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**CESR Consultation Paper on non-equity markets transparency  
(ref CESR/10-510)**

**Euroclear / Xtrakter Response**

Euroclear is pleased to be given the opportunity to offer its views on the consultation on non-equity markets transparency that CESR is conducting in preparation of its Technical Advice to the European Commission in the context of the MiFID Review. This response is chiefly provided on behalf of Xtrakter Limited, which is one of the Euroclear group<sup>1</sup> companies and 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 since April 2009. It has 300 clients located globally, processes 2m transactions daily and has registered offices in the United Kingdom.

Given its role as a leading provider of trade matching, reporting and data services (in particular in relation to fixed-income securities) Xtrakter is well placed to assist firms in complying with existing and future transparency requirements.

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<sup>1</sup> Euroclear group comprises the international central securities depository Euroclear Bank, based in Brussels, as well as the national central securities depositories (CSDs) Euroclear Belgium, Euroclear France, Euroclear Nederland, Euroclear UK & Ireland and NCSD, the CSD for Finland and Sweden. EMXCO as well as London-based Xtrakter.

## EXECUTIVE SUMMARY

### (A) General Points

(i) Any new transparency regime needs to be proportionate and based on a sound economic analysis of the effects of such a regime.

Euroclear understands that CESR's objectives are twofold: (i) to define the parameters of a mandatory post-trade regime for corporate bonds, ABS, CDOs and CDS and (ii) to assess the need for additional pre-trade transparency for these instruments and additional non-equity instruments (derivatives) as part of its advice to the Commission on the MiFID Review.

Any new requirements in the area of transparency should be appropriate and proportionate and should avoid imposing significant costs on regulated firms (which are already dealing with substantial regulatory change). We would emphasise that it is our understanding that considerable pre- and post-trade information already exists in the market today.

(ii) Different instruments have different liquidity profiles and will warrant different regulatory approaches to pre-and post-trade transparency. A further differentiation between instruments with a substantial retail market and those which are purely wholesale is also recommended.

The consultation makes no clear distinction between wholesale markets and retail markets. We would urge caution with respect to adopting blanket pre- and post-trade transparency requirements across instruments and across investors. The financial markets are varied and careful consideration must be applied to avoid unintended consequences, e.g. on the liquidity of certain instruments.

We would recommend a differentiation of pre- and post-trade transparency requirements between certain instruments. Government bonds are extremely liquid and retail participation in the government bond sector is significant. Arguments in favour of real-time transparency are thus stronger in respect of this sector. In contrast, Xtrakter's analysis (based on providing post-trade services for the fixed income market since 1989) shows that the fixed income activity within the corporate bond market is predominantly wholesale. Furthermore, structured products are generally illiquid and adopting transparency requirements in this sector could potentially damage liquidity in such markets. These markets therefore require completely different consideration.

We would also warn against a generic approach which would treat all bonds as straightforward products. While many are not complex products, some can be extremely complex in nature. It is understood that the drive for greater transparency is to improve confidence in the financial markets and would urge appropriate consideration by CESR of instrument characteristics to avoid damaging markets which are recovering from the recent credit crisis.

(iii) Bond rating information should not be part of transparency requirements.

We are concerned that the requirement for the provision of a bond rating information as part of the transparency requirement (cf. CESR Feedback Statement July 2009 CESR/09-349) could increase industry costs. The use of credit rating information for trade reporting and transparency purposes will be subject to the various ratings agencies' licensing agreements which will then have a knock-on effect on trading

costs. The industry may also face considerable IT builds in order to facilitate such a requirement as this element of data is not within the market's trade flow environments. We would recommend CESR to reconsider the necessity of such requirement.

(iv) Xtrakter has a longstanding record as collector and provider of information to the non-equity markets offering services to both wholesale and retail markets. If regulators want to deliver greater transparency to the markets, they should, where possible, leverage on existing solutions.

As outlined further in this paper, Xtrakter captures considerable trade and security information (through TRAX) and offers data services catering to the needs of the wholesale markets (e.g. XREF, XVOL and others) and the retail markets (who can access [www.BondMarketPrices.com](http://www.BondMarketPrices.com) to obtain market transparency on trades reported to TRAX that day).

We would emphasise the desirability of arriving at market-led solutions where possible, utilising reliable and cost-effective mechanisms which already exist (such as the service provided by Xtrakter both to wholesale and retail markets) since this will help firms keep the costs of compliance to a minimum. These post-trade market infrastructures have proven to be very resilient in times of market turmoil and played an important role for the stability and efficiency of the financial sector, and the solutions offered by these infrastructures have implications for the financial markets and the economy as a whole.

#### (B) Specific Points

As and when the regulators undertake to change the transparency regime for non-equity markets, we would ask them to consider following elements:

(i) End-of-day post-trade publication is sufficient for corporate bonds.

If it is thought necessary to impose post-trade transparency requirements in the corporate bond market - and we are neutral on this point -, end-of-day publication is in our view clearly sufficient in most cases.

(ii) 30 minute benchmark used by TRAX should be retained.

If contrary to our view expressed in (i), close-to-real-time post-trade disclosure is required for corporate bonds, we would strongly recommend 30 minutes as an appropriate reporting period, as the industry is already used to the Xtrakter benchmark of 30 minutes for reporting the activity which they are conducting in the fixed income market even though it is not published until the end of the day.

(iii) Phased approach to transparency for structured products is supported after assessment of Government and Corporate bonds transparency.

While we support a phased approach to transparency for ABS and CDOs, we would suggest that transparency not be introduced to structured products until Government securities and corporate bond transparency provisions have been appropriately assessed to ensure there are no detrimental market effects. Phase 2 could then cover ABS with CDOs following in a further phase.

Finally, it is our view that CESR's advice to the European Commission should also take into consideration and be consistent with the legislative initiatives which are being progressed to regulate post-trade market infrastructures (EMIL or European Market Infrastructures Legislation covering CCPs and Trade repositories). Albeit that their initial scope is mainly aimed at improving market conditions in the OTC derivatives markets, the requirements of this new legislation may over time extend across all markets and asset classes and have an impact on the requirements for the non-equity markets at large and the infrastructures that support these (particularly in the area of data repositories).

#### **SPECIFIC COMMENTS**

**Q.1: On the basis of your experience, could you please describe the sources of pre-and post-trade information that you use in your regular activity for each of the instruments within the scope of this consultation paper:**

- (a) corporate bonds,**
- (b) structured finance products (ABS and CDOs),**
- (c) CDS,**
- (d) interest rate derivatives,**
- (e) equity derivatives,**
- (f) foreign exchange derivatives,**
- (g) commodity derivatives?**

Xtrakter has a significant role in the markets for the above-named instruments as a collector and provider of information which is used by firms trading in these markets. Xtrakter provides TRAX, which comprises integrated trade matching and reporting services for all asset classes. TRAX has around 200 subscriber firms which consist of the major trading institutions across the European community responsible for the majority of trading activity conducted in the financial market place. The TRAX system has provided clients with the facility to report/match/confirm their trading activity in all asset classes on a real-time basis. Additionally the TRAX system has facilitated the processing of over 60 million transactions per month and its securities database holds in excess of 600 000 instruments.

TRAX thus captures a huge amount of trade information in relation to OTC trades in a wide range of asset classes. This enables Xtrakter to provide a range of data services including its Mark to Market Valuation Service (XM2M) which publishes pricing on 40,000 issues per day and, its Reference Database (XREF) and its Volume and Liquidity Service (XVOL) which provides data relating to volume of trades for individual securities for the last calendar month. Xtrakter is thus making a significant contribution to information dissemination and transparency in the non-equity markets at the present time and is in a good position, given the trade data it collects as provider of the TRAX service, to contribute further and to help firms meet many of the requirements outlined in the Paper. Xtrakter also provides considerable trade and security information to numerous data vendors which in turn ensures broad and effective transparency of both pre- and post-trade information.

**Q.2: Are there other particular instruments that should be considered as “corporate bonds” for the purpose of future transparency requirements under MiFID?**

We would consider that covered bonds are a subset of “corporate bonds” and should therefore be treated as such. For example “JUMBO” PFANDBRIEFE form a large and very liquid asset class. We can see no reason for these instruments not to be considered corporate bonds.

**Q.3: In your view, would it be more appropriate, in certain circumstances, to consider certain covered bonds as structured finance products rather than corporate bonds for transparency purposes? Please explain your rationale.**

Please note our comments in respect of question 2. Covered bonds should not be treated as structured finance products. However, to highlight the complexity surrounding the fixed income market it should be noted that some covered bonds are also launched with embedded options as is characteristic of structured EMTN issuance.

**Q.4: On the basis of your experience, have you perceived a lack of pre-trade transparency either in terms of having access to pre-trade information on corporate bonds or in terms of the content of pre-trade transparency information available?**

We refer to the discussion above of the information services we currently provide (including daily pricing information and liquidity information in relation to individual securities). If there is a need for increased pre-trade transparency we are well placed to meet it. It is our broad understanding that no issues exist in the market today in respect of the lack of pre-trade information. We believe a significant amount of information is generally available for consideration ahead of any trading decision. We believe that careful consideration should be given as to whether such transparency is needed before firms are placed under increased regulatory burdens in this respect.

**Q.5: In your view, do all market participants have access to pre-trade transparency information on corporate bonds on equal grounds (for example, retail investors)? Please provide supporting evidence.**

Xtrakter provides the bond market transparency website [www.BondMarketPrices.com](http://www.BondMarketPrices.com) which gives the retail market access to average closing bid and offer quotes and low, high and median prices for trades reported to TRAX that day. It is thus currently making an important contribution to improving information dissemination to the retail market. In Xtrakter’s view, the potential of market-led solutions of this kind should be fully explored before further regulation is resorted to. Note that this initiative was demonstrated to the European Commission in Brussels in December 2008 and the service was subsequently made freely available. The service provides a European

post-trade fixed income transparency site and was developed in agreement with all the major European banks.

**Q.6: Is pre-trade information efficiently disseminated to market participants? Should pre-trade information be available on a consolidated basis?**

As discussed above we provide a variety of information services which we are well able to expand if the need or demand is present in the market. We do not consider moves to consolidate information provision with one provider to be appropriate and in the best interest of the market. MiFID removed the concentration rule in respect of equities in order to encourage competitive markets across the European community and avoid protectionist practices. The presence of a range of providers means that differing needs can be catered for and differing areas of expertise developed. In our view, the market will benefit from competition between a range of providers.

These views expressed above apply not only to corporate bonds (Q.6) but similarly to all other assets (Q. 15 re ABS, Q.20 re CDOs, 29 re CDS, and Q.36 re derivatives).

**Q.7: What are potential benefits and drawbacks of a pre-trade transparency regime for: (a) the wholesale market; and (b) the retail market? If you consider that there are drawbacks, please provide suggestions on how these might be mitigated.**

As we have outlined in the Executive Summary above, services exist today that are targeted towards both the retail and institutional investor. We would re-emphasise the importance of a proportionate approach towards a pre-trade transparency regime. We also would further confirm the position outlined that significant information exists today.

**Q.8: What key components should a pre-trade transparency framework for corporate bonds have? What pre-trade information should be disclosed?**

As discussed in relation to Question 4 above, careful consideration should be given to the question of whether there is real need for requirements relating to increased pre-trade transparency to be imposed, rather than deciding that there is such a need and then considering what information should be disclosed to meet it. If it is unclear at present that there is any particular information which is needed by market participants and which is currently unavailable to them, that tends to suggest that the need for increased pre-trade transparency is also, at best, unclear. In the event pre-trade information is deemed appropriate we would, as outlined above, stress that utilising a rating for a particular security must be avoided as this will result significantly increase the cost and complexity to the firms and providers with the provision of such a transparency requirement (see further explanation in Q9).

**Q.9: Do you think that notional value would be a meaningful piece of information to be made accessible to market participants? Is there any other information that would be relevant to the market?**

We have no particular view on this question, but we note the statement in paragraph 23(i) that information as to the bond's rating should be among the information made public. This is likely to create difficulties and increased costs for firms which will have to come to agreements with rating agencies (and, most likely, pay) for making use of this information. We also believe that the system modifications that firms will have to make to include the rating in their trade flow information will be substantial and potentially costly. Similarly, transparency service providers such as Xtrakter's TRAX system will incur onward licensing fees and these clearly can be considerable and would result with overall increases to trading costs. It should not be forgotten the end result of increased trading costs ultimately ends up with the client in respect of fees and again we do not believe CESR would therefore feel this is in the best interest of the market.

**Q.10: Do you agree with the initial proposal for the calibration of post-trade transparency for corporate bonds? If not, please provide a rationale and an alternative proposal (including supporting analysis).**

We understand the CESR is now minded to consider it appropriate that Government and Sovereign securities be considered for transparency purposes. These instruments are generally more liquid although clearly again these are not traded with the frequency of equities. In this regard real-time publication could be perceived as a reasonable requirement.

We would query the need for real-time publication at all in the corporate bond market, although covered bonds (which in our view should be considered as corporate bonds) are reasonably liquid securities. Other corporate bonds are significantly less liquid than equities and, except for the period shortly after issuance, do not trade frequently. If it is thought necessary to impose post-trade transparency requirements in the corporate bond market (and we are neutral on this point) in our view end-of-day publication is clearly sufficient in all cases.

**Q.11: Should other criteria be considered for establishing appropriate post-trade transparency thresholds?**

See our comments in relation to Question 10.

**Q.12: Given the current structure of the corporate bond market and existing systems, what would be a sensible benchmark for interpreting "as close to real time as possible"?**

See our comments in relation to Question 10. If, contrary to our expressed view, it is thought necessary to impose close-to-real-time post-trade disclosure, we would take

the view that the less liquid nature of the market for corporate bonds means that there is not the same need for rapid publication as exists in the equities market. We would raise the point that since 1989 our clients have been committed to reporting the activity they conduct in the fixed income market place within 30 minutes. This is important to the trading community for effective risk management of the activity they are conducting. The TRAX community, which was previously subject to Self Regulatory rules, have recently considered an appropriate timeframe for reporting purposes. The industry agreed a benchmark standard of reporting within 30 minutes of the trade and we consider this to be a sensible and reasonable timeframe given the complexities of the fixed income market. We have no particular views on the TRACE approach; however understand the requirement to be 15 minutes. If real-time reporting is deemed to be required by CESR we would strongly recommend 30 minutes as an appropriate reporting period, as the industry is already committed to the Xtrakter benchmark of 30 minutes.

**Q.13: On the basis of your experience, have you perceived a lack of pre-trade transparency in terms of access to and the content of pre-trade information available in the market for ABS?**

We refer to the comments made in relation to Question 4 in this regard. We would also make the point that if the decision were made to expand pre-trade transparency requirements into this asset class the regulatory burden on firms would inevitably increase and it is not clear that proportionate benefit would result. As the Paper notes, secondary trading in these instruments is relatively limited and trading activities tend to be confined to a small number of institutional investors. Such investors tend to have fairly good access to a range of information sources (such as Xtrakter). We would query the need for the imposition of pre-trade transparency requirements in these circumstances.

**Q.14: Is pre-trade transparency information readily available to all market participants?**

See comments in relation to Question 13 and questions 4 through to 10.

**Q.15: Is pre-trade information currently available in the ABS market consolidated and effectively disseminated to those market participants who make use of it?**

We refer to the comments made in relation to Question 6.



**Q.16: Which potential benefits and drawbacks of a pre-trade transparency regime do you see for the ABS market? If you see drawbacks, please explain how these might be mitigated.**

See comments in relation to Question 13 and questions 4 through to 10.

**Q.17: Which key components should a pre-trade transparency framework for ABS have? Which pre-trade information should be disclosed?**

On the assumption that the pre-trade transparency requirements for ABS are based on the requirements spelled out in the CESR Feedback Statement of July 2009 (CESR/09-349), we would make the similar points in relation to this question to those made in relation to Question 8 above. Unless there are clear instances of problems being caused in the market for ABS by the lack of certain specific information we would query the need for extending pre-trade transparency requirements into this market. It is not, in our view, the correct approach to decide in principle that increased transparency requirements are needed and then consider what information might be sought as part of those requirements. The proper approach is to ask first whether there is a need for certain specific information which is not currently available. If specific needs are identified, consideration should be given to the question of whether solutions already developed by the market, such as Xtrakter, could be expanded or adapted to meet those needs.

**Q.18: On the basis of your experience, have you perceived a lack of pre-trade transparency in terms of access to and the content of pre-trade information available in the market for CDOs?**

Again this question is not directly relevant to Xtrakter, but from our perspective the fact that, as the Paper notes, CDOs are relatively illiquid assets most often privately placed tends to suggest that the need for increased pre-trade transparency in this market may not be such to justify the imposition of increased burdens on firms. The investors buying these instruments will generally have access to a range of information sources and in the circumstances of a private placement will have the opportunity to enquire about the instruments and the underlying assets.

**Q.19: Is pre-trade transparency information readily available to all potential market participants?**

See comments in relation to Question 18.

**Q.20: Is pre-trade information readily available to all potential market participants?**

See comments in relation to Question 18.

**Q.21: Which potential benefits and drawbacks of a pre-trade transparency regime do you see for the CDO market? If you see drawbacks, please explain how these might be mitigated.**

See comments in relation to Question 18.

**Q.22: Which key components should a pre-trade transparency framework for CDOs have? Which pre-trade information should be disclosed?**

In relation to this question we would make substantially the same points as were made in relation to ABS in our answer to Question 17.

**Q.23: Which of these criteria to determine the first phase of the phased approach do you consider most relevant? Are there other criteria which should be taken into account?**

We would urge for extreme caution when it comes to defining a phased approach in the event regulatory authorities believe transparency is required for ABS and CDOs. While we support a phased approach, we would suggest that transparency not be rolled out to structured products until Government securities and then corporate bond transparency provisions had been appropriately assessed to ensure there are no detrimental market effects. We believe it would be appropriate to implement transparency provisions dependent upon asset class. Therefore phase one could be government and corporate bonds, with ABS in phase 2 and CDOs in a further phase.

**Q.24: Do you have specific ideas on which kind of ABS and which kind of CDOs should be covered by the first phase?**

Please see comments in Q23

**Q.25: Do you consider that it would be appropriate to use the same framework for post-trade transparency for corporate bonds and structured finance products? Please elaborate.**

**and**

**Q.26: If so, do you agree that the same calibration parameters should be used for structured finance products as for corporate bonds? Or do you think different size and time thresholds should apply?**

In relation to both these questions we would point out that there are differences in the markets for structured finance products and corporate bonds (which this Consultation Paper correctly identifies) and we note that CESR is beginning to gather information on secondary trading in structured finance products. In our view, it would be appropriate to wait until the evidence gathering is complete before arriving at a firm conclusion as to whether post-trade transparency requirements should apply in the structured finance market and if so, what the framework should be. Given the relative lack of secondary trading in these products it is far from clear to us at present that imposing burdens on firms in this area is either necessary or proportionate.

**Note re Q27 through 44:** We only have general points to be considered given our expertise primarily is in respect of the fixed income market and have therefore retained only those questions where we have views to offer.

**Q.27: On the basis of your experience have you perceived a lack of pre-trade transparency both in terms of access to and the content of information available in the CDS market?**

Paragraph 59 of the Paper outlines some of the ways in which market players are responding to the need for pre-trade information by developing new technology and new services. In our view there is no obvious reason why this process should not be allowed to continue and why regulatory requirements should be introduced.

**Q.28: Is pre-trade information readily available to all potential market participants?**

The Paper makes clear that the market has access to a number of sources of pricing information. Xtrakter and other data providers are well placed to expand services in this area if there is a need for it in the market.



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**Q.29: Is pre-trade information currently available in the CDS market consolidated and effectively disseminated to those market participants who make use of it?**

We refer to the comments made in response to Question 6.

**Q.31: Which key components should a pre-trade transparency framework for CDS have? Which pre-trade information should be disclosed?**

In relation to this question we would make substantially the same points as we make in relation to ABS in response to Question 17.

**Q.36: Is the pre-trade information currently available in these markets consolidated and effectively disseminated to those market participants who make use of it? If necessary, please specify your answer by product.**

In relation to this question we would make substantially the same points as we make in response to Question 6.

**Q.41: Is post-trade transparency readily available to all potential market participants? Does this vary by asset class?**

As discussed above TRAX provides trade matching and regulatory reporting services for a range of instruments including derivatives and Xtrakter currently provides information in relation to many small private derivative issues where information is otherwise limited. It is thus well placed to make a contribution to a market-led solution for improving information dissemination in these asset classes.

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