

3 March 2005

M. Fabrice Demarigny
CESR (Committee of European Securities Regulators)
11-13 Avenue de Friedland
Paris
75008
FRANCE

Dear M. Demarigny

CESR Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC
on Markets in Financial Instruments (MiFID)

The International Primary Market Association (IPMA) is pleased to respond to CESR's Second Consultation Paper on admission of financial instruments to trading on regulated markets. IPMA is the trade association which represents managers and underwriters of new issue debt and equity securities.

Q1. Do consultees support the revised structure of admission requirements? If not, what would be the preferred alternative?

We agree strongly with CESR that its advice should be given on the basis that the Consolidated Listing Directive remains in place. We disagree with the Commission's suggestion that Article 40 of MiFID should be a maximum harmonisation provision.

Q2. Is there a need for more information on the issuers of money market instruments?

We agree with CESR's draft advice on availability of the terms of the money market instruments. We do not consider it necessary for level 2 to include requirements concerning disclosure about the issuer and any guarantor. Only a very small percentage of money market instruments are admitted to trading on a regulated market. There is almost no secondary market trading of money market instruments and, therefore, no need to have them admitted to trading on a regulated market. In addition, the listing fees on most regulated markets and the time required to review disclosure documents and approve the admission make it economically unattractive to seek admission.

When issuers do seek admission to trading on a regulated market, it is almost always in order to satisfy the eligibility requirements imposed by some national regulators who are incorrectly interpreting the UCITS Directive, as amended by Directive 2001/188/EC.

Q3. Do you consider the proposal of not proposing any level 2 advice for bonds appropriate or should CESR advice include level 2 rules also for bonds? If yes, what should their content be?

We support strongly CESR's draft advice that no level 2 proposals are needed for bonds. We agree with those CESR Members who expressed the view that specific liquidity and trading requirements would make it difficult for regulated markets to admit bonds to trading. There are significant differences between the way in which debt and shares trade. Many bond issues are not broadly distributed, and are held by investors who do not require an active secondary market, but who nevertheless prefer or are required for regulatory or other reasons to buy bonds which are listed and/or admitted to trading on a regulated market. Any additional MiFID liquidity or trading requirements would increase the likelihood that bonds would no longer be admitted to trading on regulated markets, to the detriment of investors, issuers and the regulated market themselves. This concern would apply also to convertible and exchangeable issues and we assume that CESR's advice extends to such issues.

Q4. Do consultees see future evolvement for admitting money market instruments with maturity less than 12 months to trading on regulated markets?

We hope that there will be less admitting of money market instruments to trading on regulated markets as Member States move to implement the UCITS Directive correctly. We look forward to CESR's final advice to the Commission on the clarification, which we understand will be published in October 2005.

A second reason to hope that there will be less money market instruments admitted to trading is the STEP Project. The STEP Project is supported by Euribor-ACI and the European Central Bank and will provide a framework for issuing Euro and domestic money market instruments. One of the requirements to be eligible for the STEP classification is the publication of a complete prospectus that describes the terms of the money market instruments and the issuer.

If the Member States which currently do not permit UCITS to purchase money market instruments from another Member State permit money market instruments that have the STEP label to be purchased by their UCITS, there will no longer be any reason for issuers to seek the admission to trading of their money market instruments.

Q8. Do consultees agree with the content of the proposals? If not, what specific changes or alternatives do you suggest?

We note that the paragraph 13 proposals that shares should be transferred without restriction, and that all shares of a class should be fungible, will be problematic in some cases. For example, a new issue of shares or Global Depositary Receipts may be subject to selling or transfer restrictions to comply with the laws and regulations relevant to the distribution of the securities, which are standard in many countries. These shares and GDRs will be neither transferable without restriction, nor necessarily fungible with existing instruments of the same class, for example, because some investors fail to comply with certification requirements for release from a period of lock up.

To address such issues, we suggest that restrictions on transfer should be permitted if they do not unduly restrict trading in the shares, and any restriction, which addresses legal or regulatory requirements, should in any event always be permitted. We also suggest that the proposed advice on fungibility should be amended so that the requirement is that 'shares within a class should be CAPABLE OF BEING fungible'.

If you have questions on our response, please call Clifford Dammers or Mary Hustings. We would be pleased to discuss it with you further.

Yours sincerely

Clifford R Dammers

Mary Hustings