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Committee of European Securities Regulators

**Mr. Fabrice Demarigny**

Secretary General

11-13, Avenue Friedland

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FRANCE

Brussels, 5 February 2003

**EAPB position paper on the addendum to the consultation paper on CESR's advice on possible level 2 implementing measures for the future prospectus directive (Ref. CESR/02-185-b)**

Dear Mr Demarigny,

We would like to thank you for the opportunity to comment on the addendum to the consultation paper on the CESR's advice on possible level 2 implementing measures for the future directive for the prospectus to be published when securities are offered to the public or admitted to trading. The latter addendum was published by CESR on 19 December 2002. The European Association of Public Banks (EAPB) represents approximately 100 public banks and financing institutions from 8 European countries. Public banks, funding agencies and national associations of public banks are direct members of the EAPB.

Our position paper will provide you with our general observations and concerns regarding the consultation paper. For our general remarks we refer to our response to the initial CESR consultation paper focusing on possible implementing measures for the prospectus directive (dated 18 December 2002). However, we feel somewhat uncomfortable to answer the second round of questions without knowing your reaction to the first response.

**Necessity for a supplementary consultation**

Please let us stress that our main concern relates to the finalisation of the consultation and to the fulfilling of your mandate. CESR announced at the last hearing in Paris that a second consultation on the revised possible implementing measures which will be sent to the EU



Commission was unlikely to be held in the light of the tight timeframe. Both hearings showed there is a widespread fear that the regulations proposed in both consultation papers will lead to inflexible conditions. Many parties concerned made a lot of suggestions in their written comments and during the open hearings. According to the vast majority of the concerned parties, it should especially taken care of that the admission to trading in an as flexible way as possible is guaranteed, particularly in relation to new and currently unknown products. Furthermore a clear-cut ranking between the different registration documents is necessary to provide the necessary legal certainty to issuers. Although of high importance, the shape of a guideline to be given by CESR in this respect has not yet emerged.

Bearing in mind the above-mentioned complexity of the issue and its consequences for the EU capital market and despite the time pressure CESR has to cope with, the EAPB would like to stress the particular impact of comprehensive consultations. As a result it seems to be vital to start a second consultation process focusing the whole consultation complex, even if this would extend the planned end of the consultation process from March to probably May or June 2003.

## Base prospectus

As we have already mentioned in the response to the initial position paper, the base prospectus is of crucial importance for the banking industry. In the future it will probably be the preponderating prospectus format in the EU Member States our members derive from. CESR has not yet been instructed by the EU Commission to consider this format. Since it will be essential, however, the building block approach now proposed for derivative products should therefore also be revised against the background of the requirements which must be drawn up for the base prospectus. We therefore consider it as crucial to develop valid disclosure requirements for the base prospectus and to give the market participants enough time to contribute in finding a practicable solution for all market participants during the consultation process. One important point is the flexibility which the base prospectus must grant to the issuer, especially in respect to the finalisation of the incomplete prospectus. Current market practises have to be taken into consideration in this framework.

## The building block for credit institutions

The EAPB welcomes that the addendum to the consultation paper, amongst others, deals with a building block for banks. We are in favour to use the term "credit institution" instead of "bank", because the term "credit institution" is defined in the proposal for the prospectus directive in order to consider the whole range of this industry. Credit institutions are indeed subject to close regulatory control and supervision, and therefore involve a lower insolvency risk. As logical consequence this has to be reflected by softer disclosure obligations. It has to be taken into consideration that the purpose of a prospectus is not to provide a due

diligence report to the investor but only to inform about the nature and the major risks of his investment (cp. Art. 5 par. 1 of the revised proposal for a prospectus directive – COM (2002) 460).

The obligation to disclose the actual solvency ratio should be waived, because:

- Actually, there are two solvency ratios, at least for the international banks. This fact does not facilitate the orientation for the investor.
- The actual solvency ratios are changing permanently. The disclosed figures would be incorrect after a short time. As mentioned in the addendum, an ordinary investor could only conceive the meaning of the ratios if “the significance were fully explained and put in context” (No. 48). This explanation in plain terms will obviously be not an easy task and will burden the issuers beyond the necessity.
- The obligations for the disclosure of solvency ratios are laid down in the banking directive 2000/12/EC and in the capital adequacy directive (93/6/EEC). These provisions are clearly regulated and should not be widened on level 2.

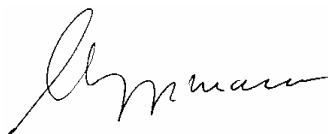
## Clear ranking between the registration documents necessary

We would like to stress once again our concern regarding the large number of building blocks and the high grade of detail. Regarding the workability of the shelf registration document, issuers will have to cope with the problem to determine which building block is the right one for the respective issue. In order to create a high grade of legal certainty, clear-cut rules and lines of demarcations should therefore be drawn up.

It will probably also lead to a problem for the issuer to determine whether a registration document which has been already prepared and approved for issues of other types of securities is allowed to be used for a new issue of securities. For this case and in this context, CESR has not provided any ideas for a rule until now.

With kind regards,

European Association of Public Banks

A handwritten signature in black ink, appearing to read 'Schoppmann'.

Henning Schoppmann

A handwritten signature in black ink, appearing to read 'G. Klein'.

Germaine H. Klein