

Markets Supervision Department
Financial Regulator
PO Box 9138
College Green
Dublin 2
By e-mail: marketsadmin@financialregulator.ie

**Re: Disclosure of Grants of Security over Shares
Consultation Paper 36**

Dear Sirs,

We welcome the opportunity to input on the development of requirements in relation to this issue. While we acknowledge the focus on, and benefits of, enhanced transparency in the current environment, we are of the view, as the Market Abuse (Directive 2003/6/EC) Regulations 2005 ("Regulations") are derived from the EU Market Abuse Directive (2003/6/EC) ("MAD"), that a European wide consensus approach in relation to whether or not grants of security over shares is required to be disclosed would be preferable to Ireland pursuing its own approach irrespective of, or in advance of, the EU response. We note that the FSA in its announcement of 9 January, 2009 has also indicated that it is seeking to reach a common understanding on the detail of the MAD requirements with the European Commission and the Committee of European Securities Regulators and would therefore appear to accommodate the possibility that they would amend their requirements and guidance to reflect any such decision.

We are also of the opinion that if and when an agreed EU position is reached, consideration should be given to domestic legislative changes to effect this rather than seeking to implement by means of guidance or amendment to the existing rules. Clarity, certainty and consistency of approach are essential in relation to shareholder notifications.

We are of the view that if disclosure is to be required, there should be clarity as to the precise type of transaction captured and the information to be disclosed as if the context for the obligation is that it is considered information likely to be of significance in assessment of whether there has been a change in the level or nature of the PDMR's interest, adequate information to make this assessment should be uniformly available. We note that there is considerable variation in the amount and type of information disclosed in the disclosures made by PDMR's of UK companies on this matter to date. In particular it is not uniformly the case (and would not appear to be warranted under DTR3) that the entity to which security has been granted is notified and since this entity may be considered as 'having a hand on the shares', their identity would be expected to be disclosed. In addition some

notifications indicate the nature and purpose of the loans in question (for example personal loan and bank overdraft etc to facilitate share purchases or provision of security in respect of insurance underwriting) while others do not. It is also not entirely clear if a direct charge through a single agreement is the appropriate notification threshold or whether transactions such as a personal guarantee being given by the individual with respect to a package of assets more generally is intended to be captured. The date of creation of security is likewise not uniformly disclosed, nor is it entirely clear whether the release of security by a lender or the repayment of a loan for which it was security will trigger a notification.

We would also observe that application of the obligation to disclose the grant of security over shares to PDMR's, whose holdings in many cases will be relatively small as a percentage of the issued share capital of the company, without a matching obligation being imposed in respect of external significant shareholders (i.e. those holding 3% or more of the issued share capital of the company) will create an imbalance and may result in an incomplete picture of the significance of shareholdings being available to the market in general. We would suggest that means to address this should also be considered in due course.

We would concur that any attempt to impose an obligation on Irish companies and their PDMR's based on the existing rules and Regulations would create confusion and would ignore the prevailing legal uncertainty. We would therefore be in favour of Option 2 but believe it should be preceded by an agreed common position at European level.

Yours faithfully,

A handwritten signature in blue ink, reading "Eugénée Mulhern", written in a cursive style.

EUGENÉE MULHERN
Director
Davy Corporate Finance