



LONDON INVESTMENT BANKING ASSOCIATION
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10 June 2005

Transparency Directive: Major Shareholdings Notification Consultation
Capital Markets and Governance Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Dear Sirs

I am writing to you on behalf of the London Investment Banking Association (LIBA) in response to your Consultation on Implementation of the Major Shareholding notification Provisions of the Transparency Directive. LIBA is the trade association for investment banks with operations in London. Its objective is to ensure that London continues to be the attractive location for the conduct of international investment banking business.

Our answers to the specific questions of the consultation paper are attached. In addition we would like to make two more general points.

First, the scope of the reporting by parties as envisioned in CESR's draft advice to the Commission on implementation of the directive is superequivalent to what is required in the directive. This would introduce unnecessary costs and complications to the disclosure regime. Level one requires a party to disclose when he has gone through a designated voting control level and his level of control. It does not require transaction reporting.

Second, the CESR draft advice would require market makers to effectively segregate market making shares. This would be an unnecessary and costly impediment to settlement and liquidity with very little benefit in terms of enhancing the regulator's ability to oversee.

Third, we note that the directive allows a member state to provide that shares held as a result of trading activities other than market making up to an additional 5% of voting rights be exempted from disclosure requirements in addition to shares held for market making purposes. We would urge that the UK make this additional exemption fully available to authorised dealers in the UK. The Takeover Code and the Substantial Acquisition Rules (SARs) provides effective coverage

and surveillance where parties are seeking to grasp control of the issuer, and so it is unnecessary for market makers to be otherwise encumbered by additional reporting requirements.

We thank you for your consideration of our views and we assure you of our support for the goals of the Transparency Directive.

Very truly yours,

A handwritten signature in black ink, appearing to be 'W. Ferrari', with several horizontal lines drawn across the bottom of the signature.

William J. Ferrari
Director

RESPONSES TO CONSULTATION QUESTIONS

- Q1. 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 have no objection to the substitution of "control of exercisable voting rights" for "interest and shares" as used in The Companies Act for maximum compatibility with the Directive.

- Q2. Do you agree with the proposal to remove non-traded public limited companies from the scope of the disclosure regime?**

We agree with this proposal.

- Q3. 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?**

We have no objection to FSA powers to make rules regarding disclosure/transparency of issuers trading on non-regulated exchanges, subject to the usual requirement of full consultation. The non-regulated market and market users should be specifically consulted.

- Q4. 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?**

We agree that the criminal sanctions for breach of notification requirements should be repealed and that the FSA be empowered to deal with such breaches.

- Q5. Do you agree with the proposal to maintain the scope of the current Companies Act regime and give the FSA equivalent powers to require disclosures in respect of holdings of financial instruments?**

We do not agree that the FSA should be given powers to require disclosures in respect of holdings of financial instruments, especially where the instruments do not include a right to receive delivery of shares or a power to compel delivery of shares. Any exercise of such a power would impose a significant and unnecessary burden on the markets for such instruments. There does not appear to be any need for such information on the part of issuers e.g. to understand their shareholder base. In the takeover context, the Code

Committee of the Takeover Panel has prepared new reporting obligations for investors with significant holdings of relevant derivatives during a takeover period. Outside the takeover context, there is no demonstrable need for disclosure to issuers. In fact, we understand that the Takeover Panel is seriously considering withdrawing SARs (the Substantial Acquisition Rules) based on their perception of current market practice. The Code Committee of the Panel is also considering inclusion of long derivatives in the Takeover code Rules, compelling a public bid where 30% ownership has been achieved by an investor and consent parties (if any). It would be duplicative and confusing for the FSA to have authority to make rules also.

Q6. Do you have any comments on the likely costs of implementation of the major shareholdings notification provisions of the directive?

We believe that the scope of reporting as envisaged in the draft CESR Advice goes beyond the requirements of the directive itself. The directive requires disclosure when a party goes through a designated level of control of voting rights, i.e. 50%, 10% 15% etc. The CESR draft advice would require parties to disclose all details of the transaction by which a given level is breached (gone through). The required systems and process will therefore be in excess of what is actually required by the directive. The costs of this superequivalence will affect not only reporting parties but also issuers and regulators which will capture information which, in the main, will be unused.

The draft CESR advice (now being consulted upon) would require market makers to keep securities related to market making in separate accounts. If this is adopted by the Commission in a regulation, there will be significant costs resulting from the complication of the settlement process, since the segregation of market making securities will require two custodian/settlement accounts, movements between them, and corresponding dual accounting requirements. This will result in significantly increased costs for market makers and will affect liquidity adversely. We have agreed that there are other ways by which regulators can monitor whether market makers are improperly pressurising issuers by asserting these holdings in the issuers by asserting these holdings in the issuers.

Q7. Do you have any comments on the impact on competition of the implementation of the major shareholdings notification provisions of the Directive?

We have no comment at this time.

Q8. Do you have any comments on the impact on small business of implementation of the major shareholdings notification provisions of the Directive?

We have no comment at this time.



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