

**Comments on behalf of The Association of Corporate Treasurers  
on:**

***Transparency Directive: Consultation on implementation of the  
major shareholding notification provisions***

***A consultative document from H M Treasury, March 2005***

**Introduction**

**The Association of Corporate Treasurers (ACT)**

Established in the UK in 1979, The Association of Corporate Treasurers (ACT) is a centre of excellence for professionals in treasury, risk and corporate finance operating in the international marketplace. It has over 3,300 members from both the corporate and financial sectors, and its membership includes representatives from 95 of the FTSE 100 companies.

The ACT has 1,500 students in more than 40 countries. Its examinations are recognised by both practitioners and bankers as the global standard setters for treasury education and it is the leading provider of professional treasury education.

The ACT promotes study and best practice in finance and treasury management. It represents the interests of non-financial sector corporations in financial markets to governments, regulators, standards setters and trade bodies. Accordingly the comments made in this paper are made from the corporate and not the financial services sector standpoint.

Contact details are provided on the last page of these comments.

**Response to questions:**

*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?*

A1: No. The consultation notes that back in 1995 the majority of respondents favoured a move away from disclosure obligations by large shareholders based on their 'interest in shares' to a narrower definition based on the 'control of exercisable voting rights'. Since 1995 the holdings of derivatives of shares, stock lending and other arrangements have

become much more common. Accordingly it can be important for a company to be aware of who is holding a stake in its shares in a wider sense eg. owns, controls or has certain rights over the shares, rather than just who happens at that instant to have the legal voting rights. We believe that leaving the definitions unchanged would be beneficial because of their wider reach. This would still be consistent with the needs of the Transparency Directive which refers to 'major holdings in issuers'.

It is interesting to see that the Takeover Panel in their consultation on "Dealings in Derivatives and Options – detailed proposals relating to amendments proposed to be made to the Takeover Code" PCB 2005/1 published on 13 May, recognised the importance disclosure of "interests in shares" during a takeover. Their definition of interests in shares is drawn very widely and includes:

- owning them or having the right to direct the voting rights
- having the right to acquire, or obligation to take delivery, under any agreement to purchase, or under an option or derivative
- being party to a derivative whose value is determined from the share price or creates a long position in the shares

The complexity of the ownership and derivative arrangements can even mean that there could be an element of double counting for example when a shareholder grants a call option to another person.

John Sunderland, Chairman, Cadbury Schweppes plc & President, CBI, speaking at the Investor Relations Society Conference on April 21<sup>st</sup> reportedly drew attention to the lack of transparency resulting from interests in shares not arising from direct ownership of shares and that that it is laborious and expensive to disentangle even the primary layers of ownership, especially outside the UK. The issue is raised with greatest salience during take-overs but companies may want to keep track of who has interests in their shares routinely or at times of pressure, for example when a "hostile" party takes a significant shareholding – as happened to John Sunderland's company, Cadbury Schweppes, with US greenmailer General Cinema in 1987. Accordingly it seems to be a move in quite the wrong direction for the UK to change from routine reporting based on interests in shares to the narrow control of voting rights basis.

We recognise that the financial services industry and those who regularly advise or represent them are in favour of the restrictive voting rights concept in the directive, but feel strongly that transparency in this area is important for the overall market and for issuers.

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

A2: No. The transparency directive requires that all companies that are traded on a regulated market be brought within the disclosure of interests rules. You explain that the UK government intend to go beyond this and include all issuers whose shares are traded on any market in the UK, but that public limited companies whose shares are not traded on a market would be excluded from the disclosure regime. We think that this is unhelpful for companies and believe rather that all public companies should be able to make use of the disclosure requirements placed on shareholders. For example there are occasions under the money laundering regulations when a bank will need to know its customer and who owns or is standing behind it. The company itself therefore needs compulsory obligations on holders to disclose large shareholdings much as under section 212 notices as present.

It is essential that the existing section 212 rights entitling companies to seek information from persons as to whether they have an interest in the company's shares, be maintained.

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?*

A3: Yes. The Transparency Directive is narrower in scope than the existing Company Law disclosure obligations and therefore for the reasons given in Q2 above we would support the government intent to go beyond the basic TD requirements. This is consistent with our view that all Public Limited companies should be within the scope of the disclosure regime, whether traded on a regulated market, non regulated market, or even no market at all.

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?*

A4: We believe that some strong method of enforcement is required and are content if this is handled through the FSA.

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 disclosures in respect of holdings of financial instruments?*

A5: Yes. As noted in A1 an ever growing variety of derivatives exist so we agree that it is appropriate to give the FSA suitable powers to cover disclosure of interests held via financial instruments. However as noted in A1 if the definition of major holding is defined based on the wider 'interests in shares' many financial instruments will already be picked up.

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

A6: Our expectation is that the costs of implementation are likely to be trivial, particularly if electronic notifications are accepted and encouraged.

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

A7: There may exist marginal competition issues arising from the disclosure regime, but in all probability these will be too remote to be of any great significance.

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

A8: We do not see any special implications for small businesses

<b>Contacts:</b>	The Association of Corporate Treasurers
Richard Raeburn, Chief Executive (020 7213 0734; rraeburn@treasurers.co.uk)	Ocean House 10/12 Little Trinity Lane London EC4V 2DJ
John Grout, Technical Director (020 7213 0712; jgrout@treasurers.co.uk)	Telephone: 020 7213 0728 Fax: 020 7248 2591
Martin O'Donovan, Technical Officer (020 7213 0715; modonovan@treasurers.co.uk)	Website: <a href="http://www.treasurers.org">http://www.treasurers.org</a>

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