

CESR Call for Evidence on the possible CESR Level three work on the Transparency Directive

NYSE Euronext contribution

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NYSE Euronext is grateful for the opportunity to express views on possible Level 3 work to be started by CESR.

Q1. Do you consider that CESR should start working in its Level 3 capacity in order to promote a consistent application of the TD and its Level 2 measures?

NYSE Euronext agrees that it is necessary to ensure consistent application of the Transparency Directive across Member States. This is a key element of EU financial markets' competitiveness. We are of the opinion that too many different implementations within Member States should be avoided and that CESR should undertake any necessary work in that way.

However, it must be emphasized that, in some Member States, implementation of the Directive is still underway and that, in any case, we are at very early stage to really assess any functioning of the Directive. Moreover, Level 2 measures will only have to be transposed by March08. We are therefore of the opinion that it is premature for CESR to enter any guidance work at this stage.

Q2. If yes, which areas do you think CESR's work should cover? Could you prioritise them?

1. Third countries' regimes

NYSE Euronext supports the setting up of equivalence regime to facilitate the creation of global financial markets. We also consider that this process will be addressed in the long term.

However, if we are to maintain competitiveness and attractiveness of EU markets together with ensuring a high level of transparency and investor protection, moves are to be made. Moreover, we are of the opinion that any step made to set up equivalence should be considered on a European basis, without overlapping each individual Member State autonomy.

2. Application of the notification of holdings regime to stock lending & to derivative products:

It has become clear that companies recently expressed wishes to be able to identify their shareholders and NYSE Euronext support the enhancement of the Transparency regime related to such practice.

However, we would like to stress the importance of the purpose of stock lending, for instance for market making activities purpose; securities lending is often used for the purpose of settling short positions¹, which themselves are mostly due to hedging or arbitrage positions, reducing therefore the risk of failed trades. NYSE Euronext is therefore of the opinion that an in-depth impact assessment should be conducted before taking any action in that area and that at least exemptions for particular lending activities should be provided.

Anyway, we are of the opinion that the debate concerning stock lending is still ongoing at an EU level and we consider it to be premature for CESR to undertake level 3 work in this field.

3. *storage mechanism:*

The transitional period and the lack of indications in the Level 1 & 2 has led various Member States to implement transitory storage mechanisms in extremely different ways.

For this reason, we believe that there is a regulatory failure at the EU level with regard to storage on a transitional basis. Guidelines on how to put in **place transitional measures in relation to storage** would be most welcome. CESR could indicate which solutions are to be excluded and which on the contrary should be favored by Member States. This task of course would require CESR to undertake a coordination effort and a sketching exercise together with the European Commission, in order to avoid inconsistencies with the final measures that will be taken in the long run.

Q3. Do you think CESR's work to harmonise should be published in the form of a Q&A section of its website (in a similar way as CESR is currently doing in the prospectus area)?

NYSE Euronext supports CESR proposal to publish a Q&A section on the Transparency Directive. These are very suitable to make legal text more comprehensive. It also favors a similar interpretation of the text.

Q4. Do you think CESR should facilitate the establishment of an EU network of national storage mechanisms?

Article 22 of the Transparency Directive states that “competent authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information...” with the aim of these guidelines being “the creation of a single electronic network...”.

NYSE Euronext consider that CESR should initiate and conduct any work in this field, taking into account the way Member States have decided to implement storage mechanism as well as the “temporary” character of the mechanisms currently in place.

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¹ A practice that has recently been considered as legitimate investment activity , playing an important role in supporting efficient markets through providing liquidity by the FSA,