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Mr Fabrice Demarigny
CESR
11 -13 Avenue de Friedland
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Paris, France

Dear Fabrice,

Response to CESR consultation on implementation of the Prospectus Directive at Level 2

We are pleased to be able to contribute a response to CESR's consultation on possible Level 2 implementing measures for the Prospectus Directive.

Barclays is the fifth largest financial services group in the EU (as measured by market capitalisation), employing over 80,000 people in over 60 countries. Within the EU we are present in the UK, Belgium, France, Germany, Greece, Portugal, Spain, Italy, Ireland, Luxembourg, and the Netherlands.

We strive to engage positively with the EU institutions and are members of a number of European organisations that share this objective.

Barclays is closely involved in the capital markets at many levels; we are an issuer, an underwriter (via Barclays Capital, our investment banking division), a major investor in the markets (via Barclays Global Investors, our asset management division) and a broker (via Barclays Stockbrokers). We also provide extensive financial services to retail investors, both in the form of wealth management (via Barclays Private Bank) and through our high street operation. This gives us a wide base of experience from which we draw our comments on the impact of implementation of the Prospectus Directive.

We have reviewed the responses of both the International Primary Markets Association (*IPMA*) and the London International Banking Association (*LIBA*) and endorse and echo those responses. Consequently, we do not intend to provide

exhaustive commentary on the discussion paper, but merely to highlight matters that are of particular concern to us.

Implementation of the Directive

Barclays welcomes the objective of the proposed Prospectus Directive to effect a pan-European passport for capital market instruments. We further understand the difficulties that CESR has been presented with, given the aggressive timetable of the consultation and the implementation phase. However, we believe that the implementation measures currently proposed will not meet either of the stated goals of providing deep and liquid capital markets, and providing consumers with an appropriate level of investor protection. It is our belief that insufficient weight has been given to the concept of appropriate disclosure and that the implementation measures need to distinguish more clearly between equity/non-equity issues and retail/wholesale investors.

Investor protection

Barclays fully supports protection of retail investors, but other classes of investor do not require the same levels of protection. We believe that the current method of distinguishing retail offerings is flawed. We further believe that the benefits of protection given to retail investors by this regime will be outweighed by the disadvantages they will suffer. Retail investors may be adversely impacted financially and may also potentially lose the consumer protection in respect of non-EU issuers that they currently enjoy, for the following reasons:

- ◆ Many companies will not wish to incur the extra expense of complying with the full retail disclosure regime envisaged by the Directive and the level 2 discussion papers. This will result in a lack of retail investment opportunities in instruments that are in many ways ideally suited to such persons, for example, investment grade bonds;
- ◆ It will become much more expensive for institutional investors to purchase bonds and to hedge their portfolios due to the large denominations they will be forced to purchase. This will have the effect of making retail financial products, such as bond index tracking funds, much more expensive. Given the desire of EU Governments to encourage individuals to make better provision for their retirement, this is unfortunate;
- ◆ Sophisticated retail investors and institutional investors will wish to diversify their portfolios by purchasing instruments issued by non-EU issuers. If the bonds that they wish to purchase are not available in the EU, they will be forced to purchase offshore (for example, in Switzerland or the United States) where they may have no protection at all. We believe that this is a very real danger and echo IPMA's comments in relation to non-EU issuers. We would further state that this is counter to the ethos of the Directive to facilitate 'deep and liquid' markets and that it deprives both retail and wholesale investors of excellent investment opportunities.

Disclosure

Barclays believes that the choice of IOSCO as the basis for the CESR disclosure standards is somewhat curious. Given that a cornerstone of the Lamfalussy process

is 'consultation', it is difficult to understand why standards established by non-European academics in isolation from the market, and which only cover equity, were deemed to be suitable for all eventualities. It is of even more concern that the Commission has interpreted Parliament's amendment 'based on' to mean 'at least'. Firstly, this is not the interpretative approach that the market is used to, and secondly, it undermines the consultation process that is now taking place. We would echo IPMA's comments on this matter.

Timetable

We appreciate the extreme time pressure that CESR is under. However, we believe that a market such as the Eurobond market, whose value last year was around €2 trillion is too important to the future of Europe's economy to be put at risk by a hasty and rushed implementation phase. We would recommend that CESR consider discussing an extension to the timetable with the Commission, failing which, we hope that CESR will continue to take comments on its proposals, and work closely with market participants such as ourselves. We believe that this will be critical in achieving the aims of the Prospectus Directive.

Conclusion

By way of conclusion, we would like to re-emphasise our support for the principal of the single European Passport for issuers. We believe that deep, liquid capital markets are an essential step in meeting the Lisbon agenda's goal of making the EU the world's most competitive and dynamic knowledge-based economy by 2010. We do not believe that it serves anyone's interests to raise barriers to entry for either issuers or Investment Banks; we do not support protection for particular practices at the expense of the depth and liquidity that a range of entities bring to the market. The background to the creation of the Eurobond market, in reaction to unpopular US Government intervention in their domestic bond market, illustrates the futility of anti-market legislation. It is important that CESR ensures that there are no unintended consequences of its implementation of the Prospectus Directive.

Should you wish to discuss any elements of this response in more detail, we would be delighted to oblige.

Yours sincerely,

W. B. Eldridge
EU Public Affairs Director