

30 May 2014

ESMA
Submitted online at www.esma.europa.eu

Dear Sir

**CP on Draft RTS on major shareholdings and indicative list of financial instruments
subject to notification requirements under the revised Transparency Directive**

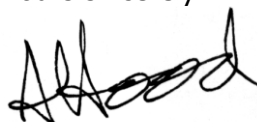
The IMA represents the asset management industry operating in the UK. Our members include independent asset managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £4.5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our members represent 99% of funds under management in UK authorised investment funds (i.e. unit trusts and open-ended investment companies).

We welcome the opportunity to comment on the proposals and support these efforts to improve transparency. Our answers to specific questions are attached below.

Over and above our answers to the specific questions raised in the consultation paper, a key consideration is that the application of the Directive must be as harmonised as possible across all Member States. A consistent, easily understood, regime would help market participants in different jurisdictions compare and contrast information – something which could not be achieved without undue burden if the requirements are implemented in anything other than a harmonised way.

We look forward to hearing from you if there is any clarification that you would find useful on the points we have raised. We would be happy to meet to discuss the thinking behind the market disclosure requirements.

Yours sincerely



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Consultation on draft RTS under the revised Transparency Directive

III.I. Draft regulatory technical standard on the calculation method of the 5 % threshold referred to in the Article 9(5) and (6) exemptions

Q1: Do you agree that the trading book and the market maker holdings should be subject to the same regulatory treatment regarding Article 9(6b) RTS?

No comment.

Q2: If not, please identify reasons and provide quantitative evidence for treating trading book and market making holdings differently?

N/A

Q3: Do you agree with the ESMA proposal of aggregating voting rights held directly or indirectly under Articles 9 and 10 with the number of voting rights relating to financial instruments held under Article 13 for the purposes of calculation of the threshold referred to in Article 9(5) and (6)? If not, please state your reasons.

Yes. This seems most consistent with the aim of disclosing any holdings over 5%.

Q4: Can you estimate the marginal cost of changing your general major shareholding disclosure system for the purposes of notification of trading book and market making holdings, i.e., having different buckets for the purposes of the exemptions? Please distinguish between one-off costs and on-going costs.

Given that asset managers have shareholdings for neither trading book nor market making purposes, this should not be relevant.

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))?

Given that no IMA members hold a trading book, or act as market makers, the choice of option should have no direct impact for us.

Q6: Do you agree that an exemption to notify at group level can apply if an entity meets the independence criteria set out under paragraph 72(Option 2)?

Given that no IMA members hold a trading book, or act as market makers, the choice of option should have no direct impact for us.

Q7: Please provide an estimate on how many times a year would your group have to report a major disclosure under the current regime in comparison to Option 1. Please include an estimate of the one-off or on-going costs involved.

Given that no IMA members hold a trading book, or act as market makers, the choice of option should have no impact.

Q8: Do you think that Option 2 poses any further enforceability issues than Option 1? If yes, what kind of issues can you foresee arising out of it? Can you propose an alternative approach?

No comment.

III.II. Draft regulatory technical standard on the method of calculating the number of voting rights referred to in Article 13(1a)(a) in the case of financial instruments referenced to a basket of shares or an index

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?

Yes. The thresholds proposed would go some way to meeting ESMA's intention that only a small number of notifications per year would be made, thus minimising compliance costs for investors.

While we support its intention, we consider that the required disclosure should be provided in those cases in which the relevant securities represent 1% or more of voting rights in the **basket only (and not in the index)** or 20% or more of the

value of the securities in the basket/index or both, as is currently the case in some European countries.

This proportionality would be further achieved by the combination of these thresholds for baskets, which would ensure that only significant positions are reportable.

ESMA should take account of the fact that many index providers charge for real-time access to index components. Asset managers should be able to rely on the latest publicly available information as to the composition of the relevant index – as in Article 3(3) of the Short Selling Regulation (No.236/2012).

Q10: Are there any other thresholds we should consider?

No comment.

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).

No comment.

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?

The approach taken by ESMA seems both proportionate and reasonable.

We would suggest that this approach should be extended to apply to a series of holdings in indices, as well.

III.III. Draft regulatory technical standard on the methods of determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement

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.

While I do not see how any proposal could completely prevent those wishing to do so from circumventing the rules, I do agree that the approach taken is good. The flexibility provided should result in the best delta adjusted calculations being made, resulting in an accurate holding being disclosed.

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

I agree that the approach taken is a good one, allowing for flexibility, accuracy and taking account of future developments.

I would like to make the following comments on the proposed wording of Article 5:

- 3. Where new financial instruments are developed, or for exotic and rarely used derivatives, the pricing model that will come to be the ‘generally accepted standard’ is unlikely to be ‘widely used’. It may be better to describe it as ‘the best available’ or ‘generally used for that instrument’.
- 3.(e) The word ‘share’ should be replaced with the word ‘instrument’ to be consistent with paragraph 103.
- 4.(b) I would suggest that there may be times when a better model is developed for calculating the delta of a particular instrument, in which circumstance it may be appropriate to change the model used. As such you may wish to reflect this in the sentence.

III.IV. Draft regulatory technical standard on client-serving transactions

Q15: Are these three types of client serving exemptions all appropriate in terms of avoiding excessive or meaningless disclosures to the market? Please provide quantitative evidence on the additional costs borne by financial intermediaries should any of these exemptions not be adopted.

No comment.

Q16: Can these three types of client-serving exemption allow for a potential risk of circumvention of major shareholdings' disclosure regime?

No comment.

Q17: Do you agree with our analysis that applying the current exemptions can address certain notification requirements for cash-settled financial instruments introduced by Article 13(1)(b)?

Yes, I agree with your analysis.

Q18: In your opinion, is the application of current exemptions sufficient to achieve the aim of this provision (i.e. avoiding unmeaningful notifications to the market)?

Yes. The proposed exemptions under Article 13(4) seem to add little to the existing exemptions.

Q19: 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?

We would support the availability of the client-serving exemption to any entity within the same group as an entity which meets the necessary criteria. This would help ensure proportionate application and provide consistent transparency to other market participants and regulators.

Q20: Do you think that the proposed methods of controlling client-serving activities are effective? Do you envisage other control mechanisms which could be appropriate for financial intermediaries who wish to make use of the exemption?

No comment.

IV. Definition and scope of the indicative list of financial instruments

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?

I agree with the response to this question submitted by EFAMA. A cash-settled derivative should only be deemed of ‘similar economic effect’ to shares in exceptional situations whereby the holder has special knowledge regarding the availability of the shares.

Q22: Do you think that any other financial instrument should be added to the list? Please provide the reasoning behind your position.

It would be useful if ESMA could spell out further those financial instruments which do not fall within the scope of Article 13(1b), e.g. securities held as collateral, on the basis that the collateral agreement does not give the holder the unconditional right to acquire the securities.

The final text should spell out what is meant by the ‘Commission Regulation’.

Paragraph 204 of ESMA’s Consultation Paper is concerning, as it entirely undermines the harmonisation and clarity otherwise provided by the list. If Member States are going to take different interpretations which impact the validity of the list, they should be required to inform ESMA, who could then make this information available on the list, possibly as footnotes.