International
Capital
Market
Association Ltd

June, 23 2006

Christian Krohn
Policy-Primary Markets
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Dear Mr Krohn

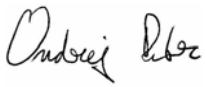
The FSA Consultation Paper 06/4 on Implementation of the Transparency Directive

The International Capital Market Association (**ICMA**) is pleased to respond to the FSA Consultation Paper 06/4 on Implementation of the Transparency Directive (the **Consultation Paper**). ICMA is the self-regulatory organisation and trade association representing the investment banks and securities firms issuing and trading in the international capital markets worldwide.

We attach our response as an Annex to this letter. **Part I** of the Annex summarises the key points of our response. Our detailed comments on the proposed principles of the implementation of the Transparency Directive (the **TD**) and answers to the questions asked by the FSA in the Consultation Paper are contained in **Part II** of the Annex.

We would be pleased to discuss our response with you at your convenience.

Yours faithfully,



Ondrej Petr

Part of the
ICMA Group of
Companies

International Capital Market Association Ltd
7 Limeharbour
GB-London E14 9NQ

Phone:
+44 20 7538 5656
Fax:
+44 20 7538 4902

Registered No.:
1917944 England
Registered Office:
7 Limeharbour GB-London E14 9NQ

www.icma-group.org

ANNEX

Part I: Summary of Response

This **Part I** summarises, in an outline, the key points of our response.

Periodic Financial Information

- Responsibility and liability for reports and other information published under the TD should lie solely with the issuer in a manner aligned with the proposed amendments to the FSMA 2000 and the risk of pan-European liability should be addressed on an EU level.

- We support the approach regarding the implementation of the TD provisions on annual reports, half-yearly financial reports and interim management statements. We would, however, consider guidance on the contents of the interim management statements very helpful, in particular as we do not think that trading statements could easily be adapted into interim management statements.

- The gradual phase-in of the TD-compliant periodic financial reporting regime should be more clearly explained to the market.

- The issuers of exclusively debt securities with denominations of at least 50.000 Euro as well as issuers listed on PSM should provide annual reports, but should disseminate them only within the UK. Issuers of asset-backed securities should continue to be excluded from the obligation to provide annual reports.

- In their half-yearly financial reports, issuers outside the scope of IAS 34 should only describe the nature and effect of accounting policy changes which will be applicable in the upcoming annual report.

- The regime applicable to GDRs, convertible securities and preference shares should be clarified.

- The UK should take advantage of an exemption for certain pre-1 July 2005 debt issuers from the obligation to prepare half-yearly reports.

- The FSA, regulators and ministries from other EU Member States should consider how to align the TD regime of asset-backed securities and issuers guaranteed by public sector entities with that under the Prospectus Directive/Regulation.

Major Shareholding Disclosures

- We do not object to the retention of certain elements of the existing regime for UK incorporated issuers traded on UK regulated or prescribed markets.

- We do not object to the retention of the Section 212 regime but would, in the long term, suggest a dialogue between the FSA and the DTI about a possible alignment of the two regimes.

- We support the proposal to enable securities lenders to set off their positions.

- We support the use of standard notification forms, including for issuers traded on UK prescribed markets.

- The FSA should consider exemptions from the electronic filing regime allowing shareholders, at least under certain circumstances, to use paper filings.

- The FSA and regulators and ministries from other EU Member States should consider in particular: recognition of shareholding disclosures made by shareholders under broadly equivalent third country laws; clarification of the principles of aggregation between notifiable voting rights and financial instruments; simplification of standard notification forms; and clarification of regime of GDRs.

Dissemination of Regulated Information

- We support the continued mandatory use of the PIP/SIP model.

- We support the proposed alignment of the dissemination of information using the PIP/SIP model with its filing with the FSA.

- The duty of the issuer to ensure TD-compliant dissemination must be interpreted in accordance with the reality of dissemination through third party service providers and the mandatory use of the PIP/SIP model. An issuer who provides the information in a timely fashion and in good order to a PIP on the basis of a solid contractual arrangement cannot be held responsible for any subsequent deficiencies in the dissemination process.

Storage of Regulated Information

- We agree with the interim approach towards storage of regulated information in the UK.

- We believe that future UK officially appointed mechanisms should be operated on a commercial basis.

- Prospectuses should be made available via officially appointed mechanisms, subject to appropriate safeguards against infringements of third country securities offering laws.

Contracts for Differences

- We see no need for a separate disclosure regime concerning CFDs outside takeover situations.

Part II: Specific Comments and Answers to Questions

This **Part II** contains detailed comments on the proposed principles of the implementation of the TD in the UK and answers to the questions asked by the FSA in the Consultation Paper.

This response focuses on the implementation of the TD (as it was when the FSA consultation was launched, i.e., under the November 2005 version of the TD level 2) in the UK, in particular on the policy choices allowed under the TD which the FSA is considering making. We do, nevertheless, occasionally highlight issues outside of the "pure" implementation of the TD in the UK, which are more within the remit of the European Commission, H. M. Treasury or other involved institutions, if we believe that they merit the attention of the FSA.

We appreciate the difficulty faced by the FSA resulting from the fact that, at the time the FSA consultation was launched, the draft TD Level 2 was only at the stage of a European Commission's working document, while the issues of filing and storage of regulated information were still being considered by CESR. Although a formal European Commission's proposal, containing a number of changes against the working document, was published before the submission of our response, the TD Level 2 still cannot be considered to be in its final form. We do not comment on TD Level 2 formal proposal in this response. We are analysing it and will provide our comments both to the European Commission and (by way of a supplement to this response) the FSA .

We have actively engaged both with the European Commission and CESR on their proposals up to date. We have provided the FSA with the ICMA responses to both the European Commission's consultation on its TD Level 2 working document (dated January 2006) and the CESR`s consultation on filing and storage of regulated information (dated March 2006). We will continue to engage with the European Commission, CESR and other involved institutions and will keep the FSA informed on any such discussions.

We have discussed our response with other trade associations and other involved bodies, some of which are referred to in the response. The comments regarding major shareholding disclosures are supported by the London Investment Banking Association (**LIBA**) and the comments on asset-backed securities are supported by the European Securitisation Forum (**ESF**).

Periodic Financial Information

General comments on responsibility and liability for reports

We believe that **responsibility** for reports and other information provided under the TD should lie only with the issuer and not (in case of listed UK issuers of shares, as proposed) with its directors as well. We do not see the case for automatic extension of the regime of responsibility for prospectuses. Such an extension would also be incompatible with the proposals for an amendment to the Financial Services and Markets Act 2000 (**FSMA 2000**) discussed below which seek to limit the external liability to outside persons for reports provided under the TD to the issuer only. In any case, we strongly support the notion that identification of the person responsible within the issuer should not affect the principle of a unitary board responsibility. This should be the case even where a director makes other similar statements or certifications, whether under the law of a Member State or a third country (such as the U.S. Sarbanes-Oxley Act).

We share the concerns that the TD regime, in particular the pan-European dissemination of the regulated information, may increase the **liability** of individual directors. Theoretically, investors who consider a particular report incomplete or misleading could bring their claims against the issuer and its directors under the law and before a court of any Member State. This of course exposes such issuers and their directors to a considerable legal risk and creates difficult conflict of law issues. It would be desirable if the FSA and other involved institutions engaged with their counterparts from other Member States to discuss how best to address it. The EC Regulation on the Law Applicable to Non-contractual Obligations (**Rome II**), recently approved by the Council, might be a useful tool to effect any agreed changes.

We support the substance of the proposals of the DTI (as part of the Company Law Review Bill (the **CLRB**)) to clarify the English law regime of the **liability for reports published pursuant to the TD** by amending the FSMA 2000. It is in the interests of the UK to ensure that – where a liability claim is brought under English law – the liability regime is clear and reasonable. We have, however, several suggestions regarding these proposals. First, the regime should apply to securities "admitted to trading" (not "traded"), in line with the terminology of the TD. Second, the scope of the proposed provision should be extended to cover issuers whose securities are admitted to trading on "all EEA regulated markets" (not only UK regulated markets) as we feel that the legal certainty of the proposed regime should be offered to all issuers who could be faced with a liability claim under English law based on the TD, i.e., to issuers whose securities are admitted to trading on all EEA regulated markets. Third, we note that the powers of the FSA under Section 384 will not be affected by the proposed changes. This may lead to investors unable to satisfy the requirements of the proposed liability regime to exert pressure on the FSA to achieve redress indirectly. We suggest that the FSA exercises its powers consistently with the changed liability regime and notifies the market of this by way of guidance. Lastly, the FSA and other involved bodies should consider a similar statutory regime of liability for preliminary statements, disclosures made under the Market Abuse Directive and other disclosures outside the TD which are made on a much shorter timeframe than periodic reports under the TD. In co-operation with the Confederation of British Industry, we have communicated these concerns to the DTI and will be following the progress of the proposed changes through the legislative process closely.

It would be helpful if the FSA clarified whom it regards as the **persons responsible within the issuer** for the purposes of the responsibility statements in the annual and half-yearly financial reports. We note that the DTI`s proposed amendments to the FSMA 2000, when identifying the persons whose knowledge of a misleading or untrue statements would trigger the issuer's liability, talk about persons discharging managerial responsibility in relation to the report. We believe that the scope of persons required to make a responsibility statement under the TD and persons discharging managerial responsibility in relation to the report under the FSMA 2000 should be aligned and, in both cases, only cover the directors of the issuer.

We note that personal responsibility/liability of directors would particularly impact on **securitisations** since directors of special purpose vehicles (SPVs) are generally professionally hired directors and should not be personally liable for the information published. If directors were to be held responsible this would add extra costs to the SPVs and introduce timing restrictions for issuers who access the debt market frequently.

We believe that the likely **combined impact of the new responsibility/liability regime** on the reporting practices is not yet fully appreciated by the market, in particular by smaller issuers. There will be an important role for the FSA, as well as for trade associations and other involved bodies, in educating the market about the changes.

Annual Report

We **support the approach** of implementation of the relevant sections of the TD by way of a copy-out.

Half-yearly Financial Report

We **support the approach** of implementation of the relevant sections of the TD by way of a copy-out.

Interim Management Statements (incl. **Q1**)

We **support the approach** of implementation of the relevant sections of the TD by way of a copy-out.

Whilst recognising the argument made against **FSA guidance on the contents** (**Q1**) of interim management statements, we believe that guidance would be very helpful. It might, in fact, be the only way to achieve the purpose of interim management statements. We are informed that the lack of clarity on their contents, together with the increased risk of liability (whether perceived or real), may lead some issuers to use regular quarterly reporting instead. Such a practice, however, would defeat the purpose of the compromise reached by Member States on the TD and unnecessarily increase the burden on issuers. Moreover, we are not sure that trading statements could be easily adapted into interim management statements as the Consultation Paper suggests. The range of information usually found in trading statements (trading and possibly sales information) is very different from that expected to be found in interim management statements. The notion that trading statements could be easily so adapted could in fact mislead less-informed issuers and expose them to liability. The guidance would not only make it clear to issuers the standard they will be judged against, but also bring

consistency of reporting among companies, improving transparency and comparability of the interim management statements. We are prepared to engage in discussions with the FSA and other involved bodies on the contents of such guidance. In particular, the existing market abuse regime of on-going disclosure of insider information might be a useful basis for determining which information should appear in the interim management statements. We are aware of suggestions that such guidance be partly "negative", i.e., setting out what the FSA does not require the issuer to disclose in the interim management statements rather than prescribe their contents, and support them.

Transition Period

We support the FSA proposal for a gradual **phase-in of the TD-compliant periodic reporting**. Although the issue is not entirely clear from the Consultation Paper itself, we understand that the relevant section (par. **2.21**) applies to an annual report, half-yearly financial reports and interim management statements (i.e. not only interim management statements). We also understand that, by way of an example, an issuer whose reporting period starts before 20 January (e.g. on 1 January) would prepare the first TD-compliant annual report for 2008, the first TD-compliant half-yearly financial report for 1-6/2008 and the first TD-compliant interim management statement for 1Q 2008. We suggest this is made clearer in the proposed instruments or any accompanying guidance.

Non-periodic Information for Holders of Securities (incl. **Q2**)

We **support the approach** of implementation of the relevant sections of the TD by way of a copy-out as well as **exclusion of convertible securities** from this regime (**Q2**). Using the same argument, issuers of convertible securities should also be exempted from the obligation to publish half-yearly financial reports.

Review of Listing Rules Extending Beyond TD (incl. **Q3** to **Q7**)

We agree with the removal of the requirement to **send half-yearly reports to investors** or insert the report as an advertisement in a national newspaper (**Q3**).

We agree that issuers of exclusively **debt securities with denominations of at least 50.000 Euro** provide annual financial reports, subject to the existing requirements in relation to accounting standards and time limits for their production (**Q4**). There should, however, be an exemption from this requirement for issuers of asset-backed securities (**ABS**, see the general discussions on ABS below). To the extent possible, the pan-European dissemination of regulated information under the TD should, however, not be mandated for the issuers providing annual financial reports beyond the TD requirements in order to mitigate, to a certain extent, the liability concerns discussed above. These issuers should be required only to disseminate their annual reports throughout the UK. The issuers with securities listed on the PSM should be subject to the same regime as issuers with securities with denominations of at least 50.000 Euro admitted to trading to a regulated market (**Q5**).

We do not support the proposal that issuers outside the scope of IAS 34 reflect in half-yearly financial reports **accounting policy changes** which will be applicable in the upcoming annual reports, rather than only describing the nature and effect of such

changes as required by the TD (**Q6**). There is a considerable difference between the efforts required to describe the nature and effect of such changes and those required to actually reflect them. The additional costs would be significant. We would therefore suggest that the minimum requirements of the TD are applied in this case. If the FSA proposal is nevertheless adopted, it should only apply to issuers of shares.

We agree with the regulated market issuers of shares providing more detailed **information on dividends** than required by the TD (**Q7**).

Listing Rules Covering Financial Report Requirements Outside the Scope of the TD (incl. **Q8** to **Q10**)

We agree with the proposed change of **preliminary statements** of annual results from a mandatory to a permissive regime (**Q8**). We understand that the scope of the regime will not be otherwise affected.

We have no comments on the **proposed retention** of the Listing Rules listed in par. 2.38 (**Q9**) or the proposed **deletion** of the Listing Rules listed in par. 2.43 to 2.55 (**Q10**).

Other comments

We noted the comments made in the Consultation Paper on the issue of **equivalence of reporting requirements** of third country issuers (par. **1.37**). Whilst recognising that this is a part of the wider issue being currently discussed at the European level (we in particular support the latest revised proposals by the European Commission for extension of the equivalency decision), we commend the FSA for being prepared to open such discussions with third country issuers and are prepared to participate in them. We assume that the FSA would exercise its power to exempt third country issuers from certain TD requirements in a consistent and transparent manner.

Our internal discussions on the Consultation Paper revealed that there is a need for **clarification of the regime of certain kinds of securities**, in particular GDRs, convertible bonds and preference shares. These securities are not obviously “shares” or “debt securities” for the purposes of the TD and their regime is consequently unclear.

The TD mentions **GDRs** only in the definition of “issuer”, which clarifies that the issuer of the underlying shares should be considered to be the issuer for the purpose of the TD, and in the definition of “shareholder”, which provides that a shareholder includes a holder of GDRs. It is therefore clear, for example, that a holder of GDRs is caught by the TD major shareholding disclosure regime if the issuer has its shares admitted to trading on a regulated market. “Shares” is not defined, but the ordinary meaning of shares does not include GDRs, nor does the application of the Prospectus Regulation definition of “shares”. The implementation of the TD in the UK should be clear in that an admission to trading of GDRs on a regulated market does not trigger major shareholding disclosure, or any of the other requirements that are expressly triggered by an admission to trading of shares. Admission to trading of GDRs would clearly trigger the annual report requirement. Half-yearly reports and interim management statements would not be required since GDRs are neither shares nor debt securities for the purposes of Article 5 TD and they are not shares for the purposes of Article 6 TD. We would support a super-equivalent provision in the UK requiring half yearly reports for issuers with GDRs admitted to trading on the regulated market, although flexibility

should be given on accounting principles. We would not support a super-equivalent provision in the UK requiring interim management statements for issuers with GDRs admitted to trading on the regulated market. Issuers have come to market in the UK without the expectation of having to produce such statements, and issuers considering coming to market would be discouraged from doing so. Given the Market Abuse Directive requirement to disclose inside information on an ongoing basis, there is a requirement that investors receive material information in any event, and the costs of imposing Article 6 TD would appear to outweigh the benefits. In addition, liability for annual reports and other statements should lie only with the issuer (not directors, if this alternative is in the end adopted for issuers of shares) and the requirement for non-IAS 34 issuers to reflect in half-yearly financial reports accounting policy changes which will be applicable in the upcoming annual reports (if adopted) should not apply.

As noted above, the Consultation Paper correctly recognises that **convertible securities** are neither shares nor debt securities for the purposes of the TD. Issuers of solely convertible securities should therefore be exempted from the obligation to publish half-yearly financial reports, interim management statements and non-periodic information.

Finally, the prevailing interpretation of the Prospectus Directive / Regulation is that, non-voting **preference shares** are considered "non-equity", rather than "equity" securities for the purposes of the prospectus disclosure. We recognise the difficulty of subsuming preference shares under "debt securities" for the purpose of the TD to achieve the same result, but the correct categorisation of these instruments should be subject to further discussion.

In the Consultation Paper, the FSA is not proposing to take advantage of the **option under Article 30(4) of the TD**. We believe that this option should be used. It would clearly benefit issuers who do not produce half-yearly financial reports, in the past listed on a UK regulated market on the assumption that they would not be required to do so, but who would have to start producing such reports solely to comply with the TD. Certain issuers guaranteed by public sector entities, discussed below, are an example of such issuers. We believe that, in principle, options of this kind agreed among Member States in Level 1 legislation should be used in the UK unless compelling reasons are presented by the FSA against their implementation.

Although the issue is not expressly mentioned in the Consultation Paper, we understand that the implementation of the TD and the related changes will not affect the existing regime of provision (by the issuer) of **information on guarantors**. The absence of an express confirmation of this fact in the Consultation Paper has caused considerable concerns in the market. We therefore believe it would be very helpful if such a confirmation was made at the time the implementation instruments are published.

SPVs which issue **asset backed securities** (**ABS**) are sometimes incorporated in jurisdictions which do not require them to produce audited annual reports and other reports. This is recognised in the Prospectus Regulation, which provides that the registration document for ABS must contain historical financial information only where the issuer has commenced operations and financial statements have been prepared. The current Listing Rules (LR 17.3.6.1) also contain an exemption, to be removed, for such issuers from the obligation to provide annual reports. The TD, however, does not contain any similar exemption from reporting requirements. As a result, such issuers will have to incur substantial costs involved in preparing the reports. In light of the

FSA`s proposal to require issuers of debt securities with denominations of at least 50.000 Euro to provide annual financial reports, the use of wholesale denominations would not help such issuers to avoid this requirement. We recognise that full alignment of the prospectus and transparency regimes is a long-term goal, requiring discussions at the EU level. We would strongly suggest, however, that if the FSA eventually requires issuers of debt securities with wholesale denominations to provide annual financial reports, it provides for an exemption for issuers of ABS of such denominations (by way of a modification, rather than a removal, of LR 17.3.6.1). The same exemption should apply to issuers listed on the PSM. It should be noted that investors in ABS receive detailed portfolio and transaction performance on a regular and periodic basis which varies from transaction to transaction. The ESF has developed a recommended standardised reporting for certain asset classes that should encourage consistent issuer reporting without the imposition of additional costs.

Another issue where the prospectus and transparency regime should be aligned, possibly by FSA guidance or CESR recommendation, concerns **issuers guaranteed by public sector entities** benefiting from the exemption under Article 8.1(a) TD and specific agents/agencies of such entities who bind both themselves and the entity in question. Such issuers benefit from a simplified prospectus regime (Annex XVII of the Prospectus Regulation) where they do not have to comply with IFRS or provide semi-annual financial information. 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 be carried over to the transparency regime, e.g., by the interpretation of scope of Article 8.1(a) TD. By way of an example, issuers guaranteed by the Canadian government, provincial governments or municipalities are not required by Canadian law to produce semi-annual reports and would be particularly affected by the TD regime.

We would finally welcome **clarification of the proposed LR 17.3.9B**, according to which an issuer not already required to comply with transparency rules must comply with the new rules concerning periodic financial reporting, major shareholding disclosures, continuing obligations and access to information as if it were an issuer for the purpose of the disclosure rules. There are concerns about the precise meaning of this rule, in particular whether it does not extend the new regime to issuers with securities listed on the PSM.

<u>Technical comments on language of proposed instruments</u>

We have the following technical comments on the language of the proposed instruments:

- **TR 1A.2.2R (2) (d)**: "Disclosure rules" should read "transparency rules."

- **TR 4.1.1R (2)**: Home state is defined for the purposes of the TR, copying out the definition in Article 2.1(i) of TD, and it is therefore unnecessary to cross-refer to that Article in this rule. The same applies in TR 4.2.1 and TR 4.3.1.

- **TR 4.1.3R**: Assuming the proposed Section 90A FSMA 2000 is adopted, this rule should be deleted and questions of responsibility should be left to that Section. The same suggestion applies to LR 9.7A.1.

- **TR 4.1.8R:** Article 4.4 TD requires the audit report to be signed by the person or persons responsible for auditing the financial statements. TR4.1.8R goes further than this requiring signature by "all the persons" responsible for auditing the financial statements. This also goes further than the CLRB which has a provision requiring the senior auditor to sign the audit report (Cl 493).

- **TR 4.1.9 to 4.1.12R:** These rules repeat the provisions of the Accounting Directives as regards what is the required content of the annual report. For UK companies these requirements will be supplemented by an enhanced form of business review required under the CLRB. For UK and other EU companies the repetition of the requirements in the transparency rules should be unnecessary. It might be better to cross refer to the provisions of the Directives, as in the TD, and also to the CLRB for UK companies, and by way of guidance rather than rules set out what the requirements of the Accounting Directives are, to provide greater clarity for non-EU companies.

- **TR 4.3.6R:** Article 6.2 TD provides that issuers need not publish interim management statements if they publish quarterly reports of their own initiative, but this is not reflected in TR 4.3.6R.

Major Shareholding Disclosures

General Comments on "Super-equivalence"

We recognise that the TD enables a Member State to provide for more stringent requirements than those laid down in the TD with respect to issuers for whom it is a home Member State. This will most likely lead to a number of different regimes of major shareholding disclosures across the EU/EEA. Such a result will increase the burden imposed on institutions which hold instruments subject to notification requirements across a multitude of EU/EEA-listed issuers. This is clearly not the level playing field which would be expected in a single EU/EEA capital market. Nevertheless, we do not in principle object to the FSA imposing such additional requirements, particularly as these apply to UK incorporated issuers only. This is namely because we understand the argument in favour of the continuity of the existing Companies Act 1985 (**CA 1985**) disclosure standards with respect to these issuers.

From a pan-EU/EEA perspective, our members in their capacity of shareholders of EU/EEA-listed issuers are prepared to accept such a diversity of major shareholding notifications disclosures provided that for any given issuer, a shareholding is subject only to one, clearly defined legal regime and not to a multitude of possibly divergent legal regimes. On the assumption that Member States will implement the TD correctly, this should be the case as we understand that the major shareholding disclosure regime is home Member State-based and therefore a shareholder will only have to consider the legal regime provided for by the home Member State of the issuer (unless the issuer is a third country issuer, as discussed below). We nevertheless urge the FSA to emphasise this point in possible discussions with regulators and ministries from other Member States.

General Comments on Third Country Issuers

Separately from the TD regime, third country issuers will in practice be subject to major shareholding disclosures in accordance with the laws of such third countries. If such issuers are at the same time EU/EEA-listed, which is the case of a number of, e.g., US or Japanese issuers, the shareholder will have to comply with two (or possibly more) major shareholding disclosure regimes with respect to the same issuer. The disclosure regime under the third country laws will be in a number of aspects different from the TD regime but in most cases will achieve sufficient degree of transparency. To ease the burden on such shareholders, the TD should take account of the fact that disclosure was made under third country laws.

The TD, however, provides only for a limited range of situations where equivalent third country shareholding disclosures regimes are recognised. They all concern certain notifications made by the issuer but do not address notifications made by a shareholder. In principle, where a shareholder is required to make a shareholding disclosure under a third country regime which is in principle equivalent to the TD regime, it should not be required to make a duplicit disclosure under the TD regime. We will continue to emphasise this point in our response to the revised draft TD Level 2.

We also note that the identification of a home Member State of a third country issuer is not at all straightforward. This may result in a shareholder not knowing the law of which Member State governs the major shareholding disclosure with respect to a particular third country issuer. Given that the national regimes will most likely differ across the

EU, this exposes the shareholder to a considerable legal risk. We would therefore support any efforts aimed at making the information about a home Member State publicly available.

Issuer Scope (incl. **Q11**)

We are supportive of the application of the new UK major shareholdings disclosure regime not only to issuers admitted to trading on a UK regulated market (for which the UK is a home Member State), but also to UK public companies (within the meaning of the CA 1985) traded on a UK exchange-regulated (prescribed) market.

Among issuers admitted to trading on a UK regulated market (for which the UK is a home Member State), the FSA in several instances further distinguishes between UK incorporated issuers (who are intended to be subject to the proposed super-equivalent provisions) and non-UK incorporated issuers (who are intended to be subject to the minimum requirement of the TD regime only). We note that the term "non-UK regulated market issuer", intended to describe the latter category, is not defined in the proposed instruments and may give rise to a misleading impression that it refers to an issuer whose securities are admitted to trading on a non-UK regulated market. We suggest that the meaning of the term be clarified.

We note that the Section 212 regime would continue to apply after the adoption of the CLRB and that we are in principle in favour of such a regime being retained. However, careful thought should be given as to which interests should be caught by the Section 212 regime and whether (and to what extent) such regime should be aligned with the TD regime. We would suggest that the FSA and DTI enter into discussions on this topic.

Notifiable Interests (incl. **Q12**)

We have not been able to undertake a detailed analysis of the differences between the CA 1985 and TD regimes. This is in particular due to the complexity of both regimes, their different conceptual frameworks and the TD Level 2 not being in its final form. In principle, the scope of notifiable interests under the UK regime should reflect the TD regime but we agree that the analysis may identify elements of the CA 1985 regime which should be so retained. In addition, where the CA 1985 regime provides additional provisions which would be helpful in clarifying the areas of the TD regime open to interpretation, the CA 1985 provisions should also be retained.

The clearing and settlement **exception** should not be limited to central counterparties to take account of the various modalities in which a trade may be settled and cleared. We agree with the exemption for voting rights held in a trading book of credit institutions and investment firms. We also support the proposal to enable securities lenders to set off their positions. We note that securities lending gives rise to complex issues which should be carefully considered, such as the existence of a chain of on-lending. LIBA will be expanding on the comments made in this paragraph and we support their position.

Notification Thresholds (incl. **Q13**)

The argument that a move to the less stringent notification thresholds of the TD regime would decrease the market transparency against current standards is convincing. We therefore agree with the retention of the current CA 1985 notification thresholds for UK

incorporated issuers traded on a EU regulated market or a UK prescribed market. The TD regime notification thresholds should apply to non-UK incorporated issuers for whom the UK is a home Member State.

Even within the super-equivalent UK regime, the exemption provided by the TD for market makers should be applied consistently with the TD regime. We do not think that the FSA has, under the provisions of the TD, the flexibility to implement the less stringent exemptions which are currently contained in the CA 1985 regime. We therefore support the proposal of the FSA in this regard.

Notification Deadlines (incl. **Q14**)

We agree with the retention of the shorter CA 1985 deadlines for UK incorporated issuers (whether listed at regulated or prescribed markets) and use of the longer TD deadlines for non-UK incorporated issuers (for which the UK is a home Member State).

Some have noted that the provisions of the proposed instruments setting out deadlines are not very clear (e.g. use of "thereafter" in TR 5.7.9.). We are aware that these provisions usually reflect the language of the TD but still suggest that the FSA considers how to clarify such key points of the regime, whether in the proposed instruments themselves or by way of a guidance.

Standard Forms

As we noted already in our response to the European Commission's TD Level 2 working document, we support the introduction of pan-EU standard forms for notification of major shareholdings and believe that they should be made mandatory and not simply recommended. We therefore agree with the FSA`s proposal to adopt such a standard form and recommend that they be made mandatory even for UK incorporated issuers listed on prescribed markets.

Consistently with our suggestions regarding third country issuers above, the mandatory standard forms should be truly mandatory only for EU/EEA issuers. Holdings in non-EU/EEA issuers should be notifiable under the relevant third country's legal regime, provided that it is found broadly equivalent.

Our support for the proposed standard forms was subject to several recommendations on their contents. In particular, we recommended deletion of the requirements to identify custodians through which the shares are held (in particular as the custodians themselves are exempt from the notification obligation) and details of the triggering transaction. The TD Level 2 should also clarify the permitted degree of aggregation, both within and between the various notifiable holdings. It would namely be helpful to expressly confirm that shareholders are not required to aggregate voting rights (Articles 9 and 10 TD) with financial instruments (Article 13 TD). This is because such an aggregation provides the issuer and the market as a whole with misleading information. The level of detail with which this issue is regulated in various Member States varies but we understand they all recognise that the two kinds of notifiable interests should not be aggregated.. To the extent the TD Level 2 in the end fails to specify aggregation principles, FSA guidance would be very helpful.

Other comments

We recognise that shareholders are likely to notify the competent authority using **electronic means**. There should nevertheless be an option for them to make paper filings. In particular, such an option should allow the shareholder to meet the notification deadlines in case of a malfunction of its IT system or other similar emergency situations.

Consistently with our suggestions made in the section on periodic financial information, we would appreciate if the FSA clarified the **regime of GDRs**. While we understand that GDRs holdings would count as notifiable shareholdings where the underlying shares are admitted to trading on an EU regulated market, the admission of GDRs themselves for such trading (without the underlying shares being so admitted) would not trigger the major shareholding disclosure regime, the GDRs not being "shares" for the purpose of the TD.

There are concerns that the TD does not make it sufficiently clear that the **exemptions** from the notification of voting rights under Articles 9 and 10 TD (concerning clearing and settlement, custodians, market makers and trading book) apply also to the notification of financial instruments under Article 13 TD. Again, if this interpretation is not clarified on the EU level, guidance from the FSA would be very helpful.

Technical comments on language of proposed instruments

We have the following technical comments on the language of DTR 5:

- **Glossary**: Define "UK regulated market issuer" and "non-UK regulated market issuer", making it clear that the "UK/non-UK" refers to the jurisdiction of registered office of the issuer (in case of EEA-incorporated issuers) or the jurisdiction of incorporation of the issuer (in case of other issuers), and not to the jurisdiction of the regulated market.

Dissemination of Regulated Information

PIP/SIP dissemination model (incl. **Q15**)

We believe that the PIP/SIP dissemination model works well and in principle meets the TD requirements and are therefore in favour of retaining its **mandated use** by issuers for whom the UK is the home Member State. Although such issuers may theoretically wish to have an option to disseminate the regulated information in any other manner compliant with the TD, we think it is unlikely that they would actually wish to do so. Use of the PIP/SIP dissemination model allows the issuer to discharge its duty by sending the information to one recipient (a PIP) and rely on the expertise of the PIP and the contractual arrangement in place with the PIP for the actual dissemination of the information across the market, in compliance (following the implementation of the TD) with the TD standards. It will also enable alignment of the dissemination with the parallel duties of filing the regulated information with the competent authority and making it available for storage.

Alignment of dissemination and filing

Effective alignment of the dissemination with the parallel duty of filing the regulated information with the competent authority is one of the key concerns which we highlighted in our response to the CESR`s consultation paper. We therefore strongly support the proposal that the provision of the regulated information to a PIP for dissemination will automatically satisfy the requirement to file the information in question with the FSA.

Audit Requirements for RIS

We express no preference for either of the FSA`s proposals regarding the PIP service audit report requirements. Irrespective of the solution chosen, issuers will continue to rely on the expertise of the PIP, the contractual arrangements in place with the PIP, the existence of (some) audit procedures and the FSA supervision. Relaxation of the requirements for external audits might result in cost savings on the part of a PIP which could theoretically be passed through to issuers but we understand this is not currently a material concern to issuers, in particular due to competition among the PIPs which results in prices remaining low.

Dissemination of annual reports and accounts in full text

We recognise the difficulties faced by some SIPs in receiving such documents in full text. We nevertheless believe that the need to comply with the TD requirements and the market demand for full text information must prevail over any such technical difficulties. By way of an example, we are aware of the evolving practice of disseminating hyperlinks to the full text information (as opposed to the full text information itself). If the FSA`s proposals to require the PIPs to disseminate the information only to such SIPs who are able to receive it were adopted, it would be necessary to provide issuers with sufficient comfort that technical difficulties on the part of some service providers do not affect the fact that by providing the regulated information to a PIP, they in effect discharged their duties. The combination of the absolute obligation of an issuer to ensure compliance of the dissemination with the TD standards (see below) and dissemination in unedited text being one of these standards could expose the issuers to risk.

Other comments

As noted above, the key concern for an **issuer is to be able to rely**, once it provides the information to one or more PIPs, on the PIPs and SIPs to disseminate it in compliance with the TD. We understand that, in principle, the issuer must remain responsible under the TD for ensuring proper dissemination. In practice, however, an issuer cannot reasonably be held responsible for failure of the PIP or SIP to disseminate the information or for delays, corruption of information and other similar occurrences which arise after the issuer has provided the information to the PIP in a timely fashion and in good order. The only way in which an issuer is able to "ensure" compliance of dissemination with minimum standards of the TD is by having in place a legally enforceable contractual arrangement which sets out the obligations of the PIP to do so. This is currently the market practice. The European Commission (while proposing the absolute obligations of the issuer referred to above) has included some helpful provisions reflecting this principle in its working document which we hope will be developed further. Although we understand that the FSA must implement the TD Level 2 in this field, we suggest that if these absolute obligations are retained, they are at least interpreted in accordance with what can be reasonably required from an issuer. This issue is even more relevant as the use of the PIP/SIP model may be mandated, i.e., the issuers will not be able to opt out of it if they feel the TD dissemination standards are not being met. An issuer using the PIP/SIP model should therefore be considered in compliance with the TD dissemination requirements.

Storage of Regulated Information

Interim Approach

We support the interim approach to the storage of regulated information, where the FSA would provide on its website hyperlinks to the various retail investor websites which receive the information disseminated by PIPs. It would be helpful if a rule or guidance made it clear that during such an interim period, the issuer is not under any obligation to take any action with respect to the storage of regulated information.

Long-term Solution (incl. **Q16**).

We prefer that any future UK officially appointed mechanisms (the **OAM**s) be operated on a **commercial basis**.

Our concerns and proposals regarding the operation of national OAMs and their contemplated pan-EU network are summarised in our response to the CESR`s consultation paper. Until the key issues described in that response (concerning namely ease of access by issuers and investors, network models, sources of funding and competition aspects) are resolved, it is difficult to make more specific suggestions for the UK implementation.

Other comments

Although the TD does not require that **prospectuses** be made available in OAMs, we emphasised to CESR that we support any initiative towards that goal. We understand that current storage mechanisms in the UK do include prospectuses so introduction of such a requirement by the FSA should not have any adverse impact on market practices. We further understand that, according to prevailing opinion, where the publication of a prospectus is mandated by law, the issue of infringement of third countries` securities offering laws does not arise (although it is nevertheless a common practice to use hyperlinks which require the person accessing a prospectus to go through the necessary disclaimers). We therefore prefer mandating such availability to making it only optional (which we suggested in our response to the CESR` consultation paper). In the long run, availability of a prospectus in an OAM should be considered a proper prospectus publication method, but we are aware that this would require an amendment to the Prospectus Directive.

The Consultation Paper suggests (par. **5.2**) that the **UK storage regime will apply** to issuers admitted to trading on a UK regulated market. We believe that a better interpretation of the TD is that it will apply only to those issuers admitted to trading on a UK regulated market for whom the UK is the home Member State. An issuer should be required to comply with only one storage regime and make the regulated information available to OAM(s) only in one Member State - its home Member State. The pan-EU availability of regulated information is achieved by its pan-EU dissemination and by the contemplated interconnection of national OAMs.

Contracts for Differences

In principle, we do not see the need for mandatory disclosure of major CFD holdings or other economic interests in shares beyond those mandated by the TD. The one exception concerns takeover situations, which are already covered by the new rules of the Takeover Code. In addition, we share the concerns expressed by the FSA about the complexity and compliance difficulties associated with such a regime. It is more than likely that such disclosure would not produce any meaningful results and might even obscure the real situation. Some also believe that the creation of such a regime might lead to the development of new products which would not fall under such regime, hence defeating the regime to some extent.

We are aware that similar concerns have been raised in connection with the new rules of the Takeover Code and agree that their planned review in June 2007, as well as a detailed cost-benefit analysis of any disclosure regime (in particular of any specific market failures it would be intended to prevent), would be a useful basis for any future discussions, in which we will be happy to participate.

ISDA and LIBA will be expanding on the comments made in this paragraph and we support their position.