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DG Internal Market and Services Working Document

Report on non-equities markets transparency pursuant to Article 65(1) of
Directive 2004/39/EC on markets in financial instruments ('MiFID')

EN

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1. BACKGROUND

1.1. Legal context

The Commission must prepare a report on the adequacy of the level of pre- and post-trade transparency in classes of financial instrument other than shares (the Report). The Report is required by Article 65(1) of the Markets in Financial Instruments Directive (MiFID)¹. That Article provides:

By 31 October 2007, the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and to the Council on the possible extension of the scope of the provisions of the Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instrument other than shares.

The present document constitutes the Report of the Commission under this Article.

1.2. Better regulation framework

The Report has been prepared in accordance with the Commission's application of the better regulation² principles. While the Commission's guidelines on impact assessment or on evaluations are not strictly applicable, because no new legislative or spending initiative is proposed in this Report, these guidelines have been applied in the preparatory work for this Report.³

The Commission will generally not propose new legislation in the area of financial services unless the following conditions are satisfied:

- there is convincing evidence of a problem, such as a market failure, to be addressed;
- EU-level legislation would be the most appropriate and proportionate way to tackle that problem, in that the problem is not likely to resolve itself in due course in the absence of regulatory intervention, and reliance on member State legislation would have negative effects, such as fragmenting the single market;
- the likely benefits of that intervention would outweigh the likely costs.

1.3. Scope of the Report

1.3.1. Instruments covered

The Report in principle extends to transactions in all classes of financial instruments other than shares. As the Report does not cover transactions in shares, there is no mandate to consider extension of transparency obligations to shares to which the

¹ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, OJ L 145, 30.4.2004, p. 1 (as amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006, amending Directive 2004/39/EC on markets in financial instruments, as regards certain deadlines, OJ L 114, 27.4.06, p. 60, and by Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007, amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, OJ L 247, 21.9.07, p.1). A consolidated text of the MiFID, not incorporating changes made by the most recent amending Directive (which must be transposed by 21 March 2009), is available at <http://tinyurl.com/yug7rx>.

² See Press Release number MEMO/05/340, Brussels, 27 September 2005 for a succinct summary. See <http://tinyurl.com/to5x6>.

³ Impact Assessment Guidelines (SEC(2005) 791. See <http://tinyurl.com/27lgha>.

MiFID transparency provisions do not apply, i.e. shares that are not admitted to trading on a regulated market.

The Feedback Statement to the Commission services' Call for Evidence⁴, published in November 2006, showed that the majority of respondents agreed with the Commission services' proposal to prioritise the cash bond markets in its review leading up to the Report. The Commission services had proposed to do this on the basis that retail exposure to cash bond markets was greatest. In light of this and other feedback received favouring a narrowing of the scope of the instruments for review⁵, the focus of the review has been on cash bond markets, and on other markets only to the extent necessary to deal properly with issues arising in those markets.

A separate stream of work undertaken by DG Transport and Energy, supported by the European Regulators' Group for electricity and gas (EREG), has issued in the Commission's so-called Third Legislative Package for Energy.⁶ That legislative package contains references to the question of transparency specifically in gas and electricity markets including derivatives markets that come within the scope of MiFID,⁷ and states that the Commission will examine this issue in detail and reach a conclusion towards the middle of 2008. These issues fall outside the scope of the present Report and will be dealt with separately.

1.3.2. *Clearing and settlement issues*

Another separate stream of work is related to the possible extension of the European Code of Conduct for Clearing and Settlement to financial instruments other than shares. Under the Code of Conduct, price transparency requirements have the objectives of improving customers' understanding of the prices paid for post-trading services and improving the comparability of such prices. Those requirements have, therefore, different scope and objectives from pre- and post-trade price transparency of MiFID. The former refers to transparency of transaction costs, the latter to transparency of the price of assets. Post-trading services fall outside the scope of the present Report, therefore any conclusion on the lack of market failure on non-equity market price transparency drawn in the present Report is not relevant for the future work on the revision of the Code of Conduct for Clearing and Settlement.

2. OVERVIEW OF EVIDENCE GATHERED

2.1. Responses to the Commission services' Call for Evidence

The Commission services issued a Call for Evidence in June 2006.⁸ A total of 59 organisations responded. The Feedback Statement summarising the responses, together with the full text of the non-confidential responses, was published in November 2006. The main conclusions were as follows:

- Most respondents expressed opposition in varying degrees to the introduction of mandatory transparency obligations in the markets for financial instruments other than shares (non-equity financial instruments).

⁴ Feedback statement: http://ec.europa.eu/internal_market/securities/docs/isd/feedback_statement_en.pdf.
Full text responses: http://ec.europa.eu/internal_market/securities/isd/consultation/mifid_replies_en.htm

⁵ See paragraph 3.4 of the Feedback Statement.

⁶ http://ec.europa.eu/energy/electricity/package_2007/index_en.htm

⁷ See paragraph 5.2 of the Explanatory Memorandum.

⁸ http://ec.europa.eu/internal_market/securities/docs/isd/call_for_evidence_en.pdf

- Although most respondents opposing mandatory transparency requirements rejected both pre-and post-trade transparency, respondents tended to be less opposed to post-trade transparency. At the same time, however, many respondents doubted whether post-trade transparency would be useful in markets where some instruments are rarely traded and where a number of factors (e.g. volume, counterparty, prevailing market interest rates) will influence price.
- A smaller number of respondents advocated awaiting the results of MiFID before deciding whether to impose additional transparency requirements beyond equity markets. Such respondents considered that MiFID would have profound impacts on securities markets in the Community and action now would be premature.
- Those who were in favour of self-regulatory solutions only expressed a preference for an increase in post-trade transparency, but not in pre-trade transparency.
- Those who were open-minded on the need for change tended to advocate separate consideration of retail and wholesale investors and of different types of non-equity securities. They also tended more strongly to favour a moderate level of post-trade transparency for more liquid corporate bonds, and tended to be against mandatory pre-trade transparency.
- Those who were positively supportive of change emphasised that mandatory transparency would lead to greater fairness in price discovery and lessen the information gap between different types of investors.

2.2. Committee of European Securities Regulators (CESR)'s advice

2.2.1. Initial assistance – fact-finding exercise

In August 2006, the Commission services requested CESR to provide initial assistance on the issue of non-equity market transparency by conducting a fact-finding exercise in relation to cash bond markets. In October 2006, CESR provided its response⁹ to that request. CESR's analysis revealed that:

- There was a lack of comprehensive, harmonised information on the nature and size of EEA bond markets. Nevertheless, CESR estimated total bond market trading in the EEA of some €50 trillion annually, of which the value of corporate bond trading would be considerably smaller than the trading of government bonds, and also considerably smaller than trading in equities on EEA exchanges. As a general observation, the information available on government bonds was viewed as more reliable than that available on corporate bonds.
- Pre- and post-trade transparency requirements in Member States were generally set up for/by regulated markets and, in some cases, multilateral trading facilities (MTFs). In many cases national laws set down specific requirements or provided regulators or trading venues with the right to establish binding requirements on firms.
- There are some common characteristics in bond market users and structures in the EEA, but also some key differences between Member States. Such differences relate, amongst other things, to the level of direct retail involvement in the bond markets.

⁹ http://www.cesr-eu.org/index.php?page=contenu_groups&id=53&docmore=1#doc

2.2.2. *Technical advice*

In November 2006, following the responses to the Call for Evidence, the Commission services issued a mandate¹⁰ to CESR requesting technical advice on a range of questions.

In August 2007, CESR published its technical advice¹¹ in response to that mandate. The response was prepared on the basis of a public consultation, summarised in a feedback statement¹² accompanying the advice.

The conclusions of the advice, and the respective questions, are reproduced in **Annex 2** of the background document to the public hearing on non-equities markets transparency held in Brussels on 11 September 2007 (the Public Hearing).¹³ The main conclusions were as follows:

- CESR has not identified an evident market failure in respect of market transparency on bond markets. Wholesale participants generally seem content with the way in which the cash bond markets currently operate and their level of access to transparency information.
- Access to transparency information for smaller participants, including retail investors, is not as great, and such participants are less likely to be able to make use of information flowing from associated derivatives markets to aid their investment decisions.
- CESR believes there would be value to such users in receiving access to greater trading transparency. Greater transparency might also encourage higher levels of retail participation in the markets – although CESR would argue that various other factors, including the structure of the bond markets, retail investors' understanding of them and the distribution channels used, also play an important role in determining the level of retail involvement.
- Given this, CESR believes any increase in transparency would need to be carefully tailored to ensure that liquidity provision and levels of competition were not damaged as a result of dealers reducing or withdrawing their commitment to the markets. In other words, a thorough cost-benefit analysis should be undertaken by the Commission before any regulatory action.

2.3. **European Securities Markets Expert Group (ESME)'s advice**

In November 2006, the Commission services also issued a mandate¹⁴ for advice to ESME asking for technical advice on a range of questions.

In August 2007, the Commission services published ESME's report¹⁵ in response to that mandate.

¹⁰ http://ec.europa.eu/internal_market/securities/docs/isd/cesr_mandate_11-06_en.pdf

¹¹ <http://www.cesr.eu/index.php?docid=4708> (dated July 2007)

¹² <http://www.cesr.eu/index.php?docid=4709> (dated July 2007)

¹³ http://ec.europa.eu/internal_market/securities/docs/isd/hearing_en.pdf

¹⁴ http://ec.europa.eu/internal_market/securities/docs/isd/esme_mandate_11-06_en.pdf

¹⁵ The report, and background information on ESME, are both available at http://ec.europa.eu/internal_market/securities/esme/index_en.htm.

The key conclusions of the advice, and the respective questions, are reproduced in **Annex 3** of the background document to the Public Hearing.¹⁶ The principal conclusions were as follows:

- There does not appear to be convincing evidence of market failure with respect to market transparency in wholesale bond markets by reference to any of the criteria identified, namely wide dispersion of market prices, concentrated market share, persistent excess profits, or investor complaints.
- As regards retail bond markets, all ESME members were agreed that there appears to be some evidence of sub-optimality with respect to some aspects of market transparency in retail bond markets, particularly in the case of post-trade information relating to corporate bonds. Some ESME members felt that there could even be possible signs of market failure with respect to market transparency in retail bond markets. In the view of ESME members, the most appropriate way to address these retail issues would be through a market-led solution to provide end of day prices in retail sizes in the most liquid bonds.
- In their feedback statement the Commission services noted that some respondents had suggested alternative approaches toward transparency that moved away from the usual concept of price and volume transparency. ESME noted that these measures do not appear to have been proposed in response to a market failure. ESME cautioned against any mandatory measures to increase transparency in the absence of clear market failure, and stated that there would also seem to be some problematic aspects associated with each of the proposals.

ESME's advice also contained a number of Annexes containing useful information, including, in Annex II, a listing of the key academic papers reviewed.¹⁷

2.4. Public hearing on non-equities markets transparency, Brussels, 11 September 2007

The Commission services hosted a public hearing, which heard from a wide range of speakers with divergent views, as well as questions from the floor. The speakers set out very clearly the various arguments for and against price transparency in bond markets.

A broad consensus emerged from CESR, ESME and the industry representatives that there was no market failure in wholesale markets, but that access by retail investors to price information on bonds could be improved.

There were differing views presented by US colleagues on the question of the impact of TRACE (see section 3.4 below) on the quality of the US bond markets. Broadly, regulators were favourable, industry far less so, particularly as to the system's potential impact in the current difficult market conditions. There were also contributions from academic speakers, who generally stated that there was no convincing evidence that transparency would harm liquidity.

Lastly, there were important voices of consumers and of those regulators who were moving ahead already with transparency schemes. A consumer representative, for example, advocated adoption of a system for bonds along the lines of that applying to

¹⁶ http://ec.europa.eu/internal_market/securities/docs/isd/hearing_en.pdf.

¹⁷ Annex I to the advice contains an overview of the bond market, while Annex III lists the membership of ESME.

shares under MiFID. See also section 3.3 below for more details of Member State schemes.

The Commission services have taken due note of the different views presented. A summary of the discussion is available on the Commission's website.¹⁸

3. OTHER RECENT DEVELOPMENTS

3.1. ICMA standard of good practice and publication mechanism

The International Capital Markets Association (ICMA) has recently undertaken a self-regulatory response to the issue of bond market transparency.¹⁹

The ICMA's response has two elements: a standard of good practice for the benefit of retail investors, and reporting arrangements whereby members can adhere to that standard. For a particular firm, adherence to the standard and, if it does adhere to the standard, the choice of reporting arrangements, is voluntary.

Firms – or trade associations or others acting on their behalf – adhere to the standard of good practice by publishing, for bonds and trades within the scope²⁰ of the standard, information about high, low and median trade prices and average closing bid and offer quotes, together with monthly trade volume and the average daily number of trades. High, low and median trade prices and the average closing bid and offer quotes for each bond covered are to be published at the end of each trading day. Figures for average daily volume and average daily number of trades are to be published with a minimum one month's delay (e.g. data for June would be published at the beginning of August).

Other elements of the standard of good practice include:

- **Accessibility:** all published information should be available for any retail investor to view via one or more prominent websites.
- **Charging:** all published information should be available to retail investors at a transparent and reasonable cost or free of charge.
- **Language:** all information should be published in the local language or in English.
- **Disclaimers:** certain disclaimers should accompany the information.
- **Education:** a website link should be provided to suitable educational material.

¹⁸ http://ec.europa.eu/internal_market/securities/docs/isd/report_hearing_en.pdf

¹⁹ ICMA (2007), *European Financial Services Industry Standard of Good Practice on Bond Market Transparency for Retail Investors*. See <http://tinyurl.com/ysedbu>.

²⁰ The standard's scope is as follows:

Bond type: straight bonds, floating rate notes and convertibles.

Issuer type: sovereigns, sub-sovereigns, corporates, and financials.

Maturity: one year's remaining life or more.

Minimum issue size: EUR 1 billion (or currency equivalent).

Minimum current credit rating: A- and above.

Trade size: between EUR 15,000 and EUR 1 million (or other currency equivalent).

Currency: bonds denominated in currencies which can be settled within the EU.

Based on these parameters, ICMA estimate the population of bonds covered will be some 1700 – 2000 bonds. By comparison, the TRACE system in the United States covers some 32,000 corporate bond issues (excluding convertible bonds): TRACE Fact book, 2006, p. 36 (<http://tinyurl.com/37quv6>).

ICMA has also announced that it would itself meet the specifications, using its existing Reporting Arrangements to enable those market participants who choose to report to ICMA to comply with the Standard. Relevant data is published via the ICMA Retail Investor Bond Information Service free of charge.²¹

3.2. SIFMA initiative ‘investing in bonds’

The Securities Industry and Financial Markets Association (SIFMA) has announced its intention to extend its current US retail-focused fixed income website www.investinginbonds.com to adapt it to the European market.²² The goal of the EU website will be to offer education, contextual data and text feeds and price information to investors, much of it in five Community languages. The information will be targeted toward three distinct adult client groups: beginners; individuals knowledgeable about equities but new to bonds; and sophisticated investors. SIFMA members have approved the proposals and SIFMA is taking forward the development in partnership with the Bond Market Foundation, a non-profit entity that will be responsible for website design, development and maintenance. It is anticipated that the service will be available beginning in March 2008.

3.3. Member State legislation

The CESR Initial Assistance referred to in section 2.2.1 above contained a table showing the pre- and post-trade transparency position with respect to bonds in 21 Member States. It was noted that national laws may set down specific requirements or provide regulators or trading venues with the right to establish binding requirements on firms.

Recital (46) of the MiFID explicitly recognises the right of Member states to apply the pre- and post-trade transparency requirements laid down in the MiFID to financial instruments other than shares.

CESR has recently published a list of national options and discretions under MiFID Level 1, including the discretion referred to in Recital (46), showing how the various Member States intend to exercise that discretion.²³

As a result, it is apparent that there will be, from 1 November 2007, a variety of approaches to the question of pre- and post-trade transparency with respect to bonds in the various Member States.

However, it also appears that for the most part and in most jurisdictions, the pattern whereby on-exchange and on-MTF trading is relatively more transparent (with regards to pre-trade transparency or with regards to both pre- and post-trade transparency) than OTC trading will continue.

3.4. The United States experience (TRACE)

The U.S. corporate bond markets have experienced mandated post-trade transparency for some time under a NASD (now the Financial Industry Regulatory Authority) initiative called TRACE (Transaction Reporting and Compliance Engine).

²¹ See www.bondmarketprices.com.

²² Slides outlining SIFMA's self-regulatory response were presented at the Public Hearing: http://ec.europa.eu/internal_market/securities/docs/isd/110907_hearing_proceedings/huet_en.pdf.

²³ <http://www.cesr.eu/index.php?docid=4820>

A number of academic studies²⁴ conclude that the introduction of TRACE has had a positive effect in increasing market efficiency and reducing transaction costs. However, the Bond Market Association's response to the Commission services' Call for Evidence stated that the principal academic research on the effect of TRACE on the US corporate bond market does not analyse in any detail the effect of post-trade price dissemination on liquidity as defined by traded volumes and that most of the studies define and measure liquidity by bid-ask spreads, rather than trading volumes.^{25, 26} In light of the advice of CESR and ESME, the Commission services for the time being conclude that while relevant, the TRACE experience is not conclusive for present purposes.

4. PROBLEM IDENTIFICATION – IS THERE A MARKET FAILURE?

In order to justify regulatory intervention, the Commission would first need to conclude that there was a problem to be tackled. The most obvious form of such a problem is a market failure.

4.1. Retail bond markets

With regards to retail bond markets, the Commission services accept CESR's and ESME's advice that there is a degree of sub-optimality with respect to the access that retail investors have to bond prices. The Commission services also note the opinion of some members of the ESME sub-group that was charged with preparing ESME's advice that this sub-optimality represents possible signs of a market failure.²⁷

Clearly, without ready access to bond market prices retail clients are in no position to check the quality of execution they receive from their intermediaries, including the competitiveness of the prices they are quoted. Equally clearly, for many retail customers it would be totally impractical in terms of transaction costs to engage multiple intermediaries and secure competing quotes prior to each transaction, as institutional investors tend to do.

In this context, the Commission services strongly welcome industry initiatives to make available post-trade information on retail-sized trades for some bonds and requests the industry to consider extending the scope of reported transactions in the future.

4.2. Wholesale bond markets

In reliance on the majority response to the Call for Evidence as well as the advice of CESR and ESME, the Commission services accept that no convincing case of a market failure in European wholesale bond markets has been made out.²⁸ No

²⁴ [renumbered ESME footnote:] Bessembinder, Maxwell and Venkataraman (2005); Edwards, Harris and Piwowar (2005); and Goldstein, Hotchkiss and Sirri (2006). Note that other academic studies, notably, European High Yield Bonds by Bruno Biais and Fany Declerk, March 2007, conclude that spreads in European high yield markets compare favourably with those in the US even after the introduction of TRACE and that the difference between investment grade spreads and high yield spreads in Europe is lower than in the US.

²⁵ [renumbered ESME footnote:] The Bond Market Association (now SIFMA): Response to European Commission's Call for Evidence on price transparency in non-equity markets, 2006.

²⁶ ESME report to the Commission, paragraph 33.

²⁷ At paragraph 39.

²⁸ See also two studies published by the Centre for European Policy Research: Biais B, Declerck F, Dow J, Portes R, von Thadden EL (2006) 'European Corporate Bond Markets: Transparency, Liquidity,

sufficient nor persuasive evidence has been drawn to the Commission services' attention, with respect to those markets, of the four criteria identified by ESME of a market failure: wide dispersion of market prices, concentrated market share, persistent excess profits, or widespread investor complaints.

4.3. Other non-equities markets

On the basis of the responses to the Call for Evidence, the Commission services conclude that there is no proven case of market failure with respect to pre- or post-trade transparency in other non-equities markets (leaving aside commodity derivatives markets, which, as mentioned above, are outside the scope of this Report).

5. OTHER FORMS OF TRANSPARENCY

In response to the Commission services' Call for Evidence, a number of respondents raised the possibility of forms of transparency being introduced other than price transparency:

- i. Transparency of aggregate net risk positions.²⁹
- ii. Transparency of overall market activity.³⁰
- iii. Increased transparency of effective margins and increased periodic reporting obligations relating to securitised derivatives.³¹

In turn, the Commission services asked ESME to advise on these questions.³²

5.1. Transparency of aggregate net risk positions

ESME considered that it would be difficult to impose obligations similar to those applying to equity holdings on bond market investors. Bond holdings rarely convey any right of control over the issuer (ignoring any rights they have should a company want to change the terms of the issue or seek a waiver of any covenants). According to ESME, such a proposal would introduce a significant amount of complexity over what thresholds were applied, and the benefits that would flow to investors are unclear. Further, the concerns expressed by dealers that increased transparency would impact liquidity negatively would be magnified if there was no anonymity about who held the position (since the relatively limited liquidity in most corporate bond investments would mean it would be possible for other firms to guess with some accuracy what trades they had executed, even if the trades were disclosed anonymously). The Commission services note that this complex topic, which may have general implications for financial stability, needs to be assessed further. .

Efficiency', at <http://tinyurl.com/yx3loy>, and Portes R, Dunne P, Moore M (2006) 'European Government Bond Markets: Transparency, Liquidity, Efficiency', at <http://tinyurl.com/y36prz>.

²⁹ See, for example, AMTE's response to the Call for Evidence, pp. 9, 20 and 54, quoted in the Commission's request to ESME for advice dated 23.11.06; Jean-Claude Trichet's speech of 18 April 2007 (<http://tinyurl.com/yo8kh3>) and remarks by Roland Bellegarde at the Public Hearing.

³⁰ See the Commission's request to ESME for advice dated 23.11.06, Annex I, paragraph 5(b).

³¹ See BVI's response to the Call for Evidence, pp. 5-6, quoted in the Commission's request to ESME for advice dated 23.11.06.

³² See paragraphs 59 ff of ESME's report.

5.1.1. *Transparency of aggregate market activity (availability of statistical data)*

ESME concluded that even if the only obligations were to give periodic, anonymised disclosure of overall volumes, the benefit of any periodic disclosure of overall market to investors remained unclear. There are, of course, a great variety of markets for different categories of bonds and fixed-income derivatives in the EU. In this context, the Commission services recall that Article 25 of MiFID contains far-reaching reporting obligations for investment firms carrying out transactions in financial instruments that are admitted to trading on regulated markets.

5.1.2. *Increased transparency of effective margins and increased periodic reporting obligations relating to securitised derivatives.*

This question arose out of a response to the Commission services' Call for Evidence from Bundesverband Investment und Asset Management (BVI).³³

Margins can refer to a number of concepts, such as a profit margin or the variation and initial margin paid on in respect of derivative contracts. If the latter then, in the view of ESME, it was difficult to see how the disclosure of such information would benefit investors in the bond markets under review. If the BVI was referring to profit margins and the spread built into structured notes developed by investment firms, ESME considered that the discussion of whether profitability in individual contracts should be disclosed was much broader than the pre- and post-trade transparency discussions. The BVI also commented on disclosure obligations with respect to structured bonds and in this regard ESME noted that the Commercial Mortgage Securities Association (Europe) had recently issued guidance on how the disclosure obligations in the Market Abuse Directive should be applied in such markets.³⁴

In light of ESME's remarks, the Commission services do not propose to actively investigate these questions further for the time being.

6. CONCLUSIONS

In light of the extensive consultations with stakeholders and the technical advice received from CESR and ESME, the Commission services conclude that there does not seem to be, at this point of time, a need for regulatory intervention at Community level in terms of an expansion of the current transparency provisions of MiFID to financial instruments other than shares. Existing national arrangements appear to work satisfactorily.

However, as set out in this Report, one area of potential concern is transparency in the context of retail access to market prices of bonds.

The Commission services accept the advice of CESR and ESME to the effect that if there is an issue with respect to retail access to bond market prices, it is one that market participants themselves appear to be well-placed to address, through self-regulatory initiatives designed to enhance the access that retail investors have to bond prices, and to the kind of investor information that would enable them to make sense of those prices. CESR went further and devised useful criteria by which to

³³ http://ec.europa.eu/internal_market/securities/docs/isd/consultation_mifid/bvi_en.pdf

³⁴ At paragraph 63

judge self-regulatory solutions, the chief of which, of course, was fitness for purpose.³⁵

Having regard to in particular the technical advice received from CESR and ESME and work already initiated by the industry, it appears to the Commission services that self-regulatory measures may, for the time being, be the most appropriate solution to this problem.

Such self-regulatory solutions should however give retail customers access to meaningful prices. The ICMA system, for example, calls for trades between €15K and €1M to be captured for the purpose of generating end of day prices. Where no trade is done on a particular day then no prices are displayed. Clearly, if for a particular bond it frequently happens that the only trades done on a day are over €1M or under €15K, the danger is that this system will frequently not give access to prices at all.

For this reason, the Commission services would encourage all designers and implementers of self-regulatory solutions, including ICMA and SIFMA, to consider carefully the design parameters so that retail access to realistic and up-to-date prices is broadened and deepened to the fullest extent possible consistent with ensuring that liquidity is not impaired.

The Commission services will therefore continue to monitor closely whether the currently envisaged self-regulatory initiatives develop satisfactorily, attract adequate adherence and geographic coverage, and are utilised by investors so as to achieve their intended results.

³⁵

At paragraphs 63 ff. The other criteria were: • The depth and breadth of the information provided. • appropriate coverage both in terms of geographical distribution and market share. • The timeliness of the data. • The delivery mechanism employed.

