

**By e-mail**

The CESR  
Mr. Fabrice Demarigny  
Secretary General

1 February 2005  
H 553 – lbj,msp

**The CESR's Advice on Possible Implementing Measures of the Transparency Directive – Part 1: Dissemination and storage of regulated information (Consultation Paper – October 2004)**

Realkreditrådet (The Association of Danish Mortgage Banks) has taken a closer look at the CESR's Advice on Possible Implementing Measures of the Transparency Directive – Part 1: Dissemination and storage of regulated information (Consultation Paper – October 2004) and would like to put forward its comments seen from the point of view of the Danish mortgage banks.

In connection with our review of Part I, we take the opportunity to attach a number of general comments to draft level 2 advice prior to putting forward the more concrete comments to the individual questions. Our response to the individual questions should therefore be seen in conjunction with our general comments.

Realkreditrådet's comments will focus on the following:

- The "Draft advice" aims at a very high level of ambition
- What are the possibilities for taking the investors' need for information into consideration
- If the operator solution is used, it must be ensured that an issuer will only be required to provide information once to any one operator.
- It should not be made mandatory to use an operator.
- An operator must be subjected to rules pertaining to insider knowledge.

**General comments**

It is the opinion of Realkreditrådet that the level aimed for in the present draft advice is extremely ambitious and perhaps even more so than the area calls for. This means that considerations, recommendations and questions are in fact characterised by opposite views and not by unequivocal conclusions.

The questions that the CESR is asking the participants in the hearing do in many instances require in-depth, fundamental considerations. At the same time, an attitude to the various questions will to a wide extent be closely linked to considerations and answers to other questions. Realkreditrådet would therefore recommend that an edited "draft advice" be submitted for hearing, once the CESR's considerations and recommendations based on the submitted answers are available.

The demand for publication in Article 21.1 has the following wording: "The home country shall ensure that the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non discriminatory basis and makes it available to the officially appointed mechanism referred to in sub-article 2."

It is thus the responsibility of the issuer to publish regulated information in such a way that the information becomes rapidly accessible on a non-discriminatory basis.

When it comes to the question about dissemination, the CESR puts forward two interesting, and in the opinion of Realkreditrådet, conflicting comments in the "Key Concepts". Concept No. 20 suggests that "In defining the meaning of dissemination, the CESR considered the other information requirements. Article 6 (1) first subparagraph of the Market Abuse Directive requires that an issuer "inform the public". Article 6 (1) second subparagraph of the Market abuse directive states that posting information on the internet site of the issuer, while being required, does not in itself fulfil the requirement to inform the public. Concept No. 22 suggests that "... the Transparency Directive requires dissemination to the public, not to the business community". Concept No. 23 suggests that "However, it must be acknowledged that two things are not possible: a) issuers would be overburdened if they were required to publish their regulated information in the relevant newspaper(s) of each member state (N.B. that prescribing publication in a newspaper with circulation in the European business community would not fulfil the requirement of dissemination to the public). b) The media would be overburdened if they were forced to reproduce all regulated information of all European issuers."

It is interesting to note that it seems quite obvious to the CESR that access to information on the issuers' internet sites, considering the internet's worldwide search facilities, would not be enough to comply with a requirement to "inform the public", whereas the public is considered fully informed if the same information were to be published in one or more newspapers in each member state along with information from all European issuers. Both the issuers and the media would be overburdened – but apparently not the investor. We seriously doubt the validity of this claim.

On this background it would be relevant to have a debate about which possibilities are available to ensure the information demand of the investors. It would for instance – cf. above - take an effort on the part of the investor, irrespectively whether the information is available on an internet site or in a newspaper, as he would have to log on to the internet or buy a newspaper. Also the operator driven model would require an effort on the part of the investor.

This takes us back to the level of ambition where the ambition seems to be to make all regulated information accessible to all actual and potential investors (the public which may as a starting point comprise all physical and legal persons in all member states), but both questions and proposals demonstrate that this is difficult to implement.

When for instance the CESR recommends an operator-driven system, where it is of decisive importance that the issuer cannot charge a fee for placing the information at the disposal of the investor, while it is unavoidable that the operator can/will charge a fee for both receiving and conveying information and also that the media can/will charge a fee for making information available, it raises the question whether all regulated information is in this way made

available to the public in the sense of the spirit of the Transparency Directive. Also there are no demands on the media about publication, and hence no sanctions are possible.

These comments at the same time reflect our attitude towards Question 1. We therefore hope that our comments may give the CESR the opportunity to once again consider different standards of dissemination aimed at putting forward proposals for the implementation of less comprehensive and more effective measures, including which possibilities will be offered to the issuer for undertaking the dissemination of regulated information himself, cf. question 2.

### **Specific comments**

Realkreditrådet has the following comments to the individual questions:

#### Question 3

To the extent that an operator solution is set up, it will be of significant importance that an issuer is able to satisfy all of the Transparency Directive's requirements to disclose regulated information by sending this information to one operator only. This is to ensure that there can be no doubt as to when an issuer has complied with his responsibilities. It is also in compliance with item 4 (a) (page 13).

In the "Draft level advice" and the proposal for implementation we miss a more concrete suggestion of when the information demand has been met with. What exactly is it that guarantees the individual issuer that he has complied with the Directive? A scheme for the approval of operators would be a step in the right direction, but only in relation to the operator solution – however, which demands may be reasonably place on an issuer in regard to publication? It is our opinion **that a combination of publication in the regulated market and on the issuer's own internet site would meet the demands put forward in the Directive.**

In our opinion, the decisive factor for the implementation of a user-friendly operator scheme would be that the issuer has, when he supplies information to an operator, fulfilled the demand for publication of regulated information in such a way that the information is rapidly accessible on a non-discriminatory basis. If the issuer were to implement additional publication measures, this would presumably mean a considerable weakening of the operator solution.

#### Question 4

In connection with an operator model as proposed in figure 1, the question may as previously mentioned be raised as to whether all regulated information is being made accessible as demanded in the Transparency Directive. As the CERS puts it in the dissemination standards, the selected dissemination channel shall allow "investors generally to receive the regulated information, rather than specific categories of investors (e.g. institutional or retail)". In connection with the operator model it could be feared that the expenses incurred would be too heavy and prevent small and retail investors from obtaining regulated information. Therefore this model may unintended prevent some investors from obtaining regulated information.

A possible solution could be to also allow Realkreditrådet's proposal mentioned above, which suggests a combination of publication in the regulated market and on the internet site of the issuer. This would be an easily accessible, low-cost solution also to the small investors.

#### Question 5

In our opinion operators should be subject to approval and ongoing monitoring by competent authorities. This would secure equal treatment of and demands on operators and would presumably also be a precondition for setting up a scheme under which the issuers may comply with the demands of the Directive by submitting regulated information to one operator.

#### Question 6

We consider it to be of decisive importance that operators be subjected to the rules regarding insider knowledge.

#### Question 7

However, it should not be a demand that the issuer must use an operator. It will thus still be possible for the issuer himself to submit information to the stock exchange. This is based on the fact that there will be a number of costs attached to the operator function, where the individual issuer should have the possibility to decide whether he wants to pay these costs.

#### Question 12

There needs to be comments to or a clarification of the problems raised in the preceding questions, before a decision can be made about the proposed draft advice. Therefore we are in no position at the present time to agree to the proposed draft advice.

#### Question 14

Realkreditrådet does not think that it is necessary to put up further demands in regard to the time period during which regulated information shall be available. The Directive's demands in regard to accessibility of the annual report and the semi-annual report would seem to be sufficient.

Best regards,

Lars Blume-Jensen