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30. October 2003

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

Re: Comments on Draft Advice on Level 2 Implementing Measures for the Prospectus Directive July 2003

Dear Mr. Demarigny,

The European Securitisation Forum¹ ("ESF" or "Forum") welcomes this opportunity to comment on the CESR's Advice on Level 2 Implementing Measures for the Prospectus Directive released in July together with the Feedback Statement and the Annexes to the Technical Advice released in July 2003. This response also takes into account CESR's Advice on Level 2 Implementing Measures for the Prospectus Directive and the Feedback Statement published in September 2003.

Having again consulted with our members in relation to the securitisation portion of the disclosure requirements under the Prospectus Directive, we have identified some key areas where important issues remain to be resolved. We would encourage CESR to continue to be active with the industry in providing clarification on how these issues will be addressed.

In summary, the areas are:

1. Historical Financial Information for EU and non-EU issuers – Annex E;
 2. Dissemination of advertisements in relation to an offer of securities to the public or the admission to trading.
1. Historical Financial Information for EU and non-EU issuers – Annex E

The Forum generally supports the specific disclosure requirements for historical financial information.

ESF suggests that the current wording on the disclosure requirements on the audited financial statements for an issuer which has been in operation for less than two years is not clear under Annex E, and could generate confusion in its application as it currently could be construed as requiring such a company to include audited accounts in the prospectus even if it had been in operation for less than one year. Newly created special purpose vehicles (SPVs) are generated for almost each securitisation transaction and therefore there is no availability of such information during the first year of life of the SPVs. Such information can be reported in the

¹ The European Securitisation Forum is an organisation which brings together securitisation market participants throughout Europe in order to promote the efficient growth and continued development of securitisation. Membership of the ESF comprises over 100 firms from across Europe, including Germany and Austria, France, Italy, England, Scotland, Spain, Ireland, Holland, Belgium, Switzerland, Luxembourg, Sweden, Norway and Portugal. Participants include securities firms, banks, issuers and arrangers, investors and asset managers, trustees, servicers, legal and accounting firms, rating agencies, financial guarantors, stock exchanges and industry utilities and other participants in the European securitisation markets.



Registration Document only the year following the creation of the SPV. Therefore the ESF suggests that the current wording should be amended as follows for the Asset Backed Securities Registration Document (item 8.2 Annex G CESR/03-208) on page 18 of Annex E:

“Where, since the date of incorporation or establishment, an issuer has commenced operations and where audited financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or, if the issuer has been in operation for a shorter period, such audited financial statements as have been made up) and the audit report in respect of each year.”

Accordingly, the third paragraph on page 19 of Annex E should also be amended, as follows:

“If the issuer has been operating in its current sphere of economic activity for less than one year, where the audited historical financial information has made up, 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 have been fully audited”.

The proposed wording should also be applied to “issuers of securities having a denomination of at least EUR 50,000” on page 19 of Annex E:

“Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or, if the issuer has been in operation for a shorter period, such audited financial statements as have been made up) 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's State local GAAP or to a non Member States local GAAP equivalent to IAS Regulation. Otherwise...”

Consistent with the above-mentioned proposed wording, the following disclosure requirements should also be amended for the Wholesale Debt Registration Document (item 11.1 Annex I CESR/03-208) on page 20 of Annex E, as follows:

“Where, since the date of incorporation or establishment, an issuer has commenced operations and where audited financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or, if the issuer has been in operation for a shorter period, such audited financial statements as have been made up) 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's State local GAAP or to a non Member States local GAAP equivalent to IAS Regulation. Otherwise...”

Finally, the Forum supports the introduction of the word “material” within point (b) on page 19 of Annex E to limit the information to be provided to what is relevant to an investor in making an investment decision. The text should be:

“(b) immediately following the historical financial information a narrative description of the material differences between IAS Regulation and the accounting principles adopted by the issuer in preparing its annual financial statements”.

2. Dissemination of advertisements in relation to an offer of securities to the public or the admission to trading.

CESR poses the following three questions on the dissemination of advertisements, which the Forum is honored to respond:

“Question 84. Do you agree with the scope of the present consultation paper on advertising? Please give reasons for your answer”.

The ESF agrees with the current consultation on advertising. The Forum strongly supports that investors receive all the information necessary to make an informed decision. The ESF



also considers that advertisements play a valuable introductive role². The growth and development of the European securitisation markets relied and continues to rely on pre-deal research as well as advertisements as relevant information before the prospectus is released.

However, CESR's interpretation of advertisements provided in Paragraph 80 of the July Consultation Paper is very broad and, according to the Forum, may also include research materials that issuers generally provide to the investor community. The Forum is particularly worried that if pre-deal research is in any way limited the growth potential of the European securitisation markets would be badly affected, therefore limiting the access of corporate and financial institutions to a valuable funding source. This also would be harmful to the ability of counterparties to manage their portfolios based on best information.

The Forum is of the view that there should be a clear distinction between research and advertisement. Specifically, pre-deal research is an important feature of the European fixed income offerings and increases transparency and the amount of information in the market. In order to clarify this distinction, the Forum respectfully proposes to amend the current first limb of the text under Paragraph 80 of the CESR's interpretation as follows: the word "unconnected with" should be replaced by the following terms "which do not relate to". The proposed new wording is also consistent with the first sentence of the interpretation. The Forum also proposes to include the term "specific" before public offer.

Consistently with the above-mentioned amendments, the Forum supports the addition on the limb before the last one of the following text: "excluding financial analysts reports that are independent, research and rating agencies reports or independent research even if published by financial intermediaries". This text is aimed to limit the adverse interpretation of the CESR's paragraph and in particular of the meaning of interested parties involved in the placing and/or underwriting of the securities.

"Question 85. Do you believe that blackout periods should be imposed for the dissemination of any advertisements when a prospectus has not been made available? Please give reasons for your answer".

No, the ESF does not agree on imposing blackout periods. There should be no blackout periods for the circulation of advertisements, meaning that advertisements could also be circulated before the publication of the Prospectus. It should be possible to inform investors and market participants about the proposed issuance of securitised assets in advance in order to enable them to make a preliminary assessment of which issues they may be interested in investing in. Advertisements are required by paragraph 2 of Article 15 of the Directive to state where the prospectus may be obtained and paragraph 3 of Article 15 of the Directive states that the information contained in an advertisement shall not be inaccurate or misleading and that the information in it cannot be inconsistent with the prospectus. Therefore, advertisements which comply with the directive cannot harm investors and can only be of assistance to them. Failure to promote issuance of new securities before the publication of the Prospectus could harm the development of the European financial markets and could pose a serious competitive disadvantage with less regulated markets.

"Question 87. Do you consider that control over compliance of advertising activity with the principles referred to in paragraphs 2 to 5 of Article 15 of the Directive should be harmonized? If so, do you think that competent authorities should exercise the above mentioned control? Please give reasons for your answer".

The Forum supports having an indication and a statement on the advertisements that a prospectus has been or will be published, as suggested by paragraph 2 of Article 15 of the Directive. The ESF also agrees with the disclosure requirements of paragraph 5 of Article 15 of the Directive.

The Forum supports that the advertising activity should be harmonised in the EU. The Forum strongly recommends that the home Member State authority dealing with the approval of the Prospectus should be the competent authority to monitor advertisements. The ESF encourages that the contact persons involved in the issuance process would be limited in order to minimise any fragmentation and to avoid monitoring differences of interpretation of the advertising requirements in all the EU member states. Once the home Member State approves the advertisements, the advertisement activity should be carried out by the issuer and the inter-

² Please note that the ESF Investors Task Force, which comprises a wide variety of investors in European securitisation transactions, fully supports this point.



ested parties in the entire European Union without the approval of any other Member State authority. The Forum also suggests that a certain period, no longer than five working days since the submission of the request, should be provided to the home Member State authority for the advertisements approval.

Given the specific nature of the comments provided and their importance in the continued viability of the securitisation markets in Europe, we would welcome discussing any questions or issues you would like to raise in a meeting with senior market participants either at our offices in London or at CESR's Offices in Paris.

Please feel free to contact Scott-Christopher Rankin at +44.20.77 43 93 00.

Yours sincerely,

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Members of the ESF Market Standards and Practices Subcommittee
Members of the ESF Legal Regulatory and Capital Subcommittee
Members of the ESF Commercial Mortgage Securitisation Subcommittee
Members of the ESF Investors Task Force
Members of the ESF Synthetic Task Force
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