

30 May 2014

European Securities and Markets Authority
103, rue de Grenelle
75007 Paris
France

Submitted via online form

RE: Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive

Dear Sirs,

BlackRock is pleased to have the opportunity to respond to the 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.

BlackRock is a premier provider of asset management, risk management and advisory services to institutional, intermediary and individual clients worldwide. BlackRock also has extensive expertise in the fixed income markets and significant client holdings in securitised assets and serves as collateral manager to certain securitised products.

BlackRock is one of the world's leading asset management firms, managing approximately €3.20 trillion (as at 31 March 2014) on behalf of institutional and individual clients worldwide, across equity, fixed income, cash management, alternative investment and multi-investment and advisory strategies including the iShares® exchange traded funds. Our client base includes pension plans, insurance companies, third-party distributors and mutual funds, endowments, foundations, charities, corporations, official institutions and banks, as well as individuals around the world.

BlackRock represents the interests of its clients by acting in every case as their agent. It is from this perspective that we engage on all matters of public policy. BlackRock supports policy changes and regulatory reform globally where it increases transparency, protects investors, facilitates responsible growth of capital markets and, based on thorough cost-benefit analysis, preserves consumer choice. BlackRock is a member of the European Fund and Asset Management Association (EFAMA) and a number of national and sectoral industry associations reflecting our European client base and activities.

The Transparency Directive was introduced to enhance both investor protection and market efficiency through the disclosure of accurate, comprehensive and timely information about security issuers. The revisions to the Directive seek to improve the effectiveness of the existing regime in particular with respect to the disclosure of corporate ownership.

We support these efforts to improve transparency. In order for these efforts to be effective, we consider it key that the following two aspects are taken into account in the implementation of the revised Directive:

1. The application of the Directive must be harmonised throughout all Member States. This will deliver a consistent regime and facilitate easier understanding of information by market participants in different jurisdictions. Market participants should be able to compare and contrast information simply – something that will not be achieved without undue burden if the requirements are implemented in anything other than a harmonised

format. The current regime is not harmonised, with the result being that information disclosed in one jurisdiction can materially differ from that within another, whether due to calculation methodologies or format and frequency of disclosure. This creates an unnecessary burden for firms and, more importantly, has the potential to provide misleading information to the market contrary to the intended transparency which the Directive seeks to achieve. We therefore support the use of Regulatory Technical Standards and we would advocate these as an appropriate mechanism to ensure that all Member States implement similar obligations; and

2. Proportionate implementation is necessary in order to deliver the desired level of transparency and avoid the imposition of undue burden on market participants. To achieve this, we support the disclosure of company ownership information being aggregated and delivered at group level. This is provided that all exemptions that would be available to any subsidiaries are similarly available to the ultimate group parent. This will give market participants and regulators more appropriate and comprehensive data. This will also prevent the complexity of group structures diminishing the emphasis placed upon the data.

We respond in more detail below to the consultation questions that are relevant to us.

We welcome the opportunity to address, and comment on, both the issues raised by the consultation paper and the broader issues associated with implementation of the revised Transparency Directive. We would be happy to work with ESMA on any specific issue(s) that may assist in improving the implementation of the revised Directive.

Yours faithfully

Tim Dudley
Managing Director,
BlackRock Portfolio Compliance

John Ardley
Director,
BlackRock Compliance

Responses to questions

9. 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?

The consultation paper confirms that the intention of these two thresholds is to 'guarantee that only relevant disclosures are required, resulting in a small number of notifications per year and thus minimising compliance costs for investors'.

We support this intention. However, we consider that in order to achieve this, the required disclosure should be provided in those instances in which the relevant securities represent 1% or more of voting rights **AND** 20% or more of the value of the securities in the basket / index as is currently the case in some European countries. The condition that both thresholds are met will ensure that only relevant disclosures are provided and, as ESMA notes, their existence in a number of Member States will deliver the required outcome without placing undue compliance costs on investors.

10. Are there any other thresholds we should consider?

We do not believe any other thresholds should be considered.

11. 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 this disclosure (please distinguish between one-off and on-going costs).

Our initial analysis based upon the proposals as drafted has identified that we would have very few additional disclosures to make. This is a reflection of our current positions.

However, irrespective of the number of disclosures which would need to be made, enhanced system capabilities needs to be in place to deliver full automation across all jurisdictions in order to permit the monitoring to be performed to identify those disclosures which are necessary. Harmonisation of this rule will help reduce this cost, to avoid having to build separate functionality for certain countries.

12. 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?

We agree that the aggregation of holdings in this instance should not be performed. ESMA's justification for this position is correct in that it would not be cost effective to build a stake through obtaining small positions in different baskets before aggregating them.

13. 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.

We agree that the proposed approach from ESMA should prevent circumvention of notification rules but without requiring excessive disclosure of positions.

14. Do you agree with the proposed concept of “generally accepted standard pricing model”?

We also agree with the proposed concept of “generally accepted standard pricing model”. This should remain a ‘concept’ as the imposition of a more granular definition risks limiting the models which could be used as any definition would not be able to keep pace with market developments. This concept also gives enough flexibility for the accepted model to avoid additional costs that may be needed if there were more prescriptive requirements.

19. Do you agree that the client-serving exemption should cover MiFID authorised entities as well as a natural or legal person who is not itself MiFID authorised but is in the same group as a MiFID authorised entity and is additionally authorised by its home non-EU state regulator to perform investment services related to client-serving transactions? Can you foresee any additional cost in case the exemption does not also cover non-EU entities within the group? If yes, please provide an estimate.

To deliver a harmonised regime, we support the availability of the client-serving exemption to any entity within the same group as an entity which meets the criteria. This is essential in ensuring proportionate application and achieving consistent transparency. More importantly, this will deliver consistency in transparency to market participants and regulators.

The submission of company ownership data by only one entity in any financial services group, with aggregation of the total holdings, will enable the provision of the most appropriate and meaningful data to the company, the market and regulatory authorities. However, in order for the disclosures not to impose undue burden on groups, the exemptions that are available to those subsidiaries within the group must similarly be available to the ultimate group parent entity.

21. 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?

We agree with the approach taken by ESMA in determining financial instruments that have an “economic effect similar” to that of shares. The exposure to both upside and downside risk provides a viable indicator of whether the economic effect is similar to shares.

22. Do you think that any other financial instrument should be added to the list? Please provide the reasoning behind your position.

The list provided on the inclusion / exclusion of repurchase agreements and securities lending agreements does not specifically cover any collateral agreements. Our view is that any securities held as collateral are not included unless and until such time as they become a holding in their own right (upon counterparty default), given that for any securities to be included, they must ‘give the holder either the unconditional right to acquire’ and a collateral agreement does not provide that unconditional right. To provide consistency, and for the avoidance of doubt, we believe that this conclusion that securities held as collateral are not included should also be provided by ESMA along with the treatment of repurchase agreements and securities lending agreements.

Statements of this nature will help facilitate better understanding of the requirements and ensure consistent application by Member States. Given the complexity which can be associated with loans, repurchase agreements, reverse repurchase agreements and collateral, there is a real need for harmonised understanding and application in order that market participants can adhere to, and regulatory authorities can supervise, the applicable disclosure obligations.

We understand that there is no intention to provide an exhaustive list of all instruments both in and out of scope of the revised Directive, and that the list should be seen as more of a guide.

However, we would suggest that such a list is reviewed regularly and formally updated every two years. This is to enable appropriate planning and preparation for the amendment of system capabilities without incurring the cost or resource implications of having informal and ad hoc review mechanisms for the list of instruments in scope. System changes will always require a lead time before delivery and it will be necessary to provide firms with a grace period after any amendments to the indicative list within which these changes can be designed, tested and delivered.

We also consider that the rationale for inclusion of any instrument within the indicative list should be documented such that clarity is provided to firms. This would further enable firms to consider additional and new instruments and see whether they should be included within the disclosures. Where consideration has been made of a specific instrument and it is concluded that it should not be included on the indicative list, a similar rationale should also be provided in order to provide clarity to firms.