European Association of Public Banks
- European Association of Public Banks and Funding Agencies -

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Committee of European Securities Regulators
Mr. Fabrice Demarigny
Secretary General
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EAPB position paper: CESR consultation paper on possible implementing measures on the proposed prospectus directive

Dear Mr. Demarigny,

We would like to thank you for the opportunity to comment on the CESR consultation paper on possible implementing measures of the prospectus directive. 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.

Basically, we welcome the CESR activities with regard to the concept of implementation measures. Problematic however is that the published papers are not based on the actual situation of the prospectus Directive. Early August 2002, the Commission presented a revised proposal for a directive. Additionally a complete new version of the Directive's text emerged due to the political agreement during the ECOFIN Council on 5 November 2002. The latter complicates the discussion to a huge extent.
While reviewing the Consultation Paper, we noticed that the demands of the prospectus are so detailed that they can be considered as critical:

- The aspired protection of investors will not be accomplished because, from the the multiplicity of information, the investor cannot filter out the essential information for repayment.
- The Credit Institutions have to dedicate quite a lot of organisational and personal resources in order to continuously update the prospectus.
- The duty to continuously update the prospectus' information brings incalculable liability risks.

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With regard to the consultation paper, we would like to take the following position:

IOSCO-standards

The EAPB looks at the fundamental adoption of the IOSCO-standards with a considerable scepticism. Because, the IOSCO-standards are dealing with maximum standards which are basically conceived for the equity area, we feel it is not appropriate to use these same standards for the Bond- and Derivative area.

For the IOSCO-standards, CESR should merely concentrate on the equity area. The adoption of the standards should not occur entirely but it should be weighed which of these standards are de facto serviceable. Because the standards mentioned should also be applicable to the Bond- and Derivative area, it seems preferable that CESR only takes into consideration and completes Schedule A of directive 2001/34/EC. A weighing by proportionality and investor protection should take place in any case. The proceeding currently chosen by CESR would include a complex procedure for the market participants because superfluous prospectus regulations should be eliminated.

Building-block approach

The EAPB welcomes the creation of provisions for special building blocks. Thereby, it should be taken into consideration that in the so far submitted proposals provisions for e.g. offering programmes , Credit Institutions and frequent issuers are missing. For these building blocks, proposals which take into consideration these strongly different building blocks should still be brought forward. The provisions should take in account the investor's protection aspects. At the same time they should be adequate and not be all-embracing.

The provisions for the building blocks, proposed in the consultation paper, show a high level of detail and specialisation as well as a profound congruence. It should be prevented that, in the future, for each new product related to a security category an additional building block should be created in order to obtain the approval of the prospectus.
The definition of the building blocks should therefore contain an adjustment margin which is as broad as possible (related to the adjustment regarding new products) and which ensures the feasibility of flexible management.
In case, in the building blocks, every single detail would be arranged for from now onwards, the desired and sensible flexibility would not be realistic.

Base prospectus Regime for frequent issuers.

With regard to the EAPB members this topic partially deals with issuers who continuously issue bonds or who do this in a repeated manner. The creation of a special building block for frequent issuers of non-equity securities (here: Credit Institutions who continuously or repetitively issue debenture bonds and are submitted to a permanent solvency supervision) has got an enormous importance. In a building block for frequent issuers which are submitted to the base prospectus Regime, all important information about the issuers and the security should be included in the registration document which is obligatory to be approved. With respect to the respective issuance only the final terms (interest, volume,

maturity) should be deposited but should not be approved in order that the respective current capital markets situation can be used in a non-bureaucratic and spontaneous way.

Furthermore, a building block for frequent issuers should foresee that after approval of a registration document the updated registration document is submitted to less content-related requirements and basically has rather an "updating function" of the first, basic prospectus. The content of the updated registration document should be defined analogously to Article 29 - Directive 2001/34EC.

Disclosure requirements - Question 93

With regard to the disclosure obligations it should be guaranteed that information about company strategies, co-operation objectives or contracts with other companies should not compulsory made known. Other companies or issuers should not receive this kind of information because it is not open to the public and because they may have an impact on competition.

A practical solution for this problem could be limiting the disclosure obligation to the summary proposed in Annex A, VIII C.

Documents on display

It is not appropriate to require that the material contracts have to be put on display. They often are of a confidential nature and the secrecy at least of their technical contents may be essential for the company's business. Further it does not appear necessary for the protection of the investor's interest to provide access to the agreements themselves. A summary of their contents will be contained in the prospectus anyway.

With kind regards,

European Association of Public Banks

Henning Schoppmann