

Fabrice Demarigny
Secretary General
CESR

24 January 2003

Dear Mr Demarigny

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

We have had the advantage of reviewing the separate responses to the Consultation Paper prepared by the International Primary Markets Association ("IPMA") (the executive summary of which is attached) and the London Investment Banking Association ("LIBA") and support the comments made in those responses. In particular, we would like to emphasize the following issues:

1. THERE SHOULD BE GREATER RECOGNITION OF THE DIFFERENT INVESTOR REQUIREMENTS FOR DEBT AND EQUITY DISCLOSURE

Article 5 of the Prospectus Directive is clear that prospective investors must be given all information they require in order to decide whether to invest in any securities being offered to the public. Whilst the CESR proposals recognise that interests of investors in equity and debt securities will have different focuses, this needs to be more clearly reflected in the drafting of the Level 2 disclosure requirements.

Currently, the requirements for both debt and equity are derived from the IOSCO disclosure standards. Whilst these may be helpful guidelines, we do not believe that it is appropriate, particularly in the case of debt securities, to reproduce these standards without detailed consideration of what is actually necessary for investors. It is particularly relevant that the IOSCO standards were produced five years ago (without meaningful consultation) in the context of equity securities only, and never were intended to be used for debt or derivative products.

We do not believe that the requirement in the Prospectus Directive that the implementing measures be "based" on IOSCO means that they must be adopted wholesale as minimum requirements, merely that they be used as a guideline.

2. WHOLESALE SECURITIES NEED DIFFERENT DISCLOSURE REQUIREMENTS

We also strongly support the comments made by IPMA that investors in wholesale securities of all types should be treated differently to those investing in retail securities. Investors in wholesale securities need less extensive disclosure, given their far greater level of knowledge and experience. In particular, the requirements proposed by CESR for retail debt are far in excess of what is required for professional investors and should be significantly reduced when preparing the wholesale debt building block.

3. DISCLOSURE GOES BEYOND THE REQUIREMENTS OF IOSCO

In addition to our concerns as to the use of IOSCO standards as set out above, we note that in certain cases, the proposed disclosure requirements go beyond those required under that regime. For instance, issuers are required to disclose information on their prospects for at least the current financial year and the assumptions on which these prospects are based. Neither the IOSCO standards nor even the US standards require such disclosure. We agree with IPMA that there is no benefit in introducing such requirements and believe that they can only act as a disincentive to issuers without providing any real material benefit to investors.

The existing disclosure requirements for debt securities in those EU markets on which most debt securities are issued (including those reduced disclosure requirements where the securities are wholesale securities) have worked effectively for many years while allowing the development of an open and competitive market. Given this fact, we believe that it is important for CESR to clearly justify any suggested changes which impose more stringent requirements to the existing regimes.

4. DUPLICATION BETWEEN REGISTRATION DOCUMENT AND SECURITIES NOTE SHOULD BE REMOVED

It is clear from the Prospectus Directive that the registration document is intended to contain all information relating to the issuer and that the securities note is to contain the information concerning the relevant securities. It is only to the extent that information is not available for inclusion in the registration document, or needs updating, that it should be included in the securities note.

This structure has not been comprehensively followed through in the CESR proposals. As identified by IPMA and LIBA, there are a number of areas where the disclosure requirements in the registration document and securities note are duplicated. For example, most of the information in section 1 of Annex N (Securities Note: Common Items) on the identity of directors, senior management, advisers etc would already be covered in the registration document. This overlap should be rectified in accordance with the intentions expressed in the Prospectus Directive.

5. THE PROPOSED LEVEL 2 IMPLEMENTING MEASURES ARE OFTEN TOO DETAILED AND PRESCRIPTIVE

The proposed Level 2 implementing measures are extremely detailed and prescriptive. We believe that this level of detail will lead to inflexibility and an inability to deal appropriately and speedily with particular cases. It is also essential that Member States are given a clear power to derogate from the detailed Level 2 requirements to ensure that only appropriate information is disclosed to investors.

We agree with IPMA and LIBA that there is a need to balance the level of detail required at Level 2 with the degree of discretion given to Member States. To the extent, however, that greater discretion may result in inconsistent implementation of the measures across the EU, this should be dealt with in the guidance and recommendations issued at Level 3 which can be issued and amended in a much shorter time frame. We support the suggestions made by IPMA as to those areas where detailed provisions should be restated in more general terms.

6. THE PROPOSALS RESTRICT THE ACCESS OF NON-EU ISSUERS TO EU MARKETS

We do not believe that CESR has given sufficient consideration to the potential negative impact that the proposals as drafted will have on non-EU issuers, which make up a substantial part of the markets in the EU. Whilst we agree that the disclosure regime for non-EU issuers should not be fundamentally more lenient than that for EU issuers, certain of the current proposals (such as the requirement to use International Auditing Standards) will significantly increase the costs for non-EU issuers and consequently for those EU investors who wish to buy their securities. To the extent that non-EU issuers are forced to leave the EU markets, the resulting reduction in size and liquidity of those markets will also lead to increased costs for EU issuers who will no longer benefit from existing economies of scale.

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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