Trust through governance

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Dear Sirs,

ICSA response to ESMA consultation on Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive

We welcome the opportunity to comment on the European Securities and Markets Authority ("ESMA") consultation regarding major shareholdings and financial instruments notification requirements. The Institute of Chartered Secretaries and Administrators ("ICSA") is the international professional body that qualifies Chartered Secretaries and, as such, our members are well placed to understand the concerns of Issuers with regards to notification requirements.

In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, which includes company secretaries from more than 30 large UK listed companies from the FTSE100 and FTSE250. However, the views expressed in this response are not necessarily those of any individual members of the ICSA Company Secretaries Forum nor of the companies they represent.

We support proposals that lead to an effective transparency regime with respect to the disclosure of corporate ownership. It is appreciated that a finite list of financial instruments is not practical, as new ones are created over-time. However, regulations should be flexible enough to require notification of instruments which facilitate the exercise of influence on the issuer by the holder, thus preventing the building of secret stakes in companies and allowing hidden ownership and creeping control. In simple terms, voting and ownership rights need to be treated the same. As with all reporting requirements, the desire for transparency should be proportionate and balanced and not create onerous reporting requirements.

Commentary on specific questions

Q1. Yes, we would agree that the trading book and market maker holdings should be subject to the same regulatory treatment regarding Article 9(6b) RTS.

Q3. Yes, we agree with the EMSA proposal of aggregating voting rights held directly or indirectly under Articles 9 and 10 with the number of voting rights relating to financial instruments held under Article 13 for the purposes of calculation of the threshold referred to in Article 9(5) and (6)

Q5. Yes, we agree that, in the case of group of companies, notification of market making and trading book holdings should be made at group level, with all holdings of that group being aggregated (Article3(1)).

Q6. Yes, we agree that an exemption to notify at group level can apply if an entity meets the independence criteria set under paragraph 72 (Option 2).

Q14. Yes, we would agree with the proposed concept of “generally accepted standard pricing model”.

Qs15-18. From an issuer perspective, we would prefer to keep disclosures meaningful and to a minimum, however so achieved.

Q19. We believe that the client-serving exemption should cover MIFID authorized entities as well as a natural or legal person who is not itself MIFID authorized.

Q21&22. With regards to these questions the key point is that the principles of ownership and voting rights needs to be the same, thus where financial instruments have an “economic effect similar” to that of share or entitlements to acquire shares they should be subject to the same regulations.

To conclude, from an issuer perspective we would support the intention to ensure transparency in the structure of corporate ownership, preventing the building of secret stakes, hidden ownership and creeping control as in cases such as Fiat and Continental/ Schaeffler. However, with all regulatory requirements the process needs to be balanced and proportionate, and disclosures minimal and meaningful.

We hope our comments are useful and if you would like to discuss any comment in more details, please contact me.

Yours faithfully

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