

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

October 29, 2003

CESR's Advice on Level 2 Implementing Measures for the Prospectus Directive,
Consultation Paper July 2003

Dear Mr. Demarigny,

Advantage Corporate Communications GmbH ("Advantage") presents the subsequent statements with regard to the DISSEMINATION OF ADVERTISING in order to make available to this process its experience as one of the leading German financial communication companies. Through its partner firm and shareholder Doremus Advantage is serving clients in financial markets worldwide and partner in the global Omnicom Inc. network. Advantage's opinion is based on 17 years of experience in financial communication, including IPOs and other offerings since 1986 from the outset of the opening up of German financial markets.

Please confirm that our statement arrived prior to the end of the consultation period.

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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 agree with the scope of the present consultation paper on advertising. However, we believe that its interpretation should follow the lines of market mechanics and carefully assess the implications derived from information economics. We would assume that a tight interpretation unnecessarily infringes on the set goal of raising attention and providing access to information.

A tight and restrictive interpretation would limit creativity in a harmful manner and undermine its set target to raise attention, which is essential for all types of advertising to fulfill. This would be the case if the Directive would be interpreted as explicitly stipulating the mentioning of the prospectus and other legal provisos in advertisements. An interpretation towards an explicit requirement would perpetuate a status of financial advertising which may still prevail today but is bound to be replaced by new types of inter-active communication and advertising which make it possible to provide the investor or consumer with better information.

Already today, it is perfectly possible to raise the investors' attention by advertising and to ask them to refer to a web site for further information. By further linking this web site to other relevant web sites the investor and consumer would gain access to summary information as well as direct access to the prospectus as the sole basis for the securities offer. This new approach holds for the print media as well as for banner advertisements on relevant web sites. In addition, such a link could state how a prospectus could be obtained by mail. Thus, Article 15 (2) should stipulate ways of how to obtain further relevant information, such as the prospectus, but may not be interpreted as stipulating a formal requirement to explicitly mentioning the prospectus.

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 rather believe that blackout periods should not be imposed because they would deny investors the

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information they should have. While not adding to the necessary and undebated protection of the retail investor such a blackout period would even discriminate against individual investors if other market participants, e.g. institutional investors, gained knowledge by informal market channels.

However, prior to the availability of a prospectus it is in the favor of all investors to have their attention drawn to upcoming investment opportunities. Thus, they can include this preliminary information at an early stage when they decide on their overall investment strategy. Advertising provides the information on how they can obtain access to further information. A subsequent blackout period would handicap not only to the broad group of retail investors but also the proper functioning of the market in general.

Prior to an intended public offer it suffices to include in an advertisement a reference where it is stated that a prospectus is/will be available and how it can be obtained. As soon as a public offer starts, investors will already know how to obtain the prospectus. Prior to a public offer of securities, when securities may not be bought, there is evidently no need for a prospectus. Therefore we are convinced that a prospectus is not a prerequisite for advertising, although advertising must relate to the prospectus as the sole binding document.

A blackout period would infringe on the investors' rights to obtain full information on the possible investment universe. Therefore it may be efficient to have advertising even prior to the completion of the prospectus as long as such advertising gives reference to where further information, i.e. also the prospectus, can be obtained as set forth in Article 15(2) of the Directive.

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.

We feel that harmonization of control over compliance of advertising activity would be desirable but not crucial to achieving financial market efficiency in the European Union. Broad harmonization could also come about as a result of different individual approaches and their respective market success.

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Therefore the ambition to create an equal level playing field for issuers all over Europe should primarily focus on achieving an optimal flow of information to market participants, which is essential for financial markets to function well. For all capital market transactions and offerings time is of essence, in particular in the case of derivative securities. This would require that up-dated market information is available to all market participants. Therefore the implementation of control must not lead to any delay in the offering and issuing activities.

Consequently, such information including advertising activities evidently could not be subject to a prior approval process by any authority because this would not only

substantially delay the process but simultaneously put the market's performance and existence as such at jeopardy. If a prior approval requirement for advertisements were introduced we believe that the market's size would not only be restricted but shrink substantially compared to today's levels.

For this reason we would assume that a regulating authority should only interfere and open an investigation where there seems to be a breach of regulations. This seems by far superior to requiring prior approval because it allows the regulating bodies to concentrate on cases where there is sufficient evidence that regulations have been trespassed. This approach is also supported by the inherent incentives for issuers to avoid the most detrimental case of their advertising activities being prohibited post-publication for not having obeyed set regulations. These incentives simultaneously reflect the interests of the investors for complete and accurate information. The prospectus will serve as a base document for both quick and in-depth reference and will give clear guidance in case market participants are in need of further information or are in doubt as to an advertisement's informational content. Market experience in Germany shows that in by far most instances advertising activities fully comply in contents and in form with rules set forth in the German Selling Prospectus Act.

In addition, sanctions brought about by the market itself are often more severe and thus more efficient than fines levied on participants. This modus firstly avoids insufficient examination of the myriad of documents, while secondly intelligently employs market incentives to promote functioning markets.

As far as the control over compliance of advertising activity is to be harmonized, we believe that it is possible to have local competent authority to draft technical guidelines which provide for specific

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market aspects. This also in line with our understanding that only local regulators can verify if there has been a breach of rules in their individual markets. For instance, it would be rather bothersome if German authorities were to judge whether the advertising in Greek or Swedish in a daily is in line with the prospectus, which they have approved. To judge whether the advertisement corresponds to the prospectus will be much easier for the local authorities. Otherwise, the requirement set forth in Article 15(3) of the Directive that information contained in an advertisement shall be consistent with the information contained in the prospectus could not be verified without creating enormous cost for complex regulating authorities with a broad multilingual and legal expertise in each country.

Sincerely yours,

Advantage Corporate Communications GmbH

Dr. Manfred Seyfried
(Managing Partner)