

**Response of Deutsches Aktieninstitut (DAI) to
ESC Working Document on storage of regulated financial
information in relation to issuers whose securities are ad-
mitted to trading on a regulated market**

Ref. ESC/10/2007 rev. 1

30st March 2007

A. Introduction

Deutsches Aktieninstitut e.V. is the association of German exchange-listed stock corporations and other companies and institutions which are engaged in the capital markets development. Its most important tasks include supporting the relevant institutional and legal framework of the German capital market and the development of an harmonised European capital market, enhancing corporate financing in Germany and promoting the acceptance for equity among investors and companies.

B. General Comments

1. DAI welcomes the involvement of the market participants in regard of the minimum quality standards for the central storage mechanisms and the conditions required for the effective functioning of a pan-European network thereof. Of course, it is a noble aim to provide appropriate and easily accessible broad information channels for investors.

However, we fear that the establishment of Officially Appointed Mechanisms (OAM) might miss the ambitious target and will not create any surplus neither for investors nor for the capital market. It is not unlikely that neither private nor institutional investors will use the service very intensely. Considering this, we recommend that costs of the establishment of the pan European net-



work of OAMs should match its limited benefit and therefore be reduced to the necessary.

2. Private investors usually do not base their decision whether to invest or not on blank corporate data. A study on investor's informational habits concerning investment decisions shows that private investors mostly rely on the print media, reports on radio or television to get the relevant information on the issuer when considering an investment. (Study 29 of the Deutsches Aktieninstitut e.V., "Verhalten und Präferenzen deutscher Aktionäre", http://www.dai.de/internet/dai/dai-2-0.nsf/dai_publicationen.htm; The study is based on a mail questionnaire sent to 800.000 private investors of the Deutsche Post AG with an extraordinary return of about 88.000 questionnaires). Investors can also turn to analysts' websites that offer commented and evaluated data. They also can find most of the relevant information on the issuers' websites already. This is not only because according to the Prospectus Directive 2003/71/EC issuers are obliged to publish an annual document containing all relevant information published or made available to the public over the preceding 12 months, including information provided to the various reporting requirements laid down in other Community legislation. It is also because issuers provide information voluntarily on their homepages.

Considering the initiative of "Better Regulation", the annual document, in our view, should be abolished. This is also a topic for "Reading Across" EU legislation. Since the invention of OAMs by the Transparency Directive issuers have an easy internet related access to the information they want, which e.g. in Germany is for free. The same (overlapping) information has to be provided due to the Prospectus Directive on the issuers' homepages, which is also an internet access. Thus, the provision is redundant. Providing information on their homepages isn't a problem for issuers inherently. The annual document leads to unnecessary bureaucracy, though. Also, investors visiting the website of an issuer will generally be interested in current information on the issuer, not historic information referring to a certain period of time in the past. This might be considered arbitrarily by investors.

Deutsches Aktieninstitut has recently released a study, in which issuers in Germany gave their view on the latest capital market regulation that mostly came into German law due to EU regulation, like the Market Abuse Directive and provisions like the annual document (Study 35 of Deutsches Aktieninstitut e.V., "Kosten und Nutzen der Regulierung börsennotierter Unternehmen", http://www.dai.de/internet/dai/dai-2-0.nsf/dai_publicationen.htm, available only in German). Issuers estimated in a capital market perspective the benefit of most of the new regulations very low while very encumbering for them. Only the increasing awareness and sensitisation of their employees for capital market crimes had a positive connotation.

The latest regulations resulted in a raising number of compliance staff and an increase of the budget in the field of compliance. This binds financial re-

sources and management capacities that are necessary for entrepreneurial measures and can deter companies from raising capital via stock exchanges.

In this study, the annual document got the worst evaluation of all provisions.

3. Institutional investors are not dependent on an institution like the OAM, either, they get the relevant information by contact with the issuers or on roadshows.

4. It should be made clear, that issuers are not liable for mistakes due to technical transfer. Also, OAMs will have to deal with a dimension of documents that makes it completely impossible to check every document if it is conform to the original. This leads to a very important issue that is not elaborated by the DG. Any remarks concerning liability are missing in this paper. Who is liable if a private investor bases his decision to invest on wrong data? There is no model of preventing mistakes of technical transfer available at costs that are proportionate to the benefit of the establishments of the OAM. There must be the possibility for OAMs to add a disclaimer excluding liability for them and the issuer concerning technical transfer.