SHEPHERD+WEDDERBURN

OUR REF T0537.34/GXT/PWH
YOUR REF CESR/03-162
8 August 2003

M. Fabrice Demarigny
Secretary General
CESR
11 - 13 avenue de Friedland
75008 Paris
France

Dear Sir

CESR's Advice on Level 2 Implementing Measures for the Proposed Prospectus Directive
Ref: CESR/03-162

Further to our letter to you of 16 June 2003, we write concerning the above Advice. We are a Scottish firm of lawyers acting for a number of UK issuers in the wholesale debt market who maintain annually updated debt issuance offering programmes. Please note that this response sets-out the views of Shepherd+ Wedderburn only and is not to be taken to represent the views of any third party, including any of our clients. We have the following comments on the above Advice:-

(i) ***Question 61: Do you agree that information about investments should not be required for banks issuing wholesale debt securities? Please give your reasons.***

We do agree that information about investments should not be required for banks issuing wholesale debt securities. There are a number of reasons for our holding this view, as follows:-

(a) In our letter of 16 June 2003, we confirmed our view that, where building blocks conflict, only the minimum disclosure requirement should apply. Our response to Question 61 is consistent with that previous view. The bank building block requires no disclosure of investments so that should be determinative of the position regardless of what the wholesale debt building block says.

(b) CESR has previously stated that its rationale for a reduced disclosure regime for banks is the prudential and regulatory supervision of banks providing greater comfort in respect of debt issues. If CESR is to remain faithful to that rationale then information about investments should not be required for banks issuing wholesale debt securities.

(ii) ***Question 64: Do you consider that information on investments is relevant for wholesale debt securities? Please give your reasons.***

We do not consider that information on investments is relevant for wholesale debt securities. There are a number of reasons for our holding this view as follows:-

(a) We repeat our concern expressed on 16 June 2003 that, for all issuers, requiring disclosure of investments appears to treat wholesale debt as though it were an asset-backed security. It is not debt of that nature and investors will be aware that this is the case.

(b) Disclosure about "investments" should be resisted on the basis that it is not clear to us what would be caught by the expression "investments". Its meaning appears potentially very broad indeed.

(c) Disclosure concerning investments may be triggered through "risk factor" disclosure or other general disclosure requirements. Consequently, it appears to us as a matter of general application that disclosure about investments should not be specifically required under the wholesale debt securities regime.

(iii) ***Question 101: Do you agree with this generic rule [i.e. the rule to determine which line items are to be classifiable as final terms and which line items have to go into the base prospectus]?***

Subject to the following comment, we do agree with this generic rule. We note that the base prospectus shall .... (b) set out which line items of information will be included as final terms. We believe that CESR should make it clearer that such items of information are not necessarily exhaustive of the final terms but, instead, are the minimum final terms. It should be made clear that there may be additional information/terms for the purposes of the particular issue which we believe is consistent with CESR's desired goal that flexibility be maintained for innovation in the development of financial products in the future.

(iv) ***Question 112: Which of these two approaches [concerning the translation of the summary] do you think should be applied to base prospectuses? Please give your reasons.***

We do not believe that any items of the final terms should need to be translated. Our reason for this is that introducing a translation requirement in respect of final terms may reduce the speed with which issues can be achieved which is not desirable.

(v) ***Question 122: Which of these views do you consider should apply to the form of final terms? Please give your reasons.***

We believe that the issuer should not be allowed to file a document which replicates only some information already provided in the base prospectus because, by giving such information increased prominence, there is a risk of giving a misleading impression. Our additional concern is that, in addition to there being replication of only certain information already provided in the base prospectus, new information might be included which, properly, should form the subject of disclosure through a supplementary prospectus. We suspect it would be easier to "police" the need for a supplementary prospectus if the final terms document were confined to final terms only and (consistent with our response to Question 101 at paragraph (iii) above) such other information/terms as may be necessary for the purposes of the issue only.

(vi) ***Question 131: Do you agree with the above additional disclosure requirements in relation to base prospectuses [relating to offering programmes].***

Consistent with our response to Question 101 (see paragraph (iii) above), our only comment is in relation to item 2 i.e. identification of line items that are to be included in the final terms. We believe that CESR should make it clearer that such items of information are not necessarily exhaustive of the final terms but, instead, are the minimum final terms. It should be made clear that there may be additional information/terms for the purposes of the particular issue which we believe is consistent with CESR's desired goal that flexibility be maintained for innovation in the development of financial products in the future.

(vii) ***Question 143: Do you agree with this approach [i.e. the approach on the wholesale debt securities note which is included as Annex F to the Advice]?***

From review of the wholesale debt securities note, we raise the following points:-

(a) Persons Responsible: We refer you to paragraph (i) of our letter of 16 June 2003 where we set out our view on the persons who should be responsible for a prospectus in the context of wholesale debt. We note that the wholesale debt securities note requires disclosure of "names and functions of natural persons or of members of the issuer's administrative, management or supervisory bodies and name and registered office of legal persons responsible for the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts". Consistent with our previous view, we believe that the persons responsible in the context of wholesale debt should be restricted to the legal persons engaged in the wholesale debt issuance i.e. the issuer and any guarantors. If your intention is to permit (rather than require) legal persons and/or natural persons and/or members of the issuer's administrative, management or supervisory bodies to take responsibility then it should be made clearer that these are possible options. Our view, however, is that it should be acceptable for only legal persons to take responsibility for the prospectus. We believe it will be unlikely that natural persons/members as noted above would voluntarily assume responsibility for a prospectus if it is adequate for legal persons only to take responsibility. Why would natural persons/members expose themselves to personal liability? However, if you wish to afford this flexibility then that is not objectionable;

(b) Expense of the Issue: We can see it would be relevant to investors to be made aware of management commission, underwriting commission and any selling concession. However, we query whether it would be relevant to investors to be advised of expenses such as printing costs, professional fees and fees payable to the authority where the securities will be listed/traded. Indeed, we query whether it is appropriate to require disclosure of professional fees where these are the subject of confidential negotiation between the issuer and its professional advisers. If CESR is content that there is simply an estimate of the "all-in" expenses related to the issue without detailed breakdown of the individual expenses contributing to that overall figure then that is more acceptable. However, we are of the view that a detailed breakdown of expenses is inappropriate in the context of wholesale debt; and

(c) Credit Ratings: In their response to you of 16 June 2003, the International Primary Market Association set-out their view that issuers should not be required to disclose ratings and the reasons for that (see pages 6 and 7 of their letter). We agree with IPMA that ratings should not be a matter of mandatory disclosure. The principal difficulty is that ratings may change over time thereby making historical debt issuance documentation inaccurate/misleading.

(viii) ***Question 172: Which of the options set out above do you support [i.e. the options concerning the order of presentation of prescribed content for prospectuses]? Please give your reasons for your choice.***

We believe that issuers should be able to choose the best way to present the information which meets the disclosure obligations. Issuers should be allowed to choose the order of the information to describe best to investors the activities of the issuer and the nature of the securities. Issuers would therefore be able to choose their own individual order of information which would differ from other issuers.

Our reason for this choice is that a prospectus should not simply be viewed as a "box-ticking" exercise. Rather, a prospectus is a commercial, selling document which needs to "tell a story" and be sufficiently inviting to motivate investors to subscribe for the particular security to be issued. Issuers should therefore be allowed flexibility to present the prescribed prospectus content information in the order which they think best serves the prospectus.

(ix) ***Question 176: Which of the options set out above do you support [i.e. the order of presentation of information in a single document prospectus]? Please give your reasons for your choice.***

We believe that no specific order should be set for the presentation of information in a single document prospectus. Our reason for this is the same as that given in response to Question 172 at paragraph (viii) above.

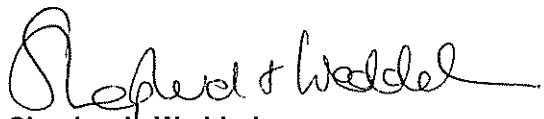
(x) ***Question 182: Which of the options set out above do you support [i.e. the options concerning the way in which the summary should be supplemented where the prospectus is supplemented]? Please give your reasons for your choice.***

We believe that the new information should be integrated into the original summary. Our reason for that view is ease of use, principally by investors, but also ease of use by issuers themselves. In the current information technology age, the production of consolidated documentation should be simple enough and this will make life simpler for both investor and issuer alike.

We trust that the above comments are useful to you. You will note that we have copied this letter to John Purvis, MEP for Scotland and Vice-Chairman of the European Parliament Economic & Monetary Affairs Committee, in order to ensure effective communication between representatives of the industry and all the institutions involved in the Lamfalussy procedure.

Should you require any further information on any of the points raised above, please do not hesitate to contact our Gordon Taylor whose details are given below. We are happy for you to publish this letter on your website.

Yours faithfully



Shepherd+ Wedderburn

cc: John Purvis, MEP

Undernote referred to:

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