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Madrid, October 30, 2003

Mr. Fabrice Demarigny
Secretary General
COMMITTEE OF EUROPEAN SECURITIES REGULATORS
11-13 Avenue Friedland
75008 Paris

Dear Mr. Demarigny,

Consultation paper dated July, 2003 on CESR's advice on possible level 2 implementing measures for the proposed prospectus directive

(Ref: CESR/03-210b)

Please find below our comments to the questions raised in the Consultation Paper dated July, 2003 regarding CESR's advice on possible level 2 implementing measures for the proposed Prospectus Directive (Ref: CESR/03-210b). For ease or reference, I have followed the same numbering used in the Consultation Paper.

III- MINIMUM INFORMATION

III.1.- Member states, non-EU states and their regional or local authorities.

30. Do you agree with this approach? If not, please give your reasons.

We generally agree with CESR's opinion that public international bodies are usually more akin to companies in their structure and therefore the appropriate annex for these bodies should be the retail or wholesale debt annex instead of benefiting from the annex for Member States and their regional or local authorities (Annex D). Reasons that justify the application of Annex D for Member States and their regional or local authorities

may not always be applicable to public international bodies. In particular, ample information on certain public international bodies is not always publicly available with the subsequent difficulties for the potential investors to access to the information required to make an investing decision. In such cases, it could be stated that information on these public international bodies needs to be disclosed. The same applies for the second reason that justifies the application of the mentioned Annex, i.e. the small probability of default of Member States that might be not that small for public international bodies. However, it could also be argued that whilst certain public international bodies seem to be more similar to companies than to Member States or regional and local authorities, other public international bodies (such as for instance the International Monetary Fund, the World Bank, Inter-American Development Bank, etc.) can be definitely compared to Member States and local or regional authorities from a point of view of their insolvency probability or information available on them. Accordingly, we would suggest to include in the implementing measures of the Prospectus Directive or its development regulation, a list (to be periodically updated) of public international bodies to which the beneficial treatment of Annex D could be applicable or at least a more precise definition of what can be deemed to be a public international body for the Directive purposes.

As for non-profit organisations, and in spite of the silence of CESR in this regard, we believe that it is questionable that non-profit organisations fall under the category of issuers with public nature and are outside the scope of the Directive. Rather than granting the benefit of Annex D to such organisations, we would require them to provide as much information as possible, particularly considering the different entities that may be included under such a broad concept of non-profit organisation. The recognition of such organisations by the relevant Member State, as required by the Prospectus Directive, is a first step to control which entities are benefiting from Annex D. Such a first step, could be followed by the requirement of extensive information on the entity willing to issue securities. This would allow investors to make an informed decision as to whether or not to purchase the securities offered by the non-profit organisation in question and would minimise the risk of misinformation and incorrect investment decisions.

32. Do you agree with this list as more fully described in Annex D?

Yes, we do agree with the list of information as more fully described in Annex D. However, we believe that there might be some other information regarding the issuer which ought to be considered relevant for the investor and therefore should be also included in such Annex.

33. Is there any other information which you consider relevant for Member States and their regional or local authorities and should be included in the Annex?

We believe that, although disclosure of historical financial information on the issuer is indeed important, what might be even more important for a potential investor is to provide him with some information on the financial expectations of the issuer in a medium/long term. Therefore, it might be recommendable to require the disclosure of any sort of medium/long term financial plan of the issuer, if such plan exists, identifying

its sources of finance and stating how the issuer plans to face the financial obligations arising out of the issue or any other preceding or forthcoming issue of securities. In particular, it should be detailed whether any subsidy has been granted from any national or supranational public institution or other, and if it expects to continue receiving such subsidy in the near future, as this might affect directly its financial capacity.

Regarding the political framework of the issuer (item 3.5 of the Annex), we believe the information required could be further detailed in order to include a precise outline of the political structure and the relationship of the issuer with the rest of the public bodies, particularly when such issuer is a regional or local authority. In this regard, it might be worth creating a specific new item to explain to potential investors the political structure of the State and how its regional and local authorities are organised, its competencies and the hierarchical relationship between the latter and the Member State in which they are integrated. The concrete information to be included in such item would be probably different for each State, regional or local authority issuing the securities and therefore should be adapted to the idiosyncrasy of each of them rather than be generally determined for all possible issuers.

35. Do you consider that it is appropriate to have such a disclosure requirement? If so, do you believe that the selected indicators are those relevant to make an investment decision? Please give your reasons.

We consider the disclosure requirement is appropriate, as any potential investor should be able to access to the most relevant financial/economic information on the issuer.

In this sense, the selected indicators are those relevant to make an investing decision. However, some of the selected indicators included in Annex D might not be applicable to some regional or local authorities (e.g. foreign exchange reserves, foreign trade). On the other hand, there are some indicators which, in our opinion, are also relevant and have not been specifically included in item 4 of the Annex, that we would suggest to include, such as, *inter alia*, the Gross Domestic Product, the Inflation or Interest Rates, etc. These indicators might be deemed to be comprised under the expression "financial position"; nevertheless, their high relevancy may well advocate for a more explicit inclusion in the "Public Finance and Trade" item of Annex D.

Finally, we would like to emphasize again on the importance of disclosing not only historical financial information, but also information regarding the economic and financial plans of the issuer for the medium and long term, as this will be crucial to determine its ability to face the financial obligations arising out of the issue of securities.

40. Do you deem that Investments and development plans should be included in the Annex for Member States and regional and local authorities? If so, please give your reasons.

Yes, since investments and development plans might influence considerably on the expected economic performance of the issuer and therefore, providing any potential investor with information in connection thereto is essential in order to make an

informed decision regarding the purchase of the securities. This issue might not have considerable effects for Member States, but may indeed be of great importance for regional or local authorities, as their budget is more limited, and thus a large investment might compromise its financial performance in the future, its solvency and may adversely affect its rating as debtor. It should be noted that, if the issuer plans to face a substantial investment, there is a higher risk of default, and consequently, a potential investor would probably expect a higher interest or return from his investment in the issue of securities in question.

42. Do you consider that potential conflicts of interest should be disclosed? If so, do you consider that the wording used will be sufficient to capture such conflicts?

We believe disclosure of potential conflicts of interest for any expert used by the issuer is an essential requirement to guarantee the reliability of his statement and the effects on his independence in the preparation of the report issued, as the case may be.

However, we believe the unlikeness of a potential conflict of interest between the expert and the issuer being a Member State, or between the expert and the offer itself, could be questioned. As a consequence thereof, from our point of view, if such conflict of interest is likely to occur, then it would be necessary to establish a clear prohibition of including any statement or report issued by an expert who might have a material interest either in the issuer or in the offer.

The amended wording proposed by CESR seems sufficient to us to obtain information in respect of any conflict that may arise. Notwithstanding the above, we would suggest an alternative wording for the disclosure requirement which, in our opinion, would focus on any potential conflict of interest and simultaneously be sufficiently broad as to capture any other possible conflict between the expert and the issuer. The suggested wording would require disclosure of "*information in respect of any conflict of interest or any other kind of conflict relating to such expert*".

III.2 Financial information requirements in a prospectus

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

Both reconciliation and full restatement imply a substantial additional cost for the issuer. Considering that the additional work required to perform reconciliation is only marginally less than the effort imposed by a full restatement, we believe the latter option might constitute a more recommendable choice, as a full restatement would ensures a higher level of transparency and comparability of the issuer's financial reporting and would allow to have a more accurate perspective of the issuer's financial situation. Thus the additional work would be worth *vis- à- vis* the slightly higher cost that it might imply.

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

We do believe that Option 2 is a balanced option between disclosure and costs. While three years of restating would be burdensome and would imply excessive costs for the issuer, two years of restatement are sufficient to give an adequate view of the financial situation of the issuer.

As for the four column approach already adopted in some Member States and referred to in the consultation paper, we agree on its advantages as it provides two years of comparable financial information prepared and presented according to IAS and two years (one of them necessarily being presented under IAS as well) of historic financial information comparable as well. However, from a practical point of view, the drafting and review of financial statements with four different columns might be burdensome and complicated. Therefore, we would propose to present the four years mentioned in the "four column approach" by means of presenting two documents with two columns each (the two years under IAS in one document, the two years under local GAAP on another).

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?

Comparability is an essential issue for investors in order to assess the financial reporting of the issuer and decide whether they will invest in the securities offered or not. An amendment of the accounting policies might hinder the comparison of the latest results of the issuer with the historical track record, thus not allowing the investor to draw a clear conclusion concerning the financial performance of the issuer during the period of time in which accounting policies were modified.

Notwithstanding the above, account should be taken of the fact that it is not realistic from an economical and practical point of view to restate the whole historical track record of the issuer to the new accounting standards. Accordingly, it should be assumed that a discontinuance in the way accounts are presented to the public will always exist. Measures seeking the most convenient way to face that discontinuance and to minimise its effects in terms of disclosure of information and comparability between the audited historical track record and the reporting standards, should be analysed.

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

We believe that option 2 is a balanced option between disclosure and costs, as three years of restating would imply excessive costs and time, while two years can give an adequate view of the financial situation of the issuer and allow a sufficient comparison.

The four column approach is an efficient way of exhibiting the financial information of the issuer. Presenting the IAS-restated accounts for financial years -1 and -2 (assuming year 0 as year of the issue) and the financial results according to local GAAP for years -2 and -3 seems to be an excellent technique to allow for comparison and to give

investors a better glance of the financial situation of the issuer. In addition, this option does not suppose a marginally higher cost than Option 2.

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

Yes. As debt issuers are only required to provide financial information for two years, it seems necessary to present both of those accounts restated to IAS standards, since restating only the latest of the two years does not seem to be enough to allow for a correct comparison of the accounts and therefore the investor would not have adequate and satisfactory information to make an informed investing decision.

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

We agree on extending the treatment to EU issuers for the types of securities identified in the consultation paper, since the ultimate purpose of the Prospectus Directive is to protect medium and small investors in spite of the origin of the issuer.

Therefore, issues of securities which are offered to institutional investors, directly or through the fact of their high denomination, should not require to incur the expenses which would arise out of producing a full new audit report for the last two or three years. It should be noticed that this type of investor is usually much more capable to self- analyse the economic implications of the issue and does not need additional protection, by means of supplementary information, such as restated accounts of the issuer.

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

No.

IV Dissemination of advertising

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

Yes, we generally agree with the idea of CESR's advice being restricted to communications which include certain features described in CESR's consultation paper. However, we would suggest to include in the definition of advertisement an additional requirement, regarding the level of dissemination of the communication made by the issuer. This communication, in order to consider it as a formal advertisement, should be addressed to an indefinite number of persons or at least a number of persons beyond a restricted circle. Without a sufficiently widespread diffusion of the communication, it cannot be sustained that we are dealing with an advertisement publicly addressed to the general market.

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.

We agree on the convenience of establishing blackout periods for the dissemination of advertising. However, we would suggest to reword and redefine the concept and scope of such blackout periods. In this regard, we believe that the prohibition on the dissemination of *any* kind of advertisements before the prospectus has been made available is a excessively restrictive measure that might limit the possibilities for the investors to be aware in due advance of the public offer of securities in question.

We agree with the thesis that no formal offer can be made without prior availability of the prospectus to any potential investor, as any decision regarding a potential subscription of the securities being issued should be based on the information disclosed by the issuer in such prospectus. Notwithstanding the aforementioned, there is a middle stage, in which some advertisements - that are certainly different from what can be considered a merely general promotion of the issuer, as they are somehow related to the future offer, but that cannot be deemed to be a formal offer as such- are being disseminated.

In this middle stage, the issuer announces to the public that it will soon undertake an issue of securities, but no offer is formally made. Generally, this pre-marketing stage is preceded by a mere prior notification ("*Comunicación Previa*") to the market, which does not constitute a prospectus. In this regard, the definition of "advertisement" that CESR provides could be construed as to include this pre-offer advertisements, thus excluding the possibility of their dissemination before a prospectus is available. From our point of view, as long as no formal offer has been made, no prospectus is therefore necessary, as no potential investor can yet acquire or subscribe any securities. Consequently, pre-marketing advertisements campaigns carried out prior to the registration of the prospectus, should not be forbidden provided a prior notice in connection with the offer of securities to be made has been filed with the market regulator and notified to the general public.

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.

Yes, we believe that control over compliance of advertising activity with the aforementioned principles should be harmonized. In spite of the difficulties that may arise from the differences existing between the competent authorities of each Member State, if the concept and requirements of a prospectus and related issues, and specially, those in connection with the definition of advertisements, are being harmonized by the Directive, it seems reasonable to harmonize as well the control over that advertising activity, in order to ensure the correct and harmonized application of the principles incorporated in the Directive. Such control should be exercised by the competent authorities of the country of the issuer, with which the prospectus has been filed and which approves such prospectus, as to achieve the maximum efficiency and

homogeneity in the application and control of the principles stated in the Directive. Thus, inconsistencies or incoherent interpretations that could arise from the different competent authorities within the EU empowered to register the prospectus and control the advertising related to it, would be avoided.

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I trust the foregoing proves helpful. Please do not hesitate to contact me if I can be of any further help.

Yours sincerely,

Luis de Carlos Bertrán