



Society of Investment Professionals in Germany

Mr Fabrice Demarigny
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via Email/Internet

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27 May 2005

**CESR's revised draft Technical Advice on Possible Implementing
Measures of the Transparency Directive Ref CESR 05-267
Response by DVFA e.V., the Society of Investment Professionals in Germany**

Dear Mr Demarigny,
the Society of Investment Professionals in Germany, DVFA, is the leading German professional organisation for financial analysts. It has a corporate governance structure comparable to that of similar professions, which are traditionally regulated by government, for example accountants, solicitors and tax experts.

In the following DVFA will comment on those issues and provide answers to those questions which may directly or indirectly affect the community of financial analysts and asset managers as users of regulated information in their services. For those questions and issues where no answer or comment is provided, CESR may assume that DVFA agrees with the position taken by CESR in the Draft technical advice, or that DVFA is not taking any position because financial analysts or asset managers do not seem to be affected.

Chapter I Dissemination standards:

Distribution Channels

Question 2: What distribution channels do consultees consider should be mandated?

In Nr. 43 of the draft technical advice CESR takes the position that regulated information must be pushed towards investors. Mere insertion of the information on issuer's website is not considered an adequate method of dissemination, although the issuer's website can be used as an additional source of information.

DVFA agrees with the CESR that the issuer's website cannot be the only and exclusive means of dissemination of regulated information. But DVFA is also of the opinion that the issuer's website should not only be an additional optional means of dissemination of regulated information, but rather an additional compulsory channel of dissemination. In particular, analysts and asset managers, and most likely many investors, could and would use issuer's website as an easy and central means of obtaining information on the issuer. If CESR does not favour the mandating of the website as an additional channel, it should at least advise the Commission that a website be mandated on which the channels are listed which the issuer or its service provider employ for distribution.

Necessary output information fields.

Question 6: Do consultees consider that a specific method of issuer identification should in addition, be mandated (such as the identification number in the companies register or the ISIN)?

(Specific method of issuer identification)

DVFA favours mandatory identification of issuer and issue through the ISIN. The ISIN is a generally accepted means of identification in the capital markets, whereas the issuer registration number with the national registrar of companies is not as easily ascertainable and has different formats in different jurisdictions. On a global or European level, the company registration number is inferior to the ISIN.

The ISIN, however, identifies an issue and not the issuer. An issuer might have several issues outstanding which have different ISINs. In many cases, an announcement will concern the issuer and all its issues, not only one particular issue. This requires the selection of one ISIN identifying the issuer. It is suggested this to be the ISIN of the first issue listed by the issuer on a regulated market in its home member state. Or it should be the first part of ISIN, namely 7 characters that are common for all the issues of one issuer: 2 characters for its home member state and 5 for the symbol of the issuer.

Question 7: Do consultees consider that CESR should establish a method, or some sort of 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?

(Numbering code for announcements)

DVFA is of the opinion that there should be such a unique numbering of announcements. Nevertheless, the costs associated with such a numbering must not outrage the benefit.

Question 8: What methods do consultees suggest CESR should establish?

(Methods)

A sequential number (e.g. including the date of the announcement) could be attached the ISIN. (Example: ISIN<A1, A2 2005.....An>). These two items could identify each issuer and each announcement in an efficient and cost saving way.

Another similar proposal would be (including the proposal to the Question 6):

A sequential number could be attached to the 7 first characters of the ISIN. To make easier the process of quick retrieval, the code should be constructed hierarchically, it means "ISIN-year-sequential number in the year" (with the constant number of digits – 4 digits should be enough). Example: CCXXXXX-2005-0001

>> Connection with media (questions 1 to 4, referred to paragraphs 47 and 49 of the revised draft)

Paragraph 47 of the draft Technical advice states that to ensure that the issuer is fulfilling its obligations under Article 21 of the Directive, CESR would normally expect that these connections include different channels of distribution such as press agencies, newspapers with wide coverage and websites dedicated to financial matters.

While in our opinion, the exigency of so many different channels could be excessive, we agree with DVFA that the issuer's website should be a compulsory channel of dissemination as an easy and central means of obtaining information on the issuer.

Moreover, CESR makes issuer responsible for ensuring that whatever method of dissemination they chose, it ensures sufficient and reasonable connections with the media and adequate means of reaching the media (electronic contacts, such as dedicated lines, but also other technical means of communication). Although it seems appropriate, for efficiency reasons, that connections with the media are made through electronic means, we consider likewise excessive, because onerous, to make it compulsory the settlement of dedicated lines.

In our opinion this measure would not benefit to the whole industry but only to certain sectors.

Operational Hours (paragraphs 64 and 70)

CESR considers that in order to facilitate issuers operating in more than one international market, service providers must be able to receive and release regulated information 24 hours a day, seven days a week, and provide support to issuers during receipt hours and media during release hours.

One might ask whether this is, in fact, feasible and actually necessary.

Necessary output information fields. (Question 6, 7 and 8 referred to paragraphs 53 to 58 of the draft Technical advice).

We agree with your comments on these questions. That is:

- (i) we consider it could be an appropriate method of issuer identification the selection of the ISIN of the first issue listed by the issuer on a regulated market in its home member state,
- (ii) we favour a unique numbering of announcements valid on a European basis and
- (iii) we think that a sequential number which would be attached to the ISIN is a feasible method in order to identify announcements.

Separation of functions when service providers provide other services or perform other functions (questions 9 to 11 referred to paragraphs 71 and 72 of the draft Technical Advice)

CESR considers that whenever service providers provide other services or perform other functions, such as media, competent authorities, stock exchanges or of the entity in charge of the central storage mechanism, service providers should keep these other services or functions clearly separate from the ones relating to the dissemination of regulated information and that no competitive advantage should be allowed in disadvantage of competing entities (for example, when a service provider is also a media).

We think that in order to reconcile the terminology of the MiFID with that of the draft Technical Advice, it would be preferable referred to regulated markets rather than to stocks exchanges or even included MTF's in the list of service providers which could provide other services or perform other functions.

Charges (Q12-13 questions, related to the paragraph 73)

CESR proposes that the cost structure of the dissemination process should not be detrimental to the overall objective of proper dissemination and that, therefore, media should not be required to pay the service provider to gain access to regulated information.

We consider this as a very sensitive matter and think it will not be easy to reach an agreement between all the parties involved. <<

CHAPTER II

SECTION 4. Interpretation of Art. 9 and 10 of the directive

A singular minority view in CESR takes the position that Art. 9 and Art 10 aim at two different fact situations, Art. 9 at the acquisition and disposal of shares, and Art. 10 at the acquisition and disposal of voting rights.

DVFA supports this minority view. We agree with the minority's explanation of the consequences of the majority view potentially misleading the markets. Notification of changes in voting rights reported under Art. 9 might send the wrong signals to the markets.

SECTION 6

THE CONDITIONS OF INDEPENDENCE TO BE COMPILED WITH BY MANAGEMENT COMPANIES, OR BY INVESTMENT FIRMS, AND THEIR PARENT UNDERTAKINGS TO BENEFIT FROM THE EXEMPTIONS IN ARTICLES 12(4) AND 12(5):

(Independence of management firms).

Question 19: Do you agree with this change in the content of the declaration that the parent undertaking has to make?

National supervision requirement for management companies not falling under the UCITS regime?

DVFA does not see any need for management companies not requiring supervision under the UCITS directive to be forced under a national supervision regime when and if their parent companies wish to make use of the exemption. It would suffice that the parent company make the required declaration. The same argument which favours a supervision of such companies on a national level could be advanced for national supervision or regulation of all market participants who are under an obligation to notify competent authorities or the markets under the transparency directive. This idea has not yet been advanced. Therefore, it should suffice to apply the general sanctions which are provided for breaches of the obligations established by the transparency directive and the implementing secondary legislation. Furthermore, one should refer to CESR's comments under Nr. 302 in which it is said that investment firms and management companies are already subject to extensive regulation and supervision safeguarding their independence. The argument for national supervision does not take into account and solve the information problem for third country management companies and their parent undertakings.

**Question 20: 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 comes to meet the test of independence?
(Declaration of non-exemption?)**

DVFA supports the new approach of CESR. Since the declaration to make use of the exemption can be made in a blanket manner not requiring actual use of the exemption, a declaration to cease making use of the exemption would not give any meaningful information to the competent authority. Regardless of any original declaration, the parent company is required to notify the issuer of aggregate holdings when and if the requirements for the exemption are not fulfilled. Any additional declaration is superfluous.

**Question 23: What are your views on this new definition of indirect instruction?
(Resulting situation information.)**

DVFA supports the view that only the fact that there is no longer a notifiable interest should be notified. The argument that it is important for the market to know the size of the remaining interest must be rejected. If this argument were accepted, the notification threshold ought to be lowered to 1% or whatever the consultates advancing the argument consider relevant. Since the legislator considers the threshold of 5% as the relevant one, no other lower threshold for related purposes should be introduced through the backdoor of secondary legislation.

Question 24: Should the standard form for all notification requirements include some form of issuer identification number? Please give your reasons.

Question 25: Should CESR mandate what form this security identification should be in? If so, please state what the standard should be and why.

DVFA supports the view that all the notifications should follow the same standard method of identifying the issuer. Therefore the answer to both these questions is exactly the same as the answer to the Question 6.

>> Section 7

Standard Form to be used by an investor throughout the community when notifying the required information (questions 22 to 23 referred to paragraphs 369 to 374)

We consider very relevant and positive the amendment made by CESR to the draft Technical Advice, so that only the identity of those that have a notifiable interest under one of the Article 9 of the Directive thresholds (so an interest of 5% or more of voting) have to be identified.

Likewise, we appreciate extension of this provision to those cases covered by article 10 f) so that the deposit taker will have to include in its notification only those shareholders who have an interest of 5% or more of voting rights. <<

>> Chapter V

Coordination of filings between the competent authorities elected by the issuer under Article 2 (1) (i) (ii) and several competent authorities elected under the Prospectus Directive (paragraphs 655 to 660).

According to paragraph 660 of the draft Technical Advice, as the issuer is the one who is the originator of the information, it should forward the information to the Prospectus Directive competent authorities, and also make it available to the central storage mechanism.

It seems reasonable that in case the central storage mechanism were commercially exploited, it would also be possible that the information forwarded to it by issuers would not be free. <<

Yours sincerely,

A handwritten signature in black ink, appearing to read 'F. Rau' with a stylized flourish at the end.

Fritz H Rau
Spokesman for the DVFA's Board of Directors
Chairman of EFFAS European Federation of Financial Analysts Societies