



FINANCIAL SERVICES AGENCY
GOVERNMENT OF JAPAN
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27 May 2005

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

Re: CESR's Public Consultation Paper on CESR's Revised Draft Technical Advice on
Possible Implementing Measures of the Transparency Directive

Dear Mr. Demarigny,

1. As Director for International Financial Markets of the Financial Services Agency of Japan ("Japanese FSA"), I am pleased to submit this letter on behalf of the Japanese FSA in response to the request, published on 27 April 2004, of the Committee of European Securities Regulators ("CESR") for comments on its public consultation paper on CESR's revised draft technical advice on possible implementing measures of the Transparency Directive ("CESR Revised Draft").
2. Among the CESR Revised Draft implementing measures, the equivalence of third countries requirements for notifications of major shareholdings of voting rights and the equivalence of third countries information requirements would affect Japanese issuers in EU capital markets, and are related to the Japanese disclosure requirements. Therefore, our comments focus on these issues.

General Approach for Assessing Equivalence

3. With regard to the general approach for assessing equivalence of third country information requirements, we agree with the approach described in paragraph 539 that the same general definition and objective of the word "equivalence"- as used in the mandate and in the concept paper on equivalence of certain third country GAAP and enforcement aspects - should be used for the purpose of this mandate. We also support the approach described in paragraph 543 that "equivalence" with regard to transparency requirements for third country issuers does not mean "identical to" the transparency requirements in third countries, and can be declared when the requirements in third countries enable investors to make similar decisions.
4. From this viewpoint and considering that the CESR is mandated to develop

principles, as included in the mandate to the CESR for technical advice on GAAP equivalence, **we request the CESR to make clear in its advice that the CESR should carry out a global and holistic assessment, focusing only on significant differences in transparency requirements between the EU and third countries, without going into technically detailed line-by-line comparisons.** Such an approach would enable the CESR to strike the right balance between the need to promote the global and open nature of the EU capital markets, which ensures investment opportunities for investors, and the need to protect investors.

5. In addition, considering that third country information requirements include both the substance of information and time limits, the equivalence of **time limits should also be assessed.**

Principles for Establishing Equivalence of Periodic Reports

6. We appreciate that the revised principles in paragraphs 551-554 have been simplified to some extent. In order to avoid, under the principle-based approach, the situation that an assessment of equivalence would amount to requiring "identical" treatment, **each item described as a minimum requirement for equivalence in paragraphs 551-553 should be considered as important element for equivalence instead of a minimum requirement, and assessment of equivalence should be conducted based on the entirety of third country information requirements, taking into account these elements and from the viewpoint of investors. In particular, considering that the issuer's likely future development includes uncertainty and that there is a risk of misleading investors, the issuer's likely future development should not be made as a requirement.**

Principles for Establishing Equivalence of Major Holdings of Voting Rights

7. Requirements with regard to major holdings of voting rights affect not only issuers but also shareholders. We agree with the CESR Revised Draft in paragraph 586 that the CESR needs to taken into consideration the implications of imposing an obligation on issuers who have dual listings of shares in both their third country and in Europe and who must ensure equal treatment for all holders of shares that are in the same position. Therefore, **the basis approach should be to respect third country requirements as much as possible, and take a flexible approach for equivalence.**

8. Under the EU Transparency Directive it is an obligation of an issuer to make public the information of major holdings of voting rights after receiving notification from a shareholder. On the other hand, under the Securities and Exchange Law in Japan, a shareholder whose percentage of holdings of the shares of a listed company has exceeded five percent of the outstanding shares of such listed company is required to file a large shareholding report with the FSA within five business days (Article 27-23), and the FSA is to make the report public (Article 27-28). Such large shareholder is required to send copies of the report to the issuer and the securities exchanges without delay (Article 27-27). Since the FSA, the competent authority in Japan, makes public

such information within five business days (see paragraph 591 of the CESR Revised Draft), **we believe that the Japanese requirement with regard to publication of major holdings of voting rights is equivalent.**

We would greatly appreciate it if you would seriously consider our views.

Yours Sincerely,

Naohiko Matsuo
Director for International Financial Markets
Financial Services Agency, Japan