INTERNATIONAL SWAPS AND
DERIVATIVES ASSOCIATION, INC.

31 March 2010

CESR
11 ï 13 Avenue de Friedland
75008 Paris
France

Dear Sirs

Re: CESR proposal to Extend Major Shareholding Disclosure Regime to Instruments of Similar Economic Effect to Holding Shares and Entitlements to Acquire Shares

This is a joint response to CESR/09-1215b: CESR proposal to extend major shareholding notifications to instruments of similar economic effect which is being sent on behalf of Association for Financial Markets in Europe (AFME), the International Swaps and Derivatives Association (ISDA) and the International Securities Lending Association (ISLA). Details of our organisations are attached.

We welcome this opportunity to respond to CESRôs proposals. We have attached hereto our answers to the specific questions raised in the consultation. The main points of our response may be summarised as follows:

1. We agree that a Pan-European and proportionate disclosure regime for these financial instruments is preferable to diverse regimes being introduced by individual Member States.

2. The proposed extension of the disclosure regime will be very costly and increase complexity. We are not convinced that the benefits to issuers, investors, and the public will outweigh the costs.

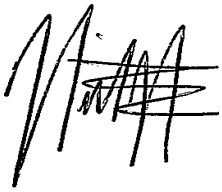
3. The proposed exemptions for regulated writers of these instruments should not be subject to the same ceilings as share positions held by regulated market makers and regulated proprietary traders under the Transparency Directive.

4. We propose exemptions for underwriters and sub-underwriters which are holding these financial instruments for bona-fide hedging purposes in the content of raising capital.

5. To contain costs and complexities, we propose that the proposed regime should require disclosure on a nominal basis rather than on a delta-adjusted basis although we also propose that disclosures be allowed on a delta-adjusted basis, if a party opts to do so.

We thank you for your consideration of our joint submission. If it would be useful to you, we would be pleased to discuss our response with you.

Yours faithfully



William J Ferrari	Richard Metcalfe	Kevin McNulty
AFME	**ISDA**	**ISLA**

About our associations:

AFME (Association for Financial Markets in Europe) was formed on November 1st 2009 following the merger of LIBA (the London Investment Banking Association) and the European operation of SIFMA (the Securities Industry and Financial Markets Association). AFME represents a broad array of European and global participants in the wholesale financial markets, and its 184 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with SIFMA in the US, and the Asian Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association), and provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. For more information please visit the AFME website, www.afme.eu.

ISDA (International Swaps and Derivatives Association) which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985, and today has over 800 member institutions from 56 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on the Association's web site www.isda.org

ISLA (International Securities Lending Association) represents the common interests of nearly one hundred borrowers and lenders of securities in Europe, Asia and the Middle East. While based in London, it has members in more than twenty countries. More information is available at www.isla.co.uk

CESR proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares

List of consultation questions

Q1. Do you agree with CESR's analysis of the issues raised by the use of instruments of similar economic effect to shares and entitlements to acquire shares?

We do not agree with every aspect of CESRôs analysis. We do agree that it is important to harmonize existing disclosure regimes by establishing a pan-European and proportionate disclosure regime for financial instruments with economic effects similar to those of financial instruments which are currently caught by Article 13 of the Transparency Directive (e.g. shares).

We note that CESRôs analysis does not deal with the FSAôs finding that there was no evidence that usage of CFDs and other similar instruments had resulted in any systematic market failure. After its research, the FSA took the view that CFDs are not a substitute for shares on any systematic basis. The FSA also found no evidence that the non-disclosure of CFD trades created a significant problem of inefficient price formation in the referenced shares.

CESR (paragraph 41) states that it is ñlikelyò that an investor with a significant economic long interest will seek to influence the issuer. However, our members are not aware of any such common practice (likelihood), and in general banks have policies in place restricting access to votes. We note the FSA commissioned study by PwC which found that nine of the largest UK CFD writers have policies in place which disallow the acceptance of voting instructions from the holders of such financial instruments. Also AFME members have indicated that a sale of shares held as a hedge for cash settled financial instruments to the holder of the instruments is the exception and not the rule. Please note also that a hedge may take the form of an offsetting CFD which eliminates any question of selling shares held as a hedge or gaining control of voting rights.

It would be helpful if the reference to ñfree floatò were defined clearly. It is not clear why CESR introduces the reference, since it also notes that any regulatory policy to maintain a free float ñchallenges the scope of the TDò. The FSA has also concluded that it is not its role to oversee the communications between the board of an issuer and its shareholders e.g. where it is alleged that hedge funds have attempted to influence board decisions citing their derivative holdings. In any case, it is unconvincing to argue that a board can be manipulated by a holder of CFDs who asserts-- but does not prove-- his control over the voting rights of referenced shares to the board in question. In such cases a board would be well advised to report the incident to the appropriate regulator.

Q2. Do you agree that the scope of the Transparency Directive needs to be broadened to address these issues?

It would be preferable to address the issue of surreptitious position-building as part of the review of the Takeovers Directive in 2011. It is beyond the scope of the TD to deal with

the communications/negotiations between boards and shareholders and holders of long economic interests in an issuersô shares. Since the great majority of CFD holders do not try to obtain control of the referenced issuer or to influence the board of an issuer, it is not be necessary to broaden the TD in order to address such practices. During its consultation process, the FSA found no evidence that price formation is materially impacted by non-disclosure of trading in CFDs or like instruments (see above). Likewise, the FSA received no evidence from its respondents that increased transparency would deliver significant price formation benefits. Presently the UK is the only Member State to have implemented a disclosure regime for these financial instruments, but a few other Member States are contemplating the establishment of such a regime. Thus, it would be helpful to establish a pan-European regime which is as proportionate as possible.

Q3. Do you agree that disclosure should be based on a broad definition of financial instruments of similar economic effect to holding shares and entitlements to acquire shares without giving direct access to voting rights?

Yes ï we agree.

Q4. With regard to the legal definition of the scope (paragraphs 50-52 above), what kind of issues you anticipate arising from either of the two options? Please give examples on transactions or agreements that should in your view be excluded from the first option and/or on instruments that in your view are not adequately caught by the MiFID definition of financial instrument.

Stock lending transactions will present issues of disclosure because a securities loan always includes a right of recall. Disclosure of stock lending transactions should be harmonized on a pan European basis.

Q5. Do you think that the share equivalence should be calculated on a nominal or delta-adjusted basis?

The calculation of share equivalence should be required on a nominal basis, owing to the costs/complexity associated with developing a systems programme to perform a delta-adjusted calculation within the firmôs disclosure protocol. Currently delta calculations for disclosure purposes must be made by hand by many large banks, and it would be time consuming and labor intensive to perform the calculations with respect to all CFDs referenced to EEA shares. However, we also suggest that firms be allowed to disclose on a delta-adjusted basis if they wish to do so with the appropriate notation.

Q6. How should the share equivalence be calculated in instruments where the exact number of reference shares is not determined?

Such exotic instruments should be exempted from the disclosure regime unless they can only be hedged with a defined number of referenced shares. It may be possible to derive the appropriate hedging equivalent by reference to the cost of acquisition.

Q7. Should there be a general disclosure of these instruments when referenced to shares, or should disclosure be limited to instruments that contractually do not preclude the possibility of giving access to voting rights (the 'safe harbour' approach)?

There should be a general disclosure of these financial instruments rather than implementation of a safe harbour exemption based on a contractual bar to voting rights access. The FSA found that the latter would be very difficult to properly implement, and costs would be correspondingly higher.

Q8. Do you consider there is a need to apply existing TD exemptions to instruments of similar economic effect to holding shares and entitlements to acquire shares?

The proposed exemptions for writers of cash settled derivatives and similar financial instruments referenced to shares should not be subject to the quantity limitations currently existing in the TD. This will avoid undue complexity and allow clearer focus on the holders of the long economic interests i.e. the buyers/holders of these financial instruments. It would be confusing to the user of the disclosure regime for the regime to reflect both the writerôs hedge positions and the long interest of the holder of the derivatives. Of course, writers of these instruments claiming the exemption should not interfere with or seek to directly influence the management of the company concerned.

Q9. Do you consider there is need for additional exemptions, such as those mentioned above or others?

Yes ï we propose that cash settled financial instruments referenced to shares which are held by underwriters and sub-underwriters as bona fide hedges of their underwriting commitments should be exempted from disclosure. We note that the hedging of underwriting risks has been a long standing practice which serves to reduce the risks and thus the costs of raising capital. Underwriters and sub-underwriters serve the same public purpose as market-makers in that they put their capital at risk to serve the interests of investors by facilitating their investments in securities, and this fulfils the public purpose of enabling companies to raise capital for their commercial purposes. Thus, these activities should receive the same treatment as market-makers.

Secondly, positions in cash settled financial instruments which are taken as bona-fide hedges of underwriting and sub-underwriting commitments do not create a net long economic interest in the issuer by definition. We accept that any position taken in excess of the partyôs underwriting/sub-underwriting position should be treated as a proprietary position would be.

Q10. Which kinds of costs and benefits do you associate with CESR's proposed approach?

There will be substantial systems development costs if delta disclosure is required across the EEA markets. Systems development costs would in any case be substantial given the EEA scope of the proposals. There will also be infrastructure costs incurred by the regulators across the EEA in order to monitor and enforce the new regime.

The benefits of the new regime will largely be of a theoretical nature since they are based on the assumption that more transparency is always good. However, the benefit to issuers will be modest, since the level of surreptitious position building for control purposes is not meaningful at the macro level and could be handled in a more focused way when the Takeovers Directive is reviewed in 2011. The benefits to investors will

also be modest, since the absence of disclosure has not been linked to problems in price formation.

Q11. How high do you expect these costs and benefits to be?

The systems development costs and infrastructure costs will be very substantial.

Q12. If you have proposed any exemptions or have presented other options, kindly also provide an estimate of the associated costs and benefits.

Our proposed exemptions for bona fide hedging by underwriters/sub-underwriters will facilitate the raising of capital.