AFEP

Paris, February 24th, 2004

Dear Sir,

The European Commission has recently published its first provisional mandate on implementing measures concerning the future directive on financial instruments markets (ISD 2).

With a view to preparing its technical advice for the European Commission by 31 January 2005, CESR has just launched a call for evidence aimed at classifying the subjects for future consultation, and has announced the establishment of three Expert Groups.

Please find below AFEP's comments in response to this consultation.

First of all, AFEP would like to draw the attention of CESR to the following two points:

- It deems it essential for issuers to be represented in the expert groups established by CESR, in particular in the groups on markets and on intermediaries' issues.
  In fact, the future directive has significant implications for businesses, as customers of investment firms or investors (as regards fulfilling orders, transparency of transactions, etc.).

- In addition, as it pointed out to the Inter-Institutional Monitoring Group (IIMG) in July 2003, AFEP considers it important to publish not only the responses sent to CESR, but also, if appropriate, the reasons why proposals put forward by market players have not been taken into account.

As regards the various subjects on which the European Commission is expected to request the opinion of CESR, AFEP would like to see the inclusion of more specific details concerning the rules of conduct for the provision of services to clients and the admission of financial instruments to trading.

Mr Fabrice DEMARIGNY
Secretary General
CESR
11-13 Avenue de Friedland
75008 PARIS

ASSOCIATION FRANÇAISE DES ENTREPRISES PRIVÉES
63, RUE LA BOÉTIE - 75008 PARIS - TÉL. 01 43 59 65 35 - TÉLÉCOPIE 01 43 59 81 17
35, RUE ROYALE - 1000 BRUXELLES - TÉL. (322) 219 90 20 - TÉLÉCOPIE (322) 219 95 06

Conduct of Business Obligations when providing services to clients or potential clients

The Commission would like to know the content of the minimum information that has to be provided for clients or potential clients.

- Among the various points on which CESR is to give technical advice, AFEP believes it is necessary to clarify Section 3.3.2 'Appropriate information to be provided to the clients or potential clients'.
  In (5), AFEP recommends using the same term, 'information to be provided', taken from the proposed directive, rather than 'information to be made available', which looks at the relationship between investment firm and client from a more restrictive point of view for the client.

- The mandate from the European Commission to CESR referred to in Section 3.3.4 is intended to determine *when and in which manner* investment firms should report to clients.
  In addition to these points, it is important for the implementing measures to cover the *services provided* and their *cost*. In fact, as the CESR document says, reports also need to take account of the services provided and include the costs associated with the transactions to which they refer. This enables clients to be informed of the terms and conditions applied to transactions (contractual conditions, etc.).

Admission of financial instruments to trading

According to § 3.8 of the consultation document, the technical advice provided by CESR is to aim to clarify the arrangements that a regulated market is to implement to verify that the issuer complies with its obligations in respect of initial, ongoing or *ad hoc* disclosure obligations.

> AFEP considers that it is also necessary to take account of the situation, provided for in the future directive, in which transferable securities are admitted to trading without the consent of the issuer, in which case the obligations in respect of information do not have to be fulfilled by the issuer.
> In fact, in accordance with Article 40 of the joint position from the Council (and not 39, as stated in the consultation document), the latter cannot be obliged to provide information to a regulated market having admitted its transferable securities to trading without its consent. Nor can it be held responsible for the information due in respect of financial instruments admitted to trading without its consent.

We appreciate the opportunity to comment and are of course available to discuss these issues at your convenience

Yours faithfully,

Alexandre TESSIER
Director General