REPORT BY THE ADVISORY BOARD OF THE COMISIÓN NACIONAL DEL MERCADO DE VALORES ON THE CESR PROPOSAL TO EXTEND MAJOR SHAREHOLDING NOTIFICATIONS TO INSTRUMENTS OF SIMILAR ECONOMIC EFFECT TO HOLDING SHARES AND ENTITLEMENTS TO ACQUIRE SHARES

The CNMV's Advisory Board (or Committee) has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

General comments

1. The Advisory Board of the CNMV broadly welcomes the proposal since it considers that the scope of application of the Transparency Directive can and should be expanded to respond to cases such as those described in the consultation paper.

   The Board generally favours initiatives that can contribute to greater transparency in the securities markets and improve price discovery mechanisms.

   For that reason, the CNMV Advisory Board considers that this initiative should not be confined to the financial instruments referenced in the consultation paper; rather, the same enhanced transparency requirements could apply symmetrically to financial instruments giving entitlement to dispose of shares and other similar mechanisms (e.g. short-selling), public ignorance of which may potentially perturb the markets.

2. The Board considers that efforts should be made to maximise harmonisation of the legislation for implementing this initiative so as to ensure that certain markets or operators do not enjoy unfair advantages.

   Therefore, the ideal approach would be to widen the scope of the Transparency Directive (TD), provided that this can be done in a reasonable time scale.

   If the TD cannot be amended in the short term, another approach might be a "coordinated" amendment of national legislation in this area such as to achieve a level of harmonisation comparable to an amendment of the TD. Nevertheless, it would be desirable to include those common standards in the TD at a later date.

3. As for the scope of this initiative, it should be sufficiently ambitious as to respond to cases such as those analysed in the consultation paper while having no impact (or as small an impact as possible) on the acquisition of financial instruments for purely economic purposes. Limiting the proposed changes to transactions that entail or may entail a situation of significant influence or effective control over a listed company

not resulting solely from the possession of a large percentage of its shares appears to be the proper approach.

Below are our responses to the questions raised in the consultation paper:

Q1. Do you agree with CESR's analysis of the issues raised by the use of instruments of similar economic effect to shares and entitlements to acquire shares?

In view of the cases referenced in the consultation paper, there is undoubtedly a need for a debate on this issue.

Q2. Do you agree that the scope of the Transparency Directive needs to be broadened to address these issues?

Based on the response to the previous question, it is reasonable to commence a debate on an amendment of the TD, albeit with the limited scope described in the response to the next question.

Q3. Do you agree that disclosure should be based on a broad definition of financial instruments of similar economic effect to holding shares and entitlements to acquire shares without giving direct access to voting rights?

In our opinion, the expansion of the scope of the TD or amendments to national legislation to the same end should be ambitious enough to respond effectively to situations such as those described in the consultation paper. However, to avoid an unnecessary increase in costs, which would impair the European industry's competitiveness, the additional reporting requirements should not apply to financial instruments and their uses not related to influence or control over listed companies as analysed in the consultation paper.

There are logically two options for defining the scope of this initiative: a broad definition of financial instrument which would cover the instruments referred to in the consultation paper, or a list. Both approaches have advantages and drawbacks: a list would provide operators with greater legal certainty, while a broad definition would avoid the need for regular updates.

A solution might be to combine the two approaches: a broad definition accompanied by a list of specific examples of instruments to which the new reporting obligations refer specifically; as a result, operators would know that they would have to report at least on the transactions performed with instruments in the list.

Q4. With regard to the legal definition of the scope (paragraphs 50-52 above), what kind of issues do you anticipate arising from either of the two options?

Although the MiFID and the TD logically have very different scopes, it is hard to conceive of a financial instrument having different definitions within the same system of legislation. For that reason, and for regulatory coherence, we believe that both regulations should be based on an equivalent conceptual base, while in a separate section the scope of the TD could be extended to cover instruments classified legally as financial instruments.

Q5. Do you think that the share equivalence should be calculated on a nominal or delta-adjusted basis?

This is not an easy question to answer. Nevertheless, nominal values would be simpler and less volatile, which would reduce compliance costs.

Q6. How should the share equivalence be calculated in instruments where the exact number of reference shares is not determined?

In line with the preceding response, we prefer the use of nominal values for reasons of simplicity.

Q7. Should there be a general disclosure of these instruments when referenced to shares, or should disclosure be limited to instruments that contractually do not preclude the possibility of giving access to voting rights (the “safe harbour” approach)?

For reasons of legal certainty, we consider that the exceptions to the rule should be minimal, and set out in a list.

Q8. Do you consider there is a need to apply existing TD exemptions to instruments of similar economic effect to holding shares and entitlements to acquire shares?

We consider that existing exemptions should be respected. It would be meaningless to have exemptions with regard to share ownership which did not also cover ownership of instruments of equivalent economic effect.

Q9. Do you consider there is need for additional exemptions, such as those mentioned above or others?

We consider that the additional exemptions mentioned in the consultation paper need to be recognised.

Q10. Which kind of costs and benefits do you associate with CESR's proposed approach?

Any proposal to increase transparency generally produces benefits in terms of improved market working and, specifically, more efficient price discovery, while the costs arise from compliance with the new reporting requirements.

Q11. How high do you expect these costs and benefits to be?

This Advisory Board does not have the capacity to assess them. Nevertheless, compliance costs might be significant if the scope of the TD is expanded significantly.

Q12. If you have proposed any exemptions or have presented other options, kindly also provide an estimate of the associated costs and benefits

No additional proposals were made.