

Position paper in response to the call for evidence on the CESR mandate for technical advice on possible implementing measures concerning the Transparency Directive

Deutsche Börse Group, whose activities include the management and operation of the Frankfurt Stock Exchange (FWB), welcomes the opportunity to submit views to CESR as to what the regulators should consider in their advice to the European Commission on implementing measures for the Transparency Directive. We wish to focus on one particular issue: dissemination of regulated information. We believe this topic is of the utmost importance for maintaining high standards of investor protection and thus for the international credibility of a capital market. Through our participation in the Deutsche Gesellschaft für Ad-hoc Publizität (DGAP), the German market leader for providing disclosure of price-sensitive information, we are directly involved in organising the dissemination of ongoing regulated information. We are delighted to have been invited to share our first-hand experience in this area with the regulators at CESR.

Pull vs. push systems

Generally, one can distinguish between pull and push systems for the dissemination of information. While in pull systems, the reader is responsible for researching and retrieving the information he is looking for, push systems actively bring the information to the recipient's notice. Newspapers or the internet are examples for pull systems, electronic news alerts are an example for push systems. For the dissemination of time-critical information in which the response of one recipient has repercussions for others, the use of push systems is necessary. Price-sensitive news revealing insider information as defined in the Market Abuse Directive as well as the notification about directors' dealings and changes in major shareholdings (threshold reporting) belong to this type of information.

The requirement to ensure timely and reliable access to price-sensitive information cannot be fulfilled by publication on the internet alone, even where supplemented by an e-mail alert system. The danger of network breakdown and the intrinsically selective nature of the list of addressees of an e-mail alert system would introduce a certain degree of arbitrariness into the dissemination of information. Furthermore, retail investors without internet access would be severely disadvantaged.

Examples of push systems for disclosing price sensitive- information: UK and Germany

In this context, we wish to draw attention to the advantages of the system for the disclosure of price-sensitive information currently employed by several member states of the European Union, including Germany (Securities Trading Act, Paragraph 15) and the United Kingdom. In Germany, the Securities Trading Act obliges issuers to disseminate information on an immediate and simultaneous basis to news agencies, recognized by the competent authority as providing a sufficient degree of publicity within the financial community. In Germany, these

agencies are Bloomberg Reuters and vwd, each of which is deemed to provide the necessary publicity on its own. Furthermore, certain newspapers (“Börsenpflichtblätter”) are accepted as media for publishing price-sensitive news. However, their market share among this type of news distribution is below one per cent.

The rule has led to the emergence of full news service providers, such as DGAP, that operate an electronic bridge between the news agency and the issuer. DGAP is the market leader, competitors include euro ad-hoc and Hugin. Competition among these information service providers has been seen to encourage customer-oriented pricing and the use of state-of-the-art technology, ensuring fast and easy access to information by investors. These service providers use push technology that simultaneously and immediately brings price-sensitive information to news agencies and from there, via the mass media, to the investor. Use of a network owned and operated by the information service provider makes the system far more stable and reliable than the internet. Furthermore, given the substantial potential for market abuse by distributing counterfeit company news, specialized information service providers operate with a far greater degree of security than the internet.

Smooth and orderly functioning of the market can only be achieved if it is guaranteed that regulated markets and supervisory authorities are provided with price-sensitive information prior to its public dissemination. In Germany, both are informed 30 minutes before the price-sensitive information is forwarded to the news agencies. Once the information has been published, the service provider confirms this to the supervisor, the exchanges and the issuer. The news are then archived in the online database of the service provider.

In addition, directors’ dealings are published on the DGAP website. The immediate notification of the issuer and the German Financial Supervisory Authority by the director and the subsequent publication is required by German law, although the publication on the issuer’s website is so far deemed sufficient. However, if the issuer so wishes DGAP can also distribute these news via its push system like any other price-sensitive information.

For periodic reports, DGAP provides a complete list of links to the online versions of these reports. Thus, all regulated information on issuers listed in Germany is made available via one website. This “one-stop shop” solution saves investors valuable time for researching and retrieving information on listed companies. A database allows searching for information by the issuer’s name, ISIN, country of origin, and type of report. Technically, these links could also be distributed via the same push system used for insider news, but this is not required by law. The system is thus suitable for both the dissemination and the storage of all types of regulated information, be they immediately price-sensitive news or systematic reports on a company’s fundamentals.

In the UK, the pillars of regulatory disclosure are the same as in Germany: in both countries, an electronic push system is in place, with two tiers for bringing the information from the issuer to the investor in a fast, simultaneous and reliable manner. The first tier, the so-called “primary information provider” (PIP), operates the bridge from the issuer to the news agency, the so-called “secondary information provider” (SIP). Competition among PIPs and SIPs keeps cost low and service quality high. There are two major differences: firstly, the UK system applies to all forms of regulated information, while the German system is legally confined to the disclosure of insider information (although in practice, the German system covers other

types of regulated information as well). Secondly, while in Germany the evaluation by the regulator takes place at the SIP level, in the UK, it is the PIP that is licensed and supervised by the Financial Services Authority.

Issues to be discussed by CESR

In its call for evidence, CESR points out two aspects of the dissemination of regulated information on which advice is needed: firstly, **fast** access to information both in the home member state and in other EU member states; secondly, access to information on a **non-discriminatory** basis, depending, among others, on the type of regulated information.

Fast access: the price effect of insider information usually is a matter of minutes. Their distribution therefore makes the use of an electronic medium mandatory. Newspapers, in which price-sensitive information can only be published at least one day after the event, are not suited to provide the fast access that is needed. For the reasons mentioned above, however, the internet, being a pull system, is not suitable for performing this task.

We do not advise to give a legal definition of the time-lag between the occurrence of a price-sensitive event and its publication. Immediacy should take account of the specific circumstances of the event in question. Between the delivery of the news by the company and its publication, a lag of half an hour seems useful to give exchanges and regulators a chance to see if any special measures, such as a temporary suspension from trading, are necessary to guarantee orderly trading.

Access to information of issuers from abroad: The Markets in Financial Instruments Directive (ISD2), in Article 40(3), stipulates that regulated markets, under the guidance of their home member state, need to make sure that issuers fulfil the transparency obligations required by EU regulation, and find ways of making this information easily available to trading participants. The CESR Consultation Paper from June 2004, in its level 2 advice on this Article (pp. 96ff) specifies that, firstly, regulated markets need to check the issuers' compliance with their disclosure requirements, and secondly, they need to provide information on where the regulated information is disclosed and, if possible, make available links to these sources.

For the disclosure of price-sensitive news by issuers from another EU member state or a third country, the second of these provisions may not be sufficient. These issuers would have to disseminate such information via a service provider that reaches a degree of publicity considered sufficient by the regulator in the host country. Access to the disclosure of price-sensitive news throughout the EU is made possible through cooperation agreements between information service providers. DGAP, e.g., has distribution agreements with 17 news agencies worldwide.

Non-discriminatory access: this requirement implies the use of a medium that is equally accessible by all types of investors, both institutional and retail. It seems useful to distinguish between different solutions according to the type of regulated information in question. While periodic reports provide a systematic set of indicators of an issuer that do not necessarily move share prices on the short run, but are important for a fundamental assessment of a company, insider news are by definition immediately price-sensitive. Therefore, periodic reports require primarily a storage system that is equally accessible by investors, whereas the distri-

bution of price-sensitive news needs to fulfil an additional criterion: they need to be made available simultaneously. If only a select group of investors receives them an insider problem arises.

One way of overcoming this problem consists of defining a group of financial information vendors that constitute the relevant public (“Bereichsöffentlichkeit”) and need to be given price-sensitive information simultaneously, and rely on market forces for further distribution. In Germany, as described above, the news agencies which are defined by the regulator to provide this sectoral publicity immediately forward price-sensitive news to the general public.

Suggestions for further issues

An additional topic that should be discussed in the CESR working group is the establishment of standards for service providers that guarantee the **safety and reliability** of the network used for the dissemination of price-sensitive information as well as the **compliance** of their employees. In this context, the question of **licensing** service providers and regularly **reviewing** these standards should be considered as well. The UK model may serve as a benchmark here.

For questions and further information, please contact:

Reinhold Röhrig
DGAP
Managing Director
Tel. +49 69 211-19222
E-Mail: reinhold.roehrig@dgap.de

Achim Brosch
Deutsche Börse AG
Market Policy
Tel. +49 69 211-18253
E-Mail: achim.brosch@deutsche-boerse.com

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