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Secretary General, CESR
The Committee of European Securities Regulators
11 - 13, Avenue de Friedland
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29 October 2003

Dear Sir

CESR's Advice on possible Level 2 implementing measures for the proposed Prospectus Directive - Consultation Paper 03-210b

We are writing to you as representatives of the PricewaterhouseCoopers' firms throughout the Member States of the European Union in response to your request for comments on the Consultation Paper issued in July 2003 in connection with additional implementing measures for the proposed Prospectus Directive.

As we have noted in our previous responses to Prospectus Directive implementing measures consultations, we believe that clear, comprehensible guidance as to the presentation of financial information in prospectuses, whether historical, pro forma or prospective, and to the provision of external assurance by auditors and/or independent accountants, is an essential prerequisite for the success of the European capital market and in fostering investor confidence in prospectuses issued throughout the European Union. We would encourage you to work with experts in this field through such bodies as the Federation des Experts Comptable Europeens ("FEE") in developing this material.

In addition to responding to the specific questions posed in the Consultation Paper, set out in Appendix 1 to this letter, we have a major concern as to the practical application of the proposed historical financial information implementing measures on companies that are already trading on a regulated market. We have also taken the opportunity to make a number of other comments and these are set out in Appendix 2 to this letter. We have focussed our detailed comments on the questions concerning financial information in prospectuses.

We would like to take the opportunity to highlight the absence of transitional provisions in the proposed implementing measures, the effect of which would be to require that an issuer, wishing to issue a prospectus in 2005 either before its 31 December 2004 accounts have been published, when it would have to prepare IAS Regulation historical financial information for its 2002 and 2003 financial years, two years earlier than required by the IAS Regulation or up to the publication of its 2005 accounts when 2003 and 2004 would have to be presented on an IAS Regulation basis.

As we do not believe that this can have been the intention, we strongly encourage you to prepare workable transitional provisions. We believe that restricting the requirements to take into account next year's policies etc to prospectuses prepared in connection with an initial application for trading on a regulated market is the best solution to this problem.

We would also like to highlight the fact that you have not specifically addressed the question of what may be considered to be "equivalent" accounting principles to those required by IAS Regulation. This is particularly important for the many non-EU issuers who regularly access Europe's capital markets for finance. We believe that the cost of requiring full restatement to International Financial Reporting Standards may act as a significant deterrent to those issuers continuing to directly access Europe's capital markets which will inevitably lead to lower overall market liquidity and an increase in the cost of capital for EU domiciled issuers.

We have set out, in Appendix 3 to this letter, our thoughts as to how you might frame the requirements in relation to equivalence. We would note that we believe that it is essential that these requirements are included in your Level 2 advice to the European Commission as leaving the issue to Level 3 guidance would do nothing to settle the concerns being expressed to us, and to other commentators, by many non-EU issuers.

In summary, to assist you in seeing the impact of our proposals, we have presented in Appendix 4 the cumulative effect on paragraph 20.1 to Annex A. We would expect the same changes to be made to the other annexes as appropriate.

We should be pleased to discuss with any of the points raised in this letter. Please contact Kevin Desmond at the address above.

Yours sincerely

PricewaterhouseCoopers LLP

CC David Wright, European Commission
David Devlin, President Federation des Experts Comptable Europeens

Appendix 1

Responses to specific questions

<u>Financial information requirements in prospectuses</u>

56 *What are your views on the costs of providing reconciliation as compared with a full restatement?*

It is our view that, in principle, a reconciliation approach would result in lower costs to issuers of securities than would be incurred from requiring full restatement. However, the extent of any cost saving is dependent on the required content of any reconciliation and on the scope of any assurance required from an issuer's auditors.

There are two dimensions by which the content of a reconciliation can vary. Firstly, as to the number of financial years to be reconciled, as commented on in paragraph 49 to the Consultation Paper. Secondly, the content can vary from showing the effect of accounting policy differences on key financial statement components such as profit before tax or net equity through to tabulating the effect of accounting policy differences on each of the primary financial statements. It could also be possible to require additional note disclosure where disclosures required by International Financial Reporting Standards are not given in the company's accounts.

The level of assurance demanded of an issuer's auditors can vary from requiring no assurance, through an opinion as to whether the information has been properly compiled, as is to be required under the implementing measures on pro forma financial information, to requiring an audit opinion.

We would note that it is very difficult to quantify the first time cost of restatement or reconciliation from set of accounting principles to another as this depends on the nature of the differences and their impact on the financial statements. .

We would also note that the practical consequences of proposals to require restatement or reconciliation depend on the extent to which accounting principles whether applied in an EU Member State or elsewhere are considered to be "equivalent". We have emphasised the importance of providing guidance as to what is meant by equivalence in our covering letter.

57 *What are your views on the most appropriate way to present the financial information?*

We agree that where issuers choose to only present the two most recent financial years in accordance with the IAS Regulation then it is essential that the first year of national generally accepted accounting principles accounts is supplemented with the subsequent second year in order to provide investors with some basis for comparison. We also believe that, where differing accounting bases are used in one prospectus, the disclosure requirements of IFRS1 concerning the impact of adopting International Financial Reporting Standards should be required in order that investors can make a link between the two sets of financial information.

Clearly a four-column presentation approach would be preferable in keeping the financial information together, although we would note that the format adopted in presenting the accounts under national Company Law, as required by the 4th Company Law Directive, may not be consistent with that to be adopted under the IAS Regulation. In such circumstances the financial information may need to be presented in two separate parts.

We also believe that where the historical financial information in a prospectus is not presented on a consistent basis, as would be permitted by your preferred option, the prospectus should be required to contain appropriate cautionary language highlighting the divergence in bases.

58 *What are your views on the importance of comparability both within the audited historical track record and with the reporting standards that are to be adopted?*

Our view is that at the time of an initial application for trading on a regulated market investors deserve that the historical financial information be presented on a basis comparable with that which companies traded on regulated markets are required to follow. Accordingly, we agree that it is appropriate to require the presentation of “new” historical financial information in a prospectus where a company is to be subject to a different financial reporting regime such as will be the case after admission to trading on a regulated market.

Whilst we acknowledge the cost implications of imposing the “new” basis on the full three-year record have led you to the inclusion that only two years should be represented, we believe that the most appropriate solution is for all three years to be re-presented, that is we support Option 1.

We would note that consistent presentation of all three years on the basis applied by companies already trading on regulated markets in Europe may well be demanded by investors and would suggest that you make it clear, in any event, that issuers would be able to do this should they so choose.

For existing issuers there should be no additional financial information disclosure requirements imposed by the Prospectus DirectiveThis conforms to existing practice across the world's capital markets.

Accordingly, we believe that you should differentiate the requirements for new issuers from those of existing issuers. We note that you have acknowledged already that a differential solution to the disclosure requirements for a registration document in connection with an admission to trading may be required through the drafting of the historical financial information text in the banks registration document, item 11.1 Annex K, as set out in Annex E.

59 *What are your views on how this should be achieved?*

We are concerned that the detailed drafting of the additional text in item 20.1 in Annex A, and the equivalent items in the other annexes, whilst in principle achieving your objective, in our view requires all companies preparing prospectuses to consider the impact of the accounting policies they will be applying in the current year and if they are different from that applied in either of their last two years audited accounts restate those accounts in the prospectus.

We do not believe that this was intended as it is far removed from existing practice where companies traded on regulated markets are able to present their financial history without ever having to consider whether restatement is necessary.

Should you decide to maintain the "2+2" approach described in Option 2, we suggest below an alternative to the text that we believe better achieves the intended objective:

> "In the case of a registration document prepared in connection with an initial application for trading on a regulated market, the last two years historical financial information must be presented and prepared in a form consistent with that which would be adopted in the issuer's next annual financial statements having regard to

> accounting standards and policies and legislation applicable to such annual financial statements..”
> .

This would make it clear that the requirement to look “backwards” as regards the basis of financial accounting only applies when an issuer is seeking admission to trading on a regulated market. In all other cases issuers would be able to use their pre-existing financial statements as the basis for preparing a registration document.

In respect of companies already traded on regulated markets, we are concerned that the disconnect between the European requirements as set out in Company Law for annual accounts and the need for historical financial information to be included in a prospectus as set out in these proposals. This “disconnect” arises because Company Law requires that companies present financial information that gives a true and fair view, or under the IAS Regulation a fair presentation, of their financial position and profits in their accounts for a financial year together with comparative amounts for the preceding financial year. The auditors are then required to report as to whether the accounts give that true and fair view.

The Prospectus Directive, if implemented as drafted, will require three year’s audited historical financial information and auditors’ reports thereon. This leads to a number of difficult questions as to how to present the historical financial information, and the auditors’ reports, in a prospectus including those arising from:

- changes in accounting policies over the three years, which is particularly relevant as International Financial Reporting Standards continue to evolve;
- corrections of errors to previously published accounts; and
- modifications to the auditors’ reports, whether for references to matters of fundamental uncertainty or qualifications.

We believe that an alternative solution that could be considered would be to take advantage of the opportunity arising from the ongoing drafting of the Transparency Directive to introduce specific requirements augmenting the IAS Regulation regarding the content of the annual accounts, and the audit thereof, for companies trading on regulated markets.

The accounts of companies with equity securities traded on regulated markets could be required to include three year’s financial information each giving a fair presentation in accordance with the IAS Regulation, as "comparative financial statements", and the auditors would be required to report on each year under International Standards on Auditing. This would be modified from three years to two for companies with any other type of securities traded on a regulated market.

This would provide the basis for companies already traded on Europe's regulated markets to include, or incorporate by reference, into a prospectus, historical financial information from a single set of accounts significantly simplifying the securities issuance process.

60 *Do you agree with the approach taken in relation to issuers of debt securities? If not, please state reasons.*

We agree with the approach taken in respect of debt securities as regards the presentation of two years rather than three years.

However, we believe that issuers of all non-equity securities, including debt, to prepare a separate reconciliation of key financial statement components from their national generally accepted accounting principles to those required under IAS Regulation together with requiring a compilation report thereon to be issued by the company's auditors rather than requiring full restatement into IAS Regulation as is proposed.

This we believe reflects the appropriate cost to be imposed on non-equity security issuers whilst providing appropriate benefit to investors in such securities.

69 *What are your views on extending this treatment to EU issuers for the types of securities identified?*

We support the position you have taken in permitting non-EU issuers of wholesale non-equity securities to limit the requirements in relation to divergent accounting policies to a narrative description of differences.

Whilst it may be attractive to consider extending the treatment of allowing a narrative description of accounting policy differences to EU issuers, as the IAS Regulation applies in any event to such issuers, there is little to be gained from such an extension. Although we would advocate adopting a reconciliation approach as suggested for all non-equity securities, in our response to question 60 above even if such an approach is limited to wholesale issues by EU domiciled issuers.

70 *Are there any other types of issuer where you believe that the different requirements should apply?*

We agree that these different requirements should be available to all issuers of wholesale, that is issues with units denominated over €50,000, non-equity instruments including depositary receipts and assets backed securities.

Appendix 2

Other comments

1 We note your comments concerning auditing standards in paragraph 61 of the Consultation Paper. We support the initiatives of the European Commission in seeking a common standard of auditing throughout the European Union.

We would draw your attention to the practical implications of requiring retrospective application of a different body of auditing standards to that required to be used in an individual Member State as an example of the need for guidance to be prepared assisting auditors in complying with the requirements of these rules. For example, it may not be possible to go back and perform audit procedures that would have been required by International Standards on Auditing.

2 We note that the text in respect of asset backed securities registration document in item 8.2 to Annex G is differently drafted to that of the other annexes. We would recommend that you conform the text in order to minimise any opportunity for confusion as to the requirements concerned. The first sentence of the first paragraph should be replaced by the first sentence used in the other annexes.

3 Whilst agreeing that it is appropriate that a newly incorporated issuer that has not prepared any accounts should be required to prepare and have audited some historical financial information for in its prospectus, the drafting of the text in the third paragraph of item 20.1 Annex A does not provide a concise rule to achieve this. Our concern is that the text does not specify a period to which the information should be drawn up. We believe that the requirement should be that the historical financial information be drawn up to a date not more than six months before the date of the prospectus.

In addition, we do not understand what is meant by the term “fully audited” when applied to this financial information. Our view is that the “fully” is unnecessary as financial information can either be audited or not, there is no concept of a partial audit. Indeed, given that the last sentence in item 20.1 requires all historical financial information to be audited the sentence concerned can be deleted.

4 We believe that you should consider drawing together all of the requirements in relation to the audit of the historical financial information required by item 20.1 as a means of

clarifying these. This could also be used as an opportunity to make it clear that the audit requirements only apply to historical financial information required by this item and not other historical financial information such as interim financial information. Our summary revised text in appendix 4 illustrates how this might be achieved.

Appendix 3

Determination of equivalence of accounting and auditing standards

We believe that additional text is necessary, as set out below, in the implementing measures to address the question of equivalence and that this should be included as an additional section immediately after item 20.1 in Annex A with similar positioning in the other registration document annexes.

Accounting standards

Historical financial information must have been prepared according to:

(a) IAS Regulation; or

(b) a Member's State local GAAP; or

(c) in the case of non-EU issuers, either

  (i) IFRS, US GAAP, or Canadian GAAP; or

  (ii) a high quality comprehensive basis of accounting that is recognized by the international community for its merit; or

  (iii) comparable to financial information prepared according to IFRS when taken together with a statement of differences between such standard of GAAP and IFRS.

Auditing standards

The historical financial information must have been independently audited in accordance with:

(a) International Standards on Auditing (ISAs); or

(b) auditing standards applicable in a Member State; or

(c) in the case of non-EU issuers,

(i) auditing standards applicable in the US or Canada; or

(ii) a high quality comprehensive basis of auditing that is recognized by the international community for its merit; or

(iii) that if the audit had had to meet ISA or an Member's State auditing standards, the audit standard actually applied would not have led to a reservation or such reservations are fully disclosed.

Appendix 4

Revised paragraph 20.1 reflecting our proposals

"~~Audited~~ Historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), ~~and the audit report in respect of each year~~. Such financial information must have been prepared according to IAS Regulation, or if not applicable to a Member States local GAAP or to a non Member States local GAAP equivalent to IAS Regulation.

In the case of a registration document prepared in connection with an initial application for trading on a regulated market, the last two years ~~audited~~ historical financial information must be presented and prepared in a form consistent with that which ~~will~~ would be adopted in the issuer's next annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the ~~audited~~ historical financial information covering that period must have been prepared in accordance with the standards applicable to annual financial statements under the IAS Regulation, or if not applicable to a Member States local GAAP or to a non Member States local GAAP equivalent to IAS Regulation. This historical financial information must be drawn up to a date not earlier than three months before the date of the registration document ~~have been fully audited.~~

If the ~~audited~~ financial information is prepared according to local GAAP, the financial information required under this heading must include at least:
(a) balance sheet;
(b) income statement;
(c) a statement showing either (i) all changes in equity or (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
(d) cash flow statement; and
(e) accounting policies and explanatory notes

The historical financial information required by this item must have been independently audited, or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member

State or an equivalent standard. The audit reports in respect of each of the periods presented must be included in the registration document."