

6 February 2003

M. Fabrice Demarigny
Secretary General
CESR
11-13 Avenue de Friedland
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FRANCE

Dear M. Demarigny

PROSPECTUS DIRECTIVE - LEVEL 2 CONSULTATION ADDENDUM

Thank you for the opportunity to respond to the addendum to CESR's consultation paper on its proposed advice to the Commission regarding technical implementing measures for the Prospectus Directive.

Generally, we reiterate the point made in our response to the original consultation on the high level of detail. Our view is that the very detailed requirements should be created in level 3 by the competent authorities, rather than be in level 2, and that level 2 should be restricted to more general terms. This would help to preserve the flexibility and openness to innovation that are so essential to the financial markets.

We append some more specific comments below.

Wholesale products

In relation to wholesale debt and derivatives, the disclosure requirements should be tailored to the needs of the investors. For example, we do not see that there is any need for detailed disclosures on such things as major shareholders or related party transactions, as these are of interest to investors in equity rather than in debt.

We also recommend that there should be a derogation from the requirement to produce financial information on a "true and fair" basis for wholesale instruments. We understand that this basis is likely to exclude US and Japanese GAAP, and may in practice have the effect of requiring non-EU issuers to prepare their accounts in accordance with International Accounting Standards. It is costly and time-consuming for issuers to translate their accounts from its home state GAAP to IAS, and this could act as a significant disincentive to attracting third country bond issuers – and the huge market they represent – to Europe.

Depository receipts

With regard to depository receipts, our view is that it is appropriate that the issuer is considered to be the issuer of the underlying shares rather than of the depository receipt. The issuer of the depository receipt itself should only need to disclose very limited information, given that there tends to be no recourse to the depository.

Working capital statements

We are pleased to see that a working capital statement is to be required. Our view is that the statement would be more useful for investors as part of the securities note rather than the registration document, as the working capital information should be timely and relate to the position of the company at the time of the issue.

CESR working group

Finally, on an organisational matter, the CESR working group on the Directive does not contain a representative from the UK. Although clearly all member states have an element of primary market activity, it should be noted that the largest number of European IPOs takes place in the UK, and therefore we believe that it would be a positive move to include a representative of the British primary markets in the group.

If you would like to discuss any of these issues in any further detail, please do not hesitate to contact me.

Yours sincerely

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