CESR's Advice on Possible Implementing Measures of the Transparency Directive Part II

Response to CESR's Consultation Paper

Ref: CESR/04-512c

4 March 2005

Introduction

Deutsches Aktieninstitut e.V. is the association of German exchange-listed stock corporations and other companies and institutions which are interested in the capital markets with a particular focus on equity. Its most important task is to promote the acceptance for equity among investors and companies.

We welcome that CESR's draft advice reflects a number of comments made by market participants in connection with CESR's Call for Evidence in relation to Level 2 measures under the Transparency Directive and that, in respect of some items, CESR has chosen a pragmatic approach. However, there are also some crucial points and which we would like to ask CESR to consider when drafting its final advice. This includes, among others, the following general aspects:

- The Level 2 advice should not establish any requirements which go beyond the requirements of the Transparency Directive and which are not expressly included in CESR's mandate. In particular, the draft advice on the content of the notifications is too detailed and contemplates requirements which are not provided for in the list of content set forth in the Transparency Directive with respect to notifications in relation to shareholdings.

- Issuers should not be obliged to make all relevant information under the Prospectus Directive available to the central storage system. There is no legal basis in the Transparency Directive nor in the Pro-

Deutsches Aktieninstitut e.V.
Börsenplatz 5 60313 Frankfurt am Main
Telefon 0 69 / 9 29 15-0 Telefax 0 69 / 9 29 15-11
E-Mail dai@dai.de Internet http://www.dai.de

Deutsches Aktieninstitut e.V.
31, rue du Commerce 1000 Bruxelles
Phone +32 2 290 89 90 Fax + 32 2 290 89 91
E-Mail europa@dai.de Internet http://www.dai.de

spectus Directive for such requirement the fulfilment of which would be burdensome and costly for issuers. Further, Art. 18 of the Transparency Directive (= Art. 22 of the consolidated final version of the Transparency Directive) already contemplates such network of security regulators, operators of exchanges and commercial registers. There is therefore no legal basis nor any practical advantage for requiring issuers to make filings with the central storage system.

Our comments to CESR's Consultation Paper on possible implementing measures of the Transparency Directive Part II are as follows:

Chapter 1 Notifications of Major Holdings of Voting Rights

Section 1: The Maximum Length of the Short Settlement Cycle for Shares and Financial Instruments if Traded on a Regulated Market or Outside a Regulated Market and the Appropriateness of the "T+3 Principle" in the Field of Clearing and Settlement

Question 1: Do you agree that, considering the definitions already set out by other bodies, CESR does not need to define what clearing and settlement means for the purpose of the exemption under Article 9(3a) of the Transparency Directive?

Yes, we agree that no separate definition of clearing and settlement is required for the purpose of the exemption under Art. 9 (3a) of the Transparency Directive (= Art. 9(4) of the consolidated final version of the Transparency Directive). The definitions referred to in paragraph 11 of the present consultation paper should apply also under the Transparency Directive.

Question 2: Do you agree with the proposed technical advice? If not, please provide reasons for your answer and state what period of time you consider to be appropriate for these purposes and why.

We in principle agree with the draft technical advice that, for the purposes of the exemption under Art. 9(3a) of the Transparency Directive (= Art. 9(4)), the usual short settlement cycle means a T+3 clearing and settlement period for share transactions which are executed on a regulated market.

However, we do not agree with CESR's draft advice in relation to the settlement and clearing of OTC shares trades (paragraphs 14-16). In this case, the strict and inflexible T+3 rule should not apply. Otherwise a T+3 standard will *de facto* (to avoid misleading notifications of mere settlement holdings) be introduced for trades executed outside a regulated market which is not the in-

tention of CESR either (see paragraph 16). In the case of OTC transactions, the settlement cycle should be the settlement period agreed between the parties or at least a longer period such as for instance a period of up to 10 days.

Question 3: Do you consider that "short settlement cycle" can mean the same in relation to shares or other financial instruments, or are there, in your view, circumstances that should make CESR differentiate shares from other financial instruments? Please provide reasons for your answer.

In principle, "short settlement cycle" should mean the same for shares and other financial instruments which are securities traded on a regulated market.

However, for financial instruments which are traded outside a regulated market, the settlement period should be defined by reference to the contractual arrangements as described in relation to question 2 above.

Section 2: Control Mechanisms to be Used by Competent Authorities with regard to Market Maker and Appropriate Measures to be Taken Against a Market Maker when these are not Respected

Question 4: What do consultees think of the proposed methods of controlling the market maker activities with regards the exemption provided?

We welcome and fully agree with CESR's view that, for the purposes of the exemption for market makers, it is not necessary to establish a full set of controls given that the relevant market maker will be an investment firm which is authorised and regulated under the MiFID.

We would, however, like to ask CESR to clarify the requirement in paragraph 39(a) of the draft technical advice pursuant to which the market making activities need to be kept separate from other activities. Market making and own trading is normally not kept separate in different departments or teams of an investment firm and there is no need for this as a matter of compliance. It should therefore be clarified that paragraph 39(a) only means that the shares held by an investment firm may not be used together with other shares held by it due to other activities for the exercise of any influence on the management of the issuer. Of course, in order to identify the shares which are exempt from the notification requirement such shares should be kept in separate accounts as provided for in paragraph 39(d).

Question 5: Do consultees envisage other control mechanisms could be appropriate for market makers who wish to make use of the exemption?

No, we do not envisage any control mechanisms other than those referred to in our response to question 4.

Question 6: Do consultees agree with the proposals set out in this paper? Please give your reasons if you do not agree.

Yes, we agree with these proposals subject to our response to question 4.

<u>Section 3:</u> The Determination of a Calendar of "Trading Days" for the Notification and Publication of Major Shareholders

Question 7: Do consultees agree with the proposals set out in this paper? Please give your reasons if you do not agree.

Yes, we agree that, for the purposes of determining the time period within which a notification of a share holding has to be made in accordance with Art. 11 (= Art. 12) of the Transparency Directive, the calendar of trading days of the issuer's home Member State should be used.

<u>Section 4:</u> The Determination of who should be Required to Make the Notification in the Circumstances set out in Article 10 of Transparency Directive

Question 8: Do you agree that aggregation is required in three main situations? Please give your reasons if you do not agree.

Yes, we agree that aggregation should be required in the following main situations: (1) aggregation of shareholdings, (2) aggregation between voting rights under Art. 10 and shareholdings and (3) aggregation in relation to the voting rights that can be exercised under Art. 10 of the Transparency Directive.

Question 9: Do you agree with the possibility to appoint another person to comply with the notification duty? Please give your reasons if you do not agree.

Yes.

Question 10: Do you agree with the possibility of making a single notification in case of joint notification duty? Please give your reasons if you do not agree.

Yes.

Question 11: With which of the approaches set out above in relation to each of the circumstances set out in Articles 10(a)-(g) above do you agree with. Please give reasons.

We tend to prefer approach B since in our view the disposal of voting rights should also be disclosed if the relevant holding of voting rights falls below a certain threshold.

Most importantly, however, irrespective of which approach is followed, we would like to point out that market participants should not be misled by notifications under Articles 9 and 10. This requires in our view that any notification made in relation to the acquisition or disposal of voting rights within the meaning of Art. 10 should expressly state that the relevant notification is based on an amount of X voting rights acquired or disposed of in accordance with Art. 10. This would ensure that it is transparent for market participants why a notification is made although the actual shareholding has not changed.

Question 12: Do you agree that a subsequent notification requirement is trigged when there are changes to the circumstances described in Article 10(a)-(g)? Please give your reasons.

Yes, but only if such change results in a threshold set out in Art. 9 (1) being triggered.

Question 13: Do you agree with the draft technical advice?

Yes, we agree with the draft technical advice subject to our response to question 11.

<u>Section 5:</u> The Circumstances under which the Shareholder, or the Natural Person or Legal Entity Referred to in Article 10, should have Learned of the Acquisition or Disposal of Shares to Which Voting Rights are Attached.

Question 14: Which of the options set out above do you consider should be recommended to the European Commission. Please give reasons for your answer.

None of the options set out in paragraph 172 should be recommended to the European Commission. The notification duty is triggered only when a certain proportion of voting rights of the issuer **held (!)** by the shareholder **as a result of** the acquisition or a disposal is reached (see Art. 9(1) of the Transparency Directive). This clearly shows that the settlement/closing date of a share transaction is relevant and not the execution of the relevant order. As of the day of the execution, no share transfer and no transfer of ownership is effected. This occurs only on the day of settlement (typically on T+2 or T+3).

Given that the actual holding of a person and in particular financial institution can only be determined at the close of each relevant business day, the time at which the relevant person should have learnt of the aggregate amount of a certain shareholding in a specific issuer cannot be earlier than close of business of the settlement day which, in substance, means that the relevant entity will have learnt it not earlier than at start of business on the next following day.

Question 15: Are there any other options that CESR should consider and why?

Yes, the date of the actual transfer of the shares should be the starting point to determine when a person should have learnt of the relevant amount of its aggregate shareholdings in relation to a specific issuer.

Question 16: Do consultees agree with the proposals set out in this paper? Please give your reasons if you do not agree.

No, please see our response to question 14.

<u>Section 6:</u> The Conditions of Independence to be Complied with by Management Companies, or by Investment Firms, and their Parent Undertakings to Benefit from the exemptions in Articles 11.3A and 11.3B.

Question 17: Which of the above approaches do you think most appropriate? Please give reasons for your answer.

The second view is the most appropriate approach and the only approach which is in line with the text and the objective of Art. 11(3a) (= Art. 12(4)) of the Transparency Directive. Any management companies (and not only UCITS authorised management companies) which manage collective investment schemes under the Conditions set forth in Council Directive 85/611/EC are obliged to act in the sole interest of their investors (and not in the interest of a parent of such management company). It is not, and should not be, decisive whether such management company is authorised as such under the UCITS Directive.

Question 18: Do consultees consider the additional confirmation envisaged in paragraph 245 to be necessary?

Given that, as pointed out by CESR in paragraphs 235 et seq., the relevant management companies and investment firms are subject to a number of regulations which should ensure their independence. A further confirmation as contemplated in paragraph 245 would not add anything but would only constitute a further formal act of bureaucracy which should be avoided.

In this context, we would like to point out that it is unclear to which declaration paragraph 244(b) refers and how such declaration should look like and which content it should have. If this is a statement of the parent undertaking as to the independence, this would be superfluous given the existing supervision in this respect. We therefore suggest that this requirement is removed since we cannot see any need for such declaration.

Question 19: Do you consider that there should be other methods by which the parent undertaking demonstrates independence to those set out above? Please give your reasons and set out what these should be.

No, the existing regulations relating to management companies should be sufficient to ensure independence from the parent undertaking.

Question 20: What is your view about these suggestions, and do you consider any of them to be fundamental for the demonstration of independence? Please give your reasons.

No, as set out above and as described by CESR in Section 6 in detail, regulated management companies are subject to specific regulation including independence requirements. There is no need for any further reporting under the Transparency Directive over and above the existing supervision of regulated management companies.

Question 21: What are your views in relation to the meaning given to indirect instructions? Please give your reasons.

The definition of indirect instruction should be very clear and concise and relate only to those instructions which are intended to influence the manner in which the management company exercises the voting rights. The current wording "Indirect instructions are those that *may* influence the position of the management company or investment firm in the exercise of the voting rights ..." is too broad. By contrast, it should be clarified that nothing in the normal business relationship between the parent undertaking and a management company can be construed as an implicit or tacit instruction to the management company to exercise voting rights in a specific manner.

Question 22: Do you agree with the technical advice? If not please give your reasons. Are there any circumstances that CESR should take into consideration that would necessitate different conditions being established for management companies and investment firms? Please give details and provide reasons.

No, we do not agree with the technical advice. As set out in our responses to questions 18 to 21, it should be sufficient that management companies and investment firms are regulated which includes an effective supervision by the competent authority. Therefore, one may assume that the relevant regulated entities will act in accordance with applicable law and that, if not, this will become apparent in connection with the regular supervisory activities. There is no reason for additional bureaucratic requirements such as the "independence" declaration of the parent undertaking referred to in paragraph 261b.

Section 7: Standard Form to be Used by an Investor Throughout the Community when notifying Required Information

Question 23: Do you agree that is necessary to disclose information about the total number of voting rights? Please give your reasons.

No, it is not necessary to disclose information about the total number of voting rights. Such information is not required under the Transparency Directive. Further, only the thresholds referred to in Art. 9(1) of the Transparency Directive are of relevance for market participants and issuers. Information about the total number of voting rights is therefore both not required under the Transparency Directive and superfluous.

Question 24: Do you agree that it is important to require disclosure of information about the previous notification? Please give your reasons.

No, such requirement has not been provided for in the Transparency Directive. Therefore, disclosure of information about previous notifications should only be made on a voluntary basis.

Question 25: Do you agree with this proposal? Please give your reasons.

We strongly disagree with this proposal which again goes beyond the disclosure requirements set forth in the Transparency Directive at Level 1. Such information is typically not available either and it would not be practicable to make such information available. Finally, there is no need that such information is disclosed to market participants which are only interested in the result, i.e. the actual shareholding following the relevant transaction.

Questions 26: Do you think that information about the number of shares should be required? Please give your reasons.

No, it should not be required to disclose information about the number of shares. Such information is not required by the Transparency Directive. Further, only the thresholds referred to in Art. 9(1) of the Transparency Directive are of relevance for market participants and issuers. Information about the number of shares is therefore both not required under the Transparency Directive and superfluous.

Question 27: Do you agree with this approach, or do you consider it necessary to have a break down of each party to the agreements holding? Please give your reasons.

Yes, we agree with this approach. There is no need for a break down of each party to the agreement holding. In line with Level 1, only the relevant thresholds set out in Art. 9(1) of the Transparency Directive and the name of the relevant holders are of relevance for market participants and issuers.

Question 28: Do you think that upon termination of the agreement, there should be a requirement to disclose each party to the agreements individual holdings after the termination? Please give your reasons.

No, such disclosure should only be required where the relevant thresholds of Art. 9(1) of the Transparency Directive are reached.

Question 29: Do you agree with the above? Please give your reasons.

Yes, subject to our response to question 28 in relation to paragraph 327c). Information about parties to an agreement upon its termination should only be required if the relevant holding falls below a threshold upon such termination.

Question 30: Do you agree with this approach? Would you suggest different figures? Please provide reasons for your answers

Yes, we agree with this proposal. In particular, we welcome the pragmatic approach described in paragraph 341.

We would like to stress that shareholders (as opposed to the person which has to make a notification pursuant to Art. 10(g) (= Art. 10(h)) as a proxy in case that "its" aggregate voting rights reaches a threshold applicable) should not be disclosed at all unless their individual holding reaches one of the thresholds set out in Art. 9(1) of the Transparency Directive.

Question 31: Do you agree with the draft technical advice? Please provide reasons if you do not agree

No, the draft technical advice contains a number of information which is not required under the Transparency Directive (see our responses to questions 23 to 29 above). Further, the draft technical advice is much too detailed. The list of content set out in Art. 11(1) (=Art. 12(1)) of the Transparency Directive is sufficient and should be exhaustive.

Section 8: Financial Instruments

Question 32: With which do you agree with? Please give your reason.

The first approach is preferable. This approach specifies a clear trigger for a notification requirement. This seems to be a decisive advantage of this approach given the broad variety of financial instruments to which this requirements may apply.

Question 33: Are there circumstances where you consider any of these approaches not to be appropriate? If so, please give details and propose an alternative.

No.

Question 34: In relation to the second view, do you agree that 3 months is the appropriate timeframe before exercise or conversion of the instrument takes place for when a notification requirement is triggered? Please give your reasons. If you do not, please specify the timeframe that you consider to be appropriate and why.

Not applicable, see response to question 32 above.

Question 35: In relation to the second view, do you agree that instruments that include an "American exercise period" feature should be notifiable upon the acquisition, disposal, or relevant change in holding of these instruments? Please give your reasons.

Not applicable, see response to question 32 above.

Question 36: In relation to the second view, do you consider it appropriate to distinguish between those instruments with an American Exercise Period and those that have a "structured but fixed exercise period"? Please give your reasons.

Not applicable, see response to question 32 above.

Question 37: Do you agree with this approach? Please give your reasons.

Yes, we agree with this approach. There is no reason why the deadline for notifications in relation to financial instruments should be different from notifications made for Articles 9 and 10 purposes.

Question 38: Do you agree with the above proposal? Please provide reasons for your answer if you do not agree.

Yes.

Question 39: Do you consider it necessary to define what the meaning of financial instruments is for the purposes of the Transparency Directive? Please give your reasons.

No, we do not believe that a definition of financial instruments is necessary for the purposes of the Transparency Directive. The reference to the MiFID made by CESR appears to be appropriate as long as it is clarified that the Mi-

FID definition is only the starting point and that all features set out in paragraphs 418-435 have to be met. See also our response to question 42 below.

Question 40: Do you agree with the above? Please, provide reasons for your answer if you do not agree.

Yes, we agree with CESR's view as to which financial instruments listed in the annex to the MiFID should qualify as financial instruments for the purposes of Art. 11a (= Art. 13) of the Transparency Directive.

Question 41: Do you consider it to be either necessary or possible to establish a list of instruments that qualify as financial instruments for Transparency Directive purposes? Please give reasons.

Yes, such list would provide market participants with the necessary comfort and certainty as to which financial instruments the notification requirement under the Transparency Directive applies. Given that such list is a matter of detail and practical application, we suggest that it is provided in connection with the Level 3 recommendations.

Question 42: Do you agree with the above proposal? Please, provide reasons for your answer if you do not agree.

Yes.

Question 43: Are there reason why certain financial instruments should not be aggregated? Please give reasons.

As a high level matter, we are not aware of certain financial instruments which should not be aggregated. However, we cannot exclude that questions might arise on a case-by-case basis.

Question 44: Do you agree with the above proposal? Please provide reasons for your answer if you do not agree.

Yes, we in principle agree with the proposal in relation to the content of notifications as set out in paragraph 454 (subject to the below).

Question 45: Do you think that CESR should require more or less information than what is proposed above? Please give your reasons and specify what information you would delete or add.

We welcome CESR's thoughts set out in paragraphs 459 and 461 that information about the total amount of voting rights held before the relevant transaction and the identification of each transaction that contributed to such notification is not necessary and too burdensome.

However, the proposals considered in paragraph 460 should not be recommended to the EU Commission either since information about the total number of voting rights in issue and a previous notification is also superfluous as mandatory information.

Question 46: Do you consider that information on the total number of voting rights in issue and on the previous situation should be included? Please provide reasons for your answer.

No, see our response to question 45.

Question 47: Do you consider the ISIN code of the undertaking share to be relevant information to be included in the standard form? Please provide reasons for your answer.

No, the name of the issuer should be sufficient.

Question 48: Do you agree with the above? Please state your reasons if you do not and explain why you do not agree.

Yes, we agree with CESR's proposal as to whom the notification should be made, in particular that, in the case of a financial instrument, only the issuer of the underlying shares has to notified and not also the issuer of the underlying financial instrument (which is not relevant in this context).

Question 49: Do you agree with the draft technical advice? Please provide reasons if you do not agree.

Yes, we agree subject to our responses above, in particular the response to questions 45 to 47.

Chapter 2 Half-Yearly Financial Reports

Section 1: Minimum Content of Half-Yearly Financial Statements not Prepared in Accordance with IAS/IFRS

Question 50: Do you agree with this proposal? If not, please state your reasons.

In our view, it is appropriate that, as provided for by the draft CESR advice, half-yearly financial reports, which are not set up in accordance with IFRS, should, substantially, follow the requirements of IAS 34 ("Interim Financial Information"). We further welcome that CESR intends to provide for exemptions with respect to cash flow statements (if such disclosure is not made in its annual financial statements) and that there is no strict standard format for

such half-yearly-financial disclosure (which allows the issuer to produce half-yearly financial statements which are comparable to its annual financial statements).

Section 2: Major Related Parties Transactions

Question 51: Do you agree with this proposal or do you believe that other definition could be followed?

For the purposes of a definition of related party transactions, we agree that a reference to IAS 24 ("Related Party Disclosures") should be made. This would also be in line with paragraph 149 of CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses no. 809/2004 (ref: CESR/05-054b) of February 2005.

Question 52: Do you agree with the proposed definition? If not, please state your reasons.

We welcome that CESR limits the disclosure of related party transactions to transactions which have, or, in the case of an update of transactions described in the last annual report could have, a material effect on the financial position of the issuer and the performance of the enterprise in that reporting period. This should mean that the amount of disclosure to be made in such semi-annual reports is substantially less than the amount of disclosure to be made in annual reports.

We do not agree that major transactions means the same as material transactions. This is not only an issue of limitations of disclosure of information about material transactions. "Major" obviously is not the same as "material" transactions so that also the number of transactions to be included in the semi-annual report should be smaller than in the case of annual reports.

Section 3: Auditors' Review of Half-Yearly Report

Question 53: Do you agree with the approach proposed by CESR?

Yes. As suggested in our comments to the Commission's draft of the Transparency Directive and in our response to CESR's Call for Evidence on Level 2 implementation of the Transparency Directive, the International Standard on Review Engagements (ISRE) 2004 "Engagements to Review Financial Statements" (formerly ISA 910) should be taken into account with respect to any (voluntary) review of the interim accounts. This ensures consistency with international auditing standards. We therefore welcome both that CESR indicates that ISRE 2004 may provide guidance as to how such a limited review may be conducted and that, on the other hand, CESR limits the scope of its recommendations to the effect that CESR will not establish separate auditing

requirements under the Transparency Directive since such rules and standards should be prepared by the relevant auditing bodies and organisations.

Question 54: 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, we do not see any need for additional standards since it appears that ISRE 2004 will be the future standard and that this standard will be increasingly complied with in the future.

Chapter 3 Equivalence of Third Countries Information Requirements

Section 1: Equivalence as Regards Issuers

As a general rule, we believe that information required by CESR under the Transparency Directive should be recognised on a mutual basis, i.e. such information should also be recognised in the relevant third countries.

Question 55: Do you agree with the proposed approach? If not, please give your reasons.

Yes, we agree that the term "equivalence" should be determined in a way which is analogous to the CESR concept paper on equivalence of certain third country GAAP. This ensure consistency within the EU legislation.

Question 56: 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.

No, we do not consider that there is such other way to develop such Level 2 implementing measures. In particular, we welcome that, as suggested by us in our response to CESR's Call for Evidence on Level 2 implementation of the Transparency Directive, CESR will establish the "equivalence" criteria with respect to the scope and objective of each individual item of the items described in paragraphs 537 et seq.

Question 57: 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 with CESR's interpretation of Art. 19(1) (= Art. 23(1)) of the Transparency Directive.

However, we would like to point out the following in relation to the individual items set out in paragraphs 538 et seq.:

In relation to the annual management reports, the draft advice provides that additional information for share issues to be included into prospectuses pursuant to the Prospectus Regulation (EC) no. 809/2004 should also be inserted into annual management reports. This is however misleading since it may lead to the false impression that such information is not required for debt securities. However, the general requirements under the Fourth Company Law Directive 78/669/EEC and the Modernisation Directive 2003/51/EC already provide for substantially similar requirements so that the reference to the Prospectus Regulation in relation issuers of shares does not add any substantially new content and should therefore be deleted.

Question 58: Do you agree with this proposal? Please give reasons for your answer.

No, we believe that a more flexible time limit should be introduced. This is in particular relevant if the home Member State regime provides for a more flexible time period.

Question 59: Do consultees agree with this draft advice? Please give your reasons.

No, we do not agree. The time standards provided for in the draft advice are not sufficiently flexible. The requirements need to be equivalent (but not the same as under the Transparency Directive). See also our response to question 58.

Question 60: Do you agree with this proposal? Please give your reasons.

No, equivalence may also be deemed to exist if the home jurisdiction of the issuer allows the holding of 10 per cent of own shares and more.

Question 61: Do you agree with this proposal? Please give your reasons.

Yes, this proposal appears to be reasonable.

<u>Section 2:</u> Equivalence in Relation to the Test of Independence for Parent Undertakings of Investment Firms and Management Companies

Question 62: Do you agree with the proposed approach? Do you consider that the alternative approach provides added value? Please give your reasons.

Yes, we agree. We do however not believe that the alternative approach may provide added value.

Question 63: Do you agree with this proposal? Please give your reasons.

Yes, we agree with CESR's proposal in connection with the reference to the nature of the investment firm or management company's authorisation.

Question 64: Do you agree with the above proposals? Please give reasons.

Yes, we agree with the draft advice on the requirements to be met by third country investment firms or management companies.

Chapter 4 Procedural Arrangements whereby Issuers may Elect their "Home Member State"

Question 65: Do you agree with this proposal? Please give reasons.

We strongly disagree with the proposal in paragraph 632 that issuers should be obliged to make all relevant information under the Prospectus Directive available to the central storage system. There is no legal basis in the Transparency Directive nor in the Prospectus Directive for such requirement the fulfilment of which would be burdensome and costly for issuers. As already pointed out in our response to CESR's first Consultation Paper relating to the advice on possible implementing measures of the Transparency Directive (ref:CESR/04-511) neither the Transparency Directive nor the Prospectus Directive provide that the scope of Art. 17 (= Art. 21) of the Transparency Directive should be extended to information to be published under the Prospectus Directive. Issuers should not be required to disseminate information to be published under the Prospectus Directive on a pan-European basis and to send this to central storage mechanisms. CESR does not have any mandate to propose such requirement nor is there any authorisation at level 1 for such regulations at level 2 or for any guidelines to this effect pursuant to Art. 18 (= Art. 22) of the Transparency Directive.

Level 1 cannot be amended through Level 2. Further, Art. 18 (= Art. 22) of the Transparency Directive already contemplates such network of security regulators, operators of exchanges and commercial registers. In sum, there is therefore no legal basis nor any practical advantage for requiring issuers to make filings with the central storage system.

Question 66: Do you agree with this proposal? Please give your reasons.

Yes, we agree with this proposal which ensures that investors may learn where they may obtain information about the issuer and which regulation the issuer is subject to.