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CESR's advice on possible implementing measures of the Transparency Directive. Part II. CESR/04-512c

Comments from Danish Shareholders Association.

Danish Shareholders Association, DAF, is the organisation representing private shareholders in Denmark. Our comments are concentrated on items related to and of importance to private shareholders.

When "no comments" is stated is it because DAF finds that the content of the draft advice and/or the question is not directly related to or of distant importance to private shareholders.

Notifications of major holdings of voting rights

Section 1 – The maximum length of the short settlement cycle for shares and financial instruments if traded on a regulated market or outside a regulated market and the appropriateness of the "T+3 principle" in the field of clearing and settlement.

Q1-3

Danish Shareholders Association agrees with the proposed text of the draft technical advice. The usual short settlement cycle means a T+3 clearing and settlement cycle.

Section 2 – Control mechanisms to be used by competent authorities with regard to market maker and appropriate measures to be taken against a market maker when these are not respected.

Q4-6

DAF finds that it can be a strenuous exercise to market makers and competent authorities managing conditions for the exemption from the disclosure obligation according to article 9(3b) of the Directive. But if market makers want to use the exemption they must live with the administrative burden. We have no remarks to the content of the proposed advice.

Section 3 – The determination of a calendar of “trading days” for the notification and publication of major shareholdings.

Q7

DAF supports the draft technical advice suggesting that the calendar of trading days to be used when establishing the time period within which a notification has to be made.

Section 4 – The determination of who should be required to make the notification in the circumstances set out in Article 10 of the Transparency Directive.

Q8

DAF agrees that aggregation is required in the three main situations:

- aggregation of shareholdings
- aggregation between voting rights under article 10 and shareholdings
- aggregation in relation to voting rights that can be exercised under Article 10

Q9

DAF agrees with the possibility to appoint another person to comply with the notification duty but likes to stress that this does not imply any change in the obligations. It is still the natural person or the legal entity that has the obligation to notify within the time period.

Q10

DAF agrees with the possibility of making a single notification in case of joint notification duty provided the single notification discloses all the information.

Q11

DAF supports approach B because the information disclosed according to approach A does not give all the information needed by investors.

Q12

Subsequent notification requirement is triggered when there are changes to the circumstances described in Article 10(a)-(g) because changes in the circumstances e.g. the dissolution of an agreement as mentioned in Article 10(a) and a split of the voting power between the parties is the equivalent of a sale.

Q13

DAF agrees with the draft technical advice.

Section 5 – The circumstances under which the shareholder, or the natural person or legal entity referred to in Article 10, should have learned of the acquisition or disposal of shares to which voting rights are attached.

Q14

DAF finds that the date when the transaction is actually executed should be recommended to the European Commission as the date on which the investor learns of (or should have learned of) the acquisition or disposal.

Q15

For the time being DAF sees no other options worth a consideration.

Q16

DAF agrees with the proposals.

Section 6 – The conditions of independence to be complied with by management companies, or by investment firms, and their parent undertakings to benefit from the exemptions in Articles 11.3a and 11.3b.

Q17

DAF finds that the exemption should apply to all management companies that carry out their management activities under the conditions laid down under the UCITS Directive, whether they are authorised or not.

Q18

DAF does not find it necessary with the additional confirmation envisaged in paragraph 245.

Q19

DAF finds it sufficient that the parent undertaking demonstrates independence as proposed in the Draft Technical Advice.

Q20

DAF does not find that that the appointment of a senior individual within the management company or investment firm with the responsibility of help ensure the independence between the asset or UCITS manager and its parent undertaking should be included in the Advice. The responsibility shall rest with the supervisory board and management board of the two companies. It will be naturally for the boards(s) to report on this important matter in the annual report.

Q21

Confidence and trust are key words for investment firms and for UCITS. The use of indirect instructions is unacceptable and damaging to confidence and trust. It is in the own interest of the firms to defend confidence and trust.

If parent undertakings and management companies act in a way that leaves the authorities and the financial community with the idea of direct or indirect instructions the natural sanction will be to delete the exemptions in Article 11.3a and 11.3b.

Q22

DAF agrees with the draft technical advice.

Section 7- Standard form to be used by an investor throughout the community when notifying the required information.

Q23

DAF finds it important that the information contains information about the total number of voting rights in order to make certain that the market has the precise information.

Q24

DAF finds it important to require disclosure of information about the previous notification included the total number of voting rights as disclosed in the previous notification.

It is a question of making sure at the same time that the informant is checking and double-checking the content of the notification and that other market participants have the same information and the correct information.

Q25

It is important for investors to know if changes in the holders voting rights are the consequence of a trade made at market conditions or a transaction built on special circumstances.

Q26

In some companies in some countries are not only the voting rights important, but also the number of shares. So it is relevant to disclose information not only on the voting rights but also on the number of shares.

Q27

DAF agrees with the proposal that it should be stated if notification is triggered as a result of a breakdown in voting rights. Without this information the notification might be incomprehensible and thus leading the market to guess about the background.

Q28

It shall be possible for other investors to understand what happens at the termination of an agreement. Consequently DAF finds that there should be an requirement to disclose the individual holdings of each party after the termination.

Q29

DAF agrees that the full names of all parties that enter into an agreement, that are parties to the agreement at a time of change and that are parties to the agreement upon its termination.

Q30

DAF can agree with the pragmatic approach that when a natural person or legal entity holds more than 10 proxies each of them representing less than 1 % of the voting rights, the identity of the underlying shares do not need to be disclosed, but the total number of proxies needs to be disclosed.

Q31

DAF agrees with the draft Technical Advice.

Section 8- Financial Instruments.

Q32

DAF finds that the notification should be triggered upon acquisition and disposal of the financial instrument. The other approach will open up for too much uncertainty.

Q33-36

No observations.

Q37

Yes. DAF agrees with the approach that the notification timeframe shall be the same for all notifications.

Q38

DAF agrees that when the number of shares to which voting rights are attached changes during the life of a financial instrument a holder shall recalculate his holding and report accordingly if a threshold is crossed or reached.

Q39

DAF does not consider it necessary to define what the meaning of financial instruments is for the purposes of the Transparency Directive. MiFID covers the matter.

Q40

DAF agrees with the distinctions made between instruments that qualify as financial instruments and those that do not, e.g. that a covered warrant that will qualify under Article 11a if it has the characteristic of physical settlement of shares that are already issued, but will not qualify if it can only be settled in cash.

Q41

A list of instruments that qualify as financial instruments will always be backward looking. It is not possible to list the instruments not yet invented. That is the main reason why it is neither necessary nor possible to establish a list of qualified financial instruments.

Q42

DAF finds that a holder must aggregate and make a notification about all the instruments relevant under Article 11a, shareholdings under Article 9 and voting rights under Article 10.

Q43

DAF does not find that certain instruments should not be aggregated.

Q44-47

DAF can support the proposals made about the content of the notification to be made. DAF prefers that the total number of voting rights be mentioned and that information on the previous situation should be included. We would prefer the use of the ISIN code of the underlying shares.

Q48

We agree that notifications under Article 11a should be made to the issuer of the underlying share.

Q49

DAF agrees with the draft technical advice.

Half-yearly Financial reports

Section 1 – Minimum content of half-yearly financial statements not prepared in accordance with IAS/IFRS.

Q50

DAF agrees with the proposal that the half-yearly report includes information required by IAS 34 that is not required by the existing accounting directive if the issuer has disclosed such information in the annual reports.

Section 2 – Major related parties transactions.

Q51

DAF agrees with the proposal that companies that are not required to prepare consolidated accounts should also use the definition of Related Party Transactions currently provided by IAS 24.

Q52

DAF supports the draft CESR advice on the elements to disclose as “major related parties transactions” including that the concept of “major” transactions only implies some limitations in terms of disclosures.

Section 3 – Auditors’ review of Half-year report.

Q53-54

DAF can agree with the approach proposed by CESR. DAF supports the use of the standard issued by IFAC. DAF recommends a change from the use of national adaptations of the IFAC standard to use of a common standard issued by IFAC or other bodies.

Equivalence of transparency requirements for Third countries issuers

Section 1 – Equivalence as regards issuers.

Q55-56

DAF agrees with the proposed pragmatic approach. A EU list of countries deemed to be equivalent created by competent authorities sharing information and views, seems the right way.

Q57

DAF agrees that exceptions from the time limits should not be granted based on Article 19(1).

Q58-59

DAF can agree with the proposal because a pragmatic approach is necessary. Looking at relations to third country issuers the important is to respect the time frame of 7 trading days.

Q60

DAF agrees with the proposal that equivalence in regard to the notification trigger thresholds require that the 5 % and 10 % triggers apply in the third country.

Q61

DAF can accept the draft advice proposing that an obligation for a issuer to make a notification to the public within 30 calendar days after it has increased or decreased its share capital and/or voting rights is considered as having equivalent requirements to those set out in Article 11c. But DAF would prefer the same type of time frame.

Section 2 – Equivalence in relation to the test of independence for parent undertakings of investment firms and management companies.

Q62

DAF can accept that management companies/investment firms located in third countries that have rules on independence equivalent to the requirements in the Transparency Directive will benefit from a general presumption of independence. The competent authorities in the EU member states and in third countries should exchange information and views on how independence is assured in theory and daily life.

Q63

DAF can agree with the proposal that it is assumed that the controlled undertaking of the parent undertaking which wishes to make use of the exemption will be supervised by the third country authority.

Q64

No observations.

Procedural arrangements for election of “Home Member State”

Q65-66

No comments.

Yours sincerely

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