

31st March 2006

Fabrice Demarigny
CESR
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Dear Mr Demarigny

**IMA response to CESR's Consultation Paper on possible
implementing measures for the Transparency Obligations Directive
relating to the storage and filing of regulated information**

The IMA welcomes the opportunity provided by CESR to comment on the proposed implementing measures for the storage and filing of regulated information under the Transparency Obligations Directive. As the representative of the UK-based investment management industry¹, we are particularly interested in the position of investors in companies. We are therefore, interested in ensuring both that relevant, manageable information is available to the market and that the processes for making that information available are as efficient as possible.

IMA's members are both users of regulated information (in relation to investment decisions on behalf of clients) and filers of regulated information (in relation to major holdings, and in some cases as issuers). The issues dealt with in the consultation paper mainly affect IMA's members as users of regulated information. However, their position as filers, in particular as major holders (on behalf of clients) of voting rights, is also relevant.

The main concerns of IMA's Members as users are to ensure that information accessed is accurate and can be relied upon, that it is easy to retrieve and can be downloaded in different electronic formats.

As filers, our members are concerned that Officially Appointed Mechanisms ("OAMs") have adequate security to ensure that stored information is not tampered with and that OAMs verify the source of information stored and any corrections made to such information.

¹ The IMA represents the UK-based investment management industry. IMA members include independent fund managers, asset management arms of banks, life insurers and occupational pension scheme managers and are responsible for the management of over £2 trillion of funds (based in the UK, the rest of Europe and worldwide).

We support the majority of the proposals set out in the consultation paper in relation to OAMs and consider that on the whole they provide a sensible balance between the benefits and potential costs of providing an integrated EU wide storage system for regulated information. However, the enormous task of implementing the proposals, even at the individual OAM level should not be over looked. More detail is still required in many areas before the framework of the system can be finalised. CESR should also consider periodic reviews of the standards proposed at Level 2 to ensure they keep abreast of technical and industry developments.

In this response we do not attempt to answer each question raised in the consultation paper, but set out in the attached document, a summary of our position in respect of the areas covered.

We applaud CESR's aim of providing for a storage system in each Member State which is easy to use, affordable and not unnecessarily complex or technical. We also agree that the best way to achieve this, at least in the short to medium term, is to promote high level standards for OAMs. This will allow existing mechanisms to be used or adapted and should ensure that costs of conversion are kept down.

The proposed quality standards for OAMs on the whole appear sensible and should provide sufficient flexibility to accommodate technical developments. We are pleased that CESR proposes almost exclusive provision of electronic storage facilities in respect of OAMs, but feel a similar approach should be adopted towards filing with Competent Authorities.

We have a number of concerns with the content of the Consultation paper some of which are discussed in more detail in the attached note, as follows:

- The issue of costs both at national level and at the level of the OAM network needs to be considered as a matter of priority and before any final decision can be made on the approach to be adopted.
- The question of funding of OAMs and the OAM network is not considered in detail in the consultation paper. This cannot be addressed properly until the costs of the various proposals are clearer. The fact that it is proposed that the costs of funding of OAMs at the national level should be left up to each OAM is unhelpful. We feel that a coordinated approach would be preferable.
- The position of filers of regulated information is hardly addressed. In particular, where filers are required to make filings in a number of jurisdictions (this is likely to affect filers of major holdings more than issuers) they will still potentially be subject to numerous different filing and storage regimes. The focus is on providing a one-stop shop for users. Why not a one-stop shop for filers as well?
- More consideration should be given to the use of standard forms in relation to the filing of regulated information to ensure that the format is the same across Members States. This will ease the burden for filers, but will also make it easier to achieve interoperability between OAMs at the EU network level.
- It is important that search facilities are clear and easy to use. In order to achieve this search facilities should be available in each OAM in the local language and the main languages of the European Community, as well as in the language of international finance.
- The Consultation Paper does not address the issues of alignment in any detail. Filing and storage are considered as separate processes, and yet the information

to be filed and stored will be the same. Alignment of standards and requirements between Competent Authorities and OAMs both within each Member State and across Member States should be one of the main aims of the proposals.

Alignment ensures lower administrative costs for issuers and filers and will make it easier to create the one-stop-shop for users that the Commission proposes.

- The consultation paper also does not address in any detail how the proposals will facilitate public access to information to be disclosed under other European directives as anticipated by Article 22(1) of the Directive.

We hope that the issues raised above and our attached comments and views on some of the specific matters highlighted in the Consultation Paper will be helpful to CESR in formulating its proposals. Should you wish to discuss any of the points raised or other issues relating to the implementation of the Transparency Directive, please do not hesitate to contact me.

Yours sincerely

Penny Froggatt
Senior Legal Consultant

IMA's response to the questions raised in CESR's Consultation Paper on possible implementing measures of the Transparency Directive relating to storage and filing of regulated information

INTRODUCTORY CONCEPTS

1. We agree that the implementing measures should be of general application and that the specific needs of particular types of users or investors do not need to be addressed at this level.
2. We agree that 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 issuers. OAMs would be allowed to provide more services and enhanced information if they desire.
3. We consider the approach to “easy access” to be sensible. However, we do have concerns as to whether the proposed standards relating to search facilities in different languages are sufficient.
4. We agree that the approach to the OAM network is sensible and achieves a sensible balance between the benefits and costs of providing an EU wide system. We are pleased that CESR has acknowledged that more complex functionality may be introduced in the future.
5. We are concerned, however, that the proposals do not consider the requirements of the filers of regulated information, but focus almost exclusively on the position of the users. Issuers will be required to ensure that regulated information which they generate themselves or receive from notifiers of major interests is lodged with the OAMs as well as reporting information to Competent Authorities. Many filers will have to file information with Competent Authorities in a wide range of jurisdictions.
6. The issue of alignment of requirements from the perspective of the issuer and other filers of regulated information is also important, both in terms of the alignment of filing and storage standards in each jurisdiction between OAMs and Competent Authorities and in terms of the alignment of filing requirements across Member States. If the form in which information is to be filed and stored and the content requirements are standardised across Member States and within each Member State this will not only ensure that interoperability across the OAM network is easier to achieve, but also that the administrative burden on issuers and other filers is kept to a minimum.

ROLE OF THE OFFICIALLY APPOINTED MECHANISM

1. We agree that information should be provided to and stored by OAMs in electronic format.
2. We agree with the approach set out in relation to file format standards. In particular, we would encourage the use of standard templates or forms as far as possible for filing regulated information across the EU.
3. We consider the minimum security standards proposed to be adequate.
4. We consider that the proposed standards with respect to user authentication, time recording, format of information and access to information are sensible.
5. We feel that search facilities at the OAM level should be available in a wider range of languages, especially if the searching facilities for the OAM network are to be at the level of each OAM rather than centralised.
6. We have issues with the proposals on funding. Funding options cannot be considered properly until there is a clearer idea of costs. This applies at the individual OAM level and at the OAM network level. We believe that, as far as possible the funding of OAMs should be the same across Member States. If different approaches are adopted this could lead to issues at the OAM network level.

OAM NETWORKS

1. We have no detailed comments on the options proposed. IMA's main concerns are to ensure that the approach adopted provides a system which is robust, secure and ensures "easy access" to information across Member States without costing too much to implement.
2. Common standards will be necessary at the OAM level to ensure interoperability. If there is too much flexibility left to OAMs it will be difficult to create the network.
3. CESR has given no consideration to the situation where a Member State has more than one OAM, and how OAMs in such Member States should link into the OAM network.

ROLE OF THE COMPETENT AUTHORITY

1. We agree with the proposed approach to supervision of OAMs and the role of Competent Authority.
2. We agree that each Competent Authority should be able, within the limits set out at level 1 and 2, to change the standards over time set for OAMs

within its jurisdiction to take account of technological evolutions. Changes should also be allowed to accommodate changes in the industry and to market practice. In addition CESR should consider how and when the Level 2 standards should be reviewed to ensure that they also keep abreast of developments.

3. Greater coordination between Competent Authorities should be required if a fully transparent system and one stop shop is to be achieved.

FILING OF REGULATED INFORMATION WITH THE COMPETENT AUTHORITIES

1. The filing of information with Competent Authorities should be subject to same security provisions, standard formats, reception and handling standards as those set for OAMs.
2. Electronic filing (not including fax) should be the normal position. We accept that Competent Authorities may also need to offer paper-based filing, at least in the short term.
3. We agree with the proposal that information should be time stamped on receipt. However, if information is not technically correct when filed how will this affect a filers compliance with its obligations regarding timing of filings?
4. CESR should require specific forms to be used as far as possible otherwise, filers will have to file different forms in different jurisdictions.