

Summary of comments by interested parties to the DG Internal Market and Services' working document ESC/34/2005 Rev.2 in relation to procedural arrangements for the choice of the home Member State, the content of the half-yearly financial report, the procedures for the notification and disclosure of acquisition or disposals of major holdings of voting rights, the dissemination of regulated information and the equivalence of third country issuers, under Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Introduction

In November 2005 DG Internal Market and Services disclosed working document ESC/34/2005 Rev.2 in relation to possible draft implementing to the Transparency Directive calling for comments from interested parties until beginning of January 2006. 31 interested parties responded to this public consultation.

The most represented categories of respondents are banks (23%), stock exchanges (15%), issuers (10%), regulated professions (10%), investors (13%), securities regulators (6%) and news providers, including the press (6%).

General comments:

Minimum or maximum harmonisation nature of the proposed implementing measures. Only one respondent asked for a regulation instead of a directive. Two others explicitly request that the level 2 provisions relating to notification of major holdings (including the standard forms and the independence test for management companies) should be maximum harmonisation. Finally, a third respondent considers that the explanatory memorandum is not an appropriate place to address whether the future text will be minimum or maximum harmonisation.

The general approach of the proposed text. A number of respondents voiced an explicit support for the approach of the document, limiting of the use of the binding legal text. On the contrary, a respondent considers that recitals are generally understood as interpretation tools. Usage of recitals not reflected in the actual text of the legislation may create legal uncertainty. Where the proposed recitals are intended to provide guidance while maintaining a degree of flexibility for the future, we recommend that they be replaced with corresponding recommendations. Conversely, where they are intended to provide for binding rules of conduct, they should form part of the text of the legislation.

In any event, appropriate flexibility to address necessary or desirable change is considered essential. CESR and its work at Level 3 should have a key role to play in achieving this. The fact that the proposals are less detailed than the corresponding CESR recommendations has been welcomed.

The recommendation of a Standard Form for notifications. Some respondents welcome the recommendation of a Standard Form. Other respondents consider that the content of

the standard forms should be maximum harmonising and for this reason feel that the use of a legally binding provision would be preferable to a recommendation (provided that their comments on substance are accepted). They are concerned that if Member States are left to their own devices the requirements will not be implemented consistently and the use of the standard forms may not be universal. This would lead to an additional administrative burden for the considerable number of firms who operate in a range of jurisdictions.

On the nature of the standard form, a respondent has questions about the how national implementation will be done. This respondent also claims that if not compulsory, the de facto harmonisation achieved by the form will be lost.

Article 2 – Definitions

According to some respondents, the definition of indirect instruction should be reviewed to avoid that it considers the group's corporate governance standards as an indirect instruction. This could be done by inserting a word in the last part of the definition: "specific business interests".

Article 3 – Procedural arrangement for the choice of the home MS

A respondent stated an explicit support for the proposed Article 3. Another respondent requested that this text makes clear the division of responsibilities between competent authorities as regards the dissemination of information taking into consideration the regimes under the TD and the Market Abuse Directive.

Article 4 – Minimum content of the half yearly non-consolidated financial statements

Several respondents had comments concerning the scope of Art. 4 in the light of the current legislative framework of accounting rules, in particular Regulation EC/1606/2002 and 4th and 7th Directives.

One respondent indicated that Art. 4 (which requires the companies not required to adopt IAS under the Accounts Regulation EC/1606/2002 for their annual financial reports, to re-organise their reporting systems and practices to comply with IAS principles for their half yearly accounts) goes beyond the current legislative framework on accounting rules (Regulation 1606/2002/EC which foresaw the application of IAS only to companies on a regulated market that produce consolidated accounts) as well as is against the principle of subsidiarity (Art. 5 of the Regulation 1606/2002/EC gave the option to extend the requirements to use IAS to other types of companies and to annual accounts to the Member States). A respondent indicated that the requirement is inconsistent with Art. 5(3) 2nd paragraph of the Transparency Directive which requires issuers preparing their half-yearly financial reports to follow 'the same principles for recognising and measuring as when preparing annual financial reports'. In that respect two respondents suggested that the scope of application of article 4 needs to be clarified so that it is in line with Art. 5(3) and Art. 5(6) of the Transparency Directive, i.e. it must be made clear that Art. 4 applies only with respect to half-yearly financial statements not prepared in accordance with IAS when the issuer is not required to prepare consolidated accounts in accordance with IAS.

As regards Art. 4(1), two respondents proposed to delete the last indent of Art. 4(1)(c) (the notes of the half-yearly financial statements shall include any events or transactions that are material to an understanding of the first six months of the financial year if material and not disclosed elsewhere in the half-yearly report) as potentially overlapping with art. 5(4) of the TD (the interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year) or Art. 6(1) (an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings). The latter respondent also indicated that it is not clear from the last indent of Art. 4(1)(c) (disclosure in the notes of any event or transaction that are material to an understanding of the first six months of the financial year and are not disclosed elsewhere in the half-yearly report) whether a free choice is given as to where to insert the information, or whether it is envisaged that the information provided in the notes is different, e.g. more detailed. It was also proposed to insert into Article 4.1 line 4 (and throughout the article where appropriate) the 'condensed' balance sheet, profit and loss account etc to in accordance with Article 5 (3) 2nd paragraph of the Transparency Directive.

One respondent objected to the requirement that information on revenue and results by business or geographical segment (Art. 4(1)(c)) should be required to be included in the half-yearly statements of small quoted/AIM companies, even if they provided this information in the annual financial statements, as too onerous and costly for these companies.

As regards Article 4(2) several respondents found it unreasonable to oblige that information required by IAS which is given voluntarily in the annual reports must be also disclosed in the half-yearly financial statement (the requirement is more onerous for voluntary information than for information mandatorily disclosed in the annual report, not all of which has to appear in the half yearly statement. It could be a disincentive from voluntary disclosure of that information in the annual report. One respondent suggested its deletion. Another suggested that it should be left for the issuer to continue to provide such voluntary disclosure also in its half yearly statements (especially if the information is material). Two respondents signalled that it is not clear from the wording of Art. 4(2) what kind of additional information is meant by the phrase *information required by IAS 34*. In their view it should be understood as a restriction on information to be published in half-yearly financial statements going beyond that required under Art. 4(1). One respondent, while agreeing that the information requirements should be defined by reference to the details contained in IAS 34, considered that they should be at a less demanding level in order to stay in line with the level one Directive¹.

A number of comments were made concerning definitions of terms used in Art. 4. In particular it was suggested that the generality of the formulation and absence of definition of 'materiality' might lead to a requirement to expand half yearly reports to the full scope of an annual report because, theoretically, only full scope disclosure ensures that "any events that are material to an understanding of the first six months of the

¹ According to the respondent the level 2 measure cannot adopt a requirement equivalent to imposing full IAS 34 to such issuers because it would modify a decision taken at level one (the EP and the Council have not adopted the initial proposal (content to be defined in accordance with the national accounting law of the home Member State) of the Commission in the proposed Directive that was far less stringent to the full application for IAS 34).

financial year" are caught. Another respondent indicated that the term 'material' has a different meaning in the context of accounting legislation (quantitative approach with a materiality test) compared to the context of securities Directives (impact of an information on the market)² and suggested to include clarification in the recital (according to him in the context of the implementing measures to Transparency Directive the reference should be made to the accounting legislation). The same respondent noted the need to define also the term 'misleading' half-yearly report and suggested alternative wording: *Additional line items shall be included if their omission would make the half-yearly financial statements not giving a real and fair view of the assets, liabilities, financial position and profit or loss of the issuer.*³

As regards proposed recital 6 two respondents suggested to delete the proposed recital 6 or at least to clearly indicate in it that an auditor's review of the half-yearly financial statement is voluntary (as provided for in Art. 5(5) of the Transparency Directive). They suggested to amend the first sentence as follows: "... it is important to ensure a common understanding on the level of assurance that investors can expect from ~~the~~ a possible auditor's review..." They also proposed that instead of calling for *a common understanding on the level of assurance that investors can expect from the auditors' review of half-yearly reports* it would be more appropriate to make a reference to ISRE 2400 which is a known standard. One respondent suggested to introduce in the possible recital 6 a mandatory auditor's review for listed companies that do not choose to have their half-yearly reports audited.

It was also suggested that the text of the proposed recital 6, which seems to be a positive definition of an auditor's review, should rather be included in Art. 2 on definitions or deleted, the meaning of negative assurance should be clarified and the typographical error "containing concluding" should be amended.

Other comments included the indication that Art. 4 is too prescriptive and might lead to unnecessary inflexibility in the future. It was also suggested that the principle of equivalence for third country issuers is respected for all aspects of financial reporting (Art. 14 should contain an equivalence provision also in respect of Art. 4).

Article 5 – Major related parties transactions

One respondent opposed to the mention in a possible recital 7 that issuers of shares who do not prepare consolidated accounts and are not required to apply the IAS/IFRS equally use the definition of related parties provided in IAS 24 as non-consolidated half yearly financial statements are governed by the national law of the Member States. This provision does not take into account the exemption to be granted to certain companies under the 4th Company Law Directive and goes beyond the mandate of Transparency Directive. Contrary to that, other respondent stressed that it is essential for the

² The respondent indicated that even in the context of securities Directives there is a different meaning given to the term 'material' in the Prospectus Directive (reasonable investor test for investment decision) and the Market Abuse Directive (price sensitive and non-public information).

³ The respondent stated that this is in line with the scope adopted at level one in Art. 5(6) which is limited to the financial statements and not to the financial reports. This would also maintain consistency with the responsibility statement defined at level one and not extend this responsibility at level 2 to a non-defined concept in Community legislation.

consistency that the proposed recital to Art. 5 is included in the legal text to have a binding nature.

One respondent suggested deleting the last sentence of possible recital 7 stating that *third country issuers that use GAAP that has been determined to be equivalent to IFRS should apply the definition of related party transactions provided by these standards* arguing that if a third country GAAP has been deemed as equivalent, issuers should be allowed to use the definitions under such accounting standards and not be subjected to any further requirements.

It was also proposed to ensure that the transposition date of the proposed implementing measures to the Transparency Directive is coordinated with the amendments to the 4th and 7th Company Law Directives which addresses related parties' transaction disclosure in annual accounts, to avoid the situation where major related parties' transactions would be disclosed only in the interim, but not in the annual financial report (this would arise in the case where national accounting standards do not require issuers to disclose major related parties' transactions in their annual accounts and where the issuer does not give this information on a voluntary basis).

It was suggested that the text of the proposed recital 7, which seems to be a positive definition of a 'related party transaction' with direct reference to IAS 24 for the purpose of interim management reports, should rather be included in the legal text to ensure the consistent use of the definition of 'related parties'⁴.

One respondent called for clarification of the meaning of the words 'major' (e.g. by providing a recital stating that 'major' means 'significant') and 'material' (see comments to Art. 4).

There was also a suggestion to delete paragraph (e) as superfluous to paragraph (d).

Article 6 – Short settlement cycle

For some respondents, in order to avoid misleading notifications, in the case of off-exchange transactions, the usual "short settlement cycle" should be defined in such a way as to cover the settlement period agreed between the parties to the transaction in accordance with market practice, or at least a longer period than currently envisaged, such as 10 days.

For another respondent “day of transaction” in paragraph 1 should be defined (possibly by reference to the execution of the transaction), and “definition of” in paragraph 2 should be deleted. Yet for another respondent, it would be more appropriate for paragraph 2 to be included in a recital. This respondent also suggests to make a reference to the applicability of Article 8.

Article 7 – market makers

Concerning the competent authority issue, several respondents prefer that market makers are regulated by their own competent authority only, including the monitoring of compliance with the exemption. A reference to Article 25 of Mifid has been made.

⁴ The obligation to use consistently the definition of 'related parties' was proposed in CESR advise (& 425-429).

Another respondent would also support the notification of market making activities to its own authority, but does not commit on which authority should be empowered to monitor the use of the exemption.

Hence, the system of cooperation among competent authorities (currently restricted to paragraph 4 of Article 7) should be extended. However, it has been stated that if the system of cooperation among competent authorities is too complicated and too expensive to establish, it should not be pursued.

However, another respondent is strongly against the proposal that market makers notify their competent authority instead of that of the issuer: (i) the authority under the MiFID is not interested in receiving this information and even if cooperation arrangements are established, this may imply delays in time that may be relevant. On the contrary, the competent authority of the issuer has a strong interest to know who is intervening in the shares of a certain issuer, as it is the authority with the legal duty, under the Transparency Directive, to supervise major holdings on its issuers; (ii) market makers will only be required to send letters to the competent authorities in relation to the issuers in which they conduct market making activities. A market maker is not likely to be acting as such for issuers across all Member States, on contrary, they will be probably acting as such for a restricted number of issuers on a restricted number of markets (and, therefore, will need to notify a restricted number of competent authorities, which is not burdensome); (iii) market makers may not have a competent authority (i.e. Mifid does not directly regulate market making activities, only of dealing on own account. Therefore, market making as such is only indirectly covered by this Directive).

Independently of the addressee of the notification, it has been raised that market makers should have the possibility to notify their market making activities to the competent authority via a third party, such as the stock exchanges (cf. issuers in Article 13(1)).

Concerning the triggering events for the notification (paragraph 1), a respondent requires clarification (e.g. recital) that ‘new contract’ does not refer to an extension of a contract with an issuer that has been notified already. Sub-contracts of notified contracts with issuers should also not be included. It is also stated that the notification on an issuer by issuer basis is too bureaucratic and inconsistent with the practical likelihood that monitoring will be done at market maker level.

A proposal for a different drafting of paragraph 1 has been made:

“For the purposes of paragraph (5) of Article 9 of the Transparency Directive, a market maker shall notify the competent authority which regulates it under Directive 2004/39/EC that it intends to rely on the market maker exemption in that paragraph in relation to one or more issuers no later than the time limit provided for in paragraph (2) of Article 12 of the Transparency Directive as it applies in relation to the first such issuer to whom the market maker would be obliged to make to a notification under paragraph (2), were it not relying on the market maker exemption.”

A recital could then deal with the earlier points at which a market maker can choose to notify (see paragraph (1)(a) and (b)). Paragraph (1)(b) should be an example; as paragraph (3)(b) indicates, a contract is not always required.

It has been raised as well that the last sentence of paragraph 1 should refer to notifications from market makers on each issuer with shares listed, rather than on each share.

Concerning paragraph 2, doubts are expressed on its need. But if needed, it would seem to be needed only when the market maker ceases entirely (and not just temporarily) to make a market in relation to any issuer or proposes, as a matter of general policy (and not just on a one off basis), to undertake the activities in Article 9(5)(b) of the Transparency Directive. If it can't rely on the exemption for any reason whatever and has a disclosable level of interest, it has to announce. It is not clear why it should also have to notify the regulator, who can see the announcement. This seems unnecessarily bureaucratic.

In relation to Article 7(2)(b) (reference to the activities of buying shares or backing the shares price mentioned in Article 9(5) of the TD), a respondent requires to integrate the definition of these activities developed by CESR (cf. §100 of CESR's consultation paper of May 2005).

It has also been suggested that the last sentence of the paragraph would be better placed in a recital.

Concerning paragraph 3, for some respondents any enquiry by a competent authority (art.7(3)) should be conducted only if a reasonable basis concern: e.g. that the market maker holds more than 5% of the voting rights of the issuers outstanding shares or, if its holdings represents less than 5% of voting rights, is conducting other activities vis a vis the shares of the issuer. On site inspections should only be done by market maker's own competent authority. For another respondent this paragraph is not acceptable as it adds powers for competent authorities in addition to the ones contained in Article 24. The Commission would lack powers to do this. In addition, this may overlap with the rights of MS under Article 3 of the TD. Yet, for a respondent, paragraph 3 could be better dealt with at level 3.

It has been requested by several respondents to make clear that a separate account is not needed (art. 7(3)(c)). The following drafting suggestion has been made:

"the requirement in letter (c) of this paragraph shall be deemed to be fulfilled inter alia if the market maker holds the shares or financial instruments subject to market making activities in a separate account. Market makers are allowed to identify shares or financial instruments held for market making purposes by other verifiable means."

The requirement for a written contract to perform market making activities should be governed by the law of the home MS of the market maker, not of the issuer. This should be regulated by Mifid.

Concerning paragraph 4, it has been requested to clarify that the requirement for market makers to notify a holding would only apply if the relevant threshold is crossed. The following wording is suggested "...when reaching a notifiable threshold". Another respondent think that this paragraph is more suitable for level 3 than level 2. Finally another respondent is opposed to this paragraph as being a disguised modification of Articles 24 and 28.

Other comments. Some respondents request that the implementing measures clarify that the market maker exemption contained in Transparency Directive Article 9(5) applies

also to market makers' activities in financial instruments, and therefore Article 7 applies also to financial instruments. The following drafting suggestions are made:

Article 7(1), last sentence: "This notification shall be made for each share or financial instrument for which market making activities are conducted".

Paragraph (3)(c) "identify the shares or financial instruments held for market making activity purposes.", and in the sentence following that "The requirement in letter (c) of this paragraph shall be deemed to be fulfilled if the market maker holds the shares or financial instruments subject to market making activities ...".

Finally, a respondent requires that the market making (and trading book) positions which are exempt should be left out of any aggregations (and not just those where the aggregate position is below 10%).

Article 8 – trading days

It has been suggested to delete from footnote 9 the recommendation that issuers should indicate their competent authority in their website. If not deleted, at least a reference should be included to limit its scope to issuers of shares only. However, for another respondent an issuer should be required to include on its website, or in its annual accounts, details of who is its home member state. Otherwise it may be not be easy to link an issuer with its home member state.

It has also been mentioned that the directive is assuming, wrongly or rightly, that the trading days for a Member State will be the same for each market. It has been suggested to add: "of the different regulated markets situated or operating on its territory" after the words "calendar of trading days" in the second sentence.

Article 9 – who should notify

A respondent proposes to modify the title of this article by "shareholders, natural persons and legal entities required to make the notification of major holdings" in line with Article 12(2) of the TD.

For several respondents Article 9 is outside the scope of the Transparency Directive: the wording of Articles 9 and 10 of the TD would be unequivocal and would not support the wording of the working document. This is likely to result in confusing announcements which imply that a person has disposed of their entire interest in shares when they have made what is generally a temporary disposal of part of that interest. Furthermore it would result in a doubling of notifications, in particular as a result of proxy voting (e.g. ahead of shareholders' meetings). The shareholder should not notify alterations in case of proxies.

Article 9(1)(a) of the working document. For one respondent, there appears to be some inconsistency in the approach to Article 10(a) of the TD (cf.). The question of whether one or all parties to an agreement falling within that Article needs to notify will depend on the terms of the agreement. Where the agreement is that the parties to it will agree between themselves a common policy and will then vote in accordance with that policy, the effect of Article 10(a) would appear to be that they are all treated as interested in each other's shares since they are all, in effect, entitled to exercise the voting rights attached to all of the shares to which the agreement relates. If, however, the agreement is that one party will determine the policy and all the others will vote in accordance with that policy, it seems that the person who can determine the policy *alone* controls how the

voting rights are exercised and is, in effect, entitled to exercise them. This is not quite the same situation as under Article 10(b), where the voting rights are actually transferred (mechanically, this is presumably by way of the grant of a right to direct how those rights are exercised).

Also in relation to Article 9(1)(a) and the paragraph following 9(1)(h), it has been stated that the relevant proportion of voting rights should be those effectively held by the parties to the agreement instead of those "subject to the agreement", which would allow for a contractual delimitation of the legal obligation (unless "subject to the agreement" is understood as referring to the total voting held by the parties to the agreement). If a contractual delimitation is accepted, this would easily allow for by-passing the take-over bid rules.

Article 9(1)(h) of the working document A respondent also claims that the proposed requirement to make a notification after the proxy holder's discretion has ended *as well as* when it commences is onerous, although paragraph (2) appears to allow these two notifications to be combined. However, even this provision may not make the notifications practicable in all circumstances⁵.

Article 9(2)2nd sentence of the working document A respondent also raises concerns in relation to the single notification in the case of proxy voting because the proxy voter would be obliged to give the name of the shareholder in the notification, according to Article 12(1)(d) of the TD (cf. also Annex to Standard form VR).

Article 9(3) and 9(4). It has been suggested that paragraphs 3 and 4 may be better as recitals.

Other respondents point to the fact that if an obligation to notify the crossing of thresholds is imposed on the lender of shares, this might have a negative effect and reduce the amount of lending and hence the liquidity of the market due to the additional administrative burden on the lender of shares. Thus, only the borrower of shares should notify.

A request has been made to include in the implementing measures minimum sanctions for non compliance with the notification of major holdings in order to ensure that there are consistently and effectively implemented across the EU Member States.

A comment has been made by one respondent in connection with the timing of notification system. This respondent suggests to include a recital making clear that systems that combine notification of major holdings to the issuer and disclosure of those notifications to the market, so that the information reaches the issuer and the market as

⁵ It is usual for the Chairman to be given proxies which permit him to use his discretion in exercising the relevant voting rights at a forthcoming general meeting of the relevant company. These proxies come in over a period of time. As the votes are only exercisable at the meeting to which the proxy relates, it does not seem cost effective to require notification until the deadline for lodging the proxies arrives and the total is known. In theory, there is a subsequent notification obligation after the general meeting that the Chairman no longer controls the relevant voting rights. It would be clearer and more cost effective if one notification had to be given (as soon as reasonably practical after the proxy lodging deadline) of the extent of the Chairman's interest and the fact that he will cease to be so interested after the relevant meeting. The wording in paragraph (2) does not appear to allow this as it refers to the notification at the moment of giving the proxy.

soon as possible (generally 1 trading day of delay) and at the same time, will be in accordance with the Directive and recommended.

Another comment has been made in relation to the calculation of the thresholds. Clarification is requested as to whether short positions can be netted against long positions when calculating whether a notification threshold has been reached/crossed. With respect to shares, where the execution dates are the same, 'sells' are clearly netted against 'buys'. It is also suggested that short (e.g. puts) and long positions (e.g. calls) with respect to financial instruments could also be netted against each other (irrespective of their expiry or exercise dates) UNTIL they are respectively exercised or expire. For clarity purposes it may be helpful to confirm that notifications are to be made based on end of day positions only, rather than for each and every crossing of a notification threshold in any given day (this is also supported by another respondent). Given the timing requirements for notification, this would appear to be a reasonable assumption as well as a practical one for global financial institutions that conduct securities trading activities across multiple time zones each day and therefore are only in a position to consolidate all the trade movements in any one security at the close of trading each day.

Article 10 – should have learnt

Several respondents support the use of the "execution of the transaction" as the triggering event for the purpose of clarifying the circumstances under which the notifying person should have learnt of the acquisition or disposal of the possibility to exercise voting rights: not only this would meet the need for certainty, but it also provides better transparency than the settlement date as the settlement date may occur some time (up to 25 days or more) after execution (e.g. it would undermine the objective of prompt disclosure of the TD). It is underlined that a notifying person would have at least 5 working days to notify (one after he should have learnt plus the four days foreseen in Article 12(2), which should be long enough). In addition, the use of the settlement date would be problematic from a systems point of view (as traders monitor most disclosable transactions by trade date) and from the legal certainty point of view (one would need to specify whether settlement means the contractual settlement date or the actual settlement date – in any event, an unambiguous temporal rule would be lacking since the relevant dates would vary from case to case). They do not see why an off-exchange transaction should be subject to a different requirement from an on-exchange transaction (a reference to the Mifid level playing field is made). Others would support the execution of the transaction date for exchange transactions only, (though some preference for "settlement of transaction" has also been expressed among these respondents). A respondent calls for the alignment of the wording "day of the transaction" in Article 6(1) with the "execution of the transaction" for consistency and certainty reasons.

However, some specificities might be needed for off exchange transactions. One option could be to adapt the "execution of the transaction" as triggering event for off exchange transactions to account for legal specificities in the Member States and to give sufficient consideration to the scope of contractual designs, the execution of transactions concluded off exchange should be placed at the general point of time at which, according to the applicable law, the transfer of the legal position comprising an entitlement to the execution of voting rights effectively takes place (an amendment to the proposed recital 10 would be necessary).

Another option claims that for off exchange transactions, the final result of the transaction is relevant and the point in time when a shareholder should have learnt about his holding should not be earlier than the point of time when the transfer of ownership has taken place. The following wording has been suggested:

“For the purposes of paragraph 2(a) of Article 12 of the Transparency Directive, the shareholder or the natural person or legal entity referred to in Article 10 of the Transparency Directive, shall be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights on the trading day after the settlement of the transaction. In jurisdictions in which the transfer of ownership of the shares is effected already by the agreement on the acquisition or disposal this is the point of time when the agreement is entered into. In jurisdictions in which the agreement on the acquisition or disposal is only one element of the transfer of ownership of shares, it is the point of time, when all supplementary steps necessary according to this jurisdiction are fulfilled“.

On the contrary, a number of respondents believe that an approach based on the "settlement of the transaction"/transfer of ownership" should be followed (a reference to a T+3 settlement cycle could be included for on exchange transactions; for over the counter transactions the corresponding period could be T+10). According to their explanations, the trading day after the execution of the transaction is not an appropriate date for several reasons: not always possible for large internationally active financial institutions to learn of their notification obligations within one day of execution; not normal market practice to monitor every day if "time-in-force" orders executed; execution should mean when the voting rights are actually transferred (e.g. value date). An approach geared to the date of execution of the transaction would therefore shorten the notification period.

Concerning recital in footnote 10, it has been invoked by a respondent that the second sentence of this recital should be deleted: i.e. the directive should not regulate when transactions should be executed. But another respondent (FESE) specifically supports the drafting of this recital.

Finally, another respondent thinks that the Commission has mistaken CESR's advice and applied it beyond its scope. CESR was looking at a situation where a person deals through a broker. The drafting does not appear to be limited to this situation but should be⁶.

⁶ Article 12(2)(a) of the Transparency Directive also covers, for example, a situation where a parent undertaking should have learnt of the acquisition by its subsidiary undertaking. The time period in which a person ought to have learned of an acquisition or disposal made by a broker on that person's own behalf and at his instruction is not obviously the same as the period within which a parent undertaking should have found out about its subsidiary undertaking's acquisition/disposal. Indeed, it is not obviously the case that the period within which a person ought to have learned of a transaction on his behalf should be the same in a situation where the principal has not initiated the transaction (for example, because it has been carried out on his behalf by an asset manager in the exercise of discretion) as in a situation where the principal has initiated it.

CESR looked at the rather limited situation of a broker instructed to execute a transaction for a client. Even in this situation, one trading day is a very short period. It is also not clear which market should be looked at to determine what this means. The Commission indicates in (5) of the Introduction to the Working Document that it is considering whether settlement of the transaction should form the trigger. This is preferable to the current proposals, but it would be more logical for a person to be taken to

Article 11 – management companies

A respondent proposes to modify the title of the Article by adding the words “involved in individual portfolio management” after the words “investment firms”, to avoid ambiguity.

Concerning the content, a respondent made an explicit support for the proposal as it stands. However, another respondent considers that if any notification is to be required under this Article, it should only be that a person intends to rely on the exemption and which management company or investment firm it intends to rely on it in relation to. The declaration should not extend beyond this. Points about the interpretation of the exemption should be dealt with at level 3, rather than at level 2.

Concerning the addressee of the notification, a respondent requires that the notification should be done to the competent authority of the management company. Competent authorities should pass their own assessment of independent to the other authorities upon request.

A respondent suggests that it be clarified that a parent undertaking of a management company, in order to benefit from the exemption in Article 12(4) of the Directive, is only required to make notifications pursuant to Article 11 of the proposed text insofar as the parent undertaking has a holding of its own in an issuer in the relevant Member State(s). It should further be clarified that if the parent undertaking has no holdings in issuers of certain Member States, it shall not be required to make notifications pursuant to Article 10 letter (e) of the Directive although the management company has holdings in such issuers, provided that the parent undertaking can demonstrate that there is an arms-length relationship between the parent undertaking and the management company (as set out in Article 11(2) of the proposed text).

A respondent considers that the requirement to implement written policies and procedures designed to prevent distribution of information on the exercise of voting rights between a parent undertaking and a subsidiary should not be a strict requirement of the independence test. The existence of such policies may be better dealt with as a recital.

know that an acquisition or disposal has occurred when that person has received the contract note from their broker or asset manager which is required under the Markets in Financial Instruments Directive.

This respondent considers that it would be helpful if the drafting expressly set out when an acquisition or disposal takes place. This question is key to (i) when the obligation to notify arises and (ii) the threshold crossing date which needs to be included in the notification. They may not necessarily occur at the same time. As the Commission recognises, CESR appears to have concluded that the execution of the transaction is the key, although it is by no means clear that it considered properly the situation where settlement of the transaction is conditional. This respondent supports in principle taking the date of execution (trade date) as the date when both acquisitions and disposals take place: systems of firms which are significant traders are currently set up on this basis. However, some guidance would be required from the Commission on the approach to be taken where the transaction is conditional (whether the agreement is subject to a condition precedent or settlement is subject to the fulfilment of one or more conditions). It would seem that the market needs to understand such conditionality in order fully to understand a disclosure of the acquisition/disposal of such an interest if disclosure is made by reference to the date of execution. Otherwise the market would be unaware of the possibility that the transaction may never settle and unable to make any assessment of the likelihood of this.

A respondent requires the deletion of the third paragraph of (1) and the redrafting of the fourth paragraph (when to make a notification) along the lines of the suggestions made in relation to Article 7. Concerning paragraph (2), if an asset manager manages assets of its parent, it is likely to exercise the voting rights on the parent's behalf. While it may do this without instruction from the parent, the parent may well have general shareholder activism etc policies which need to be followed. So (a) and (b) would appear to need some adjustment. As regards (c), while the relationship may be generally an arms' length one, there may be some aspects of it (eg length of notice) which are not.

It has been requested that recitals in footnotes 11 and 12 be part of the binding text.

Article 15 – equivalence – management companies

For some respondents, the equivalence test for independence of third country management companies and investment firms in Article 15 of the working document is potentially unworkable. It is much wider than the test provided under Article 11 of the working document (and therefore not equivalent) and it is unlikely that any non-EU management company or investment firm would be able to comply, as currently drafted.

The conditions set out in Article 15(a) and (b) do not relate purely to tests of independence from the parent undertaking or other entities in the same group as the investment firm or management company, but cover all relationships which a management company or investment firm may have, including relationships with clients unconnected with the firm's group: The condition set out in littera (a) states that the firm must be free to exercise the voting rights attached to the assets which it manages in all situations. As drafted this restriction means that a management company or investment firm would need to ignore all client instructions, both generic and specific, with respect to voting rights from any client, regardless of whether they were in the same group as the firm. Similarly, in relation to the condition set out in littera (b) of Article 15, the interests of other parties outside of an investment firm's or management company's group are not relevant to the test of independence. In fact the interests of clients outside of the group should be taken into account in the event of a conflict of interest.

The following drafting amendments to Article 15 have been suggested

"(a) the management company or investment firm is free to exercise the voting rights attached to the assets it manages (other than the assets it manages on behalf of the parent undertaking and controlled undertakings of its parent undertaking) independent from its parent undertaking in all situations;

(b) the management company or investment firm disregards the interest of the parent undertaking or any other controlled undertaking of the parent undertaking whenever conflicts of interest arise."

According to one respondent, draft recital in footnote 18 may imply that it is not possible to for a management company to rely on the exemption if it is incorporated in a member state and is the manager of a UCITS scheme, which would seem wrong.

Article 12 – financial instruments

While one respondent wonders about the necessity of this Article, other respondents would welcome an Article provided that legal certainty is enhanced by including an

enumerative list of financial instruments. One of them expresses preference for CESR advice. The use of “may” would not be acceptable.

Concerning paragraph 1, it has been underlined the need to delete "and any other derivative contracts relating to shares" in 12(1)(a) second indent, as otherwise it would allow for an arbitrary extension of the scope of notifiable instruments. Another respondent considers that “relating to shares” in the second indent should be deleted and that the following should be added after the second indent: “that entitle the holder to acquire shares under a formal agreement.”

Contracts for differences relating to shares should qualify as financial instruments, even if they allow for cash settlement: the UK’s Takeover Panel has only recently taken steps to force full disclosure of such positions, with effect from 7 November 2005, to deal with the increasing use of contracts for differences to build up, reduce or hedge positions in companies which are the subject of a takeover bid or approach.

Other respondents request the deletion of 12(1)(b) which contain the list of financial instruments that are not covered by the TD. If maintained, the list should be preceded with "in particular" or "for the avoidance of doubt" to avoid being considered as exhaustive. Another respondent requires that in the third indent, the reference to "currencies, interest rates or yields" should be deleted.

One respondent considers that the text should indicate that the underlying shares must be already issued, as mentioned in the TD.

One respondent wonders about the need of paragraph 2.

While it has been stated that a reference to the applicability of national law for the interpretation of formal agreement is desirable (which is done in paragraph 3), other voices claim that any reference to national law should be avoided as legally binding arrangements may be entered into under a variety of laws, whether of the issuer, the holder or another law. Another respondent indicates that the reference to national law is unclear and the corresponding recital is not helpful.

In this connection, it has been required that the abstract criteria laid down in Article 13 of the TD should be substantiated. In this context, another respondent considers that paragraph 3 should be included in paragraph 1 and the recital in footnote 13 be integrated into the text of the Article. Concerning this recital, there is a request to broaden its scope in order to cover shares not yet issued as well as shares already issued; and situations in which the decision of the instrument holder is dependent on external factors. Another respondent claims that this recital should be deleted as it appears to mandate the content of the contractual arrangements between the parties.

Concerning paragraph 4, the comment has been made that litterae (d) and (e) are burdensome and not necessary. Another respondent requires to align this paragraph with §403 of CESR advice: add information on triggering transaction to (4)(c); add requirement in relation to passive crossings.

It is also suggested that paragraphs 398 (instruments that do not qualify under Article 13) and 397 (instruments that expire) of CESR advice should be integrated as useful explanations as recitals.

Clarification (e.g; recital) has been requested that notifications pursuant to Articles 9+10 and those under 13 of the TD need not to be aggregated (cf. CESR §375).

Finally, it has been also requested a clarification on whether the trading book exemption in Article 9(6) of the TD is limited to shares or also applies to financial instruments held in the trading book. This respondent considers that it is neither reasonable nor realistic to notify derivative positions held for the purpose of trading activities, even though they are held beyond the 5% threshold of Article 9(6). It requests that either financial instruments in the trading book do not qualify as financial instruments within the sense of Article 13 of the TD, or that they are not counted for the notification purposes, even if beyond the 5% threshold of Article 9(6) of the TD.

Article 13 – Minimum Standards for the dissemination of information

About two thirds of respondents commented on Article 13 of the Working Document and its corresponding recital. The main comments may be summarized as follows.

The comments most commonly made with regard to Article 13(1) relate to the ultimate responsibility of issuers for the dissemination of information in cases in which they decide to entrust a third party with such dissemination. Respondents generally do not object in principle to the ultimate responsibility of issuers for the dissemination of information. However, they point to the proposed Recital 15 which provides that "issuers must ensure that the third party who disseminates information on its behalf is capable of doing so in adequate conditions". This provision, in their view, puts an excessive onus on issuers, which should only be subject to a duty of care when using a third party for the purposes of disseminating regulated information. These respondents, therefore, consider that systems such as the accreditation of third parties by competent authorities, or the delivery by third parties to issuers of a document demonstrating their compliance with the dissemination standards, should be expressly encouraged. Such systems would give a guarantee that third parties comply with high standards and use 'state of the art' technology. They would also reduce the responsibility of issuers using third parties to disseminate regulated information on their behalf. One respondent expresses disagreement with the Commission's approach to insert dissemination standards for third parties in recitals and argues that this will lead to lower the level of compliance. In this respondent's view, these standards should be made mandatory. Another respondent considers that any Level 2 measures should introduce a mandatory regime of authorisation for service providers at EU level which would be implemented at national level.

With regard to the text itself, one respondent considered that the reference in Article 13(1) should not be to "minimum standards", but only to "standards", so as to avoid an overlap with Article 3 of the Transparency Directive.

With regard to the substance of Article 13(2) and the corresponding parts of recital 15, several respondents consider that the use electronic means by the issuer when sending regulated information to media or to a third party in charge of disseminating the information should be made mandatory and not merely encouraged. This obligation, however, would be without prejudice to the right of Member States to impose newspaper publication. One respondent points out that "electronic means" does not have a commonly accepted meaning. Another respondent considers that the requirements relating to the electronic format of the information communicated to the media should be detailed.

Further, some respondents consider that it should be clarified that there is no obligation to disseminate regulated information to each investor in each Member State but that the obligation only relates to the use of media capable of reaching the public throughout the European Union.

A number of comments relate to the wording of Article 13(2). The reference to "an appropriate number of media", notably, is much commented upon. Some respondents find the wording ambiguous and too vague. They question whether press agencies, financial news providers and websites are covered by such wording. One respondent suggests that "an appropriate number of media" be replaced with "an appropriate number of press agencies", and considers that the reference contained in CESR's technical advice to "key national and European" be inserted in Article 13(2). One respondent considered that any Level 2 measures should aim at introducing a "safe harbour" detailing how concretely the dissemination requirements of the Directive would be deemed fulfilled. That respondent suggested that sending the information to a third party dissemination services provider authorized by the competent authority or to a press agency ranking among the first press agencies at EU level should be deemed sufficient.

Other comments relate to the words "without delay", which would not be consistent with Community terminology (Market Abuse, Transparency and Prospectus Directives), the wording "the general public" as opposed to "the public" in the Level 1 text. It was also suggested that a definition of "public" should be inserted in the implementing measures. Two respondents argued that a clear definition of the terms "public throughout the EU" in Recital 15 would obviate the need for Article 13(2) altogether. One respondent argued that regulated information should not be "communicated to" an appropriate number of media, as currently provided in Article 13(2) but should be "made available in" a variety of media, including newspapers, to mirror the recommendation made in Recital 15 that issuers "make regulated information available on their own or other websites". This would, according to this respondent, be in line with the advice of CESR which recommended that issuers establish mandatory connections with key national and EU newspapers, news agencies, etc.

Most comments in relation to Article 13(3) relate to the meaning of "full unedited text". Respondents indicate that issuers should not be obliged to actually disseminate documents such as annual reports in full. For such documents, it should suffice that issuers disseminate an announcement indicating where the report is available.

Other comments pertain to the exemption of liability for issuers in case of shortcomings and systemic errors at the media, with one respondent considering that Level 2 measures should not contain any such exemption, as such a matter, under Article 24 of the Directive, falls under the authority of national competent authorities. One respondent requested that the order between 'shortcomings' and 'systemic errors' in the text of Article 13(3) be reversed.

One respondent commented on Article 13(4), requesting that the mention of the 'sequence number of the disclosure' be added, as it would help investors to search for information and would be useful for storage purposes.

The few respondents which commented on Article 13(5) mainly pointed to the fact that this paragraph does not take account of the fact that the person responsible for the dissemination of information may actually be, under Article 21 of the Transparency Directive, a person who applied for the admission of the issuer's securities to trading

without the issuer's consent. In such cases, the issuer would not be able to give the information required under Article 13(5) of the Working Document to the Competent Authority. Nor should it be held responsible for the dissemination of regulated information. The exact meaning of "security validation details" was also questioned.

On Recital 15, one respondent considered that the last paragraph of the recital on financial reports is of a normative nature and should therefore be included in a specific Article. Another respondent expressed disagreement with the statement that the mere availability of information is not sufficient for the purposes of the Directive, on the ground that investors can be expected of actively seeking regulated information, to which they are given easy access.

Other comments – One respondent pointed to the absence of any guidance in the Working Document in relation to the level of fees charged to media for price sensitive information and considered it prudent to require that any charges imposed by issuers should not exceed the marginal cost of making the information available. Excessive pricing, according to this respondent, would discourage the media from disseminating price sensitive information.

Several respondents commented on the provision of information dissemination services to issuers by institutions which perform other functions, such as stock exchanges, competent authorities or storage mechanisms.

Several respondents insisted that where officially appointed storage mechanisms also act as third parties for the dissemination of regulated information, these two functions should be kept functionally separate. Since making regulated information available to the storage mechanism is mandatory under the Directive, such separation was necessary to avoid any risk of unfair competition with commercial entities offering dissemination services. It was also suggested that a recommendation should be made that issuers or third parties disseminating regulated information on their behalf communicate information to stock exchanges directly and in real time to enable stock exchanges to meet their obligations, notably trading suspension in case of market abuse.

One respondent considered that the mere requirement that third parties who disseminate information on behalf of issuers while performing other functions such as media, stock exchanges or competent authorities should keep these functions separate was not sufficient. According to this respondent, stock exchanges should no longer be allowed to impose on issuers, as is currently the case in some Member States, the obligation to disseminate price sensitive information via the exchange's own commercial website. Such an obligation would give exchanges an unfair competitive advantage over other players, as they are guaranteed to disseminate 100% of the price sensitive information.

Another respondent pleaded for a clarification that competent authorities also are a third party which can disseminate regulated information on behalf of issuers and as a result should be subject to the standards contained in Article 13(2) to (5).

Article 14 - Equivalence

Some respondents highlight that this Article is not flexible enough (for one of them it would possibly be not workable in practice): third country issuers should not be deterred from EU markets. One of them suggests that, as the TD is not maximum harmonisation, competent authorities should also be able to recognise other standards if they

demonstrate equivalency in another manner. Equally some respondents call for removing uncertainty of implementation (in particular when choosing their home Member State for those issuers that do meet these criteria). The following drafting changes have been suggested:

“Without prejudice to the powers of the competent authority of the Member State pursuant to Article 23 of the Transparency Directive...an issuer whose registered office is in a third country shall be deemed to be meeting equivalent requirements to those set out in Article [] of the Transparency Directive in particular if...”

or replace “may be deemed” by “is deemed” or “shall be deemed”

Finally a respondent proposes to introduce a general principle indicating that when the fulfilment of the equivalence principle will generate a conflict or a contradiction with the issuer’s national legislation, the national legislation should prevail. The aim of the equivalence principle should not impose EU legislation on an extra territorial basis, but rather maintain an appropriate level of information taking into account their particular situation compared to EU issuers.

This respondent also calls for transitional arrangements of 10years for third country issuers because these provisions might disrupt the functioning of international capital markets.

Article 14(1)(a) requires such issuers to disclose certain information in the management report, including ‘non-financial key performance indicators relevant to the particular business’. This is a new and untested requirement for EU companies, imposed by the Modernisation Directive. A respondent questions whether at this stage such information should also be required from third country companies. However, another respondent has no objections.

Concerning 14(2), it has been stated that a ‘review of period covered’ is not required by Art. 5(4) of the Directive and should be deleted.

In relation to paragraph 3, it has been stated that the text should refer to ‘persons’, rather than ‘person’. In some jurisdictions it is likely to be the issuer that is responsible for accounts, rather than an individual.

Concerning Article 14(5), it has been stated that the phrase “minimum capital and equity requirements and liquidity issues” in littera (b) is unclear and should either be clarified or deleted. Another respondent proposes to replace “requirements” by “information” because there might be no such requirements in the legislation of a third country.

A respondent points out that in article 14(5) 2nd paragraph the Commission changed a “will” to a “may”, therefore adopting a different approach than the one proposed by CESR. The Commission should revert to CESR advice on this (paragraph 475). In addition, paragraph 476 should be inserted in the legal text. On the contrary, another respondent is of the view that this sentence should be deleted for legal reasons: i.e. it intends to give supplementary powers to competent authorities, which would not be supported by Article 24. The Commission would lack an appropriate legal basis for this and overlap with the rights of MS under Article 3 of the TD. Finally, it has also been noted that if "local accounting principles" in this sentence refers to the relevant third country's GAAP, the drafting should rather be: "under the accounting standards of that third country" or "under the law of that third country".

Regarding paragraph 6, the presentation of appropriate consolidated financial information is of crucial importance to investors. A respondent is not convinced that issuers based in jurisdictions that do not require consolidated financial statements should be similarly exempt in the EU. Another respondent has no objections. Finally, some respondents call for a specific regime for securities with an individual denomination of at least 50000 Euro or an explicit reference to the regime of the Prospectus directive. This respondent underlines that a restated financial statement is not required in item 11.1 of annex 9 of regulation 809/2004, referred to in the recital in footnote 17.

On paragraph 7, one respondent would favour a more relaxed approach authorising the extension of time limits in order to permit third country issuers to keep in line with their national legislation. The word “law” should be replaced by “legislation”. A clarification of the scope could be included indicating that this paragraph deals with third country issuers with shares admitted to trading in a regulated market.

Some respondents point out to the fact that there is no equivalence provision for notifications of major shareholdings in relation to third country issuers. Paragraph 7 of Article 14 of the Commission’s working document provides for some flexibility in respect of the time periods specified under Articles 12(2) and 12(6) of the Transparency Directive, but does not provide any equivalence in terms of the content of the notification where a similar notification requirement already exists in the jurisdiction of the third country issuer. In these circumstances, third country issuers will receive two notifications relating to the same holdings. The implementing measures should provide for equivalence where the notification requirements that apply in the country where an issuer has its registered office reflect, as a minimum, the requirements of Article 12(1) of the Directive.

A respondent points to the fact that, the TD being a minimum harmonisation directive, the language in footnote 16 suggests that even if a third country issuer's financial statements comply with Article 14, then that third country's GAAP may still not be deemed equivalent by a home member state. This would create uncertainty for third country issuers during the period from when they need to select a home member state, until all member states have determined their position on which GAAPs they consider to be equivalent. To address this potential issue, third country issuers should be able to assume equivalence if they have complied with Article 14 UNLESS, at the time they select a home member state, their respective GAAP is deemed not to be equivalent.

A respondent indicates that Paragraphs 471 and 472 of CESR advice, in which the definition of “parent” for the purposes of the equivalence was defined, should be inserted in the text, at least as recitals (but should more properly be dealt in the definitions).

Standard From

Concerning the use of electronic means only, some respondents provide support for this option; while others would prefer more flexibility: i.e. electronic means encouraged (maybe by providing some incentive to use this method) but not rendered mandatory. The paper system would remain in use as a back up.

Paragraph 2 (nature of the triggering event). Some respondents indicate that the requirement to disclose the nature of the triggering event in paragraph 2 of the Standard Forms should be removed as well as notes (vi) and (viii). This requirement exceeds the Directive and will be overly burdensome for many financial services firms and groups,

executing many transactions on a daily basis all over the world. It will often be difficult for a firm to identify precisely which transaction resulted in the threshold being exceeded. As an alternative, it could be provided the position before the threshold was crossed, the position after and the direct/indirect holdings of the new position.

Paragraph 4 (underlying shareholder). Some respondents claim that the requirement to provide details of underlying shareholders for notifications under Articles 10(b) to (h) of the Directive should only apply where the shareholder would be obliged themselves to make a notification under Article 9 if they were entitled to exercise the voting rights. Note (iv) to the Standard Forms refers to a “notifiable interest” but it is not clear from this that custodians would be excluded from the requirement, even though they are exempted from the notification requirements of Article 9 of the Directive. A suggestion to include "where applicable" or "(with) notifiable interest in point 4 of the form has been made.

Paragraph 7 (resulting situation in terms of voting rights). For some respondents there should be no requirement to disclose the extent of a holding (whether of shares and/or financial instruments) where the holding has fallen below the minimum threshold. This should be reflected in note (vii) to the Standard Forms.

Paragraph 7 (securities). A respondent asks that the ISIN code for the identification of the securities is included.

Paragraph 8 (chain of controlled undertakings through which voting rights are held). Some respondents indicate that details of the amount of voting rights and percentage held by each controlled undertaking should not be mandatory. A parent undertaking should provide this information only where a controlled undertaking has a notifiable interest in its own right and the notification by the parent is intended to cover the notification obligations of the controlled undertaking. Note (xi) to the Standard Forms in respect of notifications under Article 12(1) only reflects the notifiable interest point, but does not consider the potential for duplication of notifications. Note (xix) to the Standard Forms dealing with notifications under Article 13 does not even reflect the fact that this detail should not be required unless the controlled undertaking also has a notifiable interest.

Paragraph 10 ("additional information"): A respondent claims that if additional requirements are allowed at the national level, the risk exists that the current requirements by MS will make their way into the additional information section. Allowing for "additional information" constitutes in essence an "opt-out".

In the annex to the standard form, when the investment manager is reporting on behalf of clients it manages there should not be a need to disclose the details of the (several) individual beneficial owners. It has also been stated that it should be clearer his should be amended so that it is clear that it is the person, legal entity or shareholder who is the SUBJECT of the notification being made that needs to be identified and NOT (always) the actual shareholder or financial instrument holder.

In the annex to the standard form, if the identity of the notifier is provided, input regarding the 'functional relationship with the holder' should also be requested.

In relation to the aggregation of holdings, it has also been requested that clarification is done as to which holdings should be aggregated: i.e. article 9+10 holdings should be aggregated, while article 13 holdings of financial instruments should not. Another

respondent advises to refer, at least in a recital, to paragraphs 255 to 260 of CESR's advice on this.

A respondent claims that the suggested standard form requires more information than is necessary and proposes an alternative from.

Other issues

Art. 9(6) of the TD (non aggregation of voting rights held by credit institutions/investment firms in trading books) should be extended to holding of shares in trading books by insurance companies.