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BARCLAYS

Fabrice Demarigny
CESR
11-13 avenue de Friedland
F-75008 Paris
France

29th July 2004

Dear Mr Demarigny,

Barclays Response to CESR on its Call for Evidence on its Mandate for Technical Advice on Possible Implementing Measures Concerning the Transparency Directive

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 Spain, Portugal, France, Italy and Germany.

Barclays welcomes the opportunity to respond to CESR on its call for evidence on its mandate for technical advice on possible implementing measures concerning the Transparency Directive. However, we feel that the one-month response period provided by CESR is not adequate, particularly as it falls in the month of July, which is during our interim reporting period. This creates difficulties in obtaining the necessary expert input to provide a thorough response.

While we expect that CESR will look at all Member States' current provisions that are similar to those in the Transparency Directive, we would like to reiterate areas where we believe the UK provisions work well in practice and could provide a useful model in developing implementing measures.

Our views on specific areas of CESR's call for evidence are below.

3.1 Information about major holdings (Articles 9(3d), 11(5) and 11a(2))

Section 3.1.2 Procedures on the notification of major holdings of voting rights (Article 11(5)) and aggregation amongst financial instruments (Article 11a(2))

- (1) Bilateral notification using a standard form, whilst potentially making things easier for large organisations who frequently make many such notifications, could create difficulties for individuals, especially in third countries, who are required to make a one-off notification for whatever reason, e.g. inheritance of a significant quantity of shares. How would they know that they were required to use such a standard form and how would they obtain a copy? We are concerned about the practicalities of operating such an arrangement in all cases.

Any standardised form should contain a space for “additional information” in case an investor wishes to include some information that is outside the standardised format.

- (4) The shareholder, natural person or legal entity should have learnt of the acquisition of shares by ensuring that they have a satisfactory system in place to regularly monitor their shareholdings, such that they become aware when thresholds are reached.
- (5) With regard to the conditions of independence with which management companies and their parent undertakings would need to comply to benefit from the exemptions in Articles 11.3a and 11.3b, we would recommend that CESR refer to the UK Takeover Panel's rules. Of particular interest would be the criteria it applies when deciding whether a fund manager can be exempted from being "in concert" with an investment banking affiliate ('exempt fund manager' status). This would cover, inter alia:
 - Group structure (e.g. separate subsidiaries)
 - Physical location and access controls
 - Management structure, including directorships
 - Chinese Wall procedures
 - Information flows
 - Shared services
 - Compliance arrangements
 - Remuneration structures including bonus pools/option schemes

Section 3.2. Publication of regulated information

Section 3.2.1 Dissemination of regulated information by issuers (Article 17(1))

Questions (a) and (b): Issuers should be provided with certainty about what media are considered to meet the fast-access, non-discrimination and no-charge criteria. Having different primary mechanisms for different types of regulated information may make storage and later retrieval more difficult. However, this need not prevent or discourage the use of supplementary mechanisms additional to the primary one, such as newspaper advertisements for interim reports, where this is useful to investors. The UK system of Regulatory Information Services (RIS) provides timely information accessible in other member states via the internet for no charge and may be a useful model for primary mechanisms.

Section 3.2.2 Keeping periodic financial reports available by issuers (Articles 4(5) and 5(5))

We regard the internet as the fastest, furthest-reaching and cheapest means of distribution and Barclays Annual Reports are available on our website back to 1997. Hardcopy is available only for the last two years. Annual Reports are also lodged at the UK's Companies House and are available to download, albeit for a small charge. Preliminary and interim documents are also available on our website.

We would remind CESR that annual reports become out of date as soon as more recent financial information is available. While they remain a useful source of information until the next annual report is issued (e.g. they include a complete list of accounting policies), investors should be warned about using out-of-date annual reports.

3.3 Other issues

3.3.2. Half-yearly financial reports (Article 5(5))

- (1) We agree that CESR should consider the relevant international auditing standards. The nature of the auditors' review of the half-yearly report can best be clarified by reference to these standards.
- (2) We suggest that the minimum content of the condensed balance sheet, profit and loss account and notes can best be set by reference to the relevant sections of IAS 34 (paragraph 10). At a minimum, they should include each of the headings and sub-totals in its most recent annual financial statements with additional line items being included if to exclude them would be misleading.
- (3) With regard to the clarification of the notion of "major related parties transactions" as part of an interim management report for issuers of shares, we would strongly advise that for the sake of consistency, this requirement is made exactly the same as what is in IAS 34. "Major" has no accounting meaning in the sense that "material" does and IAS 34 (paragraphs 16 & 17) only requires information if it is material to an understanding of the current interim period.

3.4 Third countries: equivalence as regards issuers and UCITS management companies/investment firms (Article 19)

As a general comment on equivalence, CESR should be mindful of accounting developments that happen at different paces and could lead to non-equivalence either in the short or longer term. For example, if the US does not adopt a similar share based payment standard, does this make US GAAP not equivalent?

Should you have any questions relating to this response, please do not hesitate to contact me or my colleague, Laura Mowbray (laura.mowbray@barclays.co.uk).

Yours sincerely,

Bill Eldridge
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