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By on-line submission

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Dear Anastassios

Consultation Paper: CESR Technical Advice to the European Commission in the Context of the MiFID Review – Transaction Reporting (Ref: CESR/10-292)

Thank you for the opportunity to provide comments in relation to CESR's work on aspects of MiFID relating to transaction reporting. We have set out below our general comments as well as our views in relation to CESR's proposal to extend transaction reporting requirements to market members who are not authorised as investment firms.

By way of background, BATS Trading Limited<sup>1</sup> ("BATS Europe") is based in the UK and is authorised and regulated by the UK Financial Services Authority ("FSA") as the operator of a Multilateral Trading Facility ("MTF").<sup>2</sup> BATS Europe operates an Integrated Book (for displayed orders and non-displayed Large in Scale orders), a Dark Book (for non-displayed orders that match at an externally generated reference price) and an Order Routing Facility so that orders which are not filled on the BATS Europe order books may be routed to other execution venues.

Regulators and market participants all have a role to play in ensuring a fair market. MiFID has allowed for greater competition and fragmentation of liquidity and trading across Europe. As such, we believe that it is imperative that regulators have access to sufficient data and tools to ensure that they are able to fulfil their functions.

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<sup>1</sup> BATS Trading Limited is a fully owned subsidiary of BATS Global Markets Inc. Owners of BATS Global Markets Inc include affiliates of Citigroup, Credit Suisse, Deutsche Bank, GETCO, JPMorgan, Lime Brokerage, Morgan Stanley, Merrill Lynch and Wedbush.

<sup>2</sup> BATS Europe launched its market for the trading of pan-European equity securities on 31st October 2008 and regularly matches more than 10% of the notional value traded in FTSE 100 securities and 5-7% of other major European indices.



We are supportive of CESR's proposals to ensure that regulators have a complete picture of trading activity and to ensure that they are able to efficiently monitor trading activity and share information. That said, we recognise that there are likely to be significant compliance costs for market participants associated with CESR's proposals with respect to introducing a third trading capacity and the harmonisation of client identifiers. Therefore, we will be interested in the responses of market participants to CESR's proposals.

#### Part 6: Transaction reporting by market members not authorised as investment firms

CESR suggests amending MiFID by introducing a transaction reporting obligation to those persons that are members of a Regulated Market ("RM") or MTF currently falling under the article 2(1)(d) exemption or, alternatively, by introducing a similar obligation on RMs or MTFs that admit these entities as members.

- *Question 15: Do you agree with CESR's proposal on the extension of reporting obligations? If so, which of the two alternatives would you prefer?*

**We are supportive of CESR's proposal to extend the transaction reporting obligation to those firms which are currently exempt from MiFID obligations under article 2(1)(d).**

We should note that, at present, RMs and MTFs are required to monitor activity on their own markets, including for disorderly trading conditions, breaches of the trading venue's rules and conduct that may involve market abuse, and to make report such activity to the Competent Authority. Firms operating under the article 2(1)(d) exemption are, by their nature, proprietary trading firms with no clients. Therefore, trading activity conducted by these firms on organised markets at present is subject to surveillance by the operator of the trading venue. Nonetheless, we believe it is important that this activity should be directly reported to the relevant Competent Authorities with responsibility for the administration of the market abuse regime to ensure that they have a complete picture of trading activity in order to efficiently and effectively carry out their regulatory functions.

**In line with the current transaction reporting obligations on MiFID investment firms, we believe that the obligation should be placed on the trading firm rather than on the RM or MTF.** As a matter of principle, we consider that the trading firm itself should take responsibility for its own transaction reporting obligations, including the choice of the channel used to fulfil these obligations.

MiFID does not currently obligate RMs and MTFs to provide a transaction reporting facility for their members, although does provide an exemption under article 45(3) for trading firms using such facilities. Where an RM or MTF has taken the commercial decision to offer such a facility, we consider that it is appropriate that firms, including those to whom the transaction reporting obligation would be extended, could choose to use this mechanism to meet their transaction reporting obligations.



We will be interested to understand how the extension of the transaction reporting obligation will be implemented.

Yours sincerely

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