

**Remarks on the CESR call for
evidence on the review of the
scope of MiFID Transaction
Reporting Obligation**

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Introduction

ABI is pleased to respond to the CESR call for evidence on the review of the scope of MiFID Transaction Reporting Obligation, on behalf of the Italian banking system.

We consider favourably the initiative of the CESR to assess with the banking sector any potential problems and concerns in the application of the transaction reporting system within Member States.

In Italy, the transaction reporting system has entered in operation since November 2007. Now, one year from its implementation, intermediaries have observed its proper functioning and do not feel the necessity for adjustments. This was possible thanks to the joint efforts of both intermediaries and CONSOB, which identified the system characteristics at national level, thus guaranteeing the system's proper functioning through constant monitoring. At present, the problems and reservations that were observed during the initial stage of operation have been solved.

For this reason, we hope that the CESR will not review its guidelines on transaction reporting.

Remarks on the CESR proposals for adjustments to the Transaction Reporting system

1. Have the differences in the scope of the transaction reporting obligation between CESR Members caused problems for you? Please provide practical examples of any difficulties encountered.

As known, the transaction reporting system was not implemented in all countries, so an assessment of the differences in the application of transaction reporting obligations is considered premature at this point.

We nonetheless wish to point out that the issue of identifying the competent authority, to which the branches of banks established in other European countries should report ("booking approach" vs. "trading approach"), has not yet been solved.

2. Please provide information on your practical experiences in reporting transactions that fall under each of the items:

- 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 an RM or MTF or outside them);

- c) information which is necessary to identify the ultimate client on whose behalf the transaction is undertaken or 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.*

Is the difference between these three categories sufficiently clear? Do the competent authorities interpret the scope of these categories in the same way? If not, where in particular have you encountered problems?

Our opinion is that the current guidelines, issued by the CESR, concerning the exchange of information as referred to in items (a) and (b) and, if requested, as referred to in item (c), have proven to be effective and should therefore not be amended in any way.

Furthermore, competent authorities may, in any case, request additional information from intermediaries concerning the transactions concluded, on a case by case basis (in other words, when suspect transactions are detected, or the need for further investigation arises). The power granted to the competent authorities to request reporting of all information relating to intermediaries or individuals involved in every step of the process, is considered adequate for achieving transaction reporting objectives.

Imposing further reporting obligations would result in intermediaries having to treat an enormous quantity of hardly manageable information, without conveying any actual benefits to the market or to transparency.

3. In your opinion, what are the advantages and disadvantages of competent authorities systematically receiving transaction reports covering the information referred to in item (c) above versus acquiring that information on an ad-hoc basis by other means?

As specified in the previous response, we do not gather that there are any advantages to be gained by extending the scope of application of transaction reporting obligations, as referred to in the above-mentioned item c).

When the need for acquiring further information arise, we believe that such information should be reported upon request only by the Authorities and should regard specific information relating to single transactions.

4. On the basis of their pros and cons, what would be the preferred solution in relation to the possible convergence of the scope of the transaction reporting obligation (regarding what constitutes 'execution of a

transaction')? Please provide justifications for your choice. When analysing the pros and cons, please consider also whether there is a danger of regulatory arbitrage if the scope of the transaction reporting obligation is not harmonised between Member States, as well as the implications for transparency calculations on shares considering that in the future these calculations will be conducted on the basis of the transaction reporting data?

In light of the considerations already expressed, we believe that the best possible solution would be to maintain the current reporting obligations with regard to the above-mentioned items a) and b), and to eliminate the provision referred to in item c).