Banco de Portugal

Vice-Governador

Nº 013 / GAB

Lisbon, February 6, 2003.

VIA MAIL: secretariat@europefesco.org

COMMITTEE OF EUROPEAN SECURITIES REGULATORS (CESR)
Att: Mr. Fabrice Demarigny

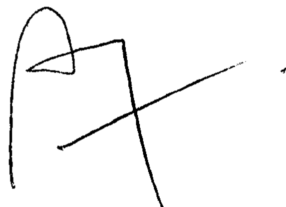
Subject: **CESR PROPOSALS SET OUT IN THE ADDENDUM TO THE CONSULTATION PAPER ON POSSIBLE IMPLEMENTING MEASURES FOR THE PROPOSED PROSPECTUS DIRECTIVE**

Dear Mr. Fabrice Demarigny

As regards the disclosure obligations set out in Annex 2 of the Addendum to the Consultation Paper - Banks Registration Document Building Block - as well as the specific questions raised in the Addendum, we would like to put forward the following comments:

First of all, we consider that it is duly justified to have a specialist building block, not only for banks, but also for other credit institutions and investment firms.

In fact, we believe that these institutions should benefit from a lighter regime in terms of disclosure, due to the regulatory control and prudential supervision to which they are submitted. Furthermore, under Pillar 3 of the new capital adequacy regime (Market Discipline), a comprehensive set of disclosure requirements will be imposed on these institutions. Having this in mind, as well as the fact that the need to streamline the reporting requirements of the financial institutions is broadly recognized, we consider that we should avoid to impose a disproportionate burden on the industry if a similar result is, or can be, obtained by other means.



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In principle, the same reasoning should apply to non-EU banks that are subject to an equivalent level of prudential supervision. However, given the political sensitiveness and the practical difficulties of applying an "equivalence test" (if it would be applied at national level, the consistency of approach could be difficult to achieve) we consider that, at this stage, it should cover only EEA institutions.

As regards the Banks Registration Document Building Block set out in Annex 2, we consider that several of its requirements are excessive, namely taking into account that the regulatory framework applicable to credit institutions and investment firms imposes important restrictions on their activities and investments, as well as on the conduct of business by these institutions and on the prevention of conflicts of interests. This is particularly the case of disclosure obligations on management and directors conflicts of interests, board practices, related party transactions and material contracts, that we see as unnecessary and/or inappropriate and therefore, in our view, should not be included.

We also consider that these institutions should not be required to disclose information on principal future investments, not only because "such information no longer adds significant value to investor's judgement of the issuer's ability to meet its obligations under the securities being issued" – as it is remarked in the Addendum - but also because such disclosure could undermine the regular course of the business and raise concerns in terms of competition.

With reference to the financial information to be provided, we think that the cash-flow statements are not relevant and could impose an excessive burden on institutions if they would be required.

With regard to the convenience of disclosing trend information and profit forecasts concerning credit institutions, we would like to underline the need to ensure a right balance between different objectives: transparency towards the investor, on one side, and financial stability and prevention of the systemic risk, on the other side. In particular, the disclosure of the solvency ratio is, in our view, inappropriate, as it may be misleading to the investor and give rise to inadequate interpretations about the health of

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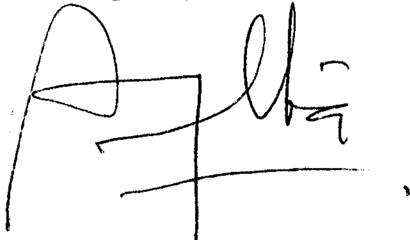
the institution. Actually, banks may disclose different ratios, according to different methodologies (Basle/EC Directive/its own country regulatory methodology, that can be more restrictive than the previous ones). Furthermore, in the context of the supervisory review of the risk management system of each institution, the supervisor may impose a higher ratio than the standard one. Therefore, a similar figure may reflect different realities, misleading the investor and the market. Also in the framework of Basle discussions on Pillar 3, the convenience of disclosing this information has raised several doubts and it still is an open-ended question. We consider that we should not prejudge that discussion and, once again, we stress the need to ensure consistency between different approaches in terms of disclosure requirements.

Finally we would like to point out that the above considerations also apply to the Derivatives Registration Document Building Block when the issuer is a credit institution, as well as to the base prospectus produced by a credit institution.

With best regards,



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