



**Protocol on the Operation of  
CESR MiFID Database**

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## **Foreword**

The operation of the MiFID market transparency regime involves making certain information regarding shares admitted to trading available to market participants. The regime requires CESR Members to make certain calculations regarding shares admitted to trading on a regulated market (and to some extent "liquid shares"). The results of the calculations will be published by CESR.

The publication of this type of information is a new kind of task for CESR (and to some extent for its members). In order to fulfil the requirements, a specific MiFID database has been set up as a part of the CESR website.

In order to ensure smooth and harmonised calculation and publication CESR has considered it necessary to agree on this protocol. This protocol describes the tasks and responsibilities of the CESR Members and the CESR Secretariat respectively. Additionally, it contains practical guidance on how to conduct the calculations as well as the necessary technical instructions.



## **1. Scope**

This Protocol concerns the practical cooperation arrangements between CESR Members and the CESR Secretariat in order to manage the calculation and publication of MiFID market transparency calculations.

## **2. Obligations of CESR Members and the CESR Secretariat**

Article 33 of the MiFID Implementing Regulation states that national competent authorities are responsible for ensuring the calculations are done. They may choose to conduct the calculations by themselves or delegate the practical calculations (or part of them) to a third party. In practice, calculations may be delegated for example to a regulated market. In any case, CESR Members are responsible for the outcome vis-à-vis the Secretariat and they should ensure that the necessary data is available on a timely manner in a format as described in the instructions from the Secretariat. The responsibility of the accuracy of the data provided to CESR lies with the respective CESR Member.

The CESR Secretariat is responsible for building and maintaining the CESR MiFID database and the publication of the information. The Secretariat is responsible for submitting the necessary technical instructions to members which are needed in order to present the results of the calculations in a harmonised format and upload the data.

## **3. Questions of interpretation**

A CESR Member shall submit to CESR any questions relating to the operation of the database. Issues of a technical nature will be solved by the Secretariat. Issues which require further consideration will be submitted to the MiFID Markets Sub-group for its consideration. If such questions include interpretation of MiFID, the European Commission will be included in the discussions.

All queries should be addressed to the designated contact persons.

## **4. Determination of the relevant competent authority**

For each share one competent authority is responsible for the necessary calculations in respect of that share. The responsible authority for a given share is the authority of the most relevant market in terms of liquidity for that share. This authority will be determined according to Article 9 of the Implementing Regulation. or shares the most relevant market in terms of liquidity is the Member State where the share was first admitted to trading on a regulated market. If the share was admitted for the first time simultaneously on more than one regulated market, then the most relevant market in terms of liquidity is the market where the turnover of that share is highest.

The Implementing Regulation facilitates the change of the competent authority in specified circumstances.

Changes in the status of the share (new admissions and delistings) may also change the respective competent authority and have an effect on the calculations. It is therefore necessary that the relevant CESR Members ensure co-operation in such cases.

### **4.1 Co-operation in case of new shares admitted to trading or delistings**

When a share is to be admitted to trading on a regulated market, the relevant CESR Member shall check whether the share is already or will simultaneously be admitted to trading on another regulated market. When a share is to be delisted from the regulated market which is the most relevant market in terms of liquidity, the relevant CESR Member shall check whether the



share remains admitted to trading on another regulated market. If shares are (or will be) admitted to trading on other regulated market(s), the relevant authorities shall inform each other about prospective measures and undertake the necessary co-operation, particularly in order to determine the correct calculating authority and the correct outcome of the calculations.

#### **4.2 Alternative determination of the relevant competent authority**

According to Article 10 of the Implementing Regulation an authority may notify the relevant competent authority that it intends to contest the earlier determination. Such notifications shall be submitted in January, but CESR Members endeavour submitting them as early as possible after the end of the previous calendar year. The notification shall be submitted to the designated contact persons.

The respective authorities shall make the necessary calculations as described in Article 10 during the four weeks following the submission of the notification.

If the relevant competent authorities disagree about the outcome of the calculations (and hence the responsible competent authority for the calculations), they shall inform the CESR Secretariat which shall then utilise the necessary measures in order to assist the authorities to achieve a mutually acceptable outcome.

#### **5. Changes to this protocol**

This protocol may be changed or amended as decided by CESR. Annexes 1 and 2 may be changed following the decision of the relevant working group responsible for the application of the MiFID pre- and post-trade transparency provisions.



## **Annex 1 – CESR Guidebook on MiFID Market Transparency Calculations**

### **1. Introduction**

This internal guidebook is intended to facilitate the MiFID market transparency calculations of CESR Members. Articles 33 and 34 of the MiFID Implementing Regulation require CESR Members to calculate and publish a set of information regarding all shares which are admitted to trading on a regulated market. The exact content of information is different for all shares and liquid shares as described below.

The information is targeted for market participants who need the information for recognising liquid shares (which trigger the obligations for systematic internalisers according to Article 27 of MiFID) and for determining the block sizes for waivers from pre-trade transparency requirements and for delayed post-trade publication.

CESR Members are responsible for ensuring that the calculations are made, but may delegate the practical calculations to a third party (for example, to a regulated market).

### **2. Calculating authority**

The relevant competent authority responsible for the calculations for a share is the authority of the most relevant market in terms of liquidity. That authority will be determined according to Article 9 of the Implementing Regulation. For shares the most relevant market in terms of liquidity is the Member State where the share was first admitted to trading on a regulated market. If the share was admitted for the first time simultaneously on more than one regulated market the most relevant market in terms of liquidity is the market where the turnover of that share is highest.

Each CESR Member shall check for all shares which are admitted to trading in its jurisdiction whether they have been admitted to trading on other markets and on which market the share was admitted first.

On the basis of Article 10 of the Implementing Regulation, a competent authority may, in January every year, notify the competent authority previously responsible for the calculations that it intends to contest the earlier determination of the most relevant market for a share. In that case, the procedure described in Article 10(2) of the Implementing Regulation will be followed to determine the responsible competent authority.

### **3. All shares admitted to trading on a regulated market**

In respect of each share that is admitted to trading on a regulated market, the responsible competent authority for that share shall ensure that the following calculations are made in respect of that share promptly after the end of each calendar year:

#### *The average daily turnover*

The average daily turnover will be calculated by dividing the total yearly turnover by the number of trading days. The total yearly turnover includes all trading within the EU, i.e. both on-market and off-market trading. The information will be available for the calculating authority on the basis of the transaction reporting according to Article 25 MiFID. (This applies for the calculations to be published after the first trading day of March 2010. For calculations to be published before and on the first trading day in March 2010, respectively, please refer to Annex 2).

#### *The average daily number of transactions*

The average daily number of transactions will be calculated by dividing the total number of transactions by the number of trading days. The total yearly number of transactions includes all trading within the EU, i.e. both on-market and off-market trading. The information will be available



for the calculating authority on the basis of the transaction reporting according to Article 25 MiFID. (This applies for the calculations to be published after the first trading day of March 2010. For calculations to be published before and on the first trading day in March 2010, respectively, please refer to Annex 2).

The above calculations are based on trading between 1 January and 31 December of the preceding year. As defined in Article 5 of the Implementing Regulation, a transaction should include a purchase and a sale of a share (i.e. the figures should be "single counted"). If only information about either the purchase or the sale is available (e.g. due to trading with a non-EU firm or a non-MiFID firm), the data about one side of the transaction should be regarded as the "single counted transaction".

In case the share has not been subject to trading the whole year, the calculations should only take into account the period the share has been subject to trading. If the trading in a share has been suspended, the entire day should also not be taken into account. Additionally, all non-trading days in the Member State of the responsible competent authority shall be excluded.

The results of the calculations shall be published on the first trading day in March. The calculations shall be valid for a 12 month period starting 1 April and ending 31 March.

#### **4. Additional calculations regarding liquid shares**

For liquid shares, in addition to the average daily turnover and average daily number of transactions, free float and average daily value of orders executed shall be calculated.

##### *Free float*

Free float, which is one factor for defining a share as liquid, will be calculated only in cases where a share meets the other liquidity criteria (i.e. 500 transactions or 2 million euro turnover and being traded daily). According to Article 22 of the Implementing Regulation, Member States have flexibility in deciding how these criteria will interact. The basic assumption in the Implementing Regulation is that a share which meets either of these criteria is liquid. However, Member States may decide that both criteria need to be met simultaneously. The need to calculate free float should be decided accordingly.

The free float is calculated by multiplying the number of shares by the price of the share. However, when calculating the free float all holdings exceeding 5 % of total voting rights shall be excluded unless they are held by a collective investment scheme or a pension fund.

If the free float exceeds 500 million euro, the share will be liquid for the purposes of Article 27 MiFID.

##### *Average value of orders executed*

The next step is calculating the average value of orders executed which is an arithmetic average value of transactions in that share. From all transactions in a share those which are large in scale compared to normal market size shall be excluded from the calculations. Whether a transaction is large in scale will be determined according to Table 2 of Annex II of the Implementing Regulation. Based on the average daily turnover shares will be divided into five classes which all have a threshold for being large in scale.

The results of the above calculations shall be published by the first trading day in March. The calculations shall be valid for a 12 month period starting 1 April and ending 31 March.



## 5. "Ad hoc" calculations

During the calendar year the calculations shall be reviewed and when necessary recalculated if there is a change in relation to the share or the issuer which significantly affects the previous calculations on an ongoing basis.

The recalculations shall be published as soon as practicable after the recalculation has been completed.

The published figures will be valid until the following 31 March.

## 6. Calculations/estimates before a share is admitted to trading

For shares which are admitted to trading on a regulated market for the first time there is no data for the calculations. In order to facilitate the operation of the MiFID transparency regime a competent authority shall ensure that the following estimates are provided which determine whether the share is considered as liquid and the block size for waivers from pre-trade transparency requirements and for delayed post-trade publication.

A competent authority shall ensure that the following estimates are made:

- Average daily turnover
- Market capitalisation (at the start of the first trading day)
- If market capitalisation is estimated at 500 million Euros or more, additionally:
- Average daily number of transactions
- If other liquidity criteria are met, free float
- If "liquid", the average value of orders executed

The estimates shall relate to the six week period following the admission (after the admission a set of calculations will be made which determine the parameters from that period on). The estimates shall take into account the previous trading history of the share (for example on an MTF). It shall also take into account shares that are considered to have similar characteristics.

The estimates shall be replaced by calculations based on four weeks' trading. The calculations shall be done as soon as the data is available and in any case no later than in six weeks.

The first estimates shall be valid from the first day of admission until six weeks after that day. Without prejudice to the possibility of "ad hoc" recalculations, the calculations based on four weeks' trading shall be valid from the six week period until the following 31 March or in the case that the end of this period would be between 15 January and 31 March they will be valid until 31 March of the following year.

## 7. Publication of the results

The national competent authorities shall publish the information mentioned above. Additionally consolidated information shall be published by CESR. Competent authorities can refrain from publication when the information is published by CESR. However, CESR Members may consider whether simultaneous publication also nationally would be useful for their markets (for example in national language(s)).

### *Sending the information to CESR and publication by CESR*

In order to be able to publish the consolidated information CESR needs to receive the information in a harmonised format before the publication deadlines. Concerning the regular yearly calculations the information shall be uploaded by CESR Members by 5 p.m. CET on the day before the publication deadline. New calculations will be published on the first trading day of March every year and they will be valid from 1 April for the next 12 months.



From 1 November 2007, the information in the database will be updated regularly by CESR Members. The changes include the estimates and calculations for new shares admitted to trading, delistings and other updates needed. New admissions will be included as soon as possible, normally no later than by 5 p.m. CET the day before admission to trading. In addition, further changes may be made on an ongoing basis, if a CESR Member on the basis of Article 33(5) of the Implementing Regulation identifies a change in the share or issuer which significantly affects the previous calculations on an ongoing basis. These ad hoc updates will, however, take place only in exceptional cases.

## **8. List of systematic internalisers**

According to Article 21(4) of MiFID competent authorities shall ensure that there is a list of all systematic internalisers, in respect of shares admitted to trading on a regulated market, which it has authorised as investment firms. The list needs to be published and reviewed at least annually. The list includes the identity of the systematic internaliser and the name of the authorising competent authority.

Similarly to transparency calculations, the list shall be sent to CESR who shall publish a consolidated list.

When the list is updated, the changes shall be sent to CESR as soon as possible.



## **Annex 2. CESR Guidebook on MiFID Market Transparency Calculations applicable during a transitional period**

### **1. Introduction**

According to Article 33 of the MiFID Implementing Regulation the calculation of the average daily turnover, average value of the orders executed and average daily number of transactions shall take into account all the orders executed in the Community in respect of the share in question between 1 January and 31 December of the preceding year, or, where applicable, that part of the year during which the share was admitted to trading on a regulated market and was not suspended from trading on a regulated market. The MiFID Implementing Regulation refers to the use of the Community wide data in the calculations to be made after the first trading day of March 2009, before which the data relating to the regulated market or markets of the most relevant market in terms of liquidity was used in the calculations.

CESR Members originally intended to use the transaction reporting data available on the basis of Article 25 MiFID in the calculations. However, due to technical problems, the reconciliation and correct use of the buy and sell side of a transaction reported and exchanged under Article 25 MiFID has proved to be very complex. The intended use of transaction reporting data therefore has proved to be less straightforward than anticipated when the Protocol was put in place.

After receiving the view of the Commission, CESR decided in its meeting of 12 December 2008 to endorse the principle of using regulated market data in the MiFID market transparency calculations for an additional period of maximum one year (see section 1 below). In addition, CESR decided on 16 October 2009 that the annual calculations to be published on the first trading day of March 2010 will not be made on the basis of the transaction reports as was originally intended. An alternative methodology as described in section 2 below will be used.

### **2. Calculations to be published before the first trading day in March 2010**

Calculations which are to be published before the first trading day in March 2010 will be based on the trading on regulated market or markets in the Member State which is the most relevant market in terms of liquidity. From all transactions made on a regulated market negotiated transactions (as defined in Article 19 of the Implementing Regulation) shall be excluded before the calculations are made.

### **3. Calculations to be published on the first trading day in March 2010**

For the purposes of the calculations to be published on the first trading day of March 2010, in respect of each share in the CESR MiFID database (<http://mifiddatabase.cesr.eu/>), the relevant competent authority for that share shall firstly collect the following information relating to trading on the regulated market or markets of the Member State which is the most relevant market in terms of liquidity. For those purposes, negotiated transactions within the meaning of Article 19 Implementing Regulation shall be excluded from the calculations.

- Turnover for the year 2009;
- Number of trading days in 2009 in the Member State of the relevant competent authority;  
and
- Number of transactions for the year 2009

Secondly, the above mentioned data will also be collected from the three most relevant MTFs in terms of overall market share in relation to all shares in the CESR MiFID database traded on these platforms. The data from these MTFs will be made available to the CESR Secretariat that will forward it to the relevant competent authorities of each share.



Each relevant competent authority must make the following calculations for each share based on the sum of the data it collected and, where applicable, the data that was forwarded to it by the CESR Secretariat as described above:

- Average daily turnover (ADT) will be calculated by dividing the total turnover for the year 2009 by the number of trading days in 2009 in the Member State of the relevant competent authority;
- Average daily number of transactions will be calculated by dividing the total number of transactions for the year 2009 by the number of trading days in 2009 in the Member State of the relevant competent authority

Based on the above calculations, for those shares which satisfy the conditions laid down in Article 22(1)(a) and/or (b) (as applicable) of the Implementing Regulation, each relevant competent authority shall:

- Collect the free float as at 31 December 2009

For each liquid share determined in accordance with Article 22(1) or 22(3) of the Implementing Regulation, the relevant competent authority shall:

- Calculate the average value of orders executed (AVT) for the year 2009 by dividing the total value of transactions (i.e. total turnover) for each share by the total number of transactions. From all transactions in a share those which are large in scale compared to normal market size shall be excluded from the calculations.
- Determine the standard market size (SMS) on the basis of the AVT (as calculated above).