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**RESPONSE TO THE CONSULTATION PAPER FROM THE
COMMITTEE OF EUROPEAN SECURITIES REGULATORS:**

**CESR'S DRAFT TECHNICAL ADVICE ON POSSIBLE
IMPLEMENTING MEASURES OF THE DIRECTIVE 2004/39/EC ON MARKETS IN
FINANCIAL INSTRUMENTS**

Preamble

virt-x welcomes the opportunity to participate in the second consultation on the first set of mandates. We would like to comment on 2 areas: transaction reporting and the criteria for assessing the "most relevant" market in terms of liquidity.

8. Methods and arrangements for reporting financial transactions

Whilst we recognise the benefits of allowing competent authorities to require additional information, we think that it is undesirable that a reporting channel should need to obtain approval in each jurisdiction, even though the process is intended to be routine.

9. Criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments

We have previously argued against the identification of any market as "most relevant" in terms of liquidity since it sends wrong signals as to the Commission's intention to reduce fragmentation in the markets. We consider that its effect will be anti-competitive, self-reinforcing and contrary to the long-standing efforts to integrate the European market place.

We also disagree both with the concept of "liquidity proxies" and with CESR's current proposal to use the regulated market on which the share was first admitted to trading as a proxy for the most relevant market in terms of liquidity. CESR's comment that the existence of multiple trading platforms has not yet led to fragmentation of liquidity is a poor justification for such a measure. We believe that the proxy will reinforce the

restrictive and anti-competitive effects of the exemption in Article 4.2(h) of the Prospectus Directive which only applies 18 months after securities have been admitted to trading on another regulated market (and then only in conjunction with a summary document in respect of which responsibility is taken by the person seeking admission).

We also think that the proxy does not fulfil the following criterion specified by CESR in the Explanatory Test (paragraph 6 on page 14):

“(a) the concept should allow for a comparison of activities in very different markets/market models”.

The mandates also envisage, as an alternative proxy, that the relevant market would be the one with the highest turnover and/or volume over an appropriate period (to be defined at Level 3). We are dismayed that CESR advises the competent authorities to choose the criterion for which data are available on the basis of minimum cost and effort, and yet with no criteria to ensure relevance. The competent authority must surely be obliged at least to ensure that historical volume data is not unduly biased by corporate actions such as splits.

Our preference would be for the same measure to be used on a consistent basis in every Member State.

17 December 2004
