

**WMBA/LEBA RESPONSE TO CESR CONSULTATION PAPER MiFID REVIEW-
TRANSACTION REPORTING ON OTC DERIVATIVES AND EXTENSION OF THE
SCOPE OF TRANSACTION REPORTING OBLIGATIONS**

1. Introduction

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) are the European industry associations for the Interdealer Brokers ("IDBs") in the wholesale Over-the-Counter ("OTC") financial, energy/commodity, equity, credit, cash and derivatives products. Their members' client bases are made up of governments and treasuries, global and regional credit institutions, primary dealers, fund and asset managers, oil companies, energy generators, and transmission operators.

WMBA and LEBA members are, inter-alia, authorised to arrange deals in investments and to make arrangements with a view to transactions in investments and to deal as agent and/ or principal.

WMBA and LEBA are very supportive of the work undertaken by CESR and the measures that protect the integrity of markets and investors.

2. Responses to the CESR specific questions

WMBA and LEBA welcome the opportunity to respond to the Consultation Paper and shape CESR's approach to the questions on "Transaction Reporting on OTC Derivatives and Extension of the Scope of Transaction Reporting Obligations" that has been asked by the EC as it concurs with CESR's opinion that "these raise significant policy issues, including some which go beyond the confines of the questions that have been asked....".

WMBA and LEBA have only responded to the questions where they or their members have relevant expertise/ experience and their responses are detailed below.

Question 1: Do you agree with the solution proposed by CESR for the organisation of transaction and position reporting?

WMBA and LEBA fully support the overarching principle proposed by CESR in order to organise the reporting of transactions and positions within member states. However the Association is particularly concerned with the potential market risk that TR's(that come close to monopolies) would abuse their market position to the detriment of firms and investors obliged to report through them and would regard it as crucial that CCP'S are not also able to act as trade TR's.

WMBA and LEBA recognise that;

- Extending the transaction reporting to OTC derivatives is urgent and the work to achieve this is much more advanced than the work on position reporting.
- TR's, when established, will have the ability to register as an approved reporting mechanism for transaction reporting purposes and hence relieve its participants of any double reporting obligation.

Hence option 2 is the one favored by WMBA and LEBA.

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Question 2: Do you have any other views on the possible way to organize transaction and position reporting on OTC derivatives?

WMBA and LEBA members are only authorized by the FSA to arrange deals in OTC derivatives and hence would have no transaction or position reporting obligations. However the Associations' members consider that in addition to the current service provided to their clients in respect of passing details of executed trades to CCPs or clearing agents, clients will require members to undertake the notification to the trade repository on their behalf. Hence when considering the infrastructure for reporting to trade repositories additional functionality needs to be included for third party reporting of executed trades.

Question 3: Do you agree with the extension of the scope of transaction reporting obligations to the other identified instruments?

A. Financial Instruments Admitted to Trading on a MTF.

WMBA and LEBA concur with CESR's statement that transaction reporting regime is one of the main supervisory tools for market abuse purposes. However, the Association maintains that the scope of MAD should not be extended to MTF's, and hence the transaction reporting requirements, for the following reasons;

1. Variable size and business models of MTF's means one size does not fit all,
2. Trading of instruments on an MTF does not carry the same disclosure requirements on the part of the issuer,
3. MTF's are intended to be subject to different regulatory obligations in order to be less costly for the issuer/participant(one of the purposes of MiFID was to reduce trading costs to end users by increasing competition among trading venues),
4. Ability to affect the market of OTC instruments that are not subject to pre and post trade transparency is very limited,
5. MTF operators would have the ability to extend the scope of the instruments covered by MAD thus affecting all market participants and providing uncertainty regarding instruments covered,

B. Transactions on Certain OTC Derivatives

WMBA and LEBA agree that as a result of financial product innovation there is a range of OTC products that mirror instruments admitted to trading on regulated markets but do not concur with the statement that such instruments could be used to manipulate the market or that they can influence the price evolution process.

A fundamental attribute of market manipulation is the public availability of information in the market. By their very nature OTC trades, negotiated by members' clients, are bilateral trades negotiated between the 2 counterparts and, other than in the equities

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markets where pre and post trade transparency is mandatory, details of these trades are not published.

WMBA and LEBA believe that rather than extending the transaction reporting regime to "OTC look alike instruments" the inclusion of price data in the trade repository reporting system discussed in Question 1 would enable local regulators to monitor for manipulating transaction and abusive squeezes.

Should CESR recommend adopting transaction reporting for OTC derivative instruments that mirror instruments admitted to trading on a regulated market they need to carefully consider which OTC instruments have sufficient volumes to influence the market and as suggested in the paper provide a list of such instruments which would then be subject to consultation with market participants.

WMBA and LEBA would also like to raise the issue of volume of transaction to be collected and the costs of collection. The Association's members are already adhering to/developing systems infrastructure in respect of the FSA transaction reporting requirements for derivative instruments and would make the following observations;

1. The FSA have delayed implementation of their transaction reporting requirement on two occasions as a result of the amount of data envisaged and systems infrastructure problems,
2. The cost to the FSA of implementing new systems to receive and monitor the data was originally estimated at £8.8m (FSA have recently indicated that this figure had increased),
3. The cost to investment firms is currently unquantifiable but exceed those estimated by the FSA in their cost benefit analysis,

3. Conclusion

Outside the scope of this CP but never-the-less relevant to the issues raised is the question of potential regulatory arbitrage. The OTC derivatives market is also an established market in both the USA and Asia, requiring limited infrastructure and hence is easily transportable to a region with less prescriptive regulation. Hence CESR needs to give serious consideration to firms (including end users) migrating to these centres should the regulatory/trading environment in the EU become too prescriptive and not stand alone in its approach to trade repositories and transaction reporting for OTC derivative instruments.

Without the cooperation of the other main centres the data collected by the EU regulators from EU financial institutions will not provide an accurate picture of the overall market in a particular instrument or issuer and consequently will potentially not be sufficient to monitor market abuse. Hence consideration needs to be given to the benefits of adopting this approach versus the cost to regulators and individual investment firms

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