

6 February 2003

To the Committee of European Securities Regulators

CESR'S ADVICE ON POSSIBLE LEVEL 2 IMPLEMENTING MEASURES FOR THE PROPOSED PROSPECTUS DIRECTIVE - ADDENDUM TO THE CONSULTATION PAPER

The Finnish Bankers' Association (FBA) respectfully submits the following comments on the Addendum to the Consultation Paper concerning CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive.

The FBA would like to pay stress that the time for submitting comments to the Addendum was very short, especially when taking into consideration that the holiday season fell into this time span.

We have no general comments to put forward, but would like to respond to the questions as follows:

Question 15

The FBA is of the opinion that information about future investments should be disclosed only when it really concerns principal investments, and when an issuer has made a substantial decision to implement the investment in the future. Instead, a mere preliminary commitment or a plan concerning future investments should not be disclosed.

Question 16

The FBA does not consider it appropriate that a description of only some items be made. Significant descriptions affecting the value of securities should be disclosed anyhow, based on the continuing disclosure obligation.

Question 18

The FBA does not consider it necessary from the viewpoint of wholesale market investors to set out an obligation to disclose information on a company's capital expenditures. In case the capital expenditure has a clear connection to the funding object and it has significant importance otherwise, it may be justified to disclose the information nonetheless.

Question 22

The FBA does not consider it justified that a profit forecast be included in the report by a company's auditor or reporting accountant. Inclusion of such information is not the task of the auditors. It would also cause unnecessary costs.

Question 23

The FBA considers it appropriate that the requirement to disclose information on the financial prospects of an issuer be retained.

Question 25

The FBA does not consider it necessary from the point of view of wholesale market investors to require disclosure of Board practices. Disclosing unnecessary information reduces investors' possibilities to pay due attention to significant information.

Question 27

The FBA believes that disclosing information on major shareholders may be of importance to wholesale market investors in certain situations.

Question 28

The FBA considers it justified to disclose such arrangements as mentioned in paragraph VI.A.2 in Annex I, the consequences of which may result in a change in control of the issuer. The disclosure obligation set out in paragraph VI A.3 should be restricted more clearly to concern e.g. contractual arrangements.

Question 30

The FBA pays attention to the fact that as far as debt securities are concerned, the same information concerning related party transactions should not be required as is required on equity securities. Thus the paragraph VI.B of Annex should be formulated to contain only information necessary from the viewpoint of investors investing in debt securities on the wholesale market.

Question 33

The FBA considers the CESR's approach relating to interim reports stated in paragraphs 31-32 justified. However, the FBA wants to stress that an interim report should not be required only for the prospectus.

Question 35

The FBA does not consider it justified to require, that all information mentioned in paragraph VIII.C. of Annex I, be put on display. Part of the information may contain aspects that should be kept secret, e.g. information under business trade secrecy or banking secrecy. Therefore, it is not always even possible to disclose the information in question.

Question 43

The nature of banking business differs in many respects so significantly from other companies' business, that a specific building block for banks is justified.

Question 44

The FBA considers it justified that a building block for banks be applied also to non-EU banks that are subject to an equivalent level of prudential and regulatory supervision.

Question 47

The FBA is of the opinion that information about future investments should be disclosed only when it really concerns principal investments, and when a bank has made a substantial decision to implement the investment in the future. Instead, a mere preliminary commitment or a plan in relation to future investments should not be disclosed.

Question 49

As assessments concerning banks external reliability are mainly based on banks' solvency, it is justified to disclose banks' solvency ratios.

Question 51

The FBA does not consider it necessary from the point of view of wholesale market investors to require disclosure of Board practices. Disclosing unnecessary information reduces investors' possibilities to notice significant information.

Question 53

The FBA considers it justified to disclose information mentioned in paragraphs VI.A.1, VI.A.2 and VI.A.3 in Annex 2. However, the FBA wants to note that in paragraph VI.A.3, the wording "any arrangements" is open for various interpretations. The disclosure obligation set out in the paragraph should be restricted more clearly to concern e.g. contractual arrangements.

Question 55

The FBA does not consider it justified to require disclosure by banks of information on loans granted to interest groups mentioned in paragraph VI.B of Annex 2. The basis of banking business is for banks to function as financial intermediaries. Therefore, loans granted to interest groups have not the same meaning for banks as they have for other companies, for which credit granting is exceptional and not common business practice.

Question 57

The FBA considers it justified to disclose information concerning interim reports. However, an interim report should not be required only for the purpose of prospectus.

Question 59

The FBA does not have any views or comments different from those stated in the Consultation Paper.

Question 66

The FBA finds that in the Consultation Paper the division made into equities, debt securities and derivative securities is ambiguous. See also our answer to the question 136.

Question 96

The FBA does not have any comments on the requirements relating to Asset Backed Securities set out in paragraphs 94-95.

Question 102

The FBA considers the requirements set out for depository receipts basically justified. However, when setting requirements, it would still be important to make sure that they are as equivalent as possible to the requirements set out for equities and debt securities, as depository receipts replace equities and debt securities.

Question 103

The requirements should be equivalent to those set out e.g. for equities.

Question 123

The wording of Blancet Clause is well formulated.

Question 132

The FBA does not have any comments concerning the approach described in paragraphs 127-131.

Question 136

Also the FBA does not consider it appropriate to create any specific building block for structured bonds. The problems mentioned in the paragraph reflect the problems due to the division - equities, debt securities and derivative securities - launched in the Consultation Paper. For this part, it would be sufficient to divide securities into two parts: equities and debt securities.

Question 143

The FBA finds the requirements set out in Annex 10 justified as such. However, the FBA wants to draw attention to the fact that the basic legislation concerning asset backed securities varies in different jurisdictions.

Question 168

The FBA does not believe there to be a need for any special Level 2 advice on the summary. Nor is there any need for special summary schedules at this stage. This matter could be reverted to after some experience been gained on the new Prospectus Directive.

Question 175

The FBA agrees with the views stated in the Consultation Paper. The same requirements should be set out for a normal prospectus procedure as for a program or base prospectus procedure.

THE FINNISH BANKERS' ASSOCIATION

Markus Fogelholm
Managing Director

Erkki Kontkanen
Director