



ATHENS
EXCHANGE S.A.

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CESR

11-13 Avenue de Friedland

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France

Attention:

M. F Demarigny

Secretary General

**RESPONSE TO CESR'S CONSULTATION PAPER ON POSSIBLE
IMPLEMENTING MEASURES CONCERNING STORAGE AND FILING
OF REGULATED INFORMATION (CESR /06-025)**

Dear Sir,

Athens Exchange SA (ATHEX) is the market operator of the omonymous regulated market organized under Greek law and supervised by the Hellenic Capital Market Commission. ATHEX is a wholly owned subsidiary of the company Hellenic Exchanges S.A. (HELEX), a limited liability company officially quoted on the ATHEX's regulated market.

Thank you for the opportunity to comment on the above issue. Filing and storing regulated information as well as an efficient and cost-effective European network of storage mechanisms is, to our view, vital for the

realization of the purpose of the creation of a “single capital market for all issuers”.

We would like to stress out the following points:

1. The clear-cut functional distinction made between dissemination and storage of regulated information should in no case rule out the possibility of one entity performing both functions. The attractiveness of EU's capital markets depends on the streamlining of the requirements on companies admitted to trading wherever possible in ways that do not undermine the transparency of the markets. Hence, we consider it very important to ensure that the requirements for filing and storage and, gradually at a later stage, for dissemination are well aligned so that the overall system in place does not place undue burden on the issuers and the end users of regulated information.
2. The existence of different technical standards and formats and the lack of unified national legislative provisions in this area mean that an approach that is excessively elaborate would most likely trigger huge costs. This means that a careful cost-benefit analysis must be conducted before any model is further developed in practice. We therefore have a clear preference for model C (the “Central List of Issuers” model). As CESR rightly points out, the most intensive and costly task associated with this model is the maintenance of the list of issuers. This, however, could be done automatically, ie without significant costs involved. Model C being the simplest and the most cost-efficient model fulfils all the requirements imposed by the Transparency Directive. All national storages should be involved in the creation of the pan-European network.
3. We fully share CESR view, that there needs to be a clear distinction between the obligations of the OAM and the value-added services which it can provide at its choice; as a legal requirement, an OAM should be

obliged to store and make accessible regulated information, as received by the OAM from the issuer or from any other person acting on the issuer's behalf ("naked information"). Given that the issuer should "make information available" to the OAM, as provided for in Art. 21 par. 1 of the Directive, we do not see any reason in referring to anything else than to this submission, in order to fully define the OAM's relevant obligation. The OAMs should be in any case free to determine the business model and cost recovery structure of their services as long as they comply with this general principle. Moreover, the pricing of the provision of the value-added services should be fully up to the OAM to decide.

4. With regard to the format of the information, we generally agree with the open e-filing architecture supporting standard file formats that are not proprietary and that obviate single vendor software applications. However, we believe that the wording used by CESR in Paragraph 56 should be strengthened to clarify that the OAM is obliged to support only the formats described in the CESR's advice (only no-proprietary formats that obviate single vendor software applications) and not at least such formats, whose provision of course should not be excluded but remain an OAM's possible choice. In general terms, any OAM, that supports filing on XML-type and ASCII formats, should be seen as having accomplished its obligations to maintain an open e-filing architecture.
5. Straight-through-processing is needed in order to avoid imposing unnecessary burdens on issuers and to ensure an inexpensive and rational process providing issuers with a "one-stop shop" solution for filing, dissemination and storage of regulated information. We therefore agree with CESR's assertion that electronic means should be used to the maximum extent possible. We would argue that a message is sent by electronic means only if it can be electronically processed further without

any manual intervention. In consequence, fax would fall out of the definition of “electronic means”.

6. As regards the language regime, we are of the view that any translation of the regulated information received from the issuers falls into the category of value-added service. The legal obligation of the issuer is well defined in the language regime of the regulated information in both the Transparency and the Prospectus Directives, which were a matter of lengthy debate and reflect a balanced compromise between the needs of investors and the cost of admission to trading for companies. Thus an OAM should be able to provide translated information but should not have to translate any such data. Moreover, we welcome CESR’s intention to recommend that the search mechanism in a national OAM should be made available in the official local language and in the language customary in the field of international finance.

An Annex of detailed answers to questions raised in the consultation paper is attached hereto.

We would like to thank you again for offering us the opportunity to comment on the said issue and we remain at your disposal for any further clarification.

Best Regards

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ANNEX

Q1: Do you agree that, taking into consideration the main purposes of the Directive in relation to the OAM, end users of the OAM will be investors seeking information on issuers and that the specific needs of particular investors or users should be tackled by the OAM itself and not require further and more burdensome requirements on issuers or on the OAM itself? Please provide reasons for your answer.

We fully share CESR's view, both on that the end investor, who is anyone with an interest in having access to the stored information, should be offered by the OAM straightforward and simple access and on that the development and supply of services tailored to the *"specific needs of particular investors or users"* should be left to the discretion and skills of the storage mechanisms, as added value service.

Q2: Do you agree that, taking into consideration the main purposes of the Directive in relation to the OAM, what needs to be stored and to be accessed in the OAM is just the regulated information, as produced and disseminated by the issuer or more than that? If so, please provide reasons for your answer and indicate what kind of facilities you would expect and indicate how to cover the costs of such value added facilities.

We agree with CESR's view thereon: as a legal requirement, an OAM should be obliged to store and make accessible regulated information, as received by the OAM from the issuer or from any other person acting on the issuer's behalf ("naked information"). Given that the issuer should "make information available" to the OAM, as provided for in Art. 21 par. 1 of the Directive, we do not see any reason in referring to anything else than to this submission, in order to fully define the OAM's relevant obligation; the decision as to

whether or not to offer additional, added-value services should be subject to the OAM's discretion and dictated by the environment in which it operates. The distinction made in the CESR document between naked and value-added-type of information storing and availability will also be extremely useful for the design of the OAM's business model. We fully agree with the document's understanding that the Directive does not require the information to be accessed through the OAM for free: however, given the underlying spirit of the overall legislation, an approach that "naked" information should be made available close to cost while the value-added services' pricing should be freely determined by the overall competitive structures of the industry is to be seen as reasonable. In both cases, of course, it should be the OAM's responsibility to determine the business model, both for the "naked" information service cost recovery and for the pricing of the value-added services offered. Last but not least, we fully agree that the cost-recovery model selected by the OAM should comply with the general principles and objectives of its operation.

Q3: Do you agree with the views above or do you envisage a more ambitious approach to "easy access"? If so, please indicate what facilities you would like to see in place and detail the additional estimated costs of implementing them, how to cover those costs and explain the advantages of such an approach.

We fully agree with CESR's definition of "easy access to information", being that information can be viewed, downloaded and printed from the OAM.

With regard to the issue of translation, we share the view of other industry participants, of FESE and of CESR, that a requirement to translate the regulated information would contradict both the Transparency and the Prospectus Directive, needless to say that it would also amount to a very expensive obligation. We firmly believe that any translation of the regulated

information received from the issuers falls into the category of value-added service, which OAMs should be able but not obliged to provide.

Q4: Do you agree with the views above or do you envisage a more developed approach for the network? If so, please detail what additional functionalities you would like to see and if possible, provide your opinion on the implications, namely in terms of costs, of setting up such a network. In considering the above, please take into account the alternative funding implications.

Q5: Do you see alternative technical solutions to those envisaged in this consultative document and permitting to reach the same goal, both for the designing of OAM's and for creating an EU "one stop shop"? If yes, please describe those solutions and provide estimates of costs and indications on the best way to cover them.

We welcome CESR's understanding on the complexity of the issue of a pan-European network as well as its firm commitment to select the best and proportional solution for the accomplishment of the "one stop access" for all EU investors. We believe that the solution, ultimately proposed by CESR, should be attainable at a short-term without at the same time ruling out tighter network models that might become achievable in the future; the solution proposed should succeed in being what the EU investor really needs on one hand without at the same time raising insurmountable implementation, management and cost related concerns. Encouraging a step-by-step approach to the creation of the OAMs network is also a guarantee of the attainability and proportionality of the solution proposed at each and every stage.

With regard to the definition of the network, our sole comment relates to the distinction between "sharing" information versus "making it available" existing in the document. We assume that CESR implies that "sharing" would require an active "push" of information by the OAMs while "making it

available” would not impose such a requirement on OAMs. Using this terminology, we believe that OAMs operating in a network should only be obliged to *make data available*, since this concept more compliant with the Directive than an obligation to *share the data*.

Q6: Do you agree with the above? If not, please provide reasons for your answer.

We welcome CESR’ s assertion on p. 15 of the document, that electronic means should be used to the maximum extent possible. We would also like to see a stronger statement for the use of electronic means, both for filing and for storage of regulated information. The use of electronic means allows for timely and unlimited access to information to all interested parties, ensures the automation of systems, diminishes the possibility of errors and is more cost-effective for all parties, including the issuers. With regard to the issue of the fax usage, we are of the view that it falls out the definition of electronic means, as electronic should be viewed whatever message can be further processed further without any manual intervention. We are also of the view that in case that the issuer chooses to provide the information by fax, either a third party (service provider) or the OAM could make the transformation of the information to an acceptable electronic format, at a cost.

Q7: Do you agree with the above? Please provide reasons for your answer.

We generally agree with the open e-filing architecture supporting standard file formats that are not proprietary and that obviate single vendor software applications. However, we believe that the wording used by CESR in Paragraph 56 should be strengthened to clarify that the OAM is obliged to support only the formats described in the CESR’s advice (only no-proprietary formats that obviate single vendor software applications) and not at least such formats, whose provision of course should not be excluded but remain an

OAM's possible choice. In general terms, any OAM, that supports filing on XML-type and ASCII formats, should be seen as having accomplished its obligations to maintain an open e-filing architecture.

Q8: Do you agree with the above minimum standards of security?

Q9: Are there any additional standards on security CESR should consider?

We fully agree in principle with CESR's line of reasoning related to security standards, validation, availability of the stored information, acceptance of waivers and recovery as well as to back-up systems. Although we do not in principle disagree that information already stored remains available to end-users, without disruption, 24 hours per day, 7 days per week, we would like to make the clarification that the above does not refer to operational availability for filing by issuers. , We discuss further this point under Q.16. It is beyond any doubt that the storage mechanism may need to prevent access to its systems for brief periods in order to perform maintenance or to upgrade its services.

With regard to the issue of completeness of regulated information: we point out the risk that the wording is interpreted as suggesting that the OAM is responsible to check whether or not the issuer has sent all the regulated information required by law. Rather, an OAM should be solely responsible for confirming that it has in its possession all the information it has been sent from the moment of pre-validation of the information received. By pre-validation we refer to technical checks (i.e. type of characters and fields checks) that should be done automatically by the OAM before accepting the information. It is important to clarify this point to avoid wording that would clash with Level 1.

Q10: Do you agree that there is no need for special or additional security standards if an electronic network of national OAMs at EU level is created?

We agree with CESR's position.

Q11: Do you agree with the above? Please provide reasons if you do not agree.

We totally agree with the minimum quality standards for the information source and the user authentication. We could suggest that a dual methodology such as PKI certification would provide the best results on that crucial issue and it could be suggested as a minimum standard.

Q12: Do you agree with the above? Please provide reasons for your answer if you do not agree

Q13: Are there any additional standards on time recording CESR should consider?

We agree with the minimum quality standards of time recording to be complied with by the OAM and with the general principle, that the information should be time stamped as it enters the OAM, irrespective of the timing of supervisory control chosen in that jurisdiction. At this point, however, a distinction should be made: there is a difference between "content checking", that is the supervisory control whom with the competent authority is mostly entrusted and the "technical integrity" check, that is the non-rejection of the submission made for technical reasons (what we defined earlier in Q.8, Q.9 as pre-validation). We recommend that time stamping is made before any required content check and after the integrity check has been accomplished.

Q14: Do you agree with the above? Please provide reasons for your answer.

We fully agree that there is indeed no need to differentiate between minimum standards for various types of regulated information.

Q15: Would you require searching capabilities in the language of international finance to be able to have “easy access” to the information stored?

We welcome CESR’s intention to recommend that the search mechanism in a national OAM should be made available in the official local language and in the language customary in the field of international finance, a proportionate approach in line with Level 1 texts. We also share the view that the existence of the EU-network will practically avail searching facilities in all different languages through the OAMs’ interconnection.

Q16: Do you agree with the above standards in relation to technical accessibility? Please provide reasons for your answer if you do not agree.

We see a point in CESR’s assessment that end users should have access to all stored regulated information on a continuous basis, 24 hours a day 7 days of a week. This, however, should not mean that the service support should be operational on the same terms and this relates to the OAM’s (non)responsibility in case a failure of an interested party to reach the database, either for filing (issuer) or for retrieving information, has occurred. We see no benefit in, but rather unnecessary costs arising from, a requirement that would keep the service support open 24/7. Hence, not only the level of support *stricto sensu* but also the operational hours should be left to the discretion of each OAM. In any case a 16 hours a day 5 days of a week seems the best compromise between cost and result. The system will be available for longer time periods, as suggested, but there should not be an obligation for having technical support and help desk outside those hours, especially in smaller countries where listed companies are mostly local.

Q17: Do you agree with the above in relation to the format of information to be accessed by end users? Please provide reasons for your answer.

OAMs should be required to record sufficient reference information. We generally agree with the proposed list of reference items although we believe that the issues of organization and categorization of regulated information should be further elaborated in the CESR document.

Q18: Do you agree with the above? Please provide reasons if you do not agree.

We appreciate that CESR considers various sources of funding of the OAM, namely funding by the users of the system as well as public and private funding. Hence, there should be a distinction between OAM's initial establishment and improvement/operating costs. With regard to all costs, we would, at this point, like to repeat our views, as expressed in Q. 2 above.

Q19: What are your views in relation to the issues being discussed above?

We are of the view that models A ("Central Access Point" network model) and B ("De-centralised" network model) are not practically feasible at this stage due to cost and time constraints and could only be considered as a long-term goal. Both models present, apart from technical issues, fundamental and difficult questions of funding and governance.

We, therefore, have a clear preference for model C ("Central List of Issuers" model), as we see it as the only possible scenario to fulfill the requirements of the Transparency Directive with the given time frame. As CESR rightly points out, the most intensive and costly task associated with this model would be the maintenance of the list of issuers. This, however, could be done automatically, avoiding substantive costs. Model C as the simplest and the

most cost-efficient model fulfils all the requirements imposed by the Transparency Directive.

Thus we would invite CESR to elaborate further on all the details related to the governance of Model C. As for the costs, it would make more sense to require from all OAMs to split the costs associated to the implementation and running of model C. This should be the case as OAMs in various jurisdictions are expected to differ in terms of public/private ownership and source of funding for their national activities. As the network is intricately linked to their national activities, all the OAMs should be closely involved in the setting up and governance of such a model.

Moreover, the involvement of the national Competent Authorities would be also indispensable for the creation of such a network. We would urge CESR to recommend the involvement of Competent Authorities as the primary representative of the Member States as this would facilitate the process in terms of time and simplicity and achieve the best solutions.

Q20: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

We agree with CESR's approach as to the role of the competent authorities. However, we would like to underline the possible conflicting situation, which might arise from the duty of to provide oversight of the OAM's compliance versus the fact that they themselves may be acting as an OAM. If this jurisdiction operates more than one OAM, then competent authorities-OAMs should establish rigorous arrangements (in terms of separation of functions and staff, Chinese walls) for managing these conflicts. If, however, the competent authority is the sole jurisdiction's OAM, then an issue of possible lack of OAM's supervision might arise. We invite CESR to think over this hypothetical situation.

We also believe that competent authorities should be involved in the appointment of the OAM. However, the level and the manner of this

involvement are matters for the national legislators to decide when implementing the Directive.

Q22: Do you consider that a competent authority can, within the limits set out above, change the standards over time in case of new technological evolution occur?

We believe that any future adaptation of the standards should be in line with the framework given by the EU legislative measures and should be agreed among all the competent authority in order to ensure an effective level playing field. Gold-plating, as referred to in the White Paper, should be avoided in order to establish a framework for fair competition among OAMs. We suggest that CESR has an active role in the future reviews of these standards to ensure full harmonization.

Q23: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

We fully agree that regulation and co-ordination of the operation of the future EU electronic network will be better effected at the level of CESR.

Q32: Do you agree with the above concepts of alignment?

Q33: Are there additional ways of alignment CESR should consider?

Q34: Do you consider that CESR needs to expend this idea to properly address the mandate?

Along with other industry participants, we consider that the requirements for filing, storage and dissemination are well aligned so that the overall system in place does not place undue burden on the issuers and the end users of regulated information.

To our view, alignment should be in principle fully attained between storage and filing.

One aspect of this alignment is the means by which information is transmitted. As we remarked in our response to Question 6, it is of vital importance to promote the automation of systems, as the use of non-electronic means (including fax) would slow down and complicate the process, could increase the possibility of errors in transmission, and would not guarantee the certainty of source. In principle we agree with CESR's approach to this subject in the current paper; however, we ask for CESR's support in ensuring that the definition of electronic means is better harmonised across the different functions involved in the Directive. The proposition of transformation of a fax to electronic means at the cost of the issuer remains. The issuer should have the choice to make the transformation by own means, through a 3rd party or through the OAM. In the last 2 cases, the issuer should be ready to take the cost.

Another aspect of the alignment between storage and filing is the adoption of a system whereby OAMs could offer to competent authorities a sort of "special access" to the stored regulated information by means of a dedicated interface. When an issuer uses an OAM for storage purposes, the presence of such a special access would enable issuers to meet the filing requirement simultaneously. To this aspect, we fully encourage CESR to expand the idea of alignment towards this direction to properly address the mandate.

More generally, we support the concept of alignment from the perspective of issuers, dissemination included. The attractiveness of EU's capital markets depends on the streamlining of the requirements on companies admitted to trading wherever possible in ways that do not undermine the transparency of the markets. Such an alignment could be best achieved through the use of a service provider (operating in a competitive environment): in such a model, which is in principle foreseen by the Directive, a single electronic transmission to the service provider would allow issuers to simultaneously

fulfill not only the disclosure obligations vis-à-vis the competent authorities but also the related dissemination and storage obligations. However, for such a model to function, it might be possible that a system for “service providers approval” is required to be established. We would encourage CESR to consider an accreditation system at Level 3.