London
STOCK EXCHANGE

4 March 2005

10 Paternoster Square
London EC4M 7LS

T +44 (0)20 7797 1000

www.londonstockexchange.com

M. F Demarigny
Secretary General
CESR
11-13 Avenue de Friedland
75008 PARIS
France

Dear M. Demarigny

RESPONSE TO CESR'S CONSULTATION ON POSSIBLE IMPLEMENTING MEASURES OF THE TRANSPARENCY DIRECTIVE – PART II:

- **Notifications of major holdings of voting rights**
- **Half-yearly financial reports**
- **Equivalence of third countries information requirements**
- **Procedural arrangement whereby issuers may elect their 'Home Member State'**

Thank you for the opportunity to comment on proposed implementing measures of the Transparency Directive. We believe these implementing measures are an important aspect of the creation of a single market.

Firstly, we wish to praise CESR on the quality of this consultation paper and the detailed and thorough analysis that it has given to these important issues.

We have some comments on areas of CESR's advice, which are set out below. We have also attached an appendix in which we provide answers to CESR's specific questions raised in the Consultation Paper. This letter and the appendix jointly constitute the London Stock Exchange's response.

Equivalence of third countries information requirements

With regard to assessing the equivalence of third country requirements, we agree with the approach set out in paragraphs 526-535 of the consultation paper. In particular, we believe that:

- equivalence should be assessed in the same manner in the context of both GAAP and other requirements;
- "equivalence" does not mean "identical to"; and,
- the important factor is the ability of informed investors to make a similar decision or reach a similar conclusion in terms of investment and disinvestment.

However, although we agree with CESR's outlined methodology, we are extremely concerned that this is not followed through in the resulting discussion and advice on the pages that follow. The Commission has asked CESR to produce advice on the principles to consider; however the advice sets out requirements.

We believe that, overall, CESR needs to take a much more flexible approach to determining third country issuers' equivalence — it should be enough that third countries have broadly similar requirements.

Along with the work currently being undertaken on equivalence of IAS and certain third country GAAP's, it is important that the approach taken does not reduce the attractiveness of the EU's capital markets, thus undermining one of the key objectives of the Financial Services Action Plan.

Unique Security Identifiers

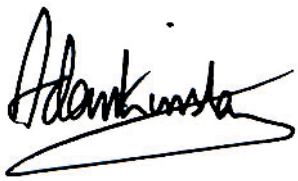
In relation to the standard form referred to in sections 7 and 8, we believe that there is a strong case for security codes to be included. The issuer may have different types of shares and also different financial instruments will exist — therefore, to avoid confusion we strongly believe that each security and financial instrument should be identified on the form by an internationally recognised numbering standard as this would provide valuable information to clearly identify the precise asset that the disclosure relates to.

It is also vital that security codes are required as this will make the dissemination by operators and media under Article 17 far more efficient and is likely to be an important input requirement into any central storage mechanism.

However, whilst we are of the strong view that CESR should require the use of security codes, we do not believe that it is appropriate for CESR to mandate a specific format.

I hope our views are helpful to CESR's work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely



Adam Kinsley
Head of Regulatory Strategy
London Stock Exchange
Telephone +44 20 7797 1241

RESPONSE TO QUESTIONS

CHAPTER 1: 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 C&S

Q1: Do you agree that, considering the definitions already set out by other bodies, CESR does not need to define what clearing and settlement means for the purpose of the exemption under Article 9(3a) of the Transparency Directive?

We do not believe that the definitions of clearing, particularly the CESR/ECB one, are relevant to the transparency issue. The clearing issue that arises is that a clearing member - especially a general clearing member (i.e. a clearing member acting on behalf of a separate trading firm) may temporarily become the owner as principal of shares that it is clearing. It is right and proper that these clearing members should not be under any disclosure requirement just because of their role in the clearing process. This requirement arises from their role, which is nothing much to do with the definitions of clearing used in the text, which are more to do with the role of the central counterparty (incidentally, the central counterparty should also be exempt from disclosure). Therefore, there needs to be a more appropriate definition to be used for this purpose, which is that the exemption should apply to any organisation (clearing member or central counterparty) that temporarily acquires ownership of shares˚solely as a result of their role in the clearing process - if they acquire ownership for other reasons, then this particular exemption would not apply.

The settlement definitions are probably sufficient for this purpose, but again the exemption needs to be set out more clearly, for example, that the exemption should apply to any organisation that temporarily acquires ownership of shares (the term "ownership" should include the shares being in an account controlled by that organisation) solely as a result of their role in the settlement of transactions and where they are not the beneficial owner of the shares.

Q2: Do you agree with the proposed technical advice? If not, please provide reasons for your answer and state what period of time you consider to be appropriate for these purposes and why.

The technical advice needs to be adapted as suggested in the answer to Q1 above.

The restriction to particular settlement periods seems unnecessary and potentially problematic.˚ London Stock Exchange trades can have settlement periods up to 25 days after the trade - this is a rule that is under the control of the London Stock Exchange rather than government legislation - and it is hard to see

why legitimate on-market trades acquired solely for the purposes of clearing or settlement should be treated differently for transparency purposes just because they have different settlement periods. An example of where a different settlement cycle might be used is where the seller is holding a physical share certificate. It can currently be hard to carry out all the processes required for such a sale within a T+3 settlement cycle. It is not acceptable that transparency requirements should effectively be different depending on whether an investor holds their shares electronically or in physical form.

Instead, we would propose that the exemption should be for any on-exchange trade carried out according to the rules of the relevant exchange, and therefore would be the same requirement for all legitimate settlement periods.

The situation for off-exchange trades should be the same as those for on-exchange trades. This could in theory create some confusion if there was more than one exchange operating in a market and they had different rules on allowable settlement cycles for their on-exchange trades, so there may be a need to refer to the lead exchange in the market.

Q3: Do you consider that "short settlement cycle" can mean the same in relation to shares or other financial instruments, or are there, in your view, circumstances that should make CESR differentiate shares from other financial instruments? Please provide reasons for your answer.

We do not have any strong view in this area, although we believe it probably makes sense for the rules to be the same in general.

However, if the T+3 principle is retained, CESR should be aware that the standard settlement cycle for other sorts of financial instruments might be different.

***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: What do consultees think of the proposed methods of controlling the market maker activities with regards the exemption provided?

Firstly, we support the general approach that CESR has taken with regards to market makers, who provide an important function to the market.

In answer to Q4, we agree with the view that it is unnecessary to establish a full set of controls since the investment firm will already be authorised under the Markets in Financial Instruments Directive (MiFID).

We agree that different activities need to be treated separately, but we do have some concerns that requiring separate accounts is not absolutely necessary and may cause problems and excessive costs for some firms.

Q5: Do consultees envisage other control mechanisms which could be appropriate for market makers who wish to make use of the exemption?

No.

Q6: Do consultees agree with the proposals set out in this paper? Please give your reasons if you do not agree.

We agree with the proposed measures to be taken in the case of market makers violating the conditions of exemption.

However, with respect to determining the relevant competent authority, there may be a further option. This would see the investment firm notify its competent authority as determined by MiFID. The home MiFID competent authority (would then use the same interfaces here that exist (as part of Article 25 of MiFID) in relation to sharing transaction reports with other competent authorities. This would reduce the costs to investment firms who operate on a pan European basis so that they would not have to deal with 25 competent authorities.

***Section 3:* The determination of a calendar of "Trading Days" for the notification and publication of major shareholdings.**

Q7: Do consultees agree with the proposals set out in this paper? Please give your reasons if you do not agree.

We agree with the approach taken by CESR in not trying to produce a calendar of uniform "trading days" across the EU, as this would be too problematic given the variety of public holidays across the EU. Given this, we agree that the most appropriate option is the calendar of trading days of the issuers' home Member State.

As for how information on the relevant calendar is accessed (paragraph 81), we feel that attaching a calendar to the standard form of notification is unnecessary — in practice, the same outcome could be achieved by the person making the notification cross-referring to the calendar on the competent authorities website.

The proposal that each Member State could draw up a list of issuers it controls is a very good idea and to some extent is merely an extension of the requirement under the Prospectus Directive Article 14(4) for the competent authority to publish on its website all the prospectuses approved (or at least the list of prospectuses approved).

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: Do you agree that aggregation is required in three main situations? *[i.e. (a) aggregation of shareholdings; (b) aggregation between voting rights under Article 10 and shareholdings; (c) aggregation in relation to the voting rights that can be exercised under Article 10].* Please give your reasons if you do not agree.

Yes, we agree that aggregation is necessary in each of these situations.

Q9: Do you agree with the possibility to appoint another person to comply with the notification duty? Please give your reasons if you do not agree.

Yes, we do not see a problem in appointing another person to make this notification; the important thing is that the notification is made.

Q10: Do you agree with the possibility of making a single notification in case of joint notification duty? Please give your reasons if you do not agree.

Yes, we believe this is a practical suggestion to avoid confusion within the market and to reduce the reporting burden on the shareholders, natural persons or legal entities.

Q11: 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 reasons.

We support approach A — we believe this is the most appropriate approach and that it is supported by the language used in Level 1.

Q12: Do you agree that a subsequent notification requirement is triggered when there are changes to the circumstances described in Article 10(a)-(g)? Please give your reasons.

We believe that a notification requirement should only be triggered if a change in circumstances under Article 10 (a)-(g) results in a change in voting rights which the crosses a threshold.

Q13: Do you agree with the draft technical advice?

Yes, although we believe paragraph 150 should be altered to reflect our comments in Q12.

***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: Which of the options set out above do you consider should be recommended to the European Commission. *[i.e. (a) on the date when the transaction is actually executed; or (b) on the day after the transaction was actually executed.]* Please give reasons for your answer

We note that the obligation to make the notification is "*as soon as possible*" which in practice we expect to be a 24 hour turnaround. Given this, any extra day should not be seen as an extra day granted to investors to make their notification. Rather, since the obligation is to make the notification as soon as possible, the need to use this extra day in practice should only really be considered by regulators when determining breaches (in other words, we agree with paragraph 179). To this extent we support option B.

Q15: Are there any other options that CESR should consider and why?

No.

Q16: Do consultees agree with the proposals set out in this paper? Please give your reasons if you do not agree.

Subject to our comments under Q14, we support option B.

***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: Which of the above approaches do you think most appropriate? Please give reasons for your answer.

We support the second option — i.e. all management companies that conduct their management activities under the conditions laid down under the UCITS Directive, whether they are authorised under that Directive or not, should benefit from the exemption — for the reasons set out in paragraphs 191-196 of the consultation.

Q18: Do consultees consider the additional confirmation envisaged in paragraph 245 to be necessary?

No, we do not believe that the management company or investment firm should have to confirm in writing the statement of independence made by the parent undertaking. A declaration from the parent undertaking should be sufficient.

Q19: Do you consider that there should be other methods by which the parent undertaking demonstrates independence to those set out above? Please give your reasons and set out what these should be.

No, we believe the methods set out are appropriate.

Q20: What is your view about these suggestions and do you consider any of them to be fundamental for the demonstration of independence? Please give your reasons.

In our view the suggestions made in paragraph 248 are not fundamental. Rather, they are methods that a firm may find useful to employ to demonstrate independence, but this should be left to the individual firms to decide.

Q21: What are your views in relation to the meaning given to indirect and direct instructions? Please give your reasons.

We believe the view of indirect instructions is too vague and could inappropriately capture general proxy voting guidelines or basic principles of ownership.

Q22: Do you agree with the technical advice? If not please give your reasons. Are there any circumstances that CESR should take into consideration that would necessitate different conditions being established for management companies and investment firms? Please give details and provide reasons.

In general we agree with the technical advice, although we believe that paragraph 269 should be amended to take account of our concerns expressed in Q21.

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

One area which we not believe CESR's advice has covered in this section is the need to include unique security identifiers on the standard form. Issuers may have many different types of shares with similar names, meaning that the market could be confused unless each security is identified on the form by an internationally recognised numbering standard.

Whilst we are of the strong view that CESR should require the use of security codes, we do not believe that CESR should opt for a specific format such as ISINs, or indeed any other. (Please also see our answer to Q44 and Q47 for further discussion on unique security identifiers)

Q23: Do you agree that it is necessary to disclose information about the total number of voting rights? Please give your reasons.

We agree, as we believe it will be helpful to know this information and should be easily attainable for the investor (and indeed they will need it to calculate percentage thresholds).

Q24: Do you agree that it is important to require disclosure of information about the previous notification? Please give your reasons.

Yes, we agree — it will be useful information that is easy for the investor to provide.

Q25: Do you agree with this proposal? *[i.e. information about how the holder has acquired or disposed of the shares with voting rights attached and/or voting rights (e.g. through purchase/ inheritance/ pledge), should also be disclosed because this gives a complete view of the movements of voting rights and ensures transparency]* Please give your reasons.

We do not believe that it is necessary to provide this information, as we do not feel it will add any value to the issuer or other shareholders.

Q26: Do you think that information about the number of shares should be required? *[i.e. information about both the number of shares as well as the number of voting rights attached to the shares, in order to fully understand the shareholder structure of the company].* Please give your reasons.

We think that the number of shares is useful information, as it is an absolute measure and will therefore be more easily verifiable. In contrast, the number of voting rights held could end up being calculated differently by two people. If the total number of shares is given, the accuracy of the disclosure of voting rights will become 'self-policing' as any discrepancy will be spotted by interested parties.

In addition, we do not believe it will be onerous to disclose the number of shares, since the calculation of voting rights would require information about the number of shares to be known anyway.

Q27: Do you agree with this approach, or do you consider it necessary to have a break down of each party to the agreements holding? Please give your reasons.

We agree with the stated approach. We do not consider it necessary to have a break down of each party to the agreements holding, as there will already be disclosure about who holds what upon entering into the agreement.

On a drafting point, we suggest the wording of paragraph 317 (and corresponding paragraph 363 of draft advice) should be amended as follows: "(a) Total number of voting rights held by the parties to the agreement in relation to all classes/types of share of that issuer after entering into or terminating the agreement".

Q28: Do you think that upon termination of the agreement, there should be a requirement to disclose each party to the agreements individual holdings after the termination? Please give your reasons.

We do not believe that such a requirement is necessary.

Q29: Do you agree with the above? Please give your reasons.

The suggested approach appears reasonable.

Q30: Do you agree with this approach? Would you suggest different figures? Please provide reasons for your answers.

Yes, we agree with this approach and the exemptions — it is unnecessary and burdensome to disclose the identity of all underlying shareholders.

Q31: Do you agree with the draft technical advice? Please provide reasons if you do not agree.

We agree, although we suggest a minor amendment to paragraph 363 (see answer to Q27). Also, in accordance with our answers above we believe that the form should include:

- the security identifier;
- information about the total number of voting rights in issue attached to shares overall;
- if a previous notification has been made, the total number and percentage of voting rights contained in the previous notification;
- in relation to the triggering transaction, the number of shares of each class/type of that issuer that have been acquired or disposed of by the shareholder, when reaching, exceeding or falling below the thresholds specified in Article 9; and,
- in relation to the resulting situation, the total number of shares of each class/type of that issuer that the shareholder holds after the triggering transaction.

Section 8: Financial Instruments

When is the notification triggered?

Q32: With which approach do you agree with? *[a) The notification should be triggered upon acquisition and disposal of the financial instrument, or b) the notification should be triggered at a set point in time before the underlying shares can be acquired)].* Please give your reason.

We are not convinced that either option is ideal and would ask CESR to reconsider its approach in this important area.

Approach A: we believe that whilst approach A would be the simplest for investors to comply with, it may result in an unnecessary number of notifications if a notification has to be made every time an instrument is bought or sold (which may be years before the actual shares can be acquired or disposed of). This would make notification less meaningful, which is obviously undesirable for market transparency.

Approach B: the problem with this approach is that we believe it will be hard for investors to monitor and comply with — especially for long-dated instruments which may take years before they become exercisable. Furthermore, just because the instruments could be exercisable (as described in paragraph 406), it may be significantly out of the money, so in practice would not be exercised.

We believe there is an alternative, pragmatic, approach which is both more relevant for the issuer and should also generate more meaningful notifications. We believe the advice should consider *when* the instrument might be converted, both from a practical and technical assessment.

Investors should assess upon acquisition whether the instrument is exercisable and the shares could be acquired immediately [both by virtue of price (i.e. is it “in the money”?) and other terms, typically date/time]. If so, they should make a notification. Otherwise, notification should only be made at the time when the instruments become exercisable, again with reference to both price and date.

Q33: Are there circumstances where you consider any of these approaches not to be appropriate? If so, please give details and propose an alternative.

Please see our answer to Q32.

Q34: In relation to the second view, do you agree that 3 months is the appropriate timeframe before exercise or conversion of the instrument takes place for when a notification requirement is triggered? Please give your reasons. If you do not, please specify the timeframe that you consider to be appropriate and why.

Please see our answer to Q32. Notwithstanding our comments under Q32, we believe that if a timeframe has to be set then 3 months is appropriate.

Q35: In relation to the second view, do you agree that instruments that include an "American exercise period" feature should be notifiable upon the acquisition, disposal, or relevant change in holding of these instruments? Please give your reasons.

In accordance with the 'alternative approach' as outlined in our answer to Q32, we believe that investors should assess upon acquisition whether the instrument is exercisable. Clearly American exercise period instruments will always pass the exercise or conversion date test. Therefore investors will have to consider whether it is exercisable by reference to price (i.e. is it "in the money"?). If so, they should make a notification. Otherwise, notification should only be made at the time when the instruments become "in the money".

Q36: In relation to the second view, do you consider it appropriate to distinguish between those instruments with an American Exercise Period and those that have a "structured but fixed exercise period"? Please give your reasons.

Yes, in view of our answer to Q32, we believe that for instruments that have a "structured but fixed exercise period" the notification requirement should be triggered if, on the exercise/conversion date the instrument is in the money.

Deadline within which the notification has to be made

Q37: Do you agree with this approach? Please give your reasons.

We agree that the notification timeframe should be the same as that set out under Articles 9 and 10, for reasons of consistency.

The basis upon which the voting rights are to be calculated

Q38: Do you agree with the above proposal? Please provide reasons for your answer if you do not agree.

Yes, we agree: the only way a holder is to know of a change in the number of voting rights attached to shares is through the issuer's Article 11c disclosure.

Types of financial instruments

Q39: Do you consider it necessary to define what the meaning of financial instruments is for the purposes of the Transparency Directive? Please give your reasons.

We do not think it is necessary to produce a new definition of financial instrument, since MiFID already has a definition and it would be confusing and unnecessary to duplicate this.

Q40: Do you agree with the above? Please, provide reasons for your answer if you do not agree.

We agree with CESR's interpretation of Article 11a when applied to Annex 1 of MiFID.

Q41: Do you consider it to be either necessary or possible to establish a list of instruments that qualify as financial instruments for Transparency Directive purposes? Please give reasons.

It does not appear necessary to establish such a list.

Aggregation between financial instruments

Q42: Do you agree with the above proposal? Please provide reasons for your answer if you do not agree.

We agree with the proposals but note the potential lack of consistency described in paragraphs 449 - 451.

Q43: Are there reasons why certain financial instruments should not be aggregated? Please give reasons.

In determining its policy CESR should be aware of the trade off between costs to market participants and the need for transparency. The more complex the requirements, the more cost to users of capital markets.

The content of the notification to be made

Q44: Do you agree with the above proposal? Please provide reasons for your answer if you do not agree.

We agree with much of the advice, but disagree with the conclusion and rationale in paragraphs 457 and 467.

In paragraph 457(i) CESR states that "instruments with the same features may have different names in different jurisdictions and therefore inclusion of a name

may confuse investors and the market" and paragraph 467 states that "the issuer may have different types of shares, so may result in large number of ISIN numbers needing to be disclosed" — we believe that these statements give all the more reason for security codes to be included on the form. The large number of different types of shares with similar names means that the market could be confused unless a unique security identifier is stated. Please see our response to Q47.

Under paragraph 457 (ii) CESR concludes that the identification of the specific financial instrument that the holder has acquired or disposed of is not necessary "because the important part of the disclosure is to know that a particular holder of these instruments holds financial instruments which may at some point result in holding shares in a particular company". We disagree.

We believe that it is important for the issuer and other market participants to be aware of the specific instrument as this will indicate the likelihood of these financial instruments being converted into shares.

For example, an option with a €1 exercise price (for an underlying share trading at €10) may result in the holder obtaining 6% voting rights, whilst another option in the same underlying may also result in the holder obtaining a 6% voting right but with a €50 exercise price - however in reality the latter will not be exercised. Therefore, we believe that the identification of the overlying is important. Moreover, this can easily be put into place by the use of unique security identifiers.

Q45: Do you think that CESR should require more or less information than what is proposed above? Please give your reasons and specify what information you would delete or add.

See above.

Q46: Do you consider that information on the total number of voting rights in issue and on the previous situation should be included? Please provide reasons for your answer

Yes - in accordance with our answer to question 23 and 24 - we believe it will be helpful to know this information and should be easy for the investor to provide.

Q47: Do you consider the ISIN code of the underlying share to be relevant information to be included in the standard form? Please provide reasons for your answer.

We strongly believe that each security should be identified on the form by an internationally recognised numbering standard as this would provide valuable information when identifying a security. It would remove confusion over an instrument that may be described in different ways in different jurisdictions.

CESR has stated, “the ISIN code is an internationally recognisable way of identifying a security”. As such we disagree with CESR that “investors may not be easily aware of the ISIN number of the underlying’s share”. This demonstrates a misunderstanding of how security codes are used by markets and data vendors to accurately describe issuers and classes of issuers.

It is also vital that security codes are required as this will make the dissemination by operators and media under Article 17 far more efficient. It is also likely to be an important input requirement into any central storage mechanism.

Whilst we are of the strong view that CESR should require the use of security codes, we do not believe that CESR should mandate a specific format such as ISINs, or indeed any other.

We believe that other unique securities identifiers such as SEDOL are also appropriate for inclusion on the standard form, for the following reasons:

- Although ISIN is a unique *issue* identifier, it is not always a unique *security* identifier, because one ISIN can be shared among offerings in multiple locations where each offering may have slightly different characteristics that nonetheless have significant impact.

- Due to the number of National Numbering Agencies (NNAs), up to 65, the problem arises of lack of same day allocation and distribution of new instrument identifiers.

- The SEDOL code plus the Market Identification Code (MIC) meets the three key industry criteria tests of uniqueness, timeliness and commonality[1]. This model allocates all instrument asset classes (Exchange traded and OTC) at the listing level, denotes all the places of trade (through the MIC code) and allocates all global instruments in real-time to aid STP.

Q48: Do you agree with the above? Please state your reasons if you do not and explain why you do not agree

Yes, we agree with the proposals that notification should be sent to the issuer of the shares to which the financial instrument relates and the competent authority (and that it is not necessary to send it to the issuer of the financial instrument in question) — this is because we agree with CESR’s assessment that this information will only be relevant to the issuer of the underlying shares.

[1] The three key industry criteria tests as considered by the Reference Data User Group (RDUG) and the Reference Data Coalition (REDAC) paper “In search of Unique Instrument Identifer” (June 2003).

Q49: Do you agree with the draft technical advice? Please provide reasons if you do not agree.

We generally agree but would add the following:

"481. The notification under Article 11a shall include the following:
- …
- information on the transaction that triggered the crossing or reaching of the relevant threshold by the holder, including information on the security identifier of the specific financial instrument, and information on the date on which the threshold was crossed or reach and total number of voting rights in such transaction;
- ...
- security identifier"

CHAPTER 2: HALF YEARLY FINANCIAL REPORTS

Minimum content of half-yearly (non-consolidated) financial statements not prepared in accordance with IAS/IFRS

Q50: Do you agree with this proposal? *[i.e. they should be defined by reference to the principles of IAS34].* If not, please state your reasons.

Yes, we agree that the content of half-yearly reports should be defined by reference to the principles of IAS 34. This seems a logical approach — although also see our comments with regard to third country issuers under Q51.

Major related parties transactions

Q51: Do you agree with this proposal *[i.e. companies which are not required to prepare consolidated accounts should also use the definition of Related Party Transactions currently provided by IAS 24]* or do you believe that other definitions could be followed?

We agree that IAS 24 already provides an appropriate definition and therefore there is no need for other definitions to be developed.

However, we would ask that if the Commission deems a third country GAAP to be equivalent (e.g. US, Canadian or Japanese, following the work undertaken by CESR and the advice to be given in June 2005) then a third country issuer that uses such GAAP should be allowed to use the definitions under the third country GAAP, and not be required to use IAS.

Q52: Do you agree with the proposed definition? If not, please state your reason

Yes, the proposed definition appears sensible.

Auditors' review of half-yearly report

Q53: Do you agree with the approach proposed by CESR?

We agree with the approach taken by CESR and believe the results of the survey are useful and informative in determining that there is convergence in the way half yearly reports are audited. Since this is the case, it appears sensible to use these findings to determine what the nature of the auditors review should be, going forward (i.e. limited, voluntary, less than full scope audit).

Q54: Do you consider that there is a need for the adoption at national level of a single standard to which audit reviews are conducted? Please give your reasons.

No, we do not feel that CESR should be involved in specifying a single standard at this stage, as there is already convergence.

CHAPTER 3: EQUIVALENCE OF THIRD COUNTRIES INFORMATION REQUIREMENTS

Equivalence as regards issuers

Q55: Do you agree with the proposed approach? If not, please give your reasons.

Definition of Equivalence (paragraphs 527- 533)

We agree that equivalence should be assessed in the same manner in the context of GAAP and non-GAAP requirements, and that the general definition and objective of the word "equivalence" should be the same as that used in the concept paper on equivalence of certain third country GAAP.

We strongly agree with the paragraph 531 — i.e. equivalence" does not mean "identical to", and that the important point is the ability of investors to make a similar decision or reach a similar conclusion in terms of investment and disinvestment. Further, we believe that the investors in question should be assumed to have a reasonable knowledge of business and economic activities

and accounting and a willingness to study the information with reasonable diligence, in other words “professional investors” such as fund managers.

Principles in determining equivalence (paragraph 534)

We strongly believe that CESR should make a “global and holistic assessment” when reviewing third country annual, half yearly and interim reporting standards, and other notifications. Line-by-line comparisons will undoubtedly find differences between reporting requirements in various countries - but this should not cause them to be rejected. We strongly believe that CESR should instead establish overarching principles by which a comparison can be made. CESR should consider whether the general disclosure rules, for example, provide EU investors with an understandable and broadly equivalent assessment of the third country issuer’s position.

List of third countries (paragraph 535)

We agree with the outlined approach and believe it present a pragmatic solution — i.e. that competent authorities should be free to determine which third countries they consider provide for equivalent information requirements, and that over time and through sharing of information between competent authorities across the EU, this will develop into a pan-EU list of equivalent third countries.

However, whilst we agree with the methodology laid out on page 95 on the consultation paper, we are concerned that this is not followed through in the resulting discussion on the pages that follow. We appreciate that CESR’s flexibility is limited by the provisions of the Directive, and the mandate which specifically sets out the areas to be considered. However, we believe that CESR was mandated to consider the principles for determining equivalence, but has instead gone into too much detail on the requirements on third country issuers, and in certain cases this has resulted in advice that effectively requires third country issuers to provide exactly the same information that is required under the Transparency Directive. For example:

- Annual management reports - the requirements set out here appear to go even further than the requirements set out by Article 4 of the Directive itself, for example in requiring third country issuers to prepare a full operating and financial review section analysing period on period changes in financial information.

- Half-yearly (interim) management reports - the requirements under this section appear to be exactly the same as those in the Directive (in contrast to the statement made in paragraph 531, that equivalent does not mean identical).

- Interim management statements under Article 6 - this section basically sets out that issuers will be deemed to be meeting equivalent requirements to those set out in Article 6 of the Transparency Directive if they either publish quarterly financial reports (which is already permitted under Article 6.2 of the Transparency Directive) or apply the requirements of article 6 of the Transparency Directive. Therefore, 'equivalent' again really does appear to have been interpreted as 'equal'.

It is our view that CESR needs to take a more high-level approach, based on the stated philosophy. It needs to set out principles not requirements.

We note the recent comments by the U.S. Commodity Futures Trading Commission[2], in relation to dialogue between regulators from the United States and the EU to lower barriers to international derivatives trading, that the key concern is not necessarily moving to identical regulation: "It's not about equivalent treatment, it's about adequate and comparable (treatment)". We support this view and believe it is essential if there is to be meaningful convergence and co-operation amongst regulators.

It is also important that third country issuers are afforded some level of certainty that any decision on equivalence will be permanent. Otherwise, these issuers will be deterred from listing in the EU. Therefore we believe that there should be a clear statement that, subject to any substantive changes in the requirements of the third country, the decision on equivalence will not be retracted.

Q56: Do you consider that there is any other way to develop Level 2 implementing measures related to Article 19(1) of the Transparency Directive? Please explain your answer.

Please see our answer to Q55.

Q57: Do you agree with this interpretation of Article 19(1) of the Transparency Directive as regards time limits? Please give reasons for your answer.

No, we do not agree — we believe that the purpose of article 19(1) (in relation to articles 11(4), 11b and 11c) is for Member States to be able to allow third country issuers to be exempted from the requirements if they are subject to equivalent domestic laws. We do not believe that the meaning of equivalence should be restricted to substance of information, but could also apply to time limits contained within 11(4), 11b and 11c.

[2] Sharon Brown Hruska, acting chair of the U.S. Commodity Futures Trading Commission "Regulators get fraternal as exchanges go to war" [Financial Times (22 February 2005)]

Principles for establishing equivalence of the items set out in the mandate

Q58: Do you agree with this proposal? Please give reasons for your answer. *[i.e. provided that this 7 trading day notification deadline is met by a third country issuer, the issuer itself may be able to make its notification to the market within a different number of trading days to that set out in Article 11(4)].*

Following our answer to Q57, CESR does not appear to be very flexible in this area — we believe that if third countries have requirements to make the notification public within a certain timeframe, then competent authorities should be allowed to accept this, even if this timeframe is longer than the 3 trading days required under article 11(4). This may therefore result in the total period being longer than 7 days.

However, we fully agree with the point that third country issuers must ensure equal treatment to all shareholders who are in the same position, and therefore make a notification in their domestic and EU market at the same time.

Q59: Do consultees agree with this draft advice? Please give your reasons.

Please see our answer to Q58.

Q60: Do you agree with this proposal? Please give your reasons

We do not agree with CESR's belief that there can be no flexibility over the four trading days for the issuer to make the notification of acquisition/disposal public. Indeed, for the reasons stated in our answers above, we believe that if third countries have equivalent time frames (even if these are greater than 4 days) then competent authorities should be allowed to deem these acceptable if they consider them to be equivalent.

We agree that it is important that the market is kept informed when issuers are making acquisitions/ disposals of their own shares, and that so long as there is market transparency and the thresholds reached are clearly stated, other thresholds should be deemed equivalent. It would be confusing and costly for third country companies to have to make notifications whenever the EU thresholds and also domestic thresholds are reached.

Further, CESR only propose to allow thresholds that are less than 5% and 10% (i.e. 4% and 8%). We believe that 'equivalent' thresholds do not have to be restricted, for example if a third country has 6% and 12% thresholds, these should also be allowed.

Q61: Do you agree with this proposal? Please give your reasons

We agree that market transparency is the important objective; so as long as notification is made, the specifications of precisely when this is to be made are less important. Therefore as long as third countries have requirements that achieve the end result, these should be deemed equivalent. As such, we believe that some flexibility should be given to third countries that have similar notification timetables, but which may not exactly meet the 30 days criteria, e.g. 2 months would be acceptable in our opinion.

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

Q62: Do you agree with the proposed approach? Do you consider that the alternative approach provides added value? Please give your reasons.

We agree with the proposed approach (i.e. that it is not necessary to create a list since the test of independence is not based on an assessment of equivalence of third country frameworks). We therefore do not see any added value from the alternative approach since the firms involved would still be required to meet the test of independence on a case-by-case basis.

Q63: Do you agree with this proposal? Please give your reasons.

We agree that the level 1 text does not require the third-country management company or investment firm to be authorised.

Q64: Do you agree with the above proposals? Please give your reasons.

Yes.

CHAPTER 4: PROCEDURAL ARRANGEMENTS WHEREBY ISSUERS MAY ELECT THEIR "HOME MEMBER STATE"

Coordination of filings between the competent authority elected by the issuer under Article 2(1)(i)(ii) and several competent authorities elected under the Prospectus Directive.

Q65: Do you agree with this proposal? *[i.e. Issuer sends the information to the Prospectus Directive competent authorities, and also makes it available to the central storage mechanism].* Please give reasons.

We agree that this seems a sensible approach — issuers have to send the information to the Prospectus Directive competent authority and the central

storage mechanism anyway, so there would be no further burden on them. The host competent authority should be able to access the information through the central storage mechanism easily — as this is the whole point of the central storage mechanism.

Applicable regime in case of delisting from the regulated market of the home Member State whilst continuing being listed in other Member States.

Q66: Do you agree with this proposal? *[i.e. the issuer can elect its home Member State under Article 2(1)(i)(ii) by choosing between those Member States where its securities either remain admitted to trading on a regulated market (in the case of securities having been delisted) or any other Member State where the issuer has its securities admitted to trading on a regulated market].* Please give your reasons

This proposal seems logical — it should be at the issuer's choice, out of the Member States where it has its securities admitted to trading on a regulated market.

We also agree that, if the home Member State is to be changed, a notification should be made via the dissemination arrangements set out by Article 17 — as it is important that the market knows which the relevant competent authority for Transparency Directive purposes is.