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Michel Colinet
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Committee of European Securities Regulators
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8 October 2007

Dear Mr. Colinet

Transparency Obligations Directive

You have asked for views on possible CESR Level 3 work in relation to the Transparency Obligations Directive and the Level 2 Directive.

In our view, the Directives have not helped the creation of a comprehensive framework that allows shareholders to operate a single regime for disclosure of shareholdings across EU. As a pan-European shareholder, we believe that, as such, the Directives represent a wasted opportunity.

We believe that the Directive, as implemented, has complicated the disclosure obligations imposed upon shareholders. However, we are not sure that it has increased the transparency of information related to share ownership. Specifically, the Directive's emphasis on disclosure of voting rights, inconsistent rules among EU Member States and the impact of individual-company disclosure obligations have all led to increased complexity.

We have set out below our response to your questions:

- **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?**

Yes. In our view, the Transparency Obligations Directive ("the Directive") has not led to the creation of a comprehensive framework that allows shareholders to operate a single regime for disclosure of shareholdings across EU. We would have preferred a Directive with maximum harmonisation in so far as the provisions on shareholder disclosure are concerned.

- **If yes, which areas do you think CESR's work should cover? Could you prioritise them?**

We believe that CESR should focus on the provisions concerning shareholder disclosure to try to encourage greater consistency of approach.

- **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)?**

Yes but table format would probably be simpler for setting out the main differences between Member States.

We provide further comment on our experiences as shareholders of the disclosure provisions in the Transparency Obligations Directive overleaf. We would be happy to provide further details if desired and would welcome the opportunity to discuss these issues further with you.

Yours sincerely

Susannah Haan

Susannah Haan

Attached:
Comments on the shareholder disclosure provisions of the Transparency Obligations Directive

Comment on the shareholder disclosure provisions in the Transparency Obligations Directive

In our view, the Transparency Obligations Directive ("the Directive") has not to the creation of a comprehensive framework that allows shareholders to operate a single regime for disclosure of shareholdings across EU. As a pan-European shareholder, we believe that, as such, the Directive represents a wasted opportunity.

Longer term, we would welcome simplification with more consistent disclosure rules across Europe and also EU efforts on the international stage to create a more consistent approach within IOSCO, because we experience similar difficulties in respect of inconsistent reporting obligations elsewhere in the world. By way of background, we currently disclose our holdings in approximately 60 jurisdictions worldwide, all of which have different disclosure requirements; some of which also have different internal reporting requirements under company law, rules on takeover bids and securities regulation; this function requires several full-time staff.

We believe that the Directive, as implemented, has complicated the disclosure obligations imposed upon shareholders. However, we are not sure that it has increased the transparency of information related to share ownership. Specifically, the Directive's emphasis on disclosure of voting rights, inconsistent rules among EU Member States and the impact of individual-company disclosure obligations have all led to increased complexity. We explain each factor in turn below:

i. Systems limitations for voting rights-based reporting:
The Directive requires a shareholder to disclose its interest in a listed company in an EU jurisdiction in terms of the percentage of voting rights held, rather than the number of shares owned. Unfortunately, our internal reporting systems and policies (which are consistent with industry standards in this regard) were designed to monitor our ownership interest in companies based upon the number of shares held; the system does not automatically account for shares that carry double voting rights or no voting rights.

Consequently, as we finalise planning on systems enhancements, we have found it necessary to engage in considerable manual intervention in order to produce the reports required by the Directive. For example, in order to calculate our holdings in terms of voting rights, we must obtain company-level data regarding the number of voting rights per each share. In some instances, this can be a very time-consuming and labour-intensive effort.

Member States have been late in implementing the Directive, making it impossible for us to plan systems changes and instead requiring manual tracking of regulatory requirements. This increases the risks of mistakes being made in the reporting process.

ii. Inconsistent disclosure obligations in Member States:
Unfortunately, notwithstanding desires to create a pan-European market, different Member States still apply local disclosure rules in different ways. Some EU jurisdictions require disclosure of holdings by number of shares and voting rights separately. This leads to additional disclosures for the same issuer and increases the operational and cost burdens on shareholders.

There is no agreement on what constitutes the reporting entity. There are different rules across Europe for filing according to legal entity, product, umberella, management company (the definition for which differs across all EU jurisdictions) or parent level. Sometimes this leads to duplication of filings, particularly in Germany. For a single issuer, we may need to monitor and to make 4 or 5 separate filings (SICAVs, management companies, advisers, parent level).

Moreover, Member States maintain different and sometimes inconsistent "continuing" reporting threshold obligations. In some jurisdictions we are obliged to report when our holdings increase from e.g. 5% to 10% or above. In other jurisdictions, we are obliged to report when our holdings increase from 5% to 6% or above. In addition to the actual level, the measurement of the percentage increases differs between jurisdictions - some work on the basis of multiples while others use "whole number integer" increases. Some jurisdictions allow an exemption for management companies where they require additional disclosure above the provisions of Directive; others do not.

Finally, Member States have different timescales for filing such notices (anywhere from between 1-7 days) and different entities to which the information must be sent (the company / stock exchange / regulator / some combination or all of them). We are in the final planning stages of building a systems-based reporting solution in respect of the Directive, but uncertainty regarding rules at the Member State-level continues to complicate matters in this regard.

iii. Additional company-level disclosure obligations:
In addition to the above disparities, individual companies in some jurisdictions have imposed, via their articles, additional disclosure obligations that oblige shareholders to report holdings at even lower levels of share ownership (often 1% of outstanding share capital or total voting rights). The shareholder typically risks forfeiting the right to vote such shares unless the specific disclosure is made to the company. This trend concerns us for a number of reasons.

First, as a large, global institutional investor, we have investments in thousands of companies around the world. Consequently, it is difficult for us to track such changes in individual company articles. As we described we have complex technology and compliance systems for disclosure, which are generally designed around different countries' legal requirements rather than individual company articles. We had hoped that the Transparency Obligations Directive would allow us to operate a more consistent pan-European approach to disclosure. Company-level disclosure obligations clearly frustrate this aim.

Second, we will not generally disclose our holdings where there is no legal requirement to do so, because this may place us at a disadvantage to other investors, who may seek to make quick, short term gains from knowledge of Fidelity's long term position. We are not therefore in favour of such provisions and would very much prefer companies to avoid disclosure requirements which go beyond the law.

We appreciate that companies should reasonably know the identity of their owners, but we believe that depriving shareholders of the right to vote without warning is a disproportionate response to the issue.

We would point out that the UK approach (FSA Listing Rule 9.3.9 and s.793 Companies Act 2006) allows a company to withhold voting rights or company dividends, but only after due notice has been given, and where the legal owners on the register have not responded to requests for information about the beneficial owners for whom they are holding the shares. This allows time for such queries to be passed down the chain of ownership.