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**Answer to consultation CESR/09-768
on guidance to report transactions
on OTC derivative instruments**

1. **The French Banking Federation (FBF)** represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and serve 48 million customers.

The Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions.

2. FBF and AMAFI welcome CESR's consultation and support its objective to define common reporting rules for OTC derivatives amongst its members, a pre-requisite to avoid unnecessary costs in the industry and secure the quality of the data collected by regulators. French financial institutions are committed to supporting such initiative that contributes to market integrity.

3. Having said that, we regret that the time allowed to respond to this very technical consultation was so short, as a more detailed analysis is required to check that each derivative type can be mapped to the proposed fields. Importantly as well, these timing constraints did not enable AMAFI and FBF to share views with their European counterparts. As a result, the positions that we put forward in this paper are representative of our members' but have not been benchmarked with others'.

Before answering the detailed questions set out in the consultation paper (II), FBF and AMAFI wish to make the general observations set out hereafter (I).

I. – General Observations

➤ *The EU transaction reporting mechanism should be centralised*

4. The reporting mechanism that was finally adopted by the EU when MiFID was implemented consists in the exchange of information among CESR members rather than a central repository system into which regulators would log and access the data they need. This choice entailed that financial institutions have had to develop multiple reporting systems, specific to each regulator who progressively came to request information fitting their own individual needs hence multiplying the burden of reporting for investment firms.

As we have had opportunities to stress in previous consultations at the time of the implementation of MiFID, we still consider that the best reporting solution would be a system centrally managed in the EU with at distance connections by authorities and based on the requirements of the most demanding authority. It would provide the flexibility needed, would avoid multiple exchanges in different languages and under different formats across the EU and would provide each CESR's member the information needed.

➤ *The current system continues to create duplication of reporting, an issue that should be addressed before extending the reporting scope*

5. Although CESR produced guidelines to help regulators and firms determine to whom a transaction should be reported, the fact is that there are still diverging interpretations among regulators, especially on the reporting of branches' transactions but also on the notion of where a transaction is executed. This results in duplication of reporting to regulators, which is costly and inefficient.

Extending the scope of the reporting obligations will undoubtedly increase the volume of duplicate reporting, giving this problem an even greater importance. This has consequences in terms of the firms' technical capacity to manage this volume of reporting, and more importantly, on the regulators' capacity to effectively use the data collected. Hence, although the objective of the reporting of OTC derivatives is one that AMAFI and FBF fully support, we are of the opinion that this work should be carried out in parallel to a concerted effort among regulators to try and minimise the duplication of reporting.

In addition, for the avoidance of doubt and as far as OTC derivatives are concerned, the criterion that will be used by firms to decide where to report is the one of the location of the trader, without consideration of the location of the booking entity involved. CESR should confirm that this interpretation is shared by its members and communicate it as a preamble to its guidelines.

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➤ ***The possibility to leverage existing (or incoming) repository systems should be investigated by CESR***

6. The DTCC platform has become the reference place where credit derivatives transactions are matched and settled. In addition, there are plans under way to add equity derivatives to it. Firms have invested heavily (and are presently investing as well) to create a safer environment for the trading of derivatives. They should be able to leverage this standardisation effort with respect to their transaction reporting obligations as well. As a unique source of information is emerging (DTCC), it seems inefficient to multiply the reporting from various sources and create additional costs to firms in terms of IT developments. Providing potential technical difficulties are looked at and overcome, firms should be able to enter into an agreement with DTCC to appoint it as an Approved Reporting Mechanism.

CESR should engage into a close collaboration with DTCC to examine which data are available through it and assess whether some changes are necessary either to TREM or to the DTCC feed to enable trade reporting through it. There may be some differences in terms of the data reported, the categories of derivatives considered (i.e. there may be different derivative categories), in term of netting or in terms of the basis for reporting for equity derivatives (delta equivalent or nominal), but these should not be an hindrance to finding a common solution, as the ultimate goal of the reporting of fighting market abuse is common amongst regulators.

➤ ***The OTC derivatives' reporting system should provide for a proper number of reporting fields to allow for the reporting of common types of OTC derivatives and curb the risk of inflating the complex derivative category***

7. We understand that CESR aims to keep the number of reporting fields to a minimum for budgetary reasons and to minimise adaptation efforts for regulators who have already implemented this reporting. However, this approach means that a number of fields have to be "twisted" to give them a different meaning depending on the type of derivatives concerned. We think that this exercise creates complexity and is prone to misinterpretations. More importantly, it constrains the reporting to a limited number of derivative types, leaving the others, that could equally be used for market abuse purpose (especially insider trading), to feed the category of complex derivatives.

As an example, derivatives with a forward start date, a feature that is applicable, at least in theory, to any type of derivatives, will enter into the complex derivatives' category if a field is not created to indicate the forward start date (without this information, regulators will not be in a position to assess the accuracy of the derivative's pricing).

With the same logic we would suggest to add fields to all types of options and swaps in order to avoid the creation of other new categories:

- options and all other types of options : add field callable as the price of the instrument will be different from the price without the "call ability" what could lead to misinterpretations with the price paid; the effective date should be fed in one dedicated field in order to be able to conclude that the product has a forward start; for digital options it is necessary to have up/down barrier in one

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dedicated field and in/out barrier in another one; option type is also missing what is an important criteria (American, European, Asean and Bermudean with potentially 2 dates fields for bermudean options);

- swaps and all other types of options : add field callable as the price of the instrument will be different from the price without the “call ability” what could lead to misinterpretations with the price paid; the effective date should be fed in one dedicated field in order to be able to conclude that the product has a forward start; always require 2 legs for swaps in order to be able to feed the reporting adequately when the swap is referring to two different securities what would avoid the burden of the choice to perform and the complexity to report two transactions instead of one what is complex.

Whereas the category of complex derivatives should be as limited as possible in principle, it could end up representing an important portion of the transactions reported, at the expense of greater transparency. In addition, it is likely that the transactions reported in this category will trigger questions from regulators to understand their nature, which will use compliance resources within firms that could be employed in more value-added tasks.

We have identified a number of other derivative types, which are commonly traded and should therefore be reported as separate categories to allow for a proper understanding of the transactions reported. These are:

- options on CDS
- equity linked swaps
- options on variance swap
- asset swaps callable

Lastly CESR should precise whether variance swaps, volatility swaps and dividend swaps have to be reported by banks and investment firms.

8. We also believe more generally, that without a minimum set of guidelines established by CESR, mapping derivatives into the complex derivatives’ category will undoubtedly trigger questions within firms as to how to report the various terms of the transaction. Leaving these decisions to firms will result in different interpretations and the inability for regulators to understand what is reported to them in this category.

9. Having said that, AMAFI and FBF are also of the opinion that CESR could bundle together the categories of OTC options and OTC warrants, as these products can be reported according to the same rules.

10. Finally, we want to stress that the current set up that enables the reporting of cancellations/amendments and insertion should also be applicable as far as the reporting of OTC derivatives is concerned (see also question 23 on this topic).

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➤ ***The industry still needs a list of instruments admitted to trading on a regulated market or an MTF of the EU***

11. As already mentioned in previous consultations, firms are not in a position to determine whether the underlying of a derivative transaction is admitted to trading on a regulated market or on an MTF of the EU (versus elsewhere in the world). As a result, it is common market practice to over declare transactions, a practice that will be even more visible with the extension of the reporting scope to OTC derivatives.

Another issue is related to products such as EMTNs that have an ISIN but may not be listed. To the extent that these products have an ISIN, firms are likely to report them as listed products rather than as OTC derivatives because there is no list today against which to check whether the product is listed or not.

FBF and AMAFI therefore strongly recommend that a list of these instruments be made available. To this end, CESR could, for example, launch a tender offer to data providers on the market.

➤ ***Reporting of products combining vanilla derivatives***

12. Some products are the combination of vanilla derivatives (e.g. butterflies that are a combination of a call purchase and the sale of two puts or asset swap that are a combination of a bond and an interest rate swap) and are therefore likely to be reported by firms as a number of vanilla OTC derivatives (although some firms may also report them as complex derivatives). However, firms do not necessarily maintain a unique transaction reference number for the constituents of this “packaged” product. Providing such a reference number should not therefore be a requirement.

➤ ***The reporting solution should be flexible enough to accommodate any change to the Market Abuse Directive***

13. Considering that, within the context of the revision of the Market Abuse Directive, its scope could be extended to instruments listed on MTFs and OTC products, and more generally, that the instruments due to be reported in the future could go beyond the current scope, CESR should set up reporting rules and mechanisms that are product driven rather than market driven in order to bring the necessary flexibility to adapt them rapidly and easily at a lesser cost for the market and to allow a quick integration of new financial instruments without the need to revisit the developments made for the legacy products.

➤ ***The implementation of the OTC reporting should be phased out by category of derivatives***

14. Finally, and although this is more an issue that concerns national regulators, a phased implementation of the new reporting obligation should be provided for. A big bang approach should be avoided and different implementation phases should be set by derivative types to allow firms to correct

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errors before moving on to another type of derivatives and to plan in advance their IT developments, which are subsequent and require anticipation.

II. – Questions

Transaction reporting fields

- **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?**

15. No, the Unit Price should be provided per contract as is currently the case for listed options. In some cases (CDS and other swaps) it is not even possible to calculate the premium per underlying, as the contracts are traded in terms of nominal amount and without a reference to a number of underlying securities.

- **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?**

16. If the OTC reporting feed is not distinct to the current reporting for listed instruments, we agree that the Venue identification should be XXXX. If the two reporting are distinct, there is no need to provide such information because, by nature, this feed will only contain transactions traded OTC.

For listed derivatives that may be traded OTC, it is likely that firms will not be in a position to identify that the instrument is a listed one (see our comment § 10) hence these transactions are likely to be flagged XXXX instead of XOFF.

- **Q3: Any other views on the above?**

17. N.a.

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?**

18. Yes.

- **Q5: Any other views on the above?**

19. N.a.

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Contracts for Difference (CfDs)

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

20. In our opinion, it is a complex derivative because if it is reported as a CFD, the optional aspect of the trade will be lost and if it is reported as an OTC option, data related to the underlying CFD will be lost as well.

Spread Bets

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

21. Yes (i.e. x \$ for every cent movement for example). In the case of example 6.3, we think that the strike price should also be provided (i.e. an additional field is needed).

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

22. Yes.

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

23. No. As CESR aims to keep the number of fields to a minimum, this field should indicate the currency of the derivative transaction because it is the only one left for this purpose. If the currency of the underlying instrument is to be provided, another field should be added.

- **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?**

24. Same answer as above in Q9.

- **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?**

25. Yes.

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- **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?**

26. 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?**

27. We agree that a report is needed for opening and closing a spread bet because they are similar to sales and purchases. The simple expiration of a contract is out of scope and it does not bring any new information that the regulator would not be able to infer from the data provided at inception. MIFID do not consider that expirations should be reported.

- **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?**

28. 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?**

29. No.

Equity Swaps

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

30. The buyer is the one who receives the equity performance and pay the interest and the seller is the one who pays the equity performance and receives the interest.

- **Q16: Do you agree that the Quantity field should be the notional value of the Equity Swap?**

31. No it is the number of shares that is acceptable for equity swaps.

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

32. Yes.

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- **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?**

33. When the initial reference price is not set at inception, there is at least a reference that is set on the basis of which the price will be calculated, hence it should be possible to populate the price field with this reference.

- **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?**

34. No. Each counterparty should report both equity legs. If each counterparty is to report only one leg, there is a risk that the regulator never receives one of the legs (if the counterparty is not based in the EU or is not an entity with an obligation to report transactions). In addition, it is very unlikely that both reporting firms could report the same TRN.

AMAFI and FBF do not favour two reports for each transaction. For each firm it may be very complex to report two transactions, one for each leg as it will be necessary to develop a specific module to duplicate the transaction. It is far more simple to report two legs whatever the swap as stated hereunder what would require the addition of one field

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? (Warning : these are mutually exclusive options, i.e. participants would not have the choice between different reporting options. Once one of them has been selected, it would become the only standard for reporting).**

35. AMAFI and FBF would prefer the Markit red code with 6 figures because it is widely used on the market and although CDS always include a reference entity, there is not always a reference bond. To the extent that CESR could get a commitment from Markit that it will issue at low cost, or even for free, codes to smaller firms, we believe that this solution would be acceptable for the market.

36. On a distinct note, we are of the opinion that the seniority of the debt should also be provided, as it is of great influence on the price of the CDS (especially with regard to financial institutions and insurance companies' debt). Without it, regulators could assume that a CDS is traded at an improper price. We therefore believe that a specific field should be designed to convey this piece of information.

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

37. No. This information is used by front-office systems but is not always fed to the back-office systems from which reporting is done. Hence, the price should be expressed in basis points without the upfront payment. This latter information should be populated in a different field. An equivalent all-running payment price would require a calculation by the reporting system, which could be error prone and difficult to achieve in any case, as the upfront payment does not always feed the back-office systems.

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

38. No, the currency reported should be the one of the transaction and not the one of the underlying (see answer to Question 9 above).

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

39. Yes early terminations should be reported as it could be seen as a sale of an instrument from a MiFID perspective.

An assignment is equivalent to a counterparty change for one of the counterparty, hence it is not reportable (its position is unchanged); for the other counterparty, it is equivalent to a termination, hence it should be reported; for the new counterparty entering the deal, it is equivalent to a new contract, hence it should be reported. This logic is consistent with the MiFID rule of reporting sales and purchases. Its drawback is that regulators may not be able to match several firms' trades on the basis of this reporting, but as it is not the purpose of this reporting, it should not be an insurmountable issue.

In our view, from a theoretical point of view, there is no need to report compressions as they have no other economic effects than netting positions with a counterparty (i.e. there is no sale or purchase equivalents here). However, technically speaking, some firms may be able to identify compressions per se and may or may not report them, depending on the requirements that will be set. For other firms, a compression may be dealt with system wise as the cancellation of existing trades and the amendment of another one to increase or decrease its nominal. For these firms, there will therefore be a reporting generated: cancellations of previous reports and an amendment of another one with the same internal transaction reference number of the reporting firm. Even if the reporting of compression is not mandatory, regulators could still thus receive reports sent by these firms. Thus it should be necessary to add a field of the state of the transaction (modification or cancellation for all type of transactions and early termination or assignment for CDS; compressions being not reportable so no need to specify them).

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Complex derivatives

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

40. As mentioned in § 7, we think that other categories of derivatives, the most used, should be added to avoid inflating the complex derivatives category, We have not had enough consultation time to perform a detailed analysis of each of these categories but we strongly support a further analysis by CESR.

An example of a derivative type that, in our view, should feed the complex derivatives category is the one of an option with several strike prices at different dates. This information will not be accommodated in the fields set for OTC options and will therefore have to be provided in the description field of the complex derivatives' category.

As far as swaps are concerned, there may be a need to define more precisely which of them are to be reported or not, when their value is not directly dependent upon the performance of a single security or the risk of a single issuer, but rather on a parameter linked to a single security or issuer. This is the case for volatility swaps, dispersion volatility swaps and dispersion variance swaps. Should they be considered as reportable and, if so, should they be reported in the complex derivatives category?

- **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 ?**

41. Yes this field is necessary even is it is populated in various languages. Without it, it will be hard to understand which instrument is reported. As previously explained, CESR should try and deflate as much as possible the complex category who could lead to countless questions.