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**CALL FOR EVIDENCE
ON THE POSSIBLE CESR LEVEL THREE WORK ON THE TRANSPARENCY DIRECTIVE**

Background

1. The EU legal framework regarding transparency in relation to issuers having securities admitted to trading on a regulated market (basically periodic financial information, information about major holdings and the way such information is disseminated and stored) is included in two legal measures:
 - Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (hereafter TD or Directive).
 - Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (hereafter Level 2 Directive). This Level 2 Directive supplements the TD with regard to half-yearly reports, major holdings, pan-European dissemination of regulated information and equivalence of third country regulations in respect of some elements of the Directive.
2. In addition, the European Commission is considering a possible way forward to facilitate the implementation of the TD as regards the storage of regulated information (the minimum quality standards to be respected by the national storage mechanisms and the conditions for the functioning of a pan-European network of such national storage mechanisms).
3. Member States were due to transpose the TD into their national laws by 20 January 2007 and the Level 2 Directive by 8 March 2008 (12 months after its date of adoption).
4. Once most Member States have implemented the Directive and national practices are developing, market participants and competent authorities are raising questions about whether some provisions of the TD are being applied in a consistent manner in the different jurisdictions. An obvious consequence of its minimum harmonisation nature is that national legislation might vary regarding some aspects of the Directive. Furthermore, Member States also have to choose between different options provided in the legal EU text. Whilst these different approaches are obviously legitimate as resulting from the choices made by EU legislators, issuers and market participants in general would expect that the minimum areas that the TD does harmonise are applied by the different competent authorities in a consistent way.
5. At this stage, CESR considers it appropriate to determine whether it should work with the provisions of the EU transparency framework that might give rise to different practices in the Member States that are not a result of different legitimate national discretions, but rather a result of inconsistent application of the Directive by CESR members. Before initiating any work on areas of the TD which fall into this category, CESR intends to assess whether the areas considered fulfil three conditions: Is there a supervisory or regulatory failure? Has the issue an EU dimension? Can CESR do something?



6. As an example of the areas that CESR could examine, when advising the European Commission on possible implementing measures of the TD, CESR has already undertaken a very preliminary analysis and identified a number of issues that could lead to different approaches by competent authorities. Some of these issues are:
- Equivalence of third countries' regimes;
 - Consistency and quality of the interim management statements;
 - Application of the notification of holdings regime to stock lending and to derivative products;
 - Application of the trading book exemption;
 - Application of the information requirements for issuers as described in Art.16-18 TD;
 - Application in practice of the standard forms for notification of holdings.
7. Additionally, CESR is currently considering what role it could play in order to facilitate the creation of the EU network of national storage mechanisms.

Call for evidence

CESR is inviting all interested parties to submit their views regarding the possible CESR Level 3 work it could undertake in relation to the TD and the Level 2 Directive. In particular, responses to the following questions would be especially welcomed:

- Do you consider that CESR should start working in its Level 3 capacity in order to promote a consistent application of the TD and the Level 2 Directive?
- If yes, which areas do you think CESR's work should cover? Could you prioritise them?
- Do you think CESR's work to harmonise should be published in the form of a Q&A section of its website (in a similar way as CESR is currently doing in the prospectus area)?
- Do you think CESR should facilitate the establishment of an EU network of national storage mechanisms?

All contributions can be submitted online via CESR's website under the heading Consultations at www.cesr.eu by **14 September 2007**.