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Investor Services

Consultations
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Dear Sir,

'CESR's advice on possible implementing measures of the Transparency Directive.'

Computershare Investor Services PLC (CIS) is the only Global Registrar; our operations span the Asia Pacific, American, European and Middle Eastern time zones with over 13,000 quoted company clients and in excess of 70 million shareholder records. Computershare operates share and options plans, and provides extensive investor relations support. In Europe, we maintain details of share entitlements and process voting rights for over 18 million shareholders in respect of 800 Issuers.

CIS supports the principle underpinning the Transparency Directive (TD) of creating fairer market places by improving accessibility to company information and welcomes CESR's implementation proposals. We agree with the bulk of proposals so have limited our response to aspects of notifications of major holdings of voting rights. As a share registrar our principle interests surround certainty as to who is entitled to vote and the efficiency in which that information is processed and communicated. We have some concerns over whether all of the proposals will achieve full voting transparency in General Meeting (GM).

The notification thresholds of 5% increments of the votable share capital are an acceptable minimum standard. We agree that the responsibility for making the notification to the Issuer should follow approach B for the reasons outlined in paragraphs 141 & 142, acquisition and disposal of voting rights both with and without the underlying security should be reported in all cases.

Section 5 discusses the point from which the clock starts ticking for notification. We believe that for the sake of clarity and the reasons outlined in paragraph 173 that the notification period should start from the date on which the transaction is actually executed. The length of this reporting period under Article 11 of four days causes us some concern. In the UK only those shareholders entered in the register of members on the 'record date', which occurs two days prior to a GM, are entitled to vote at the meeting. If a shareholder triggering a reporting requirement close to a GM need not announce his interest in shares until four days following the execution date, provided his shares were registered in time for the record date, he would be able to vote at the meeting before he must report his interest to the Issuer. If his holding were split between several nominees, the Issuer may not become aware of his interest until some time after the meeting had taken place. Potentially, an investor could acquire and vote a substantial amount of issued capital without the knowledge of the Issuer in any market where the length of time between the record date and the GM was substantially less than the 4 day notification period. Although rare in occurrence this type of market manipulation can occur and has happened in the past.

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We perceive possible solutions to this problem. Firstly, the length of time between the record date and the GM could be increased to allow the Issuer to receive late reports. As transparency is intimately linked with the speed of reporting we would regard such a proposal as a backwards step. A second option could be to adopt notification periods in line with standards already operating successfully in UK. In the UK notification periods are much shorter; under the Takeover Code a reporting obligation is triggered where the holding exceeds three percent of voting rights and must be communicated to the Issuer by the day following the execution date. Any subsequent movement of 1% or more must be reported using the same timeframe. Under this system, Issuers become aware any change in holding a day following the execution of the trade; in the case of holdings over 15% a report is also made to the market on the same day as to the Issuer¹. The net effect is the market is made aware of changes in major interests in shares in much shorter time scales than those contained within the TD. When voting entitlements are crystallised on the GM record date the company should have full knowledge of who is entitled to vote in respect of major shareholdings. We believe that transparency and corporate governance control in member markets could be improved by regulators imposing stricter reporting time limits for notification.

Article 10(g) states that a notification obligation can be triggered where *'voting rights which that person or entity may exercise as a proxy where it can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders'* exceed a reportable limit. In the UK, the Chairman of the meeting is appointed as proxy by many underlying holders unable to attend the meeting. A shareholder may instruct the Chairman to vote for or against a resolution, or alternatively he may empower the Chairman to vote at his discretion. The Chairman commonly represents in excess of 5% of the issued capital as a proxy. In an event such as a procedural poll announced during the meeting, for which the Chairman has not been provided with voting instructions, all of the votes held by the Chairman can theoretically be voted at his discretion thus triggering a reporting requirement. If the Chairman is not exempted from this rule he would be under an obligation to report his interest in the shares. If this is the case when should he do so? If he should report his proxy position as crystallised at the record date, should he report the voting rights which he has been instructed to vote at his discretion, or the total voting rights represented which in the event of a procedural poll he could be able to vote at his discretion? It should be noted that in practice the Chairman may be advised to vote proportionally for and against in a procedural poll in accordance with what his lawyers believe to be the intention of underlying shareholders.

The Issuer is not obliged to report major holdings of voting rights to the market until three days following notification. If the full time period is used in respect of notification the of voting rights which the Chairman represents at the record date, the market may not become aware of the Chairman's voting right until a day following the meeting. If a reporting obligation is triggered during the meeting, the market could not be made aware of his voting rights until after the meeting had closed. In both cases, the usefulness of the notification to the market is limited as it would be published after the event. Corporate representatives given instructions to vote in accordance with the intentions of beneficial owners' aggregated holdings exceeding reporting limits may also be caught by the 10 (g) requirement.

These consequences may be unintended. If so, exemption from the reporting obligation would help clarify the position of the Chairman in GM. If intended, we would question the value of reports from the Chairman or Corporate Representatives triggered during the meeting, as they would not be reported to the market until after the meeting had closed. Should this be recognised as a definite requirement, we would expect further details as to exactly when a reporting obligation is triggered and when information must be relayed to the market. Our chief concern is that the current interpretation of Article 10 (g) may introduce additional complications to the GM; we believe clarification is required in the forthcoming consultation feedback.

Please find our responses to individual questions posed below:

¹ Substantial Acquisition of shares Rules

CESR's advice on possible implementing measures of the Transparency Directive: Computershare's response

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

CIS agrees that the calendar of trading used for notification of major holdings of voting rights should be that of the Issuer's home state.

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 your reasons.

We agree with approach B. Any transfer of voting rights that places the holder in a position whereby a reporting obligation is triggered should be mirrored by any corresponding fall below a relevant threshold by the transferee. This would assist the Issuer in maintaining a balanced perspective of who controls voting rights.

We would welcome clarification of the reporting obligations under 10(g) which could trigger a reporting requirement during a general meeting from either the Chairman or a Corporate Representative, especially in the event of a procedural poll. As a report could not be made during the meeting we would welcome clarification on when the reporting obligation is triggered and whether the market must be notified prior to the meeting. This problem could be exacerbated by periods of time between the record date and the meeting shorter than the reporting notification period. The value of notification of voting rights is greater prior to the meeting than notification post meeting. Clarification of any exemption from the rule for the Chairman would also be appreciated.

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

For the draft technical advice we consider that a natural person or legal entity can be deemed to have knowledge of the acquisition or disposal or the possibility to exercise voting rights on the date when the transaction was actually executed. We agree with the points raised in paragraph 173 and while we recognise that a distinction has been drawn between when the person or legal entity actually received knowledge and when he should have received knowledge of the success of the transaction triggering the requirement, we do not feel this warrants the addition of an extra day to an already long reporting period. It should be noted that if arrangements can be made to fund such transactions, equivalent arrangements should be made to comply with reporting requirements.

The TD and CESR's comments on the notifications of major holdings of voting rights highlight the distinction between three aspects of maintaining company registers; the statutory register, beneficial ownership and voting entitlement. We believe the most transparent model of ownership can be achieved through a combination of statutory registers and designated nominee accounts inspectable by the Issuer. Market transparency would be further improved if a separate register of voting interests were maintained by Issuers.

CIS appreciates the opportunity to take part in this consultation process and looks forward to further discussion with CESR. As aspects of this response may be regarded as commercially sensitive, we would ask that it be kept confidential. Should you have any queries or comments regarding our response, please feel to contact me at any time; I look forward to hearing your thoughts and reading consultation feedback from other areas of the market in due course.

Yours faithfully,



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