to identify or guess the positions held by other market participants. This risk would be particularly acute if there were to be a requirement to publish the issuer name. Any regulatory proposals must be mindful of this risk in order to avoid negative consequences and in particular, a decrease of liquidity on these markets.

Pre-trade transparency for CDS

Q.27 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?

As evidenced by CESR's own description of the market functioning, European banks do not believe that there is any problem with pre-trade transparency for CDS. In addition, it must be borne in mind that there is a large number of non-standardised CDS, with all sorts of features. Transparency on the products underlying these CDS is much more important than information on the CDS themselves.

Q. 28 Is pre-trade transparency information readily available to all potential market participants?

The CDS markets are mostly professional markets. Sufficient information targeted at these investors is available, reflecting in form the functioning of the markets.

Equity derivatives, as a specific part of the markets, are standardised and often traded on exchanges, meaning that the trading platform's respective pre- and post-trade transparency requirements apply to them.

Q. 29 Is pre-trade information currently available in the CDS market consolidated and effectively disseminated to those market participants who make use of it?

Information is not necessarily consolidated but is provided in a way that fits the functioning of the markets. Market participants feel entirely comfortable with the amount and format of the information available.

Q. 30 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.

European banks believe that the current, commercially-driven structures are functioning well and that there is no need for a mandatory pre-trade transparency framework for CDS.

Q. 31 Which key components should a pre-trade transparency framework for CDS have? Which pre-trade information should be disclosed?

The EBF does not see any need for further pre-trade transparency, besides the commercially available solutions. Today's commercial solutions are functioning well.

Post-trade transparency for CDS

Q.32 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).

The European Commission is currently working on specific proposals for the European Market Infrastructure Legislation, which will mainly serve to provide information to the competent authorities. However, European banks believe that this framework can and should also be used to provide aggregate information to the markets. Besides that, the EBF does not see any need for a separate post-trade transparency regime for CDS.

Q.33 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).

Derivatives

Pre-trade transparency for derivatives

Q. 34 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?

European banks do not believe that there are any shortcomings with respect to pre-trade transparency for derivatives. CESR rightly notes that transparency already exists for contracts traded on regulated markets or Multilateral Trading Facilities (MTFs). It is estimated that this covers 20-30% of single-name equity options and about 70% of index equity options.²

² <http://www.ft.com/cms/s/0/9c87fd58-1a67-11df-a2e3-00144feab49a.html>

Products that are traded OTC, on the other hand, are typically bespoke, as also rightly mentioned by CESR. Pre-trade transparency on such products would have limited informative value for the wider markets.

Nevertheless, traders recognise the legitimate interest of supervisory authorities for more transparency on the derivatives markets. Electronic trading platforms are being set up for this reason, sometimes in combination with traditional voice broking on the phone. These platforms allow for pre-trade transparency information, similar to exchanges.

Q. 35 Is pre-trade transparency readily available to all potential market participants?

Market participants feel that they have sufficient pre-trade information. Pre-trade information on standardised products is already required today for all products traded on regulated markets or MTFs. Pre-trade information for bilaterally negotiated products would be of rather limited interest to the wider market, in the absence of detailed information about the underlying products.

Q. 36 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.

European banks do not believe that consolidated information is of particular significance for these markets, in view of their specific functioning and the bespoke nature of the traded instruments.

Q. 37 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.

The efforts that are currently ongoing to provide greater pre-trade transparency on the derivatives markets are primarily intended to improve the supervisory oversight of these markets. From a market participant perspective, banks do not see any need for or added value of a pre-trade transparency framework over and above the situation as it presents itself at the moment.

Q. 38 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?

Pre-trade transparency exists for those instruments that are traded on regulated markets.

The EBF does not see any need or added value from an additional, mandatory pre-trade transparency framework for derivatives, from a market perspective. However, the Federation recognises that these questions might be relevant from a supervisory perspective and is prepared to further discuss with CESR any shortcomings that the Committee might have identified from its viewpoint, to the extent that these are not addressed by the already started initiatives.

Post-trade transparency for derivatives

Q.39 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?

The European banking industry believes that greater post-trade transparency for derivatives could be beneficial primarily for supervisors, so as to provide supervisors with the necessary tools to monitor risk taking by market participants as well as concentrations of exposures with individual market participants or in specific asset classes.

In view of the fact that a large part of the derivatives market is non-standardised, post-trade transparency is of lesser importance to the market more widely. This is as opposed to the equity markets, where transparency is crucial for the price discovery process.

Nevertheless, some aggregated information would also be informative to the markets more widely and would allow market participants to include macro-economic considerations in their investment decisions.

The European banking industry however believes that this would best be provided by building on the work that is currently being undertaken to a) centrally clear a greater share of the derivatives markets through central counterparties (CCPs); and b) to record data about derivatives deals in trade repositories. These approaches are the right ones, in that they address, at the same time, the heightened counterparty risk of derivative deals, and in that they approach the identified need for greater transparency on the derivatives markets primarily from a supervisory perspective.³

The information gathered through these two approaches could usefully be disseminated to the markets more widely, in an aggregated way. The dissemination could be undertaken directly by the trade repositories and by CCPs. Information of interest to the market would for example include aggregated trade volumes.

However, the EBF considers that this objective does not necessarily need to be achieved through any amendments to MiFID, but might better be included in EMIR.

Q.40 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?

The EBF believes that a post-trade transparency regime for derivatives should be limited to instruments that are widely traded, in sufficient volume to provide adequate liquidity.

Q.41 Is post-trade transparency readily available to all potential market participants? Does this vary by asset class?

³ For the EBF's detailed views on the upcoming Regulation on European Markets Infrastructure, please cf. <http://www.ebf-fbe.eu/uploads/documents/positions/FinMark/D0602E-2010EBFviewsonupcomingEMIJune%202010.pdf>
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Currently, there is no systematic post-trade transparency in the European derivatives space. Banks would therefore see benefit in the above proposals, with the objective of providing market participants with aggregate data, based on information gathered by CCPs and trade repositories.

Q.42 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.

Generally, the EBF believes that the objective of a post-trade transparency regime should mainly be that of enhancing supervisors and market participants' understanding of the macro-economic background. I.e., the benefit of such a regime, if well functioning, would be that of greater financial stability.

On the other hand, there would be multiple dangers in a too granular regime: it would invite comparisons between products that are essentially different; it might distract the attention from the market fundamentals; and it would impose considerable costs on the industry, while not achieving the intended objectives.

Q.43 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?

The most important criterion, in the view of the EBF, would be that of a certain level of liquidity for instruments to be included in the consolidated information.

Q.44 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?

European banks would not primarily see the rationale of greater post-trade transparency in the derivatives markets in such micro-economic considerations. The scope for comparison between derivatives is limited, due to the bespoke nature of the contracts. Where derivatives are comparable, they are to a large extent already traded on regulated markets and MTFs.

Banks would however perceive possible drawbacks of such a regime. Derivatives are open positions, meaning that their publication involves the risk of 'cornering' of the position-holders, especially if the issuer name was to be mentioned.

More generally, there can be too much transparency. Certain information would make it unattractive for market participants to take risks and to provide liquidity. Any regulatory proposals must be crafted with a great deal of sensitivity towards this risk, as well as bearing in mind the great variety of and large differences between individual derivatives.