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Addendum to the Consultation Paper on CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive

A response by the London Investment Banking Association

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The London Investment Banking Association represents the major European and international investment banks and securities houses which base their European operations in London. A list of our members is available on our website: www.liba.org.uk. We welcome the opportunity to respond to the Addendum to the Consultation Paper on CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive.

1. LIBA's approach to the consultation

We understand the pressures resulting in the short time period available to consider the Addendum. We do urge CESR to seek additional time for consultation on its proposals if at all possible however, particularly given the number of issues outstanding and revisions required. In the interests of efficiency and effective representation, this response focuses on those parts of the Addendum affecting the issue of equity securities. LIBA has, however, also contributed to the preparation of the response from IPMA and fully endorses that response.

2. General comment on CESR's approach

There are now a large number of annexes with considerable detail within them. A "roadmap" of how these annexes inter relate is urgently needed in order for feedback on the proposals to be as informed as possible. We believe that the Level 2 approach of creating a large number of annexes dealing with specific situations will be cumbersome going forward and difficult to administer and keep updated. Further there is a risk that innovation in the market will be stifled if issues have to either fit within an existing annex or await detailed drafting of a new annex. This would clearly be extremely detrimental to the operation of the market.

We believe that a more constructive approach would be to have a limited number of annexes (probably a registration document and securities note for equity and non-equity securities) together with a schedule setting out which parts of those annexes are required for specified issuers and types of issue. This would greatly simplify the disclosure requirements and the updating of the annexes. It would also identify information which is always considered non-applicable in given situations, resulting in less usage of the proposed "blanket clause" discussed below.

We reiterate our previous comment in the first stage of the Level 2 advice that the needs of non-EU issuers needs to be better addressed. We believe that in many situations EU issuers should have to provide disclosure of the differences in information provided from that provided by an EU issuer, but not provide the same information. For example non-EU issuers should disclose how their accounting policies differ from IAS, but not necessarily restate their accounts in accordance with IAS. In many cases a description of the differences will provide sufficient information for investors to make an informed investment decision. Similar arguments apply in a number of other areas (for example see comment on banks below). The risk in mandating that non-EU issuers provide "equivalent" information, where no such information is readily available, is that such issuers will no longer list in the EU. This would force investors to invest through alternative markets, to the detriment of those investors and the EU markets.

3. Specific comment on the issues raised by CESR in the Addendum

3.1 *Securities issued by banks (paras 38-59)*

We agree that banks have specific characteristics which warrant a differentiated approach in some respects. We are concerned however that it has not been felt necessary to cover equity issues for banks separately from other issuers. There are specific requirements in the general equity building block that are inappropriate for banks - specifically working capital statements, indebtedness statements and other liquidity disclosures. It should be made clear that these disclosures will not be required for equity issues by banks. The same arguments apply to similar institutions such as building societies and insurance companies and this should be clarified.

We believe that non-EU banks which are subject to similar regulatory control should be treated in the same manner as EU banks. Where non-EU banks are not subject to similar regulatory control then that fact should be disclosed to investors. We do not consider that disclosure of a bank's solvency ratio should be separately required in the Level 2 advice as it is already required and disclosed in the issuer's financial statements.

3.2 *Specialist building block for shipping companies (paras 105-115)*

We do not believe that a specialist building block for shipping companies is necessarily appropriate and, even if there were such a block, we do not believe that a valuation report should be required for shipping companies. These would be included if required in unusual circumstances under the general obligation to include all information necessary for investors. Most of the characteristics of shipping companies could equally be considered applicable to a range of other industry sectors.

We would be very concerned if this sector specific approach were to be extended. The existing "specialist" issuer requirements included in the London requirements apply to issuers whose historic record is not usually the basis for investors decisions, either because they are asset based (such as property companies), or because there is no representative record (such as scientific research based companies). We do not believe this is the case for the majority of shipping companies, who currently access the markets based on their historic records with no additional requirements.

3.3 *Proposal of a blanket clause (paras 120-123)*

We agree with the approach of introducing a "blanket clause" stating that information that is not applicable can be omitted. We further believe that there should be flexibility allowed for the competent authority to amend or allow omission of other information which is not necessary for investors' assessment of the securities.

3.4 *Working capital (paras 124-126)*

We support the inclusion of a working capital statement in relation to equity issues and believe that it is more appropriately included in the securities note. We consider that the disclosures regarding liquidity and capital resources should be included in the securities note or the registration statement at the discretion of the issuer, if not already covered by being included in the issuer's accounts.

We do not believe that a capitalisation table or indebtedness statement should be required for equity issuers. These requirements were deleted from the London rules some years ago after consultation with the market, when it was accepted that the cost of producing these statements was not balanced by the benefit of the information to investors' decisions. Much of the information is provided in issuers' annual accounts and any significant changes should be addressed by the "no material change" statement which is included in the prospectus.

As noted above, we do not consider any of these disclosures appropriate for banks or similar institutions.

3.5 *Additional information in the SN (Securities Note) Equity Schedule (paras 127-132)*

We agree with the approach taken of including certain general information and information relevant to preference and redeemable shares on the basis that the information can be omitted when it is not applicable under the blanket clause. It would, however, be useful to have a list of provisions that will always be inapplicable in certain situations. This could be achieved by the schedule suggested above setting out the application of the annexes to specific issuers and issues. It also appears that there may be a problem with the schedule as the version downloaded from the CESR website appears to be missing many of the provisions which makes it impossible to comment on the detail.

3.6 *The Summary (paras 160-168)*

We believe that the existence, form and content of any summary is something that should be left to the issuer and its advisers based on the individual circumstances of the issue and the specific issue. It would be helpful if the Level 2 guidance made this clear. A checklist of headings will result in unhelpful summary statements which do not focus on the key issues which investors should consider. We do not consider that the length of any summary should be prescribed as this should be set according to the complexity of the issue and issuer.