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AFME, BBA and ISDA Joint Response to Committee of European Securities Regulators (CESR) Technical Advice to the European Commission in the Context of the MiFID Review: Non-equity markets transparency

On behalf of our members, the Association for Financial Markets in Europe ("AFME") , the British Bankers' Association ("BBA") and the International Swaps and Derivatives Association ("ISDA") appreciate the opportunity to respond to the 7th May 2010 consultation paper on CESR technical advice to the Commission in the context of the MiFID Review – Non-equity markets transparency. We hope to continue to further dialogue with the regulatory community and policy makers and welcome the opportunity to discuss in depth, the responses provided in this paper at your convenience.

AFME, the Association for Financial Markets in Europe, promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME was formed on November 1st 2009 following the merger of LIBA (the London Investment Banking Association) and the European operation of SIFMA (the Securities Industry and Financial Markets Association). AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan‐EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA). For more information, visit the AFME website, www.AFME.eu.

The British Bankers' Association is the leading association for UK banking and financial services sector, speaking for over 200 banking members from 50 countries on a full range of UK and international banking issues. All the major institutions in the UK are members of our Association as are the large international EU banks, the US banks operating in the UK, as well as financial entities from around the world. The integrated nature of banking means that our members engage in activities ranging widely across the financial spectrum encompassing services and products as diverse as primary and secondary securities trading, insurance, investment bank and wealth management as well as conventional forms of banking.

The International Swaps and Derivatives Association, or ISDA, was chartered in 1985 and has over 820 member institutions from 56 countries on six continents. Our members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Since its inception, ISDA has pioneered efforts to identify sources of risk in the derivatives and risk management business and reduce those risks through: documentation that is the recognized standard throughout the global market; legal opinions that facilitate enforceability of agreements; the development of sound risk management practices; and advancing the understanding and treatment of derivatives and risk management from public policy and regulatory capital perspectives.

AFME, BBA, ISDA, henceforth "We" are pleased to respond as follows.

Executive Summary

Our members are fully supportive of full and immediate transparency to our respective regulators across all asset classes and jurisdictions covered in the consultation. We support full industry cooperation on all initiatives intended to create transparent and efficient markets and it is the goal of all market participants that the European Fixed Income market continues to thrive and provide a tangible benefit to the real economy.

We believe at the heart of the transparency debate lies three key issues:

- Promoting a thriving market place which will enable wide participation and real benefit to the European economy.
- Encouraging greater education and transparency for smaller institutions without punitive impact on the wholesale marketplace.
- Calibrating the balance between protecting liquidity for market participants whilst also ensuring adequate transparency.

- We believe the role that the wholesale market participants play in providing a benefit to the real economy should not be underestimated. Dealers act as intermediaries in the market enabling issuer access to funding via the capital markets and institutional investors. They also act as principal risk takers who commit capital to clients thus enabling liquidity in these fixed income instruments. Any measures proposed to improve pre and/or post-trade transparency should carefully counterbalance the impact these measures may have on dealers' willingness to commit capital and ultimately to provide liquidity in these markets, particularly in times of stress when market liquidity plays such an important role.
- The fixed income market constitutes a number of very different asset classes, unlike the more homogenous equities market. Each asset class is different and, as such, any pre and/or post-trade transparency requirements need to be appropriately calibrated in order to take account of these differences. The term "Derivatives" in Section VII is very broad and can cover everything from vanilla OTC derivatives to exotic bespoke instruments. For the purposes of this consultation, the answers will focus on the vanilla derivatives.
- There is either little or no direct retail involvement in majority of these asset classes and consequently any measures to be proposed should take account of the overwhelmingly wholesale nature of these markets. Nonetheless, we are supportive of continued encouraged retail participation and continue to provide resources to educational efforts which benefit retail participants, such as investinginbondseurope.org and bondmarketprices.com.
- We believe the vast majority of non-equities products mentioned in this paper already have very high levels of pre-trade price transparency. We however agree that sources of such data can be better organised for interested parties.
- One of the original objectives of MiFID was to encourage competition and it is our request that the MIFID review should not seek to develop a one-size-fits-all approach. We believe that customer choice should remain an objective and transparency should be one of the means to encourage this.
- While we are of a view that limiting post-trade transparency to clearing-eligible products is a welcome starting point, we wish to point out that clearing-eligibility, while a useful indicator of proportionality, is not a sufficient indicator of liquidity in the context of post-trade transparency. As the scope of the products in this consultation is broad, we recommend further consultation upon consideration of any subsets of products within the asset classes to ensure that any transparency regime is appropriately calibrated to take into account their specific liquidity characteristics.
- We believe that any additional post-trade transparency measures in all asset classes should fully leverage existing and proposed trade reporting requirements. Trade repositories should be built out aggressively where they don't already exist on the basis of one per asset class globally. Regulators should have full access to information held in these trade repositories.

- We recognise that improved post trade transparency for standardised and liquid bonds can be of benefit to market and we aim to proactively work with our regulators to best achieve this objective. With this in mind, AFME members and buyside institutions have proposed a calibration for corporate bond post trade transparency which we believe would provide increased transparency to retail and smaller institutions but can still protect liquidity in the market for wholesale participants. We believe that the transparency regime should begin with a phased approach so as to enable regulators and market participants to fully assess the benefits or impact of each phase on the market place.
- We support transparency where it is beneficial to market users and comes at a cost that is proportionate to its benefit. We believe that publishing data that is ultimately not used will cost the industry and ultimately the end user. We are also mindful that any additional dissemination of information should not add to the complexity and confusion for the users of this information. Therefore we remain at the disposal of the regulators to help distinguish where this cost benefit trade off may lie.

AFME, BBA, ISDA and our respective members again thank you for the opportunity to comment on this consultation. We have aimed to provide as much detail and constructive feedback to the questions posed in the document as possible. We remain fully at your disposal for further engagement and correspondence.

Yours Faithfully,

AFME	**BBA**	**ISDA**
		
Folake Shasanya	**Ross Barrett**	**Richard Metcalfe**

Responses to Consultation Paper Questions

GENERAL ACCESS TO PRE- AND POST-TRADE INFORMATION

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,

g) commodity derivatives?

(A) CORPORATE BONDS

Pre-trade

A number of services exist on the corporate bond market that together provides a high level of pre-trade transparency to market participants and other interested parties, including the following:

- **Dealer "Runs"**

In the corporate bond market, investors have access to pre-trade price information provided from the dealers through widely disseminated dealer pricing "runs". Investors can receive runs from multiple dealers with frequency depending on the liquidity of the bond. As such investors often can have a broader view of where the market is, based on having access to a wider range of prices, than the dealer participants.

It is estimated that for most of the actively traded bonds, clients could receive at least one quote from each dealer per day, and typically a client would be receive a material number of quotes per minute overall. For the most liquid bonds, runs would be sent multiple times a day by each dealer.

Investors review the prices available in the runs and can then raise Request For Quotes ("RFQ") to the dealers from which they wish to receive competing quotes. Although the runs prices are not executable, dealers are expected to stand behind their runs prices and face reputational issues if they do not do so. Therefore dealers have a commercial incentive to ensure that they are willing to execute within the bid offers sent via these runs.

- **Parsing Services**

Parsing services are available to the market participants which organise and present the dealer runs in an easily accessible format. These services create stacks displaying the best price amongst the dealers as well as the depth of quotes (with time and ownership stamp of each price point). The parsing services may be available for free or for a fee from commercial vendors, to any market participant or other entity wishing to gain access to the data. Some of the vendors that provide parsing services include Bloomberg, Markit, and CMA/ QuoteVision/ DataVision.

- **Indices Providers**

Markit is an independent fixed income index provider which produces the iBoxx indices commonly used in the corporate bond market. Designed to be objective representation of the markets, the indices are rules based and calculated using the best market prices submitted by a number of contributing dealers. Markit iBoxx produces a range of benchmark as well as tradable indices for cash bonds including e.g. EUR, GBP, USD, high yield, sovereign, emerging markets, and Asia indices. IBoxx bond indices for EUR and GBP use intra-day bid offer prices provided via automatic price feeds from each bank's bond desk. The prices are consolidated by Deutsche Börse, calculated every minute and disseminated immediately to the market via data vendors. The full rules and index constituent information are publicly available on the Markit website.

Dealers also provide their own bond indices to clients. Investors can subscribe to dealers' in-house platforms which often provide a wide array of research, as well data, yield curves and banks own indices. These are often customisable too and investors have the ability to determine which instruments should be included into a bespoke index.

A number of trading platforms also produce indices on bonds listed on their platforms. For example, EuroMTS provides real-time Eurozone bond indices based on tradable prices provided by MTS Group. They provide all data necessary for users to replicate the indices. The EuroMTS indices are widely distributed via vendors such as Bloomberg and Thomson –Reuters. Indices include Government Bonds, Inflation Linkers, Covered Bonds and Government Bills.

- **Price Aggregators**

Aggregate/ composite prices: commercial vendors also provide daily mid market intra-day and end of day pricing based on levels aggregated across various dealer providers. These levels are not executable but provide an indication of the market. Vendors include Markit, Bloomberg and CMA.

- **Electronic Services**

A number of electronic services are available in the marketplace. Dealers provide their own single dealer screens, which can also be found on vendors such as Bloomberg.

Electronic execution platforms are widely used in the European dealer-to-client market. The most widely used platforms are Bloomberg, TradeWeb, BondVision and MarketAxess. The platforms receive and aggregate dealer prices and allow clients to select the best price and to raise RFQs or orders to single or multiple dealers.

- **Bids wanted in competition (BWICs) and Offers wanted in competition (OWICs)**

BWIC's/ OWIC's are lists of positions sent by clients to multiple dealers to seek competitive bids in order to achieve the best possible price. The lists are exchanged and prices are sought on electronic platforms such as Bloomberg and TradeWeb, which allow clients to customise the bid process by, for example selecting the dealers for the quote request (typically 5 to 6), defining the time by which prices must be received, identifying the best prices, and initiating execution following selection of the best price.

Post-trade

- Xtrakter (owned by Euroclear) manages the TRAX OTC trade matching and regulatory reporting service and holds data on a good size of the European corporate bonds. The data is available to the regulators and commercial users for a fee through the Xbis Buyside Information Services. Xtrakter also provide services to retail investors and make available average closing bid and offer quotes, high low and median prices for bond trades reported to TRAX.

(B) STRUCTURED FINANCE (ABS AND CDOs)

Pre-trade

Bloomberg screens and dealer runs as highlighted above are most commonly used for pre-trade information in the structured finance market. Given the more complex nature of pricing ABS and CDOs, dealers provide pricing to investors on request. Dealers use a variety of sources for these purposes, including inter alia, conversations in the market and brokers' screens. Dealers also often have internal pricing and valuation groups, separate from the trading desks to provide third party pricing to customers.

"Dealer Runs", as described above in the context of corporate bonds, apply equally to ABS. There is also an index for European ABS which will be launched shortly.

There are a number of third party data providers, model providers and evaluators who also provide pricing to structured finance market participants. Some of these include Markit, ABSNet and Market Partners.

For the purposes of this consultation, the term CDO will be used to refer to cash CDO securities and not OTC derivatives e.g. index tranches and corporate CSOs

Pre-trading pricing information on cash CDOs is available through dealer pricing runs (distributed to clients, not to other dealers), and BWICs and OWICs. However while clients may see a range of offers in aggregate if they speak to multiple dealers, it is unlikely that there will be more than one offer on the same bond.

Post-trade

For ABS instruments, Markit is commonly used for end of day pricing. Xtrakter/Xbis provides post trade reporting.

Post-trade valuations are available for cash CDOs from the original vendor of the note.

(C) CDS

Pre-trade

We estimate that over 90% of all quotes on the CDS market are received over electronic means. Only a small proportion of the market quotes is received over voice services, relating mainly to less frequently traded credits or maturities.

A range of services exist on the market that receive and organize the market quote data to provide to market participants through easily accessible services, thus making a high level of pre-trade information available to the market. Many of these sources have been listed by CESR in section 56 of the current consultation, including:

Widely disseminated dealer pricing "runs": Each client receives runs from multiple dealers, i.e. clients have access to a wider range of prices than the dealer participants who only have access to their own levels. Clients then raise RFQs to the various dealers from which they wish to receive competing quotes. Although the runs prices are not executable, dealers face reputational issues if they do not stand behind their run prices and they therefore have a commercial incentive to ensure that they are willing to execute within the bid offers sent via the runs.

Parsing services: organize and present the dealer runs in an easily accessible format, creating stacks displaying best price and depth of quotes (with time and ownership stamp of each price point). The parsing services may be available for free or for a fee from commercial vendors, to any market participant or other entity wishing to gain access to the data. Some of the vendors that provide CDS parsing services include Bloomberg, MarkIt, and CMA/ QuoteVision/ DataVision.

Bids wanted in competition/Offers wanted in competition: These lists of positions are sent by clients to multiple dealers to seek competitive bids in order to achieve the best possible price.

Single Dealer screens/ electronic services

Additionally, the following further sources of pre-trade transparency in the CDS market are available:

Commercial vendors also provide daily mid market intra-day and end of day pricing based on levels aggregated across various dealer providers. These levels are not executable but provide an indication of the market. Vendors include MarkIt, Bloomberg and CMA.

CCPs provide end of day marks for contracts that are eligible to be cleared. The CCP end of day process typically requires executable pricing from all participating members and produces a composite price based on each CCP's proprietary algorithm. The executable pricing data provided to the CCP's for this calculation is comprehensive incorporating all points on the CDS curve. Members are typically required to trade on a regular basis to guarantee robustness of the CCP end of day price. The cleared set of European CDS contracts already includes 7 of the most recent European High Grade and High Yield CDS Index Series, as well as Single Name CDS that cover approximately 85% of the constituent entities of the main European CDS Index, as at the end of May 2010. As the set of cleared CDS products is expanded this year, the CCP's end of day pricing process will grow to cover virtually all CDS on liquid indices and single name components of the indices.

Electronic execution platforms (mainly Bloomberg Single Dealer services) exist on the end user side but have not received significant volume yet. The platforms provide the ability to view live prices from multiple dealers and to raise either RFQs or orders.

Post-trade

Following progress achieved through cooperation of the industry and regulators over the last several years, the CDS market now has a high level of regulatory transparency through the global **DTCC Trade Information Warehouse (TIW).** DTCC provides the CDS market with an electronic confirmations infrastructure, as well as a warehouse for all outstanding contracts on the market globally. The TIW now covers 100% of outstanding credit derivative transactions covering Single Name CDS, Index CDS, Index tranche CDS, CDS on ABS ad Loan CDS, and including both dealer and client activity. 96% of these transactions are electronically confirmed via DTCC (Gold Record) and stored in the warehouse, and the remaining 4% are paper confirmed trades with an electronic record stored in the warehouse for the purpose of regulatory transparency (Copper Record). The paper confirmed CDS contracts are typically contracts containing bespoke provisions and therefore not readily electronically confirmable. Additionally, CDS Swaptions, CDOs, CLNs, Single Tranche CDOs are among products that are now covered through a Copper record in DTCC.

DTCC is able to provide market information at a very granular level to regulators as the system houses the legal confirmation of the vast majority of Index and Single Name CDS contracts. Transaction volume or outstanding position breakdowns can be provided by counterparty or reference entity. Note that the position data in DTCC is not representative of traded volumes due to compression taking place in the CCPs and via third party vendor platforms but is representative of the gross notional of trades outstanding in the system. It should be noted that the gross notional of trades outstanding does not equate to the actual amount of risk transfer that has taken place, as will be explained in more detail in latter sections. DTCC is also able to provide a view on traded volume. We strongly support global regulatory cooperation to ensure full access and appropriate distribution of the information within the regulatory community including appropriate confidentiality procedures. Additionally, DTCC have published aggregate CDS market data on their website since 2008 (http://www.dtcc.com/products/derivserv/data/index.php) including a view on total notional of credit derivatives currently outstanding, CDS Index and Single Name breakdown, and a view of the top 1000 Single Name reference entities including gross and net notional outstanding, number of contracts outstanding and weekly traded volumes.

Another important source of post-trade transparency to the buy side, are the valuations that are provided to clients by dealers as part of the client service. Typically the service includes a regular statement which includes a position level mark-to-market valuation on the positions that the client has facing the dealer. Once implemented, client clearing via CCPs will give clients access also to the CCP end of day prices and daily mark to market/ position revaluations.

Furthermore, the CDS market participants are working towards increased use of pre-warehouse automated matching services with the objective of matching occurring very close to the execution time. Multiple vendors provide these services (as well as providing links to the CCPs), among them e.g. ICE Link and MarkitServ.

Additionally, execution volumes on CDS contracts traded in the UK are reported to the FSA at a trade level, on a daily T+1 basis through their proprietary transaction reporting system.

For post-trade end of day prices and some executed prices we will look to the clearing houses, CMA, Markit, Creditex. For size disclosure, the following services are also available -DTCC, Clearing houses, RFQ Hub and Tradeweb.

SUMMARY OR PRE AND POST TRADE FOR BONDS AND CDS

The following sources in summary provide pre and post trade information to customers for the following products (a) Corporate Bonds through to (c) CDS:

Pre –Trade Indicative Price Discovery	**Product Areas**			
Sources	Government Bonds	Corporate Bonds	Structured Finance (ABS , CDOs)	CDS
Dealer runs	Y	Y	Y	Y
Brokers	Y	Y	Y	Y
Bloomberg	Y	Y	Y	Y
Markit		Y	Y (ABS)	Y
Thomson-Reuters		Y		Y
Xtrakter	Y	Y	Y	
Fitch				Y
RFQ-Hub				Y
Tradeweb	Y	Y		Y
Bondvision (MTS)	Y			
CMA	Y	Y		Y

End of day Closing Prices – often composite of quotes or traded prices	**Product Areas**			
Sources	Government Bonds	Corporate Bonds	Structured Finance (ABS , CDOs)	CDS
Xtrakter/Xbis	Y	Y	Y	
Bloomberg	Y	Y	Y (ABS only)	Y (intraday and end of day)
Thomson-Reuters	Y	Y		
Markit	Y end of day and intraday prices	Y end of day and intraday prices	Y - end of day pricing	Y
Tradeweb	Y	Y		Y
Marketaxess	Y	Y		
Bondscape				
CCP				Y end of day
CMA				Y – end of day and intraday prices

Post –Trade Price Reporting	**Product Areas**			
Sources	Government Bonds	Corporate Bonds	Structured Finance (ABS , CDOs)	CDS
Xtrakter/Xbis	Y	Y	Y	
DTCC				Y
CCP's providing clearing services				Y

(D) INTEREST-RATE DERIVATIVES

Pre-trade

In the Interest Rate Derivatives (IRD) market, users are institutional and professional in nature and are able to access pre-trade transparency through multiple venues and formats. Typically, these are:

- **Bloomberg and TradeWeb live trading platforms** – providing Request for Quote (RFQ) functionality that allows multiple dealers to be put in competition to allow for best price execution in an efficient manner.
- Clients have the ability to access live pricing information on **Bloomberg and Reuters** and download into their proprietary systems/spreadsheets.
- **Broker screens** are widely available on a variety of platforms including Bloomberg and Reuters. These services cover a broad selection of benchmark instruments - e.g. swaps, basis swaps, block futures, inflation swaps, and strategy trades.
- **Single dealer pricing and execution screens** on both Bloomberg and TradeWeb that provide live "click to trade" functionality
- **Single dealer proprietary platforms** – live pricing, execution, analysis tools, news etc, often with a wider range of product than the multi-dealer venues.

Clients have access to extensive pre-trade transparency through multiple venues and formats as follows, especially through BBG click to trade EXCEL download view of the market from multiple dealers:

Bloomberg benchmark firm two-way prices and sizes - clients can tell whether price and size is firm and will auto-execute

- Tradeweb composite indicative two-way prices
- Tradeweb / Bloomberg RFQ responses (multi-dealers usually responding)
- Single dealer proprietary platforms e.g. MorganDirect, Deutsche Autobahn
- Broker screens are widely available
- Very broad selection of benchmark instruments available on these platforms e.g. swaps, Cross-currency swaps, basis swaps, block futures, inflation swaps, strategy trades etc.

Post-trade

Infrastructure is available to provide up-front, timely trade affirmation and execution levels e.g. MarkitWire and trade reporting repositories will provide additional transparency going forward.

Most inter-dealer trades executed via brokers are widely reported to other market makers except in situations when liquidity/size is sensitive.

Another important source of post-trade transparency to the buy-side, are the valuations that are provided to clients by dealers as part of the client service. Typically the service includes a regular statement which includes a trade level mark-to-market valuation on the positions that the client has facing the dealer.

Client clearing via CCPs will give clients access also to the CCP end of day prices and daily mark to market/position revaluations.

(E) EQUITY DERIVATIVES

Pre-trade

A relatively large proportion of equity derivatives takes the form of listed (i.e. exchange traded) instruments, to which exchange-type transparency applies.

In the OTC Equities Derivatives Market, as opposed to the Exchange Traded Market (future or option markets), users are institutional only. The retail market is usually structured through various wrappers-warrants, certificates or ETF- which already receive full MIFID protection. The pre-trade information varies from one product to the other:

- **Look-alike OTC (serves as substitution of Equity Listed Products)**: the price discovery is based on public screen prices available for Equity Listed Products, and supplemented by request for quote process that allows competition between dealers. In addition, voice prices can be given by wholesale brokers, upon request,

- **Equity swaps and other delta 1 products**: they synthetically replicate long or short positions on an listed equity underlying (stock or index both listed): the price discovery is based on the following two components:

  (i) the price of the underlying stock or index for which exists a full pre-trade transparency regime pursuant to MiFID; and

  (ii) the price of the "financing service" offered by the dealers and brokers when selling such products (i.e.: the direct long/short position on a given underlying being replaced by a synthetic exposure on this underlying, the financing cost of this exposure is transferred to the dealer and included in the price of the Equity swap) is negotiated privately and is dependent upon specific aspects of the client/dealer relationship. Hence, this price is not made public. Nevertheless, clients can still ask request for quotes and put dealers in competition.

- **Bespoke and structured products**: as these trades are privately negotiated (OTC derivatives) and do not exist prior to their request, there is no specific data to transmit. Clients can still ask request for quotes and put dealers in competition.

Post-trade

For post-trade information, dealers talk to brokers, clients, and other dealers*.*

(F) FOREIGN EXCHANGE DERIVATIVES

Pre-trade

The FX market is highly electronic and wholesale banks compete by distributing live executable prices in spot, forwards, swaps and options. Live streaming prices are available in Spot and common Forwards. The large number of grid points and pricing parameters require Options and other Forwards to be priced electronically on a RFQ basis. Market participants may access prices in several ways:

- Broker screens (e.g. ICAP / Tullet Prebon)
- Data available from exchanges (CME)
- ECN "agent" that combines the best competing prices from many sources
- Aggregator that often acts as a principal, combining best prices and may even improve upon the best bank price
- Direct with banks and market makers, often when the user wants the much richer functionality available compared to that which is available on general platforms.
- Market data providers (e.g. Reuters Matching / Bloomberg) which provide numerous sources of indicative prices in spot forwards, swaps options and NFDs

For all options instruments including those that are highly bespoke, what is readily available is information on key inputs such as spot and forward rates and volatilities. The comments in this response refer primarily to the (short-dated) spot and forward FX market, rather than options or long-dated currency swaps.

Post-trade

A number of sources mentioned above (broker screens, market data providers and exchanges) also provide post trade information to the FX market. FX Dealers have embraced post trade transparency through increased reporting via CLS since 2002. CLS continues to provide post trade reporting to many regulators and central banks covering up to 70% of the daily transaction volume in the FX Market.

The FX participants continue to work with CLS to enhance this reporting via the CLS trade repository. The FX market is also looking to develop new proposals to enhance post transaction reporting for regulators and other governing bodies while ensuring that these enhanced reports do not impact market liquidity, clients or create unforeseen consequences for the market.

(G) COMMODITY DERIVATIVES

In the commodity derivatives market, pre and post-trade data types might be categorized as coming from in three key sources:

1. Market price data in support transaction execution and price discovery
2. Information provided by exchanges and brokers in support of transaction and margin settlement, trade confirmation, risk management and trade valuation activity; and
3. Third party price publication services in support of settlement and trade valuation activity.

Pre-trade sources

The main sources of pre-trade information are inter-dealer brokers. Additional sources include:

- Electronic exchanges (e.g. ICE, APX, LME, Powernext, and Nordpool).
- Electronic broker platforms
- Voice brokerage services to access market liquidity for execution and for price discovery purposes.
- Newswire based platforms (Reuters/Bloomberg) for up-to-date market pricing for the Commodities markets/products that these platforms support, market news and commentary.

Post-trade

The main sources of post-trade information are clearinghouses, which focus on particular commodities. Those clearinghouses include CME Clearport (agriculture products, base metals, coal, crude oil, natural

gas, oil products, precious metals and weather-related contracts), ICEClear US (agriculture, crude oil, emissions, natural gas and oil products), London Clearinghouse or LCH (base metals, freight contracts, plastics products and precious metals), NOS Clearing (emissions and freight contracts), European Commodities Clearing (emissions, natural gas and power) and APX (natural gas and power).

Dealers also utilise the electronic confirmation matching platforms to monitor performance vs. fed targets, however this will not be explicit to derivatives and will include the total eligible population, both physical and financial.

CORPORATE BONDS (Q2 – Q12)

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

The scope of "corporate bonds" should cover Investment Grade Corporates/ Financials and High yield bonds. We do not believe there are other instruments beyond these that should be considered as corporate bonds for the purpose of future transparency requirements.

We note in section 13 of the consultation paper proposes to define the scope of the transparency regime as bonds for which a prospectus has been published. We feel that this does not sufficiently assist in the scope definition. The European corporate market covers hundreds of thousands of bonds, the majority of which have a prospectus. However, only a small subset of the bonds are traded; and even a smaller subset are traded actively and thus appropriate to be included within the scope of a transparency regime. We believe that the current proposals significantly overstate the fundamental liquidity of the corporate market, and the resulting set up would, we believe, make dealers more reluctant to commit capital and therefore would diminish liquidity instead of protecting and improving it.

Analysis was previously completed by a member firm on the corporate bond market activity in 2008 based on data that was made available to the FSA/ CESR by Xtrakter. Out of 150,000+ issuances on the market, the analysis was conducted on approximately 5,000 bonds with the highest turnover. Even for these top liquid bonds, the average percentage turnover compared to issuance size was 121%, compared to an average of 257% for the total European equity market in 2008 (based on FESE data). Even within the top 100 of bonds in terms of percentage turnover, a material subset of bonds traded infrequently down to as little as 6 times a year.

We believe a practical approach to ensuring that the corporate bonds within the scope of the transparency regime are sufficiently liquid is to focus on those instruments that are traded electronically. Given the continuously increasing electronically traded corporate bond population, this would not only ensure that the bonds with the transparency requirement are actively traded, but would also ensure that a sufficient subset of bonds is selected within the scope of the regime. (The AFME Electronic Trading Survey published in February 2010 found that electronic trading in the European FI markets increased in 2009 with 36% of clients conducting more than 85% of their trading electronically vs. 21% in 2008. 53% of buy side and 76% of sell side respondents increased their electronic trading in 2009. E-trading is further expected to increase in 2010, with Investment Grade bonds one of the largest expected growth areas.)

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.

We believe that covered bonds should be reviewed under their own category. Whilst some covered bonds can be considered as structured products in one context as they represent securitisation of pools of underlying receivables, they are also considered as a form of corporate debt in the context that the bondholders have recourse to the original borrowing entity. Covered bonds are also governed by strong legislation protecting the bondholders but this is not standardised and can vary across jurisdictions.

The uniqueness of the covered bond product is that whilst they are a form of structured lending, they in fact trade in the markets more like rates products (such as supranational and agency bonds).

Therefore, it is proposed that covered bonds are addressed in this context and we do not believe that they should fall into either structured finance or corporate bond categories.

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?

We have not perceived a lack of pre-trade transparency for corporate bonds. Please see all the various sources mentioned in response to Q1. Most banks quote live two-way prices to clients throughout the day. Additionally, pre-trade market data on bonds is available through a number of sources to all market participants or indeed to any other users from the commercial pricing providers and so we perceive there

to be a high level of price information that is available to all users. This is further supported by AFME Liquidity survey conducted in February 2010. Investors, in fact, have more pricing data available than the dealer market participants as they receive prices from multiple banks. It should be noted that due to the nature of the European corporate bond market (as described in Q2), a wide range of price data is available on the liquid and frequently traded corporate bonds. On the illiquid corporate bonds, clients are able to raise RFQs to multiple dealers and select the best price from the received quotes.

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.

We are of the opinion that market participants do have access to pre-trade information. Typically, retail clients would access OTC markets through Private Banking services, with the Private Banks having the same level of access to the OTC market information as dealers and other market participants, therefore providing retail clients with the same level of access to the data. Corporate bond price data is also available to retail investors via a specific Bloomberg service.

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

We believe that pre-trade information is efficiently disseminated to market participants. Pre-trade information is either provided directly to participants or via a number of electronic means on a continuous basis, including consolidation/ aggregation of the pricing data. Many commercial services currently exist that provide parsing/ scraping services for market quotes and organize the information in a format that is easy to analyse. In addition, participants can make use of the iBoxx and dealer bond indices (see Q1c).

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.

General comment:

Pre-trade transparency in market segments which are illiquid and not accessed by retail could severely damage participants' willingness to provide an execution service. Execution prices are normally negotiated bilaterally due to constraints on supply and ability to liquidate inventory. Price discovery in these segments across all asset classes is a delicate process and its demise due to any sweeping "one-size fits all" approach could be a retrograde step. Delayed post execution transparency would need to be appropriately detailed so as not to potentially mislead participants or destroy the market segment.

In relation to wholesale market:

As described in Q1 and Q4, a high level of pre-trade transparency exists for the wholesale market. We firmly believe that there has been no identified market failure related to pre-trade transparency with respect to the corporate bond market. Therefore, any additional measures of transparency must be weighed against the potential materially negative consequences in terms of liquidity. The OTC markets function largely on the principle that market makers are willing to take risk on their balance sheet in order to provide liquidity on a market that may not have natural buyers and sellers in a way that would enable an organized market. Requiring dealers to publish executable quotes that investors can evaluate prior to trading, could harm their ability to execute transactions without moving the market and creating significant risk in the execution of the subsequent hedging transaction. As a result, less capital would be available to end users with a significant impact on the market and a potentially material impact on the real economy.

In relation to retail market:

As described in Q5, retail clients have access to the same level of pre-trade information as institutional clients, typically through Private Banking services through which they access the OTC markets.

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

We believe it is important that corporate bond users have access to view prices and receive quotes real time from multiple market makers or dealers in order to be confident of the best available price. This information is fully available through the current pre-trade transparency framework described in Q1 c and Q4.

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?

We fully support availability to regulators of all transaction data including size, date and time data.

We believe that the following information is meaningful and appropriate to make available to market participants, for the subset of bonds sufficiently liquid to be incorporated in the regime:

- Description of the bond (ISIN code, maturity, coupon, rating, currency, issuer name)
- Trade Date
- Average, low and high price traded

The most meaningful piece of information to be made available is the low/average and high prices traded on a particular bond on the specific day. Notional on a trade does not provide much added information when traded in small or average sizes. At the same time, the traded notional should not be disclosed beyond a certain threshold to avoid any adverse reaction on the market; further, if a threshold is applied it must be sufficiently low to ensure that non-disclosure in itself does not create a signal to the market. Given these considerations and the limited benefit of including notional, our recommendation would be not to incorporate notional in the transaction reporting. We propose to apply a notional "buckets" of 'EUR 1mm and below' and 'above EUR 1mm' only.

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).

AFME has included in this response, a proposed calibration for post trade reporting of corporate bonds (again defined as investment grade corporates and high yield bonds).

AFME members and buy side participants have been developing a market-led approach for post-trade transparency. It aims to address the concerns to increase transparency in the market in general. However, it also seeks to form suitable calibration that will minimize the detrimental impact on liquidity.

In our consultations, we noted that dealers and investors increasingly used electronic trading platforms for their daily trading activities. Bonds typically traded on these platforms were usually the most liquid and most standardised instruments. AFME believes that any new regime for post trade transparency should begin within this scope of bonds, with further liquidity filters described below. This would help ensure focus on the most liquid instruments only; ensuring market makers remain incentivized to provide liquidity. Given the continuously increasing electronically traded corporate bond population, this would also ensure that a sufficient subset of bonds is selected within the scope of the regime. Our AFME Liquidity surveys (http://www.afme.eu/surveys.aspx) continue to demonstrate increase use of electronic trading platforms as an efficient means for dealers and customers to trade the most vanilla products. We also believe it is these bonds which would be a greater benefit to the retail market participants.

AFME also believes that in order to protect liquidity, there should be adequate calibration to determine the liquidity of a bond before it falls under the reporting regime. In that vein there should be an adjustment in terms of including a reporting delay, depending on how frequently the bond has been traded in the past. With such filters in place, we believe that a report delivering aggregated price information on all bonds within the scope we propose below could provide useful additional price information to the market whilst protecting liquidity for dealers and investors trading in the market.

We believe that aggregating data for publication purposes will require high quality inputs in terms of consistency, accuracy and timeliness. We are keen to work our regulators in conducting analysis in order to suggest suitable methods for consolidation. We also believe trying to aggregate will be immensely complex and quality control would have be an utmost priority so that inaccurate data is not disseminated to the market.

PARAMETERS	DESCRIPTION
Bond Eligibility Criteria	
Eligible Bonds	**The following types of bonds currently trading on dealer-to-client electronic trading multi and single-dealer platforms. Current popular platforms include Bloomberg, MarketAxxess, BondVision and Tradeweb.** **1. Investment Grade Corporates/Financials** **2. High Yield Bonds**
Issuance Size	**Minimum Eur500m at issue**
Maturity	**Minimum 1 year maturity at issue or outstanding**
Country Selection	**Bonds securities admitted to trading in an EU regulated market and denominated in the following G7 currencies (EUR, USD, GBP, CAD, JPY)**
Currency Selection	**Euro zone or G7 currency (i.e. EUR, USD, GBP, CAD, JPY) as above**
Trade Sizes	**Trade sizes reported in terms of two notional buckets:** **1. Trade sizes Eur1mm and under** **2. Trade sizes above Eur1mm.** Trade sizes in the 'above Eur 1mm' bucket would be subject to additional liquidity calibration criteria listed below which involves implementation of a reporting delay based on an average daily turnover measure.
Liquidity Calibration Criteria	
Reporting Delay	**To calibrate for the liquidity of the instrument, compare the trade with the average daily turnover for that bond in the past quarter.** Report the transaction if the trade size is within normal trading volume expectations; delay accordingly if the trade is out of normal expectations.
Trade size vs. Avg. Daily Turnover	**Reporting Date**
<= 200% (or <=Eur1mm)	Settlement date
>200%	Settlement date + 2 business days
>500%	Settlement date + 12 business days
Trade Frequency Threshold	All trades are reported in aggregate so a minimum of 3 trades per day in a given bond is required in order to be eligible for reporting.

Data Reporting and Collection	
Data Reported	**Once trades are eligible, and according to the appropriate filters mentioned above, the following data will be provided in the trade report:** 1. Trade Date 2. ISIN 3. Bond Type 4. Bond Description 5. Average Price 6. High Price 7. Low Price 8. Flag Trade size bucket: (i) Eur1mm and under or (ii) above Eur 1mm
Timing of Publication	**Report would be produced on confirmation of trade settlement**
Data collection	**Use the existing dealer STP feeds for electronic trading.** Decisions to be made on which provider will aggregate this information. An RFQ can be offered to existing data vendors to provide this additional service to market participants.
Data cleansing	**Remove double counting where both sides of one trade is counted**

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

AFME believes that above proposed framework aims to differentiate reporting according to the liquidity of the product. We believe this is an important criterion that should be considered for any transparency regime.

A concept of "market conditions" could also be considered whereby timing of reporting could be adjusted based on material changes in the overall liquidity conditions on the market.

Lastly we would also recommend a phased implementation. The reporting regime could be piloted with the most liquid product areas, then additional products could be added according to their liquidity ranking once the regime is considered to be functioning satisfactorily.

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"?

We are supportive of the number of providers of close to real time pre trade price information in the market place. We believe that timely pre-trade price data can be of great value to investors. Post trade data ultimately serves as a type of benchmark, and useful price point for the participant. However, post trade price data will not provide any commitment to the investor in terms of the level they would be able to achieve should they wish to execute a similar trade. The price executed will depend on a number of factors including market conditions, underlying yield curve, size and complexity of the transaction, relationship and credit /settlement risk with the client. We believe forcing close-to-real time reporting will actually damage the ability of clients to execute at the best possible price by reducing the dealers willingness to act as principal for their client, given the speed at which the trade would become known to the wider market. We believe that reporting the transaction on settlement would be a better solution.

Where similar measures have been introduced, such as in the US, the underlying markets have been significantly more homogenous in nature, and yet the results to liquidity have been found to be negative. Such proposal for reporting "as close to real time as possible" would significantly overstate the fundamental liquidity of the European corporate market, and we believe that the cost of such measure in terms of liquidity impact would be material, and more importantly the impact of diminished liquidity would be largely borne by the end users.

GOVERNMENT BONDS (Q4- Q10)

Given updated information at the CESR open hearing on 27 May 2010, we understand that CESR may also review government bonds under this scope. We therefore have provided additional responses to the questions below as if the reference to corporate bonds in the questions below were deemed to be references to government bonds.

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?

We do not currently perceive a lack of access to pre-trade info nor do we feel that the content of the information is insufficient.

In our AFME/epda Price Discovery and Market Data Guide for the European Government Bonds Market ("Price Discovery Guide"), available at (http://www.afme.eu/document.aspx?id=3780), which aims to provide investors and other interested parties with an overview of the range of providers of price and market data currently available, we demonstrate that there is ample information available to all kinds of investors including real-time tradable prices.

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.

In Price Discover Guide, we demonstrate that there is pre trade information available for every subset of investors. Each subset of investors has its own particular information needs, and data providers respond to these needs efficiently. For retail investors, there is a lot of information freely available on the websites of the specific platforms. Examples of platforms that specifically target retail investors include Euro TLX, Borsa Italiana - MOT and London Stock Exchange: ORB. Retail investors also benefit from public access to the prices of some of the interdealer platforms, although sometimes with a slight delay.

Furthermore, there are several websites that specifically target the information needs of the retail investor. Good examples include InvestinginbondsEurope.org and Bondmarketprices.com. These websites are industry initiatives.

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

We believe pre-trade information is efficiently disseminated to market participants. When compared to the equity market, the decentralized structure of the government bond market extends to decentralization of sources of price information. However, there exists a large and competitive industry of financial services providers whose business it is to collect, aggregate, consolidate or evaluate price information for use by dealers and investors. They compete amongst other things on data availability, user friendliness, speed and analytical soundness. This dynamic market driven process reacts to changing market conditions and investor needs, thereby helping to determine optimal price transparency in the markets. Furthermore, there are several industry initiatives that provide consolidated price information to retail investors free of charge (see Q5).

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.

As per earlier responses and as demonstrated our Price Discovery Guide, we believe that pre-trade information is widely available through all subsets of the market. We therefore conclude that there is no apparent market failure that needs to be solved by a regime. At the same time, an imposed regime might lead to extra costs and administrative burdens for all parties involved.

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

Please see our answer to question 7.

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?

We believe that the pre trade price information that is currently available to the market is sufficient to cover the needs of the market participants.

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).

Given updated information at the CESR open hearing on 27th May 2010, we understand that CESR may also review sovereign bonds under this scope. The AFME government bond group AFME/epda believes that the AFME proposal for the corporate bond markets is a useful framework to develop a government bond approach on. Given the specific nature of the market however, it may be desirable to adjust this proposal to the extent that it better reflects the needs of all government bond market participants. AFME/epda commits itself to continue to work with CESR constructively to further set out the details of such an approach and holds itself available for discussion.

STRUCTURED FINANCE PRODUCTS (ABS AND CDO) ("SFPs")

General comments:

SFPs cover a broad and diverse range of investments ranging from relatively standardised products to customised bilateral transactions. Customized SFPs rarely trade in the secondary market and from our understanding at the CESR open hearing on 27th of May, is out of scope for this consultation. Therefore our responses are in relation to more standardised products.

Determining the market value and price of an SFP is driven by the value of the pool of underlying assets, each of which is unique to the particular SFP. Therefore, the pricing of SFPs within each originators issuance program or across SFPs from other originators are not necessarily comparable.

Many SFPs are priced using proprietary models. Publication of the prices generated by these models for rarely-traded instruments will not serve as a price discovery vehicle. The dissemination of such trade information could have the effect of disclosing proprietary information to the detriment of such dealers.

Disseminating trade information may negatively affect market participants whose trades are revealed to the market, often before these trades can be executed in their entirety. This is especially the case in markets that are not and cannot be electronically integrated and lack the firm quote and price protection regulations of integrated markets.

In the circumstances at issue, dissemination of trade information could, especially for more liquid SFPs, create the opportunity for prices to be artificially ratcheted up or down as material information about market activity is conveyed to participants who could then buy or sell in advance of the completion of the intended transaction. As market participants trade on the information, prices would fall ahead of sellers and rise ahead of buyers. Thus, investors would pay more for the bonds they purchase and receive less for the bonds they sell. The adverse market movements precipitated by additional trade transparency would negatively impact investors.

Finally, in the current market environment, post-trade transparency may serve to freeze market participants and cause further illiquidity in the market. Market participants may not wish to have their positions marked on the basis of a single trade in the market, particularly in an overly depressed or already-illiquid market. Mandatory reporting of these trades may cause these market participants to refuse to trade.

We believe that the industry should study whether certain SFPs have characteristics that would benefit from such a post trade transparency regime. We further suggest that the industry study how to effectively disclose to all secondary market participants those cash flow assumptions that typically influence the value of an SFP, particularly changes in those assumptions. Furthermore, we suggest analysing the trading activity of the most liquid benchmarks and standardised SFPs to see what information from these transactions could be disseminated to market participants.

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?

The ABS market is largely a wholesale, not a retail market. Information is available to participants in this wholesale market via dealers, valuation companies, brokers and other market participants. On this basis, dealers are dealing almost entirely with eligible counterparties and professional clients that have access to this information.

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

We do believe that pre-trade information is available. We refer to our responses listed in Q1.

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?

Pre-trade information is not generally consolidated. However investors and other market participants have access to pre-trade information through a number of channels.

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.

Pre-trade price dissemination is already effective in the ABS market through various channels. A new pre-trade regulatory regime could potentially reduce liquidity and reduce incentives for dealers who may, on this basis, choose to exit the market. Any benefits of introducing greater transparency are seen to only be attractive to those instruments that are considered to be liquid.

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

Which pre-trade information should be disclosed?

AFME ESF Traders Group ("The Traders Group") believe that the current framework in which dealers provide available information, and dealers as well as other third parties provide valuations, is the correct model. Investors and other market participants receive on a regular basis bid lists including bonds to be sold to one or more counterparties as well as regular updates on pricing levels from dealers and brokers.

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 vast majority of participants in the CDO market are dealers and institutional investors with very little retail investors' presence.

We have not perceived a lack of pre-trade transparency of the components questioned. Investors are able to access information from dealer's runs and Bloomberg. CDOs are complex, non homogenous products with limited liquidity and trading frequency and a product that does not lend itself well to MiFID pre-trade transparency regime.

With respect to performance data for CLOs and CDOs, prospectus and investor report information is reliable and available to investors and secondary market participants. However investor reports are not always easily accessible as such reports are not always publicly distributed by trustees or issuers.

The Traders Group encourages a timely public dissemination in electronic format of prospectuses and investor reports.

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

Yes. Potential market participants have access to whatever pre-trade transparency there may be available on the particular bond of interest via Voice and electronic platforms. Please see responses in Q1. It may be also of interest to note that iBoxx indices are expected soon for SFPs which we believe will provide additional benefits for investors.

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 complex, non homogenous products with limited liquidity and trading frequency. Given the lack of standardisation with respect to CDO structures and collateral composition, pricing information/guidance is often not available for many of the tradable CDO tranches and in some cases even for comparable CDO tranches.

CDO prices are disseminated to market participants directly.

However, even when execution price points exist on a particular CDO tranche, it should be emphasised, that the execution prices may vary significantly over time depending on a number of factors including but not limited to: performance of underlying collateral markets, triggers in the transaction, supply/demand dynamics, deal manager actions, etc. Many market participants will use third party vendors to consolidate such CDO performance information, typically from trustee reports. Though trustee reports are not always available from a consolidated source they are usually provided by the seller to any potential buyers in a transaction.

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.

Given the lack of standardization and the dearth of continuous and frequent pricing point, imposing a pre-trade transparency regime, in addition to being technically challenging, may create a false sense of transparency that may impair the judgment of some market participants. Furthermore, due to the relatively low liquidity of CDOs, imposition of a pre-trade price transparency regime could have a materially negative impact. Dealers will be unlikely to be market makers under such rules.

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

We believe that there is sufficient pre-trade transparency at the present time in terms of pricing information. We are not of the opinion that the CDO market in its current state lends itself to a mandatory pre-trade transparency framework.

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?

We believe that liquidity, frequency of trading and homogeneity of asset class are the most important criteria for SFPs. We believe that the vast majority of the SFPs market consists of very bespoke products and bespoke transactions which are usually sold to sophisticated investors. These instruments are traded very infrequently and were not expected to be very liquid. Therefore we do not propose a pre- or post-trade transparency regime for SFPs in general. We are however keen to continue analysis in this area to consider whether there are suitable standardised and actively traded SFPs of which increased price transparency could be provided. We would encourage regulators to continue to work with industry in determining appropriate liquidity thresholds. We think trading frequency is the most appropriate way to determine liquidity. However, failing that measure, a EUR100m transaction size and AAA rating may be appropriate as a guide.

For CDOs, "C) Frequency of secondary trading" is the most relevant criterion for a phased approach for post-trade transparency. The non-homogenous nature of most CDOs and lack of frequent trading points should also be taken into account as a wide number of factors from the underlying markets drive liquidity and valuations. Any proposed price transparency could provide false price guidance. CDO encompasses a wide variety of products and we believe that different approaches may need to be developed for each product subset. For example, the index tranched market is the most liquid. However any first phase would have to examine the correct approach to CDS before deciding on a course of action for index tranches.

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

Please see response in Q23

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.

We do not consider it appropriate to use the same framework proposed post-trade transparency for corporate bonds to structured finance products due to the illiquid nature of these instruments and the fact that the investor base is generally represented by sophisticated institutional investors. Please see responses in Q23.

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?

We do not see the benefit of post trade reporting for structured finance products other than liquid ABS transactions. Improperly calibrated information requirements may result in misleading information, which could distort market and dry up what little liquidity might exist. Additionally, misleading information could be misused by less sophisticated investors who do not fully understand the asset class

CREDIT DEFAULT SWAPS (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 the CP correctly notes, pre-trade transparency for CDS comes in a number of forms, each contributing to an overall very high standard.

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

Pre-trade transparency is available cheaply and with minimal technological complexity. Much is available via readily accessible news vendors' screen-based services. We estimate that over 90% of all quotes on the CDS market are received over electronic means. The small proportion of market quotes that is received over 'voice' services relates mainly to infrequently traded credits or maturities.

A range of services exist on the market that receive and organize the market quote data to provide to market participants through easily accessible services, thus making a high level of pre-trade information available to the market. Many of these sources have been listed by CESR in section 56 of the current consultation, including:

Widely disseminated dealer pricing "runs": Each client receives runs from multiple dealers, i.e. clients have access to a wider range of prices than the dealer participants who only have access to their own levels. Clients then raise RFQs to the various dealers from which they wish to receive competing quotes. Although the runs prices are not executable, dealers face reputational issues if they do not stand behind their run prices and they therefore have a commercial incentive to ensure that they are willing to execute within the bid offers sent via the runs.

Parsing services: organize and present the dealer runs in an easily accessible format, creating stacks displaying best price and depth of quotes (with time and ownership stamp of each price point). The parsing services may be available for free or for a fee from commercial vendors, to any market participant or other entity wishing to gain access to the data. Some of the vendors that provide CDS parsing services include Bloomberg, Markit, and CMA/ QuoteVision/ DataVision.

Bids wanted in competition/Offers wanted in competition: These lists of positions are sent by clients to multiple dealers to seek competitive bids in order to achieve the best possible price.

Single Dealer screens/ electronic services

Additionally, the following further sources of pre-trade transparency in the CDS market are available:

Commercial vendors also provide daily mid market intra-day and end of day pricing based on levels aggregated across various dealer providers. These levels are not executable but provide an indication of the market. Vendors include Markit, Bloomberg and CMA.

CCPs provide end of day marks for contracts that are eligible to be cleared. The CCP end of day process typically requires executable pricing from all participating members and produces a composite price based on each CCP's proprietary algorithm. The executable pricing data provided to the CCP's for this calculation is comprehensive incorporating all points on the CDS curve. Members are typically required to trade on a regular basis to guarantee robustness of the CCP end of day price. The cleared set of European CDS contracts already includes 7 of the most recent European High Grade and High Yield CDS Index Series, as well as Single Name CDS that cover approximately 85% of the constituent entities of the main European CDS Index, as at the end of May 2010. As the set of cleared CDS products is expanded this year, the CCP's end of day pricing process will grow to cover virtually all CDS on liquid indices and single name components of the indices.

Electronic execution platforms (mainly Bloomberg Single Dealer services) exist on the end user side but have not received significant volume yet. The platforms provide the ability to view live prices from multiple dealers and to raise either RFQs or orders.

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?

Consolidation and dissemination of data are an integral part of the existing pre-trade transparency model. Many commercial services currently exist that provide parsing/ scraping services for market quotes and organize the information in a format that is easy to analyse. Demand for these services was driven from the buy side and the dealer run formats have been standardised to enable effective scraping and utilisation of the quotes.

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.

It is hard to see what a formalised regime for pre-trade transparency would add, other than unhelpful rigidity, to the current situation, which is generally recognised to be satisfactory to market participants. There is no identified market failure and the current system has the flexibility to provide the transparency that the market requires without regulatory prescription.

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

Please see answers to other questions on pre-trade transparency.

Q.32 In your view, would the post-trade transparency calibration parameters (i.e. transaction size thresholds, information to the 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 post-trade transparency framework and the calibrations put forward in the current consultation paper would not in our view be appropriate for application to Single Name or Index CDS due to the nature of the market. which we elaborate on below:

As a general principle, thresholds for CDS should be no more constraining than those relating to the related 'underlying' asset class. There is no point in applying a more demanding threshold for a market where the 'open interest' (ie, the net amount that would change hands upon a credit event) is so clearly much smaller than that of the related 'cash' market; and where the risk that is taken on is subtly but importantly different (reflected in the fact that CDS prices do not move in lock-step with bond spreads – what is referred to in the market as 'basis').

Further, CDS liquidity is concentrated on a narrow range of credits and maturities, varies widely between credits and maturities and can change frequently for a particular credit:

- Within the world of index CDS, it is essential to recognise the difference between the on-the-run index (where some level of post-trade transparency is feasible and indeed helpful) and other index contracts, where the contract (even though it may be clearable and may at some stage have been the main focus of trading activity) is no longer actively traded. We estimate that as much as 80% of trading occurs in the 'on-the-run' index. Similarly, liquidity in single-name swaps on certain reference entities (or 'names') can vary over time and something which may have been clearing-eligible in the past will not necessarily be so in the future. Therefore, a liquidity calibration is required for any post-trade transparency framework for CDS. One possible measure suggested by a member is to establish thresholds based on percentage of the single name CDS volume for the particular credit of the CDS index traded that day.

- Data provided by DTCC on trades in the TIW (which can be found at the following link: http://www.dtcc.com/products/derivserv/data/index.php) gives information on the frequency of trading for the top 1000 names. Only a small portion of names (slightly higher than 100) trade more than 10 times a day. Given the infrequent activity, the calibration of the reporting delay is important.

- Also, within cleared products, it is important to note that liquidity is generally concentrated in one maturity of contract (i.e., 5 years), while for others liquidity may be much lower. In other words, just because clearing is possible for some contracts relating to a particular reference entity, it does not mean that there is liquidity in all contracts on that 'name'. Further distinctions are possible between CDS contracts, for example, depending on a) whether or not Restructuring is included as a credit event; or b) the seniority of the obligations that are deliverable upon a credit event

The proposal to limit post-trade transparency to clearing-eligible CDS provides some degree of proportionality, which we warmly welcome.

Not all eligible contracts would normally be cleared, given the choice. A dealer may be able to reduce its bilateral counterparty exposure vis-à-vis a particular customer by keeping a clearing-eligible contract within the non-cleared netting set, under the bilateral Master Agreement with that counterparty. As such, it is still subject to counterparty risk management techniques – simply not those that happen to be centralised.

More generally, we note the following.

A naïve reading of market dynamics in CDS could amplify price movements in fixed income, by assuming a greater degree of position changes than are actually occurring.

This would apply in two key respects;

1. The first would be to confuse the notional principal of a CDS with a cash sale, when their respective impacts are radically different.
2. The second would be to confuse aggregate market activity with net risk transfer.

As regards to this first point (i.e., how much actually changes hands): in a cash sale, for the deal to exist, the full principal amount must have changed hands (settlement occurs delivery versus payment). In a CDS, this very clearly is not the case. The protection seller provides credit protection with respect to a specific reference entity (in return for an option-like premium) and the principal amount is unlikely ever to change hands. Demonstrably, for the vast majority of CDS, the only amounts that have ever changed hands are the related premium cash flows, which are calculated by reference to a notional (i.e., reference) amount and which, by definition, are a fraction of that notional amount.

As regards to the second point (net risk transfer): the nature of all derivatives, including CDS, is that a market maker will take on risk via one contract and then substantially offset it by another contract, the terms of which may however vary in some respects (because that is where some form of offset is most readily available at the time the dealer requires it in order to run a 'flat' book, with minimal market risk). Thus, two apparently different contracts relating to the same reference entity can exist within the market, when the reality is that only one amount of (contingent) risk has been transferred. In fact across the whole CDS market, the ratio of net risk transfer to gross activity is much lower than in this example; running at under 10% on average and at 5% or less for the most liquid names, i.e., indices. This is because the same quantum of risk very often gets transferred between multiple dealer books in the course of a trading day, before finding a natural home with an end-user.

The difference between net and gross risk transfer is perhaps most easily understood by means of a comparison with an agency transaction in the relevant bonds. Looked at superficially, it would appear that twice the volume has been traded in the CDS (or more); whereas in reality only one contingent transfer has taken place, the cash impact of which could only crystallise upon a 'credit event' affecting the issuer of those bonds. In other words, the CDS is more in the nature of an option. It cannot legitimately be treated as an outright cash transfer – to do so is to distort the true picture, causing more of a problem than already exists.

For highly liquid risks, this might matter less, because any one pair of offsetting transactions is likely to represent a smaller proportion of market activity. But this challenge clearly makes it all the more important to draw boundaries as to where any transparency regime applies in a thoughtful way; and to calibrate the thresholds for any post-trade disclosure based on careful analysis rather than "one size fits all" assumptions as to the nature of the instruments involved. ISDA stands ready to help CESR with technical advice on how to do this in a way that genuinely contributes to a more informed market.

We would add that any combination of the two types of misperception outlined above is likely to compound the mis-information problem. For this reason, it is very important not to require thresholds for amounts which, only on an entirely superficial basis, appear larger than what is transacted in the 'cash' market.

The proposal to limit post-trade transparency to clearing-eligible CDS provides some degree of proportionality, which we warmly welcome.

Not all eligible contracts would normally be cleared, given the choice. A dealer may be able to reduce its bilateral counterparty exposure vis-à-vis a particular customer by keeping a clearing-eligible contract within the non-cleared netting set, under the bilateral Master Agreement with that counterparty. As such, it is still subject to counterparty risk management techniques – simply not those that happen to be centralised.

We further note the key sources of currently existing post-trade transparency for CDS:

- Following progress achieved through cooperation of the industry and regulators over the last several years, the CDS market now has a high level of regulatory transparency through the global DTCC Trade Information Warehouse (TIW). DTCC provides the CDS market with an electronic confirmations infrastructure, as well as a warehouse for all outstanding contracts on the market globally. The TIW now covers 100% of outstanding credit derivative transactions covering Single Name CDS, Index CDS, Index tranche CDS, CDS on ABS and Loan CDS, and including both dealer and client activity. 96% of these transactions are electronically confirmed via DTCC (Gold Record) and stored in the warehouse, and the remaining 4% are paper confirmed trades with an electronic record stored in the warehouse for the purpose of regulatory transparency (Copper Record). The paper confirmed CDS contracts are typically contracts containing bespoke provisions and therefore not readily electronically confirmable. Additionally, CDS swaptions, CDOs, CLNs and single-tranche CDOs are among products that are now covered through a Copper record in DTCC.

- DTCC are able to provide market information at a very granular level to regulators as the system houses the legal confirmation of the vast majority of Index and Single Name CDS contracts. Transaction volume or outstanding position breakdowns can be provided by counterparty or reference entity. Note that the position data in DTCC is not representative of traded volumes due to compression taking place in the CCPs and via third party vendor platforms but is representative of the gross notional of trades outstanding in the system. It should be noted that the gross notional of trades outstanding does not equate to the actual amount of risk transfer that has taken place, as will be explained in more detail in latter sections. DTCC is also able to provide a view on traded volume. We strongly support global regulatory cooperation to ensure full access and appropriate distribution of the information within the regulatory community including appropriate confidentiality procedures. Additionally, DTCC have published aggregate CDS market data on their website since 2008 (http://www.dtcc.com/products/derivserv/data/index.php) including a view on total notional of credit derivatives currently outstanding, CDS Index and Single Name breakdown, and view of the top 1000 Single Name reference entities including gross and net notional outstanding, number of contracts outstanding and weekly traded volumes.

Following implementation of CCP clearing for CDS, the CCP's will going forward provide an important source of good quality data on end of day prices relating to eligible CDS contracts for all clearing participants, and will be source of position and collateral data for systemic risk monitoring for regulators.

- Another important source of post-trade transparency to the buy side, are the valuations that are provided to clients by dealers as part of the client service. Typically the service includes a regular statement which includes a position level mark-to-market valuation on the positions that the client has facing the dealer. Once implemented, client clearing via CCPs will give clients access also to the CCP end of day prices and daily mark to market/ position revaluations.

- Furthermore, the CDS market participants are working towards increased use of pre-warehouse automated matching services with the objective of matching occurring very close to the execution time. Multiple vendors provide these services (as well as providing links to the CCPs,) among them e.g. ICE Link and MarkitServ.

- Additionally, execution volumes on CDS contracts traded in the UK are reported to the FSA at a trade level, on a daily T+1 basis through their proprietary transaction reporting system.

Finally, we note that at a purely mechanical level as regards to any reporting, in paragraph 66 of the CP, CESR sets out a number of possible parameters, all of which appear to have been 'borrowed' from the bond world and some of which are only appropriate to that world. We do not believe it is relevant to stipulate:

- 'identification format' – NB, any of a number of bonds may be deliverable into a CDS, so even here something such as an ISIN may be of dubious relevance.
- 'issuer name' – if this refers to the obligor whose creditworthiness is references, this is covered in the concept of 'Reference entity';
- 'rating' – the CDS is unlikely to be rated and the rating of the underlying issuer / their bonds as at any given time is a matter of public record already.

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).

We recognise that sovereigns wish to be able to retain access to funding markets. CDS play an important role in this respect: they help them to determine what those markets' risk appetite is at any given time.

Sovereign CDS would require specific analysis and calibration of the post trade transparency framework to take into account the particular liquidity characteristics of the sovereign CDS market. We note that the (contingent) net risk transfer – or open interest – occurring through sovereign CDS amounts to a small fraction of the amount of bonds outstanding. (Eurozone government debt amounts to over €7 trillion, while net open CDS have a notional value of only €100 billion.) Therefore, sovereign CDS should not be singled out for inclusion in the post-trade transparency framework for CDS.

We would add that serious steps are under way to extend clearing to sovereign CDS and that the industry has delivered on all the aspects of clearing CDS that it has ever set out to achieve. So, to the extent that whether a product is cleared is the key test of whether post-trade transparency applies, then sovereign CDS would fall within the regime. Please note that there has been a press release from a CCP about sovereign CDS clearing, which will begin in a few months.

GENERAL COMMENTS ON DERIVATIVES, INCLUDING CDS

Questions 34-38 (Pre-trade transparency) and 39-44 (Post-trade transparency) .

As part of the OTC derivatives industry commitments to the global supervisors, ISDA is currently undertaking studies and analysis for the global regulators. With respect to the Credit Derivatives, Interest Rate Derivatives and Equity Derivatives Markets the industry committed to deliver a) an inventory of existing forms of transparency in OTC Derivative Markets by product and asset class; b) a study which describes the spectrum of methods that can be used to increase transparency, analyzes the benefits and costs by product and asset class and attempts to identify to whom the benefits accrue and to whom the costs accrue and c) relevant transaction data that can be used by the Supervisors to conduct analysis on post trade transparency. These ongoing commitments will be finished by September 30, 2010, the first item, the inventory of existing forms of transparency has been delivered to the supervisors. Where possible and appropriate within the CESR consultation timeframe, we will share the results of the various pieces of work with CESR.

The industry completely supports full transparency to regulators across all the asset classes covered in this consultation. The industry completely supports full regulatory post-trade transparency by asset class, as provided by global trade repositories.

Pre-trade

34. No: as outlined in the CP, pre-trade transparency has evolved in line with market demand (bearing in mind that there is no truly retail participation in OTC derivatives). The exact mechanism may vary by asset class, reflecting different characteristics of the products and participants. End-users have a better overview of market pricing than dealers, who are not in a position to see their competitors' price quotes.

35. OTC derivatives are a wholesale, inter-professional market and all interested parties have ready access to the information they require.

36. Consolidation and dissemination have evolved to meet market needs wherever desired. NB these phenomena are only relevant for more economically standardised instruments. Tailored transactions require bilateral discussion, albeit potentially with end-users approaching more than one dealer firm.

37. The benefits of pre-trade transparency are in encouraging confidence in customers' ability to transfer risk in a precise, targeted fashion (which is the purpose of derivatives). The drawbacks of a rigid approach to transparency would be to limit the capacity of the market to absorb that risk transfer and dampen liquidity, which would have detrimental effect on the customer's ability to transfer risk.

38. Per-trade transparency can be helpful, provided it suits not so much the asset class as the size of the transaction and the degree to which it is tailored.

Post-trade

39. No: large end-users have commented that they do not wish to see their ability to transfer risk through derivatives (which, because they are unfunded instruments, is superior to effecting a 'cash' sale or purchase in the underlying asset) compromised. All participants are supportive of post-trade transparency that respects the nature of the market, with time delays and size-related thresholds, much of which is evolving without regulatory intervention.

40. We believe in a "horses for courses" approach, i.e., the regime should fully respect the primary objective of supporting risk transfer between professional market participants. It should be clear from the

answers by asset class that the regime should be based on distinctions by instrument within each asset class.

41. Where relevant, post-trade transparency is readily available to all those who wish to follow the market. The delivery mechanisms use media that are no different from those for other types of market information.

42. As outlined in the response to Q39, a post-trade transparency regime must adopt an approach that is sensitive to the instruments being transacted, if it is to avoid destroying the very risk-transfer market that it purports to improve.

43. Post-trade transparency should apply to confirmed trades only. This would avoid the risk of delivering misleading information to the market.

More generally, transparency should be calibrated to the liquidity of the market in question and should take account of the risks of harming that liquidity, by making it difficult for market makers to commit capital to transactions without losing money on them.

It is important to remember that the potential supply of derivatives is limitless, which constitutes another way in which they are radically different from securities (in addition to their risk management role and the fact that it is only with securities that the principal amount always changes hands).

Moreover, the terms of a tailored derivative will have limited information value to the rest of the market, the terms of whose transactions will be different. More relevant will be the price of the underlying asset.

Finally, additional post-trade transparency measures should fully leverage the existing and proposed infrastructure where feasible and appropriate.

44. While derivatives markets are vital for individual users, they are (when analysed correctly) small compared with the underlying. Moreover, for CDS, the pricing does not move in lockstep with credit spreads on bonds (a phenomenon known as 'basis' – see our March 2009 consultation response for full details).

The ability to obtain a valuation does not just depend on reporting – there first has to be willingness for participants to enter transactions. The experiences of the past three years act as a reminder that there will be periods when market liquidity dries up across a wide range of assets and that, where liquidity remains (as it notably did in CDS, while disappearing in bonds) that coincides with a market not having intrusive transparency requirements.

The risk management and other benefits alluded to similarly depend on there being transactions in the first place for reporting to be made on.

DERIVATIVES

Please note, for clarity, we have split our response to Questions 34 to 44 into the relevant derivative instruments.

INTEREST RATE 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?

No, as indicated in question #1, there is significant price information available on screens in the IRD markets around benchmark maturities, and in a competitive market, it is easy to solicit prices from multiple dealers around non-benchmark trades or trades with slight variations in terms (dates, coupons etc) – either direct via voice, or through electronic RFQ platforms. Electronic platforms include Bloomberg, Reuters, TradeWeb, Brokers, and Single Dealer Platforms

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

All market participants have access to pre-trade transparency through market platforms identified in #1

Broker screens available to all market participants and copies of screens provided at execution time

Those clients that do not have access to the tradable screen prices are typically clients where factors such as absence of collateral agreements or credit quality require adjustments to the standard market price.

For those market participants who want customised packaged data, they can request quotes and/or runs from their sales coverage at their key dealers.

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.

Bloomberg offers a consolidated 'best-of' price screen where the platform engine will only show the best price of all the dealers to populate the bid and the offer

Clients can also source data from each dealers individual website as well as the different market venues and populate their own excel spreadsheet from the multiple sources in order to create a 'best of' pricing sheet for themselves.

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.

Of the OTC asset classes, we believe the Interest Rates Derivatives is a market that already provides excellent pre-trade transparency and we don't believe there is any need for radical change. Counterparties are able to access a number of sources for price discovery allowing counterparties to achieve competitive pricing. Also, for large trades or clients, discretion is of paramount importance. Owners of large risks (pension funds, money managers, etc.) are very sensitive to the market gaining awareness of their risks. In addition, occasional large corporate flows are executed and we observe that clients prefer discrete venues for execution in order to keep financing costs and risks low.

Global Regulators targets encourage a further move towards making the market more electronic, the competitive dealer platforms continue building and improving information and tools for end users.

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?

The high level of Pre trade transparency in IRD has been extremely important in expanding the use of Interest Rate Derivatives by end users. The current framework in Interest Rate Derivatives provides pre trade transparency for both, pricing and size – i.e. liquidity. These are the backbone for any transparency model and it is hard to see the need for significant change.

It is also questionable who would benefit from post trade transparency since the end user population is predominantly institutional and professional. Given the information provided to the appropriate end-users through the pre-trade transparency framework, providing additional post trade transparency is effectively redundant and a cost expenditure with marginal if any benefit.

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?

Historically, the market has lacked transparency to the regulators but with the creation of the Interest Rate Trade Repository the issue is being addressed. The industry fully supports full transparency to appropriate regulators within the relevant confidentiality/privacy framework that the industry operates in.

It is questionable who would benefit from post trade transparency and further consumer protection safeguards since the end user population is predominantly institutional and professional. Given the information provided to the appropriate end-users through the pre-trade transparency framework, providing additional post trade transparency is effectively redundant.

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?

Unlike a market populated by retail end users, who require consumer-protection supervision, the end users in IRD are professionals and institutions. The very liquid nature of the IRD market shrinks bid/offer and allows the end user to mitigate their costs of transacting and dealers to work orders on their behalf. Post trade transparency, if not administered properly, can drain liquidity in IRD markets since complete disclosure can limit a dealers ability to cover the risk, thereby discouraging them from providing liquidity to end users. Additionally, end users who are willing to run the risk of splitting their trades into tranches will likely find that the public disclosure of the first tranche may worsen the level of liquidity shown for any subsequent tranches.

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

The Trade Repository is being enhanced to fulfil the need for post trade transparency for the Regulators. As mentioned earlier there is already a commitment to extend the IR TRR to weekly public reporting by September 2010 and there are regular meetings with the OTC Regulatory Forum Sub Working Group on Trade Repositories to review enhancements to the data.

In terms of pricing, all participants can access post trade price transparency through either brokers reporting trades and prices, broker screens, and dealer screens updated by dealers or public access platforms such as Bloomberg or Reuters which will de facto update their prices according to the last executed price.

A more detailed post trade transparency such as counterparty name and size of the transaction would require the full reporting of bilateral transactions. For the reasons mentioned in #40 individual bilaterally traded transactions are not typically reported since such reporting is likely to disrupt the liquidity and efficient pricing in the market and would require a structural change of the market as well as added costs. If we were to create an architecture around bilateral trade reporting we would need to ensure that the details of public reporting are calibrated to avoid damaging liquidity.

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.

The greatest benefit is that Regulators/Supervisors should get whatever reporting is required. In order to provide them with the proper data a trade reporting repository should be built out aggressively (one per asset class with unfettered access to appropriate regulators for consistency of information).

Reporting of individual trades is likely to change the structure of the market to a less liquid, lower volume market characterized by slower trading frequency which. This ultimately will result in higher costs for the end user.

As mentioned in response to previous questions, if we were to create a framework for public reporting it is imperative that we ensure that adverse effects on liquidity are avoided. Again, setting reporting guidelines with no sensitivity to size, client type or timing will disrupt liquidity and raise end user costs. For large trades or clients trades, discretion is of paramount importance. Owners of large risks (typically pension funds, money managers, etc.) are very sensitive to the market gaining awareness of their risks. In addition, occasional large corporate flows are transacted and clients prefer discrete venues for execution in order to keep risks low.

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?

Of all the derivatives markets the IRD market is the most liquid and that liquidity is reflected in the tight bid offers that allow end users to trade at a marginal cost from mid-market. The current bid/offer on a $100 million 5 year swap is less than ½ basis point or $23,000. The liquidity is a by-product of the increasing pre trade transparency that characterizes the market. As a direct consequence of that liquidity, and the tight bid/offer it implies, dealers are able to work orders at tight margins thus minimizing end user costs. Any post trade transparency that endeavours to disclose trade positions and sizing in the market will jeopardize liquidity and only result in higher end user costs. The introduction of post trade transparency and consumer protection safeguards may be prove to be detrimental to the end users it is trying to protect.

It is imperative that when setting a post trade transparency framework we are sensitive to confidentiality and the impact disclosure could have on liquidity. It is necessary that we set general guideline of delaying and aggregating trade reporting of inter-dealer trades only in order not to adversely impact end users.

In addition, if we were to set a post-trade reporting framework, the details of the reporting should be flexible to market conditions to avoid any negative convexity whereby the detrimental impacts on liquidity of the post-trade transparency regime could become greater in times of stress.

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?

Many of the beneficial externalities that post trade transparency could potentially provide are already being provided or there is a framework in place to provide them.

Pre-trade transparency depends entirely on trade execution in the market and as result it is in fact a window into post trade transparency. In the current IRD market pre-trade transparency provides the necessary visibility and tools to properly administer risk management, measurement and valuation.

The introduction of Clearing Platforms will provide an additional tool for the benefit of valuation and risk management giving users curve building methodologies, closing curves, portfolio valuations and risk metrics on their portfolios. In the future, Clearing Platforms may be able to provide a reporting service to regulators that is more timely than is currently envisioned through the IR TRR. As trades clear intraday regulators could avail themselves of end of day reports out of the Clearing Platforms.

Clients can also avail themselves with close of day mark to markets provided by the dealers on their portfolios when the transaction is bilateral or they can access tools provided by the dealers to enable to value their portfolio and measure risk.

EQUITY 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?

There is a great deal of transparency already in the OTC markets for vanilla equity derivatives for both pricing and potential transaction size particularly for listed equity derivatives. For equity swaps and other Delta 1 products, transparency is provided by the cash equity and futures markets. **Please see responses in Q1.**

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

By counterparty type, professional and semi-professional investors have access to pre-trade information. There is a well developed RFQ process in place for the vanilla Equity OTC Market. All participants have the ability to call multiple dealers and obtain a price quote and dealing size and in many cases view markets on screens. The dealer community can also access price and dealing sizes via 3rd party brokers.

For retail investors, information is available but whether such an investor class has access to the full array of information sources is debatable. As a firm make available information on the economics through, for example, through disclosure notices, payout examples in product documentation.

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.

There is no generically available source of consolidated data. Individual dealers have various mechanisms, both electronic and otherwise, whereby they may provide quotes and dealing sizes to clients and other dealers. There are a number of vendors who are looking to develop applications that allow a more efficient means to display multi-dealer pre-trade information on vanilla products.

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.

For vanilla OTC products in respect of which a pre-trade transparency regime exists for an equivalent Exchange-traded derivative (see above), if a specific pre trade-transparency regulation should be defined, then this regulation must not impose more constraints than the one existing of the existing Exchange-traded derivatives markets. We note in this regard that liquidity in Exchange-traded derivatives is often sourced in the OTC market via a price-request mechanism, and only after the trade has been agreed is it then reported to the Exchange and given up to the clearing house.

For non-vanilla equity OTC products, defining a pre-trade transparency regime would be much more challenging, as these products by their nature are made-to-measure and do not exist until a specific price request has been made. Imposing a pre-trade transparency regime could consequently substantially impair the bespoke market and consequently hinder investors' ability to hedge a specific risk or to take on a specific indexation.

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?

Although there are fundamental issues with increased transparency, the potential impact on prices at which the end user may have to complete their business must be taken into account. If a large trade print moves the market, this could increase cost of entry. Currently, investors can place dealers into competition whereas in a transparency framework arguably the price may be driven against investors.

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 creation of an OTC derivative Trade Repository for equities will provide full transparency to supervisors and an aggregated level of transparency to the public. However, it is important to bear in mind the private nature of these transactions in any consideration of a post-trade transparency regime.

As a general rule we consider that there is not a consistent desire from users for post-trade transparency. Many large end-users have voiced concerns that publication of trade-level information could give other participants unnecessary insight and information into their investment strategies. In addition, the market liquidity relies on the willingness of dealers to commit capital, and this could be significantly compromised if transactions were to be made public. Any consideration of a post-trade transparency regime would have to carefully balance the perceived benefits against the interests of users in maintaining confidentiality and liquidity. In all cases, care must be taken that for large transactions the ability to execute should not be damaged. We note in this regard that CESR's July 2009 communication recognises this.

For vanilla OTC derivatives in respect of which a post-trade transparency regime exists for an equivalent Exchange-traded derivative, any consideration of a post-trade transparency regime must not impose more constraints than the one existing of the existing Exchange-traded derivatives markets. We note in this regard that existing Exchange-traded derivatives markets in Europe already impose limitations on post-trade transparency:

- Eurex non-disclosure on large-sized trades (Eurex circular 236/09) under BaFin regime;
- Bclear No-Posting option (London Notice No. 2697, section 2.1e) under FSA regime.

For non-vanilla OTC derivatives public disclosure would be complex to disseminate intelligibly and could compromise client or product confidentiality.

For vanilla options more post-trade transparency may be beneficial so long as there is a sufficient gap between report and trade. However, very large trades create added risk for the counterparty providing liquidity because the post-trade information may affect ability to hedge.

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?

We do not have any further comments to those mentioned above.

Q.41 Is post-trade transparency readily available to all potential market participants?

Does this vary by asset class?

We do not believe so as the OTC market is not currently reportable. The listed market we believe is sufficiently transparent in this regard.

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.

Similar to pre-trade but in a post-trade transparency regime it is the institution providing the liquidity who may be impacted, which in turn may impact price and liquidity.

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?

We believe that size of the trade, liquidity of the underlying, anonymity of the counterparty and complexity of the product are some examples.

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?

It may benefit market makers to identify the market position ahead of taking a risk position. By contrast depending upon what is disclosed to the market if the market sees a big trade comprising selling calls or buying put's this may indicate the direction of the market.

COMMODITY DERIVATIVES

General Comment:

OTC Derivatives products and markets are not uniform and do not posses similar risk profiles. The OTC Commodity Derivatives market, in particular, contains several risk mitigating characteristics. For example, the entire OTC Commodity Derivatives market is less than one per cent of the global OTC Derivatives market and benefits from a diversity of market participants ranging from commercial producers to local energy distribution companies to banks. The OTC Commodity Derivatives Market is comprised of several different market segments including the trading of Agriculture, Base Metals, Coal, Crude Oil, Emissions, Freight, Gas, Oil Products, Plastics Products, Power, Precious Metals and Weather. Therefore, the concentration of product risk is diversified and not in any one particular product. A large amount of commercial information in relation to Commodity Derivatives transactions is already publicly available from commercial service providers. In a market where market participants are hedging against specific risks, pre-trade transparency would do little good and could potentially do significant harm (exposing commercially sensitive risk positions to other market participants).

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?

The last 10 years has seen a robust and competitive environment emerge in the provision of electronic venues for Commodity derivatives execution in the exchange, exchange cleared and brokerage models. This evolution, combined with competition from the larger providers (CME, ICE) for execution and clearing flows, has done much to advance the timeliness and availability of pre-trade information across the spectrum of Commodity products and markets.

We believe that competition has also driven enhancement in platform capability and enriched the service offered to market participants. Further, competition has provided positive benefits in reduced execution cost and increased execution speed, price transparency and settlement accuracy. Key pre-trade data underlying these activities is made available to participants active on those execution venues and price information is generally available to those prepared to pay a fee for the service. In the instance of more product focused exchanges (e.g. LME) we note that electronic platform capability has also done much to enhance pre-trade data availability & data content for a wider range of products to the spectrum of potential market participants.

We are supportive of potential improvements that can be made to mechanisms that render pre-trade information available. However, unlike some more traditional financial derivatives markets, Commodities has a more diversified array of potential execution venues. This fragmentation is due to a number of factors inherent in the markets due to asset class scope, geographical market diversification and the specialized nature of some Commodities markets. In other cases specialization is driven by idiosyncrasies specific to the underlying physical markets. OTC derivatives tend to reflect their underlying physical market framework in order that they operate as effective hedging tools. As market participants require products that reflect their underlying physical exposure, this can extend to necessary differences in the content of pre-trade information that is relevant to the market/product. There are, necessarily, a number of potential execution venues and the number of potential sources of pre-trade information reflects this diversification.

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

As OTC commodity derivatives are generally priced from benchmark contracts, and pre-trade information for these contracts is readily available via exchange price data, electronic and voice broker services, news and price distribution services, all of which is available to wholesale market participants, participants operate on a level playing field in terms of potential to access information.

Pre-trade transparency is available via a variety of mechanisms including exchanges, brokerages, electronic trading platforms and bilateral arrangements. Pre-trade information in relation to exchange prices can be accessed on reasonable commercial terms.

Trade execution service providers (with the exception of voice brokered pre-trade price information) make real-time price data available for a fee, without a requirement to use their service for execution. As a further example, pre-trade data, including market news, is available for a fee via non exchange services such as Bloomberg and Reuters. Following on from comments on diversification in potential price discovery and execution venues, most market participants are likely to establish the exchange, broker and market price provider relationships required to best fit their asset class, product, risk management activities and liquidity access requirements.

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.

Pre-trade information is consolidated via exchanges, electronic trading platforms and major dealer pricing information. There is already a highly developed exchange-traded market with high levels of consolidated pre-trade transparency. At present, there does not seem to be demand for additional pre-trade transparency for non-standardised OTC deals. which are frequently so customised that additional information would not add materially to the price discovery process.

Suitable levels of access and data quality of pre-trade information are provided in a timely fashion. Data is presented in a manner consistent with the respective liquidity levels exhibited by those markets, products and product tenors, to meet our business purposes.

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 vast majority of OTC transactions in Commodity Derivatives are priced with reference to readily observable market prices (either a benchmark futures contract or physical underlying) and so do not suffer from the pricing and valuation issues which have been associated with problems in some financial markets. Potential drawbacks include exposing firms' proprietary positions that could impact trade size and frequency. Also, there are potential risks to liquidity and the willingness of market participants to commit liquidity. No clear benefits on what would accrue as a result of increased pre-trade transparency, particularly in respect of non-standardised bilateral OTC contracts; as the pricing of each deal is different and takes into account a wide range of factors specific to that deal (i.e. credit worthiness of counterparty, physical market conditions, etc.). Ill-conceived pre- and post-trade transparency requirements for Commodity Derivatives risk negatively impacting liquidity and exacerbating volatility in the market. Additionally, CESR and ERGEG, in their advice to the European Commission "came to the conclusion that there is no need to take action in relation to purely bilateral trading which often is so bespoke that transparency information would not add materially to the price discovery process"..

Our view is that the current levels of competition in execution venues provided by the available execution/clearing platforms and brokers referred to in earlier points broadly leaves these wholesale markets well placed to provide effective pre-trade transparency to participants. We can, however, identify key areas that we believe require close consideration as part of any initiative to incrementally improve pre-trade transparency: A) The selection of 'reference' product sets, B) The tenors of products selected to effectively represent the structure of a market C) The selection and use of pre-trade information sources D) Approaches to any timeliness requirements applied to the distribution of any additional pre-trade data information, E) The data content of pre-trade data information distributed where it is not from an exchange or broker platform. F) The inherent dynamics of specific market liquidity, balanced against the needs of large corporate producers or consumers required to execute macro hedging programs in less liquid parts of a market structure.

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?

In respect of OTC Commodity Derivatives, there is already an appropriate level of transparency. A key factor for market participants is in understanding the structure and operation of the underlying markets in order to use derivative markets properly.

We believe that no distinction is necessary between Commodities market segments when assessing the relevance of potential benefits that increased pre-trade transparency might bring. The potential benefits articulated should logically apply to any market segment and equally, in our opinion, so should the analysis on how any potential enhancements should be implemented for any specific market.

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?

In a similar way as for pre-trade information, electronic platform evolution, a robust and competitive environment in the provision of electronic venues for Commodity derivatives execution in the exchange, exchange cleared and brokerage model has led to greater post-trade transparency. Competition for market share by the larger providers of exchange and OTC exchange cleared flows has improved timeliness and availability and transparency post-trade information across the spectrum of Commodity products and markets. Commodities execution platforms have organically delivered a hybrid of execution and cleared product functionality to satisfy the demands of market participants. Core post-trade data underlying market activity is made available to participants active on those execution venues.

There is a robust post-trade process with adequate transparency. The Commodity Derivatives market has a significant number of central counterparty and clearing infrastructures in place today, examples include:

- Agriculture — CME Clearing / ICEClear US
- Base Metals — LCH / CME ClearPort
- Coal — CME ClearPort
- Crude Oil — ICEClear / CME ClearPort
- Emissions — ICEClear / NOS Clearing / ECC
- Freight — NOS Clearing / LCH
- Gas — European Commodities Clearing (ECC) / ICEClear / CME ClearPort / APX
- Oil Products — ICEClear / CME ClearPort
- Plastics Products — LCH
- Power — European Commodities Clearing (ECC) / APX
- Precious Metals — LCH / CME ClearPort
- Weather — CME ClearPort

In addition, a number of the institutions named above provide for central counterparties for non-exchange traded transactions.

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 OTC Commodity Derivatives market already provides central clearing for swaps that are suitable to be centrally cleared and a significant percentage of Commodity products are already efficiently processed and cleared. Based on monthly metrics provided by major dealers, over 35% of their OTC Commodity Derivatives are already settled via central counterparties (over 45% for Energy). Other market-led initiatives include monthly reporting on a number of key performance indicators, a 61% decrease in the gross number of outstanding confirmations since September 2008 and an increase in the average percentage of total volume that is electronically eligible from 52% (December 07) to a high of 70% (March 09). There may be a case for greater post-trade transparency data in relation to standardised electricity and gas contracts undertaken on exchanges, MTFs and other electronic platforms (e.g. broker platforms). Such requirements, however, must preserve the commercially sensitive nature of such information.

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

Post-trade transparency is available to global Supervisors, who receive reports on a regular basis. Commodity Derivative volume reported to the supervisory community includes OTC Financial, Physical and Cleared OTC products transactions with G14 and non-G14 counterparties and clients. Listed Derivatives volume is reported separately (at present) to the CFTC and other Supervisors. Post-trade

transparency is available to the broader marketplace via commercial venues that provide various types of information.

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.

The extent to which comprehensive post-trade transparency requirements should be applied to Commodity Derivatives markets depends, to a large extent, on the perceived market failure that such requirements are seeking to address.

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?

We do not consider that there has been a market failure to warrant regulatory intervention in the OTC commodities derivatives market. However, should CESR wish to implement such a regime the key components for post-trade transparency framework include:

- Post trade data on standardised products should be gathered from central market sources wherever possible. These would include operators of Regulated Markets and Multilateral Trading Facilities and brokers who arrange transactions.
- We do not observe the need for non-standardised transactions should to be routinely reported, particularly given the extremely heterogeneous nature of a large part of that market. Instead, firms should be required to maintain records of transactions for at least 5 years and make such records available to supervisory authorities on request.
- If reporting proves necessary, consideration should be given to developing central trade repositories as the primary means of reporting and holding transaction data providing that appropriate conditions can be met with regard to reporting arrangements, confidentiality, equal access by supervisory authorities, avoidance of duplicative effort and an appropriate level of data protection/security.

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?

The OTC Commodity Derivative Markets are relatively transparent (pre and post-trade), with a significant proportion of transactions centrally cleared, electronically confirmed and bilaterally collateralized. The OTC Commodity Derivatives market is a heterogeneous market, although there are some market niches with great standardization. Market participants are varied and financial investors coexist with non-financial investors whose main purpose is to hedge risk. Additionally, there are several different market segments that allow for diversification of product risk. These factors coupled with the advanced state of the OTC Commodity Derivatives Markets in terms of current levels of transparency and an already existing and robust post-trade transparency regime seem adequate.

FOREIGN EXCHANGE DERIVATIVES

General Comments:

Exchange of currencies is a ubiquitous activity fundamental to the world's financial system. The reasons behind these exchanges are as numerous and varied as the vast numbers of participants globally who daily need to make payments, purchase foreign goods and services, manage risk and invest. The FX market is mature, efficient and transparent, and has been proven to function well even in times of significant stress across the wider financial system. It is important that any new regulation does not impede the efficiency of the FX market, as the unintended consequences will be felt well beyond the FX market itself.

FX derivatives are generally very short dated (average maturity in the order of two [2] weeks) and, at the same time entail physical delivery (in effect, being deferred spot transactions). This represents the liquid part of the market, as well as the part with the greatest volume. 80% of volume is considered to have a maturity of seven (7) days or less.

Pre-trade transparency is freely available in highly electronic form, with the established commercial data vendors channelling aggregated quotes for spot, forwards, swaps, options and NDFs. We estimate that the vast majority of transactions (95%) are wholesale and OTC, with 3% exchange traded and 2% retail.

Because of the physical delivery dimension of FX contracts such as forwards, the transparency in cash transactions (both pre- and post-trade) is a significant component of market transparency in those related transactions.

Post-trade transparency should be applied carefully, with particular regard to the sensitive nature of information about strike prices and barrier-trigger levels.

A study on FX market transparency has recently been completed by consultants Oliver Wyman, and is available upon request.

Please note that industry is working on a trade data repository specifically for FX, to provide full transparency to supervisors.

Comments on the consultation paper text on "Forex derivatives" (p16)

- *"73. Foreign exchange (FX) derivatives are closely related to their underlying cash market. The forex market is large and mature. Generally speaking, the further one moves from the spot to the exotic derivative part of the market, the less standardised the market becomes. Most actively traded products are: forex swaps, options, exotics and non-deliverable forwards and options."*

FX forwards and swaps are simply contracts for deferred delivery. The vast majority of FX transactions simply involve the exchange of two currencies on a given day. By convention, the FX spot market comprises transactions that settle (for most currency pairs) in 2 days' time. Exchanging cash flows on any other day, including today, is termed an FX forward. (An FX swap is simply the combination of an FX spot and an FX forward executed simultaneously.) FX forwards and swaps are sometimes academically labelled "derivatives" simply because they are not spot contracts, although this is far from the common sense perception of a derivative. For example, the traveller exchanging currency over the counter at a bureau de change would be astonished to be told they are performing a derivatives transaction.

The FX market, by value, is composed as follows[1]:

FX Cash	Spot	30%
	Forward	11%
	Swap	51%
FX Derivatives	OTC Options	6%
	Exchange-Traded	2%

[1] BIS, 2007

The FX market is very short dated; 81% of market turnover comprises contracts for 7 days or less.

- *"74. The forex market is concentrated in terms of products and underlyings. For example, the top three currencies account for close to 80% of the market. Nevertheless, the market has a broad participation although global dealers play an important role. The forex derivative market has been traditionally characterised by large sized trades."*

Unsurprisingly most FX activity is concentrated around the world's principal trading and investment currencies, which makes the market highly liquid and competitive. The currencies that account for the main FX market flows are[2]:

US Dollar	86%
Euro	37%
Yen	17%
British Pound	15%
Swiss Franc	7%
Australian Dollar	7%

Importantly, the technology that provides transparency in these most traded currencies is equally available for all freely tradable currencies.

- *"75. Forex products are generally easy to define. There is agreement on market definitions for all product characteristics for a large amount of contracts, including half of the more exotic products. This way, the market presents a high level of standardisation in terms of contract specifications."*

The need to handle high volumes of transactions very efficiently has led the FX market to achieve a very high level of product standardisation. Standard legal master agreements are very widely used, and there is a very large degree of standardisation and conventions to support automated electronic matching and straight-through trade processing for all but a very small percentage of non-standard exotics.

Importantly however, product standardisation must not be confused with economic standardisation. The economic terms of each FX contract (for example contract size, settlement day, delivery instructions) are necessarily as infinitely variable as the myriad of individual payments and currency flows that every day pass around the world's financial system.

- *"76. Retail traders constitute a growing segment of this market, both in size and importance. Currently, they participate through brokers or banks. Algorithmic trading professionals are also active in this market."*

The high degree of electronic market access coupled with very tight bid-offer spreads has attracted a large number of retail and algorithmic traders to the FX market, especially for spot FX. Retail FX has been a significant driver of the growth in numbers of FX transactions over recent years, but as these transactions tend to be of relatively small size, retail FX accounts for only 1-2% of FX market activity by value.

[2] BIS 2007. Note that as FX contracts involve 2 currencies, total market flows sum to 200%.

Responses to the consultation paper questions relating to foreign exchange:

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?

The FX market is highly transparent. Wholesale banks compete by distributing live executable prices in spot, forwards, swaps and options. Live streaming prices are available in spot and common forwards. The large number of grid points and pricing parameters require FX options and other forwards to be priced electronically on a Request-for-Quote (RFQ) basis. For all options instruments, however, including those that are highly bespoke, what is readily available is information on key inputs such as spot and forward rates and volatilities. The comments below primarily refer to the (short-dated) spot and forward FX market, rather than options or long-dated currency swaps.

Market participants may access prices in several ways:

- Via an ECN/MTF "agent" that combines the best competing prices from many sources
- Via an aggregator that often acts as a principal, combining best prices and may even improve upon the best bank price
- Direct with banks and market makers, often when the user wants the much richer functionality available compared to that which is available on general platforms
- Via interdealer broker platforms, for example Volbroker (Tradition), eSpeed (BGC), TradeBlade (Tullett), ForexMatch (GFI).

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

Yes. For FX market participants it is readily available via their preferred execution channels as described above. In addition, professional data vendors such as Reuters and Bloomberg provide numerous sources of indicative prices in spot, forwards, swaps, options and NDFs.

For the general public, spot FX rates are readily available from a wide range of free internet sources, for example Oanda.

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.

Yes:

- For ECN/MTFs and aggregators, a key area in which they compete with each other is how effectively they are able to consolidate market prices and deliver the "best" price to their clients
- Subscribers to professional data vendors such as Reuters and Bloomberg are provided with extensive tools that allow them to slice and dice price data to suit their individual needs
- At the same time, there is a trend amongst more sophisticated FX market participants to source pricing feeds directly from multiple liquidity providers and perform their own consolidation with their own technology, cutting out the intermediaries to reduce costs and latency

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.

Transparency is arguably no issue in principle for FX and the FX market already benefits from a high degree of pre-trade transparency as outlined above. Furthermore, an important way in which FX dealers compete with each other is through the range of contracts they are able to provide to their clients electronically, and this is continually pushing back the electronic frontier. At least for the FX market, a formal "regime" does not therefore seem necessary.

However, if a formal regime is nevertheless imposed, it must take into account at least the following points:

- Streaming prices versus RFQ. With current technology it is only practicable to broadcast continuously updating prices (real time streaming) in a finite number of contracts. In practice, for most market makers this tends to mean spot FX and the most common FX forwards, according to the power of their technology platform. All other contracts (which are necessarily infinitely variable in currency exchange) are priced on a Request-for-Quote basis, i.e. only upon client demand. If a regime involves any obligation to make "continuous" prices in FX it must take these practical constraints into account.

- Diversity of pricing venues. There is currently a lot of choice and competition in the FX market in the area of pre-trade price discovery, as described above. If a transparency regime goes in the direction (intentionally or otherwise) of mandating a single "official" venue then this is likely to consolidate leading to less choice for participants.

NB: It is assumed that discussion regarding transparency regimes relates to price transparency and does not imply restricting participants in terms of the channels over which they may execute trades. Despite the huge and enthusiastic take up of electronic trading across the FX market, it is estimated that roughly 50% of the market still executes manually, i.e. with the involvement of two people typically over the telephone or via electronic chat. It is important to understand that there are several good reasons for this and it would be a mistake to believe that manual execution can easily be made to vanish without significantly impairing the market:

1) There are products and contracts for which electronic pricing is not available at all

2) The client may not wish to subscribe to an electronic platform that supports the type of product the client wants to trade, for example if the client trades infrequently and/or the client judges the platform fees to be too high to justify the expense

3) The client wants advice or assistance from a market professional in executing a trade or developing an execution strategy

4) The client desires direct confirmation from a (human) market maker that their trade has been executed at a given price and size (this was particularly prevalent during the financial crisis).

If an on-exchange/ anonymous type pre-trade transparency regime were introduced we believe that there is a genuine risk that this would lead to less liquidity in the FX markets. FX Dealers have direct relationships with their clients and therefore, are more likely to provide them with liquidity even during times of extreme market stress thus alleviating potential problems in this asset class and indirectly other asset classes as demonstrated during the credit crisis. Where an Exchange style solution (anonymous both pre and post trade thereby destroying bank-to-client relationship and implied obligation to quote) be introduced we believe this would lead we believe to a loss of liquidity especially when most needed in times of market stress.

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?

Rich, ubiquitous pre-trade transparency already exists in relation to vanilla FX contracts, i.e. spot FX and common forwards, and to the indicative components of vanilla options.

Moreover, it must be recognised that there is a practical limit to useful pre-trade price transparency. The actual price paid by a participant upon execution may be comprised of, inter alia:

1) The basic price for the given contract quoted by their counterparty, typically a dealer or market maker

2) An adjustment for counterparty risk, for example if the trade will not settle via CLS, which may not be known until the actual point of execution (historically such adjustments were not common in the FX market, but in the current climate they will become more prevalent)

3) Additional spreads or fees that may be charged by intermediaries, for example an ECN.

In the current FX market, these factors can usually be priced in at the actual point of execution on a given execution channel, so the participant usually immediately knows their all-in price. A general "transparency regime" for FX would either have to (a) restrict itself to the basic dealer prices, so would be of limited use for the participants in assessing what the all-in price would be, or (b) attempt to standardise all other price components, which would be impractical and would greatly restrict the market.

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?

No. Sources for this type of information are numerous as noted above. Given the very high levels of pre-trade transparency in the FX market, public post trade transparency is in our view not an issue. The highly fungible nature of FX risk means that significant flows in any product are quickly reflected in the pre-trade pricing across all relevant grid points.

For regulatory purposes, the de facto central FX repository that exists via CLS proved very useful to regulators during the financial crisis. This is currently being extended to provide an even more complete view of the market by extending the range of products that will be eligible for CLS settlement, and potentially enabling non-CLS settled trades to be recorded in the repository.

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?

No, we believe that there is already adequate post trade transparency. Furthermore, any measures could actually be detrimental for larger, more complex transactions even with a delayed publication regime.

Any regime in the FX market would consider the following:

Avoid creating potential for market abuse. Options and especially barriers are highly sensitive with respect to strike and trigger levels. Reporting significant options and barrier trades will allow other participants over time to build up a picture of where these positions lie in the market. There is clear opportunity for this information to be abused in the market, to the detriment of the corporate and other end users who use these instruments to manage specific event risks

Avoid damaging liquidity in less liquid FX instruments. The trade-off between transparency and liquidity is well documented across many asset classes; too much transparency in less liquid areas of the market tends to inhibit market makers from taking on and warehousing risk, to the detriment of end users. This applies equally in the FX market, particularly in some less liquid areas of the forwards and options markets

Avoid "flash crash" runaway price moves in liquid FX instruments. The rise of automated algorithmic trading, especially in spot FX, has made the markets exceptionally sensitive to price and trade data; a client with a $10m order may find the market running away from him when he has executed barely half of it. Providing real time post-trade data in this environment will give algo engines more data to feed upon and may exacerbate this problem significantly.

Q.41 Is post-trade transparency readily available to all potential market participants?

Does this vary by asset class?

Post-trade transparency information can be readily obtained online from websites which are free to use and from broker screens or market data providers where prices update live on a tick-by-tick basis.

It may interesting to note that the concern most commonly voiced by FX market participants, especially central banks and other large FX users, is rather that the FX market can be too transparent and they sometimes struggle to execute their business without the market very quickly reacting to their activity.

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.

If an on-exchange/ anonymous type post-trade transparency regime were introduced we believe that there is a genuine risk that this would lead to less liquidity in the FX markets. FX Dealers have direct relationships with their clients and therefore, are more likely to provide them with liquidity even during times of extreme market stress thus alleviating potential problems in this asset class and indirectly other asset classes as demonstrated during the credit crisis. Were an Exchange style solution be introduced we believe this would lead to a loss of liquidity especially when most needed in times of market stress. Please also see additional points in Q40.

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?

In addition to the important considerations listed in answering Q. 40, given the size of the FX market another factor is the sheer volume of data that would need to be assimilated and distributed. Clearly, a way to mitigate this would be to report on an aggregate level only.

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?

We believe an adequate post-transparency regime exists. FX is the most liquid of asset classes and we believe that price discovery is readily available to all market participants. The highly mature and transparent nature of the FX market, together with the relatively simple nature of the products mean that there is probably little additional benefit to be gained from additional public post trade reporting.