The Hundred Group
of Finance Directors

Investor Relations and Markets Committee

Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B – 1049 Brussels
Belgium

18 August 2010

Dear Mr Barnier

Consultation on the modernisation of the Transparency Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

We are pleased to submit our comments on the above consultation.

Who we are

The Hundred Group is a non-political, not-for-profit organisation which represents the finance directors of the UK's largest companies, with membership drawn mainly, but not entirely, from the constituents of the FTSE100 Index. Our aim is to contribute positively to the development of UK and International policy and practice on matters that affect our businesses, including taxation, financial reporting, corporate governance and capital market regulation. Whilst this letter expresses the view of The Hundred Group of Finance Directors as a whole, they are not necessarily those of our individual members or their respective employers.

Our views

We welcome the Commission's consultation and the opportunity to respond on these issues.

We set out our responses to the Panel's specific questions in the Appendix to this letter. Due to the size and nature of our membership we have answered questions in parts 2, 3 and 4.

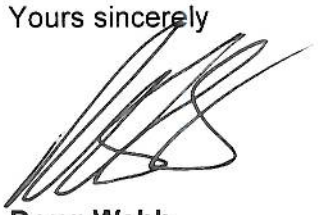
In overview, we are supportive of a European harmonisation of transparency requirements in order to support an open, active European market. However, we urge the Commission to consider carefully the disclosure thresholds to be introduced to ensure that European requirements do not lead to a loss of information in individual markets, including the UK.

In addition, we would ask the Commission to consider the wider difficulties of shareholder identification across Europe. In the UK, as issuers, we are able to utilise our rights under s793 of the Companies Act 2006 to obtain information on the identity of our shareholders. As responsible management we routinely enter in to dialogue and debate with our key shareholders which we find productive and essential for healthy corporate governance. Across Europe, however, the ability to identify shareholders is not assisted by legal rights and we are concerned with the difficulties in identification and consequent impact on Corporate Governance.

Only through accurate knowledge of our shareholder base will the additional benefits of transparency be realised.

Please feel free to contact me if you wish to discuss our comments on the proposals.

Yours sincerely



Doug Webb
The Hundred Group – Investor Relations and Markets Committee

APPENDIX

Part2 – Information about holdings of voting rights

Question 11. Would the disclosure of holdings of cash-settled derivatives be beneficial to the market? Please provide evidence supporting your answer (e.g. situations in which lack of disclosure of cash-settled derivatives produced negative results). Please report about your experience, if any, with the disclosure of cash-settled derivatives in the United Kingdom and/or in other jurisdictions where cash-settled derivatives are disclosed (such as in Switzerland).
The Hundred Group members are drawn from the FTSE100 in the United Kingdom where, since June 2009, we have benefited from additional disclosures over cash-settled derivatives and aggregate ownership. We welcome this move to incorporate best practice in to the Directive.

We note that the UK introduced reporting obligations on cash-settled derivatives with effect from 1 June 2009 to reflect the fact that cash-settled derivatives could be used to build stakes in listed entities and therefore transparency and disclosure regimes should include cash-settled derivatives. From experience these changes have worked well and aided market transparency. We note that investors have not found the additional disclosures to have been overly burdensome nor has the market been inundated with surplus information.

We are of the opinion that the current situation of divergent practice is not optimal for the market and investors and are therefore supportive of a disclosure regime where cash-settled derivatives are aggregated with other holdings for major shareholding notification on a pan-European basis.

Question 12. If the Transparency Directive was to require holders of cash-settled derivatives to disclose their positions,
12.1. should holdings of cash-settled derivatives be aggregated to holdings of voting rights and/or of financial instruments giving unconditional access to voting rights for the purposes of calculating whether the threshold triggering the disclosure obligation is reached or crossed?
Yes – in our opinion disclosure of the aggregate position of an investor provides the appropriate benchmark as it is representative of the level of control (actual or possible) that can be exercised by the investor. As issuers we encourage and pursue active engagement with our shareholders. In these relationships we wish to understand the full nature of the ownership rights of each particular investor. In particular, aggregate positions are key when considering takeovers and influence and to facilitate the identification of major shareholders for corporate governance purposes.

12.2. and if such disclosure of cash-settled derivatives should be done independently of voting rights and of other financial instruments, which threshold should be applied? E.g. (i) the thresholds provided in Article 9(1) TD should be applied (5%, 10% etc); (ii) the lower/initial threshold for this kind of disclosure should be significant and higher than the 5% foreseen in Article 9(1) TD (e.g. at least 10% or higher); (iii) other).
In the United Kingdom current disclosure thresholds are at 3% of ownership. We believe that the EU should provide cross-European thresholds, but permit individual member countries to adopt legislation that would provide additional, more stringent disclosure if they feel appropriate.
In the event that a single threshold is established across Europe we support the utilisation of a 3% threshold as established in the UK, with subsequent disclosures required at each percentage increase. We strongly believe that any thresholds that would require markets such as the UK to raise the disclosure thresholds, and therefore results in a loss of information from the market, should be avoided.

As stated in our answer to Question 12.1 we believe that disclosure of ownership should only be required for aggregate holdings and that this threshold should therefore be applied to aggregate holdings.

We note that the UK currently requires additional ownership disclosures to be made in a takeover scenario. We would urge the Commission to avoid legislating in conflict of such requirements.

Transparency of holdings of voting rights after the record date in advance of the general meeting of shareholders (the question of empty voting)

Question 13. Would the establishment of a specific disclosure mechanism for holders of voting rights who do not hold shares between the record date and the shareholders meeting be useful/effective to prevent empty voting practices?
(i) yes (please explain);
(ii) no, only limiting/prohibiting empty voting practices would be effective.
The practice of empty voting is not a significant issue in the UK due to the current registration model effective in both the UK and Ireland. In the UK, the record date for shareholders in advance of the AGM is effectively 6pm the night before the meeting when the register is closed. This, combined with rules over proxy voting, has reduced empty voting practices.

We understand that different share holding models exist in different member states. We are supportive of retaining the current UK practices and do not believe that the addition of additional disclosure nor the limiting/prohibiting of empty voting is necessary.

Question 14. If a specific disclosure obligation is imposed regarding the transfer of voting rights independently of the shares between the record date and the general meeting,
14.1. which threshold of voting rights should be applied in order to trigger the obligation? E.g. 0.5%, 1%, 2%, other.
14.2. which time-limit for the disclosure should be applied for this disclosure to be useful? E.g. immediate disclosure; no later than 1 day, other.
If a specific disclosure obligation is to be imposed we would not support immediate disclosure at the time of transfer as this would be inconsistent with other reporting requirements and be impractical in the context of operating an AGM where the register of shareholders eligible to vote must be established prior to votes being taken during the meeting. If disclosure was required it should be made at a meaningful level that will influence decision making, say a threshold of a 1%, in line with current UK requirements for disclosure of changes to ownership for investors with a 3% or more holding.

However, as outlined in our answer to question 13, we do not see any need for changes to the disclosure requirements in the UK as the current share holding model operates sufficiently well to limit empty voting practices while allowing for the practical cut-off of the share register shortly before the AGM to allow for the effective conduct of the meeting.

Intentions with holdings or voting policies disclosure.

Question 15. Which is the best way to make the investment process more transparent (*please justify your answer*):
- i) requesting investors to disclose their future intentions with holdings;
- ii) requesting investors to disclose their actual voting policies;
- iii) both;
- iv) none;
- v) other.
We believe that there should be no further requirements on investors to disclose their voting intentions or actual voting policies.

We engage in and promote open and ongoing dialogue with our investors and as such believe that we have a good understanding of the intentions of our significant shareholders. This is supported by the Stewardship Code in the UK which encourages institutional shareholders to proactively engage with companies. In addition we note that disclosure may be dissuasive to shareholders wishing to engage in future takeover activity. Shareholder intentions also change depending on circumstances and so any requirements would need to provide for when changes should be disclosed to avoid a false market being created.

We do not believe that disclosure of actual voting is practical nor appropriate for the majority of situations.

In terms of practicality we note the sheer volume of votes cast on a daily basis in the market place. In addition, each 'investor' may be representing a number of different funds and/or individuals and may vote in different ways depending on their representation. Also we are concerned that over disclosure of information may in fact lead to an excess of data and be more confusing than illuminative.

16. If investors were required to disclose to the market which their intentions are with regard to their investment,
16.1. would such disclosure be useful?
- i) this would be useful for issuers and other investors (e.g. more transparency) – *please provide examples/justify your reply*;
- ii) this would be negative to issuers and other investors (e.g. facilitate antitakeover defences) – *please justify your reply.*
Please see answer to Q15

16.2. which should be the minimum threshold triggering such disclosure? *Please justify your reply.*
- i) the thresholds provided in Article 9(1) TD should be applied (5%, 10% etc);
- ii) the lower/initial threshold should be significant and higher than the 5% foreseen in Article 9(1) TD (e.g. at least 10% or higher);
- iii) the information should only be requested only if certain threshold are crossed and provided that the investor is among the largest 3 investors in the issuer;
-iv) other.
Please see answer to Q15

16.3. should such disclosure consist in (*please justify your reply*):
- i) simple information on intentions (e.g. box ticking in a form: I intend to change/influence control of the issuer/I do not intend to change/influence control of the issuer);
- ii) more substantial information on intentions (e.g. narrative explanations on purpose of the acquisition including any plans or proposals of the investor for future purchases or sales of issuer's stock or for any changes in the issuer's management or board of directors etc.);
- iii) information on source and amount of funds used to acquire the securities;
- iv) arrangements to which the investor is a party relating to issuer's securities;
- v) other.
Please see answer to Q15

Aggregation of holdings and voting rights.

Question 17. Should holdings of shares and voting rights be aggregated with holdings of financial instruments giving unconditional access to voting rights for the purposes of calculating the relevant thresholds that trigger the notification obligation? *Please justify your reply.*

As outlined in our answer to question 12.1, we believe that holdings of shares and voting rights should be aggregated with holdings of financial instruments for the purpose of calculating relevant thresholds. We believe that the aggregate figure provides an accurate position of an investor's interest, which is critical to understanding their influence and voting influence.

Other cases of insufficient transparency regarding corporate ownership.

18. Are there other cases of potentially insufficient transparency regarding corporate ownership? *Please justify your reply.*
No, the current consultation addresses the major current issues, although as noted above we would be concerned about any EU legislation reducing the current level of disclosure required in the UK and as noted in our preamble believe that the current s793 regime in the UK is very beneficial in allowing UK companies to better understand who owns shares in the company.

Part 3: Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive

Uniform EU Regime or maximum harmonisation: major holdings of voting rights.

Question 19. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) for the notification of major holdings of voting rights? *Please justify your reply by describing any legal obstacles (e.g. related to civil or company law) to such uniform EU regime.*
We believe that it would be conducive to European markets to have a uniform EU regime setting out minimum requirements for transparency across the union.

As established in our answer to Question 12.2, however, we believe that any changes implemented by the EU should be done to avoid an increase in disclosure thresholds for country specific markets in order to avoid loss of market information. For the UK this would ensure the ability to retain the current 3% disclosure threshold which is currently in operation and for lower limits to be applied in a takeover situation.

Question 20. If a fully uniform EU regime is not possible because of insurmountable legal barriers, should Member States be prevented from adopting more stringent requirements than those of the Transparency Directive regarding the notification of major holdings of voting rights?
We believe that the EU should outline minimum requirements, but that member countries should be permitted to adopt more stringent requirements if desired. We believe that this would provide a comparable platform across Europe but with the understanding that 'one size' does not necessarily 'fit all'. We would be highly concerned if any changes lead to a decline of information in the UK market as this would be considered to be detrimental to market clarity.

Uniform EU Regime or maximum harmonisation: disclosure by issuers.

Question 21. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures? *Please justify your reply by describing legal/other obstacles to such uniform EU regime.*
As outlined above we believe that a uniform EU regime would be helpful, but that individual members should be able to adopt a more stringent approach if preferred.

Divergent rules: calculation of holdings.

Question 22. Could you please explain in what way national rules implementing the Directive result in different methods for aggregating holdings of voting rights (and where applicable financial instruments) for the purposes of calculating whether the relevant thresholds triggering the notification obligation are reached or crossed by investors? *Please justify your reply.*
The Hundred Group represents UK based preparers of financial statements. Accordingly we believe other respondents are best placed to comment on this area.

As we state in our response to Question 12.2 and Question 19, we are fully supportive of retaining the current level of disclosure in the UK market as we find this level to be a good balance of cost to the individual and benefit to the market, being both practical and informative.

Unclear rules

Question 23. Could you provide evidence of cases where unclear rules in the Directive ought to be clarified? *Please explain.*
No further comments

Part 4 - Any other comments
24. Do you have any other comments regarding the Transparency Directive?
No further comments