Q1: Do you agree with CESR's analysis of the issues raised by the use of instruments of similar economic effect to shares and entitlements to acquire shares?

Yes.

Q2: Do you agree that the scope of the Transparency Directive needs to be broadened to address these issues?

Yes, but only when it can be done accurately. The UK FSA widened its disclosure requirements to include derivative instruments after tightening the obligation on companies to publish up to date issued share capital data – see DTR 5.6. If such requirements do not exist in all EEA countries covered by the proposal, inaccurate and misleading % holding data will be calculated and published, particularly when including options due to the potentially daily fluctuating option delta.

There is no provision in the CP for ensuring that issued share capital data is as up to date as possible and that there is a single mechanism for publishing it and major shareholding notifications, although the TD acknowledges these as key issues, as follows:

Dissemination and storage of regulated information

Issuers, with securities admitted to trading on a regulated market, will be required to disseminate regulated information in a fast, non discriminatory manner on a pan-European basis. In addition, all regulated information will need to be stored and be easily accessible. A key issue for both CESR and subsequent implementation of the directive by Member States is the requirement imposed by the TD on each Member State to ensure it has at least one officially appointed mechanism for this.

Q3: Do you agree that disclosure should be based on a broad definition of instruments of similar economic effect to holding shares and entitlements to acquire shares without giving direct access to voting rights?

No, the key criterion for companies needing to disclose on their positions should be access to voting rights.

Q4: With regard to the legal definition of the scope (paragraphs 50-52 above) what kind of issues do you anticipate arising from either of the two options? Please give examples on transactions or agreements that should in your view be excluded from the first option and/or on instruments that in your view are not adequately caught by the MiFID definition of financial instrument.

The description should not be prescriptive and should, as the CP states, include a non-exhaustive list of in-scope instruments. However, baskets should not be required to be included in the % calculation if this is not a requirement in the company's home market, eg the UK FSA implemented an additional criterion which means that most companies are not required to include baskets, as follows:

Basket of Shares

The FSA are maintaining the threshold proposed in the previous Consultation Paper i.e. 1% of the class in issue and, in addition, less than 20% of the value of the securities in the basket or index. However, the FSA have included an extra criterion so that reporting is required only where the use of the financial instrument is connected to the avoidance of notification.

Q5: Do you think that the share equivalence should be calculated on a nominal or delta-adjusted basis?

Delta-adjusted, preferably. In the absence of delta data, or at least for a period of time until companies can source this, nominal should be accepted.

Q6: How should the share equivalence be calculated in instruments where the exact number of reference shares is not determined

No comment, as we do not hold such instruments.

Q7: Should there be a general disclosure of these instruments when referenced to shares, or should disclosure be limited to instruments that contractually do not preclude the possibility of giving access to voting rights (the "safe harbour" approach)?

Disclosure should be limited to instruments that contractually do not preclude the possibility of giving access to voting rights (the "safe harbour" approach). By the nature of their business, most investment management companies will be holding shares on behalf of third party clients, with no intention and without the remit of attempting to influence or control the company. There will be no change of intention and any legal expenses to include the necessary provisions to come under the safe harbour will be less than those associated with the development and ongoing maintenance of software and/or processes to meet the proposed requirements.

Q8: Do you consider there is a need to apply existing TD exemptions to instruments of similar economic effect to holding shares and entitlements to acquire shares?

Yes, as not doing so will create inconsistency between the CESR and other disclosure regimes which will create confusion and increase the risk of inaccurate disclosures.

Q9: Do you consider there is a need for additional exemptions, such as those mentioned above or others?

See Q7.

Q10: What kinds of costs and benefits do you associate with CESR's proposed approach?

Benefits to regulators and companies largely, less so for investors, in increasing transparency and reducing or eliminating hidden stakes and control creep.

Substantial costs to investors in developing and maintaining software and/or processes to calculate and disclose separate or aggregate % holdings including derivatives.

Q11: How high do you expect these costs and benefits to be?

See Q10.

Q12: If you have proposed any exemptions or have presented other options, kindly also provide an estimate of the associated costs and benefits.

No comment.