

POSITION PAPER



**ESBG RESPONSE TO THE EUROPEAN
COMMISSION ON ITS CALL FOR
EVIDENCE ON PRE- AND POST-TRADE
TRANSPARENCY PROVISIONS OF THE
MiFID IN RELATION TO TRANSACTIONS
IN CLASSES OF FINANCIAL INSTRUMENTS
OTHER THAN SHARES**

15 September 2006



EUROPEAN SAVINGS BANKS GROUP



The European Savings Banks Group (ESBG) welcomes this opportunity to comment on the Commission's Call for Evidence as regards pre- and post-trade transparency provisions of the MiFID in relation to transactions in classes of financial instruments other than shares. We welcome the Commission's proposal to examine the current market situation. In addition, we appreciate that the Commission is considering adjusting its potential future action to different segments of the market. In our view, different markets and different financial instruments require different levels of transparency to operate efficiently.

In addition, the ESBG would like to point out the importance of the better regulation principles to which the Commission committed itself in the Green Paper on Financial Services Policy (2005-2010). In line with the views we expressed in our response to the Green Paper, we would like to highlight that if the Commission envisages proposing EU initiatives, an ex-ante impact assessment is an important first step so as to determine whether the intended integration and/or economic goals are likely to be achieved. Along these lines, we would like to remind the Commission that it should not presume that there is a need for mandatory transparency, without firstly conducting an objective fact-finding exercise and presenting solid proofs for its actions.

Scope of the Report

Question 1: Do you have any comment on the proposed scope of the report?

The ESBG considers that the proposed scope is reasonable. In particular, we appreciate that the Commission predicts that one possible outcome of the report could be to have more than one transparency regime for different classes of instruments. We strongly believe that the transparency requirements should not be the same for all markets, as the markets differ quite considerably in character. Therefore, we expect that the Commission will carefully analyse market participants' responses in order to determine which markets need higher transparency requirements, if any.

Classes of instruments

Question 2: Do you consider this classification scheme to be sufficient for the purposes of the review?

From our point of view, mortgage-backed securities (MBS) and collateralised debt obligations (CDOs) should be included in the list of cash bonds. The ESBG is of the opinion that in general these instruments look more like cash bonds than asset-backed securities, as they are sufficiently collateralised and have a high degree of liquidity. Therefore we deem it preferable to classify them together with the other cash bonds, and not with the other asset-backed securities, which are normally much more risky instruments.

Focus and prioritisation



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Question 3: Do you consider that there are possible policy rationales for mandatory transparency we have not listed?

While we support the proposed list of policy rationales, we believe that they represent only one side of the objective examination which the Commission committed itself to undertake. Notably, the policy rationales should be put in perspective by considering also those rationales which would advocate against mandatory transparency. In our view, the Commission should not automatically assume that an intervention to extend the transparency requirements to classes of instruments other than shares is necessary, but instead it should objectively prove the reasons for a possible intervention. This would also be in line with the Commission's policy objective not to regulate, unless there is clear evidence that benefits would result from new regulation (see the introductory part above as regards the better regulation principles).

Question 4: Do you agree with our proposals for prioritisation of the review?

We consider that retail participation in non-equity markets will increase via advice of specialized advisors. We therefore consider that it is more relevant to consider the level of transparency available to market advisors than the level of transparency available to retail investors.

Problem identification

Question 5: To what extent do you consider there to be:

- a. observable or demonstrable problems with respect to the possible policy rationales for transparency identified above in relation to one or more of the instruments markets under review?**
- b. evidence that mandatory pre- or post-trade transparency would solve any of those problems?**

We consider that these markets are working well and no particular problems have arisen so far. Consequently, we do not consider any regulatory intervention to be necessary, such as mandatory pre- or post-trade transparency requirements, to solve non-existent problems.

Question 6: To what extent could recent and upcoming technological and market developments in relation to the instruments markets under review:

- a. contribute to a relatively inexpensive extension of mandatory transparency?**
- b. render mandatory transparency unnecessary?**

We deem that these markets are competitive enough and they are not showing any sign of market failure. Therefore we believe that these markets have an optimal degree of transparency and under this scenario no mandatory transparency should be required.

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We are not aware if there is a low cost method to deliver a transparency system which the industry could implement. However, even if such technology is available, the Commission would still be obliged to present objective proof to show whether the whole concept of mandatory transparency is necessary.

Question 7: To what extent are non-equity financial instruments different from equities so that lower levels of mandatory transparency in those markets may be justified?

First of all, we would like to point out that the absence of mandatory transparency requirements does not mean that there is no transparency in the non-equity financial markets.

Moreover, different markets have different characteristics, and generally different optimal degrees of transparency. We therefore consider that each market should be analysed separately in order to determine its optimal degree of transparency.

Question 8: What data sources do you consider relevant to the issues you have raised (if appropriate, cross-refer to your answers below)? Would you or your organisation be prepared to produce any relevant data if necessary?

No comment.

Relevant academic and institutional work

Question 9: Are there academic and institutional papers or ongoing work that should be considered in preparing the Report not included in our bibliography?

No comment.

Question 10: What conclusions do you draw from the existing academic debate and the ongoing work being conducted by interested parties?

No comment.

Question 11: In your view, how applicable is the academic or institutional literature concerning transparency in the cash equities markets to the present discussion?

We consider that the enclosed bibliography cannot be relied upon by policy makers to a large extent, as it concerns mainly the cash equities market and the US cash bonds market. As we emphasised above, each market and each instrument has its own characteristics and it is not possible to use the proposed literature to understand the structure of markets and instruments not directly referred to in the annexed books.

Question 12: What similarities, and what differences, are there between US and EU markets that should be borne in mind when seeking to draw inferences from the TRACE experience in the US?

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No comment.

Additional filters in problem identification

Question 13: To the extent that you have identified problems or believe that others might do so, do you agree that only EU-level action would be appropriate in the present case?

The ESBG believes that there are currently no problems which would require EU-level action.

Question 14: If you have identified problems or believe that others might do so, to what extent do you consider those problems would disappear as a natural product of market evolution in the short-to-medium term.

No comment.

Question for consultation

Question 15: In respect of both pre- and post-trade transparency, are the four options the right ones to consider, and in particular should other options be considered?

Regarding the last two options, we consider that it would be useful to undertake some case studies prior to considering whether any of the two options could be suitable.

Moreover, we would like to suggest an additional option which would involve no change at this moment, but according to which the Commission would keep monitoring closely the situation and would be given an option to re-examine its position based on future market developments.

Question 16: Would you, in light of your answers to the other questions, favour any of the four options in relation to pre- and post-trade transparency (or another option you might propose for consideration) in respect of transactions in any of:

- **cash government bonds;** A no-change option for pre- and post-trade transparency.
- **cash investment-grade corporate bonds;** A no-change option for pre-trade transparency. As regards post-trade transparency, the Commission should first undertake a market case study and depending on the result consider whether a market-led/self regulation option, but under a close monitoring by the Commission (see question 15), is suitable.
- **cash high-yield corporate bonds;** Same as for cash investment-grade.
- **asset-backed securities;**
- **credit default swaps, interest rate swaps and bond futures; or**

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- **any other financial instrument you consider relevant?**

For the last three (taking into account our answer to question 2), the most suitable option would be that the Commission keeps monitoring the situation without undertaking a regulatory action at this stage (see question 15).



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About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of €4,716 billion (1 January 2005). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG members are typically savings and *retail* banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their *region*. ESBG member banks have reinvested *responsibly* in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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