ASSOGESTIONI
associazione del risparmio gestito

Milan, 30th May 2014

ESMA
European Securities and
Market Authority
103 rue de Grenelle
75345 Paris

Our ref. 240/14

Consultation paper on draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive (ESMA/2014/300)

Assogestioni([1]) is grateful for the opportunity to respond to ESMA's Consultation for draft Regulatory Technical Standards on major shareholdings under the revised Transparency Directive.

We support the use of RTS to harmonize as possible the implementation of the revised Directive and the adoption of proportionate standards in order to deliver the desired level of transparency avoiding the imposition of undue costs on market participants. To this aim, we suggest amending the proposal on the calculation of voting rights in case of financial instruments referenced to a index usually used by asset management industry, with specific regards to managed UCITS, to obtain economic exposure to the underlying, rather than to obtain control of or influence the company.

Our specific responses to the consultation's questions are set out below.

Q9: Do you agree with the proposal that financial instruments referenced to a basket or index will be subject to notification requirements laid down in Article 13(1a)(a) when the relevant securities represent 1 % or more of voting rights in the underlying issuer or 20 % or more of the value of the securities in the basket/index or both of the above?

We are, in general, in favour of ESMA's proposal regarding calculation of voting rights in the case of financial instruments referenced to a basket of shares or an index. The consultation paper confirms that the intention of these two thresholds is

[1] Assogestioni is the trade body for Italian asset management industry and represents the interest of members who currently manage in UCITSs, AIFs and discretionary mandates assets around € 1,4 trillion.

to "*guarantee that only relevant disclosures are required, resulting in a small number of notifications per year and thus minimising compliance costs for investors*."

While supporting this intention, we also consider that, in order to achieve it, the required disclosure should be provided in those cases in which the relevant securities represent 1% or more of voting rights in the **basket only (and not in the index)** or 20% or more of the value of the securities in the basket/index or both, as is currently the case in some European countries. The condition that, at least, one of the thresholds is met will ensure that only relevant disclosure is provided and, as ESMA notes, their existence in a number of Member States will permit to achieve the required outcome without placing undue compliance costs on investors.

In practice, the proposal should exempt financial derivatives on indices usually used by the asset management industry, with specific reference to managed UCITS, where the economic position is taken on the specific market the index refers to for an efficient portfolio management and not used to build significant positions in a single underlying security. Such disclosure could lead to meaningless notification without creating an enhanced transparency in the market.

Therefore, we suggest a change in the wording of article 4(1), in the way as follows: "*Voting rights in the case of a financial instrument subject to notification requirements laid down in Article 13(1) and which is referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket or index and if at least one of the following conditions apply: a) the shares in the basket* ~~***or index***~~ *represent 1 % or more of voting rights attached to shares of the specific issuer; or (b) shares in the basket or index represent 20 % or more of the value of the securities in the basket or index.*"

If our understanding on the method of calculation on 1% threshold is wrong, and, thus, the reference to "index" also requires the calculation of synthetic equities position in well diversified indices with a look through approach for all EU traded securities on a regulated market (these synthetic positions should be then aggregated with the others, to determine whether the 5% threshold is reached), it should be then carefully considered if the expected benefits from the proposed requirements would outweigh the costs (please also refer to Q11).

Furthermore, as regards the 20% threshold of the value of the securities in the indices, it should be also clarified if a temporary breach of the 20% limit for capped indices requires an aggregation of such synthetic positions with the others assumed. In fact, as a result of the financial markets, the 20% limit may be exceeded passively and temporarily (i.e. until the next re-balancing date of the index). In that case, we deem that such breach is not connected to the avoidance of notification and therefore should be acceptable.

Q10: Are there any other thresholds we should consider?
Where ESMA requests, for the 1% threshold a look-through approach for the method of calculation in case of financial instruments referenced to an index (please refer to

Q9), we suggest to consider a higher threshold in order to avoid unburden costs on investors and diminish an excessive disclosure of positions. In the current national regime, the combination of a 2% exemptions threshold on cash-settled derivates and a 10% notification threshold for long positions has, in general, avoided meaningless notifications.

Q11: Please estimate the number of disclosures you would have to make per year should the above mentioned thresholds be adopted. Please also provide an estimate of the compliance costs associated with the disclosure (please distinguish between one-off and on-going costs).

Where ESMA requests, for the 1% threshold, a look-through approach for the method of calculation in case of financial instruments referenced to an index (please refer to Q9), investors, and not only asset managers, would incur in recurrent costs, as they are supposed to purchase both the daily components and the weights in the index from the index provider. At the moment, the majority of market indices publish their constituents together with their respective weightings, free of charge, after each rebalancing and not on daily basis. Furthermore, costs could arise from adapting the IT procedures required to manage information. In addition, there would be recurrent costs for the running and management of the necessary procedures and for staff training.

Q12: Do you agree that a financial instrument referenced to a series of baskets which are under the thresholds individually but would exceed the thresholds if added and totalled should not be disclosed on an aggregated basis?

We agree that the aggregation of holdings in this instance should not be performed. ESMA's justification for this position is correct in that it would not be cost effective to build a stake by obtaining small positions in different baskets before aggregating them. Moreover, we would also suggest to include a reference to indices in article 4(2), as it currently only refers to baskets. The proposal is as follows: "*By derogation from paragraph 1, financial instruments referencing a series of baskets* ***or indices*** *which are individually under the thresholds mentioned in paragraph 1 but would exceed the thresholds if added and totaled are not subject to notification requirements.*"

Q13: Do you agree that our proposal for the method of determining delta will prevent circumvention of notification rules and excessive disclosure of positions? If not, please explain.

We appreciate the proposed approach that allows investors to use generally accepted industry standard pricing models to calculate voting rights in the case of financial instruments which are exclusively cash-settled. As CRD IV entities and management firms, also asset managers have already in place models to calculate delta (CESR/10-788 and Regulation (EU) n. 231/2013). We also agree that the proposed approach will prevent circumvention of notification rules without requiring excessive disclosure of positions.

Q14: Do you agree with the proposed concept of "generally accepted standard pricing model"?

Yes, we agree with the proposed concept.

We hope that our observations will be of help and remain at your disposal for any clarification on the comments made in this response.

Yours sincerely

The Director General