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**CESR Consultation on Transaction Reporting  
on OTC Derivatives and Extension of the Scope  
of Transaction Reporting Obligations**

**EUROCLEAR - XTRAKTER RESPONSE**

Euroclear and Xtrakter appreciate the opportunity to respond to the Committee of European Securities Regulators (CESR) consultation on the "Transaction Reporting on OTC Derivatives and Extension of the Scope of Transaction Reporting Obligations (CESR / 10-809)".

Xtrakter is a leading provider of capital markets data, operational risk management, trade matching and regulatory reporting services to the global securities market. It has an established track record in providing innovative, secure and reliable systems for the financial services sector. Under the Markets in Financial Instruments directive (MiFID), Xtrakter is an Approved Reporting Mechanism (ARM) to the: FSA (UK), AMF (France) & AFM (Netherlands). Xtrakter additionally provides Primary Dealers with an onward reporting facility to the National Bank of Belgium (NBB) in accordance with the NBB and Securities Regulation Fund requirements. Xtrakter was established in 1985 and is part of the Euroclear group of companies (which includes Euroclear UK and Ireland, also an Approved Reporting Mechanism (ARM) to the UK FSA whose input on this consultation has been sought and incorporated). It has 300 clients located globally, processes 3m transactions daily and has registered offices in the United Kingdom.

**Question 1: Do you agree with the solution proposed by CESR for the organisation of transaction and position reporting of OTC derivatives?**

We would stress that the scope and standards of position reporting have not yet been defined, and in addition, the objectives of the reporting streams for positions and transaction reports are fundamentally different to one another. Transaction reports are used by Competent Authorities as a tool to detect, and deter market abuse for market conduct purposes. It is envisaged that position reports will enable regulators to view easily the current outstanding market exposures of given market participants for the purposes of detecting concentrations of systemic risk within the financial system for market supervision purposes. Whilst it may be appropriate to combine the reporting of transactions and positions, we believe that we first need additional details of how position reporting is delivered.

We consider a more practical approach would be to await the outcome of the European Markets Infrastructure legislation (EMIL), and ESMA's accompanying work on defining the scope and standards (details, type, format and frequency) of position reporting, before attempting to link the two reporting streams. This will then enable rule-makers to establish what potential links and commonalities exist between transaction and position reporting streams, and to define the most effective way to improve efficiency while minimising any double reporting.

We also note that CESR has already invested a significant amount of time and effort in defining the scope and standards for the transaction reporting of OTC derivatives, and how these instruments will be classified and identified when they are exchanged between different Member States over TREM (the Transaction Reporting Exchange Mechanism).

Finally, we note that industry feedback to Xtrakter confirms that position reporting is very different to transaction reporting and raises questions about the feasibility of a single message for both position and transaction reporting given those differences.

### **Comments on the two options described by CESR**

We have significant reservations over how the approach in Option 1<sup>1</sup> would work in practice. Transaction reporting is 'flow variable'. Transaction reports must be sent to Competent Authorities on a daily basis. Given the reports are used for the detection of market abuse, delays must be avoided at all costs. Contrastingly, position reporting is 'stock variable' and can be considered with a frequency of lower than daily (i.e. weekly or monthly). Currently, the length of the reporting cycles of the trade repositories would preclude their effectiveness in the transaction reporting context. However, as the length of the trade repository reporting cycles reduce over time, it could well be in the interests of firms to begin sending the trade repositories their OTC derivative transaction reports.

Although further clarity on details of both options would be useful, Option 2 would currently appear to be the most appropriate one. This would define a new position reporting regime through trade repositories, and also allow MiFID transaction reporting through trade repositories whilst continuing to allow firms to do MiFID transaction reporting through their Competent Authority using their existing ARM arrangements. In this respect, we agree with CESR's preference in the matter, and the basis of their reasoning.

### **Question 2: Do you have any other views on the possible ways to organise transaction and position reporting on OTC derivatives?**

CESR could consider a possible third option; to allow firms to use a single reporting mechanism to their Competent Authority, after which the Competent Authority will extract positions, and send them on to the relevant Trade Repository. This alternative model would require adjustments to TREM to allow it to accommodate the routing of the position reporting data to the appropriate TR in the same vein as it routes transaction data to the relevant Competent Authority.

Discussions with industry participants have highlighted considerable concern regarding the risks associated with a single message for both position and transaction reporting and we would urge that regulators fully engage with the industry to formulate an appropriate approach in the best interest of the overall industry and regulators.

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<sup>1</sup> Establish a single reporting regime for both transaction reporting and position reporting of OTC derivatives, based on reporting through trade repositories

**Question 3: Do you agree with the extension of the scope of transaction reporting obligations to the identified instruments?**

**(i) Extension to Financial Instruments traded only on MTFs**

We note that the Commission has recently undertaken a revision of the Market Abuse Directive (MAD). This consultation included proposals to bring Multilateral Trading Facilities within the scope of the Directive, general feedback in this respect was supportive. Bringing trading on MTFs within the scope of MAD would seem to make little sense if instruments traded on MTFs (only) are not transaction reportable.

We support CESR's proposal to extend, through a change to Article 25 of MiFID, the scope of transaction reporting obligations to financial instruments that are admitted to trading only on MTFs - on the proviso that the Commission concludes trading on MTFs should be brought within the scope of the Market Abuse Directive.

**(ii) Extension to OTC Derivatives**

We support CESR's proposal to extend, through a change to Article 25 of MiFID, the scope of transaction reporting obligations to include OTC derivatives. We assume that this proposal will be consistent with CESR's statement in its "Decision on the technical standard for the classification and identification of OTC derivative instruments (CESR/09-987)" that "*only transactions on derivatives whose underlying instrument is traded on a regulated market should be exchanged*". We would appreciate clarification from CESR on this point and also on whether commodities; interest rate and foreign exchange are to be exempt from the reporting requirements as indicated in its consultation on "guidance to report transactions on OTC derivative instruments (CESR/09-768)".

We trust that you will find these comments useful, and remain at your disposal should you wish to discuss this response.

**Contacts**

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