

Secretariat
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

3 March 2005

RE: CESR's draft technical advice on possible implementing measures of the Directive 2004/39/EC on Markets in Financial Instruments – Admission of financial instruments to trading on regulated markets (Ref.: CESR/05-023b) (the 'Consultation Paper').

Dear Sirs

We welcome the opportunity to comment on the above Consultation Paper.

Financial Services Ireland (FSI) is the lead financial services industry association in Ireland and has a membership base of over 180 financial institutions spanning the breadth of the financial services sector – including banks, building societies, insurance companies, fund administrators and managers, investment companies, leasing companies, stockbrokers, treasury companies and other providers of financial services. Financial Services Ireland provides a single forum for the leaders in the financial services sector to discuss and resolve issues of common concern. FSI is a constituent part of the Irish Business and Employers Confederation (which is affiliated to UNICE).

General comments

The introduction to the CESR advice states that these proposals should not intrude upon the scope of the Prospectus Directive ('PD'), the Transparency Directive ('TD') and the Market Abuse Directive ('MAD'). We are concerned that they do. The PD governs the initial information which must be provided by issuers of securities applying for admission to a regulated market. The TD and MAD then impose ongoing obligations which ensure ongoing transparency in the market. The proposals relating to securities within the

meaning of Art 4(18)(c) – essentially convertible bonds and ‘derivatives’ impose substantive disclosure obligations which are not specifically provided for in any of the above Directives, although these securities fall within their scope. The only effective way to implement these provisions is to require the requisite disclosure (in the prospectus and on an ongoing basis) of, *inter alia* ‘*correlation between the price of the security andthe underlying asset*’; ‘*information necessary to value the security*’, *settlement and delivery procedures for the underlying asset*’ and similar information for derivatives. The PD is a maximum harmonization directive, yet these requirements appear to impose additional disclosures over and above those already required by CESR under Level 2 of that Directive.

It is inappropriate to require such substantive provisions for these instruments, given the comprehensive nature of the disclosure requirements for these instruments recommended by CESR under the PD and the general obligations for price transparency imposed by the TD and MAD. It would appear that CESR is suggesting that the requirements at Level 1 and 2 of these Directives are insufficient to ensure transparency in the market? Further, we are concerned that the subjective nature of the requirements will make it impossible to harmonise within the EU and will pose particular difficulties for Competent Authorities (CA) in common law jurisdictions where terms such as ‘fair’, ‘efficient’, ‘reliable’, ‘sufficient’, ‘adequate’, ‘minimise’ are capable of many interpretations. It is not a CA’s responsibility to police the market in this manner, rather, to ensure investors have the information that is necessary for them to assess their investment risk. It is our view that this type of terminology has, therefore, no place in primary market regulation which has strived (through the PD, TD and MAD) to be totally objective.

We believe these requirements should be deleted, and that CESR advice, in this respect, should focus on the characteristics which ensure an orderly market, i.e. transferability of securities, free negotiability, homogeneity and transparency, these latter requirements being provided for under the PD, TD and MAD.

Expert Group on Investment Management

We note from the Consultation paper that CESR has constituted an Expert Group on Investment Management. We strongly urge CESR to distribute any new proposed advice to the market arising from this group for consultation.

Question 1: Revised structure of admission requirements

The proposed advice on ‘shares’ requires that there should be an ‘appropriate level of historical financial information on the company’. In our view, the disclosure requirements of the Prospectus Directive (as set out in Commission Regulation 809/2004) already sufficiently deals with the historical financial information of issuers and, in this context, we question the necessity and appropriateness of including such a requirement in this advice.

Question 2: Money market instruments

We consider the requirements for money market instruments to be appropriate, given that they fall outside the scope of the PD. We do not believe further requirements are needed.

Question 3: Bonds

We strongly support the proposal not to include any level 2 advice for bonds and other securitised debt instruments.

Question 5: Requirements for ‘other’ securities

As discussed above, the requirements for ‘other’ securities will apply to convertible bonds which are already sufficiently legislated for under the Prospectus Directive, Market Abuse Directive and Consolidated Listing Directives. It would appear to be extremely difficult for any third party to make the determinations which are implied in these requirements and, in particular, requirements (c) and (e). Paragraph (e) implies that, notwithstanding compliance with the Market Abuse Directive, there could still be market manipulation or distortion which, in our view, would be an extremely unfortunate inference. Therefore, we suggest that requirements (c) and (e) be deleted.

Question 6: Derivatives

Our comments outlined in relation to points (c) and (e) of ‘other’ securities (Question 5) equally apply here. Again, for the same reasons as outlined above, we suggest that paragraphs (b) and (d) should be deleted.

Question 7: Units in collective investment undertakings

(1) Distribution requirements

We do not understand the rationale for the requirement for the regulated market to satisfy itself that ‘the collective investment scheme has followed the necessary procedures of the jurisdiction of the regulated market in order to be distributed in that jurisdiction’. We also do not understand what those ‘necessary procedures’ might be or how the RM is intended to police them since distribution is not generally relevant to the listing. The explanation provided in paragraph 6, does not give any further clarity. The regulation of distribution is a matter for the jurisdiction/s (and its regulatory authorities) in which the CIU is actually being distributed, which is often not the jurisdiction where the units are admitted to trading. We believe, therefore, that this requirement should be deleted.

(2) 'Viable' market

The open ended nature of a CIU is accepted as providing evidence of a viable market – why then have the requirement at all for these products? For closed ended CIU's, the subjective nature of the term 'viable' in the context of a market will mean very different interpretations across member states and therefore no harmonization. Also, we would question any RM capability to make such an assessment given the multiplicity of factors, outside of their control, that would need to be taken into account. Consequently, we believe that these requirements should be deleted.

Question 8: Content of proposals

(1) Definition of 'units of collective investment undertaking'

It should be clear that units of a CIU could not also be treated as 'shares'.

(2) RMs obligation to facilitate flow of information

This is a matter covered by the PD and therefore inappropriate in the context of this Directive. Paragraph 21 should therefore be deleted.

I trust that this comments are constructive. If further clarification is required on any of the issues raised please contact me (aileen.odonoghue@ibec.ie).

Yours sincerely



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Director