

2 April 2007

European Commission  
DG Internal Market and Services

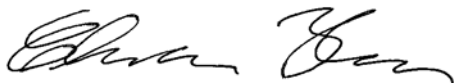
**Re. Invitation for public comment on a Working Document (ESC/10/2007 rev.1) in relation to Directive 2004/109/EC (Transparency Directive)**

The International Capital Market Association (**ICMA**) is pleased to respond to the above Commission Working Document on: possible minimum standards for entities charged with the storage of regulated information pursuant to Article 21 of the Transparency Directive (TD); and minimum conditions for the effective functioning of a pan-European network of national Central Storage Mechanisms as called for by Article 22 of the TD. We note the status of the WD as informal and not definitive and that it does not constitute a draft implementing measure and will not prejudice any final decision that might be taken by the European Commission (EC) in this area.

ICMA is the self-regulatory organisation and trade association representing investment banks and securities firms issuing and trading in the international capital markets worldwide. ICMA's members are located in some 50 countries across the globe, including all the world's main financial centres, and currently number over 400 firms.

We attach our comments on the Work Document as **Annex** to this letter and would be pleased to discuss it with you at your convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Christian Krohn".

Christian Krohn  
Regulatory Policy – Primary Markets  
+44 (0)207 538 5656  
[Christian.krohn@icmagroup.org](mailto:Christian.krohn@icmagroup.org)

## ANNEX

ICMA would like to make a number of general and specific comments on the Working Document.

### General Comments

In general, we support both the Central Storage Mechanism (CSM) standards and network conditions as a sensible starting point for rules governing the operation of CSMs and their inter-linkage in European network but we do have concerns that a number of areas critical to that operation and network are not adequately addressed.

In terms of level of detail, we consider the CSM standards to be pitched at a generally appropriate level with further detail left to national discretion. This tiered regulation would allow for the inevitable national differences in e.g. funding arrangements that will flow from different (private/public) structures and (non-profit/commercial) objectives of the entities appointed as CSMs. We also support the network conditions on e.g. governance, inter-operation and supervision as being among those critical to the operation of a pan-European CSM network. Furthermore, we welcome the European Commission's parallel consideration of both CSM standards and network conditions since the nature of the network in which CSMs will be required to participate will be a critical factor for any entity contemplating appointment as a CSM.

However a number of important areas are not adequately addressed by the CSM standards and/or network conditions:

The standards and conditions fail to provide any indication of a timescale for the establishment of CSMs and their inter-linkage in a network. A clear indication of timing will be a significant factor for those entities contemplating whether to seek appointment as a CSM and essential for those actually appointed. The timescale for establishing CSMs should allow for the potentially long process of appointing (e.g. by tender) commercial entities as CSMs. The timescale for constructing the network needs to build on that for establishing the CSMs and allow for the resolution of the complex legal, governance, funding etc issues arising in this context.

The network conditions make only very high-level reference to the legal framework and governance structures that will underpin the network. Further detail will be needed to give potential CSMs and thus network participants a more meaningful indication of the envisaged network, which should allow for the mix of public and private entities that are likely to become CSMs.

The introduction to the network conditions proposes that the CSM network be integrated with the BRITE network of business registries. While the objective of creating a 'one-stop-shop' for those interested in financial and corporate information is laudable, the proposed integration of the two networks raises a number of significant issues. The two networks are likely to comprise very different public and private entities; are at different stages of development, and may have inconsistent growth objectives (e.g. in terms of search functionality). On this basis the already complex governance, interoperability, funding etc issues arising in the CSM network would become even more so.

### Specific Comments

The CSM standards and network conditions also raise a number of specific issues:

*Part A: Minimum CSM Standards*

We are unclear how the reference in provision 1.1 to security systems providing certainty as to the source of the information being filed works with the provisions of section 2 (certainty as to the information source).

We query whether the requirement in provision 2.3 that stored information must not be removed from the CSM is consistent with the time limits of the TD.

Provision 5 is worded in terms of placing an obligation on the *issuer* to re-file information. If the intention is to require CSMs to insert text to that effect in their contracts with issuers then the provision should arguably say so.

Provision 11 requires a distinction between regulated information filed pursuant to a legal obligation and information comprising value added services. We recommend that this provision allow for the possibility that not all information filed pursuant to a legal obligation (e.g. pursuant to super-equivalent rules) is necessarily regulated information. The provision should therefore require the CSM to distinguish (as does the Appendix to the Working Document) between regulated information as defined by the TD, information legally required (by national law) in addition thereto, and any additional value added information which the CSM may offer.

Provision 12 appears to suggest that Member States could impose an obligation on CSMs to translate the information filed which may undermine the carefully negotiated language provisions of the TD.

Provision 14.3 refers a non-exhaustive list of minimum reference fields for received regulated information suggesting that Member States could add additional field requirements which add complexity to CSM operation and make harmonisation difficult.

Referring to the provision 14.4 requirement that a CSM offer filing in both proprietary and non-proprietary formats, we stress that filers should not have to change the format in which they ordinarily publish information

#### *Part B: Minimum Conditions for a pan-European Network of National CSMs*

Provision 3.3 (Supervision of the functioning of the Network) states that the single supervisor option would require community level legislation but later explains that it is unclear whether there is sufficient legal basis for such legislation. This effectively removes the single supervisor option leaving as the only alternative supervisory model: the college of regulators with its attendant problems of multiple agendas, points of contact etc.