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Mr. Fabrice Demarigny
Secretary General
CESR
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Your ref

Our ref EL/813

Contact Mark Vaessen
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7 September 2004

Dear Mr Demarigny

Guidance for Implementation of Co-ordination of Enforcement of Financial Information

We appreciate the opportunity to respond to The Committee of European Securities Regulators (CESR) consultation on *Guidance for Implementation of Co-ordination of Enforcement of Financial Information*. This letter expresses the views of KPMG International and its member firms.

Generally, we support the development by CESR of co-ordination of regulatory decisions, in particular in respect of International Financial Reporting Standards (IFRSs). However, we continue to have some concerns about the detail of the proposals which are explained in the remainder of this letter.

Global co-ordination

We are pleased that IOSCO has initiated a project on *Regulatory Interpretations of IFRSs* that would promote the consistent application and enforcement of IFRSs. We note that the IOSCO project also envisages a central database of enforcement decisions and that efforts will be made to coordinate with the ongoing CESR developments in this area.

We strongly support these efforts to ensure a globally consistent enforcement of IFRSs by securities regulators and encourage CESR to develop its co-ordination mechanism in a manner that is consistent and compatible with the wider IOSCO project.

Consultation arrangements

We support the proposed minimum requirement to consult the planned database before taking enforcement decisions.



We agree that it is preferable for an enforcer that intends to take an apparently contradictory decision to discuss the facts and circumstances surrounding the earlier decision with the enforcer that took that earlier decision. We support the proposal that an enforcer that takes a decision which is in apparent contradiction to an existing precedent should inform the Agenda Committee of the European Enforcer Co-ordination Sessions (EECS) of its decision for appropriate discussion.

In our view, the proposals represent a pragmatic approach to co-ordination during the period of transition to IFRSs and consider that they should help ensure that any differences in views are subject to appropriate discussion and resolution, including referral to the International Financial Reporting Interpretations Committee (IFRIC) when appropriate. However, we believe that the proposed consultation arrangements should be kept under review as experience with the interpretation and enforcement of IFRSs grows.

Decisions and submission to the database

We agree that a database may be an effective use of technology to facilitate consistency where time constraints preclude consultation between national enforcers before enforcement decisions are taken.

However, a key concern is that the regime must not lead to a rule-based interpretation and implementation of IFRS. We believe that ex-post negative decisions (i.e., those that do lead to an enforcement action) should be considered the most persuasive when assessing earlier decisions held on the database and should be separately identifiable on the database.

We noted in our letter of 7 January 2004 that there may be significant drawbacks to the inclusion on the database of ex-ante and “non-action” decisions. We noted that our concerns were particularly strong were the database to be made public, in whole or in part, as is still being considered.

Accordingly, we support the construction of a publicly accessible database that includes *only* ex-post negative decisions. We consider that the inclusion of ex-ante decisions and “non-action” decisions is acceptable only on the basis that they are included on a strictly confidential basis, for the information of the EU national enforcers only. Ex-post negative decisions should be clearly distinguishable from other decisions.

Confidentiality

We continue to have considerable concerns about the confidentiality of consultation between EU national enforcers and the information retained on the database. We are not convinced that the proposed omission of the issuers’ name, sector and market capitalisation will provide anonymity in many cases. Our concerns were detailed in our letter of 7 January and we urge CESR to resolve these issues quickly and to put in place a suitable, legally binding confidentiality regime.

European Enforcer Co-ordination Sessions

We generally support the objective and the main functions of the EECS as outlined in paragraphs 5-7 of the consultation.

CESR notes that EECS is expected to meet on average every three months. It may wish to consider in particular whether this frequency will be sufficient during the initial interim and annual reporting seasons of IFRSs (i.e., 2005-6). We believe that it may be necessary to increase the frequency of such meetings until the transition to IFRSs has been completed.

Consideration should be given to the role and interaction of the EECS with the wider enforcement community, in particular non-European Union enforcers through IOSCO.

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Finally, as we noted in our letter of 7 January 2004 in response to the previous consultation on the same subject, there is a need for CESR to develop quickly a comprehensive mechanism that considers and resolves the many practical issues that have been highlighted. We remain concerned that the implementation of the proposals may fail were essential implementing measures subsequently found not to be practicable (e.g., concerning confidentiality).

Please contact Mark Vaessen at +44 (0)20 7694 8089 or David Littleford at +44 (0)20 7694 8083 if you wish to discuss any of the issues raised in this letter.

Yours faithfully

A handwritten signature in black ink that reads 'KPMG International' in a cursive, flowing script.

KPMG International