

ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER HYPOTHEKENBANKEN E.V. BERLIN

Mr Fabrice Demarigny
Secretary General
Committee of European
Securities Regulators (CESR)
11-13 avenue de Friedland
75008 PARIS
France

10178 Berlin, 20 June 2005
Burgstrasse 28
AZ ZKA: 413-EU-Prosp
AZ BdB: U 13.3.4 - Wag/Mn

Call for Evidence concerning the formal mandate to CESR for technical advice on a possible amendment to the requirements in Commission Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus

Dear Mr Demarigny,

Since the first draft of the Prospectus Directive was presented in May 2001, the Zentraler Kreditausschuss (ZKA)¹ has always been closely involved in the Directive's passage through all levels of the fast-track legislative process. We are therefore pleased to have a further opportunity to comment on the above-mentioned consultation paper.

May we begin by mentioning that Germany is currently busy transposing the new prospectus regime into national law. All market participants in the issuing sector are working hard to implement the new regime and to gear new prospectuses to it. The picture is probably the same in other member states. This is one of the reasons why we believe that a revision of the Regulation relating to the disclosure of historical financial information does not make sense at

¹ The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Hypothekenbanken (VdH)*, for the mortgage banks. Collectively, they represent more than 2,300 banks.

the present time. But even at a later date, we do not feel that that Regulation needs to be amended as far as complex financial histories are concerned.

Amendments made shortly after the entry into force of new legislation are unlikely to strengthen capital market confidence in a reliable legal regime. Amendments should therefore only be made where they are absolutely essential. This is not the case, however.

The rules already laid down in Prospectus Regulation 809/2004, requiring the disclosure of pro-forma financial information compiled retroactively for a period of twelve months in the event that there is a significant change in the issuer's financial and trading position, are adequate in our view for the purpose of informing investors about the effects of structural changes at companies. Calls for additional pro-forma financial information, as already discussed last year in connection with CESR's recommendations on uniform application of the Prospectus Regulation, are, on the other hand, inappropriate in our view, as compiling pro-forma financial information for a period of more than twelve months would impose an extremely heavy workload that would be in no proportion to the anticipated benefit. The issuing process would be further burdened and issuers to whom the envisaged new rules would be applicable might be deterred from tapping the capital market. What is more, pro-forma financial information for periods further back than twelve months is only of limited value to investors and actually harbours the danger of giving them a false picture of the issuer's financial and trading position, so that it would be counter-productive. This is backed by experience to this effect made in the past.

Also, we would point out that the existing time limits on disclosure of pro-forma financial information also appear appropriate compared with the US capital market. In the US, disclosure of pro-forma financial information is limited by Regulation S-X to the last financial year and the current interim report period. The same applies in Germany at present under national auditing rules and guidelines. There are therefore no international standards at present that would require auditors to issue the necessary attestations for a longer period.

Ultimately, therefore, we feel that the general authority given to supervisors in the Regulation to request additional information from the issuer where necessary is a sufficiently flexible instrument. This allows a case-by-case assessment.

We therefore wish to emphasise that no change is needed in this regulatory area. Instead, the new law should first be applied and experience gathered in practice. This is also consistent

with the Commission's recently published Green Paper which, with the rules adopted under the Financial Services Action Plan in mind, states that consolidation of new legislation is first required.

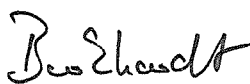
We should also like to point out that disclosure of financial information of undertakings other than the issuer's is not automatically possible. It presupposes the actual availability of this information and the consent of the undertaking concerned to its disclosure. Both may be difficult to obtain, e.g. if no provision is made in national company law for a parent undertaking to exercise authority over a subsidiary. Furthermore, we believe that the parent undertaking's consolidated accounts always give a good picture of the entire group's financial and trading position, including all subsidiaries, so that presentation of separate or partially consolidated accounts of individual subsidiaries is unnecessary even in the case of complex financial histories. As regards the thought given in the consultation paper to the securities that should be covered and whether a list of cases where additional financial information is required should be compiled, may we add, merely to complete the picture, that such thought would likely be restricted to equities and that a list would never be exhaustive.

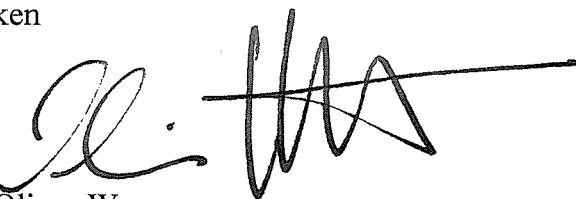
Allow us to conclude with a quote from Commissioner Charlie McCreevy which makes clear, in our view, that the Regulation should not be amended:

"We are now entering a new phase. The time has come to consolidate our achievements. Business must be given time to digest the major reforms introduced in financial services and accounting. The watchwords will be implementation and enforcement. We have to make sure European law is evenly implemented across an enlarged Union of 25."

(Speech on the occasion of the 125th Anniversary of the Institute of Chartered Accountants in England and Wales, Brussels, 5 April 2005).

Yours sincerely,
for the Zentraler Kreditausschuss
Bundesverband deutscher Banken


Katrin Burkhardt


Oliver Wagner