

**CESR'S REVISED DRAFT TECHNICAL ADVICE ON POSSIBLE
IMPLEMENTING MEASURES OF THE TRANSPARENCY DIRECTIVE**

Borsa Italiana Group welcomes the opportunity to submit views on CESR's consultation paper on the revised draft technical advice on possible implementing measures of the Transparency Directive.

Our comments are expressed below.

Chapter I Dissemination of regulated information by issuers

Notion of regulated information

We do not share the change in CESR's approach in relation to the type of information to be disseminated.

With regards to the information covered by Articles 17 and 18 of the Transparency Directive, we believe that it would be in contrast with the Directive to exclude it from the definition of regulated information contained in Article 2 (1) (k). It should be rather the proposal of directive concerning shareholders's rights which is currently under discussion and drafting to take into account the already existing legal framework. The need for minimum standards to ensure that all shareholders, irrespective of where they live, get information relating to general meeting in time is perfectly satisfied by the dissemination mechanism provided for by the Transparency Directive. It should be meaningless and expensive to introduce other dissemination methods. Otherwise, waiting for the new directive, such information would not be disseminated, thus creating a hole in the disclosure set available to the public.

Since the forthcoming proposal on shareholders' rights gives the entitlement to control the voting right to the last natural or legal person holding a securities account in the "chain" of intermediaries, the account's holder will be supported by its intermediary in finding the information necessary for the exercise of the rights attached to the shares.

With regards to director dealings, we share that this information should be disseminated in those States where issuers are required to disclose such an information under their national law. Pursuant to Article 6 of the Directive 2004/72, Member States have the right to provide for other notification obligations than those covered by the MAD. Many EU States (such as Italy and UK) exercised this right.

However, also in those Member States where issuers are not appointed as channel for disclosing directors' dealings, at least the storage mechanism established by the Transparency Directive should make available to the public such information. Otherwise there would be disparity of information through EU. The Italian public, for example, would receive more information about securities than other EU citizens.

The publication of directors dealings is a highly valuable source of information for market participants (in accordance with Preamble 26 of the Directive 2003/6 and 7 of the Directive 2004/72). All the information related to director dealings in each Member States without exemption should be made available to the public through EU.

For the above reasons, the Market Abuse Directive could be amended requiring the intervention of the issuer in the disclosure of internal dealings. This amendment has also the advantage to avoid the publication of dealings by not relevant persons. Only the issuer can appropriately recognise those persons who are required by the MAD to make such notification.

Dissemination by issuers

In the present consultation, CESR is not proposing to mandate issuers to employ a specific system for disseminating regulated information.

We share CESR's intention to allow the dissemination by the issuers in order to accelerate the implementation of the directive taking into account the need for flexibility, especially with reference to the "new" EU Member States

However, we believe that the dissemination by the issuers should be allowed only on a transitory basis establishing a deadline for the mandatory adoption of the service providers' model.

In the transitory regime, the standards set out for issuers who undertake the dissemination themselves should be exactly the same than those provided for service providers (also taking into account the regime of the approval). A less rigorous regime for issuers should be avoided.

From a systemic view point the model of dissemination by issuers is anti-economic because of the high degree of investments required to each issuer.

Moreover, there would be fragmentation of information which would be distributed in very different manners and formats through EU.

We strongly prefer the model of competing service providers and its benefits (such as continuous technical innovation, cutting costs, etc) as presented by CESR.

This model is the sole capable of efficiently meeting the Directive's goals and requirements.

Question 1: Do consultees agree with the above proposal?

In CESR's proposal, there's no reference to the role and the involvement of authorities and stock exchanges in the dissemination flow.

The storage mechanism is not able to ensure that all the regulated information in full text is made accessible to authorities and stock exchanges as close to simultaneously as possible. Besides, in case of multiple national storage mechanisms, authorities and stock

exchanges should look for the information they need through several sources, so weakening the enforcement.

Otherwise authorities and stock exchanges should be obliged to ask in their rules to issuers to re-send such information to them, so causing overburdening.

In particular, such activities involving the dissemination and storage of issuer information support stock exchanges in their legal responsibilities (again emphasised in the Market Abuse Directive and in article 40 of the MIFID). In case of admission to trading upon the issuer's request, only a direct stream of information from the issuer to the Stock Exchange could allow an effective market surveillance as required by the legal set.

CESR should mandate to service providers to guarantee a direct connection to authorities and Stock Exchanges. In order to avoid overburdening for issuers, the disclosure requirements towards authorities and Stock Exchanges could be considered to have been fulfilled where the information is disseminated by service providers to which authorities and Stock Exchanges have direct access.

Question 2 What distribution channels do consultees consider should be mandated? Please provide reasons for the answer

In order to ensure an adequate level of coverage, CESR should propose as mandatory connections with at least 3 media (such as press agencies) whose main professional activities consist in the immediate broadcasting of financial information. One out of these should have an international coverage. However, it is necessary that the service provider chooses media responsible for the dissemination within those media who have the suitability for the timely and complete release, a very large audience also in other Member States, a high level of security (for example: in order to give to the issuer a feedback of the effective dissemination, in order to avoid data corruption, loss or misuse of the information disseminated and so on).

Where it is economically sensible, newspapers, news providers and financial websites will take on such information and disclose and comment further on.

In order to reduce black holes, the service provider should be requested to make as soon as possible accessible on its web site the information disseminated.

We want to stress that where the regulated information is of a price sensitive nature, all the dissemination process should be managed in accordance with the prohibitions and requirements laid down pursuant to the Market Abuse Directive 2003/6/EC. Therefore, service provider and connected media should not misuse the information before the dissemination.

Question 3 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?

Yes. Only electronic systems can ensure a fast and wide distribution of the information. It should be clarified that the transmission of the information by fax or email is not satisfactory. Both methods are not highly secure. In addition, the shipment by fax would entail considerable manual intervention thus not fulfilling the requirement of "fast access". Only an internet based application with several levels of security should be

mandated. Other technical means (such as fax) should be allowed only in case of breakdowns of the electronic system

Question 4 Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.

CESR should mandate electronic connections with media in order to ensure a secure processing.

From the perspective of issuer's liabilities, the issuer must have in every moment the evidence of the status of the information submitted to the system (shipment, waiting status, hold, transmitting, disseminated, error of transmission).

Issuers should be certain of dissemination in order to avoid mishandling the inside information.

For the above reason, it is necessary to send a confirmation, via the mechanism, to the issuer of the effective receipt of the information by at least two media.

Only after this feedback, the issuer may consider the information public.

Pursuant to paragraph 46 of CESR's technical advice, "dissemination will occur, in practice, when regulated information reaches entities that are able to distribute the information further".

Question 5 Do consultees agree with the approach of redrafting the required field of information, as proposed above?

Yes.

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)? Which of these? Please provide reasons for the answer.

CESR should mandate a unique method of issuer identification in order to increase harmonisation through EU and guarantee fast access for all EU investors.

We reject the adoption of the ISIN because such code is assigned to each financial instruments issued by a company. A company might have multiple different ISIN as much as it has multiple financial instruments (ordinary shares have an ISIN, savings shares have a different ISIN, bonds have an other ISIN and so on).

It should be created a new EU code (which could be called "European Companies Identification Number") starting from the technical experience of the already existing ISIN.

The identification number in the companies register associated with a country code established by CESR could be also a feasible option on condition that issuers publish it in their websites.

Question 7 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?

Question 8 What methods do consultees suggest CESR should establish? Please provide reasons for the answer

Each announcement should be identified by a single and unique code. This code should be a standardised series of numbers: the date of the announcement, a progressive number for each date (specifying the number of the announcement for that day), the name of the issuer, the identification number mandated by CESR (see Question 6) and a number identifying the type of regulated information. This last one should be conventionally established by CESR.

This complex identification can also assist the authorities in checking the stored information

Question 9: Do consultees agree with the above proposal? Please provide reasons

Separation of functions

As stressed by CESR in its open hearing on Transparency, the separation of functions should be set only if necessary in order to avoid competitive advantages in disadvantage of competitive entities.

When a Stock Exchange act as a service provider, it should establish a separation of functions so that its business services/functions will not receive regulated information from the institutional functions in advance of competing media.

However, each service provider, depending on its nature (media, IT company, stock exchange and so on) and characteristics, could have different and not predictable conflicts of interest. The competent authority, when assessing on whether the service provider is compliant with the provided standards, should also consider if the service provider is using appropriate arrangements to manage its conflicts of interests (on the necessity of the approval of service providers see answers to questions 14-15)

Question 12 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.

Question 13 Do consultees consider that it is possible , on a commercial basis, to mandate that media receive regulated information for free service providers? Please provide reasons for the answer

If media connected with the service provider receive regulated information for free, the entire cost of the process will be upon issuers. Issuers do not obtain direct revenues from this model but improve their visibility in the market and satisfy a legal obligation. Media could develop a business, instead.

So media should be charged on a reasonable commercial basis for the receipt of regulated information, at least to the extent of costs of the connection provided.

Question 14 *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*

Question 15 *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 reason for your answer*

We do not share this re-drafting. Each Member State Competent Authority should approve service providers on condition that they comply with the minimum standards. This formal approval is necessary because of the importance and delicacy of the interests involved (such as confidentiality of inside information, liability of issuer, etc). The approval of the Competent Authority could be based on the document described in this consultation paper, so simplifying the approval's procedure.

If CESR gives to each Competent Authority the choice to require such an approval, service providers of a Member State would be subject to a more stringent regime than those located in a Member State where this approval is not mandatory. This provision could undermine the looked-for free-competition.

With reference to paragraph 70, we believe that a help desk should be active for users' questions and assistance 24 hours a day and 7 days a week since the mechanism should be able to receive regulated information 24 hours a day, seven days a week and to release information in real time.

It would be desirable that the system automatically disseminates the information, without requiring any manual intervention. Only the help desk will require the presence of staff out of trading hours.

Chapter II, Section 2 Control mechanisms to be used by competent authorities with regard to market maker

Question 18 *do you agree with the proposed changes to this advice? Please explain.*

With regard to the market makers' notification to the competent authority, we believe that CESR should clarify in its draft that pro forma notifications to the authorities of a long list of issuers (a part from an existing contract or effective activity) would not be in conformity with the provisions of the notification regime.

Otherwise intermediaries could find easy to make a sort of "omnibus" notification thus obtaining the exemption also for future (even if not already started/defined) market making activities.

Moreover, we are convinced that, in order to take advantage of the exemption, a market maker should always be required to submit a market making agreement, when existing (between the intermediary and the stock exchange and/or the issuer) to the competent authority together with the notification, not only upon request.

Chapter II, Section 3 Calendar of trading days

We insist on the adoption of a uniform calendar throughout the EU.

This option is not open to calendar arbitrage especially in relation to transactions executed outside of a RM. This would represent the clear and general rule which CESR is looking for in order to calculate the time within which the disclosure of the notification requirements concerning major holdings has to be made.

As in our reply to the previous consultation, we'd like to suggest again the adoption of the Long-term calendar for TARGET (Trans-European Automated Real-time Gross settlement Express Transfer) closing days established by the European Central Bank.

Otherwise it should be clarified in CESR's draft that such calendar does not apply to regulated market. This calendar should apply only for notification purposes under Article 12 of the Directive without misunderstandings and overlapping with the calendar of trading days adopted by each regulated market.

Chapter II, Section 8 Financial instruments

We believe that CESR should take into account the existence of multiple-vote securities (defined by the directive 2004/25/EC on take-over bids as "the securities included in a distinct and separate class and carrying more than one vote each). CESR should clarify the treatment of such holdings for transparency purposes.

We hope that CESR will find our comments useful and we remain at disposal for further explanations and details. Moreover we look forward to further cooperate.

Best regards

Milan, May 27, 2005

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