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Fabrice Demarigny
Secretary General
CESR
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CESR's advice on possible implementing measures of the Transparency Directive – Part II

Dear Mr Demarigny,

Barclays PLC is a UK-based financial services group engaged primarily in banking, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the United Kingdom.

The Group also operates in many other countries around the EU and the world. Barclays has been involved in banking for over 300 years and operates in over 60 countries, including Ireland, Spain, Portugal, France, Italy and Germany.

We welcome the opportunity to comment on CESR's draft advice on possible implementing measures for the Transparency Obligations Directive and are pleased with CESR's continued transparent consultation process.

CHAPTER 2 – HALF-YEARLY FINANCIAL REPORTS

Section 1 – Minimum content of half-yearly financial statements not prepared in accordance with IAS/IFRS

Q50. Do you agree with this proposal? If not, please state your reasons.

We agree with the proposal and support the requirements for companies not required to use IFRS to be based on IAS 34. We question whether the "primary basis of reporting" will be clear to non-IFRS users with regard to whether they are required to provide business segmental information or geographical segmental information. Further thought may need to be given to the disclosures where a company that is not required to prepare consolidated accounts enters into a business combination or acquires a subsidiary during the half-year and must prepare consolidated accounts for the first time.

CESR should consider introducing the following additional requirements:

- Disclosure of earnings per share (if included in the annual financial statements)
- That the company uses the same accounting policies as in the previous annual financial statements except for accounting policy changes made after the date of the previous annual financial statements that will be reflected in the next annual financial statements.

Section 2 – Major related parties transactions

Q51. Do you agree with this proposal or do you believe that other definitions could be followed?

We agree that the definition of related party in IAS 24 should be used.

Q52. Do you agree with the proposed definition? If not, please state your reason.

We agree that, since the annual financial statements are available, there is no benefit in requiring companies replicate and update this information in the half-yearly report. We also agree that a different concept of materiality or definition of material transaction should not be introduced into half-yearly reporting by the Directive's use of the term "major".

However, we do not agree that the draft CESR advice meets these objectives. Although accounting standard do not apply to immaterial items, in practice, IAS 24 results in the disclosure of all related party transactions, whether or not they have a material effect on the financial position because they may affect assessments of the risks and opportunities facing the entity (IAS 24 paragraph 8). Therefore, we consider that point b of the CESR advice can be read as requiring an update of all the disclosures made in the previous annual financial statements. If this is not the case, CESR is requiring a different assessment of "material effect" than is required by IAS 24, contrary to paragraph 512. Similarly, point a can be read as requiring disclosure of all new related party transactions.

We note that paragraph 17 of IAS 34 includes related party transactions as an example of the kinds of disclosures required by paragraph 16 and that CESR has based the required disclosures for companies not required to produce consolidated financial statements on this paragraph. In our view, it would be better to base the interpretation of "major" on IAS 34 and include a requirement to consider whether any related party transactions fall to be disclosed in the context of the disclosures required by IAS 34 paragraph 17 (in the case of companies complying with IFRS) or the disclosures required by the CESR advice for companies not complying with IFRS). Alternatively, if the intention is not to introduce a requirement for an update of the related party disclosures in the annual financial statements, the wording of the requirement will need to be amended.

Section 3 – Auditors' review of half-yearly report

Q53. Do you agree with the approach proposed by CESR?

We agree.

Q54. Do you consider that there is a need for the adoption at national level of a single standard to which audit reviews are conducted? Please give your reasons.

No. Auditors' reports will state the basis of the review and, in any case, harmonisation based on IFAC standards is likely.

CHAPTER 3 – EQUIVALENCE OF THIRD COUNTRIES INFORMATION REQUIREMENTS

Section 1 – Equivalence as regards issuers

Q55. Do you agree with the proposed approach? If not, please give your reasons.

We agree that equivalence should be defined in terms of similarity of outcomes that allow investors to make economic decisions rather than in terms of equivalence of laws and regulations. However, the level at which CESR intends to set principles for determining equivalence is not clear. What were the results of the review of requirements listed in Article 19(1) to determine whether it is possible to set up principles? How does this approach avoid both setting high level principles and providing a list of detailed rules as stated in paragraph 534?

Q56. Do you consider that there is any other way to develop Level 2 implementing measures related to Article 19(1) of the Transparency Directive? Please explain your answer.

Given the need for implementing measures, rather than leaving this to the discretion of member state's competent authorities, there seems little choice but to develop lists of equivalent provisions in different countries. However, the scale of the task, particularly the need to keep the lists up to date, should not be under-estimated.

Q57. Do you agree with this interpretation of Article 19(1) of the Transparency Directive as regards time limits? Please give reasons for your answer.

We agree. There seems no reason why EU investors should receive information from companies to a different timetable because the company is located in a third country.

No questions are asked about paragraphs 537 – 556, but we have the following comments:

Para 538. We do not necessarily agree that information relating to the environment and to employees is not necessary for investor protection. If a company is likely to incur penalties for polluting the environment or suffer poor performance as a result of difficulties with employees, this is relevant information for investors. There are arguments that by not being required to consider making such disclosures, the management reports of third country issuers are not equivalent to those within the EU.

Para 540. If related party transactions are not disclosed on an ongoing basis, this seems an argument that the third country GAAP is not equivalent. The disclosures should be required in the annual financial statements, rather than in the half-yearly report. As discussed in question 52 above, we do not agree that full disclosure of all related party transactions should be required in the interim report.

Q58. Do you agree with this proposal? Please give reasons for your answer.

This is an area where it will be difficult to define and then enforce equivalence. The proposal appears to be that third country issuers have to disclose major holdings of voting rights in the EU within 7 days of the occurrence of the event. This is seen as equivalent, in total, to the shareholder having 4 days to notify the company and the company having 3 days to notify the market. If trading days are defined by reference to the calendar of trading days of the issuer's home Member State, then the issuer should know the deadline. However, this does not solve the problem where the shareholder has more than 7 days to inform the company or where the domestic law of the third country required notification to shareholders more than 7 days after the event where the timetable may lead to shareholders and investors receiving information at different times. It is also not clear how this can be enforced. For example, how would anyone know when the event occurred?

Q59. Do consultees agree with this draft advice? Please give your reasons.

Since there is a requirement to consider equivalence, the draft advice seems the only alternative. However, there remain concerns with practicality and enforcement.

Q60. Do you agree with this proposal? Please give your reasons.

The proposal seems unnecessarily complicated. If companies in third countries have lower levels for permitted holdings and disclosures, these disclosures should also be made to EU investors, regardless of whether this is “equivalent”. Similarly, if the company is permitted to hold more than 10%, this should also be disclosed in the EU. A simpler formula for defining equivalence could be based on requiring local disclosures to be made in the EU along with disclosures at 5% and 10% if these are not required by local law within the 4 trading day limit.

Q61. Do you agree with this proposal? Please give your reasons.

This seems reasonable.

Section 2 – Equivalence in relation to the test of independence for parent undertakings of investment firms and management companies

Q62. Do you agree with the proposed approach? Do you consider that the alternative approach provides added value? Please give your reasons.

The alternative approaches are not clear. It seems impractical for CESR to assume responsibility for ensuring third country investment firms comply with independence conditions. Where third country laws have independence conditions or where third country investment firms make declarations, it should be sufficient to presume equivalence. To ensure compliance as well would go further than is required for EU investment firms.

Q63. Do you agree with this proposal? Please give your reasons.

The proposal seems reasonable.

Q64. Do you agree with this proposal? Please give your reasons.

The proposal seems reasonable.

CHAPTER 4 – PROCEDURAL ARRANGEMENTS WHEREBY ISSUERS MAY ELECT THEIR “HOME MEMBERS STATE”

Q65. Do you agree with this proposal? Please give your reasons.

The proposal seems reasonable.

Q66. Do you agree with this proposal? Please give your reasons.

The proposal seems reasonable.

Please do not hesitate to contact me or my colleague Laura Mowbray (laura.mowbray@barclays.co.uk, Tel. +44 20 7116 6175) on any of the issues raised in this paper.

Yours sincerely,

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