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**Position on
CESR Guidelines for the Consistent
Implementation of the Proposed Commission
Regulation on Prospectus**

**Call for Evidence
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Importance of Consistent Implementation

The author welcomes that the Prospectus Directive and the implementing Regulation have come so close to the effective implementation. July 1, 2005 is no longer a “magic number”, but has become the starting point into the future of harmonised public offerings for securities throughout Europe. To a substantial amount it is due to CESR that the process of preparing the rules and regulations could have successfully been finalized.

The new legislative framework will both protect investors and promote securities markets.

- It actively supports changes in securities markets through innovative products and techniques.
- It enables issuers to react quickly to an attractive market environment with an offer.
- It provides investors with a prospectus in a form that explains the opportunities and risks associated with the offer in a manner that is - hopefully - easily read and understood.

As the recognised standard, this legislative framework should contribute towards creating a new prospectus culture in Europe. In this context, it is desirable that the competent supervisory authorities in Europe also support the process of providing information and explanations by means of a prospectus to investors in Europe. The competent authorities should do marketing – marketing for prospecti to be downloaded or required before investing in a new security.

Furthermore, it is even more important that the new rules and regulations will be applied by the competent authorities in a consistent manner. Therefore, I welcome that CESR has decided that the Expert Group on Prospectus shall carry on its work and has published an Call for Evidence to find out critical elements by consulting market participants.

However, I feel, focus over the next month should be laid on a smooth implementation of the rules and regulations. I am convinced, that first level attention has to be on technicalities. Most aspects concerning the content of an prospectus will only become obvious as soon as the first prospecti have been submitted to the competent authorities. I have some doubts whether it will be possible to foresee the relevance of various aspects nowadays. Therefore, I suggest that CESR should find a quick process for the consistent interpretation of open issues after July 1, 2005.

Financial Information

My remarks make reference to Article 35 of the proposed regulation on the implementation of the Directive as well as to comments which I have already laid down in my various positions regarding the Consultation Papers.

As far as the issue of historical financial information is concerned I believe that we will face considerable practical problems with the requirement that the latest financial statements presented in the prospectus have to be restated in a way that they are consistent with the accounting standards the issuer is going to apply for the financial statements of the current business year. If the purpose of a restatement is to provide for some comparability between figures generated on the basis of the former accounting standards - for example “old” IFRS - and the figures based on first time adopted “new” IFRS, how can this goal be achieved where at the time of the issue the new figures are not yet available, since the current business year has not been closed? I strongly believe that market participants can duly expect a convincing answer to this question from CESR.

Implementation of the New Legislation

One of the major aspects regarding 1 July 2005, is the fact how the transition from the “old” to the “new” legal environment could take place. On the one hand, prior to 1 July 2005 no prospectus could officially be approved by the competent authorities. On the other hand, if draft prospectuses could only be submitted to the competent authorities on 1 July 2005, the consequences will be dramatic:

- There will be an overload of work for the competent authorities, because all issuers using offering programs for debt and derivatives will submit their base prospecti for approval. You could expect some hundreds of base prospecti to be submitted on that day to the major competent authorities with no chance for the authorities to check them properly within the time frame laid down in Article 13.
- Furthermore, there will be a “hole” of some weeks for an issuance especially of debt and derivative securities over a certain period starting 1 July 2005.
- There will be discrimination between those issuers having received an early approval and those issuers receiving the approval some days later.

Therefore, I would like to suggest that the competent authorities shall check draft prospecti prior to 1 July, so that the approval could immediately be given on 1 July 2005. Only such measure will allow for a smooth continuation of the issuance of securities.

Supplements

Another issue of major importance is the question how the competent authorities will treat with supplements to be approved according to Article 16 of the Directive. Guidance is necessary for those issues which are already in the period of bookbuilding of subscription when the need for a supplement becomes relevant. Some questions are:

- How should orders and subscriptions be treated which are submitted prior to the event?
- In which manner do such orders and subscriptions have to be renewed?
- Is the issuer or offeror allowed to neglect those subscriptions who could not be renewed?

- How shall the interruption of the process of public offering be communicated?

Such topics are especially relevant as a consequence of Article 8 section (1) (b) of the Directive which allows investors to withdraw their orders up to two working days after the final offer price has been fixed.

Selected Items

I would not like to comment in detail on the selected items regarding the annexes raised in the Call for Evidence. However, CESR should take into account that Level 2 has been widely consulted with market participants and contains detailed advice.

As already mentioned, I am of the opinion that most issues will only become obvious in the “world of real prospecti”, which means after 1 July 2005. However, with regard to financial information the “lead function” for these aspects should be with those bodies who are in charge of the Transparency Directive. The Prospectus Group should not go beyond those rules which have been laid down in the Transparency Directive. In addition, for most aspects especially in the field of equity, sufficient market standards have already been established.