26 May 2005

IMA RESPONSE TO CESR'S CONSULTATION ON REVISED DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE TRANSPARENCY DIRECTIVE

The IMA represents the UK-based investment management industry. IMA members include independent fund managers, asset management arms of banks, life insurers and occupational pension scheme managers and are responsible for the management of over £2 trillion of funds (based in the UK, the rest of Europe and worldwide).

The IMA welcomes the opportunity to respond to the consultation on CESR's revised draft technical advice on possible implementing measures of the Transparency Directive. As with our comments on the original draft advice, we have focused our attention on the provisions dealing with the notification of major holdings of voting rights (Chapter II) and related parts of Chapter IV on the equivalence of third country information requirements.

We greatly appreciate CESR's considerable efforts to deal with the concerns of investment management firms in the formulation of its advice and welcome many of the changes that CESR has made in its revised proposals, in particular the following:

- In relation to the parent aggregation exemption under Articles 12 and 23,
    - Confirmation that the exemption should apply to all management companies that meet the conditions laid down in the UCITS Directive, irrespective of whether they are authorised under the UCITS Directive;
    - Confirmation that there is no need for a test of equivalence for third country management companies and investment firms;
    - Confirmation that the test of independence should be the same for EU and non-EU incorporated entities;
    - Clarification that the exemption for non-EU management companies and investment firms also applies to financial instruments under Article 13;
    - Removal of the proposal that management companies and investment firms must also confirm in writing the statement of independence made by their parent undertaking;
    - Removal of the reference to the exercise of investment decisions in the independence test; and
    - Revision of the definition of indirect instructions to make it clear that they only include instructions which limit the discretion of the management company in order to serve the specific interests of the parent.

- Confirmation that subsequent notification requirements following a change in circumstances under Article 10 are only triggered when a threshold is crossed.

65 Kingsway London WC2B 6TD
Tel:+44(0)20 7831 0898 Fax:+44(0)20 7831 9975

www.investmentuk.org

- Acceptance of the “day after” as the point at which knowledge of a transaction should be deemed to arise for the purposes of disclosure under Article 10.

- The decision not to include information on the total number of voting rights in issue and the previous situation of the holder in notifications under Articles 10 and 13.

- The proposal to recommend to the Commission that it mandate that each competent authority publish on its website the calendar of trading days that applies to its regulated markets.

In addition to these changes, we believe it would be helpful for CESR to consider the following suggestions:

- To include in the level 2 advice a proposal that Member States consider the independence test a maximum harmonisation test and do not impose further conditions for determining independence.

- To provide that where a notification in respect of a non-EU issuer is made under equivalent requirements under the law of the third country where the issuer has its registered office, no additional notification under the Transparency Directive is necessary. As currently drafted, the advice could result in a requirement for two different notifications to be made in respect of issuers with registered offices outside the EU.

We hope that our comments and attached responses to CESR’s questions are helpful in finalising CESR’s advice. Should you wish to discuss any of the points raised or other issues relating to the mandates, please do not hesitate to contact me.

Yours sincerely

Ilene Hersher
Adviser, EU Legislation

IMA RESPONSES TO QUESTIONS ON CESR'S REVISED DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE TRANSPARENCY DIRECTIVE

Section 6

Question 19: **Do you agree with this change in the content of the declaration that the parent undertaking has to make? Please explain.**

Response to Q19: We welcome CESR's decision to allow the exemption to apply to all management companies meeting the conditions laid out in the UCITS directive, irrespective of whether they are authorised under that directive. We do not have strong views on whether the declaration by the parent company needs to include a reference to the name of the competent authority that supervises management companies not authorised under UCITS.

Question 20: Do you consider there to be any benefit by CESR retaining its original proposals and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of independence?

Response to Q20: No. We welcome the change for the same reasons expressed by CESR.

Question 21: What are you views on this new definition of indirect instruction.

Response to Q21: We consider that the new definition of indirect instruction is a vast improvement on the original proposal, and deals with our concerns that the previous language could capture general proxy guidelines or basic principles of ownership.

Section 7

Question 22: Do you agree with this approach in relation to Article 12(1)(d)? Please give reasons.

Response to Q22: While this revised proposal is better than the original proposal regarding the disclosure of the identify of the shareholders, we still do not think that this goes far enough. As you are aware from our comments on the original consultation, we believe that there should be no need to identify any of the underlying shareholders for the purposes of a notification under Article 10, even if they are above the 5% threshold (they would already be disclosed under Article 9 if they have a notifiable interest in any case). Moreover, if CESR does consider it necessary to disclose the identity of shareholders in relation to Article 10 notifications, in the case of those shareholders which are exempted from making a disclosure under Article 9 – as is the case for custodians – we do not believe disclosure of their identity should be required under Article 10 even if their holdings are above the 5% threshold. We believe that this should be made clear in the final advice.

Question 23: What do you think the resulting situation information disclosure should be when the notification is of a holding below that of the minimum threshold?

Response to Q24: We only think the fact that a holding has fallen below the minimum threshold needs to be disclosed.