



Date: 3 November 2008
Ref.: CESR/08-872

CALL FOR EVIDENCE ON THE IMPACT OF MIFID ON SECONDARY MARKETS FUNCTIONING

Background:

The Markets in Financial Instruments Directive (MiFID), a major part of the European Union's Financial Services Action Plan (FSAP), came into effect on 1 November 2007. It introduced significant changes to the European regulatory framework, taking account of developments in financial services and markets since the Investment Services Directive (ISD), which it replaced, was implemented in 1995.

In the secondary markets area, MiFID is designed to foster competition among trading venues on the basis of a regulatory level playing field and in an environment of market transparency aimed at supporting market efficiency and investor protection.

One year on, CESR considers it important to conduct an internal evaluation of the workings of the new regulatory framework and its impact on market structure, which also serves as a preparation for the upcoming Commission evaluation of some of the MiFID provisions. Accordingly, CESR will analyse the impact of MiFID on secondary markets functioning.

In the first stage, the pre-/post-MiFID analysis will focus on equity secondary markets.¹ This analysis will focus on the functioning of the MiFID provisions and the related provisions of the MiFID Implementing Regulation in the following areas:

- Market transparency and integrity
- Regulated markets
- Multilateral Trading Facilities
- Systematic internalisers

In conducting this review, CESR will be analysing the following issues in relation to equity secondary markets:

1. Trends in the markets since MiFID has come into force and the effects of these trends on market structure and competition
2. The consequences of fragmentation for price formation and market efficiency
3. Dark pools of liquidity and pre-trade transparency waivers in light pools of liquidity
4. Categorisation of shares for pre- and post-trade transparency purposes, data quality and consolidation
5. Attainment of the objectives of MiFID (e.g., fostering competition and a level playing field between EEA trading venues, providing for efficient and orderly markets)
6. Policy implications

The analysis will not cover issues surrounding transaction reporting under Article 25 of MiFID. An evaluation of CESR's May 2007 guidelines on what is execution of a transaction in the context of transaction reporting will be conducted in a separate exercise (see Call for evidence on the review of the scope of the MiFID transaction reporting obligation, Ref. CESR/08-873, of 3 November 2008).

The analysis will be conducted by the MiFID Level 3 Expert Group, chaired by Jean-Paul Servais, Chairman of the Management Committee of the Belgian CBFA.

¹ In the second stage, the analysis will be extended, where applicable, to secondary markets in other financial instruments covered by MiFID. The work on the second stage is planned to be started after the finalisation of the first stage in spring 2009.



Call for evidence:

CESR is inviting all interested parties to submit their views regarding the impact of MiFID on secondary markets functioning. At this stage, this call for evidence is focussed on equity secondary markets. In particular, CESR invites all interested parties to submit their views in relation to the questions set out below, distinguishing between regulated markets, MTFs and systematic internalisers, if relevant. CESR would especially value submissions supported by relevant data and data analysis.

Benefits

1. What do you think are the key benefits for yourself or the market more generally that have arisen as a result of MiFID provisions relating to equity secondary markets?
2. Do you consider that there are any remaining barriers to a pan-European level playing field across trading venues? If so, please explain.
3. Do you think that MiFID has supported innovation in the equity secondary markets? Please elaborate.

Downsides

4. Have you faced significant costs or any other disadvantages as a result of MiFID relating to equity secondary markets? If so, please elaborate. Have these been outweighed by benefits or do you expect that to be the case in the long run? If so, please elaborate.
5. Have you seen/experienced any unexpected consequences in terms of level playing field arising from the implementation of MiFID provisions relating to equity secondary markets? If so, please elaborate.

Trading Costs

6. What impact do you consider that increased competition between equity trading venues is having on overall (i.e. implicit and explicit) trading costs? Please elaborate.

Potential fragmentation

7. Do you think that there has been significant fragmentation of trading and/or liquidity in European equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs, best execution requirements)? If so, please elaborate on those concerns.
8. Do you think that MiFID pre- and post-trade transparency requirements adequately mitigate potential concerns arising from market fragmentation?

Transparency

9. Is the categorisation of shares appropriate in relation to: the definition of liquid shares; 'standard market size'; 'orders large in scale'; and 'deferred publication'? If not, please elaborate.
10. Do you see any benefits (e.g. no market impact) to dark pools of liquidity (to be understood as trading platforms using MiFID pre-trade transparency waivers based either on the market model or on the type or size of orders)? If so, what are they?
11. Do you see any downsides to dark pools of liquidity (e.g., impacts on the informational content of light order books)? If so, what are they?
12. Do you consider the MiFID pre- and post-trade transparency regime is working effectively? If not, why not?



Data

13. What MiFID pre- and post-trade transparency data do you use, and for what purpose? Does the available data meet your needs and the needs of the market in general?
14. Do you think that MiFID pre- and post-trade transparency data is of sufficient quality? If not, please elaborate why and how you think it could be improved.
15. Do you think that there has been significant fragmentation of market data in the EEA equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs)? If so, please elaborate on those concerns.
16. Does the current availability of data facilitate best execution? If not, please elaborate.
17. Do you think that commercial forces provide effective consolidation of data? If not, please elaborate.

General

18. Do you think that the implementation of MiFID is delivering the directive's objectives in relation to equity secondary markets (e.g., fostering competition and a level-playing field between EEA trading venues, upholding the integrity and overall efficiency of the markets)? If not, why do you think those objectives have not been met?
19. Do you see any other impact or consequence of MiFID on equity secondary markets functioning?

CESR invites all interested parties to submit their views to this Call for Evidence by 9 January 2009. All contributions can be submitted online via the CESR website (www.cesr.eu) under the heading 'Consultations'.