

Mr Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

7 January 2004

Dear Sir

CESR CONSULTATION ON DRAFT STANDARD NO 2 – COORDINATION OF ENFORCEMENT ACTIVITIES (CESR/03-317b)

PricewaterhouseCoopers supports the use of principles –based standards for the enforcement of International Financial Reporting Standards (IFRS) and welcomes the opportunity to participate in this consultation on the second draft Standard on Enforcement. This response is submitted on behalf of the PricewaterhouseCoopers network of firms in Europe.

Adequate information to support enforcement decisions

We support the general approach. But we believe criteria should be established for the level of detail that national enforcers should consider with respect to any action, and the extent of detail that should be made available to other CESR enforcers or to the public, so that a proper understanding of a decision can be obtained by third parties.

An enforcement decision should be based on a full understanding of all the relevant factors and judgements. Unless these factors are known (and there may be circumstances where it is not possible to make them public, for example with pre-clearances), there is a danger of inappropriate “read-across” to other cases.

Timely public announcement of enforcement decisions will help other companies to avoid circumstances that may result in misstatement of financial information. However, it should be made clear in any published material that each company’s circumstances may be different and users should not automatically regard the decision as being applicable in similar situations.

Clear roles and responsibilities for national authorities and EECS

There should be clarity about the respective roles and responsibilities of national enforcement authorities and the European Enforcers' Coordination Sessions (EECS).

The role of EECS should be to act as a forum for exchanging experience and to help coordinate communications between national enforcers. EECS should not be perceived to act as a "second-tier" enforcement body. An enforcement matter may be brought to EECS for consultation, but the decision should be the responsibility of the relevant national enforcement authority.

CESR and the European Commission should ensure that there are no unsolved barriers to an open dialogue among enforcers, such as an inability to exchange confidential information on the underlying cases. This may need to be embodied in legislation.

These issues are amplified in our detailed comments on each of the four draft principles set out in the attached annex.

We would be happy to discuss our comments with you. If you have any questions regarding this letter, please contact Ian D Wright (+44 20 7804 3300) or Graham Gilmour (+44 20 7804 2297) in our London office.

Yours faithfully

PricewaterhouseCoopers

Annex – Comments on draft principles in Consultation CESR/03-317b

Principle 1. Ex-ante and ex-post enforcement decisions taken by competent independent administrative authorities or by bodies delegated by these authorities (‘EU national enforcers’) should take into account existing precedents consistent with the timing and feasibility constraints which characterise the decision. Where practicable, discussions with other EU national enforcers should take place before significant decisions are taken.

Decisions taken by national enforcement authorities should take into account precedents where these are *relevant* to the case being considered. (The fact pattern of apparently similar cases may differ, so it is important to consider the level of detail available when referring to precedents.)

Special care is needed in the case of pre-clearances. It should be made clear that pre-clearance relates to particular company circumstances and is not necessarily indicative of the approach that should be taken in other cases.

As stated in our response letter on Standard No 1, pre-clearance should not be considered to provide an alternative “rulebook” interpretation of IFRS. Matters requiring interpretation should be referred back to IASB and IFRIC (through EFRAG if appropriate), otherwise there is a risk of creating GAAP without the opportunity for adequate due process.

Principle 2. Within a reasonable time after decisions are taken by an EU national enforcer, details of these decisions should be made available to the other EU national enforcers in accordance with the policies developed by CESR.

Principle 3. The EU national enforcers should follow a confidentiality regime consistent with that applicable to CESR members.

As indicated in our covering letter, the usefulness of making enforcement decisions available (in a database or otherwise) depends on the level of detail included to support each decision. We foresee that the national enforcers, particularly in smaller EU countries, will rely heavily on the database as a reference tool. There is therefore a danger that unless all the relevant facts relating to each decision are included, inappropriate parallels may be drawn. Criteria should be established for the level of detail that national enforcers should consider with respect to any action, and the extent of detail that should be made available to others (both to other CESR enforcers and publicly).

Any database developed by CESR should not become an alternative ‘rulebook’ set of interpretations of IFRS. Care should also be taken to ensure that, where differing accounting treatments are permitted by IFRS, enforcement decisions are not seen to close options or promote a particular treatment. Decisions of this nature that are made available

and copied by other enforcers will have the effect of restricting the ability of companies to communicate with the market in the most transparent and meaningful way.

Principle 4. In order to achieve a high level of harmonization, the chairman of the SCE shall call European Enforcers Coordination Sessions (EECS) of the SCE to which all EU national enforcers of standards on financial information should participate. Such sessions will be aimed at discussing decisions taken at national level, as well as experiences in the application of standards on enforcement.

We agree that the EECS would be a useful forum for discussion of experience. For example it will be helpful in providing enforcers with:

- an overview of the types of issues that are being raised in other countries as well as their own
- a “sense check” of how the overall enforcement regime established through CESR’s principles is working in practice
- an opportunity to discuss collectively issues of interpretation that should be referred to IASB and IFRIC.

The draft principle states, “such sessions will be aimed at discussing decisions taken at national level, as well as experiences in the application of standards on enforcement.” Consultation with EECS by national authorities with respect to particular cases will be helpful, but we do not consider that the EECS should act in any way as a “second chamber” to the national enforcement body. It may be helpful to re-emphasise in Principle 4 that any decision on enforcement action must remain with the national enforcer.

SCE should also consider how it could discuss experiences with enforcement agencies in other major capital markets around the world that accept IFRS filings. Many of Europe’s largest companies operate on a global basis, and some are listed on markets outside the EU. Therefore encouraging convergence of thinking by enforcers around the world, although a major challenge, will be of benefit to capital market participants.