THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref.: CESR/04-511

CESR's Advice on Possible Implementing Measures of the Transparency Directive

Part 1: Dissemination and storage of regulated information

Consultation Paper

October 2004

FOREWORD

Background

On 30th March 2004, the EU Parliament approved the Commission's proposal for the Level 1 Directive on the harmonisation of transparency requirements for securities issuers (the Transparency Directive), subject to a number of amendments.

Following on the Parliament's decision, the European Council reached a political agreement on the Draft Directive on 11th May 2004 and agreed with the amendments adopted by the Parliament. Formal adoption and translation into the official languages of the Directive is expected to take place later this year.

According to the Lamfalussy Process, the Commission may adopt implementing measures, so-called "Level 2 measures", with respect to a large number of provisions of the Directive. Before the Commission presents a proposal for implementing measures to the European Securities Committee, it seeks the technical advice on these measures from the Committee of European Securities Regulators ("CESR"). To this aim, the Commission gives a formal mandate or sends a request to CESR for technical advice.

Areas covered

CESR received on 29 June 2004 the official request from the European Commission for technical advice on implementing measures of the Transparency Directive. The purpose of this consultation document from CESR is to seek comments on the draft technical advice that CESR proposes to give to the European Commission.

There were two elements in the request of the European Commission.

This first element was a mandate given to CESR for technical advice on priority measures that are needed to complete the Directive. This advice must be delivered by June 2005. This mandate covered a number of different technical issues which can be grouped as follows:

a. Different technical issues related to **notifications of major holdings of voting rights** in companies whose shares are admitted to trading on regulated markets.

b. The minimum standards for the **dissemination of regulated information** and implementing measures on the conditions under which periodic financial reports of issuers must be kept available.

c. Different technical questions related to **half-yearly financial reports** and to **equivalence of transparency requirement**s for third countries issuers. The mandate also asked for technical advice on the procedural arrangements whereby an issuer may elect its 'Home Member State'.

The second element of the Commission's request was presented through letter of the Commission to CESR, inviting CESR to present a progress report on the conditions for officially appointed mechanisms for storage of information and on possible electronic networks of information about issuers. A first progress report is expected from CESR in February 2005. Based on this progress report, the Commission will consider whether a second mandate should be sent to CESR requesting technical advice on these issues.

CESR decided to publish two separate consultation papers setting out its draft advice and thinking on these different issues.

The present consultation paper (Ref CESR 04-511) has been released for public consultation on 28th October 2004. It sets out CESR's draft advice on possible implementing measures for dissemination of regulated information and on the conditions under which periodic financial reports of issuers

must be kept available. This first consultation paper also includes a draft progress report to the European Commission on the conditions for officially appointed mechanisms for storage of information and on possible electronic networks of information about issuers.

CESR will shortly release for public consultation an additional draft paper that will include CESR draft advice on implementing measures for other issues that were covered by the mandate received under the Transparency Directive. This future consultation paper will include draft advice on the following aspects:

(i) Issues related to notifications of major holdings of voting rights
(ii) Issues related to half-yearly financial reports
(iii) the equivalence of transparency requirements for third countries issuers
(iv) The procedural arrangements whereby issuer may elect its 'Home Member State'

Public consultation

Following receipt of the mandate from the European Commission, CESR began its work on 29 June 2004 by launching a call for evidence for interested parties to submit comments by 29 July 2004. As a result of this consultation, CESR received 18 responses from a wide range of interested parties. These responses have been published on CESR's website (www.cesr-eu.org) and have formed a very helpful source and have assisted greatly in the preparation of this consultation paper.

The public consultation on the present paper will close on 28th January 2005. Responses to the consultation should be sent via CESR's website (www.cesr-eu.org) undern the section "Consultations".

As part of the consultation process on this paper, a public hearing will be held in Paris, at CESR premises, on 7 December 2004 (starting at 2:30 pm). An agenda for the hearing will be available in the CESR web site. Inscriptions to the open hearing can me made via the CESR website (www.cesr-eu.org) under the section "open hearings".

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A. INTRODUCTION

Issues presented

1. In this paper, CESR presents its thinking on five issues, (i) dissemination of regulated information by issuers (Article 17 (1)), (ii) keeping periodic financial reports available (Articles 4 (5) and 5 (5)), (iii) the role of the officially appointed mechanism (Article 17 (1a), (iv) the setting up of a European electronic network of information about issuers (Article 18) and (v) electronic filing (Article 15 (4)(a)).

2. The work on the first two issues has been undertaken on the basis of a formal mandate. The thinking that CESR has done on these issues is presented for consultation with the understanding that this is the first step in CESR's elaboration of advice to the European Commission and that a second consultation will be undertaken if and insofar it is necessary.

3. The last three issues have been worked on on the basis of a letter from the European Commission requesting a progress report on these issues. CESR considers that this is a preliminary step in its work. CESR understands that a mandate on these issues will follow in due course. CESR's thinking on these issues is also presented for consultation. However, the thinking on these issues is much broader and much more open than in a regular consultation. CESR therefore expects that a second consultation on these issues will follow in which CESR will present not only options but will also clearly state what its preferred model is.

4. Consultees are invited to consider the different status of the issues under discussion when responding to this consultation paper.

Preliminary remarks

5. The combined provisions of Article 17 and Article 18 of the Transparency Directive set forth the framework for a comprehensive system of dissemination and storage of regulated information. The overriding objective of the Directive is to promote the integration of the European capital markets by improving investors' access to information disclosed by issuers.

6. This is achieved through a two step process:

7. First, all regulated information shall be **disseminated** throughout the union (Art. 17.1);

8. Second, all such information shall be **stored** and accessible through a central storage mechanism (Art. 17.1 a).

9. This introduction sets out the objectives and principles that have guided CESR in formulating this advice. It contains a definition and discussion of certain key concepts of the Transparency Directive and a description of the scope of the work undertaken.

10. **Objectives and Principles** In establishing the following advice, CESR has considered that the following high-level principles can be extracted from the recitals as regards the organisation of dissemination and storage of regulated information:

    - The European perspective is of vital importance, both as regards issuers and investors;

    - Access to information for investors both on a real time basis and historically should be improved;

- Issuers should benefit from free competition when choosing the media for dissemination and should not be burdened with unnecessary and duplicative filing requirements.

11. CESR recognises the key role that the proper dissemination of insider information plays for the capital markets in general and for price formation processes in particular. Even though the Transparency Directive does not specifically refer to insider information, CESR considers that it is appropriate in its work to pay attention to the special status of insider information as opposed to other regulated information.

12. The drivers for regulation that the Transparency Directive sets can be divided into two categories:

- **General issues**, such as improving investor confidence, investor protection and market efficiency, removing barriers to the admission to trading of securities in other member states and the removal of barriers in the internal market in more general terms (cf. Recitals 1, 4, 6, 11). The recitals that deal with these issues do so broadly without in detail distinguishing between the requirement to notify regulated information and the requirement to publish it. It appears a foregone conclusion, that the information requirements can only fulfil their purpose when coupled with effective dissemination and storage of such information.

- **A specific issue** that is mentioned in relation to dissemination and storage is the further integration of the single market (cf. Recital 15 and 16). Great stress is put on the need for dissemination of information on a pan-European basis and the possibility of investors to access stored information easily and at affordable prices. At the same time, issuers should not have to pay the bill through an unnecessary duplication of processes. The goal of the network contemplated in Article 18 is seen in a further improvement of access to information for investors (cf. Recital 16).

13. In formulating its advice, CESR has tried to identify what these issues mean for each of the parties involved, namely investors and issuers. This is important to give advice that not only fulfils the high level principles outlined above but that does this in a way that is in line with the realities of life of issuers and investors.

14. Investors benefit from information. However, one has to be realistic in assessing, what information investors want and to what end. For wholesale and institutional investors, the more information, the better. Information on issuers that are not relevant will be filtered out and disregarded. This sort of filtering and sorting is impractical for retail and small investors to undertake themselves. Buying information that is already processed for their needs is in many cases too costly. For the appropriate information of these investors, the media and securities intermediaries play a pivotal role because they offer information that is tailored to the needs of their audiences or their respective customers. This is done as a service to the readers in the case of media or as part of the conduct of business requirements of investment firms. Small and retail investors will therefore benefit from a system where the streams of information to media and securities intermediaries are improved. This will allow these parties to better fulfil their role, resulting in turn in improved business positions.

15. On the other hand, it is doubtful whether the business case for providing every investor in the European Union with information about every issuer of securities in the European Union does exist at this time. It is also questionable whether this kind of dissemination of information is possible at all. Dissemination, as defined in this paper (cf., below), consequently does not require that information be disseminated to this extreme level. However, it should be stressed that access to stored information must be possible for every investor, regardless of size. This will allow small investors to base their investment decisions on comprehensive research if they so wish.

16. As regards issuers, the common assertion is that issuers benefit from a market that has comprehensive and timely information about them. This assessment also needs to be checked against reality. What is true for the big, international issuers is not equally true for small, local issuers. An issuer with European reach, both in terms of products and in terms of securities will benefit when differences in information that exist today are evened out. Investors will be more confident in their investment when they know that they receive the same information at the same time regardless of their location. An issuer with a locally confined investor base on the other hand will likely not achieve the same benefit in the short or medium term.

17. For all issuers, the question of benefit is particularly relevant, as they will expect to pay some or all of the cost of better information dissemination and storage. Currently, issuers pay auditors fees and filing fees, they pay for advertisements in newspapers or the dissemination via electronic services as appropriate. The future regime should ideally be structured so that the cost is not disproportionate for any given issuer. This is a matter of determining appropriate cost structures and cost contributors which may for the purposes of the storage mechanism include investors, bearing in mind, however, the requirement that investors have access to regulated information at affordable cost. It is also a matter of determining appropriate infrastructure.

Key Concepts

18. The mandate given to CESR uses two fundamental concepts that need to be clearly understood and clearly separated: **dissemination** of information and **storage** of information.

19. Dissemination describes how information enters the public domain. For the purposes of the following discussion, dissemination requires that information is actively distributed to organisations whose business it is to distribute such information further, such as business wires, news agencies, newspapers and other media.

20. In defining the meaning of dissemination, CESR considered the other information requirements. Article 6 (1) first subparagraph of the **Market Abuse Directive** requires that an issuer "inform the public". Article 6 (1) second subparagraph of the Market Abuse Directive states that posting information on the internet site of the issuer, while being required, does not in itself fulfil the requirement to inform the public.

21. Article 14 of the **Prospectus Directive** requires that a prospectus be "made available to the public" by a number of different (alternative) means including newspapers. Where publication is only on paper, member states may in addition require electronic publication. In any event, a list of recently approved prospectuses and, where applicable hyperlinks, must be available on the website of the competent authority.

22. CESR considers that dissemination is more than that and requires a greater degree of activity. Also, the Transparency Directive requires that information be disseminated throughout Europe, while the publication requirements of the Market Abuse Directive and the Prospectus Directive are limited in scope to the respective member state. It must also be recalled that the Transparency Directive requires dissemination to the public, not to the business community.

23. However, it must be acknowledged that two things are not possible:

    a) Issuers would be overburdened if they were required to publish their regulated information in the relevant newspaper(s) of each member state (N.B. that prescribing publication in a newspaper with circulation in the European business community would not fulfil the requirement of dissemination to the **public**).

b) The media would be overburdened if it were forced to reproduce all regulated information of all European issuers.

24. CESR therefore proposes that a first level of distribution be effected by the issuer or by operators. Such Services similar to that of the proposed operators are already being provided in a number of European Member States by commercial entities and in some cases by competent authorities. The second level of distribution would be effected by media and other commercial entities (collectively referred to as **media**) such as business newswires, news agencies, newspapers (including their digital editions), internet (general or financial) sites and other media, who are in the business of providing such information to their audience and/or commenting on it. CESR wishes to point out that the concept of media is used to describe the entire existing information intermediation industry and that CESR does not propose to define the term "media" as used in Article 17 of the Transparency Directive.

25. Where it is economically sensible, the media will take on such information and make it available to their subscribers or readers. Some media, in particular business newswires, are in the business of providing complete information on all issuers they cover and will therefore normally take on and publish all available information. Others, such as news agencies and newspapers, are more selective and tailor the information that they offer to the perceived needs of their audience.

26. Media that does not offer complete information on issuers will be free to make business decisions as to which news to disclose and comment further on, based on their clients' needs. It is not CESR's role to require that all media take on and disclose all news they receive. As stated above, this is for practical reasons impossible. This media will therefore act as a market filter between issuers and investors. This may mean that certain regulated information, for instance regarding small issuers operating within one particular EU jurisdiction, may be perceived by this media as being of no interest at all to their clients. As a result this information might not be disseminated on a pan-European basis or even within the issuer's home jurisdiction.

27. CESR considers that the process of dissemination it proposes in this paper will allow very wide dispersal of all regulated information to different categories of investors throughout the EU. However, as stated above, even where regulated information is properly disseminated by the issuer, there is no way to ensure full text dissemination of this information by media. Methods by which "black holes" in dissemination could be moderated are discussed further below in the section on Article 17.1 (paragraph 24) and in the Progress Report regarding Article 18 (paragraphs 104 to 106). Additionally, one should consider that the aim of the Directive to achieve the disclosure of all EU regulated information to all actual or potential EU investors, without discrimination, should be understood as a combination of dissemination and storage.

28. Dissemination by the issuer without the intervention of operators is expressly included in this definition. However, an issuer would be required to demonstrate that its own method of dissemination (if alternative to that proposed by CESR) would provide the likely result of disclosure to a broad range of media with European reach. Distribution only to the issuer's existing investors would not satisfy the Directive requirements, as public disclosure is intended. CESR also does not consider disclosure on the issuer's own website or in one single medium as sufficient to meet dissemination requirements.

29. CESR considers that the proposed requirement that regulated information is pushed to the level of media (i.e. all existing news intermediaries) is not discriminatory towards any particular type of media, as it does not deal with where ultimately the information is reproduced.

30. A new level of information intermediary, so-called operators is proposed. This is not any of the existing types of media. Rather it is a specialised service provider which will for the

provision of its service use varied means including mail, e-mail, facsimile and other methods of communication.

31. Overall, the access of media to financial information which they may reproduce or cover for the benefit of their readers is improved. This will allow media to better serve their mission of informing their audiences.

32. Storage enables regulated information to remain in the public domain and be accessible by the public on a long term basis. For the purposes of the following discussion, information is considered to be centrally stored when it can be located, retrieved and used by an interested party without the consultation of physically located media and regardless of where such investor is physically located in the European Union.

33. The existence of a separate Directive requirement for storage confirms that the Directive considers dissemination and storage to be two different processes with different objectives (dispersal in one case, retrieval in the second). However, this does not exclude the possibility that these processes could be conducted by the same actor or entity.

34. Storage will be discussed in the Progress Report issued by CESR in parallel to the present advice.

The current situation

35. Today, there are a multitude of systems for the disclosure of information in the European Union. They vary from country to country and often also within countries depending on the type of information. There are only some countries where systems that undertake dissemination or storage as defined above operate.

36. As regards disclosure of information, some existing systems require publication in newspapers, others on Internet sites. In some cases, the competent authority makes the information public, either on its website or (sometimes also) in its official bulletin. Where dissemination as defined above exists, there are usually competing providers. Some jurisdictions have monopoly providers and regulated markets are also sometimes active in the distribution of information, or its storage.

37. As regards keeping information available, many competent authorities offer some or all regulated information on their websites. In some cases, this is an additional service, in others; the information is only made available on the competent authority's website. However, most of these systems are still far from assuring a one stop shop for issuer information with different portals for different information and selective coverage.

38. It is suggested that, while a study of practices in existence today is a very worthy exercise, it would only serve to cement the existing diversity of systems and thus not serve the goal of creating a true single market. It would appear more sensible to depart from the goals set out above and to formulate the requirements that dissemination systems and storage mechanisms would have to fulfil, building – where possible - on existing infrastructures, in order not to create too burdensome obligations for issuers.

Scope of the paper

39. The scope of Articles 17 and 18 is the following: Articles 17 and 18 apply to **issuers** of securities that are admitted to trading on a regulated market or to the **persons who applied for admission to trading** on a regulated market without the issuer's consent.

40. The term "**securities**" includes all transferable securities as defined by article 2 (18) of the Directive 2004/39/EC on markets in financial instruments with the exception of money

market instruments, as defined in article 2 (19) of the Directive 2004/39/EC on markets in financial instruments having a maturity of less than 12 months, for which national legislation may be applicable.

41. The information to be disseminated and stored under Article 17 (1) and (1a) is all **Regulated Information**[1]), i.e.:

- Information to be disclosed under the Transparency Directive, namely:
  - Annual financial reports (Article 4);
  - Half-yearly financial reports (Article 5);
  - Interim management statements (Article 6);
  - Major shareholdings information (Articles 11 (4), 11 b and 11 c);
  - Additional information (Article 12); and
  - Information for shareholders and bondholders which is to be made public under Articles 13 and 14[2].
- Any other information required to be made public by the Home Member State in accordance with Article 3 (1).[3]
- Information which is to be disclosed under the Directive 2003/6/EC on Insider Dealing and Market Manipulation, (the "Market Abuse Directive" or "MAD"), namely:
  - Inside Information (Article 6 (1) of the MAD); and
  - Directors Dealings (Article 6 (1) of the MAD).

42. Article 18 is wider in scope, as its objective is to facilitate public access also to information to be made public under the Directive (2003/71/EC) on the Prospectus to be published when Securities are offered to the Public or admitted to Trading and amending Directive 2001/34/EC (the "Prospectus Directive"), which is namely:

- The prospectus, either as a single document or consisting of a registration document, a securities note and a summary note (Article 5) and any supplements thereto (Article 16); and

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[1] As defined in Article 2 (1) (k) of the Directive.

[2] CESR notes the Commission's view that information for shareholders and bondholders under Articles 13 and 14 is to be disseminated in accordance with Article 17. CESR wishes to point out that the dissemination must be made to different audiences: The items of information under Articles 13 and 14 should be communicated to existing share- and bondholders of an issuer, a defined or definable group of persons and entities. The other items of information to be disseminated under Article 17 should be disseminated to the public, which are an undefined and indefinable group and number of persons and entities. This is also acknowledged in the consultation document of the services of DG internal market dated 16. September 2004, "Fostering an appropriate regime for shareholders rights". This consultation document discusses whether under Article 13 and 14, additional measures for the communication of information to share- and bondholders should be introduced. Such additional measures have not been discussed in this paper, as they are not part of the mandate given to CESR. However, CESR would wish to avoid any duplicative and onerous publication requirement for issuers that relate to the same items of information.

[3] Art. 3.1 enables the Home Member State to provide for requirements that are more stringent than those of the Directive.

- The annual information document (Article 10).

43. A number of publicity requirements based on company law provisions also apply to issuers. These company law obligations are separate from the Transparency Directive requirements and should remain so.

44. There is a particular temptation to confuse the company registers as provided for under Article 3 of the First Company Law Directive (68/151/EEC) with the storage mechanism under Article 18 of the Transparency Directive. CESR considers it necessary to maintain a clear distinction between these two pools of information even if Article 18 contains a proposal to create linkages between these two. The benefits and disadvantages of this proposal are discussed in more detail in paragraphs 223 to 230 of the Progress Report regarding Article 18.

B. Consultation Paper on Dissemination of Regulated Information by Issuers and on Conditions for Keeping Periodic Financial Reports Available

SECTION 1.Dissemination of Regulated Information by Issuers

Extract from level 1 text

Article 17.1 The home Member State shall ensure that the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non discriminatory basis and makes it available to the officially appointed mechanism referred to in paragraph 1a. The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information. The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Union. The home Member State may not impose an obligation to use only media whose operators are established on its territory.

Extract from the mandate from the Commission

3.2.1 Dissemination of regulated information by issuers (Article 17(1))

DG Internal Market requests CESR to provide technical advice on possible implementing measures on minimum standards for dissemination of regulated information, as referred to in Article 17.1. CESR is particularly invited to consider how to ensure:

a) fast access to regulated information for investors located not only in the issuer Home Member State, but in other Member States. In particular, CESR should consider changes to the current situation at Member States level;

b) fast access to regulated information on a non discriminatory basis. In this respect, it would be useful assessing as to whether different solutions on the method of dissemination should be envisaged according (i) to the type of regulated information, (ii) the type of issuer or the market segment where the issuer's securities are admitted to trading on a regulated market, or (iii) any other criteria.

It should be noted that the issue of dissemination of regulated information, i.e. the duty of the issuer to convey information to end users speedily and without discrimination should not be mixed up with the role of the officially appointed mechanism as provided for under Article 17.1(a) of the Directive, which is storage, i.e. archiving and retrieval of regulated information, and which will be subject to a separate mandate which the Commission intends to grant in early 2005 in the light of a first progress report from CESR on Article 18 of the Transparency Directive.

Draft CESR advice

Explanatory text

Explanatory text relevant to CESR advice on Article 17.1

1. The purpose of this proposal is to establish possible implementing measures on minimum standards for disseminating regulated information, ensuring fast access to regulated information on a non-discriminatory basis for investors located not only in the issuer's Home Member State, but in other Member States.

2. This section of the consultation paper is divided, as follows:

a) objectives of dissemination systems;
b) dissemination standards;
c) dissemination by issuers
d) dissemination by operators;
e) approval of operators;
f) minimum standards of operators;
g) role of the competent authority in disseminating regulated information;
h) dissemination by media; and
i) other considerations in determining dissemination methods.

a. Objectives of dissemination systems

3. As set out in Recital 15 of the Transparency Directive, access for investors to information should be more organised at a European level in order to actively promote integration of European capital markets. Investors who are not situated in the issuer's home Member State should be put on an equal footing with investors situated in the issuer's home Member State when seeking access to such information. Effective pan-European dissemination systems are one means of facilitating the achievement of this objective.

4. CESR is of the view that any system employed by an issuer for disseminating regulated information should be capable of meeting the following objectives:

   (a) providing a mechanism through which an issuer of regulated information can meet its obligations under Article 17.1 of the Transparency Directive;

   (b) a high level of security in order to minimise the risk of erroneous announcements being released or information leaking into the market;

   (c) a user friendly input method so that price sensitive regulated information is released without delay;

   (d) adequate access by end users to the regulated information;

   (e) a transparent charging structure so that issuers and investors know how much they have to pay, when, and in respect of which services; and

   (f) the flexibility to embrace new technological advances rapidly.

b. Dissemination standards

5. It must be stressed that issuers[4] are responsible for ensuring disclosure of regulated information in accordance with the requirements of the Transparency Directive. When disseminating regulated information in accordance with Article 17.1 of the Directive, CESR considers that it is necessary for issuers to ensure that any dissemination method chosen complies with the following minimum standards:

   (a) fast access to regulated information for investors

   CESR considers that the dissemination method must be capable of providing investors with regulated information (as defined in Article 2.1.k of the Directive) without delay. This is especially the case where regulated information is, or may be, of a price sensitive nature, for example 'inside information' as defined under the Market Abuse Directive 2003/6/EC.

[4] References to 'issuer' should be read as meaning an issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent, as appropriate.

CESR considers that fast access to regulated information for investors is best achieved through the use of electronic dissemination methods. In this context, it is also important to avoid fragmentation of information streams which may compromise the goal of fast access.

(b) access on a non discriminatory basis

Issuers must ensure that the selected dissemination method is capable of allowing investors generally to receive the regulated information, rather than specific categories of investors (e.g. institutional or retail).

(c) effective dissemination throughout the EU

CESR considers that the requirements of Article 17(1) of the Directive can only be satisfied by an issuer if it selects a dissemination channel that is capable of reaching investors not only in that issuer's home Member State, but also in other Member States throughout the EU. The dissemination channel must also ensure that investors in several Member States receive the same regulated information as close to simultaneously as possible.

(d) investors are not charged by issuers any specific costs for receiving information

In accordance with Article 17.1 issuers cannot charge investors for the regulated information provided.

(e) no obligations on issuers to use only media whose operators are established in the home Member State

CESR considers that the choice of dissemination channel operators available to issuers must not be restricted to those channels available in the issuer's home Member State. Issuers should benefit from free competition when choosing media or operators for disseminating information in other Member States provided that those operators satisfy certain minimum standards set out in paragraph 19 below.

6. Based on this, CESR considers that the dissemination of information must comply with the following specific requirements:

(a) Distribution

Connections with media

Dissemination must occur through sufficient connections with a number of media to ensure that regulated information is disseminated as widely as possible, on both a national and pan-European basis, to allow as many interested parties as possible gain access to the regulated information as quickly as possible. CESR would normally expect that these connections would include different channels of distribution such as press agencies, newspapers and websites dedicated to financial matters. In the interest of small and retail investors, free websites that disclose regulated information in full text and real-time should also be included in these connections.

CESR would also expect connections with media that disseminate regulated information in multiple Member States (including the Member State where the issuer is situated and where its securities are traded). Ideally, connections with media who disseminate regulated information globally to the entire international investor community should exist.

In addition, CESR expects that normally access on a commercial basis for all interested media will be allowed.

Re-submissions of information

It must be ensured through monitoring of the systems used that the regulated information has been successfully transmitted to media. If a media notifies that the transmission of regulated information has failed, all reasonable efforts must be made to re-transmit the missing regulated information without delay.

(b) Output format

End users, whether they are institutional investors, private investors, advisors or others, want access to the full text regulated information, as well as, or in preference to, the edited text. Therefore, regulated information must be provided to Media in unedited full text and in industry standard formats. In addition, local formats may be used for regulated information at national level.

Necessary output information fields

Information provided to media must be identified as regulated information. Announcements of regulated information must include the following fields:

- company name;
- headline;
- time and date
- sequence number; and
- unique announcement identification number.

To ensure that media have received the entire contents of regulated information, the end of all announcements must be clearly marked in the text body.

Question 1:	What are your views on the minimum standards for dissemination? Are there any other standards that CESR should consider?

c. Dissemination by issuers

7. Issuers may undertake the dissemination of regulated information themselves in accordance with the standards set out above in paragraphs 5 and 6. It is important that all of standards referred to in paragraph 19 (operator standards) that are also applicable to an issuer are fulfilled by that issuer. CESR would consider that in particular the requirements of paragraph 19 lit. a, c and e are applicable to issuers.

Question 2:	What are your views on the standards for dissemination by issuer? Are there any other standards or related issues that CESR should consider?

d. Dissemination by operators

8. In the operator/media model, an issuer would disseminate regulated information using the services of an operator which in turn would distribute that information to media, such as business wire services, news agencies, newspapers and other media, as well as general or specialised web sites. The media would then distribute the regulated information to the market. See Figure 1 below.

9 CESR considers that operators are a highly effective channel for disseminating regulated information in accordance with the standards referred to in paragraphs 5 and 6 above. However, it should be noted that CESR is not mandating that issuers use operators to disseminate regulated information. Issuers may choose to disseminate regulated information directly by way

of media, as discussed in paragraph 7 CESR acknowledges the role that media plays in dissemination in certain Member States, particularly that of the written press.

10. CESR considers that an issuer should be able to use the services of an operator to satisfy all of this Directive's obligations to disclose regulated information. This would include the requirement to:

    (a) disseminate regulated information to investors on a pan-European basis;

    (b) ensure regulated information is made available to a central storage mechanism;

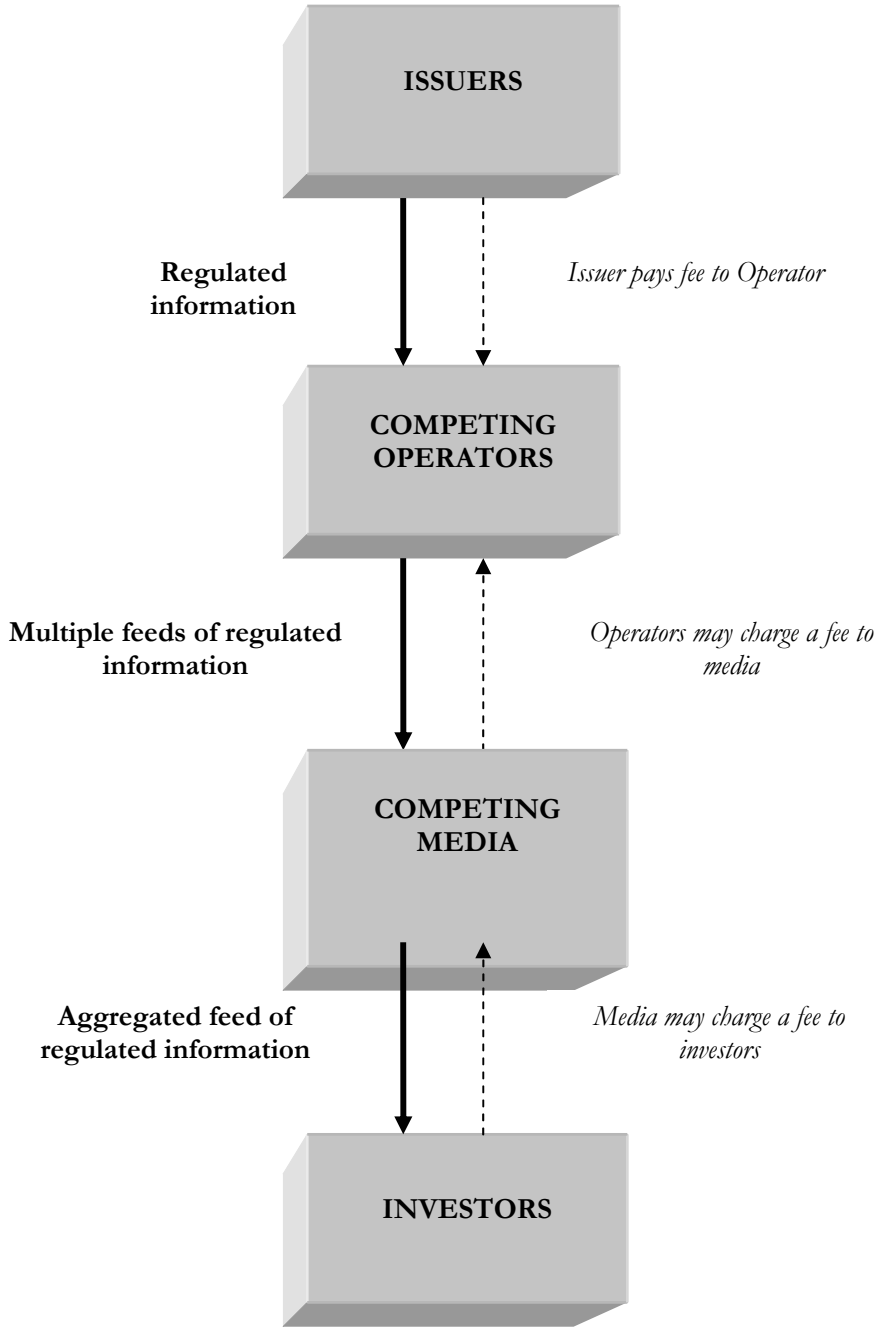
    (c) ensure regulated information is filed with a competent authority.

11. CESR considers that it would be very beneficial for issuers if they could send their regulated information once, to one operator, and, by doing so, be sure that all three of the above Directive requirements are met.

12. However, there may be difficulties with this proposal with regards to the three requirements outlined above, as it is the issuer who is ultimately responsible to fulfil these requirements. Currently, many competent authorities rely upon an issuer filing regulated information with them directly. If a competent authority were obliged to receive regulated information from an issuer indirectly through an operator, the competent authority would need to be sure that the relevant operator was authorised to act on behalf of that issuer.

Question 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? Please explain reasons for your answer?**

Figure 1: Dissemination using operators



13. An issuer needs to ensure that a selected operator is capable of disseminating regulated information properly on its behalf in particular because an issuer remains responsible for the dissemination of regulated information. A number of Member States currently use operators for the effective dissemination of regulated information. In order to ensure compliance with Article 17.1, an issuer would not be obliged to choose the services of an operator in its own Member State, but could avail of the services of operators in any Member State, as long as they satisfy certain minimum standards set out below in paragraph 19.

14. Whereas under Article 17.1 of the Directive, an issuer may not charge investors any specific cost for providing regulated information, it is possible for operators to charge fees to issuers, media and any other recipients.

Question 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? Please set out reasons for your answer.**

e. Approval of operators

15. Each Member State's competent authority could approve operators in its own territory on the basis that they satisfy certain minimum standards at an EU level. The competent authority would then monitor approved operators for compliance with the minimum standards on an ongoing basis.

16. Alternatively, minimum standards could be set without formal approval of operators by the competent authority. In such a scenario, commercial incentives may drive operators to meet minimum standards in order to attract business from issuers. An issuer is likely to only choose an operator that can demonstrate it meets standards that enable the issuer to meet its own regulatory obligations to disseminate regulated information. This commercial imperative may also ensure compliance by operators with minimum standards on an ongoing basis.

17. A disadvantage of not having a formal approval process is that it may affect ongoing supervision of operators, with the risk that for separate commercial reasons (e.g. cost) operators may cease to meet the minimum standards at some stage. In these circumstances an issuer may be unaware that its chosen operator is no longer compliant and as a consequence that the issuer itself is at risk of failing to meet its own regulatory obligations.

18. In the absence of a formal approval process, an issuer would be required to undertake due diligence of individual operators in order to ensure that any operator selected is eligible to fulfil the issuer's dissemination requirement. This would be both a costly and time consuming process for issuers, and would lead to variations in standards of operators employed by issuers across Member States.

Question 5:	**Should operators be subject to approval and ongoing monitoring by competent authorities or not? Please set out reasons for your answer.**

f. Minimum standards of operators

19. CESR considers it essential that any operator employed by an issuer assists in the satisfaction of the dissemination standards set out under paragraph 5 and meets the minimum standards set out in paragraph 6 above as well as the following standards:

(a) Security

An appropriate level of security must be incorporated into the operator dissemination mechanism. Breaches of security can lead to erroneous announcements being released or information leaking into the market. Both of these factors could seriously undermine the

orderliness of the trading market. Consequently, security is essential at each of the three stages of the operator system: input, processing and output.

Input

It is essential that any system has a secure input mechanism to ensure that:

- the operator is confident that the regulated information has been submitted by an organisation authorised to submit such information;
- there is no significant risk of data corruption in the input process which may lead to incorrect regulated information being released; and
- there is no significant risk of interception by unauthorised persons during input which may allow access to unpublished price sensitive regulated information.

Processing

It is essential that the system processes regulated information securely to minimise the risk of erroneous regulated announcements being released, that the physical location of the operator is secure and that there is no significant risk of misuse of unpublished price sensitive regulated information.

Output

Media must be certain that the information they receive has been provided:

- in a secure manner; and
- by the operator.

Breaches of security

In the event that there is a breach of any security measure relating to the provision of an operator service, the operator must take appropriate corrective action without delay.

(b) Operational hours

In order to facilitate issuers operating in more than one international market, operators must be able to receive regulated information 24 hours a day, seven days a week and release regulated information at least between the hours of trading in all EU time zones.

(c) Information that must be recorded and preserved by an operator service

For the purposes of maintaining records to ensure that security measures are being met by an operator, the following information regarding the regulated information that it processes, must be recorded and preserved by an operator service for a reasonable time period:

- name of person submitting regulated information;
- security validation details;
- date and time regulated information received;
- medium in which regulated information received;
- company name;

- embargo details (if relevant);
- details of the operator's service staff in contact with regulated information from receipt to release;
- details of any changes made to a document by an operator service during processing; and
- date and time regulated information is released.

(d) Management of regulated information by an operator

CESR does not intend to mandate the type of media in which regulated information must be accepted by operators. In general, regulated information must be released without delay. Regulated information received electronically (e.g. by Internet based input facilities) must be released without delay, unless embargoed by the issuer. CESR considers that operators are likely to process regulated information submitted by fax or hard copy for commercial reasons. Regulated information received in non-electronic format (e.g. facsimile or hard copy) must be prioritised by the issuer according to its price sensitivity. Urgent priority regulated information received by facsimile or hard copy must be released by the operator without delay.

Regulated information should be recorded as received once it first enters an operator service's processing systems and as released once it has left the operator service's processing systems.

(e) Recovery provisions

CESR considers that an operator service must have adequate recovery systems in place to rectify as soon as possible a failure in or disruption to its operations. The recovery service must be available during the operational hours of the operator (as set out in point (b) above) in order to ensure the timely receipt and dissemination of regulated information to media.

(f) Operator service support

An operator service must provide support to issuers during receipt hours and media during release hours.

(g) Charges

Charges for any operator service must be clearly stated and indicate the activities covered so that they can be readily compared with competing operator services.

Question 6:	**What are your views on the proposed minimum standards to be satisfied by operators? Are there any other standards that CESR should consider?**
Question 7:	**Should issuers be required to use the services of an operator for the dissemination of regulated information?**

g. Role of the competent authority in disseminating regulated information

20. Most competent authorities are not involved in the process of disseminating regulated information. However, some competent authorities currently provide services to issuers that result in the dissemination of regulated information to investors, whereas others publish

regulated information on their web sites. These competent authorities expect to continue to provide such services under the Transparency Directive.

21. If a competent authority were to act as full-fledged operator, there would be less commercial incentive for other operators to provide alternative dissemination services in that particular competent authority's jurisdiction. In addition, there might be conflict of interest issues where a competent authority simultaneously acted as a dissemination operator and as the authority responsible for approving operators within its jurisdiction (if such approval was foreseen).

Question 8:	What are your views concerning the role of competent authorities in disseminating regulated information as operators? Please set out reasons for your answer.

Role of the Stock Exchange(s) in disseminating regulated information

22. CESR recognises that it is possible for stock exchanges to provide operator services and acknowledges that related disclosure requirements of other Directives must be considered in drafting its advice on dissemination. For example, under Article 40.3 of Directive 2004/39/EC, regulated markets are required to ensure that issuers with securities admitted to trading on a regulated market comply with their disclosure obligations under Community law. In addition, Article 6 of Directive 2003/6/EC sets out requirements in relation to the disclosure of inside information.

23. In accordance with Article 17.1 of the Directive, the home Member State may not impose an obligation on issuers to use the services of a market operator or stock exchange established in that home state. CESR considers it feasible that stock exchanges, as commercial entities, themselves or through subsidiaries or affiliates may choose to offer operator services. However, if a stock exchange chooses to act as an operator, it must not use its special position vis-à-vis the issuer as described in paragraph 21 above in an unfair manner.

24. An issuer must be free to choose from competing operator services operating in both in its home Member State and other Member States. CESR considers that, in the absence of competition, a monopoly provider of operator services could abuse its dominant position and exploit the market by charging issuers high prices without providing an adequate choice of service levels. In addition, there would be no natural incentive to innovate and provide a better service to its customers. Competition will allow issuers to choose from services that match their requirements at the lowest price. In addition, competition will ensure that technological advances are delivered promptly, and economically, to the market across all operator services.

d. Dissemination by media

25. In terms of the connection between operators and media, CESR does not propose to set minimum standards for the activities of media. Accordingly, media are not obliged to publish regulated information that has been disseminated to them by operators. Media are also not obliged to aggregate all regulated information received from operators, and may edit this information. In practice, some media currently publish all information they receive from operators unedited, for commercial reasons, without the need for regulation. CESR has no reason to believe that this will change going forward. However, CESR recognises that in practice, it will not be possible to ensure that the operator/media dissemination model results in all regulated information reaching every actual and potential investor throughout the EU. This is because, in certain circumstances, it would not be commercially viable for media to publish all regulated information on a pan-EU basis. For example, media may not publish regulated information on certain companies (particularly small capitalization companies) in countries where there are no actual investors in those companies. CESR considers that three possibilities exist which could address this issue and at the same time promote the interests of small and retail insvestors:

(a) operators would be required to ensure that at least one of the media selected publishes all regulated information in full text on a web site on real time basis, at no charge to investors;

(b) operators could be required to publish all real-time regulated information on their web sites at no charge to investors which would result in a fragmentation of information depending on the number of operators; and

(c) the central storage mechanism could make regulated information within a reasonable timeframe. CESR considers reasonable that price sensitive information is available on a real time basis, and other, non price sensitive information as soon as possible and at the latest before the beginning of trading on the following day.

Question 9:	**Do you consider it necessary to attempt to address the risk that regulated information may not reach every actual and potential investor throughout the EU? Please set out reasons for your answer.**
Question 10:	**Which of the options presented above would, in your view, minimise this risk? Please set out reasons for your answer.**

i. Other considerations in determining dissemination methods

26. In assessing the possibility for issuers to use various methods of dissemination, CESR considers the following factors to be relevant:

(1) the priority of the regulated information

CESR is of the view that the higher the priority of the regulated information the greater the need for that information to be disseminated without delay and, in CESR's view, this is best achieved using the services of an operator. Inside information, as defined by the Market Abuse Directive, must be disclosed to the public by issuers as soon as possible using dissemination methods that meet the standards in paragraphs 5, 6 and 19 where applicable.

(2) the type of issuer or the market segment where the issuer's securities are admitted to trading on a regulated market

CESR considers that the type of issuer or the market segment where the issuer's securities are admitted to trading on a regulated market should not influence the method of dissemination. All regulated information, irrespective of the type of issuer or market segment, should be disseminated through appropriate operator or media services that meet the standards in paragraph 5, 6 and 19 where applicable and the market should have certainty that information will be released in this way.

(3) the volume of information

For certain regulated information of a large volume, such as annual reports and accounts, effective dissemination may be achieved by methods other than using operator services, e.g. sending the accounts direct to shareholders. However, even in these situations CESR considers it should be necessary for issuers to disseminate a notification through an operator or appropriate media that a company's annual report has been published and stating where it is available to investors. CESR considers that for investors it is necessary that the full text of the information is available within a reasonable timeframe in the storage mechanism. In addition, if an issuer deems an annual report to contain price sensitive information, then that information must be disseminated using an operator or media that meet the standards set out in paragraph 5, 6 and 19 where applicable.

27. CESR considers that allowing issuers to choose from a range of dissemination methods could potentially lead to fragmented dissemination of regulated information across the EU with a

consequential lack of clarity for investors. In order to ensure that investors have certainty as to the method of dissemination of regulated information, CESR considers that it is highly desirable that issuers employ one method of dissemination, i.e. operator services. A system of competing operator services across the EU should allow issuers to choose cost effective services that best meet their dissemination needs.

Question 11:	**Do you consider there to be other methods of dissemination that would satisfy the minimum standards for dissemination? If so, please provide a description of such dissemination methods, and how they would work.**

Draft Level 2 advice

1. Issuers must ensure that any dissemination method chosen, whether operators and/or media, complies with the following minimum standards:

   (a) fast access to regulated information for investors

   The dissemination method must be capable of providing investors with regulated information without delay. This is especially the case where regulated information is, or may be, of a price sensitive nature, for example 'inside' information as defined under the Market Abuse Directive 2003/6/EC. Fast access to regulated information for investors is likely to be best achieved through the use of electronic dissemination methods. In this context, it is also important to avoid fragmentation of information streams which may compromise the goal of fast access

   (b) access on a non discriminatory basis

   The selected dissemination method must be capable of allowing investors generally to receive the regulated information, rather than specific categories of investors.

   (c) effective dissemination throughout the EU

   The dissemination channel selected by the issuer must be capable of reaching investors not only in that issuer's home Member State, but also in all other Member States throughout the EU. The dissemination channel must also ensure that investors in several Member States receive the same regulated information as close to simultaneously as possible.

   (d) investors are not charged any specific costs for receiving information

   Issuers must not charge investors for the regulated information provided.

   (e) no obligations on issuers to use only media whose operators are established in the home Member State

   The choice of dissemination channel operators available to issuers must not be restricted to those channels available in an issuer's home Member State. Issuers should benefit from free competition when choosing media or operators for disseminating information in other Member States provided that those operators satisfy certain minimum standards.

   (f) Distribution

   Connections with media

Dissemination must occur through sufficient connections with a number of media to ensure that regulated information is disseminated as widely as possible, on both a national and pan-European basis, to allow as many interested parties as possible gain access to the regulated information as quickly as possible. CESR would normally expect that these connections would include different channels of distribution such as press agencies, newspapers and websites dedicated to financial matters. In the interest of small and retail investors, free websites that disclose regulated information in full text and real-time should also be included in these connections.

CESR would also expect connections with media that disseminate regulated information in multiple Member States (including the Member State where the issuer is situated and where its securities are traded). Ideally, connections with media who disseminate regulated information globally to the entire international investor community should exist.

In addition, CESR expects that normally access on a commercial basis for all interested media will be allowed.

Re-submissions of information

It must be ensured through monitoring of the systems used that the regulated information has been successfully transmitted to media. If a media notifies that the transmission of regulated information has failed, all reasonable efforts must be made to re-transmit the missing regulated information without delay.

(g) Output format

End users, whether they are institutional investors, private investors, advisors or others, want access to the full text regulated information, as well as, or in preference to, the edited text. Therefore, regulated information must be provided to Media in unedited full text and in industry standard formats. In addition, local formats may be used for regulated information at national level.

Necessary output information fields

Information provided to media must be identified as regulated information. Announcements of regulated information must include the following fields:

- company name;
- headline;
- time and date
- sequence number; and
- unique announcement identification number.

To ensure that media have received the entire contents of regulated information, the end of all announcements must be clearly marked in the text body.

2. In order to ensure satisfaction of the minimum standards for dissemination, issuers may disseminate all regulated information themselves or by using the services of an operator. Any operator employed by an issuer for the purpose of disseminating regulated information must meet all the above and following minimum standards. If an issuer chooses to disseminate regulated information itself, it must fulfil those standards that are applicable to an issuer. CESR would consider that in particular the requirements of a, c and e are applicable to issuers:

(a) Security

An appropriate level of security must be incorporated into the operator dissemination mechanism. Breaches of security can lead to erroneous announcements being released or information leaking into the market. Both of these factors could seriously undermine the orderliness of the trading market. Consequently, security is essential at each of the three stages of the operator system: input, processing and output.

Input

It is essential that any system has a secure input mechanism to ensure that:

- the operator is confident that the regulated information has been submitted by an organisation authorised to submit such information;
- there is no significant risk of data corruption in the input process which may lead to incorrect regulated information being released; and
- there is no significant risk of interception by unauthorised persons during input which may allow access to unpublished price sensitive regulated information.

Processing

It is essential that the system processes regulated information securely to minimise the risk of erroneous regulated announcements being released, that the physical location of the operator is secure and that there is no significant risk of misuse of unpublished price sensitive regulated information.

Output

Media must be certain that the information they receive has been provided:

- in a secure manner; and
- by the operator.

Breaches of security

In the event that there is a breach of any security measure relating to the provision of an operator service, the operator must take appropriate corrective action without delay.

(b) Operational hours

In order to facilitate issuers operating in more than one international market, operators must be able to receive regulated information 24 hours a day, seven days a week and release regulated information at least between the hours of trading in all EU time zones.

(c) Information that must be recorded and preserved by an operator service

For the purposes of maintaining records to ensure that security measures are being met by an operator, the following information regarding the regulated information that it processes, must be recorded and preserved by an operator service for a reasonable time period:

- name of person submitting regulated information;
- security validation details;
- date and time regulated information received;

- medium in which regulated information received;
- company name;
- embargo details (if relevant);
- details of operator service staff in contact with regulated information from receipt to release;
- details of any changes made to a document by an operator service during processing; and
- date and time regulated information released.

(d) Management of regulated information by an operator

Regulated information received electronically (e.g. by Internet based input facilities) must be released without delay, unless embargoed by the issuer. Regulated information received in non-electronic format (e.g. facsimile or hard copy) must be prioritised according to its price sensitivity. Urgent priority regulated information received by facsimile or hard copy must be released without delay.

Regulated information should be recorded as received once it first enters an operator service's processing systems and as released once it has left the operator service's processing systems.

(e) Recovery provisions

An operator service must have adequate recovery systems in place to rectify as soon as possible a failure in or disruption to its operations.

(f) Operator service support

An operator service must provide support to issuers during receipt hours and Media during release hours.

(g) Charges

Charges for any operator service must be clearly stated and indicate the activities covered so that they can be readily compared with competing operator services.

3. All price sensitive regulated information, irrespective of the type of issuer or market segment where the issuer's securities are admitted to trading on a regulated market, should be disseminated through the services of an operator and/or media without delay. It is essential that the mechanism chosen satisfies each of the standards set out above. This serves both the interest of investors who will be likely to obtain the information in a timely manner. It is also advantageous for issuers who may rely on specialised operators and will not be in danger of mishandling insider information with the attached risk of administrative or criminal sanctions.

4. However, where certain regulated information is not time critical and of a large volume, it may be possible to disseminate that information using other methods, provided that the issuer disseminates an announcement through an operator or appropriate media stating that the information has been published and where it is available. In any event, such information should

be available in the storage mechanism within an appropriate time delay (i.e. by the following trading day).

Question 12. Do you agree with this draft Level 2 advice?

SECTION 2 – CONDITIONS FOR KEEPING PERIODIC FINANCIAL REPORTS AVAILABLE

INTRODUCTION

1. CESR has been mandated to provide technical advice to the Commission by June 2005 in relation to how the issuers can meet their obligations in respect of:

   (i) Article 4.1 - which requires the issuer to ensure that its annual financial report remains publicly available for at least five years; and

   (ii) Article 5.1 which requires the issuer to ensure that the half- yearly financial report remains available to public for at least five years.

2. CESR sets out below the mandate for ease of reference:

> 3.2.2. Keeping periodic financial reports available by issuers (Articles 4(5) and 5(5))
>
> CESR is invited to provide technical advice on possible implementing measures on the technical conditions under which a published annual financial report (including the audit report) and a published half-yearly financial report (including any audit report or any review) is to remain available to the public. In particular, CESR is invited to consider the possibility for the issuer to fulfil such obligation by providing the relevant information to the central storage mechanism referred to in Article 17 (1a) of the Level 1 Directive.

3. As can be seen, CESR is invited to consider the possibility for the issuer to fulfil its obligations to to keep a published annual financial report (including the audit report); and a published half-yearly financial report (including any audit report or any review) by providing this information to the Central storage mechanism.

4. CESR considers that the Commissions proposal is the best way that issuers can ensure that these directive obligations are met for the following reasons:

5. Under the requirements of Article 17.1 (discussed fully in Section 1) regulated information has to be disclosed in a manner that ensures fast access to all investors on a Pan- European basis, and has to be made available to the central storage mechanism.

6. The term "regulated information" includes the annual financial reports (including the audit report); and half- yearly financial reports (including any audit report or any review).

7. This information is already required under Article 17.1 to be made available to the central storage mechanism, the purpose of which (as discussed in detail in Part C of this paper) is for the public to be able to access this information.

8. CESR considers that the only difference between these article 17.1 obligations and those under articles 4.1 and 5.1 is the specification of the amount of time for which this information has to remain available in the central storage mechanism.

9. There is no reason why the central storage mechanism should not be able to ensure that annual financial reports (including the audit report); and half- yearly financial reports (including any audit report or any review) remains accessible for at least 5 years.

10. All that will be required is the creation of an archiving facility in the central storage mechanism, so that this information can remains accessible for at least five years, and consideration of whether or not it is necessary to add some form of accessibility time frame criteria into the

central storage mechanism's quality standards that are discussed in detail in Part C of this consultation paper (see infra).

Question 13:	Do you agree with CESR's advice in relation to this mandate. Please give reasons.
Question 14:	Do you consider that it is necessary for CESR to establish a minimum time period for which all regulated information should be made accessible to end-users. If so, please indicate: (a) what you consider this time period should be and (b) why; and whether or not you consider this time period should apply to all regulated information or only certain types. If only to certain types please specify what they are.

C. Progress Report on the Role of the Officially Appointed Mechanism (Article 17 1a) and the Setting up a European Electronic Network of Information about Issuers (Article 18) and Electronic Filing (Article 15 4a)

The Role of the Officially Appointed Mechanism (Article 17 1a) and the Setting up a European Electronic Network of Information about Issuers (Article 18)

EXECUTIVE SUMMARY

Introduction

1. The Commission has invited CESR to prepare a progress report on the role of the officially appointed "central storage mechanisms" to which reference is made in Articles 17.1 and 17.1a and on the setting up a European electronic network of information about issuers to which reference is made in Article 18.

2. This paper raises key questions relating to the requirement for officially appointed central storage mechanisms and the electronic network referred to in Article 18.

Key points discussed

3. Introduction – the introduction to this paper sets out in detail the background to the Commission's request to CESR to prepare this discussion paper. The introduction also includes the relevant Directive paragraphs.

4. This paper is subsequently divided into two sections.

SECTION 1 – Discussion of central storage mechanism options:

5. CESR considers that the most important questions with regard to the central storage mechanism options are as follows. These are discussed in more detail in Section 1 of the paper.

Should there be one central storage mechanism or more than one?

6. It is possible that the goal of making all regulated information available in one place could be achieved by a single central storage mechanism or multiple central storage mechanisms. It is proposed that central storage mechanisms might store information according to type or category of issuer, necessitating multiple storage mechanisms which would then need to be linked at a national level. Alternatively multiple central storage mechanisms could each be required to store all regulated information. This would have the advantage of providing redundancy should one central storage mechanism become unavailable. Competition amongst central storage mechanisms may also be beneficial to the investor. However, a single central storage mechanism in each Member State would simplify the task, under Article 18 requirements, to make all regulated available on a pan-European basis.

How should regulated information get to a storage mechanism?

7. There are various options for the transmission of regulated information to central storage mechanisms. Issuers could be required to send regulated information directly to central storage mechanisms. However, if there are many central storage mechanisms in operation this would place a large administrative burden upon the issuer. Alternatively, issuers could be required to send all their regulated information once to an operator, which would convert this material into an electronic form and distribute this onwards to all central storage mechanisms.

When should regulated information in a central storage mechanism be accessible?

8. In the context of the timeliness of regulated information, it is important to distinguish between price sensitive and non-price sensitive regulated information. CESR considers that Article 17 will require price sensitive information to be disseminated as quickly and as widely as possible. The purpose of central storage is different and is to ensure that regulated information is available all in one place. Consequently it may not in all cases be necessary to require a central storage mechanism to make price sensitive regulated information available to the same timescales as dissemination. Nevertheless, "black holes" in the dissemination process can be remedied by ensuring that a central storage mechanism makes price sensitive regulated information available in real-time.

Should regulated information be available free of charge to investors?

9. This question is linked to the funding and ownership of central storage mechanisms. If central storage mechanisms are run on a commercial basis, it may not be possible to ensure free access for investors. A commercial central storage mechanism should be allowed to at least recover the cost of processing regulated information by charging investors for access. However, if multiple commercial central storage mechanisms are in operation, costs to the investor could be kept low by competition. Free access for investors will only be possible if central storage mechanisms are not funded by investor's contributions but rather publicly or by recouping costs from other parties.

Who should operate central storage mechanisms?

10. There appear to be two broad options with regard to the operation of central storage mechanisms. Central storage mechanisms could be operated by a Competent Authority or by a commercial entity that has been appointed to perform this function by a Competent Authority. The advantage of a Competent Authority run central storage mechanism is that there is complete regulatory control over the regulated information that is made available for investors. However as a Competent Authority does not act as a commercial entity in the processing of information for consumption by investors and therefore lacks commercial incentives, a Competent Authority run central storage mechanism may not be able to maintain high standards of service or offer added value services to end users. This lack of commercial incentive may be offset by other incentives under national law that are particular to competent authorities.

11. Alternatively commercial providers could be appointed as central storage mechanisms and be required to meet service standards set by the Competent Authority. This would have the advantage of utilising existing commercial expertise in the provision of regulated information. However, if central storage mechanisms were to be commercially run it is likely that an investor would be charged for access to regulated information.

Full list of issues discussed in Section 1:

A) Should there be one storage mechanism, or more than one?

B) How should investors receive access to regulated information?

C) How should the regulated information get to a storage mechanism?

D) Issuers responsibility

E) When should regulated information in the central storage mechanism be accessible?

F) Should regulated information be available free of charge to investors?

G) Who should operate central storage mechanisms?

H) What should the role of the Competent Authority be?

I) What quality standards should be established for central storage mechanisms?

SECTION 2 – Requirement for an electronic network:

12. CESR considers that the most important questions to answer with regard to the establishment of an electronic network, proposed by Article 18, are as follows. These are discussed in more detail in the Section 2 of the Discussion Paper.

How can a "one stop shop" be achieved?

13. CESR considers that the aim of Article 18 is to create a "one stop shop" for the investor. This means that an investor should be able to access all European regulated information from one place. CESR considers there to be two broad options to achieve this goal:

    - a single central storage mechanism or multiple storage mechanisms could be appointed to hold all European regulated information. This would remove the necessity for an electronic network of central storage mechanisms;

    - a single central storage mechanism or multiple central storage mechanisms could be established within each Member State. Each central storage mechanism would be required to at least hold all regulated information for a particular Member State. Member State central storage mechanisms would be linked via Competent Authority websites to provide investors with access to all European regulated information.

How could central storage mechanisms be funded on a pan-European basis?

14. Central storage mechanisms established to hold all European regulated information would benefit from large economies of scale. If a single central storage mechanism was built from nothing to hold all European regulated information, the contribution required from Member State Competent Authorities would be much less than if each Member State was to build its own storage mechanism. Alternatively, if existing commercial operators were approved as central storage mechanism for the whole of Europe implementation costs incurred by Competent Authorities would be very low.

15. On an ongoing basis, issuers and investors could both be charged to fund the operation of central storage mechanisms. However, if central storage mechanisms were to be run on a non-commercial basis, public funding may be necessary.

How could central storage mechanisms be operated on a pan-European basis?

16. A single central storage mechanism could be operated by Competent Authorities within each Member State. However, as many Member State Competent Authorities do not currently operate systems that would fulfil central storage mechanism requirements they would be required to each operate one. This would result in the duplication of operational costs across all Member States. Alternatively, each Member State could be required to contribute to the operation of one single central storage mechanisms holding all European regulated information.

17. If commercial entities were appointed as central storage mechanisms within each Member State, the relevant Member State Competent Authority would be responsible for ensuring these commercial entities met the required service standards. However, if pan-European commercial central storage mechanisms were appointed to hold all European regulated information, a body representing every Member State (such as CESR) would need to be established to monitor each central storage mechanism's compliance with the required standards.

INTRODUCTION

18. In addition to the mandates to provide technical advice, the Commission has invited CESR to prepare progress reports on the role of the officially appointed mechanism to which reference is made in Articles 17.1 and 17.1a and on the setting up a European electronic network of information about issuers to which reference is made in Article 18.

19. These progress reports are due in:

    (i) February 2005;

    (ii) October 2005: and

    (iii) a final report in autumn 2006

20. Although the overall purpose of these progress reports is to facilitate the Commissions thinking about additional mandates that may be given to CESR in the future, CESR will be given mandates in [Spring 2005] relating to the following specific areas:

    (i) storage mechanism to which reference is made in Article 17(1) & 17.(1a); and

    (ii) the filing of all regulated information with the Competent Authority to which reference is made in Article 15. (4) a.

21. The Commission has made it clear that irrespective of the exact time when the mandates relating to these articles are given to CESR, CESR will have to formulate, consult on, and give its advice to the Commission within a very short time frame so that Member States can implement the Commission's implementing measures within the same timeframe as those relating to the areas for which mandates have already been given to CESR.

22. As such, even though CESR has at this stage only been asked to give the Commission a progress report, CESR considers these matters to be a priority for the purposes of consultation as the consultation period for these mandates, once given, is likely to be very short

23. The progress report that CESR will give to the Commission in February 2005 will deal with the following Articles of the Transparency Directive:

    (i) Article 15/4a of the Transparency Directive

> 4. In order to ensure the uniform application of paragraphs 1, 2 and 3 of this Article, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures.
>
> The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or person referred to in Article 10, is to file information with the Competent Authority of the home Member State under paragraphs 1 or 3, respectively, in order to:
>
> (a) enable filing by electronic means in the home Member State;

(ii) Article 17/1 a

1a. The home Member State shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information. These mechanisms should comply with minimum quality standards of security, certainty on the information source, time recording and easy access by end users and shall be aligned with the filing procedure under Article 15(1).

(iii) Article 18, Guidelines

1. The Competent Authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC, and this Directive. The aim of those guidelines shall be the creation of: (a) an electronic network to be set up at national level between national securities regulators, operators of regulated markets, and national company registers covered by Council Directive 68/151/EEC; and (b) a single electronic network, or a platform of electronic networks, across Member States. 2. The Commission shall review the results achieved under paragraph 1 by 31 December 2006 at the latest and may, in accordance with the procedure referred to in Article 23(2), adopt implementing measures to facilitate compliance with Articles 15 and 17.

24. On a detailed analysis of these Articles CESR considers there to be fundamental interdependencies that require a joined up approach to its thinking when determining the nature of the advice that it should give to the Commission.

25. These interdependencies:

(i) Article 15.4a - deals with the practicalities of how an issuer files the regulated information that it is required to produce and publishes with the Competent Authority;

(ii) Article 17.1 imposes an obligation on that issuer to ensure that the same information gets to the central repository;

(iii) Article 17. 1(a) imposes on Member states an obligation to ensure that there is at least one officially appointed mechanism for the storage of all regulated information and that investors can access that information; and

(iv) Article 18 looks at expanding the reach of information filed and stored at a national level so that it is accessible on a Pan European basis (as discussed in detail in Section B.

26. Clearly, inconsistencies between the approaches taken by CESR in relation to each of these matters may be problematic when implementing these measures. If the methods that an issuer can use to fulfil its 15.4a obligations and file information with the Competent Authority do not take account of an issuer's Article 17.1 obligation to send that same information to the central storage mechanism, unnecessary and undue burdens are placed on issuers.

27. CESR sets out below its initial thinking relating to these issues together with a number of questions for consultees to consider and answer. This will greatly facilitate CESR's ability to meet its obligations and give the Commission detailed advice once it has been given the formal mandates.

28. This thinking is divided as follows:

(i) Article 17.1 and /1a – central storage mechanism;

(ii) Article 18 – electronic network requirement.

SECTION 1: CENTRAL STORAGE MECHANISM OPTIONS (ARTICLE 17.1/17.1a)

Directive requirements

29. Article 17.1 requires Member States to ensure that issuers make regulated information available to the officially appointed mechanism referred to in paragraph 17.1.a.

30. Article 17.1a of the Directive imposes on Member States the obligation to ensure that there is at least one officially appointed mechanism for the central storage of regulated information. The Directive also prescribes that this central storage mechanism should comply with minimum quality standards of:

    (i) security;

    (ii) certainty on the information source;

    (iii) time recording;

    (iv) easy access by end users; and

    (v) be aligned with requirements set out in Article 15.1 to file all regulated information directly with the issuer's home Competent Authority which may, at the authority's discretion also be published on the authority's internet site.

Description of the goal of the central storage mechanism

31. In order to determine what each of these minimum requirements should be, first, the goal of the central storage mechanism should be established.

32. Set out below are number of questions that require discussion in order to establish the goal of the central storage mechanism.

What information has to be captured and stored?

33. The information that is to be stored is **regulated information** as defined in Transparency Directive and explained in more detail in the main introduction

34. As such, the storage mechanism will need to be capable of capturing and storing not only a very large amount of information, but also capturing and storing very different types of information. This information is currently created and disseminated in very different formats. For example price sensitive announcements are usually disseminated electronically and in full text format, whereas large documents such as annual accounts are traditionally disseminated to investors in hard copy form.

Who should be able to access regulated information?

35. Regulated information has to be accessible to end users. “End users” is not a defined term in the Directive.

36. The Directive’s recitals suggest that "end users" should be interpreted investors, including retail investors:

37. Recital 15 states that:

"information which has been disseminated should be available …. ….for retail investors …."; and that

…investors who are not situated in the issuer's home Member State should be put on an equal footing with investors situated in the issuer's home Member state when seeking access to such information".

38. As a consequence of this Recital, CESR interprets end users to mean investors including retail investors that are located within any Member States.

39. In addition, CESR acknowledges that it is not only investors who require access to regulated information CESR considers that all users of regulated information could fall within the definition of "end users".

How does regulated information have to be stored?

40. Regulated information has to be centrally stored. "Central storage" is not a defined term and can mean a number of different things. It can mean that all regulated information has to be stored, physically, in one place, or it could be interpreted to mean that, from an end-user's perspective, regulated information is stored in such a way that it all of it is accessible to the end-user. The Directive imposes an obligation to appoint "at least one" central storage mechanism, therefore leaving the possibility of there being more than one.

41. CESR considers that central storage does not necessitate physical storage in one place.

QUESTION 1:	**Do you agree with CESR's interpretation of the requirement of Article 17.1.a that central storage does not necessitate physical storage in one place? Please give reasons.**

Issues discussed

42. In formulating its advice to the Commission, CESR considers it important to explore as many options as possible. In order to develop its thinking, CESR considers the following factors to be of importance:

A) Should there be one storage mechanism, or more than one?

B) How should investors receive access to regulated information?

C) How should the regulated information get to a storage mechanism?

D) When should regulated information in the central storage mechanism be accessible?

E) The issuer's responsibility.

F) Should regulated information be available free of charge to investors?

G) Who should operate central storage mechanisms?

H) What should the role of the Competent Authority be?

I) What quality standards should be established for central storage mechanisms?

A) Should there be one storage mechanism, or more than one?

43. As mentioned above, the Level one text states that "at least one" central storage mechanism must be appointed. The question as to whether one central storage mechanism is appointed or more than one is left open. This gives rise to a number of options:

(i) storage by type of regulated information;

(ii) multiple mechanisms storing all regulated information; and

(iii) one single storage mechanism.

(i) Storage by type of regulated information or category of issuer

44. This option would allow a number of different storage mechanisms to store only particular types of regulated information or regulated information on certain categories of issuer, determined for example by their place or segment of listing . These multiple storage mechanism would be linked together, in some way, at a national level so that all information is available to end-users for a particular jurisdiction.

45. This option makes use of the various existing forms of storage mechanisms already available in some Member States. For example, in some Member States, all regulated information is filed with the Competent Authority, where it is stored and made accessible to investors. In other Member States, although there is no central storage of all regulated information, price sensitive information is received, stored and made accessible by exchanges. In some other Member States commercial entities provide access to price sensitive information for free whilst separate commercial services capture, store and charge investors a fee to access other information such as prospectuses, annual reports and accounts, proxy forms, AGM notices etc.

46. CESR does however envisage a number of practical difficulties with this option:

(i) In order to achieve the goal of access to all regulated information for end users it would be necessary to somehow link all different central storage mechanisms together to provide a network at a national level. This requirement alone may necessitate costly changes to existing currently mutually incompatible systems.

(ii) There would be fragmentation of information that would need to be addressed with linkages at the national level with resulting cot and complexity.

(iii) From a Pan- European perspective, a secondary network would be required to fulfil the requirements envisaged by Article 18 (see paragraphs 233 onwards for further discussion of this topic.). This secondary network would be required to provide access to both the regulated information stored at a national level and the regulated information stored in other jurisdictions. Networks at both a national and pan-European level may be too costly and complicated.

(iv) As regards storage by type of information, there are inefficiencies in requiring issuers to send regulated information to multiple recipients according to type. It would be preferable for issuers to send their regulated information to one dissemination point irrespective of its type.

QUESTION 2: Do you consider storage of regulated information by type to be a viable option?
QUESTION 3: How do you consider the difficulties set out above could be overcome?

QUESTION 4:	Are there any advantages or disadvantages to this option that have not been set out above. If so, please give details.

(ii) Multiple mechanisms storing all regulated information

47. This option would require a number of competing national central storage mechanisms to all store all regulated information for a particular jurisdiction.

48. This option would have the advantage of allowing investors easy access to all regulated information at a national level without the need to create a network of different storage mechanisms. Each storage mechanism would be required to store all national regulated information.

49. CESR envisages that in the same way that there could be competing PIP services for the dissemination of regulated information, there could also be a regime of competing storage mechanisms.

50. These storage mechanisms could be run by commercial entities that offered a variety of different services to investors. These storage mechanisms would be required to at least offer affordable basic access to all regulated information for investors. However it is likely that these services will also wish to offer regulated information with added value services. Value added services could include access to non European regulated information (for example SEC documents), e-mailed alerts to investors on the receipt of documents for "watched" issuers, price and settlement data and research and analysis information.

51. By introducing competition as an option, the overall costs to the market could be kept low as the charges to both issuers and investors would be offered at competitive rates. In addition, competing commercial entities would be more likely to ensure that service standards are kept high and new technological developments utilised to upgrade their services. (The issue of cost to investors is discussed in more detail at paragraphs 110 to 127 below).

52. An additional advantage of a multiple central storage mechanism option is that if any one central storage mechanism were to become unavailable, for any reason, investors would have alternative services to rely upon with which to access regulated information.

53. The possible disadvantages of such an option:

    (i) from an issuer's perspective, this option would require issuers to ensure that all regulated information was sent to all storage mechanisms. This administrative burden may be addressed by separating the capture of regulated information from the storage of this information. This possibility is discussed further in paragraphs 54 to 75 below;

    (ii) as commercial services would be operating storage mechanisms, "free access" may not be possible for those types of regulated information that may be costly to process for reasons of size or complexity;

    (iii) fulfilment of the requirements of Article 18 for a pan-European network of storage mechanisms in each Member State might be more problematic if there are multiple storage mechanisms at a national level. This is discussed in more detail in paragraphs 236 onwards.

QUESTION 5:	Do you consider a multiple storage mechanism regime to be a viable option? Please give reasons.

QUESTION 6:	Are there any advantages or disadvantages to this option that have not been set out above, that are necessary for CESR to consider? If so, please give details.

(iii) One single central storage mechanism

54. Under this option there would be one single central storage mechanism in each Member State.

55. Investors could be sure that by visiting this one single central storage mechanism they would be guaranteed access to all national regulated information.

56. Under this option, issuers would also not be burdened with sending regulated information to multiple storage mechanisms.

57. The requirements of Article 18 for a Pan-European network of storage mechanisms may be easier to implement if there was only one mechanism in each Member State.

58. If a single central storage mechanism was operated on a non-commercial basis by Member State Competent Authorities, there would be no commercial incentive to charge investors for access to regulated information.

59. The possible disadvantages of having only one central storage mechanism are that:

a) a monopoly central storage mechanism would not have a commercial incentive to continually provide a high standard to investors and upgrade its systems to incorporate new technologies;

b) in order to access all regulated information, an investor would not necessarily be provided with a choice of services offering added value and information tailored to particular investment needs;

c) in order to provide access to all regulated information to investors for free; the cost of capturing, storing and making regulated information available would have to be recouped through increased charges to issuers. This is discussed in more detail in paragraphs 110 to 127 below.

QUESTION 7:	Do you consider having one central storage mechanism to be a viable option? Please give reasons.
QUESTION 8:	Are there any advantages or disadvantages to this option that have not been set out above that are necessary for CESR to consider. If so, please give details.

B) How should investors receive access to regulated information?

60. The provision of access to the regulated information has an important affect on the structure of the central storage mechanism regime.

61. CESR considers that a possibility to access all regulated information in one place is clearly an advantage for all end users of regulated information. For investors, it facilitates access to all regulated information about a particular issuer irrespective of where the investor or the issuer is located. For other users of regulated information in the market, such as financial analysts, and competing issuers, facilitating access to centrally stored regulated information is also clearly beneficial.

62. However, when considering access to all regulated information for investors, it is important to consider how investors use the information services currently available to them when making investment decisions. Investors often use services specifically aligned to particular investment requirements. For instance, for real-time investment decisions, an investor is likely to use a service that provides regulated information coupled with price and settlement data reported by regulated markets. For long term investment decisions, an investor is more likely to use an alternative service providing regulated information alongside analyst reports and long term research data.

63. Whatever the method of central storage, it is likely that investors will continue to use services that can provide access to regulated information amalgamated with other useful "value added" data such as those mentioned above. It is unlikely that an investor will be attracted to using a service that provides access only to all "naked" regulated information.

64. For the reasons stated above, a mechanism for the central storage of all regulated information does not necessarily mean that there should be one single access point to all regulated information.

65. It is believed that access to all regulated information could be made available through multiple access points. In addition to which, each access point could make all regulated information available together with other data suited to specific investment needs of those accessing the storage mechanism.

66. Possible options for the provision of access for investors to regulated information are:

(i) Regulated information accessible through a Competent Authority's website

67. The advantages of a Competent Authority being the point of access for investors to regulated information are:

(i) irrespective of how many storage mechanisms operate at a national level, access to all mechanisms could be provided on a Competent Authority website. This would ensure that investors were provided with a "one stop shop" for all national regulated information;

(ii) free access (excluding the cost of connection to the internet) could be provided to the investor; and

(iii) establishing a Pan-European network of central storage mechanisms could be achieved more easily if each Competent Authority provided access to other Competent Authority websites. This could consequently allow investors to access to all regulated information; both on a national and pan-European level (see discussion in paragraphs 236 onwards).

(ii) Regulated information available directly via the central storage mechanism

68. The advantage of regulated information being made available directly via central storage mechanisms is that these mechanisms may be able to offer added value services tailored to particular investment needs. For example central storage mechanisms may be able to provide regulated information together with research and analysis services.

69. A disadvantage of regulated information being made available directly via central storage mechanisms is that all regulated information may not be available from one central storage mechanism.

(iii) Basic low cost service available through a Competent Authority's website. "Value added" services offered commercially by the central storage mechanism(s)

70. A combination of the above two options may be necessary in order to facilitate free access to all regulated information with the option of access to added value services. Basic free access could be provided via the Competent Authority's website, whilst added value services could be charged directly to the investor by the storage mechanism(s).

QUESTION 9:	Which of the above options do you prefer? Please explain the reason(s) for your choice.
QUESTION 10:	Do you consider there to be any disadvantages to regulated information being accessible through a Competent Authority's website. If so, please give details.

C) How should the regulated information get to a storage mechanism?

71. The Level one text states that an issuer has to make the regulated information available to the central storage mechanism. However, the method in which an issuer does this is left open.

72. In addition, CESR has been mandated to provide advice, under Article 17(1), regarding the method by which regulated information is disseminated. Consequently, the fact that the issuer may have already sent regulated information to an operator should be taken into account.

73. CESR considers there to be a number of options:

(i) Delivery of information to both dissemination and central storage mechanisms by issuers

74. Under this option an issuer would be required to send all regulated information to both a central storage mechanism and an operator.

75. This has the advantage of the issuer himself discharging his responsibility to ensure that the information is sent to a storage mechanism.

76. However, under this option if there are multiple central storage mechanisms, a large administrative burden will be placed on the issuer to send all this information to all the central storage mechanisms as well as an operator.

77. This option would also mean that there is duplication of effort in the processing of regulated information as the same regulated information would be processed both by a central storage mechanism and an operator.

(ii) Central storage mechanisms receive a combination of regulated information from issuers and media

78. Under this option central storage mechanisms would take an amalgamated feed of disseminated regulated information from media of their choice. Issuers would be required only to send to a central storage mechanism regulated information that could not be disseminated in full text by media for reasons of size or complexity.

79. This option has the advantage of the issuer not having to duplicate the process of sending the same regulated information to multiple parties.

80. A disadvantage of this option is that, as discussed above, in the case of certain types of regulated information such as annual accounts an issuer will still be required to send this information to all central storage mechanisms.

81. In addition, under this option, the responsibility for the transmission of regulated information to a central storage mechanism would not lie entirely with an issuer. Under this option, for certain types of regulated information, an issuer could meet its regulatory responsibilities by sending it to an operator only (this is discussed in further detail in section D below). A central storage mechanism would place a certain amount of trust in media providing it with all of the regulated information it had received from Operators. However, there would be strong commercial and contractual reasons for media to provide a central storage mechanism with all regulated information it has received.

(iii) Central storage mechanisms receive combination of regulated information from Document Capture Services" and media

82. Under this option, a central storage mechanism would receive an amalgamated feed of disseminated regulated information from media of its choice. A central storage mechanism would also receive an electronic feed of large non-price sensitive documents, such as annual report and accounts processed by "Document Capture Services".

Document Capture Services

83. "Document Capture Service" is a term to describe a body that would receive, in hard copy form, large bulky non-price sensitive documents from issuers that had not been disseminated in full text. The Document Capture Service would convert these documents into an electronic form and send these documents to all central storage mechanisms simultaneously. An issuer would be free to choose the Document Capture Service it preferred.

84. This option would remove the administrative burden on issuers of having to send particular types of regulated information to multiple central storage mechanisms.

85. CESR anticipates that a number of operators may also wish to function as Document Capture Services. If this were the case, an issuer would be able to send all of the regulated information it produced to an operator that also acted as a Document Capture Service. By using such an operator, an issuer could be sure that it had fulfilled both its obligation to both have all of its regulated information disseminated and have all of its regulated information made accessible within a storage mechanism.

86. The disadvantages of this option are the same as that set out in paragraph 80 above. However, under this option, the concept of Document Capture Services would impose another tier of regulation on the market.

(iv) Central storage mechanisms receive all regulated information from operators

87. Under this option central storage mechanisms would receive both price sensitive regulated information and large non-price sensitive regulated information via direct connections with operators.

88. operators could be required to process large non-price sensitive regulated information and transmit this, along with disseminated price sensitive information, electronically to central storage mechanisms.

89. It is important to note, that large non-price sensitive documents processed by operators in this way, would be transmitted electronically for storage purposes only. It is not proposed that these documents be disseminated in full text by media. As discussed in the above section discussing the dissemination of regulated information under Article 17(1), it is proposed that a notice stating where the full document could be viewed would be disseminated by media instead.

90. A central storage mechanism would be required to maintain direct connections with all operators and amalgamate all regulated information itself.

91. As discussed above, regarding Article 17(1) it is considered desirable that issuers be able to discharge all of their obligations to disclose regulated information through one means, an operator. This option would enable an issuer to do this and would not require an issuer to send any regulated information independently to a central storage mechanism. This option is particularly advantageous if there are multiple storage mechanisms. By sending its regulated information once, to an operator, an issuer would be able to more easily discharge its obligation to ensure that every central storage mechanism makes it available. This would happen because, on receipt of regulated information, an operator could transmit it simultaneously to all central storage mechanisms in existence.

92. Also, as discussed above, regarding Article 17(1), Competent Authorities may have no regulatory control over the regulated information media chooses to disseminate. This option would place no reliance upon media to provide central storage mechanisms with all disseminated regulated information. Consequently, under this option, a Competent Authority would have regulatory control over the entire storage process, from submission of regulated information by an issuer to an operator, to its accessibility for investors via central storage mechanisms. In this way Competent Authorities could ensure that all regulated information made its way to central storage mechanisms.

QUESTION 11: Which of these options do you prefer? Please explain the reason(s) for your choice. Are options missing? Please explain which ones.

QUESTION 12: Do you consider it necessary for CESR to prescribe one particular option? Please explain your reasons.

D) Issuer's responsibility to make regulated information available to a central storage mechanism

93. In the transmission of regulated information to a central storage mechanism it is important to define when an issuer's responsibilities have been met.

94. CESR considers that there to be a number of possibilities on this issue:

(i) At the point at which regulated information is actually sent to a central storage mechanism.

95. Under this option, whichever method the issuer chooses to send regulated information to a central storage mechanism, its responsibility would be met as soon as the information was despatched.

96. CESR considers this option to be problematic for the reason that despatch of regulated information from an issuer does not guarantee its receipt by the central storage mechanism.

(ii) At the point when the issuer receives confirmation that the regulated information has been received by the central storage mechanism.

97. Whether the issuer is sending the information directly to a central storage mechanism or Document Capture Service these entities would be required to issue some form of electronic confirmation of receipt.

98. If central storage mechanisms were able to receive information disseminated by media, an issuer could rely on confirmation of receipt from an operator to be sure that dissemination via media to a central storage mechanism would occur. The method of transmission of regulated information to a central storage mechanism is discussed in paragraphs 71 to 92 above.

(iii) At the point at which regulated information is accessible by an investor directly from a central storage mechanism or via a Competent Authority's website.

99. Under this option, an issuer would only satisfy its obligations at the point at which the information it had sent to an operator, Document Capture Service or directly to a central storage mechanism was made publicly accessible.

100. The disadvantage of this option is that it would place issuers in a position whereby they would be responsible for actions beyond their control. A system failure at any point during the path to storage of regulated information, for example, may prevent investor access to regulated information. An issuer would have no power to address these problems other than by re-sending the regulated information.

QUESTION 13: When should an issuer's responsibilities to send information to a central storage mechanism be considered fulfilled? Please explain your reasons.

E) When should regulated information in the central storage mechanism be accessible?

Price sensitive regulated information

101. CESR considers it important to make clear that the purpose of dissemination and storage of regulated information are separate.

102. The purpose of the central storage mechanism is to facilitate access for investors to all regulated information irrespective of where the issuer is located and for all investors to have certainty about the ability to access all regulated information. The purpose of dissemination is to ensure that regulated information is disseminated to investors as quickly and as widely as possible.

103. As such, CESR considers that there is normally no need to apply the same time restrictions on a central storage mechanism as those applied to dissemination. For instance, where the same regulated information is disseminated in full text by media and also held in a storage mechanism, the storage mechanism should normally be under no obligation to make that information available to investors at the same time as it is disseminated by media.

104. Nevertheless, the main introduction (cf. Part B, section 1, paragraph 25) to these papers refers to the possibility that the dissemination process may not result in the receipt, by all actual and potential European investors, of all price sensitive regulated information. For example there may be circumstances where media disseminating regulated information to retail investors chooses, for business reasons, not to disseminate price sensitive regulated information for small or insolvent issuers.

105. To moderate the affect of potential "black holes" in the dissemination of regulated information, a central storage mechanism could be required to make price sensitive regulated information accessible in real-time to all investors.

106. Dissemination and storage are two separate things that function under different conditions and in most cases with different actors on the dissemination and the storage side. In particular, the dissemination of price sensitive regulated information in real-time is seen as the primary function of an operator. Consequently it is important to bear in mind the interests of the operators. CESR considers that it is important not to establish, through central storage mechanisms, competition to the dissemination model that may disrupt the viability of the dissemination model.

QUESTION 14: Should all price sensitive information be made available in real-time by the central storage mechanism to moderate the affect of "black holes" resulting from the dissemination process?

Non-price sensitive regulated information

107. The above section relating to the dissemination of regulated information under Article 17(1) of the Directive, proposes that certain large documents containing non price sensitive regulated information, will not be disseminated in full text by an operator. In these circumstances it is proposed that a notice stating where the relevant document can be viewed will be disseminated instead.

108. A central storage mechanism may receive non-price sensitive documents directly from issuers in order for these documents to be made available to investors. It will take a central storage mechanism much longer to process large non-price sensitive documents and make them available to investors electronically than price sensitive information disseminated in full text by an operator.

109. If a central storage mechanism receives large non price sensitive documents directly from issuers, CESR believes the central storage mechanism should be obliged to meet reasonable deadlines regarding the processing of that information. However CESR believes that the deadlines applied to the processing of large non-price sensitive documents should not be as demanding as that applied to the processing of price sensitive information.

QUESTION 15: Do you agree that non-price sensitive regulated information does not need to be made accessible by a central storage mechanism to the same deadlines as price sensitive regulated information? Please explain your answer.

QUESTION 16: To what time deadlines should a central storage mechanism be required to make regulated information available?

F) Should regulated information be available free of charge to investors?

110. Recital 15 of the Directive states that the :

"information that has been disseminated should be available in the Home Member State in a centralised way allowing building up a European network, at affordable prices for retail investors."

111. CESR considers this to mean that access for investors to the information that is stored in the central storage mechanism does not need to be free of charge, which fits with commercial reality in that no existing dissemination system provides completely free access to regulated information. For example if information is published in a newspaper, one must buy and pay for the paper. Similarly, if information is posted on the internet, an investor must pay for the internet connection.

112. This gives rise to the following question: if the information cannot by definition be available for free, what does "affordable prices for retail investors mean"? For example should an investor be obliged to pay for only an internet connection, or does it mean that investors can be charged a fee for use of the central storage mechanism itself and the regulated information that is being accessed?

113. The answer to this question is dependant upon how the operation of a central storage mechanism is funded.

Who should fund the costs of operating a central storage mechanism?

114. CESR considers there to be a number of possible sources of funding the central storage mechanism:

Investors who use the central storage mechanism.

115. Investors could be charged for using the central storage mechanism. The fee amount could be linked to the amount and type of regulated information that was accessed. For example access to a full set of annual accounts or a prospectus could be charged at a higher rate than the fee to access an AGM statement. CESR considers that all but the largest documents would be accessible to investors at very low cost, as is the case in jurisdictions where price sensitive information is already disseminated to retail investors electronically via the internet.

116. This option is better suited to a commercial model for operating the central storage mechanism as it seems unlikely that Competent Authorities would charge investors for access to any regulated information.

117. In view of the amount of regulated information that will need to be stored and made accessible, CESR considers that it may not be possible for the total running costs of a central storage mechanism to be funded entirely by investors.

Issuers whose regulated information is made available via the central storage mechanism

118. Under this option, issuers would be charged according to the amount of information they produce and hence stored and made accessible by a central storage mechanism.

119. It seems fair to charge issuers on the basis of the amount of regulated information that they produce and that has subsequently to be processed, stored and made accessible.

120. This option is also in line with the way that issuers are charged currently for admitting securities to trading on regulated markets.

121. However, CESR considers that it would be important to ensure that the fee burden on issuers is not excessive, as ultimately this could lead to an increase in the cost to issuers of raising capital in Europe.

Commercial entities that make use of regulated information

122. Under this option, commercial entities would be charged a fee for accessing the information to which they subsequently add value and sell to others, for example research agencies.

123. CESR considers that this source of funding alone could not sustain the total running costs of a central storage mechanism.

Investors that contract for additional services with the operator;

124. Under this option, operators of central storage mechanisms could charge for the additional services it provides to investors on a contractual basis.

125. CESR considers that a commercial operator could offer an affordable low cost service to investors (potentially through the Competent Authority's website) whilst at the same time marketing "value added" services at commercial prices on a contractual basis to investors.

Public funding of the total operating costs of the storage mechanism.

126. This option is justifiable on the basis that the obligation to ensure that there is at least one officially appointed central storage mechanism, lies with each Member State. A publicly funded central storage mechanism may be a way to ensure unrestricted free access for end users. There would be little commercial incentive for competing commercial storage mechanisms to offer their services for free. This would be particularly relevant to large bulky documents such as annual reports and accounts. The cost of processing such documents and making them available to investors would be comparatively large. A commercial service would expect to be able to recoup this cost through the fees it charged to access such a document.

A combination of the above options

127. CESR considers that a combination of these options could be possible. For example both issuers and investors could be charged, or there could be some form of public funding, as well as charges for issuers and investors.

QUESTION 17: Which of the above options or combination of options do you consider to be most desirable? Please give reasons.

QUESTION 18: Are there any other options that have not been identified above that you consider to be desirable? If so, please give details.

G) Who should operate central storage mechanisms?

128. The question of who should operate the central storage mechanism has an important affect on the structure of the central storage mechanism regime.

129. CESR considers the following technical issues to be relevant for all operators of storage mechanism:

(i) The volume and size of regulated information that would need to be received processed and accessed will require a database that has a very large capacity. However, at a national level, the capacity of these databases would to a certain extent depend on the number of issuers and the amount of regulated information that was generated within that jurisdiction.

(ii) The size of documents may also pose technical challenges regarding the retrieval of the information in the database

(iii) In order to meet the requirement for regulated information to be easily accessible it would be necessary to build and maintain software to enable investors to search the database of stored regulated information and display this information (including large documents such as annual report and accounts) electronically via a website.

(iv) A website is limited to a finite amount of bandwidth. Bandwidth is the amount of data (in kilobytes) that can be transmitted from a website to a user's PC. As some of the regulated information, such as annual accounts and prospectuses would be very large, the bandwidth requirements of the website would be significant. Bandwidth requirement would also increase with the central storage mechanism's popularity as the more "hits" a site gets; the more its allocated bandwidth is used up. Bandwidth is sold by the host of a website and consequently any increase in bandwidth is likely to increase cost.

(v) The servers on which a website is stored would have to be able to cope with an increased number of requests made to the site.

(vi) Any information that was fed into the central storage mechanism that was re-published may carry with it the cost of licensing fees for this re-publication.

130. In light of the above, CESR considers the following to be possible options:

The Competent Authority

131. The obligation to ensure that there is at least one officially appointed mechanism lies with each Member State. Consequently, the possibility of the Competent Authority taking on the role of operating a central storage mechanism should be considered.

132. Issuers are obliged to send all regulated information to the Competent Authority under Article 15.1, as such, it would make sense for the Competent Authority to also process and make this regulated information accessible. This could make particular sense for those Member states that currently operate a central storage mechanism.

133. However, CESR considers there to be a number of potential problems for Competent Authorities in taking on the role of the central storage mechanism:

(i) A Competent Authority would be less likely to offer any "value added" services. The provision of "value added" services is not a Level 1 requirement of this Directive.

Nevertheless commercial entities providing access to regulated information are likely to offer "value added" services. Consequently, investors using a Competent Authority operated central storage mechanism may be disadvantaged.

(ii) As the sole function of a Competent Authority is not the operation a storage mechanism, a Competent Authority may not be able to provide an equivalent level of service to that offered by a commercial entity whose sole purpose is the provision of information to investors.

(iii) A Competent Authority run central storage mechanism would have a monopoly over access to regulated information. The normal considerations of the benefits and disadvantages of a monopoly provider would of course apply in this case..

Commercial entities that are appointed

134. In view of the technical burdens highlighted above, another possible option is to appoint a commercial entity to perform the function of storing and providing access to regulated information.

135. There is clearly scope for such an appointment by virtue of the fact that the level one text of the Directive, itself makes reference to the "officially appointed mechanism" for the provision of central storage.

136. Taking into consideration the fact that CESR will be mandated to establish the minimum requirements for this mechanism (discussed in greater detail below), the Competent Authority will need to ensure that only those commercial entities that meet the minimum requirements could be appointed as an "official storage mechanism". In addition, it may also be necessary to monitor a commercial central storage mechanism's compliance with these standards on a continuous basis.

137. CESR considers that a similar method as that set out in the section above regarding the appointment of operators could be applied to commercially operated central storage mechanisms.

138. By appointing commercial entities that are experts in the provision of information to investors and other users, this should ensure that investors get a higher standard of service which is more competitive than if this was left to the Competent Authority.

QUESTION 19: Which of the above do you consider to be the best option? Please give reasons for your answer.

QUESTION 20: Do you consider there to be any other advantages or disadvantages to a Competent Authority or a commercial taking on the role of the central storage mechanism that have been discussed that are necessary for CESR to consider? If so, please give details.

H) What should the role of the Competent Authority be?

139. Irrespective of whether or not the Competent Authority operates the central storage mechanism, an important issue that needs to be considered is the question of what the role of the Competent Authority should be.

140. As discussed above, clearly the Competent Authority has a regulatory role in ensuring that a central storage mechanism is compliant with minimum standards. In addition, in order to keep up with technological innovations in the market place, investor requirements and

regulatory changes, the Competent Authority will also have a regulatory role in modifying those minimum standards.

141. In addition to these roles, CESR considers it important to establish whether or not the Competent Authority needs to do more then set standards and regulate the maintenance of those standards for central storage mechanisms.

142. The Directive requires Member States to ensure that issuers are meeting their obligations under the Directive, and obligations relating to the specific content of information (for example accounts, major shareholding disclosures). The only way that this can be ensured is for the Competent Authority (or those it delegates under Article 20.2) to check and supervise the content of the regulated information.

143. However, there is no requirement under the Directive for regulated information to be made available to the central storage mechanism, only once it has been checked and approved by the Competent Authority.

144. It is therefore necessary for CESR to consider how the process of supervising the accuracy of regulated information can be aligned with the storage of regulated information.

145. CESR considers the following to be possible options:

(i) Regulated information is checked on an ex-ante basis. This would require regulated information to be checked before it can be made available to a central storage mechanism.

(ii) Regulated information is checked on an ex-post basis. This would allow regulated information to be made available to investors before it is checked by the Competent Authority. If, following the Competent Authority's check, regulated information is found not to be in compliance with Directive requirements, the Competent Authority could require a storage mechanism to remove any incorrect information and require an issuer to submit a corrected version of that regulated information.

146. CESR considers that it is possible for both ex- ante and ex-post methods of supervising the accuracy of regulated information to be built into the central storage mechanism model.

147. However, for the following reasons, CESR questions whether or not any form of ex-ante supervision is necessary.

148. In Member States where there are large volumes of regulated information, it is not either practical or customary to check every piece of regulated information before it is made available to investors. As such, it is likely that in these Member States, an ex-ante method of supervision would very significantly delay the access to regulated information.

149. As one of the purposes of dissemination of regulated information (discussed in the section above regarding Article 17(1)) is fast access to this information for investors. In these circumstances a review by the Competent Authority prior to dissemination is not envisaged. Therefore, a non-compliant piece of regulated information will be disseminated to investors irrespective of whether or not a Competent Authority checks this information prior to its accessibility via a central storage mechanism.

150. An ex-ante check of regulated information may only be of real value where a full text version of regulated information had not been disseminated via operators and media (for example the dissemination of annual report and accounts) and as such investors have not already been exposed to unchecked regulated information.

151. CESR considers that an ex-ante check of regulated information is only necessary where a Directive explicitly prohibits the dissemination of regulated information prior to approval by the Competent Authority. For example, the Prospectus Directive explicitly prohibits an issuer from disseminating a prospectus until it has been checked and approved by the relevant home Competent Authority.

152. The following options can be envisaged to cater for the checking of regulated information if this was considered to be necessary:

(i) Regulated information could be retained or put on embargo for the period of time necessary for its analysis, and then subsequently made available. If this option were adopted, it would need to be made clear that the issuer's obligations of making the information available to the storage mechanism would be fulfilled once it had been confirmed as received by the central storage mechanism.

(ii) Regulated information could be made available by a central storage mechanism as soon as received in the central storage mechanism and labelled as not being reviewed by the regulator, if this review is mandatory. Therefore, users will be made aware that there might be changes to the regulated information following the checking process.

(iii) Regulated information could be made available by a central storage mechanism as soon as received and, once checked, if there is a need for clarification, an additional announcement is made to the central storage mechanism and disclosed in replacement or in conjunction with the initial information.

QUESTION 21: Which of the above options do you prefer? Please give reasons.

QUESTION 22: Do you think it is necessary to make the status of the stored information as reviewed or not reviewed by the regulator transparent in the storage mechanism? Please give reasons.

I. What quality standards should be established for central storage mechanisms?

153. CESR will be mandated to provide the Commission with quality standards for central storage mechanisms. At this stage, CESR envisages that these standards may need to cover the following areas:

(i) Electronic transmission of the regulated information into the storage mechanism and its presentation;

154. CESR considers that the method of receiving information in the central storage mechanism should be electronic and that internet based systems would be required. An electronic internet based central storage mechanism would be necessary to ensure that investors could gain access to all regulated information easily on both a national and pan-European basis.

155. There are a number of Competent Authority initiatives that set standards to ensure that certain types of information filed by regulated firms with the Competent Authority are filed to a standard that can be most easily interrogated and analysed by end-users. For example, standards based reporting initiatives using eXtensible Business Reporting Language (XBRL) systems. These initiatives also aim at reducing the amount of manual re-keying of information required within the regulated firms and the Competent Authority.

156. CESR considers that it is generally advantageous to set standards regarding the filing of information with storage mechanisms. Setting input standards improves the quality, accuracy and reliability of information as it enters a storage mechanism and enhances the information that can be included within analyses and reports on a routine basis.

157. However, CESR believes that the setting of input standards such as XBRL, at this stage, may be premature. CESR has been mandated to consider a base of dissemination and storage mechanisms within each Member State. The imposition of input standards in addition to the establishment of storage mechanisms is likely to put excessive strain upon the ability of Member States to implement the Directive's measures within the required timetable.

158. However, CESR would support the setting of input standards once storage mechanisms are established and have proven their ability to operate efficiently on a pan-European basis.

QUESTION 23: Do you consider that it is necessary for CESR to mandate the standard to which all regulated information should to be transmitted? Please give reasons.

QUESTION 24: Do you consider that the standard to which all regulated information should to be transmitted is something that should be left to some point in the future, after the Directive has been implemented? Please give reasons.

(ii) Security

Processing of unpublished regulated information

159. The operator regime established under Article 17(1) of the Directive should ensure that the majority of regulated information is disseminated publicly in full text as quickly as possible. It is likely that the majority of regulated information will be published by the operator in full-text form before it is received by a central storage mechanism.

160. Consequently, much of the burden of ensuring unpublished regulated information is processed securely will be carried by the operators involved in the dissemination process, rather than storage mechanisms. The standards set for operators should ensure that unpublished regulated information is processed and disseminated securely and not misused.

161. As explained above, it is likely that a central storage mechanism will receive specific types of regulated information that will not have been published in full text by the operator established under Article 17(1) (e.g. annual report and accounts). In these circumstances a central storage mechanism may be the first to make such a document available to investors. However this type of regulated information is unlikely to contain price sensitive material. An issuer will be required under the obligations of the Market Abuse Directive to publish any price sensitive material in full text as soon as possible. Consequently, price sensitive material contained within a document such as an annual report and accounts should be public knowledge by the time it is received by a central storage mechanism.

162. For the reasons set out above, CESR does not believe it is necessary to place a central storage mechanism under an obligation to process regulated information securely. Nevertheless, central storage mechanisms should be obliged to ensure that the information they receive is from an authentic source. In addition, a central storage mechanism should ensure that the regulated information it holds, is complete and unedited, as originally sent by an issuer.

QUESTION 25: Do you agree that security measures relating to the processing of unpublished regulated information are better dealt within the standards set out for operators than standards set for central storage mechanisms? Please give reasons.

Integrity of stored regulated information

163. In order to uphold the veracity of regulated information available to an investor, the content of regulated information held by a central storage mechanism should be complete and unedited as originally sent by issuers. A central storage mechanism should be under an obligation to ensure the completeness of the regulated information it holds and ensure that regulated information is not edited while stored.

164. If Document Capture Services are established (see paragraphs 66 to 69 above), these services should also be required to ensure that the content of the regulated information they send to central storage mechanisms is complete and unedited as received from an issuer or an issuer's representatives.

QUESTION 26: Do you consider that a central storage mechanism should be obliged to ensure that the regulated information it holds is complete and unedited? Please give reasons.

QUESTION 27: Are there any other issues relating to security that you think CESR should consider? Please give details.

(iii) Certainty of source

165. Notwithstanding the above, a central storage mechanism should have certainty that the information it receives is from an authentic source. A central storage mechanism should verify that any regulated information it receives directly is from an issuer or an issuer's representative.

166. Under proposals set out above in paragraphs 61 to 75, a central storage mechanism may receive an amalgamated feed of information from media or an operator established under Article 17(1). In these circumstances a central storage mechanism will rely upon an operator or SIP having appropriate measures in place to ensure the regulated information t processed is from an authentic source.

167. Under proposals set out in paragraphs 78 through 86 above, a central storage mechanism may receive regulated information that has been captured and converted into electronic form by Document Capture Services. A central storage mechanism should ensure that any information received in this way is from an authentic Document Capture Service.

168. If Document Capture Services are established, these services should themselves be required to authenticate the regulated information they receive from issuers.

QUESTION 28: Do you believe that a central storage mechanism should be obliged to ensure that the regulated information it receives is from an authentic source? Please give reasons.

(iv) Time recording of the receipt of information

169. The purpose of recording the time at which a central storage mechanism receives regulated information is:

- to enable a Competent Authority to monitor the time taken for a central storage mechanism to process and make available regulated information once it has been received; and

- to ensure that an investor can sort and order regulated information by date.

Measuring the performance of central storage mechanisms

170. It is assumed it is beneficial for regulated information to be processed and made available to the investor within reasonable time limits. For reasons set out in paragraphs 101 to 109 above, it is believed that a central storage mechanism should not be subject to the same deadlines to make regulated information available as those set for the operator established under Article 17(1). However central storage mechanisms should be placed under an obligation to process the regulated information they receive within reasonable time limits.

171. Central storage mechanism may receive regulated information in an amalgamated form from media that has already been disseminated in full text via the mechanism established under Article 17(1). Regulated information received in this way, could be made available by the central storage mechanism very quickly. However, a central storage mechanism may process and make available types of document that have not been published in full text by the operator (e.g. annual report and accounts). For these types of document if may be necessary to record the date and time of receipt in order to measure the time taken for a central storage mechanism to process and make this document available to investors.

172. If Document Capture Services are established, then these services will also be under an obligation to record the date and time regulated information is received. This will be necessary to measure the time taken to convert regulated information into an

electronic form and send to a central storage mechanism so that it can be accessed as soon as possible.

QUESTION 29: Do you believe that a central storage mechanism should be obliged to record the date and time on which it receives regulated information in order that its performance may be measured? Please give reasons.

Time recording for the purposes of investors

173. As stated above, the recording of the time and date regulated information is received is necessary so that investors can establish an order of publication for stored material. However, the date and time at which a central storage mechanism receives regulated information will not necessarily be the same date and time at which that regulated information became publicly available.

174. As explained above the majority of regulated information will be first published in full text via the operator regime established under Article 17(1). Consequently, the date and time of publication via an operator will be of most use to an investor when establishing the order of material held by a central storage mechanism. The date and time at which a central storage mechanism received regulated information is likely to be of incidental use to an investor.

175. For these reasons, it is believed that a central storage mechanism should be under an obligation to ensure that it holds the date and time at which the regulated information it receives was published via the mechanism established under Article 17(1).

QUESTION 30: Do you believe that a central storage mechanism should be obliged to record the date and time on which it receives regulated information for the purposes of investors? Please give reasons.

(v) Easy access for end investors

Format

176. CESR considers format to be fundamental to the purpose of the storage mechanism. "Easy access" is not a defined term and is therefore open for interpretation. CESR considers this term to mean that regulated information held by a central storage mechanism must be held in a format that enables investors to view, in a straightforward manner, the full content of regulated information from wherever the investor is located.

177. It is therefore envisaged that, irrespective of the format in which regulated information is received by a central storage mechanism, it has to be converted into a format that can meets the above requirement. Consequently, CESR believes that only an electronic format would meet the standard of "easy access".

QUESTION 31: Do you believe that a central storage mechanism should be obliged to hold all regulated information in an electronic format? Please give reason.

Organisation & categorisation of regulated information

178. CESR believes the term "easy access" to regulated information includes the provision of the ability to search order and interrogate regulated information. Regulated information is only useful to an investor if its existence is easily determined and it is placed in clear context against other regulated information.

179. CESR believes that a central storage mechanism should be required to record sufficient reference information relating to the regulated information it receives. Such reference information should include such items as:

- the name of the issuer from which the regulated information originated;
- the time and date on which the regulated information was published (see discussion in paragraphs 173 to 175 above);
- the type of regulated information (e.g. annual report & accounts);
- the name and title of the regulated information.

180. A central storage mechanism should be able to use reference information such as that mentioned above, to organise and categorise regulated information. The purpose of this management of regulated information should be to enable an investor to easily identify the existence of regulated information and place it in useful context.

QUESTION 32: Do you believe that a central storage mechanism should be obliged to record all the above reference data for each piece of regulated information? Please give reasons.

Language

181. The language in which the regulated information has to be disclosed is established under the provisions of Article 16 of the Directive.

182. Under the provisions of this Article:

(i) if an issuer' securities are admitted to trading on a regulated market of its home Member State, the issuer will be obliged to publish regulated information in the language accepted by that Member State's Competent Authority;

(ii) if an issuer's securities are admitted to trading on regulated markets situated in both its home Member State and in other Member States, the issuer will be obliged to publish regulated information in both the language acceptable by the Competent Authority of its home Member State, and in either a language customary in the sphere of international finance, or a language accepted by the Competent Authority of the host Member States;

(iii) if an issuer's securities are only admitted to trading on regulated markets of host Member States, the issuer will be obliged to publish regulated information in either a language customary in the sphere of international finance, or in a language accepted by the Competent Authorities of those host Member States.

183. As such, an issuer will only be required to publish regulated information in more then one language when it admits its securities to trading on regulated markets in its own Member Sate and in another Member State.

184. This language regime also applies to the languages in which the information is stored.

185. However, as discussed above, CESR considers that all investors irrespective of where they are located should be able to access regulated information.

186. Article 18 of the Directive envisages central storage mechanisms being used on a pan-European basis. Consequently, central storage mechanisms will be used by investors with many different native languages.

187. Insofar as "easy access" to regulated information is concerned, CESR believes that the publicly available internet based services through which regulated information is accessed, should be available in all the native languages of every Member State. Therefore, a central storage mechanism should be obliged to offer its internet based services (for example instructions for navigation and search fields) in all Member State languages.

QUESTION 33: Do you believe a central storage mechanism should be obliged to offer its internet based services in all native languages of every Member State? Please give reasons.

(vi) Operational hours

188. Investors should have access to regulated information at least during the operational hours of all European markets to enable investors to make real-time investment decisions on those markets. However, CESR believes that investors will also wish to access regulated information outside of market hours for long term investment decision making purposes.

189. Consequently, CESR believes it is reasonable to expect central storage mechanisms to be available to investors on a continuous basis, 24 hours a day 7 days of a week.

190. However, CESR acknowledges that it will be necessary for a central storage mechanism to prevent access to its systems for brief periods in order to perform essential maintenance or in order to upgrade its services.

QUESTION 34: Do you consider a central storage mechanism should be obliged to offer its services on a continuous basis 24 hours a day 7 days a week? Please give reasons.

(vii) Failures in the transmission of regulated data and alternative methods of receipt

191. As explained above, Document Capture Services may be established in order to receive regulated information from issuers, convert it into an electronic form and transmit it to all central storage mechanisms simultaneously. Alternatively, central storage mechanisms themselves may wish to establish mechanisms for the electronic receipt of regulated information from issuers, operators or media. It is important that regulated information submitted to a central storage mechanism electronically is received properly and that its content is complete.

192. If regulated information is submitted directly to a central storage mechanism by and issuer, CESR believes that that mechanism should have systems in place to confirm to the issuer submitting regulated information that this information has been received and in a complete form.

193. If regulated information is submitted to a central storage mechanism via an electronic feed for example. By, operators, media or a Document Capture Service, the central storage mechanism should have systems in place to detect breaks in this feed and subsequently raise error messages to the operator of the central storage mechanism. Central storage mechanisms should request the re-transmission of any data that it fails to receive from the submitter of that information.

194. Similarly Document Capture Services should be obliged to ensure that any electronic feed supplied to central storage mechanisms is marked in such a way that it is possible to detect breaks in transmission (e.g. by the sequential numbering of transmitted information).

QUESTION 35: Should central storage mechanisms and/or Document Capture Services be obliged to have systems in place to confirm the receipt of regulated information? Please give reasons for your reply

Alternative methods of submission to a central storage mechanism

195. As explained above, in order to prevent duplication of effort on behalf of an issuer, it is proposed that an issuer fulfils its obligation to send regulated information to a central storage mechanism by disseminating it for publication in full text form via the mechanism established under Article 17(1). However, where dissemination by the operator or issuer in full text form is not possible (e.g. for reasons of size or complexity of documents), an issuer should fulfil its obligation by either submitting this document to the central storage mechanism directly or via Document Capture Services.

196. If a Document Capture Service or a central storage mechanism's electronic submission system is unavailable, the issuer should be obliged to send regulated information (that has not already been disseminated in full text form) to the relevant central storage mechanisms in hard copy. CESR considers that the central storage mechanism should be obliged to convert this hard copy document into an electronic form and make it available to investors within a reasonable timescale.

QUESTION 36: Do you believe issuers should be obliged to submit regulated information, in hard copy form, if the electronic services of a central storage mechanism or Document Capture Service for the receipt of regulated information are unavailable? Please give reasons for your reply

QUESTION 37: Do you believe that a central storage mechanism should be obliged to provide access to regulated information in hard copy form if its electronic systems are unavailable? Please give reasons for your reply

(viii) Service support (helpdesks)

197. It is important that investors receive adequate support when accessing and interrogating regulated information. It is likely that investors will at some time have technical difficulties when accessing a central storage mechanism's systems or will not always be able to locate the regulated information they want.

198. CESR believes that central storage mechanisms should be obliged to offer support and advice to investors regarding the use of their systems. A central storage mechanism should be obliged to offer support on technological matters and customer care support regarding the use of its services. CESR believes that this support should be available during a central storage mechanisms normal operating hours (see paragraphs 180 to 182 above).

199. CESR acknowledges that a central storage mechanism should be able to charge investors a premium rate for service support provided outside of normal business hours.

QUESTION 38: Do you believe that a central storage mechanism should be obliged to provide technical and customer care service support helpdesks? Please give reasons for your reply

(ix) Demarcation of "regulated" information.

200. It is important to know which information held by a central storage mechanism is governed by European Directive standards. If information is clearly marked as "regulated information" an investor can be certain of the legal basis under which it

was drawn up. Central storage mechanisms may store information other than "regulated information", for example information produced by companies outside Europe, press articles or other information with editorial content.

201. CESR believes that an issuer should indicate to a central storage mechanism or Document Capture Service, whether or not the information it submits is regulated information. If a central storage mechanism receives information from operators or media it should ensure that it only sends regulated information, or that the information sent clearly distinguishes regulated information from other information.

202. CESR believes that a central storage mechanism should clearly indicate to an investor whether information it holds is regulated information.

QUESTION 39: Do you believe that a central storage mechanism should be obliged to clearly distinguish regulated information from other types of information it may hold? Please give reasons for your reply.

(x) Transparent charges to investors

203. The issue of whether or not a central storage mechanism should be able to charge for its services is discussed in paragraphs 110 to 127 above. If a central storage mechanism is permitted to charge investors, the amount of its fees should be transparent. This is necessary in order to allow investors to easily compare fees charged by competing central storage mechanisms.

QUESTION 40: Do you believe that a central storage mechanism should be obliged to make the amount of its fees transparent to investors? Please give reasons for your reply.

SECTION 2: REQUIREMENT FOR AN ELECTRONIC NETWORK (ARTICLE 18)

204. In contrast to the rest of the Directive, Article 18 does not set out provisions that are to be implemented by Member States. Article 18 requires that Member States instead establish guidelines.

205. Nevertheless, it is clear from the wording of Article 18.2 as well as the side letter that the Commission has given to CESR, that the Commission will use these guidelines as the basis for adopting implementing measures at some point in the future.

206. CESR has therefore decided to take a pragmatic approach and consider this article in the same way as articles where it is mandated to provide the Commission with advice for the purpose of the adoption of implementing measures.

207. On this basis, CESR sets out below a discussion about its proposals in relation to these guidelines, and sets out below Article 18 for ease of reference.

CESR Proposals in relation to these guidelines

Article 18
Guidelines

1. The Competent Authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC, and this Directive.

The aim of those guidelines shall be the creation of:

(a) an electronic network to be set up at national level between national securities regulators, operators of regulated markets, and national company registers covered by Council Directive 68/151/EEC; and

(b) a single electronic network, or a platform of electronic networks, across Member States.

2. The Commission shall review the results achieved under paragraph 1 by 31 December 2006 at the latest and may, in accordance with the procedure referred to in Article 23(2), adopt implementing measures to facilitate compliance with Articles 15 and 17.

208. CESR considers that the purpose of these guidelines is to achieve a number of different aims:

1st aim of guidelines:

209. The 1st aim of the Article 18 guidelines is to further facilitate public access to information that has to be disclosed under the relevant European Directives.

210. Apart from the addition of information that has to be disclosed under the Prospectus Directive, the information included in the first aim of the guidelines is the same as that dealt with under the requirements that are set out in Article 17.1 as "regulated information".

211. The information required under the Prospectus Directive includes prospectuses, supplements to the prospectus and the annual update document disclosable under Article 10 of the Prospectus Directive.

212. CESR believes that it makes little sense to treat the information required by Article 18 any differently to regulated information referred to elsewhere within the Directive. Consequently, CESR interprets the meaning of the words "to facilitate public access" to include access to regulated information that is disseminated under Article 17(1) plus the information required under the Prospectus Directive.

213. CESR believes that one reason this guideline should be considered now is that the implementation deadline for the Prospectus Directive is July 2005. Consequently, the outcome of consultation in this area may have an affect upon Prospectus Directive implementation.

214. CESR considers that the clearest and simplest way to address this guideline is to expand the type of information that is to be disseminated and stored under the entirety of Article 17 to include information required under the Prospectus Directive.

215. As discussed in detail above, Member States will be required to ensure that regulated information is disseminated on a pan European basis and stored in a central storage mechanism. This will require changes in the way Member States currently disseminate and store this information. If this is also to include information disclosed under the Prospectus Directive, this should be considered before Member States make any such changes.

216. As Prospectus Directive information may also be included in the regulated information to be accessed through the storage mechanisms, this should be taken into account when establishing the best option for the establishment of central storage mechanisms.

QUESTION 41: Do you agree with CESR's interpretation of the first aim of this guideline? Please give reasons.

QUESTION 42: Do you agree with CESR's proposal to extend Article 17 to include information disclosable under the Prospectus Directive? Please give reasons.

2nd aim of guidelines:

217. The 2nd aim of the Article 18 guidelines is to create an electronic network at national level between national securities regulators, operators of regulated markets, and national company registers covered by Council Directive 68/151/EEC;

218. CESR considers this aim to consist of two distinct and separate issues:

a) the creation of electronic links between national securities regulators and operators of the regulated market ; and

b) links between information produced by issuers who admit securities to trading on a regulated market, and information that is held in national company registers covered by Council Directive 68/151/EEC (Company Law Directive).

A) The creation of electronic links between national securities regulators and operators of the regulated market

219. CESR presumes that the purpose of links between national securities regulators and operators of the regulated market would be to facilitate access to regulated information for investors.

220. This presumes that these national securities regulators and operators of the regulated market are the primary conduit through which regulated information is disseminated and stored. As outlined above, it is proposed that bodies other than national securities regulators or operators of the regulated market will be able to primarily perform the functions of receipt, processing and publication of regulated information.

221. CESR proposes, instead, that the websites of national securities regulators may become access points to regulated information that has been processed and made available by other bodies.

222. Consequently, CESR questions the necessity or desirability, for the purposes of market transparency, of creating links between national securities regulators and operators of regulated markets.

QUESTION 43: In view of the proposals set out for central storage mechanisms, do you consider it either necessary or desirable that electronic links are created between national securities regulators and operators of the regulated market? Please give reasons.

QUESTION 44: In what circumstances do you think that it is necessary or desirable to create such links? Please give reasons.

B) Links between information produced by issuers who admit securities to trading on a regulated market, and information that is held in national company registers covered by Council Directive 68/151/EEC (Company Law Directive);

223. This proposal would necessitate the creation of links between information produced by issuers whose securities are traded on regulated markets and information produced by all companies.

224. In formulating its views regarding this aim, CESR should consider the differences and similarities between these two separate sources of information.

DIFFERENCES:

The scope of the companies covered

225. The Company Law Directives deals with all companies irrespective of whether or not they issue securities. In contrast, the Transparency Directive and other directives under the FSAP are relevant only to those companies that issue securities, and admit them to trading on a market.

Number of companies covered

226. The number of companies that issue securities for trading on markets is significantly smaller then the number of companies that exist throughout Europe.

The type of information that is disclosable

227. The information that is disclosable under the Company Law Directive is very different to the information that is disclosable by companies who issue securities that are admitted to trading on markets. This difference stems from the fact that the purpose of the disclosure is very different.

228. Information required of companies who issue and admit securities to trading on regulated markets is to meet at the needs of investors, market participants and regulators of the market. In contrast, the Company Law Directive is primarily aimed at meeting the requirements of business counterparts. The information required by the Company Law Directive should enable firms considering business transactions with the relevant company, to be fully informed before making such decisions.

SIMILARITIES:

229. Information about companies whose securities are admitted to trading on regulated markets also falls under the remit of the Company Law Directives. Consequently creating linkages may remove the duplication of information required by both directives and facilitate access to all information about such companies.

230. However, CESR does not consider the overlap between the information required under the respective directives significant enough to justify the cost of the creation of links between these two separate sets of information in the near future.

QUESTION 45: Do you consider that the overlap between types of information required by the directives justifies the creation of links between these two separate sources of information? Please give reasons.

QUESTION 46: If you consider linkages between these two types of information to be justified, when do you think the creation of such links should be established? Please give reasons.

3rd aim of guidelines

231. The 3rd aim of the Article 18 guidelines is to provide a single electronic network or a platform of electronic networks, across Member States.

232. CESR considers this aim to be completely separate to the issue of whether or not Company Law Directive information and securities regulators information should to be combined CESR believes that it is important and necessary for the purposes of implementing the Transparency Directive to keep these aims separate.

233. This guideline aims at providing pan-European access to regulated information that will be disseminated and stored at national levels under the requirements of Article 17.

234. As discussed in detail above, in order for Member States to ensure that the requirements set out in Article 17 can be met, mechanisms for the dissemination and storage of regulated information will have to be established.

235. All regulated information has to be accessible to all investors irrespective of where the information originates or where the investor is physically located. In other words, there has to be a **"one stop shop"** for investors to access regulated information on a pan–European basis.

236. Access on a pan-European basis to all regulated information can only be achieved if there is an electronic network to facilitate this access, so that for example an investor based in France has access to information disclosed by issuers in Greece.

How can a "one stop shop" be achieved?

237. As set out in the text of the Directive, there are two ways in which this can be achieved. Each option is considered in more detail below:

A) Creation of one single electronic network across Member States

238. CESR interprets "one single electronic network" to mean that a single central storage mechanism should contain all regulated information generated by all issuers admitted to trading on all regulated markets throughout Europe ("Pan-European regulated information").

239. CESR believes that the only way that "one single electronic network" can be achieved is to take a pan- European as opposed to national approach to the storage of regulated information by central storage mechanisms.

240. Possible options are:

(i) to have one Pan- European central storage mechanism into which all regulated information throughout Europe is transmitted and through which Pan-European regulated information can be accessed; or

(ii) to have a number of competing Pan European central storage mechanisms that all store all regulated information and through which Pan-European regulated information can be accessed.

241. Clearly, if either of these options is to be viable CESR believes that it is crucial to consult on this now in view of the short implementation timetable that will be available once CESR receives the necessary mandates from the Commission.

Investor access to pan-European central storage mechanism(s)

242. Access to pan-European central storage mechanism(s) could be achieved by providing a "hyperlink" on the Competent Authority website that when clicked, directed an investor to the relevant central storage mechanism. If multiple pan-European central storage mechanisms were established, a number of hyperlinks would be listed on every Competent Authority website to represent each one.

243. As, under this option, every central storage mechanism listed on every Competent Authority website would hold all pan-European regulated information, it would not matter which hyperlink an investor chose. Each hyperlink would direct the investor to a central storage mechanism that held all pan-European regulated information.

B) Creation of a platform of electronic networks across Member States.

244. CESR interprets a platform of electronic networks across Member States to mean that each Member State would each have its own separate central storage mechanisms. These mechanisms would each hold all national regulated information and would be electronically linked to provide all investors access to pan-European regulated information.

245. Set out below are two possible options to provide a platform of electronic networks across Member States:

(i) Single national central storage mechanism option

246. Under this option, each Member State would operate a single central storage mechanism that would hold all national regulated information for that Member State.

247. Every single national central storage mechanism would be accessible via the website of every Competent Authority. In this way an investor could access all pan-European regulated information (see Figure 1 below).

Investor access to single national central storage mechanisms

248. Access to single national central storage mechanisms could be achieved by providing hyperlinks on every Competent Authority website to the single central storage mechanisms of each Member State. A number of hyperlinks would be required in order to represent the single central storage mechanism of each Member State.

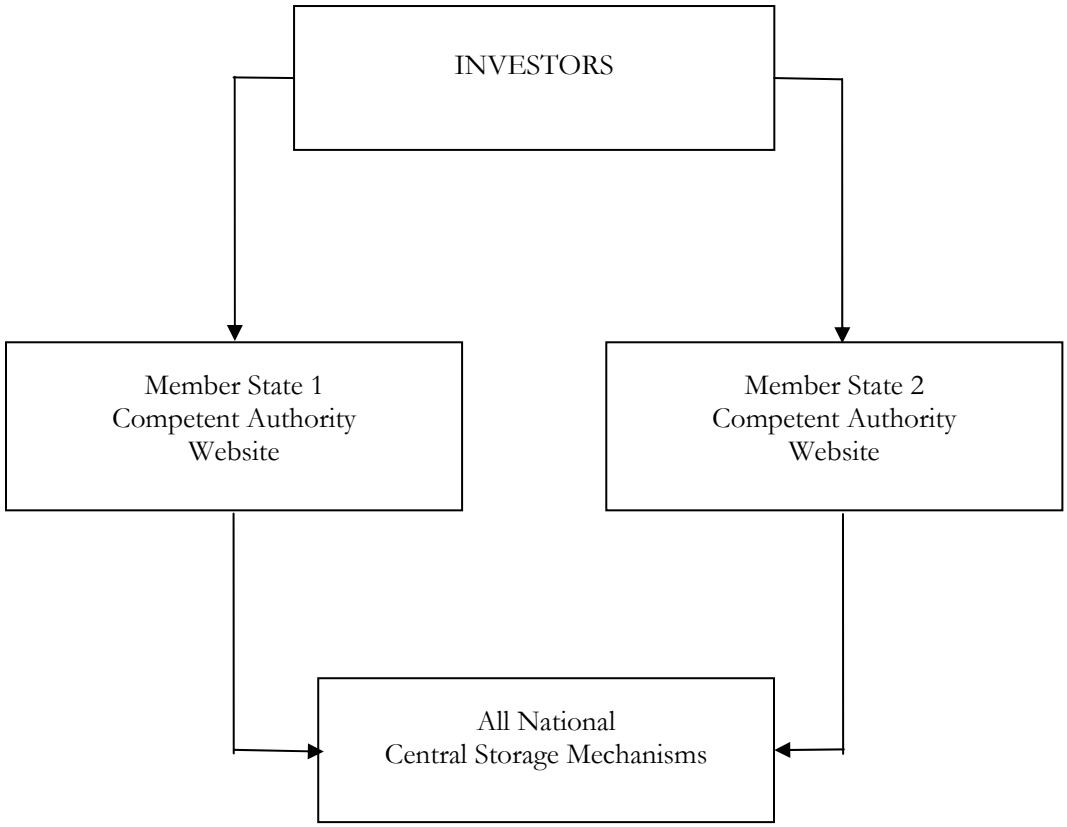
249. However, the central storage mechanisms listed on a Competent Authority website would not each hold all pan-European regulated information. Consequently, an investor could not be sure that the central storage mechanism he or she chose would hold the regulated information he or she wanted. If a particular Member State central storage mechanism did not hold the desired regulated information, an investor would be required to return to the Competent Authority website and choose an alternative Member State central storage mechanism.

250. In order to moderate any difficulty for investors regarding the location of regulated information from single national central storage mechanisms, it may be feasible for a Competent Authority website to carry a specialised "search engine" (similar to that provided by internet services such as Google or Yahoo).

251. A Competent Authority search engine could conceivably enable an investor to locate regulated information in any central storage mechanism once the investor had provided reference information such as a company name. The results produced from such a search could at least

direct the investor to the particular central storage mechanism(s) holding regulated information for the relevant issuer.

Figure 1: Diagram illustrating access for investors under single national central storage mechanism option



(ii) Multiple national central storage mechanism option

252. Under this option each Member State would appoint multiple central storage mechanisms that each held all national regulated information for that Member State.

253. Each central storage mechanism would be accessible via the Competent Authority website for that Member State. However, the websites of each Competent Authority would be linked together. In this way investors could gain access to all pan-European regulated information (see Figure 2 below).

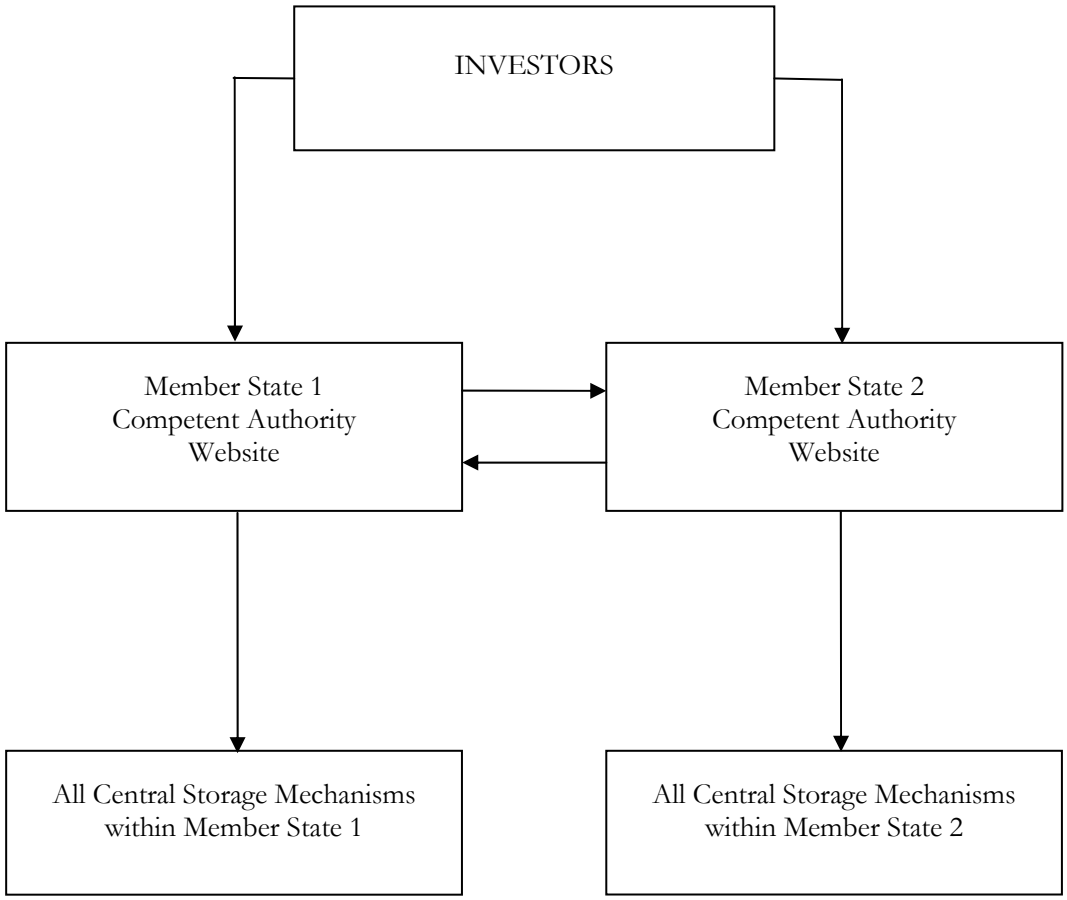
Investor access to multiple national central storage mechanisms

254. The establishment of multiple national central storage mechanisms adds a layer of complexity regarding access for investors to all pan-European regulated information. A list of hyperlinks to the multiple national storage mechanisms of a particular Member State could be provided on the Competent Authority website of that Member State.

255. As stated above, each central storage mechanism would hold all regulated information for that Member State. Consequently an investor could be sure of locating all national regulated information whichever hyperlink he or she chose. However, an investor would be required to visit the websites of every Competent Authority in order to access all pan-European regulated information.

256. In order to reduce any difficulty for investors regarding the location of regulated information from multiple national central storage mechanisms, it may be feasible for a Competent Authority website to carry a specialised "search engine" as described above. Under this option, this search engine could indicate to the investor the location of regulated information after searching all central storage mechanisms from every Member State.

Figure 2: Diagram illustrating access for investors under Multiple national central storage mechanism option



Linking central storage mechanisms themselves

257. The above options propose that investors access Pan- European regulated information through hyperlinks to central storage mechanisms or via a specialised search engine available on Competent Authority websites.

258. CESR does not, in the short term, propose that central storage mechanisms are themselves networked with each other. CESR considers that a fully integrated network of central storage mechanisms across all Member States will not be technically feasible in the time available for the implementation of the Directive.

259. A fully integrated network would require regulated information held by one central storage mechanism to be shared with all other central storage mechanisms. However, it is believed that central storage mechanisms would not be naturally compatible with each other. It is believed that, as each central storage mechanism would apply different technological standards, it would not be possible for them to share regulated information over a network.

260. If each Member State were to create a national storage mechanism of its own from nothing, it would be necessary for these mechanisms to be built to the same very stringent criteria in

order to make the sharing of regulated information across central storage mechanisms possible.

Would a regime of competing central storage mechanisms remove the need for a pan – European network?

261. If central storage mechanisms were allowed to operate commercially, it is very likely that these mechanisms will wish to operate in as many Member States as possible in order to increase the number of their subscribers. As a consequence it is likely that a national commercial central storage mechanism for one Member State will be the same as that in another. As result of this competitive behaviour, each commercial central storage mechanism could eventually hold all regulated information from every Member State. This will dramatically reduce the number of websites/central storage mechanisms that an investor would have to visit in order to find the regulated information he or she wants.

How could central storage mechanisms be funded on a pan-European basis?

262. As discussed in some detail above, the issue of funding is crucial in determining the viability of any of the options proposed.

263. A single network of central storage mechanisms operated at a European level only (either commercially or by Competent Authorities) would benefit from very significant economies of scale.

Implementation

264. If a single central storage mechanism was to be publicly funded, each Member State Competent Authority would be required to contribute funds for the creation and maintenance of this central storage mechanism.

265. For the reasons of economies of scale, CESR believes that the contribution required from each Member State for a single pan-European storage mechanism would be much smaller than the cost incurred if each Member State were to build and fund its own central storage mechanism. If each Member State were to build a central storage mechanism of its own, each mechanism would be built to perform the same function and as result, every implementation cost would be duplicated. If existing commercial operators were approved as central storage mechanisms, no implementation costs would be incurred by Member State Competent Authorities. However, these commercial operators would incur the cost of meeting required standards and making an application for approval.

Operation

266. CESR believes that it is possible that both issuers and investors could be charged to fund the operation of central storage mechanisms. Issuers could be charged for the cost of processing the regulated information that they are required to make available via a central storage mechanism. Investors could be charged for access to regulated information (see discussion in paragraph 110 to 127 above).

267. It is believed that the cost of processing a piece of regulated information would be proportionate to the number of central storage mechanisms in existence. Every central storage mechanism would incur costs in areas not directly related to the processing of regulated information (e.g. building maintenance costs). Consequently, efficiencies would be gained if the number of central storage mechanisms were small.

268. CESR believes that if multiple commercial central storage mechanisms were to be approved, national commercial central storage mechanisms are likely to apply for approval in multiple Member States and attempt to offer their services across Europe. Similarly, commercial central storage mechanisms approved on a pan-European basis are likely to merge for the reasons of economies of scale mentioned above. These efficiencies could be passed on to the investor in the form of reduced fees charged for access to regulated information and to the issuer in reduced charges for receipt of regulated information

269. If a single central storage mechanism were to be run on a non-commercial basis, public funding may be required to ensure that issuers are not burdened with the entire cost of operating the central storage mechanism.

QUESTION 47: Do you agree that a small number of central storage mechanisms operating at a European level would benefit from economies of scale? Please give reasons.

QUESTION 48: Do you agree that economies of scale would also be gained if multiple central storage mechanisms were operated commercially? Please give reasons.

QUESTION 49: Do you agree that central storage mechanisms could, in part, be publicly funded? Please give reasons.

How could central storage mechanisms be operated on a pan-European basis?

270. It is important to determine who would be responsible for operating a central storage mechanism on a pan-European basis.

271. CESR considers there to be two possible options:

(i) existing commercial entities approved by Competent Authorities to act as central storage mechanisms; or

(ii) central storage mechanisms operated by Competent Authorities.

Commercially operated central storage mechanisms

272. In the same way that CESR is establishing standards for the approval of operators under Article 17(1), existing commercial services could be approved to operate as central storage mechanisms.

273. Individual Member States could approve any commercial entity whose application met the required standards to act as a central storage mechanism for the purpose of holding all regulated information for that Member State. Alternatively, all Member States could collectively approve a number of commercial entities to act as central storage mechanisms on a pan-European basis.

274. CESR believes that if commercial entities are approved to act as central storage mechanisms, it is important that more than one is approved to perform this function. Multiple commercial central storage mechanisms should ensure competition and consequently ensure that costs are kept low and that high standards are maintained.

275. Individual Member States would be responsible for monitoring a national central storage mechanism's ongoing compliance with the required standards, and responsible for ensuring that, as and when necessary, changes to these standards were adopted.

276. If commercial central storage mechanisms were approved to act on a pan-European basis, Member States would collectively be responsible for the ongoing monitoring of these

mechanisms. A body such as CESR representing all Member State Competent Authorities could take on this responsibility.

277. The advantage of commercially operated central storage mechanisms is that expertise in the area of the processing and provision of information is maintained for the benefit of investors. However, although commercial central storage mechanisms would be required to meet established standards, a Competent Authority would have no direct control over the operation of a central storage mechanism.

Central storage mechanisms operated by Competent Authorities

278. Member state Competent Authorities may already operate services that approximate the function of central storage mechanism. Where a Competent Authority does not already operate a central storage mechanism, it could be required to build and operate a central storage mechanism.

279. Alternatively, Member States could collectively contribute towards the building and operating of a single central storage mechanism on a pan-European basis. A commercial company could be commissioned to operate a pan-European central storage mechanism or a body of staff from all Member State Competent Authorities could be constituted for this purpose

280. The advantage of a Competent Authority run central storage mechanism is that there is complete regulatory control over the regulated information that is made available for investors. However as a Competent Authority does not act as a commercial entity in the processing of information for consumption by investors and therefore lacks commercial incentives, a Competent Authority run central storage mechanism may not be able to maintain high standards of service or offer added value services to end users. This lack of commercial incentive may be offset by other incentives under national law that are particular to competent authorities.

QUESTION 50: Do you believe that central storage mechanisms, within a pan-European context, should be operated commercially or by a Competent Authority? Please give reasons?

QUESTION 51: What risks do you consider are inherent to either option? Pleases give reasons.

II. Electronic Filing (Article 15 4 a)

Introduction

281. Article 15.4 (a) requires the Commission to specify the procedure in accordance with which the filing of information with the competent authority of the home Member State can be made by using electronic means.

282. The purpose of this thinking is to propose a set of standards to ensure the uniform application of the provisions concerning the electronic filing of information with the competent authorities of the home Member States in order to facilitate the fulfilling of the duties of the same authorities under the Directive.

The preference for electronic filing

283. CESR holds the view that the issue of the filing with the competent authority requires striking a balance between reaching greater workability and the legal certainty of information received by competent authority on the one hand, and retaining flexibility to cater for needs of persons obliged to file information on the other hand.

284. Moreover, the procedures in accordance with which a filer is to file information with the competent authority should take into account the need to facilitate - and consequently should be aligned with relative established procedures - the exchange of information among competent authorities of the Member States in order to ensure a consistent cooperation with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers under the Directive.

285. CESR considers that the above mentioned purposes are best achieved through the use of electronic sending methods, rather than non-electronic means, such as mailing of paper documents. In particular, an electronic filing mechanism seems to have benefits both for persons obliged to file information as well as for competent authorities.

286. Stable, timely and secure treatment of regulated entities should be a strategic purpose of the competent authority's filing infrastructure. The electronic filing can be used to generate an automated workflow that allows the reduction of the processing cycle and also the enhancement of data integrity. In fact having direct access to an as-filed document allows incorporating directly the text-based information into the competent authority databases without further processing. The cost-reduction to competent authorities could be in the form of minimizing, or eliminating, complex workflow processes.

287. Moreover, cost-based benefits also concern the filers. It is generally accepted that issuers and other filers use standard computers and computer-based software programs to generate the documents required by the competent authorities. Therefore, by allowing such persons to use computer output generated with these characteristics will decrease operating costs such as printing, copying, mailing, and delivery service associated with filing paper documents.

288. A fundamental functional requirement of e-filing is that it must provide a paperless environment for all information filed with the competent authorities. CESR considers that in order to facilitate a smooth transition to the electronic filing mechanism a key success factor is a well-planned and phased implementation. The competent authority is to be able to concurrently support paper filing until the transition is complete. Furthermore it is likely that paper will always be involved in some part of the filing process; this is the case, for example, when a relevant person submits his first filing concerning his registration.

QUESTION 52: Do you agree that the balance between competent authorities' needs and filers' needs is best achieved through the use of electronic sending methods, rather than non-electronic means, such as mailing of paper documents? Please give reasons.

QUESTION 53: Do you agree that the e-filing mechanism should be introduced gradually and that it should allow parallel paper treatment for specific situations? Please provide examples of such specific situations.

Nature of the filers and type of the regulated information

289. Taking into account the nature of the filers would need to consider that such entities can present different characteristics. In particular they can be considered as "regular" filer or not. A regular filer is already known by the competent authority. On the other hand the filers can submit information for the first time and in relation to occasional events. In addition filers can be small entities that could have different needs in respect to the other filers in terms of easier procedures of filing. CESR believes that the adopted electronic filing requirements should be clear and straightforward and that the competent authority should attempt to design an electronic filing mechanism for these forms that will be simple and does not create significant technical constrains for all filers to use. Therefore, it does not seem necessary to develop different requirements for occasional filer or small entities, even less in relation to the type of issuer or the market segment where the issuer's securities are admitted to trading on a regulated market. Separate performance standards for particular entities would not also be consistent with the purpose of the Directive.

290. As far as the type of regulated information which have to be filed to the competent authority, it is possible identify two different groups: i) information that can be structured into a specific templates text prescribed by the competent authority (e.g. major holding notifications) and ii) information included in an unchangeable document format (i.e. financial report etc.). In this respect, CESR hold the view that it could be useful to provide specific solutions on the procedures of electronic filing according to the type of addressed regulated information.

QUESTION 54: Do you agree that it does not seem necessary to develop different requirements for occasional filers or small entities? If not, please provide suggestions to address their needs.

QUESTION 55: Do you agree that it could be useful to provide specific solutions on the procedures of electronic filing according to the type of the addressed regulated information (i.e. specific templates text, etc.)? Please provide examples of different type of regulated information which need specific solution.

Proposed Minimum Standards

291. In carrying out this work CESR should pay special attention to the experience gained in the field of filing of information within the European Union and particularly in the context of filing information with public authorities in each Member State. In fact standards for electronic filing should be developed on the basis of international and industry standards, in order to ensure full compatibility of the mechanism used by competent authorities with those used at national level in each member state.

292. The procedure put in place by a Competent Authority, in accordance with which issuer and persons, under Article 15 of the Transparency Directive, have to file information with the competent authority, could be considered sufficient when the arrangements comply with the following minimum standards:

(a) Open architecture

293. CESR does not intend to mandate the type of mechanism or architecture that must be implemented by the competent authority for the electronic filing. However CESR is of the view that an appropriate electronic filing should be designed in the form of an open architecture. In particular, it must provide mechanisms that permit the use of different

hardware from competing vendors, and it has to be configurable to support the required range of topologies, user community sizes and traffic requirements.

294. An open architecture allows the mechanism to be connected easily to devices and programs made by several makers. Open architectures use off-the-shelf components and conform to approved standards.

(b) File Format standards

295. Filers should rely on a flexible filing mechanism that is user-friendly without incurring in excessive costs. The open e-filing architecture should support several format standards, without overburdening the filers with the requirement to adopt a prescribed format. The mechanism should support standard file formats that are not proprietary[5] and that obviate single vendor software applications.

296. In certain situations, however, competent authority could provide that information be structured into a specific prescribed templates text for the purpose of fast processing.

(c) Validation

297. The electronic filing mechanism must be able to validate regulated information filed. The mechanism should enable automatically inspection of the filed documents for adherence to standards required, completeness and accuracy of their formats.

(d) Receipt and non-repudiation function

298. The mechanism should be able to electronically acknowledge receipt of documents and either confirm validation of filing or reject submittal with adequate explanation for rejection. It could also be useful that the mechanism has a "non-repudiation" function, which is the assurance that the recipient of data is provided with proof of delivery and of the sender's identity, so that the sender can not later deny having sent the data.

(e) Docketing of Electronic Filings

299. The mechanism must be able to automatically docket electronic filings based on meta-data[6] included with each filing and add a timing stamp.

(f) Acceptance of waivers and recovery

300. The mechanism must have an evaluation process for reviewing and accepting or denying waivers for late filings due to IT technology issues and non-standard submissions. The mechanism should also provide recovery tools that allow the filer to use other mechanisms of filing in place of the prescribed one when this is out of order. However there should be the obligation for the same filer to reply the filing of information through the main mechanism upon restored.

(g) Security

301. An appropriate level of security must be incorporated into the electronic filing mechanism. Breaches of security can lead to erroneous filing. The architecture must facilitate the

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[5] A proprietary design is one that is owned by a specific maker. This also implies that the maker has not divulged specifications that would allow other makers to duplicate the product.

[6] Meta-data is definitional data that provides information about or documentation of other data managed within an application or environment. For example, meta-data would document data about data elements or attributes, (name, size, data type, etc) and data about records or data structures (length, fields, columns, etc) and data about data (where it is located, how it is associated, ownership, etc.). Meta-data may include descriptive information about the context, quality and condition, or characteristics of the data.

information sharing between filers and the competent authority. In relation to the interoperability between these parts a host of challenges arise to achieve the required levels of confidentiality, integrity, availability. Fundamental prerequisites to information sharing are trust between parties and an agreement on access and protection mechanisms.

302. The secure interoperability defined by the architecture should be organized to support both simple security protocol exchanges between similar security mechanisms and complex file formats using heterogeneous products. Therefore the mechanism should provide:

User Authentication

303. It is essential that security measures be designed to establish the validity of the originator, or a means of verifying an individual's authorization to receive specific information. These tools could be in the form of appropriate access codes that are assigned by the competent authority or of Digital Signatures.

Confidentiality

304. It is advisable that the mechanism should give assurance that information is not disclosed to unauthorized persons or processes for example through cryptography techniques.

Data Integrity

305. This condition exists when there is no significant risk of corruption or change of original information either accidentally or maliciously and/or when it is possible to ascertain any alteration.

Availability

306. This condition deals with the necessary function helping the filer for the input of data and giving assurance that, by adding the interfaces required to allow the filing of information, there will be a fast processing without the risk that authorized users are denied service.

QUESTION 56: Do you agree with the approach adopted with regards to proposed minimum standards or would you prefer to see more general proposals? In this case, please provide a list of general proposals.

QUESTION 57: Do you agree with the minimum standards with which all the competent authorities would have to comply when they put in place the procedure to enable filing by electronic means? If you do not agree, what other standards would be more appropriate?

QUESTION 58: What other issues, if any, should CESR take into account when responding to the Mandate concerning the "filing by electronic means with the competent authority of the hom e Member State"?