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CESR Market Abuse Directive Level 3 Guidance Consultation

By way of background, Hermes is one of the largest pension fund managers in the City of London and is the principal manager of the BT Pension Scheme and the Royal Mail Pension Plan. We also respond to consultations such as this on behalf of the British Coal Staff Superannuation Scheme and the BBC Pension Trust Ltd and some 200 other clients. Hermes has approximately €95 billion under management and it advises with respect to a further €22 billion (figures as at September 30th 2006).

We welcome the opportunity to provide input into CESR's proposed Level 3 guidance on applying the Market Abuse Directive.

We are supportive of the bulk of the proposed guidance, which seems appropriate and straightforward. There is one area, however, which we believe may have an unhelpful impact on European markets and particularly on the quality of dialogue between companies and their shareholders. That is the generality of the statement that 'Changes in management and supervisory boards' are among events that may be inside information.

We and other shareholders regularly have dialogue with investee companies across the EU with regard to board structure and succession planning. As shareholders have the right to elect directors, these are clearly issues for their legitimate interest. Indeed, on many occasions we and other shareholders can only take decisions on whether to support the election and re-election of candidates to boards following discussions with companies about prospective changes to board structures, and after seeking to understand whether our expectations as to the development of boards will indeed be carried out. These conversations regularly enable us to support all elections when without them we would feel that opposing resolutions was in our clients' interests.

In this light, we find the inclusion of the general term 'Changes in management and supervisory boards' in the indicative list of potential inside information unhelpful. Some companies have already suggested that they are unable to discuss possible board changes for fear of taking us inside. Clearly, we accept that changes to significant portions of a board, or indeed changes of individual executive directors or the chair, will usually amount to events which might constitute inside information. However, we do not believe that a change of one or two non-executive directors (or members of supervisory boards) could, except in the most unusual circumstances, amount to an event capable of being inside information. These are matters which will have an impact on long-term value in the business but not on short-term share price performance.

We would welcome CESR making this clear. Otherwise there is a risk that the guidance will have a significantly chilling effect on relations between companies and their shareholders, and increase the number of votes against management, which would not be positive for the European capital markets.