14 September 2007

Mr Fabrice Demarigny
CESR Secretary General
The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

Dear Mr Demarigny

Joint ICMA/SIFMA Response to CESR Call for Evidence on Possible CESR Level 3 Work on the Transparency Directive (Ref. 07-487)

The International Capital Market Association (**ICMA**) and the Securities Industry and Financial Markets Association (**SIFMA**) are pleased to respond to CESR Call for Evidence on Possible CESR Level 3 Work on the Transparency Directive (the **Call for Evidence**).

ICMA is the self-regulatory organisation and trade association representing investment banks and securities firms issuing and trading in the international capital markets worldwide. ICMA's members are located in some 50 countries across the globe, including all the world's main financial centres, and currently number over 400 firms.

SIFMA (the result of a merger between the Bond Market Association and the Securities Industry Association) brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA represents its members locally and globally. It has offices in London, New York, Washington DC, and its sister Association, the Asia Securities Industry and Financial Markets Association (ASIFMA), is based in Hong Kong.

Our comments are based on extensive consultations with our member firms and their advisors. We attach them as **Annex** to this letter and would be pleased to discuss them with you at your convenience.

Yours faithfully,

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ANNEX

Summary

We believe that the inconsistent application, lack of clarity and regulatory gaps in the new transparency regime as well as other factors, including availability of implementing rules, raise a significant number of important issues that could be appropriately addressed through Level 3 measures. For this reason we strongly agree that CESR should start working in its Level 3 capacity to promote a consistent application of the new regime.

In terms of which measures should be deployed by CESR to achieve this, we believe this will depend on the issue in question and emphasise the need for CESR to engage with stakeholders before finalising any Level 3 measures.

We do not believe CESR can or should do anything further to facilitate the establishment of the EU network of national storage mechanisms until the European Commission produces a legislative measure which selects a network model and requires storage mechanisms to comply with an interoperability agreement.

Background Information

ICMA and SIFMA supported the harmonisation of transparency obligations of companies admitted to EEA regulated markets and were closely involved in the various consultations leading to the adoption of the Transparency Directive (the **TD**) and the Level 2 Directive (the **L2D**).

Following the implementation deadline for the TD, we set up a dedicated working group of representatives of financial institutions, legal and accounting experts and other market participants. Its objective is to monitor the implementation of the TD and L2D and its impact on market practices as well as discuss the resulting issues and risks arising in the various Member States. We believe that the international perspective of the working group and its focus on consistent application of the transparency regime across the EEA makes it uniquely positioned to provide CESR with informed feedback on the degree to which the TD and L2D are fulfilling their stated objective of contributing to a genuine single European securities market.

Question 1: Do you consider that CESR should start working in its Level 3 capacity in order to promote a consistent application of the TD and the Level 2 Directive?

We strongly support the CESR initiative.

It is apparent that implementation of the TD and L2D has given rise to a number of significant concerns which we outline in more detail below. They stem from a variety of factors including: a lack of detail and/or clarity in some of the TD/L2D provisions; problems with the availability of TD/L2D implementing rules and guidance; and their staggered implementation and inconsistent application.

The problems are particularly acute in the case of the major shareholding notification regime where internationally active investors need to have in place systems ensuring simultaneous compliance with all the applicable regimes and timely and accurate reporting to the issuers and competent authorities. In this area, lack of information, lack of legal certainty and unnecessary national variations in areas seemingly harmonised by the TD significantly increase compliance burden, risk of incorrect disclosure and reduce overall transparency across the EEA. A number of leading institutional investors have observed that while they have gone to great lengths to tailor their information systems to all the applicable national regimes, the level of variance among the Member States

(together with the practical issues discussed below) make this an extremely costly and time-consuming exercise.

These issues would be appropriate for CESR to address at Level 3, given that one of the main functions of CESR as a Level 3 committee is to contribute to the consistent implementation of EU directives. We believe that the Level 3 measures available to CESR, including administrative guidelines, interpretation recommendations, common standards, peer reviews and comparisons of regulatory practice can be appropriately deployed to ensure a consistent and equivalent transposition and application of the TD and L2D.

As a general observation, we note that so far most Member States have taken advantage of the minimum harmonisation nature of the TD/L2D and implemented often unique super-equivalent rules in various areas. This has resulted in significant differences between the TD/L2D regulatory regimes of various Member States, which limit the extent to which the TD/L2D will harmonise transparency requirements across the EEA and are one of the main sources of the difficulties encountered by pan-European market participants.

Nevertheless, we acknowledge the minimum harmonisation status of the TD/L2D and emphasise that we are not seeking the harmonisation of implementing rules. We are instead advocating greater consistency in areas where the rules are the same but interpretation is different, and greater clarity in areas not adequately considered by the TD and L2D.

Question 2: If yes [to Question 1] which areas for you think CESR's work should cover? Could you prioritise them?

We outline below the key issues which have arisen so far. As market participants continue to analyse the rules implementing the TD and L2D, as further Member States implement them and as competent authorities begin to apply them, additional issues are likely to emerge. We would welcome the opportunity to provide CESR with further information on both the issues outlined in this document and any additional issues arising in the future or indeed give any other assistance which might help CESR conduct its Level 3 work in this area.

We have grouped the issues into:

- those of a more general nature, relating to availability of TD and L2D implementing rules, guidance and other key information;
- those relating to major shareholding notifications;
- those relating to periodic financial reporting; and
- those concerning specifically non-EEA issuers and investors (whether in the area of major shareholding notifications or periodic financial reporting).

We consider all the issues to be of equal importance although we understand that CESR may need to prioritise them.

<u>Availability of TD and L2D implementing rules, guidance and other key information</u>

To enable market participants to prepare for the implementation of the TD and L2D and to comply with them subsequently, the Member States should provide all relevant information to the public well ahead of time.

Some Member States have still not implemented the TD or announced the implementation (and coming into force) timeline. Most Member States did not implement the L2D together with the TD, leaving a number of important details uncertain. Some Member States did not give reasonable notice of the implementation. One Member State, for example, adopted interim implementing rules in January 2007

copying out the TD and then replaced them with very different final rules in June 2007 without adequately communicating the change to the market ahead of time. Another Member State has announced that implementing rules will come into force on a certain day but, although the day has now passed, there has been no such public announcement and market participants have been unable to obtain any explanation from the competent authority.

The phase-in of the implementing rules is sometimes not workable, not clear or not communicated clearly. This is particularly relevant in the area of periodic financial reporting where the issuers need to be able to ascertain from the implementing rules from which financial year they will be subject to the TD reporting. One Member State will, for example, apparently shortly bring the implementing rules into force with very short notice and with over 8 months retroactive effect.

In the area of major shareholding notifications, investors need to adjust their information systems to the new rules or any changes to existing rules. We would strongly support an agreement among CESR members that all such changes will be announced in advance to allow time for such adjustments. Given the complexity and system consequences of new/changes rules in this area, an advance warning of at least six months would be appropriate.

A significant number of the Member States who have implemented do not provide easy access to the implementing rules (or at least their key elements), for example on the competent authority`s website. Internationally active investors would also find it very valuable if a Member State makes the implementing rules available in the language customary in the sphere of international finance (in particular English) before the rules come into force. While the efforts of a number of Member States who do so are greatly appreciated, it would be helpful if the other Member States also adopted this approach.

In light of the generally high-level nature of the TD and L2D requirements and in the absence of pan-European guidance, market participants legitimately expect guidance or informal consultations from the competent authorities on their day-to-day application. Again, this is particularly the case of major shareholding notifications, where notification deadlines must be met on a daily basis. Many Member States, however, provide only limited interpretive guidance. In one Member State for example, the competent authority has indicated that questions will be answered only on specified hours on specified days. And in some Member States a number of market participants feel there is no one available to answer their queries at all.

In addition to the implementing rules themselves and any associated guidance, there is technical information which needs to be provided to make the rules work in practice. Some Member States, for example, fail to provide information on how and where to make major shareholding notifications. The locally used standard form for major shareholding notifications is not publicly available in some Member States. By way of another example, while investors need to know what the home Member State of a non-EEA issuer is, so that they can determine which Member State`s major shareholding notification regime they need to apply (in particular in case of issuers admitted to trading on regulated markets in several Member States), only one Member State has to our knowledge published a list of non-EEA issuers who have selected it as its home Member State (and even that list is only infrequently updated).

The method of communication of information to both the competent authority and issuers in the major shareholding notification area also varies greatly from Member State to Member State with some requiring email for all communication, others fax for disclosure to the competent authority and again others requiring courier for the disclosures to the competent authority. We believe that all competent authorities should be able to accept electronic filings, a view expressed for example in the letter to CESR by Commissioner McCreevy of 5 March 2007 regarding standard notification forms.

Major shareholding notifications

Notifications by underwriters

"Underwriter" is a generic name for a financial institution which, in course of arranging an issue of securities for an issuer, buys them from the issuer and on-sells them to investors, thus ensuring to the issuer that all the securities will be sold on an agreed date for an agreed price. Where the securities being issued are shares or other financial instruments subject to major shareholding notification, the TD regime, although silent on the issue, could be interpreted as applying as the underwriter would normally exceed the minimum threshold.

The purchase and on-sale, however, are only technical consequences of the way in which securities issues are brought to the market. The underwriter does not intend to hold the securities or exercise the voting rights. The details of the new issue, including the identity of the underwriters will be disclosed to the market. Investors will make their notifications at the same time as the underwriter would or shortly thereafter and these notifications will provide the proper picture of the investor base. In short, there appears to be no need to require the underwriters to make major shareholding notifications.

In addition, the application of the major shareholding notification regime to underwriters raises questions of consistency with other disclosure obligations, in particular under the Prospectus and Market Abuse Directives as well as the Cross-Border Merger and Acquisitions Directive.

This suggests the need for pan-European interpretative guidance confirming that underwriters are not subject to the TD major shareholding notification regime.

Application of trading book exemption

In parallel to the general 5% disclosure threshold, the TD allows Member States to introduce an exception for up to 5% of the voting rights held in the trading book. Some Member States have adopted a "cumulative" interpretation where the 5% trading book exemption is added to the initial disclosure threshold of 5% resulting in an effective trading book exemption of 10%, while other Member States take a "separatist" interpretation where the trading book exemption of 5% is not added to the initial threshold. The cumulative interpretation would enable an entity with, for example, an 8% holding on its trading book and a 1.5% non-trading book holding to avoid disclosure which appears to conflict with the partial exemption (limited to 5%) provided for by the TD.

The separatist interpretation appears to be more consistent with the objectives of the TD and is advocated as the basis for a pan-European interpretation to the interaction between the trading book exemption and disclosure threshold for non-exempted holdings. Irrespective of which interpretation is applied, pan-European consistency of approach would benefit market participants and the overall market transparency.

Disclosure of aggregated group holdings

Member States take an inconsistent approach to the disclosure of aggregated holdings within corporate groups. Where the net end-of-day holding remains the same (or at least does not breach any TD thresholds) most Member States interpret the TD as only requiring a major shareholding notification if such acquisitions/disposals entail a change in the ultimate control of voting rights attached to those holdings. In contrast, certain Member States apparently require a separate notification on the effectuation of each and every acquisition/disposal irrespective of whether the net end-of-day position and control over the attached voting rights remains unchanged. This is sometimes exacerbated by requiring each notification to be made on a separate form. The

cumulative result is multiple disclosure of the same holding which confuses the market and undermines one of the central objectives of the TD.

The TD major shareholding disclosure regime is based on the location of the power to control voting rights attached to those holdings. Applying this principle to corporate group structures, disclosure should only be made at the level (parent or subsidiary) where control of voting rights resides.

We suggest the need for a common pan-European approach to aggregated group holdings, based on the principle that a notification is only required where the ultimate control of voting rights changes.

Treatment of financial instruments

Significant differences are emerging between Member States as regards securities which are subject to major shareholdings notification regime as "financial instruments" under TD Article 13. Some Member States, for example, always consider (unconverted) convertible securities within scope while others do not.

It would seem that the TD and L2D lay down clear guidelines for determination whether a particular instrument is a "financial instrument" under TD Article 13. Given the discrepancies, it might nevertheless be helpful for CESR to agree a pan-European approach to the securities where uncertainty arises most often.

While most Member States require aggregation of shareholdings with the holdings of "financial instruments" under TD Article 13, at least one to our knowledge does not. Again a common pan-European approach, ideally based on the former, would be helpful.

Position of stock lenders/borrowers

Securities lending is based on a transfer of title and the parties to these transactions could therefore theoretically fall within the major shareholding notification regime. This is despite the fact that the borrowers do not acquire the securities with a view to exercise voting rights. Indeed, it would be misleading to treat stock loans as disposals because lenders remain exposed to the price risk on the securities and have the right to recall equivalent securities at any time, enabling them to exercise voting rights. Notifications by the lenders of the loan as a disposal would therefore paint a misleading picture of where the voting rights lie, reducing market transparency rather than increasing it. The same occurs when the loaned securities are returned. The analysis is further complicated by the practice of on-lending of borrowed securities, where it would be equally misleading to treat the borrow and on-lend transactions as an acquisition and disposal, respectively. The multiplicity of notifications resulting from strict application of the major shareholding regime in such scenarios would only deepen the confusion.

In recognition of these considerations, at least one Member State has excluded lenders (that retain the right to recall the shares) and borrowers (that on-lend within a certain limited period) from the scope of the regime. The position in a number of other Member States, however, is less clear and often inconsistent. Some, for example, require notifications by both the lender and the borrower, while others allow on-lent securities to be deducted by the borrower. On the basis of the cross-border nature of many of these transactions and to the extent that that these entities refrain from exercising voting rights attached to shares, it is suggested that CESR develop pan-European interpretative guidance confirming that securities lending counterparties do not need to make major shareholding notifications.

We also note that exercise of voting rights in the context of securities lending is subject to proposed recommendations by the Commission adopted under the recent Shareholders` Rights Directive. We would urge CESR to work together with the

Commission to ensure that any such recommendations are consistent with the TD/2LD and any contemplated Level 3 work under the TD.

The International Securities Lending Association (**ISLA**) provided significant input to the SIFMA/ICMA working group's discussions on the treatment of securities lending under the TD major shareholding regime and fully support the above conclusions.

Position of collateral takers

The TD effectively allows collateral takers to disregard securities held outright under a collateral transaction providing the collateral taker does not declare any intention of exercising (and does not in fact exercise) the voting rights attached to the securities. While this position is clear in some Member States this is not universally the case, suggesting the need for pan-European interpretative guidance confirming that such collateral takers do not need make notifications.

Similarly, while shares transferred under a repo agreement presumably constitute "shares which are lodged as collateral", we think there is clear need for confirmation that equity-based repo transactions counterparties do not need to make shareholding notifications. In point of fact, we are concerned by the indication by one Member State which currently excludes repo transactions from the scope of the major shareholding notifications regime that it is planning to reconsider its position.

In principle, the treatment of collateral (including repo) transactions should be the same as the treatment of securities lending as the same considerations apply in both areas.

Disclosure of holdings that have fallen below disclosure thresholds

Significant differences between Member States have also emerged in terms of the requirements for disclosure when holdings have fallen below the initial disclosure thresholds. Some Member States require investors, when notifying that the holding has fallen below the threshold, to break down the holding among the various subsidiaries (specifying, in each case, further details such as the number of the securities and the voting rights percentage) while others do not require such a breakdown. We do not see the rationale for such detailed information below the TD thresholds and would therefore encourage CESR to develop a pan-European approach confirming the absence of a requirement for such a breakdown once a holding falls below the disclosure threshold.

Frequency of total voting rights/capital disclosures

The TD requires issuers to (as a minimum) publish the total number of voting rights and capital held at the end of each month during which an increase or decrease in the total number has occurred. Most Member States appear to have implemented this requirement through copy-out. Sometimes, however, the issuers will have already disclosed the relevant changes (for example share splits or buy-backs), either voluntarily or under different regulation (for example as inside information under the Market Abuse Directive) in course of the month.

While transparency would theoretically be best served by the investors using up-to-date information as the denominator for major shareholding notifications, investors` systems are generally unable to monitor and immediately reflect all the possible announcements on a cost-effective basis. A number of institutional investors also feel that many issuers and information service providers do not deliver this information on a timely or accurate basis.

Consistently with the TD and in recognition of these practical difficulties, some Member States have confirmed that the investors may use end of month figures, even where there has been a change announcement intra-month. In a number of Member States,

the position is less clear. We would therefore encourage CESR to examine the feasibility of pan-European guidance confirming that reliance on end of month figures is sufficient.

Calculation of the holding

Some Member States require the notifying investor to provide not only the percentage of voting rights but also the corresponding percentage of capital of the issuer. This seems to be inconsistent with the TD which focuses on voting rights and does not seem to have additional information value. It would be helpful if CESR could confirm that this is not required.

Calculation of total voting rights/capital and impact of corporate actions

Member States appear to be taking divergent approaches on a number of technical details related to the calculation of the total voting rights/capital. There is, for example, lack of clarity on whether to include treasury shares and suspended shares. Despite the language of TD Article 9(1), some Member States exclude suspended shares. There is also lack of consistency and clarity around some corporate actions – no Member State has clear rules on the consequences of delisting from a regulated market and only one Member State has to our knowledge rules on the consequence of a change in the share capital.

Divergent approaches inevitably lead to inconsistent results and reduced transparency across the EEA. We would encourage CESR to develop a pan-European approach to these occurrences.

Rounding and truncating

While some Member States provide unequivocal rules or guidance on the rounding (up or down) and truncating of shareholdings, the vast majority do not. In addition, the approaches of the Member States who do are often different. The approach taken to rounding and truncating is not only a mathematical technical issue but may have an impact on whether a notification is made or on whether an exemption applies. Guidance as to a more pan-European approach would therefore be very helpful.

Netting of positions

While most Member States allow investors to net their long and short cash positions (usually within the group) some do not. Inability to net positions unnecessarily increases the number of notifications while reducing their information value. We would therefore recommend that CESR considers a guidance allowing netting of positions.

Disclosure deadlines

Under the TD, an investor must notify the issuer as soon as possible but not later than four trading days from a specified day. A number of Member States focus on the first leg of the deadline, requiring the investor to disclose “immediately” or “on the same day”. While this may be possible if such an investor only trades within a single jurisdiction alone and on a small scale, it presents major challenges for firms conducting cross-border trades in many countries across multiple time zones. In such circumstances, a reasonable period of time is needed to collate, analyse and disclose the required information. We encourage CESR to develop a more realistic pan-European approach to the disclosure deadlines, bearing in mind the language of the TD.

A number of terms used in the TD and L2D or in their application affect the notification timetable. These are the “trading date” (or equivalent) used to identify the transaction, “trading day”/“working day” used to calculate the deadline and “end of day” used to determine the last possible moment a notification may be made on a day.

On all these terms, the Member States have taken divergent approaches. The "trading date" is usually associated with the execution of the transaction ("T") but in some Member States it is effectively "T+1". Some Member States consider Saturday a "trading day"/"working day". Similarly, "end of day" may have a number of meanings, for example midnight local time, market close or market information system close.

We are aware that the TD leaves the definition of "trading days" to the home Member State but we believe that a pan-European approach to all these technical definitions would greatly reduce the burden on investors.

Holdings in UCITS

Implementing rules of some Member States do not make it clear that, in line with TD Article 1(2), holdings in UCITS and other open-ended investment funds are *not* subject to the major shareholding notification regime. Exchange-traded funds have also been mentioned as giving rise to difficulties in some Member States. Legal certainty on this issue would be helpful. In addition to inconsistent treatment of financial instruments discussed above, this is another reason why CESR may wish to consider a list of the most commonly used instruments indicating if they are within or outside the scope of the major shareholding notification regime.

Procedures regarding exemptions and dis-aggregation

The TD contains several exemptions from the general major shareholding notification regime. It also allows, under certain circumstances, parent companies of management companies and asset managers to not aggregate holdings.

Some Member States insist that to benefit from such any such exemption or dis-aggregation the investor must apply for and be granted the exemption. This seems to be contrary to the TD which either provides for automatic application of the regime provided the conditions are met or for a mere notification. It would be helpful if CESR confirmed the procedures regarding the various exemptions and dis-aggregation as set out in the TD.

Separately listed share classes

Some issuers have their share capital divided into several separate share capitals, in respect of which several classes of shares are issued, admitted to trading separately under separate ISINs and traded as separate securities. While some Member States expect each class to be treated separately for the purposes of the major shareholding notifications, others expect that all classes be combined together. We would encourage CESR guidance ensuring a consistent approach to such securities.

Standard notification form

We understand that the Commission has asked CESR to monitor the usage of the standard notification form during the period until June 2008. We continue to support introduction of a harmonised standard form across the EEA, welcome the Commission's initiative and are prepared to provide CESR with any assistance which may be considered helpful.

We are concerned, however, whether it will be possible to assess the usage of the standard form on a fully informed basis as only a few Member States use the standard forms, while a number of Member States have introduced local notification forms and some others do not require the use of any particular form.

<u>Periodic Financial Reporting</u>

Due to the staggered implementation of the periodic financial reporting requirements in most Member States, only a relatively small proportion of issuers have so far switched to TD-compliant reporting. This seems to be the main reason why, so far, fewer practical problems seem to have been identified in practice in this area than in the major shareholding notification area. We will continue monitoring the periodic financial reporting area and will provide CESR with further examples as they arise.

Content of interim management statements

The requirements of the TD and L2D concerning interim management statements are high-level and the guidance provided so far by the Member States is to our knowledge limited and fragmented. We believe that it is primarily up to the market participants to develop an appropriate approach to interim management statements and expect this to take some time. At the same time, we believe that the existing uncertainty as to the required content of interim management statements would be greatly reduced by pan-European guidance on the key principles which the issuers are (or are not) expected to follow when preparing them.

Impact of TD on liability of issuers for disclosure

With the exception of specifying persons responsible for the various reports, the TD was not intended to impact the Member States` laws on liability of issuers for incorrect or misleading disclosures. The restatement in the TD of the objective of the periodic financial reporting, the new requirement to disseminate the various reports across the EEA together with parallel discussions on other EU instruments (namely the Rome II Regulation No. 864/2007 on the law applicable to non-contractual obligations) have, however, in some Member States ignited a debate among market participants about this liability. The fact that an issuer may theoretically be held liable to a multitude of persons under the standards and before the courts of a multitude of jurisdictions which may not be clear or even known in advance creates significant legal uncertainty and risk which has the potential to impact free flow of information across the EEA.

While CESR cannot obviously change Member States` laws in this area, we believe that this issue deserves to be highlighted. First, the urgency of most issues which may arise in the periodic financial reporting area will be exacerbated by this legal risk. Second, CESR and its members are well placed to engage in debates on this issue both at the EU level and in the various Member States. Finally, it is a reminder that CESR as well as market participants and other involved parties need to pay heightened attention to the impact which new measures may inadvertently have outside their scope as well as to the impact of measures of horizontal application, which are seemingly unrelated to capital markets. The proposed Rome I Regulation, introducing new rules determining law applicable to contractual obligations is a good example, as it contains several provisions which are of grave concern to the market and should be of interest to CESR and its members as well.

Publication of "loan issues"

Under TD Article 16(3), an issuer is expected to make public "new loan issues, in particular any guarantee or security thereof" We understand that the expression is similarly unclear in some other language versions of the TD. Some Member States have clarified this provision as requiring disclosure of any newly issued debt securities which, we believe, is consistent with the objectives of the TD. In other Member States , there were concerns that this provision would require the issuer to publish details of any loan it provides to a third party. Such an interpretation would be extremely difficult to comply with for banks and other financial institutions and would cut across a number of separate legal regimes, not least banking secrecy. We do not have up-to-date information on this topic but believe it might we worth a discussion among CESR members and, should there be divergent view, subject to a pan-European guidance confirming the former interpretation.

Methods of dissemination of information

We recognise that, within the limits provided for by the TD and L2D, the home Member State is free to specify in more detail the required dissemination methods. We would, however, be concerned if Member States retained or introduced too stringent and inflexible requirements, forcing issuer for example, to publish announcements in newspapers or various gazettes without an electronic alternative. We would also be concerned if Member States, in their capacity as host Member States, retained some requirements incompatible with the TD. The experience with the implementation of the Prospectus Directive shows that both risks are very real and that they can give rise to serious difficulties.

We would therefore encourage CESR to monitor the implementation of this aspect of the TD. We would be happy to provide CESR with more details as the situation becomes clearer.

Non-EEA issuers and investors

We believe that, in most Member States, insufficient attention has been paid to the position of non-EEA issuers and investors. In several aspects, the TD and L2D envisage that non-EEA transparency regimes could be declared equivalent, reducing the compliance burden on such entities without compromising transparency and investor protection. In other cases, lack of clarity of the TD and L2D threatens to inadvertently increase such a burden on such entities without any obvious benefit to the EEA investors or markets generally.

Equivalence of periodic financial reporting requirements other than accounting standards

In addition to requiring financial statements to be prepared in accordance with certain accounting standards (where the equivalence of non-EEA accounting standards and EU-adopted IFRS is subject to a separate debate), the TD imposes requirements regarding the production, content and timing of annual financial reports, half-yearly financial reports and interim management statements. It requires, for example, the production within four months of the end of the issuer's financial year of an annual report containing audited financial statements, a management report and director responsibility statements.

The equivalence of third country periodic financial regimes with these aspects of the TD would not be addressed by an assessment of the equivalence of accounting standards, giving rise to the risk of fragmented and duplicative equivalence assessments in Member States. To our knowledge, only one Member State has so far agreed to consider the periodic financial reporting regime of a non-EEA country equivalent. This suggests the need for a pan-European approach to assessing the equivalence of such requirements, both as regards the substance and procedure of such assessment, or at least co-ordination among the Member States most affected.

Equivalence of major shareholding notification regimes

Where an issuer is subject not only to the TD major shareholding notifications regime but also to an equivalent regime of a non-EEA country, investors complying with the non-EEA regime should not be required to comply with the TD regime in parallel. To our knowledge, only one Member State has so far agreed to consider the major shareholding notification regimes of a number of non-EEA countries to be equivalent. This suggests the need for a pan-European approach to assessing the equivalence of such requirements, both as regards the substance and procedure of such assessment, or at least co-ordination among the Member States most affected.

Issuers guaranteed by non-EEA states/ non-EEA public sector entities

Specified periodic financial reporting requirements of the TD clearly do not apply to states and their authorities (TD Art 8(1)(a)) as well as (at the option of the home Member State) issuers of debt securities guaranteed by a Member State (TD Article 8(3)). The TD does not, however, deal with scenarios where issuers issue debt securities on behalf of a non-EEA state and/or are guaranteed by a non-EEA public entity. A number of such entities have their debt securities admitted to EEA regulated markets. A case in point are certain issuers guaranteed by the Canadian government, provincial governments or municipalities which are not required by Canadian law to produce semi-annual reports and would be particularly affected by the application of the TD regime.

Such issuers in principle benefit from a simplified prospectus regime. This exemption is based on the recognition of the fact that the credit rating and credit-worthiness of such issuers in general is entirely dependent on the state or other relevant public sector entity in question. To ensure consistency of reporting requirements, this simplified treatment should in principle be carried over to the TD regime.

The limited and fragmented nature of the guidance which has so been given by competent authorities on these important scenarios (the competent authority in one Member State has informally advised that such an issuer will be exempt if it effectively acts as an agent of a state even it is additionally guaranteed by a state, but not necessarily if it is only guaranteed by a state) as well as the need to maintain the attractiveness of the EEA markets to such issuers and access by EEA investors to their securities suggest the need for a pan-European guidance, exempting such issuers from the TD regime to the extent possible within the existing TD/L2D framework.

Application of trading book exemption to non-EEA investors

The TD allows Member States to exempt from the major shareholding notifications regime up to 5% of shares held within trading book of EEA credit institutions or investment firms (TD Article 9(6)). This creates an uneven playing field vis-à-vis non-EEA credit institutions and investment firms subject to equivalent regulation in their home jurisdiction.

Even in the absence of a general determination of the particular non-EEA country`s major shareholding notification regime as equivalent, we believe that CESR should consider what could be done within the existing TD/L2D framework to put such entities on a more equal footing with their EEA equivalents. The ultimate objective should be a pan-European extension of the trading book exemption to non-EEA investment firms and credit institutions subject to equivalent regulation.

Question 3: Do you think CESR's work to harmonise should be published in the form of a Q&A section on its website (in a similar way as CESR is currently doing in the prospectus area)?

We believe that the format of CESR's work in this area should depend on the issue concerned. For example, whilst a Q&A document might be suitable for tool for addressing certain issues such as definition of working day or to identify the media to be used to communicate major shareholding notifications forms, other measures such as interpretive recommendations may be more appropriate to address areas where a greater level of clarification and explanation is required such as the content of interim management statements.

Before any final Level 3 measures (including possible Q&As) are adopted we would encourage CESR to consult with stakeholders and provide an opportunity (through e.g. consultative working groups, ad-hoc transposition meetings or hearings) to discuss the

issues under consideration in greater detail and examine preliminary drafts of any Level 3 measures.

Even where an issue results directly from the language of the TD or L2D, we believe that CESR should consider what could be done to address it. Even unclear or unhelpful language can be interpreted clearly, in accordance with the objectives of the transparency regimes and market reality and, most importantly, consistently across the EEA. Such work will also helpfully feed into the future review of the transparency regime, as envisaged by TD Article 33.

Question 4: Do you think CESR should facilitate the establishment of an EU network of national storage mechanisms?

We have been involved in the various consultations on national storage mechanisms and the possible EU network, in particular the January 2006 call for evidence by CESR. We have supported the establishment of such a network but urged the authorities to take into account legitimate interests of the issuers filing information with OAMs (concerning namely the costs and administrative burdens of such filing).

We support the June 2006 CESR Advice on standards for national storage mechanisms and Opinion on their inter-linkage in a pan-European network [CESR/06-292] but question whether CESR *can* do much more at this point to facilitate the establishment of the network. We refer to paragraph 32 of the Advice/Opinion in which CESR considers that a prerequisite for establishing a network is a binding legislative measure from the European Commission.

We are aware that the Commission is currently working on such a measure and commented on its working document on the issue, on which it invited public comment in March 2007 [ESC/10/2007 rev.1]. Assuming that such a measure does emerge, we believe that that CESR's role in facilitating the establishment of an EU network of national storage mechanisms should be strictly limited to that set out in the above Advice/Opinion.

The Advice/Opinion thus recommends that the binding measure cover certain governance issues, including the establishment of a committee/body to manage central elements of the network. CESR suggests that members of this committee/body could include either all CESR members or a subset thereof. While we agree that CESR Members should be represented on such a management group to the extent that they operate national storage mechanisms we do not see any reason for CESR per se to be a member of this group.

The Advice/Opinion also refers to the drafting of high-level interoperability agreements with which all appointed storage mechanisms must abide. We fully support the CESR recommendation that this should be drafted by competent authorities (rather than e.g. CESR) as these (which are not necessarily CESR members) are responsible for supervising national storage mechanisms and therefore better placed to draw up the interoperability agreement.

With respect to the role of competent authorities in the supervision and technical updating of the European network, CESR further recommends (paragraph 41) that it may be useful for CESR to have co-ordinating role. Supervisory co-ordination will be critical to effective and efficient supervision of the network and we would fully support such a role for CESR. In this context we emphasize that supervisory responsibility must remain with individual competent authorities that appoint the central storage mechanisms.