

17 October 2003

M. F Demarigny
Secretary General
CESR
11-13 Avenue de Friedland
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France

Dear M. Demarigny

RESPONSE TO CONSULTATION PAPER ON LEVEL 2 IMPLEMENTING MEASURES FOR THE PROSPECTUS DIRECTIVE

Thank you for the opportunity to comment on CESR's consultation paper of July 2003, regarding possible Level 2 implementing measures for the Prospectus Directive.

We welcome the overall objective of the Directive, however its proper implementation is vital to ensure improved access to capital by companies across the EU, and to encourage third country issuers to come to Europe's financial markets, to the benefit of investors and market participants alike. We have some comments on areas of CESR's latest advice, which are set out below. We have also attached an appendix in which we provide answers to CESR's specific questions on the financial information requirements in a prospectus, the area of most concern to the Exchange. This letter and the appendix jointly constitute the Exchange's response to the consultation.

Presentation of financial information

The proposal that issuers be required to include "two years audited historical financial information presented in a form consistent with that which will be adopted in their next annual financial statements", in practice means that issuers will be required to present information in accordance with the International Accounting Standards (IAS) Regulation prior to its implementation in 2005. We believe that the IAS Regulation rather than the Prospectus Directive should be driving timing, and that therefore some transitional provisions should be introduced to allow for this.

We note from our attendance at the open hearing of 9 October 2003, that CESR is aware of the transitional problem, however this is an area of concern to companies looking to use EU's capital markets in the coming year or two. The Commission needs to recognise that this issue has to be addressed and if necessary they need to give CESR a mandate. As such we would ask CESR to raise the issue with the Commission in its advice.

17 October 2003

M. F Demarigny / page 2

With regards the various possibilities to present historic financial information, and CESR's preference for option 2, we would ask CESR to explore whether requiring any restatement or reconciliation is absolutely necessary, or whether option 4 could be acceptable. We believe this option is more consistent with the IAS Regulation (which state that International Accounting Standards should apply from the date when an issuer is admitted to trading). We would also propose that an alternative "option 5" may be appropriate, under which issuers are required to provide one year's restatement of their accounts to IAS, at least for wholesale non-equity securities. This will still allow for limited comparability, while reducing the cost to companies of undergoing their transference to IAS.

Equivalence

We fully support CESR's overall approach that the requirements for non-EU issuers should generally follow those for EU issuers and that no additional disclosure requirements should be imposed where accounting standards are equivalent. We also agree that such standards should be flexible where the nature of the securities demands a different treatment.

However, we are concerned that there appears to be a lack of clarity over the scope of the mandate and the issue of what constitutes "equivalence" to IAS has yet to be resolved. We understand that CESR is currently working on this with the Commission, but clarifying this issue has become an urgent matter - uncertainty amongst third country issuers is already causing confusion and many of them are currently considering listing outside of the EU.

We believe that one way for CESR to address the issue would be to set out criteria for determining whether a non Member States local GAAP is equivalent. For example, the criteria could refer to accounting practices that are:

- commonly accepted in the field of international finance;
- widely recognised as reputable; or
- appropriate to protect the interests of investors.

Whatever criteria is chosen, we believe it would be inconceivable that US GAAP would not be deemed as equivalent. However, the lack of confirmation from the Commission has lead to uncertainty in the market, which is damaging in itself. We would therefore urge CESR to confirm that it considers US GAAP to be equivalent in its advice to the Commission.

We also believe that the determination of equivalent standards should not be unduly influenced by other ongoing US-EU political debates. We are mindful that unless a workable solution to the matter of "equivalent" standards is found, it will have the effect of deterring non-EU issuers, damaging the very market the Directive seeks to enhance.

17 October 2003

M. F Demarigny / page 3

An alternative suggestion would be to allow non-EU issuers to present their financial information in accordance with non-Member State local GAAP, so long as this is accompanied by a sufficiently clear warning that IAS has not been followed and a statement of the major differences between the local GAAP used and IAS. This would not only serve to make the EU an attractive place to list, but would also allow investors - equipped with the knowledge that the accounts are prepared on a different basis - to use their own judgement as to whether to make an investment.

Audit Standards

Given that auditing standards have not been subject to the same level of harmonisation by the international community, and have been subject to less focus by the EU, we suggest that it is too ambitious for CESR to look at auditing standards within the context of the Directive.

It is proposed that non-EU issuers whose financial information is not already audited in accordance with the audit standards of a Member State or equivalent standard, should re-do the audit. We do not believe this should be a requirement, as the quality of the audit is a separate issue to the accounting practices used by an issuer. In addition, we believe it is impractical and costly for the issuer to have to undertake the audit under totally different standards. Again, the uncertainty over what constitutes equivalent standards adds to the problem, and would need to be addressed by CESR and the Commission.

Different treatment of wholesale non-equity securities

We welcome the flexible disclosure and audit standards required of third country issuers of certain types of wholesale non-equity securities. However, we believe that this treatment should be extended to EU issuers and to *all* wholesale non-equity securities.

I hope our views are helpful to CESR's work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely

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APPENDIX - QUESTIONS RELATING TO THE FINANCIAL INFORMATION REQUIREMENTS IN A PROSPECTUS

Question 56: What are your views on the costs of providing reconciliation as compared with a full restatement?

The cost depends on the level of reconciliation that will be required. Therefore we would need CESR to clarify the type of reconciliation referred to. Clearly a detailed line-by-line reconciliation of each profit and loss account and Balance Sheet item would be far more expensive than a reconciliation of key primary statement items such as profit after tax and net assets. If CESR opts for the latter, then the costs of reconciliation would be considerably less than restatement.

Question 57: What are your views on the most appropriate way to present the financial information?

We would ask CESR to explore whether option 2 is absolutely necessary, or whether option 4 could be acceptable - as we believe this option is more consistent with the IAS Regulation. We also propose that an alternative “option 5”, whereby issuers are required to provide one year’s restatement of their accounts to IAS, may be more appropriate, at least for wholesale debt issuers.

Question 58: What are your views on the importance of comparability both within the audited historical track record and with the reporting standards that are to be adopted?

We believe that both are important, however the benefits of comparability need to be weighed against the cost for issuers. This would lead us to prefer comparability of the audited historical track record.

Question 59: What are your views on how this should be achieved?

As mentioned above, we feel that option 4 is more consistent with the IAS Regulation. Alternatively we feel that the costs to the issuers of restating their accounts and the benefits to investors of comparability can be effectively balanced by a “fifth option” of requiring only one year’s restatement, at least for wholesale debt issuers.

Question 60: Do you agree with the approach taken in relation to issuers of debt securities? If not, please state your reasons.

We believe that the differentiation between retail and wholesale non-equity securities that is applied to non-EU issuers should also apply to EU issuers (see below).

Question 69: What are your views on extending this treatment to EU issuers for the types of securities identified?

We believe that this treatment should be extended to EU issuers.

Question 70: Are there any other types of issuer where you believe that different requirements should apply?

We believe that the lower disclosure and audit standards should apply to all wholesale non-equity securities. We also believe that convertibles should receive the same treatment.