

The Committee of European Securities Regulators

Stockholm 2010-04-14

**Nordic Securities Association response to CESR's Consultation on Guidance to report transactions on OTC derivative instruments**

The Nordic Securities Association (NSA) represents the common interests of member firms in the Nordic securities dealers associations towards external stakeholders primarily in the Nordic market but also on European and international issues of common interest. Members of the NSA are the Danish Securities Dealers Association, the Finnish Federation of Financial Services, the Norwegian Securities Dealers Association and the Swedish Securities Dealers Association.

NSA welcomes the opportunity to respond to CESR's Consultation on Guidance to report transactions on OTC derivative instruments. The views in this document are a consolidation of views expressed by the members.

General comments:

- NSA notices that developing TREM for OTC derivatives should not lead to increased requirements on national transaction reporting until the role and set-up of CCPs and Trade Repositories following the reforms of the European OTC derivatives markets has been decided. This is in order to avoid unnecessary administrative burdens for financial institutions and in order to run processes as efficient as possible.
- Trading, clearing and settlement are to an increasing extent a question of cross border activities. Member firms have head offices in one country providing services in one or several other countries. In this respect Transaction Reporting and in which country the reporting should be done has become a complex issue. In some cases the same transaction has to be reported in several countries. As exchange of information between competent authorities, according to our knowledge, works well it is time to let the reporting company report to the competent authority in the home country or of its choice. Such a step would significantly decrease the costs for reporting.

- It is important that all new rules for transaction reporting are standardized through Europe. Every difference between countries causes unnecessary problems, lack of efficiency and cost money.
- There seems to be a lack of clarity regarding which trades that are to be reported depending on underlying instruments. To our understanding trades should be reported if there is one and only one underlying instrument admitted to trading on a regulated market. But it is also stated that in some situations reporting obligations apply if there are two underlying different instruments however issued by the same issuer. This must be clarified and clearly defined how to report if the latter scenario is true.
- We also regularly notice the problem knowing whether an instrument is admitted to trading or not. Information regarding if a financial instrument is admitted to trading should be provided in an easily retrievable way without any kind of charges.
- It should as well also be clarified that swap legs of OTC derivatives based on commodities, rates and currencies should not be reported. If however one swap leg fulfils the demand for reporting that swap leg should be reported.
- NSA propose that if the OTC derivative has an ISIN or an All code it should be enough to report that code as it gives all information regarding that instrument. Other instrument information such as underlying ISIN, Derivative type etc should just be optional to report.
- What is a complex derivative should be clarified.
- NSA would like to have a clarification of the reason for separating OTC Options and OTC Warrants as two different Derivative types in the reporting, since they are similar instruments. To be able to classify if a transaction should be reported as an Option or a Warrant there need to be clear rules for this. NSA thinks it would be easier to classify both instruments as Options in the reporting. As an alternative NSA proposes that Swedish warrants should be classified as warrants, based on the naming of the instruments.
- Clear guidance is needed how to handle Contracts for Difference (CfDs) in respect of contract transactions compared to positions due to changes over the contract time.
- Currency should always be reported equal to the derivative contract, not reflecting any underlying instrument in order to avoid foreign exchange issues.
- We don't think that transactions should have to be classified as complex derivatives if some information is missing, it should still be reported for what it is. The type Complex Derivatives should be avoided as far as possible.
- Regarding Instrument Description we propose instrument description to be optional for all reportable instrument types. We propose also to define guidelines, for voluntary use, stating how to fill in the instrument description field including preferred language (English) to minimize costs for cross border reporting.

**Regarding the questions raised in the consultation we have the following comments:**

Q1: Do you agree that the Unit Price should be the premium per single underlying of the contract as it is in market practice and not per contract?

Disagree. The unit price should always be the actual price of the trade as agreed with the client. If the price agreed is "Premium per derivative contract", that price should be reported, and if the price agreed is "Premium per underlying", that price should be reported. (That is no derived price should be reported.)

Q2: Do you agree that the Venue Identification should be XXXX in order to differentiate transactions on OTC derivative instruments from off-market transactions of instruments admitted to trading, marked as XOFF? Do you think this should also be the case if the transaction is executed on an MTF?

Disagree. NSA does not see the value of a new venue identification type XXXX. NSA proposes that the current definition is used: *"Trading venue is an MTF, regulated market (RM) or Systematic Internalizer (SI). The four character SWIFT MIC code (ISO 10383) should be used when the venue is an MTF or a regulated market. If the venue is an SI the BIC code should be used. If the transaction is made off market, the 'XOFF' should be used".*

Q3: Any other views on the above?

For clarity reasons, the description of the field "quantity" should be extended to include "notional amount of OTC-derivative". The notional amount is necessary for swaps, for example (this is shown in the examples on pages 14 and 15 of the CP).

**OTC Options**

Q4: Do you agree that in the case of multiple expiration dates, the field should be filled in with the latest expiration date?

YES

**CFD's**

Q6: Do you agree that an option on a CFD on equity is not a complex derivative as the terms of the bet can be accommodated in the transaction reporting fields?

If the Financial instrument is a CFD it should be classified as such and not as a complex instrument.

## Spread Bets

Q7: Do you agree that the Quantity field should contain the amount of the “bet”?

Yes. In addition, we consider that the quantity field include the notional value of the instrument.

Q8: Do you agree that the Unit Price field should contain the reference price for the transaction?

No. The Unit Price field should reflect the initial, agreed priced. The reference price is, however, the price derived from quoting sources (Eurex, Bloomberg).

Q9: Do you agree that the Unit Price should be in the currency of the underlying instrument?

The reporting should always be as the trade is done and agreed with the client regardless of the currency for the underlying financial instrument.

Q10: Do you agree that the Price Notation field should reflect the currency of the underlying instrument even when the spread bet is made in a different currency?

The reporting should always mirror the agreement with the client not some specific characteristics of the underlying financial instrument.

Q11(a): Do you agree that the Price Multiplier field should be populated to validate what movement in the price of the underlying instrument the spread bet is based on e.g. 100 for 1 point (cent/penny); 1 for 1 Euro/Pound movement?

Yes

Q11(b): Do you agree that the spread bet will normally be based on a movement of one point (cent/penny) movement in the price of the underlying instrument and the Price Multiplier field should only be populated when the spread bet is not based on a movement of one point?

Yes

Q12: Do you agree that a transaction report is required for opening and closing a spread bet and for the expiration of a spread bet?

No. The starting point of a reporting message should be, in any case, Buy vs Sell. The (simple) expiration of a contract, however, will not normally be subject to purchase or sale, hence no message is requested.

Q13: Do you agree that an option on a spread bet on an equity is not a complex derivative as the terms of the bet can be accommodated in the transaction reporting fields?

Yes

Q14: In relation to spread bets on other MiFID instruments, do you have any views on how the fields in a transaction report should be populated?

According to CESR's own decision, reporting requirements only apply to transactions on securities derivatives whose underlying instrument is traded on a regulated market. The proposed fields in the reports should be designed so as to reflect this in a sufficient manner.

### **Equity Swaps**

Q15: Do you agree that the buyer of the Equity Swap (Buy/Sell Indicator field, B) should be the Fixed Rate Payer?

As equity swaps are, in fact, exchange transactions where there are neither buyers nor sellers, we recommend that, for Equity Swaps, there is no Buy/Sell Indicator.

Alternatively, the direction could be:

- Buy = Receives performance on reportable leg
- Sell = Pay performance on reportable leg.

Q16: Do you agree that the Quantity field should be the notional value of the Equity Swap or the number of shares subject to the agreement?

Number as well as notional depending on how the trade is done. Again, the reporting should mirror the trade and agreement with the client, also in respect of currency.

Q17: Do you agree that the Unit Price field should contain reference price of the underlying equity on which the equity returns are calculated?

No. The Unit Price field should reflect the initial, agreed price in agreed currency.

Q18: Do you consider that when the initial reference price is not known when the Equity Swap is traded, this product should be considered a Complex Derivative?

All reporting should be done not later than on T+1 containing information that is available at that time. That is, if the reference price is not accessible at that very moment that information does not

have to be reported. We don't think that the transactions should have to be classified as complex derivatives if some information is missing, it should still be reported as a Swap. The type Complex Derivatives should be avoided as far as possible.

Q19: Do you agree that Equity Swaps with two Equity legs should be reported with two different transaction reports with the same Transaction Reference Number for both reporting firms?

Since the current reporting schema cannot handle multi leg transactions it is better to treat the individual swap legs a separate transactions, with individual and unique transaction numbers. It is important that the Transaction Reference Number uniquely identifies one single reported transaction.

### **Credit Default Swaps**

Q20: Which instrument should be reported as the ultimate underlying instrument for a CDS? the market clip, the reference bond if any, or the ISIN of the stock of the issuer ?

Market Red codes or the name of the issuer of the underlying instrument (not in standardized form) in instrument description. Market Red codes should be available free of charge if chosen.

Q21: Do you agree that the price should be an equivalent all-running payment price expressed in basis points?

No. The price should not be the all-running payment price but the standard coupon plus the upfront premium that has been agreed by the counterparties. To indicate the all-running payment price would result in extra calculations for reporting purposes only.

Q22: Do you agree the price notation should be the currency of the debt protected by the CDS?

No, we are of the opinion that it should be the currency of the CDS. The Derivatives do not always have the same currency as the underlying. In some cases the underlying may even consist of several different currencies.

Q23: Do you agree that early terminations should be reported, while assignments and compression should not be reportable?

No. We consider that any transaction of any contract counterparty should be reported only once (i.e. on the time of completion). We do not consider it necessary to report early terminations since this would require a disproportionate effort. The same applies to assignments and compressions.

### **Complex Derivatives**

Q24: Do you have any other relevant examples that should be added into CESR guidelines? Please give detailed explanations of the example.

- Some transactions through Agent (Trading Capacity)
- The transactions that a CFD has during its lifetime. (e.g when multiple trades are done during a day to build a position – it might be difficult to know what and how this should be reported)

Q25: Do you agree that the Instrument Description field should be required to be populated at local level, in order to explain the derivative being reported?

No local mandatory rules should be accepted. Regarding this field we propose guidelines, for voluntary use, stating how to fill in the instrument description field including preferred language (English) to minimize costs for cross border reporting. However for Complex Derivatives we recommend instrument description to be obligatory to be able to understand the nature of the complex derivative instrument.