FEFSI RESPONSE TO

CESR'S CALL FOR EVIDENCE ON THE MANDATE FOR TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES ON THE TRANSPARENCY DIRECTIVE

The European investment management industry, represented by FEFSI[1] welcomes the opportunity to respond CESR's call for evidence with regard to the Commission's Formal Request to CESR for Technical Advice on Possible Implementing Measures concerning the Transparency[2].

FEFSI believes the European investment management industry will be affected by CESR's work on the implementation of the Transparency Directive first and foremost with regard to the information on major shareholdings and in particular the procedures for the notification thereof. Our comments will reflect concerns of portfolio managers be they collective (under the UCITS Directive) and/or individual management (under the ISD and the UCITS Directives).

At this stage we would like to emphasise the following general points:

- ***The independency conditions***

The European investment management industry acknowledges the exemption from the aggregation duty (at parent level) regarding changes in major shareholdings provided that the subsidiary investment manager exercises the corresponding voting rights in an independent manner. In our eyes, criteria that illustrate such independence could include:

(i) A separate legal form/structure;

(ii) The existence of a demonstrable process of independent decision-making, e.g. by means of:

- The appointment of a senior individual within the subsidiary investment manager with responsibility to help ensure the independence between the investment manager and its parent company, particularly in terms of the exercise of voting rights;

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1 FEFSI, the European Fund and Asset Management Association, represents the interests of the European investment management industry (collective and individual portfolio management). Through its member associations from 19 EU Member States, Liechtenstein, Norway, Switzerland and Turkey, FEFSI represents the European asset and fund management industry, which counts some 41,100 investment funds with EUR 4.7 trillion in net assets under management. For more information, please visit www.fefsi.org.

2 CESR/04-284 of 29 June 2004

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- The same senior individual submits an annual report to the Board of Directors of the investment manager on the policy and procedures established to maintain independence when exercising voting rights between the subsidiary investment manager and its parent company;

- Written internal policies and procedures for the investment management company that are designed to help ensure its independence in relation to its parent company, which are designed in particular to prevent the flow of information relating to the exercise of voting rights and the investment decisions over securities traded;

- The independency or the "at-arms-length" relationship between subsidiary and parent should find its reflection in a clear written mandate, in particular in cases where the parent is a client of or has holdings in the assets managed by the investment manager.

We once again draw attention to the circumstance that investment managers are fiduciaries, who act on behalf of others, i.e. investors, whereby in the case of collective portfolio management there is a statutory prohibition on exerting significant influence/control over the portfolio holdings.

- ***Who must make the notification?***

CESR has also been asked to provide advice on which person (the shareholder, the natural/legal person referred in Article 10 or both) should make the notification. We believe that the obligation to disclose major shareholdings should only apply to the person or entity that has the discretion to exercise the voting rights. Where the notification requirements apply to investment managers because they exercise voting rights on behalf of their clients, only the management company or investment firm should be required to make the notifications. We believe it will lead a confusing duplication of information to issuers and the market if both the investment manager who exercises the voting rights at their discretion on behalf of his clients and the clients themselves have to make the notifications.

- ***Types of financial instruments***

CESR has been asked to identify the types of non-share financial instruments to be covered under Article 11a and their aggregation for the purposes of disclosure. We believe that it is equally important to make clear that the aggregation exemption should also apply to such non-share financial instruments in terms of the disclosure of holdings. We see no reason why holdings of such non-share financial instruments, such as options, should be treated differently from holdings of the underlying shares where the parent undertaking and the investment management subsidiary exercise the voting rights independently.

- ***Standard notification form***

The European investment management industry welcomes the initiative to draw up a standard notification form to be used by investors throughout the Community that should cover at least the most frequent cases. We can only emphasise the fact that such a form should be simple and straightforward to complete and use, and conceived with electronic transmissions as the preferred means of communication.

Brussels, 29 July 2004
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