SWEDISH SECURITIES DEALERS ASSOCIATION

SVENSKA FONDHANDLAREFÖRENINGEN

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European Securities and Markets Authority

Response to the Consultation Paper on Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revisited Transparency Directive

ESMA /2014/300

The Swedish Securities Dealers Association (SSDA)[1] welcomes the opportunity to respond to the Consultation paper from ESMA.

The SSDA supports the response from the SEB.

A part from the general support for the response from SEB, the SSDA want to stress the utmost importance of harmonization in this area and also give some further arguments on specific questions and the Annex.

General Comments

One of the objectives with the notification requirements of the Transparency Directive (TD) is to ensure that the public receives relevant, timely and clear information in order to maintain the public's trust in the financial markets.

In order for this objective to be met, regulations and other regulatory requirements in the area of notifications need to be harmonised, clear, and easy to adopt and to understand.

[1] SSDA represents the common interest of banks and investment-services-firms active on the securities market. The mission of SSDA is a sound, strong and efficient securities market in Sweden. SSDA promotes member's view in regards to regulatory, market and infrastructure-related issues. It also provides a neutral forum for discussing and exchanging views on matters which are of common interest to its members.

SSDA have a close cooperation with other trade associations in Sweden, in the Nordic area and in the UK. SSDA is also active on European arena via EBF (European Banking Federation) and EFSA (European Forum of Securities Associations) and globally through ICSA (International Committee of Securities Associations).

Complex or diversified regulatory requirements in this area will lead (and has in our opinion to some extent already lead) to making the market information too diversified, making it less understandable, relevant and clear, and hence creating a less transparent market.

The European transparency notification requirements that exist today are extremely diversified. Problems are increased when different legislations describe similar instruments differently making comparisons near impossible.

There are also high compliance costs to comply with the differences between the regulations between the net short notification regulations vs. the transparency notifications requirements (e.g. differences in scope, definitions and exemptions).

With the revised TD and the consultation paper by ESMA, we are concerned that we might be facing an even more diversified and complex European regulatory environment.

In our view the regulatory requirements as regards notifications should be harmonised as far as possible. We would like to allow as little national variance as regards the TD requirements as possible. In addition, we would like scope, definitions and exemptions etc. between the short selling regulation and the TD notification requirements to match as far as possible. Harmonisation is the only way to really ease the administrative burden, cut compliance costs and make the information timely, correct and relevant for the market.

Comments to specific Questions and the Annex

Question 4

As regards costs as well as complexity, we are concerned that the market making exemption does not match the exemption in the Short Selling regulation. In our opinion there should be a limit or a criterion for the calculation based on what is reasonable in the light of the scope of the regulation. Furthermore, the calculation should be done in such a way that the requirements in TD could harmonize with those in the Short Selling regulation too avoid unnecessary costs and administrative burdens.

Question 5

No. For example in one Member State Swedish banks and securities firms would have had to make around 50 disclosures so far this year (compared to no disclosures with the existing regulations). These 50 extra disclosures would in our opinion not be very relevant disclosures to the market as they mostly include various small positions in instruments such as repos, swaps,

cash settled call options etc.that would not represent an actual interest in the respective share (i.e. could never be classified as creeping control).

Question 17

The Swedish FSA has earlier proposed that it should be the beneficial owners in e.g. Portfolio Bonds products (where the policyholder – beneficial owner – make all the investment decisions in the deposit account connected to policy), that should make the disclosures to the market of their interest in an issuer, instead of legal owners (which in this perspective do not have any real interest in the issuer). We would like point out that if the disclosures is done by the beneficial owner, it will make the information to the market more understandable, relevant and clear, and create a more transparent market. We would for that reason prefer a European harmonized regulation and a disclosure done by the beneficial owners instead of the legal owners.

Question 20

We prefer option 2 regarding the RTS for the client-serving exemption. Option 1 would be hard to implement in practice.

Question 21

We do not agree on the list proposed as it includes too many products that in this perspective are not relevant in order for the market to have knowledge about investors interest in the market. Including all these instruments will not make the market more transparent, but will instead make the information hard to understand and not too complex. In our experience, e.g. in Germany, the notifications that we have made have resulted in questions from the market as well as the issuers because the public cannot understand the information when it becomes too complex.

The rationale to include cash settled instruments is based on a few examples where a party has had a major interest in another party. In those cases it is clear that there is a relevance to inform the market, as there is a true interest. The effect of adding to many cash settled instruments to the aggregation will instead be that a vast amount of synthetic irrelevant positions will be communicated to the market, not revealing any true interest. Therefore it is also important that the client facilitation/market making exemption prevails and that these are not aggregated together with other positions as such.

Annex V

We would like further clarifications as regards the scope of financial instruments in order to support further harmonisation.

A practical issue in the markets is notifications due to minor changes in holdings near the thresholds. For example can minor re-purchases of units or

shares in UCITS or AIFs trigger sales and notification requirements even though the actual change in the holding is 0,001 percent? Only relevant disclosures should be required.

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