6 February 2003

RH/VS

Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators (CESR)
11 - 13, Avenue de Friedland
75008 Paris
France

Dear Mr. Demarigny

Re: CESR's Advice on possible Level 2 implementing Measures for the Proposed Prospectus Directive - Addendum to the Consultation Paper

The Institute of Chartered Accountants in England & Wales ("The Institute") is pleased to respond to your request for comments on the Addendum to the Consultation Paper in connection with possible implementing measures for the proposed Prospectus Directive published in December 2002.

Our general observation is that the style of the building blocks differs in significant ways from the building blocks contained in the first Consultation Paper published in October 2002. In the case of the first Consultation Paper, the specialised building blocks contained additional disclosures which built on the core equity and debt building blocks. In the current consultation paper, specialist building blocks appear to be designed to be 'stand alone' and hence repeat much of the material from the core building blocks. There would appear to be scope for making the approach more consistent.

We are pleased to note that a concern expressed by us in our response to the October 2002 Consultation Paper, namely, the omission of the IOSCO requirement for a working capital statement has been addressed in the Addendum. We comment on the specific questions raised in relation to the statement, and set out our responses to certain other questions raised in the Consultation Paper, in the attached Appendix 1. Comments on other issues are set out in Appendix 2.

We would like to reiterate that the Institute has unique expertise in developing guidance on preparing pro forma and prospective financial information for UK listed companies. We would welcome the opportunity to assist CESR on these very specific issues through our involvement in the Fédération des Experts Comptables Européens (FEE).

Should you wish to discuss any matters contained in this response please contact Vera Sabeva, Head of the Corporate Finance Faculty, at +44 20 7920 8796 (e-mail vera.sabeva@icaew.co.uk).

Yours sincerely

Robert Hodgkinson
Director, Technical

Appendix 1

Responses to specific questions

Debt securities

22 *Should any profit forecast that is included be reported on by the company's auditor or reporting accountant?*

Subject to the establishment of an appropriate framework for reporting, as discussed in our first response, we consider that a report on a profit forecast would assist in maintaining appropriate standards of preparation. However, as we noted in our first response, there remains a need to establish a suitable definition of a statement which constitutes a profit forecast.

23 *Do you consider that the requirement to disclose an issuer's prospects should be retained, or should this requirement be deleted?*

The relationship between IV.B.1 and IV.B.2 is relevant to this question. Under IV.B.1, a statement must be made that there has been no material change in prospects since the date of the last published accounts or details of the material adverse change in prospects should be given. On this basis, a separate obligation to disclose details of prospects under IV.B.2 becomes unnecessary. Conversely, if IV.B.2 is complied with, and details of prospects are included under that requirement, it would appear to be unnecessary to require a separate disclosure under IV.B.2 of any material adverse change in prospects since the date of the last published accounts.

We comment separately below on the interaction between IV.B.2 and VII.J.

Related party transactions

30 *Do you consider that this disclosure requirement should be retained in relation to this type of issuer?*

We would agree with the points expressed in paragraph 29, having regard also to the availability to investors of information on related party transactions disclosed in accordance with International Financial Reporting Standards.

Interim financial statements

33 *Do you consider this approach to be appropriate?*

We believe that an integrated approach to reporting between the Prospectus Directive and the Transparency Directive should be aimed at for both the wholesale debt market and for retail corporate debt.

Securities issued by banks

43 Having reviewed the disclosure obligations set out in Annex [2], do you consider that a specialist building block for banks is justified?

We note that the style of the proposed bank building block differs from those proposed for, for example, start up companies and property companies in the first consultation paper. In those cases, the approach was to identify certain additional or variant disclosures which might be made having adopted the relevant equity or debt building block as a starting point. It is not clear why this approach is not adopted in this case also.

Whilst we would recommend changes to the style of the building block, as noted above, we do consider that there are a number of additional disclosures that could be required of banks and other disclosures which might be waived for banks, and that accordingly a specialist building block for banks is justified.

Additional disclosures might include:

- Details of the regulatory environment in which the bank operates;
- Details of solvency or capital adequacy ratios and the basis on which they are calculated.

Disclosures which it may be appropriate to disapply for a bank include those relating to indebtedness and working capital sufficiency.

44 *If so, do you consider that this specialist building block should be applied to non-EU banks that are subject to equivalent level of prudential and regulatory supervision, or should only EU banks be covered by this specialist building block?*

We would recommend applying the building block to both EU and non-EU banks.

45 *Other than those disclosures considered separately below, do you agree with the disclosure obligations for banks as set out in Annex [2]?*

See our comments on question 43 above.

Derivative securities

We would observe that there are two aspects of disclosure which are likely to be relevant to a derivative security issue. Firstly, there needs to be disclosure of information about the issuer of the securities, and secondly there needs to be disclosure of information about the investment underlying the derivative. The drafting of Annex [3] appears to focus primarily on the 'issuer'. Accordingly, it is unclear whether disclosure requirements relating to the underlying investment are adequately addressed.

Asset Backed Securities

It is not clear to us whether Annex [4] is sufficiently tailored to the needs of investors in asset backed securities so far as information about the assets is concerned. It would appear appropriate to mandate certain information concerning the assets, for example, identity, valuation, legal form, title, rights and restrictions. It may also be appropriate to require information concerning the structure of ownership of the assets within the special purpose vehicle and the means by which income is generated and capital is preserved for investors.

On the other hand, there are details required relating to the issuer which could be dealt with in accordance with the building block principle by reference to the core building blocks.

Depository receipts

It may be appropriate for the Annex to provide for the possibility that that both debt and equity securities might been packaged under depository arrangements. In common with our earlier comments on the structure of the building blocks, it may be appropriate to use the core building blocks as the basis for the Appendix, and to modify or add disclosures where required.

Specialist building block for shipping companies

111. Do you believe that a specialist building block for shipping companies is appropriate?

We are not persuaded that the characteristics of shipping companies are such that a specialist building block is required.

Proposal of a Blanket Clause

122. Do you agree with this approach?
123. Are you satisfied with the wording of the Blanket Clause?

We would agree with the view that Article 8(3) of the proposed Prospectus Directive does not make clear the treatment of wholly inapplicable items. We are not entirely convinced however that there is a necessity for a blanket clause as a consequence. Nevertheless, if it is considered appropriate, for the avoidance of doubt, to state that it is not necessary to make disclosures where the requirement is inapplicable and there is no equivalent requirement which is applicable, we would not oppose this.

The reference to equivalent information not being applicable in the proposed blanket clause is somewhat illogical. We would suggest:

"If certain information required in the line items is not applicable to the issuer or to the securities to which the prospectus relates, and there is no equivalent disclosure requirement which would be applicable, then the item shall not apply."

Working capital

125. Do you consider that this disclosure is more appropriate to the securities note or the registration document?

In our view, it is more appropriate for the working capital statement to be included in the securities note.

126. If you consider that this disclosure is more appropriate to the securities note, do you believe that the other disclosures regarding liquidity and capital resources currently in the registration document should be included in the securities note instead?

We do not believe that the inclusion of the working capital statement in the securities note entails the movement of the other disclosures regarding liquidity and capital resources from the registration document. These disclosures form part of a general discussion of funding, and do not constitute a conclusion at a particular point of time. To the extent that there has been a material change in any of these disclosures when the securities note is issued, relevant updating information should of course be included in the securities note.

Additional SN building block for asset backed securities

143. Do you consider the disclosure requirements set out in Annex [10] to be appropriate for asset back securities?

We have noted above that we consider that disclosures concerning underlying assets would appropriately be included in the registration document. In relation to the specific disclosures proposed, we would note that there seems to be an implicit assumption that the assets backing the securities are financial assets. Although the principle of 'equivalence' may be deemed to apply, it would be preferable to use wording which would more easily accommodate other forms of asset backing.

Part Three - Summary

Need for level 2 advice

168. Given the level of detail provided for by the Ecofin Text on the scope, language, length and content of the summary; taking in consideration that the summary is based on the content of the prospectus and that it is up to the issuer to evaluate which elements are essential, do you believe that there is need for level 2 advice on the content and characteristics of the summary and that, in particular, there is need to prepare specific summary schedules? If yes, please indicate what level 2 implementing measures should deal with. CESR also welcomes views on the way in which the need to standardise the content of the summary may be compatible with the maximum length the summary should normally have.

Given the 2,500 word limit, there is a risk that seeking to encourage standardised disclosure will create difficulties in those cases where there is a need to devote much of the

document to a fair description of a particular aspect of the issuer or securities. We do not therefore believe that it would be helpful to develop level 2 summary schedules.

Appendix 2

Other points of detail

Annex [1]

Trend information

We note that item IV.B.1 - requirement for a statement of material adverse change in financial position and prospects since the date of the last published accounts - closely resembles item VII.J - requirement for a description of any significant change in the financial or trading position since the last published audited financial statements or interim financial statements, or an appropriate negative statement.

It would appear appropriate for one or other of the items to be deleted.

Financial information concerning the issuer's assets and liabilities, financial position and profits and losses

We reiterate our concerns as expressed in our previous response that it is crucial in section VII that a clear position on the inclusion of financial information is developed. The use of different terms under different headings ("financial statements", "accountants' report and comparative table", "comparative financial statements", "accounts") hint at the difficulties which need to be addressed in additional guidance, but at present will create confusion as to how the disclosure obligation is to be satisfied.

We consider the wording of VII.F.3 to be somewhat obscure. It appears to be encouraging issuers to make material adjustments to information extracted from their audited accounts, and to indicate that this is acceptable, provided that the term 'unaudited' is applied. We would consider that such adjustments ought to be the exception rather than the rule, and recommend that further thought should be given to the need for and purpose of this requirement.

We agree that where a statement or report attributed to an expert is included in a document, that expert should give consent, as indicated in VIII.B. We are unclear, however, as to the purpose of, or meaning of, the additional obligation for the expert to authorise the contents of that part of the document. If the term is intended to require a different process to be undertaken from that required for consent, some indication will be required of what that process would be. If the process is no different, the reference to consent ought to be sufficient.