



RESPONSE OF THE ASSOCIATION OF BRITISH INSURERS TO HM TREASURY'S CONSULTATION ON IMPLEMENTATION OF THE MAJOR SHAREHOLDING NOTIFICATION PROVISIONS OF THE TRANSPARENCY DIRECTIVE

1 General points

- 1.1 The ABI is pleased to respond to the Treasury's consultation. The issues raised are important ones for its members as large institutional investors. The consultation covers ground already open to public consultation in the Company Law White Paper to which we shall be giving a full response.
- 1.2 We are supportive of the repeal of the current criminal sanctions and the transfer under FSMA to the FSA of the responsibility for dealing with breaches.
- 1.3 However, we also note that the debate over disclosure of interest is an active one, which may lead eventually to a consensus that economic interest including short as well as long positions should be disclosed. We believe that it would therefore be premature to replace the requirement to disclose an "interest in shares" with a requirement to disclose "exercisable voting rights". As we argue below, there needs to be further debate on purpose and definitions and full consultation on the most appropriate disclosure for current markets.

2 Specific answers

1. Do you agree with the proposal that the principal obligation of disclosure should be changed from the current 'interest in shares' under the Companies Act 1985 to control of exercisable voting rights under the Directive?

We note that this was supported by a majority of respondents in a consultation ten years ago on Company Law reform. However, the markets have evolved considerable in the meantime and we also note that there has recently been increased interest in transparency with regard to both long and short positions.

Disclosure of shareholdings interests serves two purposes. First, it acts as a tool for market discipline which gives confidence to the market as a whole through the transparency attached to significant holdings. Separately, it should allow investors to determine where the influence over a company's actions may reside.

Mere disclosure of voting interests would in theory assist the second objective, but it may impede the first because there would be no disclosure of significant holdings which might have an important market impact. Indeed, moving away from the present definition could mean that present transparency of this aspect would be lost.

Moreover the concept of exercisable voting right is not always clear. For example, if an investor has lent stock but has an absolute right of recall, then for all practical purposes he or she arguably retains a control over the voting rights. Likewise the holder of a Contract for Difference may have de facto control over the voting of shares held by a counter-party, but it is not clear how this would be treated under the revised disclosure proposals. It is therefore unlikely that a simple requirement for disclosure of voting rights will reveal the true picture.

Our members therefore conclude that a full picture, providing both market and voting transparency, would only really be discernible through disclosure of both long and short positions.

We consider that any change to the law should come only after consideration of the need for on this basis through further public debate and full consultation on the disclosure needs of today's markets. We question the wisdom of changing the definition at this stage, especially since we are not convinced that, on its own, the change would add to the amount and quality of disclosure.

1. *Do you agree with the proposal to remove non-traded public limited companies from the scope of the disclosure regime?*

Yes

3. *Do you agree with the proposal to give the FSA powers to make issuers admitted to trading on non-regulated markets in the UK (and those with qualifying holdings in those issuers), subject to the regime where appropriate for market transparency reasons?*

Yes

4. *Do you agree with the proposal to repeal the current criminal sanctions for breach of notification obligations and give the FSA powers to deal with breaches of notification obligations equivalent to those it has to deal with breaches of rules under FSMA?*

Yes

5. *Do you agree with the proposal to maintain the scope of the current Companies Act regime and give the FSA equivalent powers to require disclosure in respect of holdings of financial instruments?*

Yes, provided that the additional powers to be require disclosure of holdings of financial instruments were subject to consultation before introduction. (See our answer to question 1)

6. *Do you have any comments on the likely costs of implementation of the major shareholdings notification provisions of the Directive?*

There would be transitional costs involved in the changes as proposed, although these are hard to quantify. There would no significant costs for the present in adopting the approach we recommend above.

7. *Do you have any comments on the impact on competition of implementation of the major shareholdings notification provisions of the Directive?*

No

8. *Do you have any comments on the impact on small business of implementation of the major shareholdings notification provisions of the Directive?*

We do not believe there would be impact on small business.

10 June 2005