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FESE's Response to CESR's Call for Evidence
on the possible CESR Level Three Work on the Transparency Directive

I. Introduction

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments, comprising the markets for not only securities, but also financial, energy and commodity derivatives. Established in 1974 as a small forum of stock exchanges in Europe, FESE today has 24 full members representing close to 40 securities exchanges from all the countries of the European Union (EU) and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.

2. In response to CESR's call for evidence FESE believes that an assessment on the functioning of the Transparency Directive is premature as EU Member States are currently at different stages of implementation. It is our belief that the EU Member States should be allowed some time to implement the Directive - approximately one year – after which point it would be more feasible to identify potential issues or problems. Guidelines would however be welcomed on the issue of storage of regulated information as it is already evident that inconsistencies have arisen with Member States implementing this provision in very different ways.

II. General comments on the issues identified by CESR.

Equivalence of third countries' regimes

3. In general, FESE supports the development of a comprehensive set of international accounting standards for use throughout the EU and globally, to increase the transparency and comparability of company accounts. However, it is clear that this will not happen overnight, and in the meantime we must ensure that we do not reduce the willingness of third country issuers to list in the EU: it is fundamental for the success of the EU single market for the EU to attract companies from all over the world. The overall objective is to ensure that the goal of enhancing investor protection is achieved without damaging the attractiveness of EU capital markets to new and existing issuers.

4. We believe that the recent announcement by the SEC to accept from foreign private issuers their financial statements prepared in accordance with Standards IFRS as published by the IASB without reconciliation to GAAP as used in the United States is a step in the right direction.

Consistency and quality of the interim management statements

5. We are satisfied with the flexibility given by the Directive in terms of choice between interim management statements and quarterly reports because this combines market flexibility with performing market practices. The ultimate aim should be to reach a standardisation of minimum contents of interim management reports at the EU Level so to improve the comparability of information and to stimulate cross-border investments. For the time being however, we would advice CESR to wait until the Directive is implemented in all Member States before beginning to work on Level 3. Guidance on interim management statements would be premature given the current situation. In any case, industry-developed market practices should be carefully considered.

Application of the notification of holdings regime to stock lending and to derivative products

6. In our response to the 3rd Commission consultation on "fostering an appropriate regime for shareholders' rights"1, we have provided our comments on the practice of stock lending as follows:

"FESE believes that the lending of securities is a practice that has a number of extremely useful applications such as improving and maintaining market liquidity, allowing market operators and asset managers to run short positions and reducing the risk of failed trades. Moreover, from the lenders' perspective, investors/lenders could be interested in gain by disposing of their voting rights, providing for an additional return on their existing investment. Therefore, FESE would be very cautious regarding the introduction of regulatory measures which could interfere with the well established use of securities lending"

7. Having said the above, if on the one hand we understand the call for enhancing the transparency regime related to stock lending, one should not forget that the effective functioning of the Transparency Directive has still to be tested - due to its recent implementation throughout EU - and therefore an extension of the scope of article 9 of the Directive would be premature at this stage. The practices existing in some Member States2 show that effective transparency mechanisms are already in force; it would be counterproductive to pursue a legislative initiative that would not take account of these circumstances. The debate on the disclosure regimes concerning stock lending is ongoing at EU level and linked to the work that the Commission has done with the Directive on Shareholder Rights and is doing with the Recommendation on the same subject. In conclusion, we think that any L3 initiative would be premature since we have not come across cases of market failure in this field.

III. Responses to CESR's questions

Do you consider that CESR should start working in its L3 capacity in order to promote a consistent application of the TD and the Level 2 Directive?

8. As mentioned above, we believe that – given the fragmented situation among MSs with regard to the implementation of the Directive – it is premature for CESR to start working on Level 3.

9. For what concerns storage however, the lack of indications in the Level 1 & 2 framework has led various Member States to implement transitory storage mechanisms in extremely different ways. For this reason, we believe that there is a regulatory failure at the EU level with regard to storage on a transitional basis. Guidelines on how to put in place transitional measures in relation to storage would be most welcome. CESR could indicate which solutions are to be excluded and which on the contrary should be favoured by Member States. This task would indeed require CESR to undertake a coordination effort and a sketching exercise together with the European Commission, in order to avoid inconsistencies with the final measures that will be taken in the long run.

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[1] http://www.fese.eu/en/?inc=news&id=43

[2] In Greece, the notification requirements were already in force before the introduction of the Transparency Directive and any person reaching, exceeding or falling bellow 5%, 10%, 20%, 1/3, 50% and 2/3 of voting rights was (by presidential decree) under the obligation to notify thereof the issuer and the Hellenic Capital Market Committee. In Italy the Transparency regime with regard to the disclosure of transfers in the context of stock lending has been in force since long before the implementation of the Transparency Directive. Consob regulation requires that any participation above the 2% threshold is communicated to the issuer and to the Italian Regulator.

Do you think CESR's work to harmonise should be published in the form of a Q&A section of its website (in a similar way as CESR is currently doing in the prospectus area)?

10. A Q&A section would be a useful tool in the activity of interpretation and implementation of the TD provisions. Such a section could be updated on an ongoing basis in order to be extended to more difficult subjects over time, as CESR is doing in relation to the Prospectus Directive. In any case, the use of Q&A should not be considered as an alternative to guidelines, especially as far as core troublesome issues of the Transparency Directive are still concerned.

Do you think CESR should facilitate the establishment of an EU network of national storage mechanisms?

11. We do see a role for CESR as for the establishment of an EU network of national storage mechanisms. Any potential guideline drafted by CESR with regard to the EU network however, should take into account the heterogeneous situation across Member States as for the national appointed mechanisms.