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31 March 2006

M. F Demarigny
Secretary General
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Dear M. Demarigny

RESPONSE TO CESR'S CONSULTATION ON POSSIBLE IMPLEMENTING MEASURES CONCERNING THE TRANSPARENCY DIRECTIVE: STORAGE AND FILING OF REGULATED INFORMATION

Thank you for the opportunity to comment on proposed implementing measures of the Transparency Directive in relation to the officially appointed mechanisms (OAM) for storage and filing of regulated information. 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.

Before commenting on the proposals, we would like to make a general observation, which answers a question raised by Carlos Tavares at the Open Hearing about whether OAMs are in fact necessary and desirable. It is our view, that there would be benefits of a single European mechanism. However, in the absence of a single database, it is likely that the costs will outweigh the benefits. In this case, we seriously question whether the Commission should proceed. As such, we would ask both CESR and Commission to reconsider whether the current proposals should be pursued.

In coming to this view, we have considered the questionable viability of a business model based on the comprehensive network of OAMs approach. The obligations and scope for national market variations are such that there will almost inevitably be gaps in coverage. We believe that effective implementation and enforcement of the dissemination regime (under article 21(1)) will ensure pan-European dissemination, and if regulatory intervention is kept to a minimum, then commercial solutions will arise to enable interested parties to find information on issuers relatively easily (as is currently the case in the UK, where unregulated "Secondary Information Providers" fulfil this function).

We are aware that this would mean a change to existing Level 1 legislation, however we are reminded of comments made by Commissioner McCreevy when he addressed an audience at the London Stock Exchange in December and explained that "[the] White Paper commits us to a thorough evaluation of each and every piece of financial services legislation….I will delete or amend any rule that does not produce its intended outcome."

Notwithstanding our position, in order to assist CESR, we have attempted to answer the consultation questions put forward on the development of OAMs.

As a general point, it seems to us that before any of the detailed questions on minimum standards and interoperability between OAMs can be answered, the fundamental question of how this "integrated network of national databases" will work needs be resolved. Our main concern relates to the viability of any of the models outlined in the paper: we consider models A and B to be technically unfeasible; model D is technically easy but has problems in that it may not fully satisfy the concept of a one stop shop.

Model C may be the most technically feasible of all the models. However, this would require development of a centralised mechanism for storing the issuer list and reference data, taking in datafeeds e.g. from securities markets and numbering agencies. This raises issues relating to ownership, governance and funding. In practical terms, it may be that it is not the *technical* issues relating to development of a database that is the problem, but rather the other issues surrounding it. Notwithstanding that the mandate CESR received stated a clear preference for the network of national databases approach, it is not clear that CESR is right to reject the creation of a central pan-European database.

Finally, the proposals in relation to alignment of filing with the OAM and filing with the competent authority seem fundamentally flawed. There is no clear, compelling reason why companies should have to file information with a regulator as well as ensuring that it is sent to and published by an OAM.

We understand that the Directive contains three obligations on issuers with regard to regulated information: to disseminate, provide to the OAM and to file with their competent authority. However, we do not believe that this necessarily has to be interpreted as three *separate* obligations.

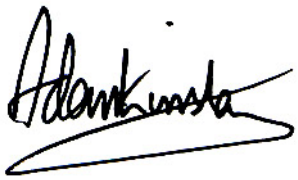
We believe that an opportunity is presented here for a streamlined process – it seems an unnecessary and illogical duplication of costs for regulated information to be filed with both the OAM and the competent authority and for both entities to build and maintain a database to store it. Irrespective of whether or not competent authorities operate the OAM, they will have access via the OAM to all regulated information and will be able to fulfil their supervisory functions on this basis.

We believe that a synchronised process could take place. Issuers could send their regulated information to a Service Provider who could disseminate it and also provide it to the OAM (or of course, issuers may choose to undertake this task themselves). The competent authority would not receive the regulated information directly, but could instead be a 'special end-user' of the data stored in the OAM (CESR states in paragraph 259 that "the competent authority must have unrestricted and free access to all regulated information stored in the OAM"). This would be cost efficient for both issuers and the competent authorities.

By way of example, in the UK, issuers are not required to file announcements with the FSA – instead, FSA receive an amalgamated feed of all company announcements (which are collected from the various Primary/Secondary Information Providers through which the information is disseminated to the market) and conduct their supervision on this basis.

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



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APPENDIX

Q1: Do you agree that, taking into consideration the main purposes of the Directive in relation to the OAM, end users of the OAM will be investors seeking information on issuers and that the specific needs of particular investors or users should be tackled by the OAM itself and not require further and more burdensome requirements on issuers or on the OAM itself? Please provide reasons for your answer.

We agree that end-users will primarily be investors; however there will be other users whose needs should also be taken into account (see Q32). OAMs should only be required to provide access to the stored information in a way that provides for easy access – any further value-added services should be left up to the OAM to decide upon.

Q2: Do you agree that, taking into consideration the main purposes of the Directive in relation to the OAM, what needs to be stored and to be accessed in the OAM is just the regulated information, as produced and disseminated by the issuer or more than that? If so, please provide reasons for your answer and indicate what kind of facilities you would expect and indicate how to cover the costs of such value added facilities.

Yes, this is our interpretation of the Directive: anything beyond the provision of the 'naked' regulated information should be deemed "value-added services", which should be offered at the discretion of the OAM.

We do not think it is necessary or desirable for CESR to consider how the OAM will cover the costs of value added facilities. If they are indeed value added, the OAM will be able to establish its own arrangements for covering its costs.

In addition, we believe that although prospectuses do not fall within the definition of regulated information (as noted in paragraph 239), there should be a requirement to store this information.

Q3: Do you agree with the views above or do you envisage a more ambitious approach to "easy access"? If so, please indicate what facilities you would like to see in place and detail the additional estimated costs of implementing them, how to cover those costs and explain the advantages of such an approach.

We agree with the approach – to require anything further such as translation would have disproportionate costs to benefits.

Q4: Do you agree with the views above or do you envisage a more developed approach for the network? If so, please detail what additional functionalities you would like to see and if possible, provide your opinion on the implications, namely in terms of costs, of setting up such a network.

In considering the above, please take into account the alternative funding implications.

We agree. If the network model is adopted, then at least to begin with, it should be kept as simple and cost efficient as possible. This does not prevent the system from adapting and becoming more sophisticated in time.

Q5: Do you see alternative technical solutions to those envisaged in this consultative document and permitting to reach the same goal, both for the designing of OAM's and for creating an EU "one stop shop"? If yes, please describe those solutions and provide estimates of costs and indications on the best way to cover them.

We consider that, as the preferred option (model C) will entail centralised infrastructure development, the option to develop a centralised database should be reconsidered. Although this would involve a larger scale technical development, we do not envisage that the technical issues would be complex and there would be significant cross-industry benefits in terms of simplifying OAM structures and enabling easy access by investors.

Q6: Do you agree with the above? If not, please provide reasons for your answer.

We agree with the high-level principles approach – this allows flexibility and development of the mechanism over time.

We believe that electronic submission of documents such as the Annual Report and Accounts should be mandated in an industry standard format such as PDF. This is essential if commercial OAM service providers are to be encouraged. Paper based filing and conversion to electronic format even on an exception basis is unlikely to be viable.

Q7: Do you agree with the above? Please provide reasons for your answer.

See Q6.

Q8: Do you agree with the above minimum standards of security?

Further clarification would be helpful on the responsibility to correct information. This should be the issuer's not the OAM's responsibility.

Further clarification would be helpful on the minimum retention period.

Further clarification would also be helpful on the obligation to validate regulated information filed. It is unclear what is intended by "technical adherence to standards required". However, this and the responsibility to inspect documents

for completeness and accuracy should be a matter for regulatory authorities to police, not the OAM.

The proposed requirement to have an evaluation mechanism for reviewing and accepting waivers for late filings appears to be a regulatory function and not appropriate for an OAM. Similarly, recovery provisions should be limited to enabling filings to be made in a reasonable timeframe rather than a requirement to have an alternative filing mechanism. Both of these proposed requirements are overly prescriptive, particularly for commercial providers.

Q9: Are there any additional standards on security CESR should consider?

The standards proposed are comprehensive.

Q10: Do you agree that there is no need for special or additional security standards if an electronic network of national OAMs at EU level is created?

We agree that there should be no further standards imposed on OAMs in relation to their databases. However, if a model is adopted with a central access point then obviously standards will have to be in place to ensure security standards in relation to that.

Q11: Do you agree with the above? Please provide reasons if you do not agree

We agree that user authentication tools, and methods to ensure there is no significant risk of corruption or change of original information, should be left up to each OAM to determine and to specify in its internal procedures.

Service providers such as RNS already provide highly developed authentication protocols and further authentication should not be required at the OAM where this is the case, subject to contractual agreements.

Q12: Do you agree with the above? Please provide reasons for your answer if you do not agree.

We agree that information should be time stamped as it enters into the OAM, irrespective of the checking procedures of the competent authority.

Q13: Are there any additional standards on time recording CESR should consider?

No.

Q14: Do you agree with the above? Please provide reasons for your answer.

We agree that there is no need for different minimum standards to apply for different types of regulated information. We also agree that OAMs should distinguish between basic regulated information and information that is available with additional value-added services (which may incur a higher cost).

Q15: Would you require searching capabilities in the language of international finance to be able to have "easy access" to the information stored?

We agree with paragraph 89 – "The language or languages in which the information was disseminated will also be the language in which it is accessible in the central storage mechanism". Any requirement to translate 'naked' regulated information would contradict Article 20 of the Transparency Directive. Translation of information could of course be offered as a value-added service if the OAM saw a benefit in this.

As for the language that can be used for the search mechanism, we are inclined to agree that the search mechanism in a national OAM should only be available in the official local language and a language customary in the field of international finance. However, we find the analysis of this issue to be confused; clearly, the answer will partly depend on which of the models (A-D or another) is adopted. We are also unsure how this relates to the analysis in paragraph 212.

Q16: Do you agree with the above standards in relation to technical accessibility? Please provide reasons for your answer if you do not agree.

Yes, we agree.

Q17: Do you agree with the above in relation to the format of information to be accessed by end users? Please provide reasons for your answer.

Yes, we agree.

Q18: Do you agree with the above? Please provide reasons if you do not agree.

- Cost of access - we agree that the information stored in the OAM should not need to be provided free of charge, but should be affordable (of course the OAM should not be *obliged* to charge for the information, if they are in a position to provide it for free).

- Cost of setting up and operating the OAMs - this is a crucial and pressing consideration, but we note that this is to be discussed in a different paper.

- Funding - we agree that it should be left to Member States to determine how their OAM is funded. However, there are other important questions on funding to be resolved if certain models are adopted, in terms of the cost and

funding of the central access point. There are also important considerations in terms of conflicts of interest to be taken into account if OAMs in some Member States are run by competent authorities (and funded via public funding or issuer fees) and some run by commercial providers.

Preliminary issues (i) agreement on interoperability and (ii) costs and funding

Q19: What are your views in relation to the issues being discussed above?

- Possible Network Models

Models A and B present a number of technical issues such as high message volumes due to multiple data requests and responses. It is also possible that a response to an end user enquiry could not be guaranteed complete if one or more OAMs are unavailable.

Model C may be more realistic; however, the practicalities of maintaining the central list of issuers, by whom and at what cost requires further detailed consideration. Issuers on EU regulated markets will change constantly and will therefore need constant updating via datafeeds e.g. from securities markets.

Model D may be the simplest in its design, although we note that CESR states it does not fully satisfy the concept of a one stop shop" and therefore is unlikely to be acceptable.

- Agreement on interoperability

We agree that the use of an issuer identification code would be very useful and would greatly increase the usability of the system for end-users. However, at the current time no such codes exist. SEDOL and ISIN numbers are very useful, but not in this context – since they relate to *securities* rather than *issuers*.

We understand that IBEI's (international Business Entity identifiers) are in the process of being developed, but will not be ready by the time the mechanism needs to be established.

We would therefore ask CESR to clarify what it means by "unique issuer identification code".

Role of the competent authority

Q20: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

We agree that competent authorities should be involved in the appointment and ongoing supervision of the OAM – it will be up to Member State legislation to

determine the level of involvement and to grant the competent authority with the necessary powers to perform such a role.

Another area which requires consideration is whether separation of functions is necessary for competent authorities that act as both the operator and supervisor of the OAM in order to manage conflicts of interest.

Q21: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

We agree that where two or more Member States share the same OAM, the competent authorities of those member States must reach an agreement between themselves as to whether to coordinate activities or to assign the task of supervision to one competent authority alone.

Q22: Do you consider that a competent authority can, within the limits set out above, change the standards over time in case new technological evolutions occur?

We believe that keeping the OAM up to date with technical developments is very important and agree that a competent authority can (and should) change the standards over time to take account of technological evolutions. As such, we agree that competent authorities should cooperate in the setting, implementing and developing of technical requirements, within CESR. It is vital that unilateral approaches are avoided as far as possible if OAM businesses are to be scalable to offer services across different markets.

Q23: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

We agree that regulation and coordination of the operation of the future EU electronic network will be best effected at the level of CESR.

The filing of regulated information by electronic means with the competent authorities

Q24: Do you agree with the above interpretation of the purpose of filing and the conclusions made on basis of the interpretation? Please provide reasons for your answer.

We believe that an opportunity is presented here for a streamlined process – it seems an unnecessary and illogical duplication of costs for regulated information to be filed with both the OAM and the competent authority and for both entities to build and maintain a database to store it.

Irrespective of whether competent authorities operate the OAM or not, they will have access via the OAM to all regulated information and will be able to fulfil their supervisory functions on this basis [see Q32].

Q25 - Q31: In the light of our answers to Q24 and Q32, we do not have any comments on these questions.

Q32: Do you agree with the above concepts of "alignment"?

We understand that the Directive contains three obligations on issuers with regard to regulated information: to disseminate, provide to the OAM and to file with their competent authority. However, we do not believe that this necessarily has to be interpreted as three *separate* obligations. The fact that the mandate asks CESR to consider how alignment could be achieved indicates that this is the Commission's view too.

We agree with the analysis in paragraph 306 ("alignment could be any procedure or option enabling issuers to meet the three obligations set forth by the directive for regulated information …. Alignment would not be envisaged as an alignment of ex-ante procedures but as an alignment from the perspective of issuers"). However, we do not agree with the analysis given in paragraph 307. Instead, we believe that a synchronised process could take place: Issuers could send their regulated information to a Service Provider who could disseminate it and also provide it to the OAM (or issuers may choose to do this themselves). The competent authority would not receive the regulated information directly, but could instead be a 'special end-user' of the data stored in the OAM. This would be cost efficient for both issuers and the competent authorities. By way of example, in the UK, issuers are not required to file announcements with the FSA – instead, FSA receive an amalgamated feed of all company announcements (which are collected from the various Primary/Secondary Information Providers through which the information is disseminated to the market).

Q33: Are there additional ways of alignment CESR should consider?

See answer to question 32.

Q34: Do you consider that CESR needs to expand this idea to properly address the mandate?

Yes. See answer to question 32.