IPMA

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Mr Fabrice Demarigny
CESR (Committee of European Securities Regulators)
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Dear Mr Demarigny

CESR GUIDELINES FOR THE CONSISTENT IMPLEMENTATION OF THE PROPOSED COMMISSION REGULATION ON PROSPECTUSES

The International Primary Market Association (IPMA) is pleased to respond to CESR's call for evidence on Level 3 of the Prospectus Directive (CESR/04-057).

- We agree with CESR that early discussion of key issues is an important element in facilitating an understanding of disclosure requirements. We are, nevertheless, concerned that detailed Level 3 guidance, prepared without the benefit of actual experience of working with the Level 2 Regulation and according to a very tight timetable, is premature, and may unwittingly lead to problems by creating a regime which is too rigid to deal with the circumstances of all issuers of many different types who access the European capital markets. We would therefore strongly recommend that any initial CESR guidance should not be overly-detailed. Too much detail will lead to inflexibility and an inability for Member States to deal appropriately and speedily with particular cases. An over-rigid "rule-book" could stifle the market and inhibit innovation, which is the opposite result to that required by the Prospectus Directive, which requires the Commission to respect the need to encourage innovation in financial markets (Recital 33). We believe that Member States will be best placed to deal with particular issues as they inevitably arise during the initial stages following implementation of the Regulation, and that common guidelines should be developed later, in those areas where it is essential.

- Level 3 should not be used just to add to the detail established at Levels 1 and 2. Guidance should be used very sparingly, in cases where Level 1 or Level 2 simply cannot be properly interpreted, whether through ambiguity or because circumstances change in the markets over time and no longer fit within Levels 1 or 2.

- Level 3 guidance should be subject to rigorous cost benefit analysis, full consultation with market participants on a realistic timetable, and CESR feedback. We note that the timetable provides for a three month consultation period. We are concerned, however, that an overall December deadline is too short, particularly as the period runs concurrently with implementation of Level 1 and finalisation of Level 2.

- Duplication of existing legislation should be avoided. In particular, further guidance should not be provided in relation to concepts that are already covered by accounting principles. For example, "related party transactions" is covered in the equivalent International Financial Reporting Standard. It should be left to company law and/or accounting standards to specify how a company's accounts should make the comparative two year presentation of financial statements when the company has made a major acquisition during the most recent financial year. The imposition of different requirements on issuers in such cases for the purposes of the Prospectus Directive will result in additional cost (because they will have to re-do work they have already done, to a different standard) and may well result in market opportunities being missed because the additional work will take considerable time to complete. In the area of financial information, Commission recognition of non-IAS standards as 'equivalent' should prevail. There is a risk that CESR Level 3 guidance might inhibit or frustrate such recognition by setting additional requirements with which such non-IAS rules do not comply.

- The imposition of different standards under the Prospectus Directive where standards already exist elsewhere in EU law or regulation will result in confusion for markets and investors. It will not be helpful, for example, if investors receive one form of Operating and Financial Review when the issuer produces a prospectus but another form (specified by company law) when annual reports are produced for the market under the Transparency Directive.

- We would welcome further CESR guidance on the 'roadmap' for the various building blocks. The architecture used to map the "road" to a particular Annex and/or building block, depending on the type of issuer and the nature of the securities, has been developed to harmonise the implementation procedure across Member States. However, as currently drafted, the language provides insufficiently clear guidance. Different interpretations by competent authorities will lead to confusion and complications for issuers and investors.

- We would also welcome administrative guidance from CESR to deal with some of the practical issues which arise from the new legislation. For example, an agreed method of dealing efficiently with multi-issuer MTN Programmes which involve more than one Home Member State (perhaps, for example, providing an option to elect that the Home Member State of any guarantor be responsible for review and approval); a procedure for dealing with the change-over around the July 2005 implementation date, so that issuers can continue to issue and markets are not disrupted. We would be happy to discuss ideas with CESR.

We would be pleased to discuss our response with you. Please contact Cliff Dammers, Helen Style or Mary Hustings if you would like to do so.

Yours sincerely

Mary Hustings