



Mr. Fabrice Demarigny
Secretary General
CESR

Stockholm, March 04, 2005

CESR's advice 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 and, Procedural arrangement whereby issuers may elect their 'Home Member State'

Introduction

OMX Exchanges (OMXE) is Northern Europe's leading provider of exchange services in respect of the Nordic and Baltic equity markets as well as trading in other financial instruments traded on the Nordic and Baltic markets. OMX Exchanges currently comprises Stockholm Stock Exchange, Helsinki Stock Exchange and the exchanges in Tallinn, Riga and Vilnius. Decisions have recently taken place for including Copenhagen Stock Exchange in respect of further Nordic integration and a future part of OMXE.

OMXE is in general positive to the proposals in the consultation but has the following comments as to some of the details in the consultation. With questions where no answer is given, OMXE generally agrees with the proposals or has no further proposals in the matter.

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?

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.

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.

A1-3/ The "short settlement cycle" can mean the same for both shares and other financial instruments; in our opinion there is no need for diversified definitions, which would only complicate matters.

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EFFICIENT SECURITIES TRANSACTIONS

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

As regards the question on which calendar of trading days to use in determining the time for notification of major shareholdings, we agree that the issuer's home Member State is a good and clear option. However, an alternative could be that the shareholder would have *an option* to use the calendar of the shareholders own Member State instead (and if the shareholder is not from a Member State, then he would not have such option, and would have to follow the calendar of issuer's home Member State).

Benefits of this possibility would be that the shareholder would know the relevant trading days in his own jurisdiction, and would not be burdened to search for trading calendars in each case. In practice this option would not diminish legal certainty. The number of potential calendars could still be limited to the EU Member States.

The problem described in point 74 as regards the potential difference in receiving the notifications on different days will not be solved by using the calendar of the issuer's Member State. For example, it is still possible that the acquisition is notified on the same day as the acquisition is made, yet the disposal regarding the same shares can be made in D+4. Therefore the notifications may still, and quite likely would still be received on different days, and the issuer will be obliged to issue its own release no later than three days from receiving each notification.

Q8/ Do you agree that aggregation is required in three main situations? Please give your reasons if you do not agree.

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.

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.

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.

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.

Q13/ Do you agree with the draft technical advice?

A8-13/ In general, OMXE agree with the proposals and favor the approach B, since it will give a more thorough view on the dissemination of voting rights and therefore support the purpose of the Directive.

The legal obligation to notify should however still rest on the original shareholder. As a technical comment, the text in points 153 and 155 could be clarified, e.g. "Such an appointment does not

release the shareholder etc. from its obligation to make a notification or the liability regarding the contents of the notification, in case the appointee fails to fulfill the obligation."

In an adjacent issue, the Swedish self regulatory rules concerning disclosure of acquisition and transfer of shares goes further than the directive in some parts. These rules require the one that has disposed over a share and passed a 5 % limit to disclose the holdings after the disposal directly to the market within a very tight time limit. The rule reads

"Disclosure.....take place at not later than 09.00 hours on the next stock exchange day after the date of the transaction, by means of a statement to an established news agency and at least one Swedish daily newspaper with national coverage. Disclosure shall be considered to have taken place when the statement has reached the news agency. This statement shall be simultaneously communicated to the stock exchange or authorized marketplace on which the company's shares are listed, and to the company".

It would in OMXE's opinion be very unfortunate if disclosure requirements in a member state from a market perspective have to be deteriorated due to the implementation of the Transparency directive.

Q14/ Which of the options set out above do you consider should be recommended to the European Commission. Please give reasons for your answer

Both options can be considered, but preference is given to the second approach. If the situation described in point 174 is recognized as a probable problem, and the shareholder in fact may not be able to attain "actual knowledge" on the day of the trade, it would be unfair to present that such shareholder "should have learned" about the trade already the day before. Since this is a question on a presumption and not of actual knowledge, the second approach is more justified.

Q17/ Which of the above approaches do you think most appropriate? Please give reasons for your answer.

In OMXE's opinion, the second approach will provide a more "level playing field" as regards different market participants, and will also suit the purposes of the Directive in a better way.

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

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.

A18-19/ No.

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.

OMXE do not see the suggestions in point 248 as fundamental.

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

Information about the total voting rights would be a useful addition.

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

OMXE do not see that the disclosure of previous notification should be required. Even though in some cases it may provide further information about the changes in control, there may be many different events since the previous notification, which still would not be shown. Therefore the information would not always give the correct view on the development as a whole.

Q25/ Do you agree with this proposal? Please give your reasons.

The proposal would add information to the markets, but OMXE don't see this to be absolutely necessary.

Q26/ Do you think that information about the number of shares should be required? Please give your reasons.

Yes, because of the reasons described in point 291.

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.

Since the notification will be due when a threshold is crossed as described in point 322, we don't see it necessary to require each party of the agreement to disclose holdings after the termination.

Q32/ With which approach do you agree with? Please give your reason.

We feel that the alternative b) would be preferred, based on points 398-400.

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.

Three months can be a long time for holdings of this type of instruments and ownership may in some cases be likely to change before the exercise or conversion, and therefore a shorter period would suffice.



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.

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.

A35-36/ OMXE view is that these instruments should be notifiable upon the acquisition, disposal, or relevant change in holding of these instruments as proposed in Q35, but the relevant factor should in both cases be the possibility to acquire the shares or lack thereof.

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

A 46/ Total number of voting rights yes, but not the previous situation for the reasons stated under A 24.

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.

A 47/ No.

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