

IPMA

**INTERNATIONAL PRIMARY
MARKET ASSOCIATION**

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27 May 2005

M. Fabrice Demarigny
CESR (Committee of European Securities Regulators)
11-13 Avenue de Friedland
Paris
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Dear M. Demarigny

Re: IPMA Response to CESR's revised Technical Advice on Possible Implementing Measures of the Transparency Directive released on 27 April 2005

The International Primary Market Association is pleased to submit its response to CESR's draft Advice on possible implementing measures of the Transparency Directive.

We hope that our comments prove useful to CESR. Please let us know if it might be useful to have further discussion of any of these points.

Yours sincerely

Mary Hustings
Consultant

Samantha Barrass
Head of Regulatory Policy

**INTERNATIONAL PRIMARY MARKET
ASSOCIATION**

**Response to CESR's revised Technical Advice on
Possible Implementing Measures of the
Transparency Directive released on 27 April
2005**

The International Primary Market Association (IPMA) is the organisation which represents the managers and lead managers of debt and equity securities in the international capital market. A list of IPMA members may be found on its website at www.ipma.org.uk

Date: May 27, 2005

INTRODUCTION

IPMA is pleased to respond to the publication by CESR, on 27 April 2005, of its revised draft technical advice on possible implementing measures of the European Commission's directive on the harmonisation of transparency requirements in relation to information about issuers (2004/109/EC) (the "**Transparency Directive**").

Given time pressures, we have focussed our response principally on those matters of key interest to our members in the context of their primary market activities. Overall, we have three main points:

1. In places, CESR's draft advice is overly prescriptive on matters that should be left for the firm to decide within higher-level regulatory obligations. We highlight areas of particular concern below.
2. We think CESR is heading in the right direction on its approach to the use of service providers. In particular, providing issuers with choice on whether or not to use service providers, and, effectively, choice on whether or not to use an 'approved' service provider is a good outcome, and has the capacity to meet the needs of all issuers, some of whom will be more averse to regulatory risks than others. However, we do think that CESR should provide some explanatory text on precisely what comfort issuers will be able to take from the fact that a service provider is 'approved' – both by an issuer's own competent authority, as well as other competent authorities. In particular, if the final responsibility for ensuring that a service provider meets the standards set out in the draft advice remains with the issuer, what information / information value can the issuer draw from the fact that the service provider is 'approved'. If the answer is 'none' (as a strict interpretation of the draft advice would suggest), then it is not clear what benefit arises from approving service providers.
3. Finally, there needs to be some ameliorating language to the use of 'must ensure'. We refer particularly to paragraphs such as paragraph 39, which set out standards issuers 'must ensure' are met. As has been discussed in other contexts, this language is too absolute and does not reflect the realities of what it is reasonable to expect of issuers, or the approach that supervisors will take to supervising against these requirements.

DETAILED COMMENTS

CHAPTER 1: DISSEMINATION OF REGULATED INFORMATION BY ISSUERS

Dissemination standards: Connections with media.

Question 1: Do consultees agree with the above proposal? Question 2: What distribution channels do consultees consider should be mandated? Please provide reasons for the answer; Question 3: Do consultees consider that CESR should mandate that the connections between issuers (either directly or through a service

provider) and media be based on electronic systems, such as dedicated lines?; and Question 4: Do consultees consider that a specific method should be mandated?

- Generally, we believe that the level of detail in the proposals risks being unduly prescriptive for Level 2 legislative regulation, and will be unnecessarily burdensome, complex and potentially costly for issuers, without a proportionate matching benefit for investors or other market participants. These provisions should give greater flexibility for regulators and issuers to keep up with technological and market developments.
- We agree strongly with CESR's conclusion that 'dissemination will occur, in practice, when regulated information reaches entities that are able to distribute the information further and push it to the market'. However, we do not believe that connections with particular news providers should be mandated. It is not clear, for example, what benefit to investors accrues from a requirement for a mandatory connection to a full range of print media. In most cases, the material will not be published, and the most efficient long-term retrieval will be from the storage mechanism. The key requirement is that choice of news providers should not be inconsistent with an outcome whereby any realistic potential investor could gain free access to the information. CESR have not explained why it is necessary go further than setting out this point of principle at Level 2.

Dissemination standards: Necessary output information fields

Question 5: Do consultees agree with the approach of redrafting the required field information as proposed above? Question 6: Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies register or the ISIN)? Which of these? Please provide reasons for your answer

This is a point of unnecessary detail. We believe that a clear reference to the legal name of the issuer would be ample information to identify the issuer in respect of which information is being disseminated. We do not believe that references to security codes should be necessary. Issuers with numerous and changing lines of securities outstanding would find this an unnecessary and burdensome task. At most, we believe that in addition to the legal name of the company, a registered name and address of the issuer be included.

Question 7: Do consultees consider that CESR should establish a method, or some sort of code, by which there would be a single and unique number of identifying each announcement that an issuer makes, that is valid on a European basis and that could be used also for storage? Question 8: What methods do consultees suggest CESR should establish? Please provide reasons for the answer.

We believe that it is premature to consider such detailed issues for Level 2 regulation. These should instead be considered at Level 3.

Dissemination standards: Separation of Functions

Question 10: When the competent authority is acting as service provider, CESR considers that these competent authorities may not, as stated in the Directive, impede free competition by requiring issuers to make use of their services. Do consultees agree with this approach? Question 11: When stock exchanges act as service providers, CESR considers that their admission to trading criteria on any of their markets cannot mandate the use of their service as a service provider. Do consultees agree with this approach?

We agree with CESR.

Dissemination standards: Charges

Question 12: Do consultees agree that media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for your answer; Question 13: Do consultees consider that it is possible, on a commercial basis, to mandate that media receive regulated information for free from service providers? Please provide reasons for your answer.

We do not consider Level 2 legislative measures in this area are necessary, and such issues, if they are to be addressed by CESR, would be better addressed at Level 3. In any event, if such rules are to be made, we would certainly draw a distinction between those media connections which are required to meet regulatory obligations under the Transparency Directive, and other media who might wish to receive information. We are concerned that ultimately it is issuers who will bear the costs of any ‘free’ services, through the charges levied on them by service providers, increasing issuers’ cost of capital, and discouraging them, particularly issuers from outside the EU, from participating in the European capital markets.

Dissemination methods: Approval of service providers

Question 14: Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirement? Please provide reasons for your answer; Question 15: Do consultees consider that CESR should undertake, at level 3, future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory? Please provide reasons for your answers.

- As stated above, we strongly support CESR’s proposal to allow issuers to choose between using approved and non-approved service providers.
- We think it is too prescriptive to have a regulatory requirement that issuers should require service providers to prepare a document showing how they meet the dissemination standards. We believe, given the proposed requirements on issuers on the use of service providers, that it states the obvious and is unnecessary.
- CESR could clarify (ideally at Level 3) that an issuer may use a service provider that has been approved by a competent authority of a member state that is not the issuer’s home member state.

CHAPTER 2

Section 2: Control mechanisms to be used by competent authorities with regard to market maker and appropriate measures to be taken against a market maker when these are not respected.

Question 16: Do you agree with this change? Please give reasons for your answer.

Yes, we agree with this change for the reasons outlined in paragraph 99.

Questions 24 and 25:

Please see our answer to Question 5 above, which similarly applies to these questions.

CHAPTER IV: EQUIVALENCE OF THIRD COUNTRIES INFORMATION REQUIREMENTS

Section 1: Equivalence as regards issuers

Question 26: Do you agree with these principles?

- We welcome CESR's proposals that *equivalence* does not mean *identical to*; and that disclosure which provides users with understandable and broadly equivalent assessment of issuers' positions can be declared equivalent. We also agree that equivalence, once determined for a relevant third country, should only be re-assessed if there are fundamental changes. We suggest, however, that it must be possible for an issuer who complies with a higher standard than that for its country of incorporation (for example, because its information complies with the requirements of another jurisdiction which has been deemed equivalent) to benefit from equivalence. This could be the case, for example, if the issuer has raised capital in the third country concerned, or if it supplies information in accordance with third country requirements because its parent company is incorporated there.
- The contents of paragraphs 551 and 552 appear to be prescriptive, however, and go further than the high-level principles that we believe represent the correct approach.
- Paragraph 552(b) appears incorrectly to go further than the requirement under the Transparency Directive – the Directive requires a description of the principal risks and uncertainties for the remaining six months of the financial year; paragraph 552(b) requires “indications of the issuer's likely future development for the remaining six months of the financial year”. The latter appears to require different information, which actually may be more onerous. At least, the two disclosures should be put as alternatives for the purpose of equivalence.
- We note that paragraph 554 proposes that a third party country issuer will be deemed to be meeting equivalent requirements for statements of responsibility if an individual is made responsible for annual and half yearly financial

information by the third country's legal framework. We agree with such a 'deeming' provision. However, we understand paragraph 553 to mean that this is the only basis on which a third country's requirements could be deemed equivalent. We consider this unduly restrictive, and suggest that the determination should be able to take into account the broader legislative and regulatory factors which apply in the country concerned.

CHAPTER V – PROCEDURAL ARRANGEMENTS WHEREBY ISSUERS MAY ELECT THEIR 'HOME MEMBER STATE'

Question 28: Do you agree with the proposal that an issuer should make a notification when it chooses its competent authority?

We agree with CESR.

We would be pleased to discuss IPMA's response with CESR. Please do not hesitate to contact Samantha Barrass (sbarrass@ipma.org.uk) or Mary Hustings (mhustings@ipma.org.uk).