FEDERATION OF EUROPEAN SECURITIES EXCHANGES

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Response to CESR's Consultation Paper on Possible Implementing Measures concerning the Transparency Directive

Storage of Regulated Information and Filing of Regulated Information

I. Introduction

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments. Established in 1974 as a small forum of Stock Exchanges in Europe, FESE today has 24 Full Members representing 36 Securities Exchanges and clearing houses from all the countries of the EU, Iceland, Norway and Switzerland as well as 6 Corresponding Members from other non-EU countries. FESE co-operates with European settlement and securities depository organizations and works closely with the European Association of Central Counterparty Clearing Houses (EACH).

2. We welcome CESR's consultation paper on the Storage and Filing of Regulated Information. We acknowledge CESR's efforts to propose market-driven solutions and to maintain a level playing field. CESR provided a considerable degree of detail in this paper concerning the scope, the basic features and the procedures that would have to be settled before the new solutions in relation to storage and filing of regulated information may apply. We appreciate the opportunity to submit comments at this stage as there remain several important points that need further clarification.

3. Our response is structured as follows: We first provide a **summary** of our views on CESR's proposals (II). In the subsequent section (III) we provide answers to the **specific questions** posed in the Consultation Paper. In section IV, we provide additional thoughts on the question of efficient alignment of the storage obligations for issuers with other obligations under the Directive. In the last section (V) we will **conclude**.

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II. Executive Summary

4. "Do we need an OAM?" In the Open Hearing, CESR asked the participants for their general view on the usefulness of the OAM regime being prepared. As we remarked in the Hearing, the outline of this regime is laid out rather clearly in Level 1. However, we believe that the question itself is useful and relevant in that it gives the consultees an opportunity to express their views on the overall effort under way. FESE believes that a regime for nationally appointed OAMs is indeed useful. At the same time, it should not be forgotten that institutions akin to an OAM do exist in many of the Member States today and that they have been functioning well in the absence of any specific regulation. Thus, while we support the overall work on the OAM regime, we wish to stress that it needs to keep as much room as possible for market-led solutions with regard to the structure of the OAMs. Cooperation cross borders between OAMs should be encouraged. One of the key purposes of having a central storage mechanism is to ensure that investors will find the information produced by all companies in a single place.

5. Storage of regulated information. FESE believes that the clear-cut functional distinction made between the dissemination and the storage of regulated information should in no case rule out the possibility of one entity performing both functions. The OAM should not "push" the information related to the issuers, and should provide only a "pull" function. However, when the same entity runs both activities, the storage mechanism should not disseminate in real time price sensitive information that it receives for storage purposes and for which it does not have a contract as disseminator; otherwise the aforesaid distinction would not be respected and the privileged position of the storage provider would undermine the level playing field which is necessary for the beneficial consequences of competition between service providers to unfold.

6. What information to store? We agree with CESR 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. We agree that an OAM should be able to provide services beyond the "naked information" (while making the distinction between the naked and the re-worked information clear to the end user).

7. Cost structure. The OAMs should be 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.

8. The language regime. As we pointed out in our remarks during the hearing, we firmly believe 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

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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.

9. Format of the Information. FESE agrees that the open e-filing architecture should support several format standards without overburdening the filers with the requirement to adopt a prescribed format. We believe that CESR should recommend "generally accepted" formats and clarify that these would mean non-proprietary format(s) as well as some proprietary ones which are in common use.

10. Fully internet-based system for storage of regulated information. 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. The processing of the information by means of a fully web-based solution allows for automated workflow and avoids unnecessary costs. It is of vital importance to minimize the role of non electronic means in order to speed up processes and avoid errors in transmission. From this perspective, we would like to stress that the definition of electronic means contained in the directive does not represent a legal constraint for excluding fax. In accordance with Article 2, paragraph 3, letter c) of the directive, the Commission shall establish an indicative list of means which are not to be considered as electronic means taking into account Annex V to directive 98/34/EC that covers information society services. Pursuant to Annex V, services provided via fax are considered as "services not provided by electronic means". This is an important systematic argument that can help the Commission in excluding fax from the definition of "electronic means" .

11. The role of the competent authority. First of all, we believe that competent authorities should be involved in the appointment of the OAM (to be determined in accordance with the decision of national legislators). Second aspect to take into account is the potential for a conflict of interest where a competent authority simultaneously acts as an OAM and as the authority responsible for supervising OAMs within its jurisdiction. In such a case, competent authorities that run an OAM should establish rigorous arrangements (in terms of separation of functions and staff, Chinese walls) for managing these conflicts.

12. Alignment of filing, storage and dissemination. 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, members of FESE consider it very

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important to ensure 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. One aspect of this alignment is the means by which information is transmitted. 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 and specifically in requiring the use of electronic means (with the exclusion of fax) for both filing and dissemination/storage of information (subject to a transition period).

13. The use of service providers. Alignment between the obligations imposed on issuers could be best achieved through the use of a service provider (operating in a competitive environment) that would allow issuers to simultaneously fulfil not only the disclosure obligations vis-à-vis the competent authorities but also the related dissemination and storage obligations. We firmly believe that issuers would be encouraged to use the one stop shop only if they can rely on the assurance of the competent authority that the service providers accredited by them are deemed to comply with prescribed standards. We would strongly encourage CESR to consider an accreditation system at Level 3 (unless such a system is introduced at Level 2). Another possible way of alignment would be for OAMs to offer to competent authorities a sort of "special access" to the stored regulated information by means of a dedicated interface. When an issuer uses am OAM for storage purposes, the presence of such a special access would enable issuers to meet the filing requirement simultaneously.

14. The European Network: "Model C" Preferred. 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. FESE has 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.

15. Funding of the network. 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. At this point in time, when basic questions regarding national OAMs are open, it is important to keep an open mind on the options available for the funding of the network.

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III. Answers to the CESR's Questions

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.

16. We agree that the "*end users of the OAM will be investors seeking information on issuers".* However, as CESR indicates, the interests of a broader range of participants, including the issuers and intermediaries, are impacted on by any rules on the OAMs and therefore need to be taken into account to determine the framework needed to ensure that access to regulated information will be fast and easy. We agree that each OAM should offer straightforward access to all regulated information to all end-users and that the storage mechanisms should grant simple access to all regulated information for potential end-users. We also agree with CESR 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 services.

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.

17. We strongly agree that what needs to be stored and accessed in the OAM is first and foremost the regulated information, as produced and disseminated by the issuer. At the same time, the OAMs should be able to expand their offer beyond the provision of "naked" regulated information. The decision as to whether or not to offer additional, added-value services should be subject to OAMs' discretion and dictated by the environment in which they operate.

18. The cost recovery of the OAM is an important element of the overall regime established by the Directive. As CESR points out in page 23, the Directive does not require the information to be accessed for free, but rather subject to the principle that access to regulated information should not be encumbered. The OAMs should determine the business model and cost recovery structure of their services under the close supervision of the competent authority. Special care should be taken that the OAM offers a level-playing field to competing information service providers

19. An OAM should offer several formats in which the regulated information may be sent in. However, it would be undesirable and impractical to request that all OAMs be prepared to accept all possible formats, as such a requirement would create a disproportionate cost burden on the OAMs. We therefore agree with CESR's wording on page 16, except that we ask for it to be clarified that an OAM only need to ensure that generally used formats are used (please see our response to Question 7).

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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.

20. As pointed out by CESR on page 10, a requirement to translate the regulated information would contradict the Level 1 text and, needless to say, amount to a very expensive obligation. As we pointed out in our remarks during the hearing, we firmly believe 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.

21. Considering that an OAM will store a large amount of information, search capabilities should be designed to fulfil the requirement of easy access to the information. CESR introduces the idea of classification and organisation of the regulated information to help in searching for information. We believe that it would be useful for CESR to clarify the degree and nature of "classification" and "organisation" that will be required. Given the separate search engines implanted in each OAM, we believe that the classification of regulated information should be limited to a minimum to allow the development of value-services to facilitate searching capabilities.

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.

22. CESR's approach takes into account the complexity of the project as well as issues related to implementation and management of such a pan-European network and rightly suggests that a more developed approach for the network is not advisable at this moment. The existence of different technical standards and formats, and 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.

23. CESR describes a network as a set of computers connected in order to share data and stresses that the level of complexity of the network, as well as the objective of sharing information or making it available, can vary. In this context,

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we are not sure what is meant with the distinction between "sharing" information versus "making it available". 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, FESE believes 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.

24. Electronic means of filing and storage of regulated information should be strongly encouraged. Only communication based on electronic means will allow for unlimited access to information to all interested parties. It is of vital importance to ensure the automation of systems since the use of non-electronic means would have detrimental effects on the entire process as it would produce delays, increase the possibility of errors and could not guarantee the certainty of source.

25. 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 on page 15 that electronic means should be used to the maximum extent possible.

26. From this perspective, we would like to stress that the definition of electronic means contained in the directive does not represent a legal constraint for excluding fax. In accordance with Article 2, paragraph 3, letter c) of the directive, the Commission shall establish an indicative list of means which are not to be considered as electronic means taking into account Annex V to directive 98/34/EC that covers information society services. Pursuant to Annex V, services provided via fax are considered as "services not provided by electronic means". This is an important systematic argument that can help the Commission in excluding fax from the definition of "electronic means"

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

27. FESE agrees that the open e-filing architecture should support several format standards without overburdening the filers with the requirement to adopt a prescribed format. We greatly welcome the commitment to flexibility, openness and cost-efficiency that is given here for the filing mechanism. However, we would like to suggest that format in the sense used here does not so much refer to the format in which the documents are saved, but rather to the format in which they are transmitted. While for the former, *pdf* is supposed to be the most commonly accepted and freely available format, the latter should be one based on a non-proprietary standard such as *xml*. Since e-mail transmission would not fulfill the high security standards set out in this paper, issuers or their service providers need to make use of a special format, which, however, must

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not be chosen by the OAM in a way that might discriminate against certain service providers.

28. CESR points out that the system should support standard file formats that are not proprietary and that obviate single vendor software applications. We believe that the wording used by CESR in Paragraph 56 should be changed to clarify whether the system should support only the formats described in the CESR's advice (only no-proprietary formats that obviate single vendor software applications) or at least such formats (allowing for other ones as well). We assume that CESR means the latter principle, which we would also support. To make this point clearer, CESR should recommend "generally accepted" formats and clarify that these would mean non-proprietary format(s) as well as some proprietary ones which are in common use.

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

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

29. FESE agrees 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. We agree that each OAM should have in place sound security mechanisms that will ensure the security of the means of communication used to link the filers to the system, minimize the risks of data corruption and unauthorized access and provide certainty as to the source of the information being filed. However, flexibility for the OAMs to adapt their security systems to their environment and end users' needs must be ensured.

30. We agree that the mechanism should ensure that the information which is already stored is available to end-users, without disruption, 24 hours per day, 7 days per week. We also agree 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.

31. CESR notes that an OAM should ensure that regulated information is complete and not editable while stored. The expression which CESR uses to capture this concept ("to ensure the completeness of the regulated information it holds", Paragraph 58 needs to be clarified so that it is not understood as an obligation 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 validation of the information received. 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?

32. CESR expects each OAM to be required to meet the minimum security standards outlined in the CESR's advice. FESE considers that this obligation is sufficient

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and supports CESR's conclusion that there is no need for special or additional security standards to be in place if an electronic network of national OAMs at EU level is created.

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

33. FESE agrees with CESR's assessment related to the minimum quality standards of certainty regarding the information source to be complied with by the OAM. We agree with the proposed elaboration on certainty as to the source of information and authentication of origin, user authentication and the need to ensure integrity of content of regulated information.

34. An OAM should indeed verify that any regulated information it receives originates from an issuer or a service provider (on issuer's behalf). The mechanism should be able to electronically acknowledge receipt of documents and either confirm validation of filing or reject submittal with explanation for rejection.

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?

35. In principle, FESE agrees with the minimum quality standards of time recording to be complied with by the OAM. We also agree that, as a general principle, the information should be time stamped as it enters the OAM, irrespective of the timing of supervisory control chosen in that jurisdiction. It is important to ensure that the timing of content checking by the Competent Authority has no effect on the time recording procedure of the OAM.

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

36. FESE agrees 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?

37. 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. This would be less costly for the OAMs to implement than to have the searching fields available in all languages of the European Union.

38. The language in which the regulated information has to be disclosed is established under the provisions of Article 20 of the Transparency Directive and it is the same language(s) in which it will be accessible in the central storage mechanism. All users irrespective of where they are located should be able to access regulated information. Article 22 of the Directive envisages OAMs being used on a pan-European basis; consequently, OAMs will be used by users with different native languages. However, national OAMs are to be interconnected in a network and therefore the network would offer searching facilities in different

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languages. As we point out above in this paper, any other proposal requiring translation of information by the OAMs would not only be disproportionate but also contradictory with the Level 1 principles.

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

39. FESE agrees with 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. 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.

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.

40. OAMs should be required to record sufficient reference information. FESE agrees with the proposed list of reference items.

41. OAMs should also be able to organise and categorise regulated information. This is necessary in order to allow end users to identify the required information and to allow information to be searchable through the entire network on national OAMs. Please see our remarks in response to Question 3 above for additional remarks on classification.

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

42. FESE supports CESR's intention to follow Recital 25 of the Transparency Directive which stipulates that information disseminated should be available in the Home Member State in a centralised way allowing a European network to be built up and accessible at affordable prices for retail investors.

43. 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. At this point in time, when basic questions regarding national OAMs are open, it is important to keep an open mind on the options available for the funding of the network. At the same time, it would be important to be aware of the potential distortion of competition that might be generated by a mixture of public funding and private funding of OAMs operating in the same network (for example when it comes to dual listed companies, the company will choose the country's OAM that is publicly funded instead of the other country's OAM which isn't.

44. In this context, we are not certain what is meant by the term "users of the systems". We understand that the scope of this expression covers also "issuers" (a principle we would agree with) but would like to get confirmation that this is meant.

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

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45. FESE appreciates that CESR has conducted a thorough analysis of possible network models. FESE, like CESR, has taken all proposed models under careful scrutiny. We have found that model A ("Central Access Point" network model) as well as model B ("De-centralised" network model) are not feasible at this stage and could only be considered as a long-term goal. Both models present fundamental and difficult questions of funding and governance. Moreover, both are too expensive and comprehensive to be set up within the technological and time constraints involved.

46. FESE has a clear preference for model C ("Central List of Issuers" model). This is the only possible scenario to fulfil the requirements of the Transparency Directive at the present moment. 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.

47. Thus we would like CESR to elaborate further on all the details related to the governance of Model C. As for the costs, it would seem to make most sense to require all OAMs split the costs necessary to create a pan-European network under model C, especially because the OAMs will differ among themselves in terms of the public/private ownership and source of funding for their national activities. As the network is intricately linked to their national activities, the OAMs should be closely involved in the setting up and governance of such a model.

48. 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.

49. In relation to common reference data, we would like to ask CESR to explain the meaning of "a unique issuer identification code" Paragraph 214. At present there may be no code which would allow identifying a single issuer in a unique way, as even the ISIN code does not fulfil this criterion and allows for duplications. There may indeed be a need to work out a suitable standard shortly. Considered that such an identification code might not be necessary, given that the names of the issuers are sufficient, it would be important, if it was decided that such code is needed, to make use of some of the already existing systems already in use.

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

50. We agree with CESR's approach. Pursuant to the Directive, competent authorities have to provide oversight of the OAM's compliance with all the prescribed quality standards. However, because of this supervisory role, there might be a conflict of interests where a competent authority simultaneously acts

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as an OAM and as the authority responsible for supervising OAMs within its jurisdiction. In such a case, competent authorities that run an OAM should establish rigorous arrangements (in terms of separation of functions and staff, Chinese walls) for managing these conflicts.

51. 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.

Q21: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

52. We agree with the need for stability in the supervision of an OAM operating in multiple jurisdictions. However, we have some concerns about the requirement that the joint OAM should have its registered office in the territory of one of the Member States in which it is operating. This is apparently proposed to facilitate continuing supervision, which may require, for example, on-site inspections. In practice, we expect joint OAMs to be relevant especially for the emerging EU Members which have no existing structures for data storage. However, the requirement that the OAM have its head office in one of the States in which is operating is an undue encroachment in the structure of a multi-jurisdictional OAM. In fact, such a rule is not necessary to ensure effective supervision.

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?

53. 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 have an active role in the future reviews of these standards to ensure full harmonisation. The generalised technical updating of national OAMs is of vital importance for the development of the EU network.

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

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

Q25: Do you agree with the above conclusion? Please provide reasons for your answers

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

IV. Alignment of the filing with the storage

55. As a member of the FESE delegation remarked in the Open Hearing, members of FESE consider it very important to ensure that the requirements for filing, storage and dissemination are well aligned so that the overall system in place

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does not place undue burden on the issuers and the end users of regulated information.

56. 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 would slow down and complicate the process (among others because of the time and staff needed for revise and edit the document), 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.

57. Specifically, we find that the alignment of the filing procedure with the procedure for sending the information to the OAM is achievable only via requiring the use of electronic means (with the exclusion of fax) for both obligations. If the use of fax or electronic fax (sending a fax message through a personal computer) were to be included in the definition of "electronic means" for the filing, but not for the storage (where an interned based system is required), this different treatment could become an obstacle to the alignment among the two processes and could cause confusion in definitions used by the different parties; for example, for the dissemination of regulated information, the Commission is still allowing the use of fax. We would argue that a message is sent by electronic means only if it can be electronically processed further without manual intervention. Consequently, the use of fax would fall out of the definition of "electronic means". However, we would be in favour of an adequate transition period, such as a year.

58. More generally, we strongly support the concept of alignment from the perspective of issuers. 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 fulfil not only the disclosure obligations vis-à-vis the competent authorities but also the related dissemination and storage obligations.

59. However, for such a model to function, we need to address the unresolved question concerning the approval of service providers for eligibility for use by the issuers. In the absence of any limitations on the liability of issuers using an intermediary service provider, it is difficult to see how any issuer would be able to use the services of another entity. On the other hand, it is clear that it is in the interest of the investors and the pubic at large for the issuers to use the

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most efficient systems for fulfilling their obligations under the Directive. We firmly believe that issuers would be encouraged to use the one stop shop only if they can rely on the assurance of the competent authority that the service providers accredited by them are deemed to comply with prescribed standards. We would strongly encourage CESR to consider an accreditation system at Level 3 (unless such a system is introduced at Level 2).

60. In addition, we could envisage 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 am OAM for storage purposes, the presence of such a special access would enable issuers to meet the filing requirement simultaneously.

V. Conclusion

61. As the preceding remarks show, FESE is supportive of CESR's broad proposal for a storage mechanism for regulated information. To highlight some of the main recommendations we have made in this paper:

- The clear-cut functional **distinction made between dissemination and storage of regulated information** should not rule out the possibility of one entity performing both functions; however, when the same entity runs both activities, the storage mechanism should not disseminate in real time price sensitive information that it receives for storage purposes and for which it does not have a contract as disseminator.
- As long as OAMs comply with the fundamental principles laid out in the Directive concerning the accessibility of regulated information, they should be **free to determine their own business models, cost structures and to develop value-added services**.
- In compliance with the language regime of the Directive, **OAMs should be able to offer translation of the regulated information as a value-added service and on an optional basis**, and be required to offer their search services only in the language of their jurisdiction and an internationally accepted language.
- The storage mechanism should utilize a **fully web-based solution** and **non electronic means (after a year-long transition period).** The formats accepted should allow issuers to submit in a number of commonly used formats without requiring proprietary formats.
- The **competent authorities** should be **directly involved** in establishing the OAMs. Moreover, given the potential conflict of interests between their role in the oversight of OAMs and their possible operation of OAMs, they should be subject to **appropriate arrangements to manage these conflicts of interest.**

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- CESR should work towards **a network of OAMs along the lines of its proposed Model C**, which should be established after appropriate cost-benefit analysis and with the involvement (and shared funding by) of all national storages.

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