

Mr Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

14 September 2007

Dear Mr Demarigny

IMA response to CESR Call for Evidence on Possible Level 3 Work on the Transparency Directive (Ref: 07-487)

The Investment Management Association welcomes the opportunity to provide input into the Level 3 process for the Transparency Directive. As the representative of the UK-based investment management industry¹, we are particularly interested in the position of investors in companies across the EU. As such, we are concerned to ensure that the obligations placed on investors under the Directive are implemented as consistently as possible across Member States and that there is easy access to information on each Member State's implementing measures in a standardised format.

The affect of a minimum harmonising approach is that investors are required to comply with different notification regimes in each Member State. This creates uncertainty and a huge administrative burden for many of our members who have substantial holdings on behalf of their clients across Europe. Our comments (set out in the Annex attached) reflect a desire to minimise this uncertainty and lighten the administrative burden as far as possible.

We feel that the issues faced by investors have been largely overlooked at Level 1 and 2, and we would welcome the opportunity to work with CESR at Level 3 to try and address the substantial outstanding issues.

Yours sincerely,

Penny Froggatt
Senior Legal Consultant

¹ The IMA represents the UK-based investment management industry. IMA members include independent fund managers, asset management arms of banks, life insurers and occupational pension scheme managers and are responsible for the management of over £2 trillion of funds (based in the UK, the rest of Europe and worldwide).

Annex

Investment Management Association response to CESR Call for Evidence on Possible Level 3 Work on the Transparency Directive (Ref: 07-487)

Question 1: Do you consider that CESR should start working in its level 3 capacity in order to promote a consistent application of the TD and the Level 2 Directive?

Question 2: If yes, which areas do you think CESR's work should cover? Could you prioritise them?

We consider this work to be vital in order to ensure that the objective of the Directive is achieved, especially in the context of shareholder reporting requirements.

As a result of the minimum harmonising nature of the Directive many Member States have sought to impose more stringent obligations on shareholders than those set out in the TD and Level 2 Directive. The lack of clarity and detail of some of the requirements set out in the TD and Level 2 Directive has also led to inconsistent application in key areas. This has been exacerbated by the staggered implementation and lack of information on the state of implementation in member states and access to implementing rules.

There is a real need for clear information to be made available to investors on the major shareholding notification regimes in each jurisdiction in an easily accessible format. CESR should prescribe the areas which should be covered, for example:

- Scope of obligation in terms of issuer/market
- Reporting thresholds including any variations for different types of holder
- Notification deadlines
- Method of calculation of holdings
- Approach to stock lending
- How to file including relevant contact details of competent authority
- Form of notification
- Where to go for additional information and/or who to contact with queries
- Link to implementing rules or a summary in English
- Information on penalties for breach of requirements

Ideally this information should be made available by CESR via a central database. Failing that, each competent authority should be required to provide this information in a prominent place on their website in English as well as the language of their jurisdiction. Information should also be provided on the state of implementation in each Member State and any timetable for implementation where applicable.

There is also a distinct lack of information on the home state of non-EU issuers and it is often not easy to determine the correct figures to use for total numbers of shares of each issuer when making notifications.

In addition to the information deficiencies, there are significant differences in the treatment and interpretation of key areas of the Directives. For example the definition of "financial instruments"; the application of the exemption from the aggregation requirements, in particular for non-EEA investment managers and

management companies; the position of stock lending/borrowing; equivalence of non-EEA major shareholding notification regimes; the method of calculating holdings for threshold purposes and the form of notification. Lack of harmonisation in these areas means that investors need to set up different systems for each jurisdiction.

Question 3: Do you think CESR's work to harmonise should be published in the form of a Q&A section of its website (in a similar way as CESR is currently doing in the prospectus area)?

The format of CESR's work in this area will depend on the issue to be addressed. In the case of information on different notification regimes, this information could be presented in a tabular format on CESR's website. Q&As would not be appropriate.

Where there is a lack of clarity in the text, interpretative recommendations may be a more appropriate way of ensuring a consistent approach across Member States.

We would encourage CESR however to consult widely before any final Level 3 measures are adopted and provide an opportunity for stakeholders to discuss their concerns in detail and any suggested measures through working groups, public hearing and other ad hoc meetings. We would welcome the opportunity to be involved in any such discussions.

Question 4: Do you think CESR should facilitate the establishment of an EU network of national storage mechanisms?

We support the work that CESR has done thus far in this respect, but we are not aware of further action that CESR need take at this point, bearing in mind CESR's June 2006 Advice and the work currently being done by the Commission on a binding legislative measure to underpin the establishment of such a network.