



**VERBAND DER AUSLANDSBANKEN IN DEUTSCHLAND E. V.**  
**ASSOCIATION OF FOREIGN BANKS IN GERMANY**

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INTERESSENVERTRETUNG AUSLÄNDISCHER BANKEN, KAPITALANLAGEGESELLSCHAFTEN, FINANZDIENSTLEISTUNGSPROVIDENTEN UND REPRÄSENTANZEN  
REPRESENTATION OF INTERESTS OF FOREIGN BANKS, INVESTMENT MANAGEMENT COMPANIES, FINANCIAL SERVICES INSTITUTIONS AND REPRESENTATIVE OFFICES

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**CESR's Advice on Level 2 Implementing Measures for the Prospectus Directive  
Consultation Paper CESR/03-210b**

Dear Mr. Demarigny,

We appreciate very much your invitation to comment on the Consultation Paper CESR/03-210b.

We would like to respond to the questions concerning Art. 15 of the Prospectus Directive (paragraphs 84, 85 and 87):

**84. Do you agree with the scope of the present consultation paper on advertising? Please give reasons for your answer.**

Yes. We especially agree that the term "advertisement" does not need further clarification.

**85. Do you believe that blackout periods should be imposed for the dissemination of any advertisements when a prospectus has not been made available? Please give reasons for your answer.**

Blackout periods are not necessary for investor protection, as long as the advertisement is recognizable as such, the information contained in it is not inaccurate or misleading and it states that a prospectus has been or will be published and where it can be obtained. Furthermore, the context of an advertisement shall not be contrast to the context of the prospectus. This is already stated by Art. 15 of the Prospectus Directive itself, so additional blackout periods would be spare.



On the other hand, security issues which are offered to US investors may be facilitated if a blackout period – comparable to that imposed by SEC rules – was optional for European issuers (an “opt-in”-solution for issuers would be sufficient and appropriate), provided that the supervisory authorities would be able and willing to supervise such an optional blackout period. In the long run, such a regulation would make it easier to bring together the EU and the US supervisory approaches. Another possibility would be to impose blackout periods only for the initial public offering of equity securities.

- 87. Do you consider that control over compliance of advertising activity with the principles referred to in paragraphs 2 to 5 of Article 15 of the Directive should be harmonized? If so, do you think that competent authorities should exercise the above mentioned control? Please give reasons for your answer.**

For investor protection the limitation on advertisements the Directive provides for is essential. But this does not mean that harmonized supervisory rules for the execution of the Directive’s provisions on advertisements are necessary. We understand that the danger in undertaking a harmonization attempt is that existing local markets could be partly harmed, because regional and cultural traditions are among the reasons for the prospering of market niches in some Member States (e. g. German derivative security’s market). As pointed out in the consultation document, the different existing approaches of the Member States are working effectively and are adjusted to the national issuer’s and supervisory authority’s liability regimes (Para. 78). So we feel that negative effects of harmonization on local markets could outweigh the benefits.

Pursuant to Art. 15 of the Directive a harmonised supervision of advertisement would have to be carried out by the respective competent authorities of the home Member States. However, these do not possess cross-border enforcement power. So we deem a non-harmonised host Member State supervision to be more effective.

Should you have any question please do not hesitate to contact us.

Yours sincerely,

Jens Tolckmitt

Wolfgang Vahldiek