

29th March 2006

Mr Fabrice Demarigny
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Dear Mr Demarigny

CESR's consultation paper on possible implementing measures concerning the Transparency Directive

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is the organisation that represents those firms who act for the private investor and who offer them services that range from no advice or execution only trading through to portfolio management for the high net worth individual. Our 217 member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, and following the merger of EASD into APCIMS increasingly in other European countries as well. APCIMS members employ 21,000 regulated staff, they have under management GBP280bn for the private investor and undertook last year 18.6 million trades on their behalf.

APCIMS members act for the types of retail investors at whom the services of the information storage systems envisaged under the Transparency Directive (TD) are in large part directed. Consequently, we believe that, at least in relation to UK investors, we have a reasonable understanding of the way in and extent to which the data opportunities offered by the proposed "one-stop shop" are likely to be taken up. Although we do not intend to respond to the detailed questions set out in the CESR paper, we would like to offer several more general comments.

Costs

While we appreciate the difficulties involved in attempting to place even approximate costs on measures that have not yet been finalised, it is likely that the absence from the paper of any estimates as to the likely costs of setting up/operating OAMs or of creating an OAM network and the fact that no such data will be available until well after the close of the current consultation will combine to undermine the usefulness of this exercise. An outline proposal that looks reasonable at first glance may well be completely impracticable once the cost implications of its underlying details are analysed.

Demand-driven development

APCIMS firmly believes that, notwithstanding the objectives of the TD, CESR should not produce advice that results in Members States being obliged to fund the development of complex, interoperable information systems whose functionality far exceeds any clearly identified level of demand from targeted “end users”. The Press Release accompanying this consultation states that the TD storage system “is intended to become a key tool in the integration of EU financial markets, fostering investor confidence” – while we appreciate the importance of anticipating and encouraging future market growth, the development of a system that was ultimately significantly underused would not only be a cause of reputational damage to the Commission/CESR but would, more importantly, represent a considerable waste of resource on the part of the regulators, issuers and data providers likely to be involved in this project.

As regards the retail end of the market, at present, UK private clients invest primarily in UK-based companies/instruments with exposure to other markets being gained indirectly through collective vehicles. We are by no means convinced that the availability of “naked regulated information” for issuers across Europe would of itself change this situation. Although many companies already publish via their websites much of the data that would be held within OAMs under the TD, we would suggest that this raw data is not the primary source upon which decisions to invest are based. Most investors have neither the inclination, time nor expertise for such detailed consideration of each potential investee company and are more likely to use “short-cuts” in the form of advice and simplified research materials from finance professionals, investor tip-sheets and articles in newspapers and financial magazines and the services of investment clubs. Further, we query whether the availability of raw data via OAMs would be enough to attract UK investors to direct investment in EU issuers in the face of other practical difficulties (e.g. language barriers, access to trading facilities and concerns about the parity of overseas regulatory/compensation arrangements with those in the UK). In addition to this, the impact of straightforward inertia and the “fear of the new” should not be under-estimated.

So far as institutional investors are concerned, they already have access to such information via data vendors, specialist research houses and their own corporate contacts with, in many instances, data being provided to them in the formats/combinations most useful for their business needs. While it seems obvious that some of the data vendors currently used by such investors would become OAMs under the TD system, the incremental benefit such investors would derive from a formalised and integrated OAM network are less clear.

Given the above, we are pleased to note that, in relation to many areas of detail – e.g. limiting mandatory OAM data to “naked regulated information” and not requiring translation of filed documents, the use of prescribed filing formats or the provision of printed information to end-users – CESR is maintaining a sensible approach to the balance between investor needs and issuer/OAM costs.

Network models

With the Commission having clearly indicated its preference for a network of linked national OAMs over a pan-European centralised system, CESR prefaces its discussions of Models A to D with a statement that such a network “should provide access to pan-European regulated information in a way that ensures that the internal machinery of the network is not visible to the user” and that “users of the network should benefit [from] seamless searching and accessing capabilities”. We query whether the degree of integration that this implies is either necessary or desirable. To make a network “seamless” would require complete harmonisation across many

different areas and would undoubtedly entail significant costs. Is this an appropriate demand on industry resources when there is no clear indication of the extent to which any TD system will be used (over and above the current usage of existing OAM-type services) ? It is also worth considering that, if an investor is sophisticated enough to be contemplating direct investment in companies outside his home state, he will almost certainly have the wherewithal to navigate a network of systems supplying relevant data. While investor access to complete, accurate and timely information is crucial to the proper functioning of financial markets, it is perhaps a counsel of perfect that such information should be made available in exactly the way an investor would wish, regardless of the costs to those funding the system.

Consequently, of the network possibilities presented in the paper, APCIMS would favour the “Basic Access Model” or Model D. Although it undoubtedly does not fulfil the “one-stop shop” criteria, it has the advantages of being simple in design, of using the data provision arrangements already existing within individual member states, of requiring relatively little development and of having negligible costs. If usage of the system subsequently indicated that there was reasonable demand for a higher level of service, the more ambitious strategies outlined in the other Models could be further developed and brought into effect over time.

Regulatory filing

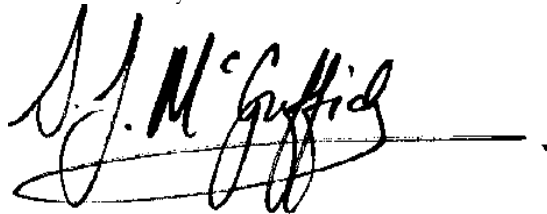
The section of the paper which deals with competent authority access to regulated information seems to indicate that, for issuers, the processes of filing information with a OAM for public access and with a competent authority for regulatory purposes would be separate. We do not understand why this should be the case and would suggest that these processes should be aligned as far as possible with a view to minimising regulatory burdens on issuers. While regulatory authorities may require additional information from issuers over and above that submitted to OAMs, every effort should be made to ensure that the same basic data filing process is adequate for both purposes.

Other possibilities?

Finally, we understand that, at the recent CESR Open Hearing on OAMs, it was suggested that consideration might be given to a transparency regime where (a) issuers simply stored their regulated data on their own websites, (b) access to such data was managed via a centralised list of issuer links and (c) consequently, no OAMs or OAM networks were necessary. While this is obviously not a strategy that fulfils the requirements of the TD as currently drafted, it is one that we believe should be given serious thought because of the minimal cost and development constraints it would impose.

APCIMS hopes that these comments will be of assistance to CESR in progressing its work in this area. If any further input is required, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. J. McGuffick', with a long horizontal flourish extending to the right.

Sarah McGuffick
Policy Adviser