



London
STOCK EXCHANGE

27th May 2005

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Dear M. Demarigny

**RESPONSE TO CESR'S REVISED DRAFT TECHNICAL ADVICE ON
POSSIBLE IMPLEMENTING MEASURES OF THE TRANSPARENCY
DIRECTIVE (CESR /05-267)**

Thank you for the opportunity to comment on proposed implementing measures of the Transparency Directive.

We have some comments on areas of CESR's advice, which are set out below. We have also attached an appendix in which we provide answers to CESR's specific questions raised in the Consultation Paper. This letter and the appendix jointly constitute the London Stock Exchange's response.

Certainty for issuers

It is important that issuers and investors are afforded a clear level of certainty, which we do not believe the draft advice fully achieves. There are two aspects to this:

- Definition of media - there needs to be a clearer definition of media than the one provided under paragraph 47, in order that issuers can determine whether they have fulfilled their obligations. This is important if they are to use the option of making their own arrangements for disseminating regulated information, but equally if they are using a service provider – for the responsibility is still on them to ensure that whatever method of dissemination they choose has sufficient connections with the media. We have therefore proposed a definition of “financial media” to which issuers/ service providers should connect.
- Approval - we believe CESR's revised proposals regarding approval of service providers to be fundamentally flawed. CESR states that they will not be mandating approval of service providers as this would limit free provision of

these services and hamper issuers' choice. However, we believe that an approval system (as outlined in the October consultation¹) would be infinitely preferable. Approval of service providers is critical for two key reasons:

- o Issuers need a greater degree of certainty - without an approval regime, an unnecessarily high regulatory obligation will be placed on issuers; the burden will pass to them to establish whether a service provider is capable of offering the kind of high quality, reliable service that is imperative if they are to ensure the effective dissemination of their company announcements. Issuers need certainty to enable them to be fully assured that they can discharge their responsibilities in this area.
- o Enforcement - it is hard to understand the reason behind CESR setting out standards if no approval regime is to exist; we believe that if CESR is to propose this model then it needs to also describe the mechanism for enforcing the standards. If the responsibility is ultimately to lie with the issuer, without the reassurance of an approval regime, then this will undoubtedly increase the costs on issuers of having to perform due diligence to establish their choice of service provider.

In addition, we strongly urge CESR to take a holistic approach to the questions of dissemination of regulated information (Article 21), the establishment of a mechanism for the central storage of regulated information (Article 21.2) and an electronic network for EU wide storage (Article 22). If CESR and the Commission fail to facilitate electronic solutions for the dissemination of regulated information then the other tasks, especially setting up the central storage mechanism will become disproportionately more difficult and expensive - potentially to the extent that they become unfeasible. Electronic availability of data could allow private ventures to provide the central storage mechanism with valuable additional products and services; however, this would not be possible in the absence of 'electronic push' dissemination.

Operational hours

We are against the proposal that service providers must be able to release regulated information 24 hours a day, seven days a week. The current core market hours arrangement works perfectly well – whereas requiring round-the-clock operation would have a significant operational and systems impact on service providers, causing an increase in costs.

We are also concerned that these proposals could put European investors at an unfair disadvantage, due to the fact that announcements released outside of core EU market hours will get picked up first (and acted upon first) by non-EU investors, due to the time difference. We believe this is counter to the objectives behind the Financial Services Action Plan.

¹ CESR/04-511

Charging media

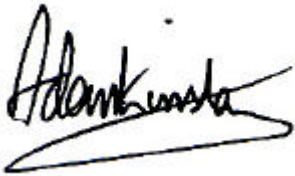
CESR proposes that media should not be required to pay the service provider to gain access to regulated information as a point of principle. However, pricing policy is a complex area: we believe the level of detail that would be required to make this work (and to avoid unintentional consequences) is too high for level 2. We therefore do not believe it is the role of CESR to determine pricing decisions but that these decisions should be left to the market. Please see our answer to Q12 for a full analysis.

Level of detail

We believe that in a number of areas, the draft advice set out by CESR goes into too much detail for Level 2. Please see our answers to specific questions for examples.

I hope our views are helpful to CESR's work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Kinsley', with a long horizontal flourish underneath.

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RESPONSE TO QUESTIONS

Chapter 1: Dissemination of Regulated Information by Issuers

Connections with media

Q1) Do consultees agree with the above proposal?

Paragraph 18 (and 47) states that "... connections with media should include mandatory connections with at least the key national and European newspapers, specialist news providers, news agencies with national and European coverage and financial websites accessible to investors". We understand the intention is not to mandate specific dissemination channels, but we believe this paragraph is misleading and will cause confusion in the market, as it is not clear what it intends to imply.

On the one hand, we do not believe that CESR should specify certain entities (i.e. "newspapers", "specialist news providers", "news agencies" or financial websites accessible to investors") as these are undefined terms, and service providers and issuers will be faced with confusion over what is required of them and whether they have met the criteria. Neither do we believe that CESR should specify which particular newspapers/ agencies/ websites they consider to be acceptable (for example, Financial Times, The Daily Telegraph). Undoubtedly, successful service providers will *want* to maintain effective connections with media that they see fit in order to fulfil their functions and ensure widespread dissemination – however we do not believe it is helpful to mandate this in such a granular way.

In particular, we strongly believe that it should not be mandatory to have connections with newspapers. In the UK, a huge range of financial information is disclosed to the market there are approximately 170,000 regulatory announcements in the UK each year, carried to an audience of hundreds of thousands of market professionals via electronic financial media and millions of retail investors via financial websites. **The unedited text of all announcements for all companies is carried** - it is therefore a very efficient mechanism, which provides **complete, accurate and reliable** information to investors.

Any proposal that mandates connections to newspapers would be costly and inefficient. Newspapers are selective in their coverage of regulated information; the decision as to whether or not to publish is left to editorial judgement on what they consider to be newsworthy. Even for those regulated information announcements that they do cover they are unlikely to carry the full story – we are concerned that incomplete regulated information could cause confusion in the market. This was recognised by CESR in the October consultation paper: "news agencies and newspapers are more selective and tailor the information that they

offer to the perceived needs of their audience”². Similarly, we do not believe that issuers should be required to advertise their regulated information in newspapers across Europe, as this would impose unacceptable costs on issuers.

In a recent exercise to establish the extent that newspapers pick up regulated information, we found that only approximately 20% of announcements get picked up as stories in the leading UK financial newspaper. Whilst this is based on a limited sample, it does give some indication of the inefficiency as a method of dissemination to investors and highlights that it does not meet the goals or objectives of what Article 21 seeks to achieve.

Furthermore, the mandate refers to “fast access” to “investors located not only in the issuer Home Member State, but in other Member States” and “in particular, CESR should consider changes to the current situation at Member State level”. We believe CESR is attempting to perpetuate the current dissemination model in certain Member States. Newspapers are generally local and provide incomplete and edited information on a delayed basis, putting those investors who rely on it at a distinct disadvantage to others who will receive complete information on a fast, electronic, real time basis.

In addition, to put all regulated information through newswire services to press agencies would be very costly (in the UK, the press agencies make an additional charge per announcement for distribution to newspapers, which will in all probability be passed on to issuers and their shareholders) and ultimately unjustified. Again, we therefore do not believe that this should be a mandatory requirement.

However, we understand from the open hearing that it is not CESR’s intention to mandate any specific distribution channels – we believe this is the correct approach – the obligation should only be to connect to sufficient media to satisfy the requirement of article 21 to achieve fast, pan European, non discriminatory disclosure. We believe the appropriate connectivity is to “financial media” and suggest the following wording to replace paragraph 47:

To ensure that the issuer is fulfilling its obligations under Article 21 of the Directive, CESR would expect that the method for dissemination chosen by the issuer must ensure connections to financial media.

Financial media should be defined as follows:

Financial media –publishers of corporate information to the financial markets which undertake to:

² Paragraph 25, page 8, of CESR’s Advice on Possible Implementing Measures of the Transparency Directive Part 1: Dissemination and storage of regulated information, October 2004 (CESR/04-511)

- *publish regulated information, received from service providers and/or EU issuers*
- *aggregate regulated information into a single comprehensive service for investors*
- *publish the full text of all regulated information received*
- *provide real-time release of all regulated information received*
- *achieve Europe-wide distribution to investors, fund managers and other financial markets professionals via data terminals or feeds to retail investor focused financial websites*

We believe that dissemination to the financial media fully achieves the stated objective of Article 21. It is non-discriminatory for both issuers and investors and achieves the widest possible dissemination consistent with minimum standards. By connecting to systems used by market participants it feeds directly into the price formation process which is a key safeguard for investors and crucial to public confidence in the integrity and efficiency of capital markets. In addition, it keeps to a reasonable level the number of dissemination points to which issuers or service providers need to be connected. This is particularly important if issuers have the option to make their own arrangements.

In addition to the financial media, there is a wide variety of discretionary additional distribution services that service providers can provide to maximise the breadth and impact of issuers' corporate and PR communications. These include additional distribution to press agencies as well as specialist distribution circuits. Clearly issuers may also make their own arrangements or appoint agents to ensure maximum media coverage.

In a competitive market, service providers will differentiate their offerings by providing some or all of these discretionary services. We believe that issuers should be free to choose between service providers that, in addition to meeting the minimum standards, offer services that meet their specific needs for home market or broader media distribution.

Importantly, we strongly urge CESR to take a holistic approach to the questions of dissemination of regulated information (Article 21), the establishment of a mechanism for the central storage of regulated information (Article 21.2) and an electronic network for EU wide storage (Article 22). If CESR and the Commission fail to facilitate electronic solutions for the dissemination of regulated information then the other tasks, especially setting up the central storage mechanism will become disproportionately more difficult and expensive - potentially to the extent that they become unfeasible. Electronic availability of data could allow private ventures to provide the central storage mechanism with valuable additional products and services; however, this would not be possible in the absence of 'electronic push' dissemination.

Q2) What distribution channels do consultees consider should be mandated? Please provide reasons for the answer.

We believe that connectivity should be to “financial media”, please see Q1 for details.

Q3) Do consultees consider that CESR should mandate that the connections between issuers (either directly or through a service provider) and media be based on electronic systems, such as dedicated lines?

No. Although electronic contacts or dedicated lines are desirable and efficient, it is not always practicable. For this reason we believe that CESR should allow flexibility in this area.

Q4) Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.

No, for the reasons stated above.

Necessary output information fields

Q5) Do consultees agree with the approach of redrafting the required field of information, as proposed above?

Yes. We agree with CESR that some form of identifier would be very useful and would reduce the possibility of confusion in the market. We are very supportive of CESR’s decision not to specify the means of identification that should be used, but to leave this to the participants involved to decide.

Q6) Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies’ registrar or the ISIN)? Which of these? Please provide reasons for the answer.

As above, we do not believe that a specific method of issuer identification should be mandated, but left up to the market to decide.

Q7) Do consultees consider that CESR should establish a method, or some sort of a code, by which there would be a single and unique number identifying each announcement that an issuer makes, that is valid on a European basis and that could be used also for storage?

There is potential in this idea, as it should make the dissemination by service providers and media under Article 21 more efficient. It is also likely to be a useful input requirement into any central storage mechanism. Currently in the UK, the “Primary Information Provider’s” (i.e. service providers) each use a code to assign

to announcements – this provides clarity to the aggregators of announcements and helps avoid confusion and/or duplication.

However, we believe that this is something best left to the market to develop, rather than CESR.

Q8) What methods do consultees suggest CESR should establish? Please provide reasons for the answer.

As above, we believe this is best left to the market to develop.

Minimum standards for service providers – separation of functions

Q9) Do consultees agree with the above proposals? Please provide reasons for the answer.

We agree with the proposals – please see our answer to Q11.

Q10) When the competent authority is acting as service provider, CESR considers that these competent authorities may not, as stated in the Directive, impede free competition by requiring issuers to make use of their services. Do consultees agree with this approach? Please provide reasons for the answer.

Yes, we agree. This would not be acceptable in terms of free competition.

Q11) When stock exchanges act as service providers, CESR considers that their admission to trading criteria on any of their markets can not mandate the use of their service as a service provider. Do consultees agree with this approach? Please provide reasons for the answer.

Yes we agree. The London Stock Exchange operates as a ‘service provider’ through its news dissemination service (RNS), however this is not mandated and issuers on our markets have a free choice as to which FSA approved service provider to use.

However, we believe that CESR should state clearly that the requirement refers to *functional* separation, rather than legal separation.

Minimum standards for service providers – charges

Q12) Do consultees agree that media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for the answer.

No. We believe that CESR should avoid getting into pricing decisions as a matter of principle. Pricing in this area is best left to market forces.

If CESR were to attempt to intervene, a much deeper understanding of the model is required. The proposals as they stand are far too simplistic for such a complex area: a lot more work on understanding how the infrastructure operates would be essential, and far more detail would need to be given in the proposals if this were the route to be taken, the extent to which would be inappropriate at Level 2. For example, it would need to differentiate between charges for access, for connectivity, and for other added services. One of the unintended consequences of taking an over simplistic approach would mean that legitimate charges that go beyond the provision of access to regulatory information would be passed on to issuers. In addition, if CESR were to mandate that service providers cannot charge media for regulated information, it must also be unacceptable for media to charge service providers for carrying such information. We believe that the level of detail required to make this work is too high for level 2. As a point of principle and given the absence of this level of detail, we do not believe that CESR should attempt to regulate pricing decisions.

Q13) Do consultees consider that it is possible, on a commercial basis, to mandate that media receive regulated information for free from service providers? Please provide reasons for the answer.

No. See response to Q12.

Operational hours

There is no specific question relating to the redrafted advice on operational hours (i.e. service providers must be able to receive and release regulated information 24 hours a day, seven days a week). However, we feel that this is a detrimental step as the current core market hours arrangement works perfectly well. Requiring round-the-clock operation would have a significant operational and systems impact on service providers, causing an increase in costs.

Furthermore, we are concerned that these proposals could put European investors at an unfair disadvantage. Regulated information announcements released outside of normal EU market hours are more likely to get picked up first and acted upon by non-EU investors, due to the time difference. For example, bad news released late at night in the EU could be acted upon immediately by US investors who will sell the stock, so that by the time that EU investors are aware

of the news and can act upon it, the share price will have fallen. We believe this is counter to the objectives behind the Financial Services Action Plan.

Approval of service providers

Q14) Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirements? Please provide reasons for the answer.

As a general point, we believe that an approval system as discussed in the October consultation³ would be a much better solution - it would make it easier for issuers to discharge their functions. Also, without an approval regime, it is hard to know the value of outlining minimum standards - how can these be enforced if there is no approval regime?

In answer to the specific question, we see no harm in requiring service providers to produce a document showing how they meet the dissemination standards and requirements. However, CESR says in paragraph 35 that although they do not propose to mandate approval of service providers, competent authorities may choose to do so. Therefore, service providers that undergo such an approval process will be subject to a vigorous audit process; it should be sufficient in these circumstances for the document to consist of an auditor's statement that this approval process has been undergone and signed off. This should be more than sufficient to satisfy issuers that they meet the required standards. We would appreciate CESR clarifying that this would be the case.

Q15) Do consultees consider that CESR should undertake, at level 3, future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory? Please provide reasons for your answer.

We do not believe a system without approval can work effectively due to lack of enforceability. We urge CESR and the Commission to adopt this in Level 2 advice. Failing this, it is essential that CESR develops a workable approval model as a matter of priority; otherwise they risk the following implications:

- chaos in the market;
- an unacceptable burden being placed on issuers to determine suitability of service providers;
- exposing issuers to unnecessary regulatory risk.

³ CESR/ 04-511(paragraphs 15-18, page 18). As CESR noted "in the absence of a formal approval process, an issuer would be required to undertake due diligence of individual operators in order to ensure that any operator selected is eligible to fulfil the issuer's dissemination requirement. This would be both a costly and time consuming process for issuers, and would lead to variations in standards of operators employed by issuers across Member States".

Chapter 2: Notifications of major holdings of voting rights

Q16) Do you agree with this change? Please give reasons for your answer.

Yes – it seems sensible to amend this wording to “any of the voting rights”, so as not to be unnecessarily restrictive.

Q17) Do you agree with this change? Please explain.

Yes, we agree. However, as stated in our previous response, we do have concerns that requiring separate accounts is not necessary and is likely to cause problems and excessive costs for some firms.

Q18) Do you agree with the proposed changes to this advice? Please explain.

Yes, we agree.

Q19) Do you agree with this change in the content of the declaration that the parent undertaking has to make? Please explain.

We do not have specific comments but would urge CESR to work with the fund management trade associations.

Q20) Do you consider there to be any benefit by CESR retaining its original proposals and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of independence?

See Q19.

Q21) What are your views on this new definition of indirect instruction?

See Q19.

Q22) Do you agree with this approach in relation to Article 12(1)(d)? Please give reasons.

Yes, this seems a sensible approach.

Q23) What do you think the resulting situation information disclosure should be when the notification is of a holding below that of the minimum threshold?

We support the argument set out in paragraph 374 i.e. that information about the resulting situation should only have to be of the fact that the notifier's interest is

below 5%, and all other information about the resulting situation that is set out in section 6 of the standard form should not need to be filled in.

Q24) Should the standard form for all notification requirements include some form of issuer identification number? Please give your reasons.

Yes, we strongly believe that the standard form should include a unique security identifier. This is because issuers may have many different types of shares with similar names, meaning that the market could be confused unless each security is identified on the form by an internationally recognised numbering standard.

Furthermore, it allows market solutions to be built, offering analytical services to issuers and investors regarding developments surrounding the company.

Q25) Should CESR mandate what form this security identification should be in? If so, please state what the standard should be and why.

No. Whilst we are of the strong view that CESR should require the use of security codes, we do not believe that CESR should opt for a specific format such as ISINs, or indeed any other. We believe this is an area where the market will provide solutions capable of innovating to meet the changing needs of capital market users.

Chapter 4: Equivalence of third countries information requirements

Q26) Do you agree with these principles?

In our previous response we reasoned that CESR needs to take a more high-level approach, based on the stated philosophy and should set out principles not requirements. Therefore, we are pleased to see high level principles being presented, and we support the first four.

However, we do not agree with the fifth principle (“no exception should be given as regards time limits”) - we believe that CESR could allow more flexibility with regard to time limits and do not understand why CESR is taking such a narrow view on this issue which will be a barrier for non EU companies accessing EU markets. We believe that if third countries have reasonably similar time frames, then competent authorities should be allowed to deem these equivalent if they consider them to be acceptable.

Q27) Are you satisfied with the draft technical advice considering both the need for flexibility and the requirements of the text of the Directive?

We are slightly confused over whether the text under A-H (paragraph 550 onwards) is technical advice or explanatory text. We recognise that CESR states

in paragraph 536 that “it should be clarified that the text under A – H does form part of CESR’s advice”.

However, if this is the case, we do not feel it makes sense to set out high level principles followed by detailed advice, as this negates their purpose. It would be preferable to include A-H as explanatory text.

In relation to the specific draft technical advice in paragraphs 593, 600-602 and 606, we would reiterate the comments made in our previous response, that we believe CESR could be more flexible with regard to time limits and thresholds, to minimise undue costs and confusion imposed on third country issuers.

Chapter 5: Procedural arrangements whereby issuers may elect their “Home Member State”

Q28) Do you agree with the proposal that an issuer should make a notification when it chooses its competent authority?

Yes, we agree that issuers should make this notification, to avoid risking confusion over who their competent authority is.