



SHEPHERD+ WEDDERBURN

OUR REF T0537.34/GXT/PWH
YOUR REF CESR/03-210b
30 October 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 Prospectus Directive
Ref: CESR/03-210b

Further to our letters to you of 31 March, 16 June and 8 August 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 60: Do you agree with the approach taken in relation to issuers of debt securities [i.e. that debt issuers would have to provide two years annual financial statements restated to IAS standards in their prospectuses]? If not, please state your reasons.***

As noted, our principal area of interest in responding to this consultation is annually updated debt issuance offering programmes. For the avoidance of doubt, we have assumed that CESR's requirement for two years annual financial statements would only apply in relation to the prospectus published at the time of establishing such a programme and not thereafter at the time of subsequent annual updates. If that assumption is correct, then we would ask CESR to consider whether, in the context of wholesale debt, any restatement is necessary given the sophisticated nature of investors in wholesale debt; would the assistance (if any) afforded to such investors by restatement genuinely be worth the additional cost to issuers? CESR should also consider how investors actually come to their investment decision where wholesale debt is concerned. While we act exclusively for the issuers of wholesale debt rather than investors in such securities, we suspect that substantial reliance is placed on the work of the ratings agencies albeit that will not necessarily be to the exclusion of considering the annual financial statements.

(While CESR does not touch on this in the consultation, it should also be made clear that existing listed issuers, e.g. issuers with an equity listing who have satisfied the requirement for two years annual financial statements in that context, are not again subject to this requirement should they subsequently establish a programme. While this result may flow naturally from the use of a registration document, it is more likely that, as contemplated by the Directive itself, programmes will be founded upon a base prospectus. Where there is a pre-existing registration document with the requisite financial information then such information should not need to be reproduced in a base prospectus).

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In case the foregoing assumption is incorrect and CESR does intend to require two years annual financial statements in the prospectus produced at the time of programme annual updates, we note the absence of any distinction drawn between wholesale and retail debt in the above question. Consistent with current UK practice in the wholesale debt markets, no financial statements should be required in the annual update prospectus for that type of security. Instead, a capitalisation and indebtedness table drawn-up to the latest financial year end/half year end should be adequate given the nature of the investors. For the purposes of disclosure, the latest financial year end/half year end results should be capable of incorporation by reference, consistent with current practice. Sophisticated investors will be well able to source such financial information for themselves. The logical conclusion to this approach is that, in the absence of two years annual financial statements from the annual update prospectus, no restatement issue will arise. There will be nothing to restate.

Finally, we suggest that CESR should consider whether two years annual financial statements would be of assistance even in the context of a prospectus for retail debt. Would the understanding of a retail investor actually be improved by that information? We suggest that, as recognised by the summary financial statement regime (in lieu of full annual accounts) in the context of reporting to shareholders, "less could be more" in terms of promoting understanding on the part of retail investors.

(ii) ***Question 69: What are your views on extending this treatment [i.e. lower disclosure standards] to EU issuers for the types of securities identified [e.g. wholesale debt]?***

Consistent with our response to Question 60, lower disclosure standards should operate in the context of wholesale debt. Furthermore, it would not be desirable to differentiate between EU and non-EU issuers in this respect; there should always be a "level playing field".

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 Duncan Holland 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

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