

Attention M. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 Avenue de Friedland
Paris

May 26th 2005

Dear Sirs,

Re Transparency Obligations Directive

The Investor Relations Society would like to thank CESR for this second opportunity to comment on draft advice on the Transparency Obligations Directive. This letter expresses the views of the members of the Investor Relations Society.

CESR's draft advice and progress report has been very useful in highlighting the significant challenges that are faced in achieving equality of access to regulated information by investors throughout the European Union, and elsewhere.

Executive summary.

The Investor Relations Society's members include investor relations officers from the UK's largest companies. They support the principles driving the Transparency Obligations Directive, and broadly the CESR recommendations. Concerns include clarity of standards of operators, which help members ensure that their chosen operator meets the requirements, and competition between operators, which they see as having had a beneficial effect in the UK. Simplicity of use and cost effectiveness are of great concern to members, in both the submission of price sensitive information, and the filing of other regulated information.

About the Investor Relations Society.

The Investor Relations Society is the UK's professional body for investor relations practitioners. Formed in 1980, it has over 650 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250. Members' disciplines include finance, treasury, corporate affairs, company secretariat as well as investor relations.

The Society's primary objectives are to:

- o · Promote good relations between listed companies, their shareholders and potential investors.

- o · Provide education and training.
- o · Support high ethical and professional standards in the practice of investor relations.
- o · Increase awareness of investor relations techniques and best practice.
- o Represent the views of members to regulatory bodies, the investment community and government.
- o · Carry out research and publish information.
- o · Provide a forum for members to exchange views and share experiences.

General introduction.

The IRS are strong advocates of full and fair disclosure to the investing public – a concept that underpins the Transparency Obligations Directive and one that continues to be championed across the world.

We support the belief that a properly delivered press release / regulatory announcement delivered through proper regulatory channels and posting on the company website is the most effective way of ensuring that all investors receive news from issuers simultaneously, and that a well informed market is the best regulator.

The IRS supports the proposals made in the consultation paper, and append our detailed responses in the Appendix below.

Thank you again for the opportunity to comment. If anything in our response is unclear, please do not hesitate to get in touch with the undersigned.

Yours sincerely,
(signed on the original)

Mark Hynes
Member of The Investor Relations Society Board

Appendix 1.

Q1 Do consultees agree with the above proposal?

- A. Connections with media. The Investor Relations Society agrees that this aspect is key to a successful achievement of the underlying objectives of the Transparency Obligations Directive. Unless there is clarity as to *which type* of media are to be reached, investors will be confused as to where to find price sensitive information, and issuers in doubt about when their disclosure obligations have been met. Consequently, we believe it would be helpful for CESR to name specific types of media that must be reached.

Q2 What distribution channels do consultees consider should be mandated? Please provide reasons for the answer.

- A. Which types of media channel. The underlying principle should be to ensure that announcements can be reached simultaneously by all investors, institutional, and retail, across Europe, with or without access to the internet. We agree that it is impossible for CESR to mandate that media should always publish every announcement, however, by mandating that the media should receive these announcements, every chance is given to its wide distribution.

We believe that there are 3 key channels to achieve the above which taken in association with the concept of information being 'free' to media channels would achieve the maximum transparency to investors:

- o Financial news services, which (mostly) serve the institutional investors, and include news and trading solutions. Examples include Reuters, Bloomberg, Thomson, all of which have pan European and indeed global presence.
- o Press agencies and newspapers. Together they have great reach to retail investors, and should be a very important component of achieving transparency. I note that your Consultation Paper separates the two; in reality we believe that all major newspapers have electronic access to the national news agencies wire services, thus by mandating the use of the European wire services, CESR would in effect be reaching all European newspapers.
- o Financial websites. These are also essential for investors who regularly use the internet for investment decisions.

If CESR were to mandate the three outlets as above, The Investor Relations Society believes that a significantly greater transparency would be achieved.

Q3 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?

- A. Electronic connections. Yes, the type of connection used to submit price sensitive information to the media should be mandated, for simple practical reasons. It ensures that there is certainty, security and speed in delivering the announcement.

Q4 Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.

A. Electronic connections. The medium used for communication must allow for cost effective simultaneous electronic dissemination of news. The Internet is thought to be the only available network capable of offering such cost effective availability.

The communications protocols and systems used by operators and issuers to send releases over the Internet must overcome the following key constraints:

- o There should be measures taken to ensure the originator of the message is identified as a bona fide source.
- o The information interchange should be transactional, in order to recognise and report on the failure to deliver to any media point.
- o The communications protocols and systems employed should be secure i.e. preventing the interception of or tampering with the release in transit.
- o The communications protocols and systems used must provide a mechanism to guarantee the simultaneous delivery of the news to all users within a few seconds tolerance. The system must therefore be able to compensate for variable latency and speeds.

CESR's text refers to 'dedicated lines'. In our view, a dedicated line is not the only way to achieve the key objectives, and in any case it is unreasonable to expect issuers to have such lines. However, using an internet protocol IS reasonable.

In addition to the above *minimum, primary* means of communication, issuers should be free *secondarily* to add further dissemination by email to contacts maintained by the issuer.

Further, we note that implementation of the Market Abuse Directive will require posting of announcements in many instances, to an issuer's website, and hence should be added as a fourth means of communication.

Q5 Do consultees agree with the approach of redrafting the required field of information, as proposed above?

A. Fields of information. Yes. Recipient media need a 'key' on which to base the use of the information sent to them. Unless this is present in the data record, the news will not be picked up, and hence not reach the investors.

Q6 Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies registrar or the ISIN)? Which of these? Please provide reasons for the answer.

A. ISIN. Given that issuers already have access to their own ISIN code and can provide that to their chosen service provider this seems to be a fair approach.

Q7 Do consultees consider that CESR should establish a method, or some sort of a 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?

A. CESR code. We do not believe this is an appropriate function for CESR, especially given the existence of existing codes.

Q8 What methods do consultees suggest CESR should establish? Please provide reasons for the answer.

A. See above.

Q9 Do consultees agree with the above proposals? Please provide reasons for the answer.

A. Minimum standards for service providers. Broadly we agree with the approach, and believe that a real risk exists that national stock exchanges could continue to market their dissemination solution as the de facto standard.

To avoid this, we would encourage CESR to make detailed requirements in the following areas. "Separate" is open to different interpretations. Should competent authorities and stock exchanges be obliged to create physical barriers with their other businesses, or separately branded businesses? Should they be allowed access to issuer information (provided for market operational reasons) for marketing purposes? Further, what are the processes for redress if a competitor sees non compliance? These are questions that would maximize the "competitive market" for services foreseen in the level 1 Directive.

Q10 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? Please provide reasons for the answer.

A. Yes, subject to the above comments. .

Q11 When stock exchanges act as service providers, CESR considers that their admission to trading criteria on any of their markets can not mandate the use of their service as a service provider. Do consultees agree with this approach? Please provide reasons for the answer.

A. Yes, subject to the above comments.

Q12 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 the answer.

A. Yes, we agree with the approach proposed by CESR. If a service provider were to seek to sell the price sensitive information, it would act as an inhibitor to the media receiving and publishing that information.

Q13 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 the answer.

- A. Yes. In effect this could almost be self policing. If a service provider were to seek fees for news, the media could simply charge the service provider a fee for carrying the news, resulting in a 'stand off'.

Q14 Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirements? Please provide reasons for the answer.

- A. Approval of operators/ service providers. The Investor Relations Society believes that such a document would help issuers ensure that they were using a service that was compliant. Asking issuers to do their own 'audit' of potential service providers is unrealistic, and this would help.

Q15 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 answer.

- A. Any such future work should, in our view, depend on experience from the market. If issuers find it difficult to establish whether a service provider is compliant, more work may be needed.

Q16 Do you agree with this change? Please give reasons for your answer.

- A. We believe this proposal makes sound practical sense.

Q17 Do you agree with this change? Please explain.

- A. We believe that this does not go far enough in 'separation' of accounts. CESR proposals point towards internal controls with no disclosures to the issuer. We believe that the Competent Authority should be able to impose strict and transparent separation where the clearing, settlement and custody environment allows – for example the UK. As a further issue, if the controls are purely internal, how would a Competent Authority be able to exercise active monitoring?

Q18 Do you agree with the proposed changes to this advice? Please explain.

- A. Notification of intention to use the exemption. Any Notifications in this case should be available, at the same time, to the Issuer. Particularly in the case of the scenario in Paragraph 138 (where the exemption ceases so as to allow the Market Maker to 'intervene in the management of the issuer'). Whilst the exemption in that case would cease to be, if the Market Maker is then liable to make a notification, it still has a further four days after the notification to the Competent Authority before it has to inform the issuer.

Q19 Do you agree with this change in the content of the declaration that the parent undertaking has to make? Please explain.

A. We agree with the change. Having concluded that advice that the scope of the exemption is such that it applies to all management companies that conduct their management activities under the conditions laid down under the UCITS Directive, irrespective of whether or not they are authorized under that Directive, we believe the Competent Authority should then have powers of inspection so as to properly supervise.

Q20 Do you consider there to be any benefit by CESR retaining its original proposals and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of independence?

A. No. Given that the parent undertaking would automatically then be required to make an aggregated notification, this is not necessary.

Q21 What are your views on this new definition of indirect instruction?

A. The redrafting of the definitions on 'indirect instructions' would appear to be satisfactory but we expect that upon implementation the Competent Authority could take powers to reflect the practical application of this, particularly in its policing.

Q22 Do you agree with this approach in relation to Article 12(1)(d)? Please give reasons.

A. We agree that the proposed approach in regard to proxies is pragmatic. However, may we also revert to the subject of the dissemination of the Form. CESR is currently suggesting a two part form, with only the full contact details of the notifier in the second part and being disseminated only to the Competent Authority. We believe that this should also be disseminated to the issuer. CESR has commented that their concern is in regard to rules in respect of data protection. We would encourage CESR to require part two of the form, also to be sent to the issuer, but with no obligation on the issuer to publish. We believe issuers are in the best place to question the notification, and correct any mistakes, to do which they need all the contact information. If the information is not corrected where a mistake does occur, then the market will be misled

Q23 What do you think the resulting situation information disclosure should be when the notification is of a holding below that of the minimum threshold?

A. The resulting holding should be declared. The wording in the original directive, was that a notification should include 'the resulting position', avoiding the position whereby someone going below the notifiable holding, providing simply the bland 'no longer notifiable'. However we note the distinctions paragraph 372, the 'neutrality' in paragraph 373. However, CESR suggests in Paragraph 378 that there are very good reasons for stating the resulting holding, a position which we would strongly support.

Q24 Should the standard form for all notification requirements include some form of issuer identification number? Please give your reasons.

A. Yes. Fields of information. Recipients need a 'key' on which to base the use of the information sent to them. Unless this is present in the standard form, the automatic analysis will be much harder and consequently not reach all interested parties.

Q25 Should CESR mandate what form this security identification should be in? If so, please state what the standard should be and why.

A. For the avoidance of doubt, CESR should mandate a standard, and we would support the use of the internationally recognized ISIN standard.