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Consultation paper: CESR proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares (CESR/09-1215b)

The Swedish Investment Fund Association (SIFA) would like to make the following comments to the CESR consultation paper with proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares.

General comments

SIFA agrees with CESR that a high level of transparency is in the interest of all market participants and investors including funds and their unitholders. However, w**e** believe that if the scope of the Transparency Directive (TD) is to be broadened a thorough analysis of all consequences should be performed.

SIFA is also of the opinion that harmonisation of diverging national regimes poses additional challenges to those reporting. Harmonisation relating to other aspects of the TD such as time limits and methods for reporting must be achieved.

The objective of a broadened scope is to avoid the build up of major stakes in public companies. If a broad scope is applied investors that due to legislation are prohibited to build major stakes in companies should be allowed safe harbour exemptions from the new requirements.

Answers to the CESR questions

Q1. Do you agree with CESR's analysis of the issues raised by the use of instruments of similar economic effect to shares and entitlements to acquire shares?

The issue is complex and we acknowledge that those market participants that are interested in hiding their intent can do so and that this is not to the benefit of the rest of the market. There might be other ways to achieve better market conditions in relation to such circumventions than to change the TD. The effect of other legislation, such as market abuse rules etc, should be examined to make sure that the most effective legislative changes are made.

Q2. Do you agree that the scope of the Transparency Directive needs to be broadened to address these issues?

A high level of transparency is in the interest of all market participants and investors including funds and their unitholders. We agree with CESR that the TD should provide as much transparency as possible to the benefit of all investors in the market.

However, it is hard to asses all possible effects a broadened scope would have. We have not experienced the problems CESR describes in its consultation, especially not in relation to fund managers or UCITS funds, either on a national- or a European level. Therefore we can not see the immediate need for the proposed changes even though we share the opinion that harmonisation of the transparency rules in different member states needs to be achieved. We believe that if the scope of the TD is to be broadened a thorough analysis of all consequences should be performed.

Q3. Do you agree that disclosure should be based on a broad definition of financial instruments of similar economic effect to holding shares and entitlements to acquire shares without giving direct access to voting rights?

We agree that a broad definition would provide the market with more transparency but it would also add to the administrative burden of all companies acting on the financial markets. To asses what has to be disclosed will require extra personnel and efforts.

Diverging national regimes poses additional challenges to those reporting. In Sweden a very short time limit has been imposed on disclosure. Reporting to the relevant authorities is required the day after the purchase and failure to do so results in heavy fines. If harmonised and extended rules are sought for the scope of the directive, harmonisation relating to other aspects of the TD such as time limits and methods for reporting must also be achieved.

Q4. With regard to the legal definition of the scope (paragraphs 50-52 above), what kind of issues you anticipate arising from either of the two options? Please give examples on transactions or agreements that should in your view be excluded from the first option and/or on instruments that in your view are not adequately caught by the MiFID definition of financial instrument.

A general approach has the benefit of providing an all encompassing transparency that would be hard to avoid and that could give the market a total picture of the influence of each company. However, the problems to determine what should be reported and in what way, the risk of several market participants reporting the same transactions, and the difficulties to asses the very large amounts of information, might make the information useless to the general public. The heavy burden of reporting would also carry additional costs for fund managers that would ultimately have to be borne by the individual unitholders.

As mentioned above fund managers and UCITS-funds have not been involved in any of the scandals referred to by CESR. Since the objective of the extended rules would be to avoid attempts to build major stakes without the market finding out those investors without such an agenda will be unduly burdened. If a general approach is chosen safe harbour exemptions should be allowed for those investors that due to legislation is unable to build major stakes, such as UCITS-funds.

Q5. Do you think that the share equivalence should be calculated on a nominal or delta-adjusted basis?

No comment

Q6. How should the share equivalence be calculated in instruments where the exact number of reference shares is not determined?

No comment

Q7. Should there be a general disclosure of these instruments when referenced to shares, or should disclosure be limited to instruments that contractually do not preclude the possibility of giving access to voting rights (the 'safe harbour' approach)?

See above.

Q8. Do you consider there is a need to apply existing TD exemptions to instruments of similar economic effect to holding shares and entitlements to acquire shares?

The purpose of existing exemptions remains even with an extension of the scope.

Q9. Do you consider there is need for additional exemptions, such as those mentioned above or others?

See above Q 4

Q10. Which kinds of costs and benefits do you associate with CESR's proposed approach?

See above

Q11. How high do you expect these costs and benefits to be?

We can not make an estimate at this time.

Q12. If you have proposed any exemptions or have presented other options, kindly also provide an estimate of the associated costs and benefits.

The benefit if safe harbour exemptions were allowed for those investors that due to legislation is unable to build major stakes in companies would be that reporting would continue to be timely and correct and that no additional costs would have to be borne by the unitholders.

SWEDISH INVESTMENT FUND ASSOCIATION

Lena Falk Eva Broms