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Ref MMCK/vs

Dear Mr Demarigny

Proposed Prospectus Directive – Possible Implementing Measures

I am writing in response to CESR's invitation to comment on its consultation paper on possible technical measures needed to implement the proposed EU directive on prospectuses. ABI members as institutional investors have some £1 trillion (more than €1.5 trillion) in funds under management, approximately half of which is invested in the equity and fixed interest securities of EU corporate issuers.

Our Association is particularly concerned to ensure that the framing and interpretation of directives which impinge on the financial markets of the EU does so in a manner which accords with the interests of users, actual and potential, of those markets. The UK's developed capital and financial markets form a substantial proportion of those located within the EU and EEA and we hope that this has been reflected through the Consultative Working Groups' deliberations on the Prospectus Directive implementation proposals.

Our view of the Prospectus Directive is that its focus needs clearly to be on providing an appropriate framework for capital issuance events. Notwithstanding the proposed obligation for mandatory annual updating of the Prospectus under Article 10 of the Directive, we consider that on-going obligations by issuers to their shareholders and other investors going forward should be within the scope of other directives. The existing regime afforded under the listing directive is particularly important and we have registered our concern at the possibility that implementation of the Prospectus Directive could lead to a weakening in these arrangements.

Paragraphs 51, 52 & 53

We note the proposal to require mandatory *pro forma* financial information in the case of a significant gross change in the size of company due to a particular

actual or planned transaction. This is a matter which, as per our comments above, we view as outside the primary focus of a prospectus directive. It is, nonetheless, an important matter and not only because investors need to have relevant information reflecting real current circumstances of listed entities. We would highlight the need for accountability by companies to their shareholders in respect of such material changes.

In the UK this is reflected in the requirements for shareholder approval in respect of Class 1 transactions which are defined according to the same 25% threshold being suggested by the CESR prospectus directive implementation proposals. Institutional shareholders view this as a key pillar of the Listing Rules regime in accordance with the listing directive. Obligations for mere publication of *pro forma* financial information under the Prospectus Directive can be no substitute for this. We believe that 25% is the right level for the shareholder authorisation threshold but that in the context of disclosure requirements a lower threshold may be appropriate. Under the UK's transaction class tests there is already an appropriate hierarchy of disclosure requirements with informative disclosure to the market required in the case of Class 2 transactions which exceed a 5% threshold.

Our preference would be for this area to be dealt with under a listing rules regime, but in any event we encourage CESR to help ensure these matters are dealt with in a coherent fashion as the overall architecture of the various EU directives becomes clearer.

I hope our comments will be of assistance to CESR in developing its advice on level 2 implementing measures for the proposed Prospectus Directive.

Yours sincerely

M W McKersie
Manager
Investment Affairs