

Fabrice Demarigny
Secretary General
CESR

6 February, 2003

Dear Mr Demarigny

We are writing in response to the Addendum to CESR's consultation paper on its proposed advice to the European Commission regarding technical implementing measures for the proposed Prospectus Directive (the "Addendum").

We have had the advantage of reviewing a draft of the separate response to the Addendum prepared by the International Primary Markets Association ("IPMA") and support the comments made in that response. We would particularly like to emphasize the following issues:

1. RESTRICTION OF WHOLESALE TREATMENT TO PURE DEBT SECURITIES

One issue that has already been commented on in great detail is the appropriate treatment of investors in wholesale securities. The Addendum appears to interpret the proposed Directive as only requiring separate wholesale treatment in the context of pure debt securities. We share IPMA's view that this interpretation is incorrect. The Directive distinguishes between equity (broadly shares and mandatory convertibles) and non-equity securities (everything else). Recital 33 and Article 7(1)(b) require that account be taken of the different requirements of investors in non-equity securities having a denomination of €50,000 or above. CESR should therefore be making recommendations in relation to the wholesale treatment of all non-equity securities, not just debt.

If there is not a clear statement at Level 2 that the wholesale disclosure regime applies to all non-equity securities, there is a risk that competent authorities will interpret the CESR proposals as they presently stand as meaning that the wholesale regime applies only to pure debt securities. If the market in wholesale securities is constrained by the new proposals and transactions made more costly, wholesale issuers will be driven away from the EU.

2. STATES AND SUPRA-NATIONAL BODIES

We share IPMA's concern about the lack of specific provision in the proposed Directive for issues by non-EU states and quasi-states. There is neither a clear exemption which covers non-EU states and quasi-states, nor any positive set of provisions as to how the

requirements of the Directive shall apply to them. We believe clarification is required to avoid any concern that because such entities are not covered in any way by the Directive they may be precluded from issuing in the EU at all.

3. PROGRAMME ISSUES

We share IPMA's view that proposals need to be introduced at Level 2 which reflect the current operation of programme-based issues and allow them to continue as present.

The key concern in this respect is that although pricing supplements (which provide information as to a particular issue within a programme, such as price and amount) must be submitted to the competent authority before issue, they should not require approval, in accordance with Articles 5(4) and 8(1) of the proposed Directive. This is a critical aspect of the speed that is essential for programmes to work as effectively as they do at present. In contrast, information which up-dates the base prospectus, such as information concerning business developments relating to the issuer, constitutes a supplemental prospectus and we accept this would require approval.

4. CRITERIA FOR DETERMINATION OF THE OFFERING PRICE

Paragraphs X.K.3 and 4 of Annex 5 (Depository Receipts) require disclosure of the criteria for the determination of the offering price. We do not believe it is appropriate, or necessary, in this context to require such information to be included. In the past, we have seen issuers use disclosure that amounts to a list of factors considered (valuation of comparables, analytical modelling such as DCF, investor sentiment and demand etc.), without it being possible to allocate particular weight to each factor. As you will be aware, pricing is not an exact science - the final determination cannot be reduced to arithmetic formulae, particularly as one of the key factors is the subjective reaction of potential investors to the company.

We recognise that similar provisions were included in paragraphs V.E.3 and 4 of Annex K (Securities Note: Equity Securities Schedule) and although we did not raise this specific point in our response CESR's original consultation paper, we would stress that the same concerns apply in relation to equity securities.

If you would like to discuss our comments in further detail, please do not hesitate to contact Alun Williams on +44 207 677 2424 or email alun.williams@morganstanley.com.

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