



Mr Fabrice Demarigny  
Secretary General  
CESR  
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FRANCE

6 February 2003  
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**Response to CESR's advice on possible level 2 implementing measures for the proposed Prospectus Directive**

Dear Mr Demarigny,

The Association of German Banks welcomes the opportunity to respond to CESR's first consultation paper of October 2002 on its advice on possible level 2 implementing measures for the proposed Prospectus Directive.

The Association of German Banks represents 258 private commercial banks and eleven regional associations, as well as the special mortgage bank and ship mortgage bank associations. Measured in terms of business volume, these banks hold a share of around 40% of the banking market as a whole. They have a total of over 200,000 employees.

The Association of German Banks is a member of the *Zentraler Kreditausschuss* (ZKA), the joint committee of the central associations of the German banking industry, which submitted the comments you will find enclosed.

We fully support the views expressed by the ZKA in these comments and would like to highlight one or two points which we consider particularly important.



First of all, however, we would like to request that CESR consult with market participants again before submitting its revised proposals to the Commission. This would allow them the opportunity to examine how their responses have been taken into account. If necessary, additional suggestions could then be made with the aim of ensuring that the final recommendations prove practicable for all market participants. It is true that two hearings have already been held on the first consultation paper. Since no evaluation of market participants' comments on the first part of the paper was available at these hearings, however, it was not possible to have an in-depth discussion of CESR's further proposals even at the second hearing in Paris at the end of January.

Naturally, we are aware that CESR would like to send its proposals to the Commission on 31 March 2003 and that this would make it very difficult to organise another hearing with an adequate period of time for comment. Given that the second reading in the European Parliament has not yet begun, however, we feel that CESR should consider requesting the Commission to extend its deadline. In all probability, the Prospectus Directive will not be adopted before June 2003. In spite of the tight deadlines for implementation and the further technical implementing measures to be drafted by the Commission, this would still allow sufficient time to consult market participants on the results of the first consultation paper.

As far as the points raised in the comments of the *Zentraler Kreditausschuss* are concerned, we would like to especially underline – as in our response to the first part of the paper published in October 2002 – our belief in the importance of keeping the number of building blocks to an absolute minimum and providing issuers with clear guidance on the interrelationship between the various building blocks. We infer from the recently proposed registration document for shipping companies that further special building blocks will be created for certain issuers. In light of the building blocks already proposed in the first consultation paper for property companies, scientific research based companies etc., we are concerned that issuers in other industries with special features might face difficulties if no special building block were available at the time of their issue. We would therefore argue that sufficient flexibility is needed both for issuers and authorities to avoid further, costly obstacles being placed in the path of issuing activities.

We would also like to draw your attention to the differences which exist at present between the building blocks for banks and derivative products. In its description of the building block for banks, CESR states that it is possible to give these issuers preferential treatment since they are subject to solvency supervision by the state. CESR subsequently notes that offers of derivative products are normally issued by banks. Nevertheless, CESR wishes to develop a separate building block for derivative products with requirements

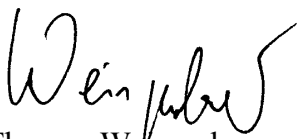


going beyond the registration document envisaged for banks. The investor is primarily interested, however, in obtaining information that will enable him to assess the issuer's solvency. In the interests of legal certainty, it should be clarified that the preferential treatment accorded to banks applies in these cases too. Furthermore, if a number of registration documents had to be produced, the updating requirements in Article 10 of the directive would prove extremely costly.

Finally, we should like to ask CESR also to consider our first comments when reviewing the prospectus models published shortly before Christmas, since many of the points raised there apply to this consultation paper too.

Should you require any further information, please do not hesitate to contact us at any time.

Yours sincerely,

  
Thomas Weisgerber

  
Georg Baur

Enclosure