Re.: CESR‘s advice on possible implementing measures of the Transparency Directive

Part 1:
Dissemination and storage of regulated information

As regards the consultation paper, we comment as follows:

I. Part B (Dissemination of regulated information)

In order to guarantee access to the "regulated information" required under Art. 21 (previously Art. 17), CESR considers a system, which beside the dissemination media additionally provides for the involvement of an operator as particularly suitable (see Fig. 1, p. 17 and re question 2, marginal number 8 and 9, page 16 of the Consultation Paper).

It is not comprehensible why with all "regulated information" comprised by the Directive, e.g. regarding annual financial reports (Art. 4), half-yearly financial reports (Art. 5) and interim management statements (Art. 6), two institutions (operator and medium) – which need to be financed – with different fields of responsibility should be engaged between the issuer and the investor.

From our point of view the goal of improving transparency and disseminating information or facilitating access to regulated information – while avoiding unnecessary complexity and unnecessary costs – would be mostly and best met if the information of a Member State were comfortably delivered "to the doorstep" of anybody interested via a generally known internet address.

Thus unnecessary double burdening of issuers which also have to comply with the disclosure requirements of the first Council Law Directive (DIR 68/151/EEC) with respect to certain information would be avoided.

Particularly regarding the aforementioned information, from our point of view the necessity of establishing push-services or of involving service providers to service at media level is not given considering the matter or by way of the Directive's text.

Thus it is to be pointed out or made clear that the structure set forth in Fig. 1 may be sensible for ad-hoc disclosures, however is not generally mandatory or necessarily recommendable for other information to be disclosed.

II. Part C (Central Storage Mechanism - Art. 21 Para. 2, previously Art. 17 Para. 1 a)

1. Question 9 and 10 (p. 43 et seq. of the Consultation Paper):

   From our point of view as a matter of course, investors should have the possibility to receive the "regulated information" via the central storage mechanism.

   In view of the total mechanism, we do not regard the competent authority as the institution, which is assigned or may be assigned to provide the investors with the regulated information. However it is the competent authority, which carries out control and inspection tasks which according to our opinion cannot be joined with the publication function (e.g. information identified as incorrect by the competent authority should not be published and disseminated by same authority).

   Besides, the central storage mechanism must unmistakably point out to the end user by the manner of presentation, which information was originally published by an issuer and, if applicable, which value added service is offered by the central storage mechanism.

2. Question 11 and 12 (p. 43 et seq.):

   Who and through which method the information is delivered to the central storage mechanism depends, from our point of view on the form of the publication.

As far as possible the publication function should be performed by the same (contact) point which is responsible for the storage function. In general, it should apply that the issuers are imposed as little ways of servicing as possible.

In the case it is not the point responsible for the central storage which also carries out the publication, the competent authority should be obliged to transfer the data to the central storage mechanism, or otherwise to the point to which the issuer forwards the data for the purpose of publication.

The central storage mechanism should be involved with as few suppliers as possible in order to enable easy implementation of uniform and standardised (electronic) transmission channels and data structures for the purpose of reducing cost and complexity.

3. Question 17 and 18 (p. 50 et seqq.):

As regards the funding of the officially appointed central storage mechanism, we believe that the “basic information” should be rather made available to all users free of charge.
The funding should be provided via corporations, which have to place their information in the storage mechanism as well as where appropriate via corporations, which use the placed data commercially. Value added services required by the users should also be provided against payment.

4. Question 19 and 20 (p. 52 et seqq.):

Regarding the question, which institution should be commissioned to operate the central storage pursuant to Art. 21 Para. 2 of the Directive, we believe it preferable to engage a private corporation. The reasons for not engaging the competent authority with the task of central storage are set out appropriately in the Consultation Paper.

5. Question 42 (p. 64 et seq.):

CESR's proposal (extension of Art. 21 to include the publications pursuant to the Prospectus Directive -2003/71/EC-) shall be consented to.

The central storage mechanism also serves the purpose of improving transparency. Hence all information whose publication is prescribed in the interest of the investor protection should be accessible.

6. As regards the elaborations referring to Art. 22 (previously Art. 18 – electronic network or a platform of
electronic networks across Member States), it must be noted that the central storage mechanism must initially be formed as a national mechanism; the deliberations 23 and 25 are expressly based on same assumption by clearly speaking of a national mechanism. This is also supported by the fact that a Member State may only guarantee the set requirements regarding security etc. if the Member State itself manages the mechanism.

Of course, the national storage mechanisms in Europe should be interlinked and thus standardized in order to enable access to other mechanisms and respective research in these mechanisms via a storage mechanism.