

Secretary General, CESR
11-13 Avenue de Friedland
75008 Paris
France

16 June 2003

Dear Sirs

CESR Prospectus Consultation

We are writing to you, as representatives of the PricewaterhouseCoopers firms in Europe, in response to your request for written comments on the draft feedback statements and revised annexes setting out proposed detailed implementing measures in response to your mandates from the European Commission published in April 2003 and May 2003.

We are pleased that you have taken advantage of the extension in your timetable to advise the European Commission to expose for public comment the texts of the annexes revised to address as you believe appropriate the many comments received by you on the initial drafts.

We have a number of comments we would wish to make reiterating some of those we made in our responses to the earlier consultations as well as on the proposals you are now putting forward and these are detailed below.

Should you wish to discuss any of these comments with us please do contact Kevin Desmond at the above address.

Road map

We welcome the indication that you will be issuing a “road map” as a guide to the application of the annexes and as to how they interact. We believe that such a “road map” is essential to the consistent application by issuers of the prospectus directive implementing measures.

We would also encourage you to consider including a definitions section in such an annex.

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Pro forma financial information (May Annex 4 paragraph 20.2 and April Annex B)

We believe that is essential for the 25% threshold at which significant gross change is considered to occur to be spelled out in the annexes otherwise Member States might choose to apply different thresholds. It is also necessary to produce guidance, which should be agreed with all of your members, as to what are the criteria against which changes should be measured in order for their significance to be determined. Such guidance is essential if issuers are to properly prepare the information necessary to be included in a prospectus particularly if it is necessary to prepare historical financial information for the object of a transaction giving rise to a significant gross change.

We also believe that it is essential that the rules set out in Annex B should apply whenever pro forma financial information is included in a prospectus or registration document even if its inclusion is not mandated by the applicable annex. In order to achieve this, it may be necessary to include a specific provision in each relevant annex.

Interim financial information (All registration document annexes)

Firstly, we note that other than requiring comparative information there are no provisions concerning the content of interim financial information. In order to provide consistency with the historical financial information requirements we would advocate that you require interim financial information to be presented in accordance with applicable IFRS. The formulation of words currently proposed in the Transparency Directive would be appropriate, as follows:

“The condensed set of financial statements shall be prepared in accordance with the international accounting standards for interim financial reporting, as adopted pursuant to Articles 2, 3 and 6 of Regulation (EC) No 1606/2002 or, where the issuer has no subsidiary, in accordance with the national law of the home Member State.”

Secondly, we believe that the deadlines after which interim financial information is required to be included in a registration document should mirror those eventually adopted in the Transparency Directive.

It may also be necessary to include specific provisions requiring that where interim financial information has been “reviewed” rather than audited that any “review” opinion

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should also be included in the registration document, the following text would, in our view, achieve this:

“If the interim financial information has been subject to an auditors’ review carried out in accordance with applicable auditing or reporting standards then any such opinion must be included in the registration document.”

Financial information requirements for Non-EU issuers (All registration document annexes)

We are pleased to understand that you will be circulating for comment an annex that will address the “equivalence” of financial information for non-EU issuers. We believe that you should build such an annex on a graduated approach dependent on the type of issue for which the registration document is being prepared. In particular, we believe that the following structure would be an appropriate basis:

Equity	Reconciliation from local non-EU GAAP to IFRS with additional note disclosure where IFRS would require such notes but not local non-EU GAAP
Retail debt	Reconciliation from local non-EU GAAP to IFRS
Wholesale debt	Narrative description of differences

Profit forecasts and reporting by auditors or independent accountants (Equity registration document, retail debt registration document and depository receipt registration document annexes)

We are pleased to note that you have clarified that the reporting obligation required of auditors or independent accountants is one of proper compilation. However, we continue to believe that it is pre-requisite for auditors or reporting accountants to report that there exists a framework for the preparation and presentation of profit forecasts that issuers would be expected to follow. We would urge you to work with all interested parties in the drafting of such guidance at the earliest opportunity as this is particularly important given the inherently risky nature of reporting future financial performance..

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Asset backed securities (Registration document annex)

Whilst we support the inclusion of a specific annex for asset backed securities, we note that the drafting of this is not homogenous with the other annexes and we would encourage you to conform the requirements where appropriate.

We would also encourage you through the “road map” to limit the application of this annex to “classic” asset backed issues such as mortgages or credit card receivables. We are concerned that these rules do not address the much more complex disclosure needs of “whole business” securitisations. Indeed, our view is that whole business securitisations should be treated more in the manner of equity securities in terms of appropriate financial information disclosures.

Specialist issuers

We agree with your conclusion not to require specific annexes for certain specified industries. However, we would be concerned if the provision you advocate through which issuers would be required to include other non-financial information such as minerals valuation reports, property valuation reports or experts reports on new technologies were left to individual competent authority discretion. We would encourage you to provide guidance as to the normal situations where such non-financial information would be expected to be provided to minimise the risk of inconsistent application of this provision.

Specifically, we are concerned with the assertion made in paragraph 71 of the May 2003 draft feedback statement “that the main reason for such [experts’ or valuation] reports was that the information that could be obtained from the financial statements provided in the prospectus could not be sufficient to explain the valuation being given to the issuer’s securities”. It is our view that it is all of the information in a prospectus that “supports” the valuation of which the financial information is but one part. To highlight financial information in this context is in our view highly misleading. A more appropriate test would be that where the valuation of the securities is supported by information that would not ordinarily be recorded in historical financial information then that information should be provided and in circumstances where such information is fundamental to the assessment of the securities in question then it should be subject to independent assurance such as that which would be obtained through an experts’ report or valuation report.

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We are also concerned with the drafting of the insert addressing the financial information requirements for newly incorporated issuers, for example paragraph 20.1 of Annex4, will not achieve the desired effect. What is the “period” which must be presented, to the date of the registration document would be impossible? What is meant by “fully audited”? Financial information can either be audited or not. We would suggest that the following text would better achieve your objective:

“Where the issuer has not been otherwise required to prepare and have audited historical financial information, it should prepare and have audited historical financial information drawn up to date no later than 90 days before the date of the registration document.”

Yours faithfully

PricewaterhouseCoopers