



May 26, 2005

**Via E-mail and International Airmail**

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

Dear Mr. Demarigny:

The Investment Company Institute<sup>1</sup> appreciates the opportunity to support the revised draft advice of the Committee of European Securities Regulators (CESR) on possible implementing measures of the Transparency Directive. We believe CESR has taken a thorough and thoughtful approach to the implementing measures, and we are especially pleased with the conditions for exempting parents of non-EU management companies and investment firms from the requirement to aggregate their holdings with those of their subsidiaries. We also are pleased that CESR has provided some additional clarifications in the revised draft in response to comments, including those of the Institute.

Conditions of Independence for Disaggregation Exemption for Non-EU Management and Investment Companies

We appreciate CESR clarifying that the exemption from aggregation for non-EU management companies and investment companies applies where the exercise of voting rights is delegated by the management company or investment firm to a third party provided that the third party exercises the voting rights independently from the parent of the management company or investment firm.

The revised draft advice states that the exemption applies in cases where the exercise of the voting rights is delegated by the management company or investment firm "under the relevant requirements of the UCITS Directive and MiFID as applicable" to a third party. We question the reference to the requirements under these directives and remain concerned how non-EU management companies and investment firms would be able to comply with these conditions. We recommend that CESR in its final advice eliminate that particular text.

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<sup>1</sup> The Institute is the national association of the US investment company industry. Our membership includes 8,512 open-end investment companies (mutual funds), 650 closed-end investment companies, 143 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$7.959 trillion (representing more than 95 percent of all assets of US mutual funds); these funds serve approximately 87.7 million shareholders in more than 51.2 million households. Many of our members also manage assets in Europe, including UCITS and pension funds, and our comments reflect their experiences in Europe.

We also support CESR's clarification that the disaggregation provision would apply for parents of non-EU management companies and investment firms in relation to financial instruments under Article 11a.

#### Other Revisions to the Final Advice

We also strongly support several other changes that CESR made to its draft in response to comments, including those of the Institute. First, we appreciate CESR recommending to the Commission that it mandate that each competent authority publish on its website the calendar that applies to its regulated markets. As we stated in our previous submission, we believe providing full transparency to investors of the calendar of trading days and the list of issuers for which such calendar would apply would help investors comply with the disclosure requirements and make timely notifications.

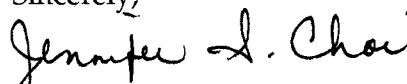
Second, we fully support CESR's decision to advise the Commission that a natural person or legal entity is deemed to have knowledge of the acquisition or disposal or the possibility to exercise voting rights *on the day after* the transaction was executed. We believe that this option would give multi-national firms time to obtain information from their worldwide systems that a notification may be required.

We also are pleased that CESR has decided to change its advice and propose requiring in the standard form the disclosure of only the identity of shareholders that have a notifiable interest under Article 9 (interest of 5% or more of voting) by those reporting under Article 10. Although we continue to believe that, in the case where a shareholder (client) has given discretion for investing and exercising voting rights to another entity (management company or investment firm), the identity of the shareholder need not be disclosed, we agree that at least limiting the disclosure to only those shareholders that would reach the 5% threshold on their own would be helpful.

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We appreciate the opportunity to provide comments on CESR's revised draft advice to the Commission on the notification of major shareholding provisions of the Transparency Directive. We thank members of CESR for their efforts to develop the implementing measures that are both pragmatic and consistent with the objectives of the Transparency Directive. If we can provide any other information or if you would like to discuss further any issues, please contact me at [jchoi@ici.org](mailto:jchoi@ici.org) or at (202) 326-5810.

Sincerely,



Jennifer S. Choi  
Associate Counsel