London STOCK EXCHANGE

13 April 2004

M. Fabrice Demarigny
CESR
11-13 avenue de Friedland
75008 PARIS
FRANCE

Dear Fabrice

TRANSACTION REPORTING, CO-OPERATION AND EXCHANGE OF INFORMATION BETWEEN COMPETENT AUTHORITIES

Thank you for the opportunity to comment on CESR's consultative concept paper on transaction reporting, co-operation and exchange of information between competent authorities. This letter and its attachment constitute the Exchange's response.

Our substantive comments are attached as responses to CESR's questions but I would like to highlight three areas that we think are of particular importance:

- 'One-stop-shop' reporting - we welcome CESR's recognition that the reports required for post trade transparency and regulatory purposes share considerable content in common. We urge CESR to keep the potential cost implications in mind before introducing requirements that would restrict meeting multiple requirements through a single report.

- Pan-European Reporting - in imposing pan-European criteria on organisations and systems that are used to submit transaction reports, CESR should explicitly confirm that organisations and systems that meet the requirements in one member state will be able to do so in all member states without the need for a separate authorisation process.

- 'Host' member state - in the majority of cases, regulated markets do not have operations in other member states that are within the competence of this directive. The concept of host member state with respect to regulated markets appears flawed, given that it is the investment firms who access regulated markets on a remote basis. CESR should clarify this apparent misconception.

I hope that you find the attached paper useful in your deliberations and look forward to working with you to ensure that the legislation that the Commission produces works for European securities markets.

Yours sincerely

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Enclosure

London Stock Exchange responses to CESR's questions

Methods and arrangements for reporting financial transactions

Q 1: Do you agree with the approach suggested above to determine the methods and arrangements for reporting financial transactions in one set of criteria applicable to, both, the conditions for a trade matching and reporting system to be considered valid to report transactions to competent authorities, and the criteria allowing for a waiver? If you do not agree, what other approach would be more appropriate in your view?

The London Stock Exchange agrees that all systems that are to be used to submit regulatory reports should be subject to equivalent criteria. However, we would ask CESR to confirm that once criteria are met in one member state, that system or organisation should then be considered fit to submit reports in all other member states. If there is to be a regime set by CESR then it logically follows that any requirement for additional approval in each member state is unnecessary and would impose unnecessary costs on those systems and organisations that wish to offer reporting services in multiple member states.

We fully support and endorse CESR's desire to minimise costs and to facilitate 'one-stop-shop' reporting for both regulatory and transparency purposes. We would also ask CESR to note that the same reports currently form the basis of settlement instructions and, as such, CESR should consider the extent that this will allow further costs to be removed from the system by harmonising content.

Q 2: What requirements should such an inventory contain?

The London Stock Exchange agrees that the inventory should include areas such as data security and system reliability for all organisations and systems that are approved for reporting purposes.

Q 3: What other issues, if any, should CESR take into account when responding to the Mandate concerning the "methods and arrangements for reporting financial transactions"?

We don't believe that there are other issues that CESR should take into account.

The criteria for assessing liquidity in order to define a relevant market in terms of liquidity for financial instruments

Q 4: What would general criteria for measuring liquidity be?
Q 5: What specific criteria could be useful in measuring liquidity? Should they be prioritised?

Liquidity is a difficult term to afford a precise definition to. As such CESR should identify a suitable proxy and we would suggest that this should be the quantity of reported trades ("reported turnover"). The most liquid market for a security will be the member state in which the most transactions are completed in a security, whether conducted on regulated markets, MTFs or OTC. We would advise CESR against discriminating between categories of business by giving any additional weighting to business transacted on a particular type of platform – this is only likely to reinforce the position of incumbent trading platforms and inhibit the competition that the Directive is intended to introduce.

The location of OTC business should be determined by where that business has been made public – i.e. where the firms have chosen to publish business according to Article 26.

Q 6: What could be an appropriate mechanism for assessing liquidity in a simple way for the purposes of this provision?

Turnover in each security can be calculated annually by each competent authority. The use of a trading platform specific security identifier will be important to assist in this (see Q8 below). The most liquid market can then be agreed between regulators.

Q 7: What other considerations should guide CESR in its work regarding the assessment of liquidity in order to define a relevant market in terms of liquidity?

CESR should avoid attempting to over-engineer a definition. This will merely result in an overly complex outcome with no additional benefits. CESR should look for a pragmatic and simple solution.

The minimum content and the common standard or format of the reports to facilitate its exchange between competent authorities

Q 8: Do you agree with the approach proposed by CESR for determining the minimum content and common standard/format for transaction reports? Are there other approaches that could usefully be considered?

As stated above, we support CESR in its desire to facilitate 'one-stop-shop' reporting. The minimum content of transaction reports we feel should, therefore, ensure that, as far as possible, the same information is required in transparency and regulatory reports. The ISD also imposes extensive record-keeping requirements on authorised firms - competent authorities should be able to rely on calling on these records if they should need further information on an *ad hoc* basis.

When determining security identifiers we would refer you to our submission in response to the initial mandate in which we laid out our concerns about the use of ISIN. While ISIN certainly has its uses, it is not specific or timely enough to be useful for regulatory, transparency and settlement purposes. There are standards, such as the SEDOL numbering service in conjunction with Market Identifier Codes that can provide far more information. We would once again direct CESR to the work that industry groups have conducted in this area, in particular the work of Reference Data Coalition and the Reference Data Users Group in their discussion paper 'In Search of a Unique Instrument Identifier' (June 2003).

Q 9: Apart from the types of information set out in Art. 25 par. 4 and the Mandate, what other information might be usefully included in transaction reports?

For the reasons stated above, CESR should restrict the requirements to a minimum as listed in the mandate, including the further requirement to identify the market – although we believe that this can be achieved using the security identifier.

Q 10: Do you agree that the content of transaction reports has to be equal irrespective of the entity reporting the transaction? What considerations could justify a different treatment of reporting parties?

We agree that the content should be equal.

Obligation to cooperate – Art. 56 par. 5

Q 11: Do you agree that this preliminary assessment on the scope of the implementing measures is appropriate, and with the approach suggested above to determine the criteria under which the operations of a regulated market in a host Member State can be considered as of substantial importance, or would you consider another approach more appropriate?

We agree with the approach that CESR proposes as we believe that it will show that, for the most part, the co-operation between regulators required under this article require no further regulation over and above the general requirement to co-operate. To determine that 'host' member states should be granted excessive additional powers under these circumstances is to undermine the principle of mutual recognition of supervisory competence that underpins the directive.

CESR must also take this opportunity to confirm that the 'host' relationship can only be said to exist where the market operator is conducting investment business, as defined by the directive, in that member state. For example, where an Austrian firm trades an Austrian security on the London Stock Exchange, that firm is potentially conducting investment business in London, rather than the regulated market operating in Austria. Only when it is conducting an authorisable activity can a regulated market be considered to have operations relevant to the directive in another member state and should the issue of 'substantial importance' be considered.

Q 12: What relevant criteria should be taken into account in order to assess the substantial importance of the operations of a regulated market in a host Member State?

As previously stated, a regulated market will not generally be deemed to have 'operations' in another member state, except where they have are conducting some type of investment business as defined by the directive.

However, if CESR must define 'substantial importance' to deal with the possibility that regulated markets will choose to begin operating in that manner then it seems logical that the threshold must be set at 50% of trading in a country's securities i.e. a majority. However, the directive also states that in capturing that level of business a regulated market is in some way impacting the functioning of securities markets and investor protection in that country. The determination of 'substantial importance' must also include a requirement to establish this.