Committee of European Securities Regulators
11-13 avenue de Friedland
75008 PARIS
FRANCE

Dear sir,

Re: Consultative Concept Paper on Transaction Reporting, Co-operation and Information Sharing Between Competent Authorities

Virt-x Exchange Limited ("virt-x") welcome the opportunity to express our views on the important issues addressed in this consultation. We view the sharing of transaction information to be a vital part of the process of preventing market abuse. This is particularly the case in an environment in which the integration of markets, and the facilitation of cross-border trading activity, are primary goals.

We therefore support the goals set forth in the consultation document, as well as many of the proposals raised in the discussion. We do have concerns, however, with other approaches and proposals in the document. We are particularly concerned about the potential harmful effects of naming a particular market to be "the most relevant market in terms of liquidity", based on an arbitrary and potentially inappropriate standard of relevance. In the response which follows, we believe that we offer an alternative approach which meets the Level 1 mandate without raising the danger of these harmful effects.

We also would encourage CESR to follow this consultation with a discussion concerning what the competent authorities will be expected to do with the transaction information once it is received. Given the number of transactions which will be received each day, it seems advisable that CESR provide some guidance not only as to how the information will be shared, but how the information is expected to be used and indeed how further investigation is to be co-ordinated.

We are pleased to provide below specific comments to the questions raised in the consultation document.

Question 1. Do you agree with the approach suggested above to determine the methods and arrangements for reporting financial transactions in one set of criteria applicable to both the conditions for a trade matching and reporting system to be considered valid to report transactions to competent authorities, and the criteria allowing for a waiver? If you do not agree, what other approach would be more appropriate in your view?

We agree with the premise that transaction reporting is essential to the competent authorities' responsibility for the supervision of markets. We also agree that the consolidation of this information is necessary in order to enable a full and complete picture of activity to be produced. However, we feel that it is both unnecessary, counter-productive to require the identification of a "most relevant market in terms of liquidity".

While it is important that all reports be collected in a central location where they can be reviewed in their totality, this function is already being served with the transmission of reports to the home market regulator. To "centralise" reports in several (potentially) separate authorities is redundant and inefficient.

What is more important, in our view, is to ensure that those regulators who need the information have access to it. With this in mind, we believe that reports should be sent to the home market regulator, with the provision that this regulator would make the information available to those competent authorities on whose markets the security also trades. Where the home market is not within the EU/EEA, the requirement should be deemed to be met if the home market regulator has an agreement in place to share the information with one or more competent authorities (as is the case between the Swiss Federal Banking Commission and the FSA with respect to Swiss blue chip securities admitted to trading on virt-x).

We concur with the proposed approach of defining minimum criteria which a system must meet in order to be considered a valid means of transmitting transaction reports, in order to ensure the reliability of, and confidence in, the supervision of the market, and to ensure the level playing field required for fair competition among systems.

We provide further comment regarding the concept of a "most relevant market" in terms of liquidity in our response to Question 4.

Question 2. What requirements should such an inventory contain?

Clearly, the security and integrity of information provided via any system is of paramount importance. Additionally, systems should be required to maintain a sufficient capacity for the reliable and efficient transmission of reports, including the provision of back-up systems and procedures.

Question 3. What other issues, if any, should CESR take into account when responding to the Mandate concerning the "methods and arrangements for reporting financial transactions"?

We believe the principle issues have been covered. However, we think CESR should consider the implications of requiring firms to report transactions in "any*"* security admitted to trading on a regulated market. Specifically, we believe that it would be time-consuming for a firm to verify in each case whether a security is admitted to trading on any regulated market. This burden would be substantially eased if a centralised data base of securities admitted to regulated markets were to be maintained and easily accessible by firms.

Question 4. What would general criteria for measuring liquidity be?

We strongly believe that the identification of any market as "most relevant" in terms of liquidity sends exactly the wrong signals as to the Commission's intention to reduce fragmentation in the markets. To the extent that any market may be dominant in the trading of shares of a particular security, the identification of that market as "most relevant" in an official communication of the Commission would only serve to endorse tacitly this dominance, without providing any benefit in terms of regulation. We would

submit that it is not appropriate for the Commission, CESR, or any other EU institution to act in such a way as to endorse such dominance, given the implications both for competition among market venues and for the ultimate integration of the presently fragmented markets. Further, the identification of a market as "most relevant in terms of liquidity" incorrectly implies that it is liquidity, however defined, which makes a market relevant. In an environment in which markets are integrated – the presumed goal of the Directive – the *location* of the liquidity becomes irrelevant.

For these reasons, we strongly recommend that the provisions of Article 25 para 3(2) be deemed to be met if the home market competent authority makes the information available to any competent authority in which the security trades. In this way, the information is available to the competent authority of any market with any liquidity, and the Commission need not endorse any particular market as "the most relevant". In other words, the criterion for measuring liquidity should be merely the admission to trading of an instrument on a system (with perhaps some minimum threshold of activity), with the competent authorities of *all* such markets being entitled to request the transaction data. By using this "pull" approach rather than a "push" approach to the data sharing, the complexities of attempting to devise a one-size-fits-all measurement of liquidity would be unnecessary.

Question 5. What specific criteria could be useful in measuring liquidity? Should they be prioritised?

Please see our response to Question 4, above.

Question 6. What could be an appropriate mechanism for assessing liquidity in a simple way for the purposes of this provision?

Please see our response to Question 4, above.

Question 7. What other considerations should guide CESR in its work regarding the assessment of liquidity in order to define a relevant market in terms of liquidity?

We would stress the points made in response to Question 4 to the effect that the identification of a market as "most relevant in terms of liquidity" would be anti-competitive, self-reinforcing and contrary to the goal of integrating Europe's fragmented marketplace. The approach we propose, wherein the competent authorities of all markets with liquidity in a security are entitled to the data, is more simple and effective, without suffering from the negative effects noted above.

Question 8. Do you agree with the approach proposed by CESR for determining the minimum content and common standard/format for transaction reports? Are there other approaches that could usefully be considered?

Yes.

Question 9. Apart from the types of information set out in Article 25 para. 4 and the Mandate, what other information might usefully be included in the transaction reports?

When considering additional information, it is important not to make the assumption that *more* information is always *better.* In particular, we oppose a requirement to provide customer identifying information in transaction reports, for the following reasons.

First, this information is not presently provided in the transaction reports submitted in all markets. Any requirement to provide such information will impose additional system cost as well as an additional administrative burden on firms and reporting systems to ensure compliance with appropriate privacy legislation.

Secondly, the inclusion of this information in the transaction report is unnecessary. The identification of the customer needs to be, and is, available to investigators in the course of an investigation, but it is not necessary for the identification of potential market abuse or insider dealing. There is a general but misplaced assumption that client identification is necessary for "pattern matching" in the surveillance process. The fact is that any party wishing to engage in market abuse can easily establish multiple, seemingly unrelated accounts in order to thwart pattern matching. Moreover, the identification of clients underlying suspicious trades can (and is) done at a later stage in the investigation, when the investigating authority obtains relevant documentation from the executing firm. We therefore do not believe the cost to the market would be justified.

Question 10. Do you agree that the content of transaction reports has to be equal irrespective of the entity reporting the transaction? What considerations could justify a different treatment of reporting parties?

While the individual fields may differ according to the type of instrument involved in the transaction, we do not believe there to be any justification for a different treatment of reporting parties.

Question 11. Do you agree that this preliminary assessment on the scope of the implementing measures is appropriate, and with the approach suggested above to determine the criteria under which the operations of a regulated market in a host Member State can be considered as of substantial importance, or would you consider another approach more appropriate?

In our view, the distinction as to when a market is "of substantial importance" is not relevant: arrangements should be established for co-operation whenever a regulated market establishes operations in another Member State (for instance, by admitting to trading securities listed in another Member State).

Question 12. What relevant criteria should be taken into account in order to assess the substantial importance of the operations of a regulated market in a host Member State?

We would re-iterate our comments in response to Questions 1 and 11. In our view, any regulated market to which a security has been admitted to trading is of "substantial importance". To divide regulated markets into those which are "substantially important" for a security and those which are "not substantially important" would be anti-competitive, self-reinforcing and contrary to the long-standing efforts to integrate the European market place.

Question 13. What other indicative elements should CESR take into account when drafting its technical advice in this field?

In addition to cases where the information should be supplied immediately to other market authorities, there may be cases in which information should be forwarded expeditiously to the regulated markets monitoring the activity in question. The indicative elements should address any existing legal impediments which would prevent the sharing of information directly with regulated markets.

We also disagree with any reference to a “most relevant market”, for the reasons given in the responses to previous questions.

Question 14. To what extent should CESR take into account the nature of the information to be exchanged in order to set up different categories of information and corresponding procedures of exchange of information (i.e., routine, case specific)?

The type of information needed will depend on the nature of the case at hand (routine, case specific, etc). Specifically, some cases will be more urgent than others, because the alleged abuse is ongoing at the time of the request. For this reason, the type of case may be relevant to the procedures to be taken – market manipulation, for instance, may be an ongoing abuse whereas insider dealing may have run its course by the time the enquiry is made.

Question 15. To what extent do you agree with the approach outlined above? In particular, are there any issues which you believe would be more appropriately dealt with at Level 3? What other considerations should guide CESR?

We agree with the approach of aligning procedures among the various Directives. Due to their nature, we believe most of the issues will involve Level 3 measures, with Level 2 addressing the basic structure of, and triggers for, co-operation.