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Comments on ESMA's Consultation on Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive

Dear Madam or Sir,

Allianz SE appreciates the opportunity to respond to ESMA's consultation on the draft regulatory technical standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive ("TD").

The Allianz Group offers a comprehensive range of insurance and asset management products and services in over 70 countries. It takes interest in the notification requirements for major shareholdings as investor and as asset manager. From Allianz' perspective, it is important that the proposed regulatory technical standard allow for meaningful disclosures which are valuable to the market while the monitoring of notification obligations remains practicable for investors. We have limited our answers to the questions that are relevant for Allianz from this perspective.

In this context, we would like to address a practical point concerning Art. 13a TD: For the sake of a harmonized implementation of Art. 13a TD, ESMA should clarify the relationship between Art. 9 and 13 on the one hand and Art. 13a TD on the other hand. An interpretation corresponding to the relationship between the §§21, 25 and 25a of the German Securities Trading Act should be avoided. If a person had to make a disclosure pursuant Art. 13a TD only in case that its holdings comprise both, shares **and** other financial instruments, the acquisition of a single share or a single financial instrument could trigger a notification under Art. 13a TD (with respect to a threshold already notified pursuant to Art. 9 or Art. 13 TD), which is not only difficult to monitor but could also lead to irrelevant notifications.

One way to avoid this problem would be to always require a notification pursuant to Art. 13a TD if a certain threshold is crossed with **any** of the relevant instruments. E.g. if a person holds only shares in excess of 5% it should be required to make also a notification pursuant to Art. 13a TD, in addition to the notification pursuant to Art. 9 TD. Likewise, a notification pursuant to Art. 13a TD would always be triggered together with a notification pursuant to Art. 13 TD with respect to financial instruments. In each case, the two notifications could be linked to one form. Transparency as to the nature of the holdings would sufficiently be insured by the information on instruments held given in the notification (see also Art. 13a (1) second sub-paragraph).

Q5: Do you agree that, in the case of a group of companies, notification of market making and trading book holdings should be made at group level, with all holdings of that group being aggregated (Article 3(1))?

It would be helpful if ESMA could clarify that it is possible to **not** make use of the exemption for the trading book in Art. 9 (6) TD. For certain investors it would simplify the monitoring process if it was allowed to fully take into account also the holdings contained in a trading book, at company as well as at group level.

Q9: Do you agree with the proposal that financial instruments referenced to a basket or index will be subject to notification requirements laid down in Article 13(1a)(a) when the relevant securities represent 1 % or more of voting rights in the underlying issuer or 20 % or more of the value of the securities in the basket/index or both of the above?

We recommend to delete the 1% criterion: Currently, it captures index- or basket-related financial instruments if **shares in the basket or index represent 1%** or more of voting rights attached to shares of the specific issuer. However, we think that while this criterion might work with respect to baskets, it may not work with respect to the standard indices, such as Euro Stoxx 50, CAC 40 or DAX, where the indicated number of the shares of a specific issuer and class represented by the index equals 100% or nearly 100% of such class. If understood this way, the 1% criterion would lead to the relevance of all standard indices and render the 20% criterion inefficient. Accordingly, we disagree with the 1% criterion if understood this way.

Alternatively, the 1% criteria could be understood to capture index- or basket-related financial instruments held by a person, if such **financial instruments represent 1%** or more of the voting rights attached to the shares of a specific issuer. The 1% criteria would, thus, not lead to the qualification or disqualification of a specific index or basket as such, but to the qualification or disqualification of a specific position in index- or basket-related financial instruments with respect to the shares of a specific issuer.

In case of the second interpretation, the question arises whether the 1% test will have to be applied to a) a specific financial instrument (i.e. per ISIN), b) all financial instruments (different ISINs) referenced to a specific index, or c) all financial instruments referenced to any index in which a specific share is represented. In case of b) and c) the monitoring of the position becomes extremely complex, such that the purpose of the exclusion of certain index- or basket-related financial instruments (i.e. to facilitate the monitoring) will no longer be fulfilled.

Q10: Are there any other thresholds we should consider?

There are no other thresholds that ESMA should consider.

Q11: Please estimate the number of disclosures you would have to make per year should the above mentioned thresholds be adopted. Please also provide an estimate of the compliance costs associated with the disclosure (please distinguish between one-off and on-going costs).

Allianz would most likely not have to make any additional disclosures. However, we do expect that monitoring costs would considerably increase with the 1% test. As Allianz, as other large investors, needs to take into account all index- or basket-related financial instruments, and accordingly determine the weight of the index constituents on a continuous basis, with respect to the reporting of net short positions, any additional costs caused by the above mentioned thresholds will relate to the distinction between relevant and non-relevant indices, baskets or financial instruments.

Q12: Do you agree that a financial instrument referenced to a series of baskets which are under the thresholds individually but would exceed the thresholds if added and totalled should not be disclosed on an aggregated basis?

Yes, we agree.

Q13: Do you agree that our proposal for the method of determining delta will prevent circumvention of notification rules and excessive disclosure of positions? If not, please explain.

Yes. We agree that there cannot be a predefined formula for calculating the delta.

Q14: Do you agree with the proposed concept of "generally accepted standard pricing model"?

Yes. Referencing to generally accepted standard pricing models which need to be applied in a consistent manner should to ensure that no circumvention of notification duties for cash-settled instruments can be engineered.

Q21: When does a financial instrument have an "economic effect similar" to that of shares or entitlements to acquire shares? Do you agree with ESMA's description of possible cases?
Q22: Do you think that any other financial instrument should be added to the list? Please provide the reasoning behind your position.

We welcome that there be an indicative list of financial instruments that are subject to notification requirements and hope that this list will be able to foster the application of a uniform scope of financial instruments within the EU/EEA. Furthermore, we hope that this list will provide investors guidance as to which instruments have to be included in the calculation of their holdings and which have to be disregarded.

We have the following comments to the instruments currently on the list:

- Including "**other conditional contracts or agreements**", irrespective of any derivative element that such contracts or agreements might have, does not provide any practical guidance. A specification would be helpful.
- **Convertible bonds referring to already issued shares**: Convertible bonds should be either all excluded or all included, irrespective of whether they relate to new or already issued shares. Any such differentiation is difficult to monitor. The information whether a convertible bond is referring to new shares only or also to already issued shares (treasury shares) is not contained in published market data but requires an in depth's analysis of the terms and conditions of the individual bond which is not always publicly available. Therefore, the distinction made by the current list is not practicable. We do not believe that the exclusion of all convertible bonds would obstruct the transparency in any way since the option to deliver treasury shares instead of new shares relies in general with the issuer of the convertible bond and is, in most cases, only an additional option for the issuer.
- A similar question arises with respect to convertible bonds providing for a cash settlement option: Are such instruments captured on the basis that they are potentially cash-settled instruments? Are they only captured if the terms and conditions provide also for the issuer's options to deliver treasury shares instead of new shares? Again, the differentiation of convertible bonds along these features is not practicable since requiring an analysis of the terms and conditions of the instrument which are often not readily available to the investor.

With respect to the definition of "financial instrument" in Art. 13 (1b) TD, it should be considered that Art. 13 (1b) (g) widens the definition of "financial instrument" provided by Annex I C of MiFID by including other contracts and agreements, irrespective of their derivative character. We think that for the sake of a uniform interpretation of both directives, deviations should be limited to the largest extent possible.

Allianz SE

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