Investment Management Association

27 July 2004

IMA RESPONSE TO CESR'S CONSULTATION ON THE MANDATE CONCERNING THE HARMONISATION OF TRANSAPRENCY REQUIRMEENTS FOR SECURITIES ISSUERS

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

IMA appreciates the opportunity to comment on the mandate to CESR for technical advice on possible implementing measures concerning the Directive on the Harmonisation of Transparency Requirements for Securities Issuers.

Notification of Major Shareholdings

<u>Conditions of independence</u>

This issue is of fundamental concern to our members. The level 1 text provides an approach which will avoid the danger of the market being misled, or of inappropriate expense being incurred, if sensibly implemented.

The level 1 text does not require, for the purposes of disclosure, the aggregation of holdings between a parent company and its UCITS or asset management subsidiary provided the voting rights are exercised independently. The Commission is seeking advice from CESR to clarify the conditions of independence to be complied with in order to benefit from the exemption.

We believe that it is important for CESR to recognise that their focus must clearly be on the exercise of voting rights, as defined by the level 1 directive. Other issues of independence, such as in relation to the general management of the subsidiary should be irrelevant in this context. In terms of the disclosure of holdings which is designed to provide information on shareholders accumulating shares in circumstances where they may seek to influence or seek control of a particular company, CESR should focus on the question as to whether the parent company can indeed influence the exercise of the voting rights.

Some of the conditions of independence, CESR might consider include, for example,

- Written internal policies and procedures for the asset or UCITS management company designed to help ensure its independence in relation to its parent company including procedures designed to prevent the flow of information relating to the voting and investment decisions over securities traded;
- The appointment of a senior individual within the asset or UCITS manager with responsibility to help ensure the independence between the asset or

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UCITS manager and its parent company, particularly in terms of the exercise of voting rights;
- An annual report to the Board from that individual of the asset or UCITS manager on the policy and procedures established to maintain independence when exercising voting rights between the asset or UCITS management company and its parent company;
- A clear written mandate for an arms-length customer relationship between parent and asset or UCITS manager subsidiary in cases where the former is a client of or has holdings in the assets managed by the asset or UCITS manager.

<u>Persons to make notifications</u>
The Commission is seeking advice from CESR to clarify which person (the shareholder or the natural person or legal entity referred in Article 10 or both) should make the notification. We believe that the obligation to disclose major shareholdings should only apply to the person or entity that has the discretion to exercise the voting rights. Where the notification requirements apply to UCITS management companies or investment firms because they exercise voting rights on behalf of their clients, only the UCITS management company or investment firms should be required to make the notifications. Requiring both the firms or management companies exercising voting rights at their discretion on behalf of clients and the clients themselves to make notifications would provide confusing information to issuers and the market.

<u>Types of financial instruments under Article 11a and their aggregation</u>
The Commission has asked CESR to identify the types of non-share financial instruments to be covered under Article 11a and their aggregation for the purposes of disclosure. When looking at the aggregation of these financial instruments, we believe that it is equally important to make clear that the aggregation exemption in Articles 11.3a and 11.3b is also intended to apply to these non-share financial instruments in terms of the disclosure of holdings. We see no reason why holdings of such non-share financial instruments, such as options, should be treated differently from holdings of the underlying shares where the parent undertaking and the asset/UCITS management subsidiary exercise voting rights independently.

<u>List of third countries and the equivalence of the independence requirements</u>
The Commission has asked for CESR's advice on a list of third countries that ensure the equivalence of the independence requirements laid down in the level 1 directive in relation to UCITS or asset management companies. The Commission invites CESR to focus on those rules it considers to be the most relevant from the point of view of European capital markets. While we recommend that CESR focus on the US rules as US management companies are important investors of EU securities and many EU parent undertakings will have US managers who are subsidiary companies, we do not believe that CESR should attempt to apply these third country rules to EU UCITS or asset management companies. While the US rules may be effective in assuring independence of US managers or investment firms in relation to their parent undertakings, they will certainly not be the only means of assuring the level of independence required by the directive.

We hope these comments are helpful and look forward to working closely with CESR as it develops its advice. Should you like to discuss any of these points or other issues relating to the mandates, please do not hesitate to contact me.

Yours sincerely,

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