afme/ Finance for Europe

Equity Deferred Reporting Blueprint

Executive Summary

This document examines the rationale for having a deferred publication regime with respect to equity post trade transparency. It qualitatively assesses the current and proposed regimes and identifies concerns that the recent proposals may damage the efficiency of the market, and therefore considers some alternative approaches. In conclusion, we recommend empowerment of and actions for ESMA. A summary is set out below.

Transparency

Transparency is not an end in itself but a means to an end. When appropriately balanced, it will improve the overall quality and efficiency of the market. Key measures of quality and efficiency are high returns accruing to retail investors and low cost of capital for firms listing their equity. In order to achieve the appropriate balance, certain exceptions to the presumption of immediate transparency are required.

- The vast majority of retail investors access the market via collective investment funds. This results in their interests being reflected in very large orders
- Being able to trade in large size via a broker delivers positive economic benefits for these collective investment vehicles serving retail investors. These benefits justify a continuation of a waiver from the presumption of immediate transparency
- Premature information leakage flagging a trade in large size permits predatory behaviour and damages the investment returns of those retail investors
- An effective deferred publication regime must find the appropriate balance between the need for timely information and protecting the interests of retail investors

MiFID I recognised the previous points and that the interests of investors should be protected by delaying transparency for certain large trades. The new (October 2011) legislative proposals from the European Commission also allow for deferred reporting of transactions based on their type and size. The proposals put forward during the review continue to implicitly acknowledge these benefits and seek to improve the balance.

Considerations for a deferred publication regime

The primary objective of the deferred publication regime is to allow a collective investment scheme to benefit from the execution techniques provided by brokers when they act as principal. To capture those benefits, it is essential that the market is not given prior notice of the trades between the broker and the broader marketplace.

- Even within a deferred publication regime, publication should still be as early as possible - the regime should define the maximum possible delay. Once the primary objective has been achieved publication should be immediate
- Ideally, the deferred publication regime should be based on prevailing market conditions and should consider market impact or, as a proxy, liquidity
- An official European Consolidated Tape should be implemented and form the measure of liquidity used in calculating the allowable delay period

Concerns over the current and proposed deferred publication regimes

- The use of a historic liquidity measure – average daily turnover *(*ADT*)* in assessing the allowable delay period is flawed as it makes no reference to prevailing conditions. For example, a given trade will have the same allowable delay regardless of whether it is executed on Christmas Eve or on the day the company announces its results
- The structure of the deferred publication regime results in arbitrary changes in the permitted levels of delay that do not reflect the reality of executing business
- If the revised MIFID results in a wholesale reduction of the allowable delay period (for example to the end of the current trading day) this could have significant negative consequences by stifling the market for SMEs and increasing the cost for the end client - the retail investor

Recommendations

- ESMA should be required to:
    - assess other approaches to deferred publication which might provide a more appropriate and effective deferred publication regime
    - select an appropriate and effective new deferred publication regime
    - quantitatively assess the impact of the changes made to the deferred publication regime
- ESMA should be empowered to:
    - respond to the needs of the marketplace by implementing a new deferred publication regime without undue delay

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1. Introduction

This document examines post-trade transparency. In particular:

- considers how a deferred publication scheme facilitates the provision of capital as a means of protecting the interests of retail investors accessing markets collectively
- examines how a deferred publication regime might best operate
- assesses the current deferred publication regime
- assesses the proposed deferred publication regime
- examines alternative models for deferred publication, including models which will be facilitated by the introduction of a European Consolidated Tape
- recommends a number of actions for ESMA

The key driver for this document is to continue to improve the efficiency of the single market by:

- identifying concerns about and improvements to the deferred publication regime with the aim of providing a better balance between transparency and investor protection that will:
- improve transparency by reducing unnecessary delays in publication
- better protect the interest of investors

1.1 Defined terms

Throughout this document the following defined terms have the meaning set out below.

Defined term	Meaning
ADT	Average Daily Turnover as used in the deferred publication regime currently in force, defined as the average number of shares traded per day in a given year. ADT levels are assessed annually and are effective from 1 April in the following year.
CESR Technical Advice	CESR Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets, reference CESR/10-802 published on 13 July 2010. Available at: http://www.esma.europa.eu/system/files/10_802_Technical_Advice_MiFID_Review_Equity_Markets.pdf
ECT	European Consolidated Tape
ESMA	European Securities and Markets Authority
MiFID Review Consultation	Consultation on the review of the Markets in Financial Instruments Directive (MiFID) published by the European Commission on 8 December 2010
OTC	Other than on a *public trading venue*
post-trade data	Reports of trades. Trades may occur on a *public trading venue* or *OTC*.
pre-trade data	Bids and offers (from orders and quotes)
private investor	An individual who trades for his or her own account. *Private investors* are typically more sophisticated than *retail investors* and with a higher net worth
public trading venue	A public trading venue with objective membership criteria recognised under MiFID where trades may occur i.e. a regulated market or multilateral trading facility
retail investor	An individual who participates in the equity market via collective investment schemes such as pension schemes or other savings plans
SMEs	Small and medium sized enterprises

2. Transparency

2.1 Introduction

Transparency is not an end in itself but a means to an end. Transparency is promoted to improve the overall quality and efficiency of the market. Key measures of the quality and efficiency of the market are:

- **high returns accruing to retail investors**
- **low cost of capital for firms listing their equity**

Modifications to the presumption of immediate transparency are required to best deliver these measures.

2.2 Context

Pre-trade data consists of orders detailing prices and sizes at which business can be conducted. Pre-trade data provides an indication of trading opportunities and presents a picture of where the market, in a certain size, may be. These opportunities will fluctuate with market conditions and may or may not result in a trade. Each order published exposes a willingness to trade on the part of a single participant and this provides information which other market participants may use in forming their view.

Post-trade data consists of reports of trades that have taken place, either on a public trading venue or on an OTC basis. It provides the means of assessing the business that has occurred and exposes a matched willingness to trade of two parties in the market. It is used in determining whether best execution has been achieved and for transaction cost analysis (TCA).

Both pre and post-trade data contribute towards the price formation process. Given the typical size of a retail trade, pre-trade data alone can often provide a very clear view of what price can be achieved by retail investors. Professional investors, who may wish to trade in larger sizes not seen in pre-trade data, must equally consider both pre-trade data and post-trade data in forming their view.

As consumers of market data, market participants require information about trading activity that is reliable, timely and available at a reasonable cost. Transparency is good for those seeking to make investment decisions (using other participants' data).

As providers of market data, market participants are naturally inclined not to want disclose information about their own trading activities whilst wishing to see the information of others. Transparency can be bad for those in the process of buying or selling investments.

In many cases, publication of pre-trade data - orders - and post-trade data - reports of trades - has negligible market impact and is readily absorbed without any detriment to the participant that provided the data.

But, where the data concerns a block of stock that is large in comparison with the normal size of the market and prevailing liquidity, publication will impact the market and affect the price at which subsequent business takes place. Such blocks of stock typically represent the pooled holdings of retail investors in a collective investment fund - and damage to the price caused by the transparency of the data is borne by those individuals.

- **Transparency is not an end in itself but a means to an end - to improve the overall quality and efficiency of the market.**
- **The transparency regime must consider the balance between the need for timely information and protecting the interests of retail investors accessing the market collectively**

2.3 Challenges facing large orders

Certain market participants - typically those acting as wholesale funds serving retail investors via collective investment vehicles - may wish to acquire or dispose of significant positions in securities. Trading into and out of such positions presents a challenge as public trading venues cannot typically absorb such large positions without material market impact - and any such market impact would be borne directly by the end investor in a reduced return on their investment.

Brokers who are prepared to commit their own capital can, in an environment with deferred publication for large trades, service such large orders for their clients and provide:

- **immediacy of pricing** - by executing an immediate large trade with their client by taking on their client's position - effectively adopting their client's order[1]
- **improvement of pricing** - by bringing to bear a broader array of trading techniques than are afforded to most wholesale investors (e.g. hedging or a portfolio approach)

The broker undertakes the large trade with its client on the risk that it can be successfully unwound at better than the price at which the broker takes on the position. Both broker and client share in the upside of the broker's skill in achieving an improved execution price.

The ability to successfully unwind the initial large trade is conditional on the availability of deferred publication. The extent to which brokers are able to service large orders in this way is directly impacted by the transparency regime - increasing transparency will result in less business being able to benefit from being traded in this way to the detriment of individual investors.

- **Even when considered in aggregate public trading venues are typically unsuited to the trading of large blocks of stock**
- **A deferred publication regime supports a vital market function in allowing investors to trade large blocks of stock**

2.4 Information leakage and the transfer of value

Prices in the market are driven by actual and perceived supply and demand. The known or suspected presence of a large buyer or seller creates an opportunity for prospective counterparties to be less keen in their pricing. So a direct consequence of the availability of the information about a large position is an immediate damage to the price at which the position is traded.

Every subsequent trade at the damaged price creates an effective a transfer of value from the investor with the large position to its counterparty. Given the nature of the investors that tend to hold large positions and those that tend to react to information leakage, this typically results in a transfer of value from a wholesale investment fund representing retail investors to a shorter term investor acting as principal or representing other principals (such as a hedge fund).

- **Information leakage from large trades encourages predatory behaviour and damages the investment returns of retail investors**

2.5 Public trading venues and the large in scale waiver

MiFID recognises that full pre-trade disclosure of a large order to a marketplace will not allow the price impact of that order to be managed and will result in less than optimal execution to the detriment of the investor. It is considered '*essential in striking the right balance between market transparency and protecting legitimate interests of market participants who are essential contributors to the liquidity of markets*'[2] to provide a pre- trade transparency waiver for orders that are large in scale.

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[1] In contrast to the behaviour of a market maker which is seeking to manage its own inventory by positioning its prices to trade against other market participants.

[2] *MiFID Review Consultation*, section 3.1.1

The '*large in scale waiver*'[3], which is available for orders submitted to public trading venues, is designed to allow market participants to execute large orders on these venues without too large a price impact.

On these venues, market participants interact directly and a trade results when orders match. All resultant trades publish immediately and the publication of the trade report creates only limited information leakage[4] as, in the case of a trade resulting from an order that is large in size, any unexecuted portion of a large order remains hidden[5]. In this manner, a large order can be traded within a single venue without at any time disclosing the full extent of the order[6].

However, in submitting a large order to a single venue - or multiple large sub-orders to a number of venues - the investor has necessarily excluded a number of other venues and alternative means of execution. Consequently, execution of that order is unlikely to be immediate and may also be at a sub-optimal price.

- **MiFID recognises that interests of investors can be protected by reducing transparency for large orders**

2.6 Risk capital and client facilitation

In recognition of the demand from their customers and that the public trading venues cannot normally service very large orders, certain brokers will commit their own capital to facilitate large orders by taking on their client's position on risk.

The broker adopts their client's position and seeks to unwind it in the market using their expertise to the mutual benefit of both client and broker.

This price at which the large order is taken on, which is negotiated between the client and its broker, is determined by a number of factors which affect the broker's ability to minimise the market impact of executing the order. These include:

- **liquidity** - the impact of any trades to unwind the position will be smaller in more liquid markets
- **volatility** - the distribution of execution prices of unwinding trades may be greater in more volatile conditions
- **information leakage** - whilst the broker can manage any information leakage from unwinding trades, the publication of the trade between the broker and its client will disclose the broker's full position to the market which will compromise any subsequent unwinding of the position
- **additional investment techniques** - techniques are available to brokers to manage their positions that are typically not available to their clients. These additional techniques allow for a tighter pricing of risk than which can be shared with the client.

The resultant pricing takes into account these factors and also reflects a premium paid to the broker for the service provided to its client.

- **The ability to trade large blocks of stock through brokers protects investment returns for retail investors**

2.7 Transparency, cost and liquidity

In determining what the appropriate level of transparency is for large trades the relationship between transparency, cost and liquidity should be considered. On a purely qualitative basis:

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[3] Other available pre-trade waivers are generally meant to accommodate orders which would not contribute to price formation. *MiFID Review Consultation*, footnote 64

[4] The principal information leakage being that a hidden order has been 'discovered', which may imply that further hidden volume is present.

[5] The treatment of the remaining element of a hidden order, known as the 'stub', when the stub falls below the threshold for large in size orders is under consideration as part of the MiFID review.

[6] Notwithstanding this, other market participants may seek to determine patterns of trades that may imply the presence of further unexecuted business and seek to anticipate that business to their own benefit. This practice is the essence of market making both historically - when human traders sought to understand market 'sentiment' - and presently - when certain trading models have automated this process to seek to anticipate where the next trade will take place (albeit typically on much shorter time horizon and with a much higher frequency of change).

Greater transparency increases cost

- increased transparency reduces the window in which market impact can be managed, increasing the risk to the broker taking on the large trade
- this increased risk will be reflected in a worse price for the investor
- the greater the transparency, the worse the price and the lower the economic benefit for the investor
- the more transparency is increased, the less business will benefit from this approach to trading

Greater cost decreases liquidity

- increased costs of execution will reduce anticipated returns for investors making investors less willing or able to invest
- investment mandates will exclude increasing numbers of stocks where execution costs are too great and returns are too low
- liquidity will decrease in affected stocks; volatility will rise
- the impact of this will be most greatly felt in stocks that are already at the less liquid end of the market

Decreased liquidity requires less transparency

- a reduction in liquidity will lead to an increase in the time required to offset a given position

There is something of a vicious circle here. Very careful consideration must be given to any change that, by increasing transparency, upsets the balance between transparency and the protection of the interests of retail investors.

2.8 Conclusions

This section considers transparency and the execution of large orders. It concludes:

- **being able to trade in large size via a broker delivers positive economic benefits for retail investors**
- **those benefits justify a waiver to the presumption of immediate transparency**
- **very careful consideration must be given to any change that, by increasing transparency, upsets the balance between transparency and the protection of the interests of retail investors**

3. Some considerations for a deferred publication regime

3.1 Primary objective

The primary objective of the deferred publication regime is to deliver the net benefits of appropriate protection from the market impact of undertaking a large order to offset risk, whilst also maintaining an appropriate level of transparency.

3.2 Earliest appropriate publication not maximum delay

The deferred publication regime should not seek to maximise the delay in publication for a large trade but to permit an appropriate level of delay to allow the benefits of the brokers execution techniques to be realised.

Even within a deferred publication regime, publication should be as early as possible - the regime should define the maximum possible delay. Once the primary objective has been achieved publication should be immediate.

3.3 Dynamic approach

Market impact is a function of available liquidity - for a given size of trade, greater liquidity will result in less market impact. Liquidity is a dynamic function of supply and demand and can also be significantly influenced by external factors such as relevant news or macroeconomic events. The most appropriate period of delay in publication for a given size of trade is dependent on market conditions at the time of trade.

Ideally, the deferred publication regime should be based on prevailing market conditions.

3.4 Market impact and liquidity

Deferred publication is permitted to reduce market impact. Determining market impact is a complex task and models have been developed that can assess market impact. A common model for market impact could be agreed and used in determining appropriate levels of deferred publication.

However, market impact is a function of prevailing liquidity which is more readily assessable - prevailing liquidity may therefore form a simpler measure against which appropriate levels of deferred publication can be assessed.

Measuring actual liquidity is conceptually straightforward as all trades are subject to publication. In practice, there are issues with the quality and availability of post trade data that make a common assessment of liquidity challenging.

The deferred publication regime should consider market impact or, as a proxy, liquidity.

3.4.1 European Consolidated Tape Blueprint

The implementation of a European Consolidated Tape is under consideration as part of the MiFID Review. Once the European Consolidated Tape is in place, a single consistent liquidity measure will be available in real time[7]. This will facilitate a dynamic approach to the deferred publication regime.

The European Consolidated Tape should be implemented and form the official measure of liquidity.

AFME has contributed to and endorses an earlier document published by EFAMA in September 2011: 'Blueprint for a European Consolidated Tape'.

[7] To the operator of the ECT

4. Analysis of the current deferred publication regime

4.1 Basis for delay

The current deferred publication regime provides delays based on the absolute size of trade and / or the size of trade relative to ADT - a historic measure of turnover.

ADT is a historic measure of liquidity, representing an average over a defined prior period. There may be days when ADT approximates current market liquidity. However, on a day-to-day basis ADT is likely to be at best a poor approximation for prevailing liquidity.

Further, the use of ADT does not recognise or take into account the very significant variations in liquidity that routinely occur in many stocks - contrast the levels of liquidity seen around the announcement of corporate results with that seen in typically quieter periods such as in vacation periods.

The absolute size of a trade is absent any context of liquidity. Delays that are determined on the basis of absolute size of trade:

- bear no meaningful relationship to the ability to execute such a trade; and
- are therefore entirely arbitrary in nature.

This approach is particularly concerning as absolute size of trade is the only measure assessed for the stocks that are least liquid - where the appropriateness (or otherwise) of the deferred publication regime has potentially the greatest consequences.

The use of ADT, or the absolute size of trade, can result in permitted delays that bear little relationship to prevailing conditions and the ability to undertake offsetting trades, leading to one of two likely outcomes:

(1) excessive delays in times of low market impact - when liquidity is high and/or volatility is low - such that trades are published too late, resulting in a lack of transparency

(2) insufficient delays in times of high market impact - when liquidity is low and/or volatility is high - such that trades are published too soon, resulting in damage to the price achieved by retail investors accessing the markets through collective investments

It is understandable why ADT, or some other similar derived historic volume figure, was historically chosen - perhaps, for simplicity - as the measure against which potential delays should be assessed. However, the compromise in the quality of the deferred publication regime which results is a concern - and more so given the proposed changes which will inevitably put further trades into category (2) above.

4.2 Liquidity bandings

Under the current deferred publication regime permitted delays are available according to 4 bands of ADT. The criteria used to define the minimum qualifying size of transaction for a permitted delay vary in accordance with the ADT banding in which a security falls and result in minimum qualifying size that are variously based on:

- the greater of a percentage of ADT and an absolute size of trade
- the lower of a percentage of ADT and an absolute size of trade

As a consequence of the different approaches and different potential results within each approach there are some significant discontinuities across the boundaries between bands. As a result, a small increase in ADT can result in a very significant increase in the size of trade required to qualify for a delay.

These arbitrary discontinuities are an artefact of the chosen deferred publication regime and do not reflect the reality that securities of substantially similar prevailing liquidity are likely to require similar delay periods.

4.3 Permitted delays and delay bandings

Permitted delays run from 60 minutes to the end of the third trading day after next.

The longest permissible delay is only available to stocks in the intermediate ADT bands. The least liquid and most liquid stocks qualify for a maximum of until the end of the second trading day after the trade takes place.

As a general observation, the market impact for a trade representing a given percentage of ADT is smaller as ADT increases. Consequently, the greatest delays are appropriate in the least liquid stocks where market impact is greatest. The structure of the current deferred publication regime is inconsistent with this observation.

4.4 Conclusions

Whilst the current regime is straightforward and is largely based on previous historic approaches, there are concerns that:

- **the use of ADT (a historic liquidity measure) or no liquidity measure at all in assessing what delay is appropriate in prevailing conditions is flawed**
- **the current structure of the deferred publication regime results in arbitrary changes in the permitted levels of delay that do not reflect the practical reality of executing business**
- **the resultant deferred publication delays can be varyingly too long, too short and inappropriate to prevailing conditions**

5. Proposed changes to the deferred publication regime

A deferred publication regime proposed by CESR (now ESMA) is set out in Table 7, section 74 of the *CESR Technical Advice*. This proposed regime is reproduced in Appendix 2 and is discussed below.

5.1 Overview

The CESR proposal operates on the same paradigm as the current regime with the following broad amendments:

- the minimum qualifying size of transaction is increased
- the range of permitted delays is decreased
- the maximum permitted delay is reduced

CESR expects *'that, if implemented, these proposed changes would deliver greater post-trade transparency for all shares admitted to trading on EEA Regulated Markets. These proposed changes would also reduce complexity of the deferred publication regime...*'

These contentions are evidently true - the regime is simpler as there are fewer permitted delays and clearly less business will qualify for deferred publication leading to increased transparency. However, given the relationship between transparency and price explored in section 2 of this document, the proposed changes can do nothing but increase the cost for the end client - the retail investor. The potential impact of this increase in cost is of greatest concern for less liquid securities and may have unintended consequences for SMEs.

5.2 Basis for delay

The CESR proposal operates on the same paradigm as the current regime and continues to determine delay based on the absolute size of trade and / or the size of trade relative to ADT. The concerns expressed in section 4.1 about the use of ADT and absolute trade size are also pertinent to the CESR proposal.

Under the proposals fewer trades will qualify for deferred publication, and those that do will qualify for shorter deferral periods. It is therefore inevitable that further trades will be pushed into category (2) identified in section 4.1, resulting in further damage to the price achieved by retail investors accessing the markets through collective investments.

5.3 Liquidity bandings

CESR proposes no change to the liquidity bandings or banding structure. Consequently, the concerns expressed in section 4.2 are also relevant to the CESR proposal.

5.4 Permitted delays and delay bandings

It is proposed that all current permitted delays beyond the end of the current trading day are abolished (reducing the number of permitted delays from 6 to 3) with no trade being eligible for delay longer than '*until the end of trading day*'.

Clearly this represents a very significant reduction in potential delays. This is particularly of concerns for those stocks that are typically of lower liquidity - SMEs - where currently available delays beyond the end of the current trading day are utilised.

Given the lower levels of liquidity in SMEs, the impact to the implicit costs of trading will be greater - perhaps to the point where investment in such SMEs becomes economically unfavourable. Any such impact would reduce interest in SMEs with the likely consequence that the ability of SMEs to access capital markets would be reduced.

5.5 Conclusions

Whilst the proposed regime would increase transparency, there are concerns that:

- **the proposed changes can do nothing but increase the cost for the end client - the retail investor**
- **the reduction of maximum permitted delay to the end of the current trading day could have significant negative consequences**
- **the market for SMEs may be stifled by increased transaction costs**

6. Alternative approaches to deferred publication

Given the concerns about the current approach to deferred publication, alternative models could be considered, based on the principles identified in section 3:

- The primary objective of the deferred publication regime is to deliver the net benefits of appropriate protection from the market impact of undertaking a large order to offset risk whilst maintaining a level of transparency.
- Earliest appropriate publication - not maximum delay - should be sought. Once the primary objective has been achieved publication should be immediate.
- The deferred publication regime should be based on prevailing market conditions.
- The deferred publication regime should consider market impact or, as a proxy, prevailing liquidity.
- The European Consolidated Tape ("ECT") should be implemented and form the official measure of liquidity.

Three outline qualitative approaches are set out below - in each case further quantitative analysis is required to assess how the approach would be parameterised.

6.1 Market impact model

This approach would make use of common model for measuring market impact based on statistics provided by the ECT.

- A common model for measuring market impact would be determined and be made available to all market participants (using ECT statistics for liquidity and volatility up to the close of the previous day)
- The market impact of a given large trade would be assessed by entering details of the trade into the market impact model
- Trades above a certain minimum market impact - defined as a percentage change in the market price - would qualify for a delay
- The period of delay would depend on the assessed market impact
- Once the defined period of delay has expired, publication of the trade would occur

Establishing a common model for measuring market impact may prove a significant challenge given the wide range of existing approaches.

6.2 Real-time liquidity model

This approach would make use of the real-time view of liquidity available to the ECT which will receive reports of all trades in near real-time.

- The ECT will generate official daily liquidity statistics covering a rolling window
- Trades above a certain minimum size - determined as a percentage of official recent rolling liquidity statistics generated by the ECT- would qualify for a delay
- The period of delay would be dependent on the size of the trade compared to subsequent levels of market liquidity published by the ECT
- Once a delayed trade accounted for a defined percentage of market activity from the time it took place (including the trade itself), publication of the trade would occur.

6.3 Rolling liquidity model

This approach would make use of the view of liquidity available to the ECT which will receive reports of all trades.

- The ECT will generate official daily liquidity statistics covering a rolling window
- Trades above a certain minimum size - determined as a percentage of official recent rolling liquidity statistics generated by the ECT- would qualify for a delay
- The period of delay would depend on the size of the trade compared to recent levels of market liquidity (and would represent a defined percentage of recent daily liquidity)
- Once the defined period of delay has expired, publication of the trade would occur

6.4 Other approaches considered

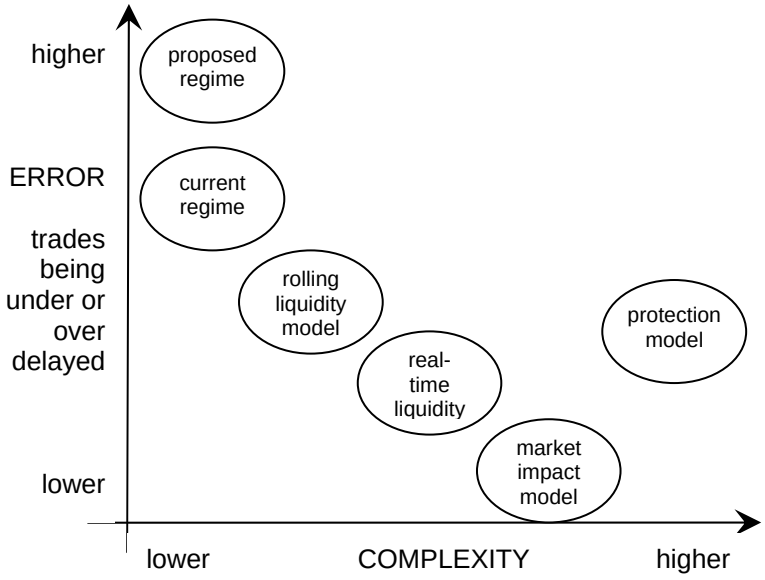
A number of other possible approaches centre on the concept of 'protection'. In these models, one party (typically an investment bank) takes on the large position and 'protects' its counterparty at an agreed price - agreeing that the trade will occur at at least the protected price[8] and then seeks to improve on that price whilst publication of the 'protected' trade is deferred.

Once the protected trade is sufficiently unwound it is published. If the protected price is improved, a further trade report will be published immediately on conclusion of the unwinding at the improved price.

There are significant practical difficulties with this approach. The determination of the time for publication is made by the firm undertaking the protection on the basis of how far the position is unwound. Implementing a uniform objective approach across all firms to the assessment of unwinding is likely to be challenging given the complex and diverse systems and approaches to risk management within firms. Further, policing of the regime would be a significant challenge for regulators.

6.5 Summary diagram

The diagram below illustrates (qualitatively) the relative complexity and likely error - in terms of deferred publication being too short or too long - of the models discussed above and the current and proposed deferred publication regimes.



[8] Protection in size may also be offered

7. Recommendations

Given the concerns about both the current approach and, in particular, the proposal set out in the *CESR Technical Advice*, ESMA should be required to:

- assess other approaches to deferred publication which might provide a more appropriate and effective deferred publication regime
- select an appropriate and effective new deferred publication regime
- quantitatively assess the impact of the changes made to the deferred publication regime

and ESMA should be empowered to:

- act in reasonable timescales to make changes to the deferred publication regime to remedy any negative impact of any changes made to the deferred publication regime

8. Appendix 1: Current deferred publication regime

The current deferred publication regime, defined in Table 4, Annex II of Commission Regulation No. 1287/2006 (the MiFID Implementing Regulation) is set out below.

Permitted publication delays and thresholds

The tale below shows the permitted publication delays and minimum qualifying size thresholds for each class of shares in terms of average daily turnover (ADT).

		Class of shares in terms of average daily turnover (ADT)			
		ADT < EUR 100 000	EUR 100 000 <= ADT <= EUR 1 000 000	EUR 1 000 000 <= ADT <= EUR 50 000 000	ADT >= EUR 50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	EUR 10 000	Greater of 5% of ADT and EUR 25 000	Lower of 10% of ADT and EUR 3 500 000	Lower of 10% of ADT and EUR 7 500 000
	180 minutes	EUR 25 000	Greater of 15% of ADT and EUR 75 000	Lower of 15% of ADT and EUR 5 000 000	Lower of 20% of ADT and EUR 15 000 000
	Until end of trading day (or roll-over to noon of next trading day if trade in final two hours of trading day)	EUR 45 000	Greater of 25% of ADT and EUR 100 000	Lower of 25% of ADT and EUR 10 000 000	Lower of 30% of ADT and EUR 30 000 000
	Until end of trading day next after trade	EUR 60 000	Greater of 50% of ADT and EUR 100 000	Greater of 50% of ADT and EUR 1 000 000	100% of ADT
	Until end of second trading day next after trade	EUR 80 000	100% of ADT	100% of ADT	250% of ADT
	Until end of third trading day next after trade		250% of ADT	250% of ADT	

9. Appendix 2: Proposed deferred publication regime

A proposed deferred publication regime is set out in Table 7, section 74 of the CESR Technical Advice. This proposed regime is reproduced below.

		Class of shares in terms of average daily turnover (ADT)			
		ADT < EUR 100 000	EUR 100 000 <= ADT <= EUR 1 000 000	EUR 1 000 000 <= ADT <= EUR 50 000 000	ADT >= EUR 50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	EUR 15 000	Greater of 10% of ADT and EUR 30 000	Lower of 15% of ADT and EUR 5 000 000	Lower of 15% of ADT and EUR 10 000 000
	120 minutes	EUR 30 000	Greater of 20% of ADT and EUR 80 000	Lower of 25% of ADT and EUR 10 000 000	Lower of 25% of ADT and EUR 20 000 000
	Until end of trading day	EUR 50 000	Greater of 30% of ADT and EUR 120 000	Lower of 35% of ADT and EUR 15 000 000	Lower of 35% of ADT and EUR 35 000 000

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