

**THE ASSOCIATION OF FINANCIAL
GUARANTY INSURERS**

Mr Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11 – 13 Avenue de Friedland
75008 Paris
France

12 August 2003

Dear Sir

Prospectus Directive – CESR advice on implementing measures

The Association of Financial Guaranty Insurers (**AFGI**) is pleased to comment on the proposed scope of the disclosure required on monoline providers in European offering circulars under the EU Prospectus Directive. As you may be aware, AFGI is the trade association of the insurers and reinsurers of securities and other obligations sold in markets worldwide. In 2002, AFGI members insured \$431.2 billion in par value of bonds and other obligations. AFGI member firms include Ambac Assurance Corporation (**Ambac**), ACE Guaranty Inc. (**ACE**), CDC-Ixis Financial Guaranty (**CDC-Ixis**), Financial Guaranty Insurance Company (**FGIC**), Financial Security Assurance (**FSA**), MBIA Insurance Corporation (**MBIA**), Radian Reinsurance Inc., RAM Reinsurance Company and XL Capital Assurance (**XL**). Affiliates of most of these insurers operate subsidiaries or branches in the United Kingdom and elsewhere in Europe. The primary market bond insurers (excluding the reinsurers) operating in Europe, affiliates of Ambac, ACE, CDC-Ixis, FGIC, FSA, MBIA and XL, each have an insurance financial strength rating of "triple-A" from one or more of the securities ratings agencies.

Affiliates, branches and subsidiaries of AFGI members are regulated as financial guaranty insurers by the UK Financial Services Authority if located in the UK and by the equivalent regulatory authority if located in another European jurisdiction. They are subject to extensive insurance regulations, including solvency measures such as minimum capital, reinsurance limitations and risk assessments and management requirements. In addition, the affiliates or parents located in the United States are subject to substantial regulation under the applicable laws in effect, including the extensive financial guaranty insurance statutes and regulations in effect in California, New York and several other states. Subsidiaries of such US companies located in Europe must also generally comply with such US insurance regulations because of the reinsurance of their European business to their US parents or affiliates, which

reinsurance typically provides the support required for these European affiliates and subsidiaries to maintain "triple-A" or "double-A" ratings.

You will be aware, we assume, that it is present market practice - accepted by issuers, investors and regulators throughout Europe (including the UK Listing Authority, the London Stock Exchange and the Luxembourg Stock Exchange) - that the disclosure on the provider of a monoline guarantee is, as compared to traditional issuers and guarantors, limited. By way of an illustrative example, we enclose as an annex to this letter a typical description from a real transaction approved by an EU competent authority.

It is our contention that a level of disclosure similar to that referred to above and accepted currently by regulators, issuers and investors in the European markets is appropriate going forward under the new Prospectus Directive regime and, in this regard, strongly encourage CESR to cater for the particular situation of monolines by excluding them from the general definition of "guarantor" in the Guarantees Building Block and providing for them specifically. To do otherwise risks creating additional and unnecessary costs for issuers without any corresponding benefit to investors.

We would note that this approach is similar to that adopted in the US and approved of by the SEC. For issuance of U. S. securities, bond insurance policies are exempt from registration under Section 3(a)(8) of the Securities Act. The bond insurers and the SEC have agreed to a limited scope of disclosure for bond insurers, which has in the case of SEC registered securities included GAAP financials that may be incorporated by reference to public filings. For U.S. municipal transactions that are not otherwise subject to SEC registration, the scope of disclosure regarding bond insurers is much more narrow, and is generally limited to one paragraph in the offering document.

Implicit within an adoption by CESR of the approach suggested above, would be an acceptance that no financial information provided in respect of a monoline guarantor would have to be restated, reconciled or in any way explained by reference to IAS. The main providers of monoline guarantees in the European markets at present and who are signatories to this letter prepare their relevant accounts according to US GAAP. Although we understand that the issue of IAS accounting is being raised generally by many US and other non-EU corporates, it is clearly imperative from the perspective of the monolines that CESR and/or the Commission confirm that, in the case of monolines, the summary information that is presently and should going forward be required of monoline providers clearly contemplates the provision of financial information by reference to their existing account principles and policies. We would note that the "concession" for issues of €50,000 denomination or more securities is of no help to monolines who have no control over the denomination of the security they are asked to guarantee.

In the time available since the monolines have become aware of this significant problem presented by the proposals made by CESR, we have not been able to prepare detailed reasoning or drafting suggestions which we are more than happy to do. Our intention would be to submit early in September a supplement to this letter providing CESR both with more detail as to the rationale for these suggested distinctions and

suggested drafting (eg a definition of monoline insurers) which we assume would be helpful to the work of CESR and the Commission.

In conjunction with the provision of this further information, we may well request a meeting with relevant individuals within CESR to further discuss this issue given its fundamental significance to the European capital markets.

Kind regards

Yours faithfully

David Ridl
Associate General Counsel
Financial Security Assurance
For and on behalf of Association of Financial Guarantee Insurers
c/o 1 Angel Court
London
EC2R 7AE

cc David Wright
European Commission