

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

OUTDATED

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 17 July 2007

To all credit institutions and investment firms incorporated under Luxembourg law and to the branches of credit institutions and investment firms incorporated under foreign law

CIRCULAR CSSF 07/302

Re: Details on the requirement to report transactions in financial instruments in accordance with article 28 of the law of 13 July 2007 on markets in financial instruments

Ladies and Gentlemen,

We are pleased to refer to the law of 13 July 2007 on markets in financial instruments (the “**MiFID Law**”) transposing, among others, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (the “**MiFID Directive**”). We also refer to Chapter III (Transaction reporting) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council (“**Regulation (EC) No 1287/2006**”).

Article 28 of the MiFID Law, which transposes article 25 of the MiFID Directive into Luxembourg law, specifies the **obligation** for credit institutions and investment firms to **report to the CSSF** the transactions in financial instruments admitted to trading on a regulated market (within the meaning of the MiFID Directive).

The new reporting regime’s chief difference compared to the former regime is that only transactions where the credit institutions and investment firms concerned are market facing and/or execute transactions on their own account (cf. section 2 of this circular) must be reported. Hence, certain entities currently obliged to report their transactions will therefore no longer be obliged to do so or will be obliged to do so to a lesser extent under the new regime considering their transaction execution procedures.

The MiFID Directive provides that the new requirements it lays down shall apply, after having been transposed into national legislation, from 1 November 2007.

Moreover, Regulation (EC) No 1287/2006 shall equally apply from 1 November 2007, save for article 11 and article 34(5) and (6) which shall apply from 1 June 2007.

The credit institutions and investment firms concerned shall therefore have in place an adequate system for reporting transactions and shall comply with this circular from 1 November 2007. On 1 November 2007, circular CSSF 99/7 on the reports to be sent to the Commission de Surveillance du Secteur Financier in accordance with articles 5 and 6 of the law of 23 December 1998 on the supervision of the securities markets, together with the circular letter of 23 May 2001 specifying circular CSSF 99/7, shall be repealed.

For the purposes of reporting transactions to the CSSF, the credit institutions and investment firms concerned shall then also adhere to the new version of the *Recueil d'instructions TAF* entitled **Transaction in Financial Instruments Reporting (TAF) - Electronic Reporting Instructions**, which will be published shortly on the CSSF's website. This version of the *Recueil* will specify further details of the communication system implemented between the reporting firms and the CSSF and notably set out the information to report to the CSSF and the technical arrangements to report transactions.

Article 28 of the MiFID Law also determines the rules regarding the **exchange of information between the relevant competent authorities** so as to enable these authorities to perform their supervisory tasks. The CSSF shall establish the necessary internal arrangements in order to ensure that the information received shall be made available to the competent authority of the most relevant market in terms of liquidity for the financial instrument concerned. In addition, the CSSF shall transmit the information received from the Luxembourg branches of credit institutions and investment firms authorised in another "Member State"¹ to the competent authority of the home Member State, unless the relevant competent authority decides that it does not want to receive this information.

1. Persons subject to the reporting obligation and competent authority

(a) Persons subject to the reporting obligation

In accordance with article 28(1) of the MiFID Law, the obligation to report transactions will apply to credit institutions and investment firms incorporated under Luxembourg law, as well as to Luxembourg branches of credit institutions and investment firms incorporated under foreign law:

- In accordance with article 1.3) of the MiFID Law, "credit institution" means any person within the meaning of article 4.(1) of Directive 2006/48/EC. In Luxembourg, these are the persons whose activities are covered by the definition of article 1(12) of the law of 5 April 1993 on the financial sector as amended.

¹ In accordance with article 1(4) of the MiFID Law, "Member State" means a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts are considered as equivalent to Member States of the European Union.

- In accordance with article 1.2) of the MiFID Law, “investment firm” means any person within the meaning of article 4.1.1) of the MiFID Directive. In Luxembourg, these are the persons referred to in Part I, Chapter 2, section 2, sub-section 1 of the law of 5 April 1993 on the financial sector as amended.
 - The following investment firms are thus subject to the reporting obligation, in so far as they are authorised to carry out transactions: commission agents, private portfolio managers, professionals acting for their own account, market makers, underwriters of financial instruments and distributors of units/shares of investment funds.
 - As they are not authorised to carry out transactions in the course of their professional activity, investment firms authorised as investment advisors, brokers in financial instruments (*courtiers en instruments financiers*), financial intermediation firms and investment firms operating an MTF in Luxembourg are excluded from the scope of the relevant obligation.

The fact that management companies of UCITS within the meaning of chapter 13 of the law of 20 December 2002 relating to undertakings for collective investment, as amended, are performing client-by-client management (*gestion individuelle*) does not make them fall within the scope of the relevant obligation.

(b) ***Competent authority to receive reports from branches***

- *Luxembourg branches of credit institutions and investment firms authorised in another Member State*

In accordance with article 35(1) of the MiFID Law, the CSSF is the authority competent for the investment services provided and the investment activities performed in Luxembourg by the Luxembourg branches of credit institutions and investment firms authorised in another Member State. These branches must report their transactions to the CSSF. It follows from the provisions of article 32(7) of the MiFID Directive that these branches shall report the transactions undertaken by it and considered as investment services provided outside Luxembourg to the competent authority of the Member State in which its registered office is situated.

In accordance with CESR guidelines on reporting for branches (cf. Annexe 3: *CESR Level 3 Guidelines on MiFID Transaction reporting* published on 29 May 2007, ref. CESR/07-301), the branches concerned may choose to report to the CSSF in its capacity as competent authority of the host Member State, all transactions, whether executed within the context of investment services provided in Luxembourg or outside the territory of Luxembourg. The CSSF will forward the information to the home Member State authority. The branches concerned shall inform the CSSF of their choice prior to 15 October 2007. This choice may be subject to change by means of a new notification to the CSSF.

- *Branches of credit institutions and investment firms incorporated under Luxembourg law established in another Member State*

In accordance with the provisions of article 32(7) of the MiFID Directive, the branches of credit institutions and investment firms incorporated under Luxembourg law established in another Member State are required to report all the transactions undertaken by them and constituting investment services provided on the territory of the host Member State to the competent authority of the host Member State. The CSSF is the competent authority to receive the reports of transactions concluded by these branches in the course of the investment services provided outside the territory of the host Member State.

In accordance with CESR guidelines published in the section *Reporting by branches* of the document *CESR Level 3 Guidelines on MiFID Transaction reporting*, the branches of credit institutions and investment firms incorporated under Luxembourg law established in another Member State can decide to report to the competent authority of their host Member State, according to the format and the arrangements in use, all the transactions they undertake whether the investment services have been provided on or outside the territory of the host Member State.

Where branches choose to report the transactions they conclude in the course of providing investment services outside the territory of the host Member State directly to the CSSF, they shall inform the latter of their choice.

- *Branches of credit institutions and investment firms incorporated under Luxembourg law established in third countries*

The branches of credit institutions and investment firms established in a third country do not fall under the scope of article 28 of the MiFID Law.

- *Luxembourg branches of third-country credit institutions and investment firms*

In accordance with article 35(1) of the MiFID Law, Luxembourg branches of non-EU credit institutions and investment firms shall satisfy the Luxembourg reporting requirements, with respect to the transactions considered as, or relating to, investment services provided and investment activities performed on the territory of Luxembourg. For administrative and organisational purposes, the CSSF accepts that the latter choose to report to the CSSF all transactions undertaken by them, similar to the choice offered to branches of institutions authorised in another Member State.

2. Transactions falling within the scope

The scope covers transactions carried out by a credit institution or an investment firm in a financial instrument admitted to trading on a “regulated market” (within the meaning of the MiFID Directive) of a Member State, irrespective of the place where the transaction has been carried out.

This obligation shall apply whether or not such transactions were carried out on a regulated market. This refers to transactions in financial instruments that credit institutions and investment firms carried out either on own account or on behalf of clients.

The transactions that must be reported to the CSSF are defined in article 5 of Regulation (EC) No 1287/2006. For the purposes of this Regulation, a reference to “transaction” is a reference only to the purchase and sale of a financial instrument. For the purposes of this Regulation, other than Chapter II, the purchase and sale of a financial instrument does not include any of the following:

- (a) securities financing transactions as defined in article 2(10) of Regulation (EC) No 1287/2006: they are instances of stock lending or stock borrowing or the lending or borrowing of other financial instrument, repurchase or reverse repurchase transactions, or buy-sell back or sell-buy back transactions;
- (b) exercises of options or of covered warrants;
- (c) primary market transactions (such as issuance, allotment or subscription) in financial instruments falling within article 4(1)(18)(a) and (b) of the MiFID Directive (and within article 1(19)(1) and (2) of the MiFID Law, respectively).

Likewise, subscriptions, redemptions and conversions of units/shares of undertakings for collective investment that credit institutions and investment firms carry out directly or indirectly with a central administration shall not be considered as transactions that must be reported.

For the purposes of transaction reporting, the following interventions shall be considered as “executions of transactions” and shall be reported:

- (a) Where credit institutions and investment firms, acting either on own account or for the account of clients, execute transactions directly with an execution venue (immediate market facing firms).
- (b) Where credit institutions and investment firms, when acting on own account, conclude non immediate market facing transactions that are thus not covered by point (a) above.

The definition set out above implies that transactions that are made by credit institutions and investment firms for the account of their clients by placing orders to be executed by other institutions that are not to be considered as execution venue do not need to be reported.

“Execution venue” means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider, or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

Please also refer in this context to the section *What constitutes execution of a transaction (to be reported)* of document *CESR Level 3 Guidelines on MiFID Transaction reporting* appended to this circular. As regards *Level 3 Guidance* (page 6

of that document) referred to in this section, it should be noted that the CSSF does only require the information referred to in points (a) and (b) and that the solution set forth in the CESR document is, where applicable, likely to be reviewed after a year's experience.

As regards the regulated markets that have to be taken into consideration with respect to the reporting obligation, you are invited to refer to the list mentioning all regulated markets as published in the Official Journal of the European Union and updated at least once a year, in accordance with article 47 of the MiFID Directive. The European Commission shall also publish and update the list on its website, every time the Member States communicate changes to their lists. (The website can be accessed through www.cssf.lu through section "Legal reporting - TAF reporting".)

In accordance with article 16(1) of the MiFID Law, the CSSF draws up the official list of regulated markets authorised in Luxembourg and which are subject to its supervision. The CSSF also keeps the official list of MTFs operated in Luxembourg and which are subject to its supervision. These lists shall be published in the *Mémorial* (Luxembourg Official Journal) at least at every year-end. They are published on the CSSF's website (for the first time on 1 November 2007) and updated with each change. Furthermore, pursuant to article 13(2) of Regulation (EC) No 1287/2006, they shall indicate the codes identifying the regulated markets and MTFs, as well as the entities which act as their central counterparties.

3. Types of financial instruments concerned

All the transactions in financial instruments **admitted to trading on a regulated market in a Member State** shall be reported. The list of "financial instruments" is defined in article 1(9) of the MiFID Law:

- transferable securities;
- money-market instruments;
- units in collective investment undertakings;
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;

- options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in B.6 of Annexe II to the law of 5 April 1993 on the financial sector as amended and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- derivative instruments for the transfer of credit risk;
- financial contracts for differences;
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in Section B of Annexe II to the law of 5 April 1993 on the financial sector as amended, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

“Transferable securities” are defined in article 1(19) of the MiFID Law. They are those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

- shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
- any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

Pursuant to article 1(10) of the MiFID Law, “money-market instruments” means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

4. Content and form of the reports

The reports shall, in particular, include details of the names and numbers of the instruments bought or sold, the quantity, the dates and times of execution and the transaction prices and means of identifying the credit institutions or investment firms concerned.

Table 1 of Annexe I to Regulation (EC) No 1287/2006 lists all the information to be included in the reports. Credit institutions and investment firms shall model their reports on the *List of fields for reporting purposes in Luxembourg* which is appended to this circular (cf. Annexe 1). This list takes into account in particular the possibilities offered by article 13(1) of Regulation (EC) No 1287/2006 which provides that the reports shall contain the information specified in Table 1 of Annexe I to that same regulation, which is relevant to the type of financial instrument concerned and which the competent authority declares as not being already in its possession or as not being available to it by other means.

The *List of fields for reporting purposes in Luxembourg* specifies the information a report must contain and explains the content required for certain fields, notably the **unique codes** to implement in order to identify certain elements of a transaction such as the credit institution or the investment firm having executed the transaction, the financial instruments, the execution venue and the counterparty. The codes identified by the CSSF are the ISO codes, notably the *Bank Identifier Code* (“BIC”), the *International Securities Identification Number* (“ISIN”), the *Market Identifier Code* (“MIC”) and the code *Classification of Financial Instrument* (“CFI”). Besides, these codes were the object of a public consultation by CESR in December 2006 under reference CESR/06-648b (*MiFID Use of reference data standard codes in transaction reporting, Public consultation*) and they have been chosen by the competent authorities as standard codes to be used for the exchange of information on transactions. The use of the standard codes defined in the *List of fields for reporting purposes in Luxembourg* is **mandatory** for transaction reporting to the CSSF. For further information regarding these standard codes and the identification of derivative financial instruments that do not have an ISIN code, reference should be made to the new version of the *Recueil d’instructions TAF*.

No additional information (in addition to the information already to be included in the reports in accordance with Table 1 of Annexe 1 to Regulation (EC) No 1287/2006) on the transactions concerned (such as, for instance, the identification of clients on whose behalf the credit institutions or investment firms executed the transaction) will be required in Luxembourg.

Practical examples of transaction reports designed to provide further information on the interpretation of the requirements for the fields *Buy/sell indicator*, *Trading capacity* and *Counterparty* of Annexe 1 are appended to this circular (cf. Annexe 2).

To report transactions, the credit institutions and investment firms shall also comply with the instructions and procedures defined in the new version of the *Recueil d’instructions TAF* (available soon on the CSSF’s website): they are required to comply notably with the error correction mechanisms and the time limits granted.

5. Time limit for transaction reports

According to article 28(3) of the MiFID Law, credit institutions and investment firms that execute transactions in any financial instrument admitted to trading on a regulated market are required to report details of such transactions to the CSSF **as quickly as possible and no later than the close of the following working day**. In order to allow

the CSSF to fulfil its obligations in terms of sharing information on transactions referred to in article 25(3) and (6) of the MiFID Directive, this time limit must absolutely be observed.

For the purpose of this circular, “working day” shall mean any day other than Saturdays, Sundays or days on which credit institutions and investment firms must be closed or are authorised thereto.

6. Methods and reporting channels

In accordance with article 28(5) of the MiFID Law, the reports shall be made to the CSSF by credit institutions and investment firms themselves, by a third party acting on their behalf, by a trade-matching or reporting system approved by the CSSF or by the regulated market or the MTF through whose systems the transaction was completed.

- (i) Pursuant to article 28(5) of the MiFID Law, credit institutions and investment firms may be exempted by the CSSF from the reporting obligation, where the transactions are reported directly to the CSSF by a regulated market, an MTF or a trade-matching or reporting system approved by the CSSF.

As from 1 November 2007, credit institutions and investment firms shall report to the CSSF all transactions that have been concluded, including those performed on the Luxembourg Stock Exchange, as opposed to what is or was the case under the regime in force before that date.

- (ii) Any person operating a trade-matching or reporting system seeking to make reports to the CSSF for the account of credit institutions or investment firms subject to the reporting obligation, shall obtain authorisation from the CSSF. To that effect, this person shall submit to the CSSF a file detailing the arrangements for reporting transactions established by this system with a view to complying with the requirements set out in point (iii) of this section. The CSSF shall notify its decision regarding the authorisation within three months following the submission of a complete file to the person that submitted the file and publish on its website a list of authorised systems. These systems shall be subject to monitoring by the CSSF, which is competent to require from the person operating such a system any document or information or to perform any on-site inspection in order to verify the conditions set out in point (iii). The CSSF may, by way of a notification by registered letter to the person operating such a system, withdraw the authorisation in case the aforementioned conditions are no longer met.

Where a trade-matching or reporting system that has been authorised by the competent authority of its home state (if this authority is a CESR member) as reporting system, submits a request to the CSSF in order to operate in Luxembourg, the process shall take into account, in accordance also with document CESR/07-301 (Annexe 3), the approval documents issued by the competent authority of the home Member State, notably as regards the requirements laid down in article 12(1)(a) to (d) of Regulation (EC) No 1287/2006. The system concerned shall fulfil all Luxembourg requirements

with respect to transaction reporting and notably the requirements as laid down in point (iii) (e) below.

Credit institutions and investment firms whose reports are made by a third party acting on their behalf, by a trade-matching or reporting system approved by the CSSF, or by the regulated market or MTF through whose systems the transaction was completed, shall nevertheless take the necessary measures to ensure compliance with their obligations towards the CSSF. They shall notably ensure that the data transmitted, for instance, to a third party acting on their behalf are correct and consistent with this third party's reporting system. In addition, they shall ensure that the agreement concluded with the third party acting on their behalf includes a clause guaranteeing that that third party's reporting system meets at any moment the requirements laid down by the CSSF in this field. Finally, they shall ensure to inform the CSSF beforehand in case they choose that their reports be made by a third party acting on their behalf, by a trade-matching or reporting system approved by the CSSF or by the regulated market or the MTF through whose systems the transaction was completed.

- (iii) Pursuant to article 12 of Regulation (EC) No 1287/2006, reports of transactions in financial instruments shall be made **in an electronic form**, except under exceptional circumstances, when they may be made, following prior consent of the CSSF, in a medium which allows for the storing of the information in a way accessible for future reference by the CSSF other than an electronic form, and the methods by which those reports are made shall satisfy the following conditions:
- a) they ensure the security and confidentiality of the data reported;
 - b) they incorporate mechanisms for identifying and correcting errors in a transaction report;
 - c) they incorporate mechanisms for authenticating the source of the report;
 - d) they include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;
 - e) they are capable of reporting the information required in the *List of fields for reporting purposes in Luxembourg* in the format required by the new version of the *Recueil d'instructions TAF* and within the time limits set out in article 28(3) of the MiFID Law.

The new version of the *Recueil des instructions TAF* further specifies requirements (a) to (d) above.

Considering the requirements introduced by article 12 of Regulation (EC) No 1287/2006, the fact that credit institutions or investment firms execute a limited number of transactions no longer justifies that these transactions are reported by a means other than electronic. The CSSF therefore stresses that such a limited activity is not an "exceptional circumstance" justifying an

exemption from the transmission of reports by electronic means and that the entities that benefited from an exemption under the former regime shall comply with the provisions laid down in the MiFID Law and in this circular within the shortest time possible.

Where the transmission of reports by electronic means cannot be guaranteed temporarily for technical reasons, the CSSF shall be notified thereof immediately.

7. Safekeeping of transaction-related data

Pursuant to article 28(2) of the MiFID Law, credit institutions and investment firms shall keep at the disposal of the CSSF for at least five years the relevant data relating to all transactions in financial instruments that they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under the law of 12 November 2004 on the fight against money laundering and terrorist financing. These provisions relating to safekeeping of data also apply to the information referred to in point (c) of CESR Level 3 Guideline concerning the “execution of a transaction (to be reported)” published on 29 May 2007 (ref. CESR/07-301, Annexe 3), even though the CSSF has decided that these items of information have not to be included into the transaction reporting.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Simone DELCOURT
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General

ANNEXES

For the purpose of reporting transactions to the CSSF, credit institutions and investment firms shall use the *List of fields for reporting purposes in Luxembourg*, Annexe 1 of this circular, and shall adhere to the practical examples for transaction reports in Annexe 2, as well as to the new version of the *Recueil d'instructions TAF* which will be available soon on the CSSF's website under the heading *Transaction in Financial Instruments Reporting (TAF) - Electronic Reporting Instructions*.

We also invite you to consider document *CESR Level 3 Guidelines on MiFID Transaction reporting* published on 29 May 2007 under the reference CESR/07-301 and appended to this circular (Annexe 3).

Annexe 1.
List of fields for reporting purposes in Luxembourg

Field identifier	Description of the fields and definition of the standard codes
1. Reporting firm identification	A unique code to identify the credit institution or the investment firm which executed the transaction. Standard: Code “BIC” ISO 9362. Every reporting firm shall communicate its BIC code to the CSSF.
2. Trading day	The trading day on which the transaction was executed.
3. Trading time	The time at which the transaction was executed, reported in the local time of the CSSF. Pursuant to article 13(1) of Regulation (EC) No 1287/2006, the time zone must not be reported.
4. Buy/sell indicator	Identifies whether the transaction was buy or sell from the perspective of (a) the credit institution or investment firm that reports the transaction to the CSSF or (b) the client, in the case of a report made by the credit institution or investment firm of the transaction to the client (in accordance with Chapter III, Section 4 “Reporting to clients” of Directive 2006/73/EC ²). With reference to field 5, points (a) and (b): (a) the perspective of the reporting credit institution or the investment firms is considered in the case of a transaction negotiated as “ <i>principal</i> ”; (b) the perspective of the client is considered in the case of a transaction made as “ <i>agent</i> ”.
5. Trading capacity	Identifies whether the credit institution or investment firm executed the transaction: (a) on its own account (either on its own behalf, or on behalf of a client), i.e. in its capacity as principal; (b) for the account and on behalf of a client (as proxy), i.e. in its capacity as agent. Please refer to the examples provided in Annexe 2 of this circular for further explanations on these qualifications. The latter are to be understood exclusively for the purposes of reports within the meaning of this circular and without prejudice to the other provisions set out in the MiFID Law.
6. Instrument identification	– Consists of a unique code identifying the financial instrument which is the subject of the transaction. Standard: Code “ISIN” ISO 6166. – If the financial instrument in question <u>does not have</u> an “ISIN” code, the report must include the name of the instrument, or, in the case of a derivative contract, the characteristics of the contract.
7. Instrument identification code type	Pursuant to article 13(1) of Regulation (EC) No 1287/2006, the code type used needs not be reported.
8. Underlying instrument identification	The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security falling within Article 4(1)(18)(c) of the MiFID Directive (article 1(19) third indent of the MiFID Law respectively) Standard: Code “ISIN” ISO 6166. If the underlying instrument concerned <u>does not have</u> an ISIN code, the name of the instrument shall be indicated.
9. Underlying instrument identification code type	Pursuant to article 13(1) of Regulation (EC) No 1287/2006, the code type used needs not be reported.

² Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

10. Instrument type	The harmonised classification of the financial instrument that is the subject of the transaction. The description must at least indicate whether the instrument belongs to one of the top level categories as provided by a uniform internationally accepted standard for financial instrument classification. Standard: <u>Code “CFI” Full ISO 10962</u> .
11. Maturity date	The maturity date of a bond or other form of securitised debt, or the exercise date/maturity date of a derivative contract.
12. Derivative type	The harmonised description of the derivative type must at least indicate whether the instrument belongs to one of the top level categories as provided by a uniform internationally accepted standard for financial instrument classification. Standard: <u>Code “CFI” Full ISO 10962</u> .
13. Put/call	Specification whether an option or any other financial instrument is a put or a call.
14. Strike price	The strike price of an option or other financial instrument.
15. Price multiplier	The number of units of the financial instrument in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.
16. Unit price	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
17. Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.
18. Quantity	The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.
19. Quantity notation	An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
20. Counterparty	Identification of the counterparty to the transaction. That identification shall consist of: <ul style="list-style-type: none"> – where the counterparty is a credit institution or an investment firm, a unique code for them: Standard: <u>Code “BIC” ISO 9362</u>. – where the counterparty is a regulated market or MTF or an entity acting as its central counterparty, the unique harmonised identification code for that counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with article 12(2) of Regulation (EC) No 1287/2006. Standard: <u>Code “MIC” ISO 10383</u> of the trading venue. Where this list mentions <u>code “BIC”</u> for the purpose of identifying an entity acting as central counterparty, the latter shall be provided in the reports. – where the counterparty is not a credit institution, an investment firm, a regulated market, an MTF or an entity acting as central counterparty, it should be identified as “client” of the credit institution or investment firm which executed the transaction. (The data included in this field shall be considered in association with fields 4 and 5 and the examples in Annexe 2).
21. Venue identification	Identification of the venue where the transaction was executed. That identification shall consist in: <ul style="list-style-type: none"> – where the venue is a trading venue: its unique harmonised identification code. <ul style="list-style-type: none"> • where the venue is a regulated market or an MTF: Standard: <u>Code “MIC” ISO 10383</u>. • where the venue is a systematic internaliser:

	Standard: <u>Code “BIC” ISO 9362.</u> – otherwise, the code “OTC”.
22. Transaction reference number	A unique identification number for the transaction provided by the investment firm or a third party reporting on its behalf.
23. Cancellation flag	An indication as to whether the transaction was cancelled.

Annexe 2.

Practical examples of transaction reports

The sole purpose of the examples given below is to provide additional information on the interpretation of certain fields of the *List of fields for reporting purposes in Luxembourg*, Annexe 1 to this circular. In particular, details are given on the following transaction-related information: which trade direction (purchase/sale) should be stated in the transaction report submitted to the CSSF, who is the transaction counterparty and in which capacity does the credit institution or investment firm perform the transaction (principal/agent).

1. *Dealing on own portfolio (as principal) with a client*

Bank A receives from Client X a buy order for 100 shares of company C. Bank A executes on own account (as principal) and sells the shares from its own portfolio (trading day and time 15/6/2007 9:00 / price EUR 150) to Client X.

Bank A shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Sell
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Client
21. Venue identification	OTC

Bank A reports a sell transaction, as for transactions negotiated as principal the perspective of the credit institution that makes the report is considered. Client X is considered as counterparty of Bank A for the purpose of the report.

2. *Dealing on own portfolio (as principal) with a credit institution*

The following transaction is concluded between two credit institutions:
100 shares of company C (trading day and time 15/6/2007 9:00 / price EUR 150 / venue OTC).

Bank A executes the transaction as principal (purchase for own portfolio).

Bank B negotiates the transaction as principal (sale from own portfolio).

Bank A shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Buy
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Code BIC Bank B
21. Venue identification	OTC

Bank B shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank B
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Sell
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Code BIC Bank A
21. Venue identification	OTC

3. *Execution of an order on behalf of a client (as agent) with a credit institution*

The following transaction is negotiated between two credit institutions:
100 shares of company C (trading day and time 15/6/2007 9:00 / price EUR 150 / venue OTC).

Bank A executes the transaction as agent on behalf of its Client X (buy order of the client).

Bank B negotiates the transaction as principal (sale from own portfolio).

Bank A shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Buy
5. Trading capacity	Agent
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Code BIC Bank B
21. Venue identification	OTC

Bank A reports a purchase as it executed the transaction as an agent, i.e. the perspective of the client determines the field Buy/sell indicator. Bank B represents the counterparty to the buy transaction.

Bank B shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank B
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Sell
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Code BIC Bank A
21. Venue identification	OTC

4. *Execution of an order on behalf of a client (as agent) on a regulated market*

The following transaction is concluded on the Regulated Market RM:
100 shares of company C (trading day and time 15/6/2007 9:00 / price EUR 150).
Bank A executes the transaction as agent on behalf of its Client X (buy order of the client).

Bank B negotiates the transaction as principal (sale from own portfolio).

Bank A shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Buy
5. Trading capacity	Agent
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Code BIC Bank B
21. Venue identification	Code MIC Market RM

Bank B shall make the following report to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank B
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Sell
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Code BIC Bank A
21. Venue identification	Code MIC Market RM

Where the specificities of the market on which the transaction was concluded do not allow Banks A and B to know the identity of their counterparty, for the purposes of the reports, the counterparty to the transaction shall be the regulated market or, where applicable, the entity acting as central counterparty.

5. Execution of orders on behalf of clients as agent

Bank A executes two orders for 100 shares of company C (trading day and time 15/6/2007 9:00 / price EUR 150).

Bank A acts as agent for the account of Client X (buy order of the client), as well as for the account of Client Y (sell order of the client).

Bank A executes a purchase for the account of Client X. Counterparty to this purchase is Client Y for whose account Bank A executes a sale.

The purchase executed for the account of Client X shall be reported in the following way by Bank A to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Buy
5. Trading capacity	Agent
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Client
21. Venue identification	OTC

The sale executed for the account of Client Y shall be reported in the following way by Bank A to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Sell
5. Trading capacity	Agent
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Client
21. Venue identification	OTC

6. Execution of orders on behalf of clients as principal

Bank A executes two orders for 100 shares of company C (trading day 15/6/2007). Bank A executes a first transaction as principal *vis-à-vis* its Client Y (sell order of the client). The Bank buys 100 C shares from its Client Y: trading time 9:00 / price EUR 150.

Bank A executes a second transaction as principal *vis-à-vis* its Client X (buy order of the client). The Bank sells 100 C shares to its Client X: trading time 9:10 / price EUR 150.50.

The first transaction with Client Y shall be reported in the following way by Bank A to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:00
4. Buy/sell indicator	Buy
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Client
21. Venue identification	OTC

The second transaction with Client X shall be reported in the following way by Bank A to the CSSF:

Data Field Name	Content of the report
1. Reporting firm identification	Code BIC Bank A
2. Trading day	2007-06-15
3. Trading time	9:10
4. Buy/sell indicator	Sell
5. Trading capacity	Principal
6. Instrument identification	Code ISIN Company C
10. Instrument type	Share
16. Unit price	150.50
17. Price notation	EUR
18. Quantity	100
20. Counterparty	Client
21. Venue identification	OTC



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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CESR Level 3 Guidelines on MiFID Transaction reporting

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Introduction

1. Article 25 of MiFID establishes a transaction reporting regime where investment firms shall submit reports of executed transactions to their competent authorities regarding financial instruments admitted to trading on regulated markets. The reports can be made either by investment firm itself, a third party acting on its behalf, or by a trade matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed. Competent authorities shall further exchange the reports between themselves.
2. The purpose of transaction reporting is to enable competent authorities to monitor the activities of investment firms and to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.
3. CESR-Tech and TREM project are preparing the technical system for exchanging the data between CESR members. In addition to the technical work, some issues have been identified where there is a need for harmonised approach by CESR members. This document provides guidance to three aspects of transaction reporting; practical solutions for the reporting obligations for branches; an answer to what constitutes “execution of a transaction” for transaction reporting purposes; and operational solutions for some aspects of reporting channels.
4. The outcome of CESR’s work is reflected in the common guidelines set out in this paper which do not constitute European Union legislation and will not require national legislative action.
5. CESR members will apply the guidelines in their day-to-day regulatory practices on a voluntary basis. Even if they do not directly apply to market participants, there is a general commitment by all CESR members to consider that these entities would fulfil their requirements when following the recommendations set out in this paper.
6. The manner in which the guidelines will be applied will be reviewed regularly by CESR. These guidelines will not prejudice, in any case, the role of the Commission as guardian of the Treaties.
7. This document is based on a consultation paper published in February 2007 (CESR/07-047). The outcome of this consultation is summarized in the feedback statement (CESR/07-319).



Reporting by branches

8. CESR has considered the issue of the transaction reporting obligations of branches of investment firms under the MiFID framework. Parallel work on passporting issues has been under way by CESR and the Commission. Apart from that discussion and especially given the technical impact it would have on investment firms' systems, the specific question of reporting by branches is also handled in this paper. These two work streams are not conflicting with each other. Depending on the outcome of the passporting discussion, the issues discussed in this paper may become less relevant. In any case, there may still be situations where the MiFID transaction reporting requirements would request the branch to send transaction reporting to two authorities. The proposals are intended to solve those potential practical difficulties.
9. Article 32(7) of MiFID provides that the competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down, among others, in article 25. However, in respect of services provided by the branch outside the territory of the host Member State, the branch would have to report transactions to its home regulator under the home Member State reporting requirements.
10. While it should be highlighted that MiFID provides for clear split of responsibilities in this respect, CESR notes that in practice it may cause unnecessary difficulties for branches to split their reporting between two authorities. Therefore CESR members are committed to seeking for flexible practical solutions to the extent permitted by MiFID.
11. CESR notes that according to Article 25(6) of MiFID the competent authorities of the home Member States will be forwarded, should they so choose, all transaction reports received from branches by the competent authorities of the host Member States. Hence, home state authorities will have access to all information about transactions carried out by branches of entities under their supervision.
12. Taking into account the rules of MiFID, CESR notes that practical solutions aiming at reducing the potential splitting of transaction reports by branches should be based on co-operation between members. It should also be noted that according to Articles 25(6) and 32(7), a solution where reports by branches would only be channelled to the "home" authority of the firm is not possible.
13. Against this background, and without prejudice to the requirements of MiFID and the national laws implementing it, CESR members have agreed that they should adopt a concrete and practical solution in respect of the transaction reporting obligations of branches of investment firms, which would allow the branch to send reports of any transactions carried out by the branch to the "host authority" according to the format in use in that jurisdiction. That would require a choice by the branch in question as well as an agreement by both competent authorities. By issuing these guidelines CESR members express their agreement to such arrangements. On the other hand CESR recognises that this possibility for firms does not prevent them using two reporting channels and splitting their reporting accordingly.

Level 3 Guideline:

CESR acknowledges that all transactions executed by branches where the service is provided within the territory of the Member State where the branch is located, shall be reported to the host Member



State competent authority, whereas other transactions executed by branches shall be reported to the home Member State competent authority.

However, CESR recognizes that, from a practical point of view, it would be burdensome for branches of investment firms to be obliged to report their transactions to two competent authorities. Where an investment firm however chooses to use two reporting channels this choice should not be challenged by the host competent authority.

Therefore, all transactions executed by branches could be reported to the host Member State competent authority, if the investment firm elects to do so. In these cases transaction reports should follow the rules of the competent authority to which the report is made.

What constitutes execution of a transaction (to be reported)

14. According to Article 25(3) of MiFID investment firms shall report executed transactions to their competent authorities. Article 5 of the implementing Regulation specifies that for these purposes "transaction" means the purchase and sale of a financial instrument and excludes specifically securities financing transactions; exercise of options or of covered warrants as well as primary market transactions.
15. The MiFID transaction reporting regime is based on reporting of executed transactions and not directly information on individual orders. It is therefore necessary to separate execution of a transaction from reception and transmission of orders.
16. CESR notes that there will be many different circumstances in which transactions take place. In some cases a client will go to an investment firm who then executes a transaction with a market counterparty. However, there may also be more complicated situations where more than one investment firm is involved in the transaction chain (e.g. the client goes to Firm A who then goes to Firm B who in turn deals with market counterparty). Such a chain may involve several transactions between intermediaries or it may include passing of an order by an investment firm to another investment firm for execution.
17. CESR members have considered the conditions under which, in such a transaction chain, the investment firms involved may be said to be executing transactions as opposed to simply receiving and transmitting orders. CESR members note that based on current differences in market structures (including the size of the market) the treatment of such a chain may, to some extent, differ from Member State to another.
18. The goal of Article 25 is to facilitate the supervision by competent authorities. Transaction reporting data is needed to enable supervisors to detect and pursue suspected instances of market abuse, client abuse or other breaches of relevant MiFID provisions.
19. Within the overall MiFID framework and with regard, in particular, to their obligation to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market (Art. 25(1) of MiFID), CESR members recognize that competent authorities have a justifiable need to specify under which circumstance transactions are executed and hence need to be reported. In addition to transaction reports, CESR members need other information on the different steps of executing a transaction. In this regard practices differ from member to member. This information (including for example the identity of the originator of the order) may be collected as part of the transaction report or it may be acquired by other means (for example *ad hoc* requests that can take place ex-post).
20. These differences are due to different supervisory techniques, in relation to different structures and sizes of the markets and will probably continue to exist after the implementation of MiFID. This does not mean that certain supervisory methods are superior to others. It also remains to be seen what impact the possible changes in market structures post MiFID will have on the supervisory methods.
21. Therefore it seems inevitable that certain differences in the collection and exchange of supervisory information will exist at the time of the implementation of MiFID.



22. However, in order to enhance convergence on transaction reporting obligations for firms, CESR members have agreed a common treatment of collecting transaction information. CESR members commit themselves to collect transaction reports of those transactions which are conducted by the firms transacting directly with or as an execution venue (immediate market facing investment firms) and those transactions where the investment firm is undertaking the transaction on its own accounts (either on market or off-market). Additionally they have agreed they should be able to exchange the information necessary to identify the ultimate client or the investment firm which is dealing with the ultimate client
23. This has been seen as an interim solution in order to avoid disruptions in current reporting and supervision systems. Following one year's experience of full operation of the MiFID transaction reporting regime (including the operation of the exchange mechanism, the effect of changing the reporting lines and the choices of requiring or not the client identification in the reports) CESR will review the reporting regime with a view to achieving further convergence.

Level 3 Guidance:

As an interim solution CESR members have agreed to commit themselves to collecting the following:

- (a) Information relating to transactions conducted by the investment firms transacting directly with an execution venue (immediate market facing firm);**
- (b) information relating to transactions not covered by (a) above but where the investment firm is undertaking the transaction on its own accounts (regardless whether the transaction is executed on RM or MTF or outside them) and**
- (c) information which is necessary to identify the ultimate client on whose behalf the transaction is undertaken or that information which is necessary to establish the identity of the investment firm which is dealing with the ultimate client where the competent authority is not already in possession of such information or where it could not obtain such information in a sufficiently timely manner.**

CESR members shall exchange the information in points (a) and (b) and, if requested and when available the information in point (c).

After there has been a year's experience of full operation of the MiFID transaction reporting regime, CESR will launch a review of the scope of the transaction reporting obligation with a view to producing definitive guidance in this area which aims at converging practice between CESR members.



Approval of reporting channels

24. According to the Article 25(5) of MiFID, transaction reports can be made by different means: by the investment firm itself, by a third party acting on its behalf, or by a trade matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed.
25. Article 12 of the implementing Regulation further specifies what requirements reporting channels shall meet and the conditions for approval of the systems (where relevant) by competent authorities.
26. Although these provisions require that some of these reporting systems are approved by a competent authority, the process of approval is not specified in details, nor do the reporting systems benefit from a European Passport. A reporting system willing to operate in several CESR members need to obtain the necessary approval individually in these jurisdictions and relevant local procedures apply.
27. CESR members however recognise that the market would benefit if the approval processes could be streamlined so that national process in one CESR member would recognise if a prior approval in another CESR member has been granted. This is especially relevant for requirements (a) – (d) of Article 12 of the Implementing Regulation. Issues which relate to the ability of the reporting channel to submit the reports according to the relevant national requirements, like point (e) of Article 12 need to be evaluated nationally in each case.

Level 3 Guideline:

CESR members agree to take account of any prior approval by another CESR member (home competent authority of the reporting channel) for reporting channels when conducting their work under Article 25 of MiFID and Article 12 of the Implementing Regulation. To the extent permitted by national law, they will adapt their internal processes to rely on the evaluation of other members and to avoid unnecessary duplication documents.