

INTERNATIONAL PRIMARY MARKET ASSOCIATION

CESR's Advice on Possible Implementing Measures of the Transparency Directive. Part 1: Dissemination and storage of regulated information

The International Primary Market Association is pleased to have the opportunity to respond to this CESR consultation paper.

IPMA is the trade association which represents the interests of the international banks and securities firms which underwrite and distribute international debt and equity securities in the primary market. It has 52 members representing the leading underwriters and dealers in all of the world's major financial centres.

The main focus of our response is on the dissemination of regulated information by issuers. On the matter of central storage mechanisms, CESR has set out many of the key issues in some detail, and we think that a consideration of the best way forward could be usefully informed by some economic analysis setting out the costs and benefits of the various options. At a very high level we think the need for centralisation is investor rather than issuer driven. This suggests centralisation of retrieval, but does not necessitate the centralisation of storage. Instead, in the interests of cost reduction and competitiveness, there should be a choice of storage systems that would interface with the central retrieval system. We do not have a firm view on the apportionment of cost, but we do think that, as with other informational retrieval systems, investors could be expected to contribute to this cost. It is also clear to us that if competition is to work in the market for storing information, then those making the choice of storage mechanism (i.e. the issuers) will need to pay the cost.

Dissemination of Regulated Information by Issuers

CESR has put forward an excellent exposition of the main issues and points for consideration in this section of the paper. In particular, we think that CESR has done a very good job of delivering the principles behind the Directive, while the same time being alive to practicalities and differences in market development throughout the EU. We broadly support the conclusions CESR has reached on the main issues, as illustrated in the draft advice. However, we do have some points of detail and these are raised in response to the individual questions. These are set out below.

1. What are your views on the minimum standards for dissemination? Are there any other standards or related issues that CESR should consider?

CESR has set out a sensible set of standards, that we support. One minor comment. In paragraph 6 (b), the paper refers to 'fields' that the announcements of the regulated information must include. One of these is 'headline'. We presume that the purpose of this field is to provide a reasonably accurate indication of the nature of the regulated information that is being provided to the media. If this is not the purpose, then it is not clear what useful regulatory outcome this requirement might achieve. We hope that it is not intended that the "headline" should contain a summary of the information. If this were the purpose, we would oppose the proposal, because a summary requirement will result in potential additional liability for the issuer, should

anyone successfully argue that the summary is inaccurate or misleading. Assuming that the purpose is to convey the nature of the regulated information, we wonder whether ‘headline’ is the right name for this ‘field’?, and / or whether it might make sense to have a ‘drop down menu’ setting out all the types of regulated information that will be disseminated under this Directive, one of which would be selected to appear in this field. We think that such an approach would aid pan-European comparability, and should not have to be the type of regulatory requirement that would create problems of inflexibility.

2. What are your views on the standards for dissemination by issuer? Are there any other standards that CESR should consider?

We support the standards set out by CESR. In particular, we think that it is important that issuers are able, if they so choose, to disseminate the regulated information themselves, without using the services of an operator. This is an important point of flexibility, particularly given that issuers are responsible for ensuring disclosure of regulated information in accordance with the requirements of the Transparency Directive.

3. Should an issuer be able to satisfy all of this Directive’s requirements to disclose regulated information by sending this information only to an operator?

This question raises a number of issues. In our view, issuers should not be prevented from contracting with any agent, for the delivery of their regulatory requirements. Issuers are responsible for ensuring disclosure of regulated information, how they then choose to do that, is ultimately a matter for them. Notwithstanding this approach as a starting point, there are strong efficiency arguments to suggest that issuers should also have the option of being able to discharge this regulatory responsibility at the point at which information is sent to an ‘operator’. This could be achieved in two ways. The first would be for the issuer to contract as appropriate with the operator, with the option of then suing the operator for a breach of contract, if an issuer was subsequently found by a regulator to have breached regulatory requirements that an issuer had sub-contracted to an operator. The second would be for regulators to ‘approve’ certain operators. Issuers would then be able to send their regulated information once, to one of these operators, and, by doing so, be completely sure that all the Directive requirements were met.

We believe that all of the above outcomes are achievable under this Directive and their possibility should co-exist, providing issuers with maximum flexibility on approaches to delivering their obligations.

4. Do you agree with the structure set out in figure 1? Are there other structures that would be in line with the Transparency Directive requirements?

The structure seems broadly sensible. The only missing link, to be consistent with both our views and the CESR approach set out in the paper, are relevant direct linkages between issuers and competing media.

5. Should operators be subject to approval and ongoing monitoring by competent authorities or not?

Please see answer to question 3 above. We do not think that all operators need to be subject to approval and ongoing monitoring. However, we do think that all issuers should be able to have the option of using an ‘approved’ operator if they wish.

6. What are your views on the proposed minimum standards to be satisfied by operators? Are there any other standards that CESR should consider?

We are comfortable with the standards set out in the paper.

7. Should issuers be required to use the services of an operator for the dissemination of regulated information?

See our answer to question 2. We do not think it is necessary or desirable to require issuers to use the services of an operator.

8. What are your views concerning the role of competent authorities in disseminating regulated information as operators?

We have no comment on this question.

9. Do you consider it necessary to attempt to address the risk that regulated information may not reach every actual and potential investor in the EU?

Every ‘actual and potential investor’ includes, at the extreme, every person in the EU aged 18 and over. A realistic view of ‘actual and potential’ investors will reflect the jurisdictional reach of the issuer and a reasonable expectation of the effort that an investor can make to gain access to information. CESR has struck a very sensible balance on this issue.

10. Which of the options presented above would, in your view, minimise this risk?

We think that option ‘c’, use of the central storage mechanism, is the best approach. This may take a little time to deliver, but the fragmentation inherent in the previous options means that neither represents a long-term or efficient solution.

11. Do you consider there to be other methods of dissemination that would satisfy the minimum standards for dissemination?

We have no comment on this question.

12. Do you agree with this draft level 2 advice?

Just few amendments would be needed to this advice to reflect our answers to the questions above. These are self explanatory.

Members' Representatives

as at 28 January 2005

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