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### **Key issues in response to CESR consultation of June 2003**

We welcome the opportunity to comment on the latest consultation paper from CESR on level 2 implementing measures for the Prospectus Directive. Some of our members have contributed to the response by the International Primary Market Association, which deals with matters raised in the consultation in detail. We have set out below some key issues for us.

#### **Principles**

We have seen the principles set out in the response by the Deutsches Aktieninstitut that:

- (i) investors should be provided with sufficient information for a responsible assessment of the relevant investment,
- (ii) disclosure requirements should not be too burdensome where such information does not add particular value to the assessment of the issuer and
- (iii) the requirements must be workable in the daily business

and we would wish to support those.

#### **Derivatives / debt**

Not only banks, but also many corporates, issue securities, which would not be classified as 'debt' as proposed. Disclosure should generally depend on the nature of the issuer and the credit risk taken on the issuer, with the exception of guaranteed offers, where it may be more appropriate to focus on the guarantor.

Wholesale treatment should clearly extend beyond pure debt securities to other non-equity securities as foreseen by the Directive, with separate disclosure regimes for non-equity securities with a denomination of €50,000 or above. However, there should not be a requirement for separate programmes for different products. This would increase cost for issuers without any related benefit for investors. Provided it is clear which terms and conditions apply to which product, issuers should be allowed to combine different products into a single base prospectus.



## **Liability for the Annual Information Document**

Issuers should be able to choose the method of publication of the annual information document. CESR should make clear that there is no assumption of liability for the annual information document beyond that of the original filing and that issuers should be able to include disclaimers to this effect.

Inclusion of past performance, volatility figures and examples should not be mandatory. Issuers should have discretion on whether to include such matters in any particular case in order to fulfil their obligation to provide the investor with the necessary information under Article 5.

Companies should not be obliged to provide information on the tax treatment of relevant securities in all EU jurisdictions.

## **Format of the prospectus**

We agree with the CESR members who consider that issuers should be able to choose the best way to present the information in order to meet their obligations under the Directive.

Yours sincerely

**Susannah Haan**

**Legal Adviser**