PRICEWATERHOUSECOOPERS

PricewaterhouseCoopers LLP
1 Embankment Place
London WC2N 6RH
Telephone +44 (0) 20 7583 5000
Facsimile +44 (0) 20 7822 4652
Direct Phone 020 7804 2792
Direct Fax 020 7804 4989

Secretary General, CESR
The Committee of European Securities Regulators
11 - 13, Avenue de Friedland
75008 Paris
France

6 February 2003

Dear Sirs

CESR's Advice on possible Level 2 implementing measures for the proposed Prospectus Directive - Addendum to the Consultation Paper

We are writing to you as representatives of the PricewaterhouseCoopers firms throughout the Member States of the European Union in response to your request for comments on the Addendum to the Consultation Paper issued in December 2002 in connection with additional implementing measures for the proposed Prospectus Directive.

In addition to responding to the specific questions posed in the Addendum to the Consultation Paper we have made some more general comments in respect of number of the topics identified.

We believe that an issue of general concern is to properly articulate the building block approach and how this should operate. In this regard, we suggest that you prepare an annex explaining the manner in which the various building blocks interact. This could be in the form of a road map or decision tree. Our view is that this is particularly important when determining the disclosures for complex instruments (for example a depository receipt for an equity securities issuer that is a property company).

We take this opportunity to reiterate our comments in our response to the first consultation concerning the multiplicity of terms used to describe historical financial information and the roles of auditors and/or independent accountants in relation thereto which issues persist throughout the annexes accompanying the Addendum to the Consultation Paper.

In particular, we continue to believe that clear, comprehensible guidance as to the presentation of financial information in prospectuses together with the extent to which

financial information should be subject to external assurance by auditors and/or independent accountants is an essential prerequisite for the success of the European capital market and investor confidence in all prospectuses issued across the European Union. We would encourage you to work with experts in this field through such bodies as the Federation des Experts Comptable Europeens ("FEE") in developing such material.

Given the substantive nature of many of the comments made by ourselves, and we understand many other commentators and the extremely short comment periods, we would strongly encourage you to work with the European Commission in ensuring that the revised texts arising from this consultation process are made available for public comment before they are adopted as final texts. We believe that the current timetable for approval of the Prospectus Directive is sufficient to enable a further round of consultation without which market confidence in the quality of disclosure in prospectuses may not be sustained.

We should be pleased to discuss with any of the points raised in this letter. Please contact Kevin Desmond at the address above.

Yours sincerely

PricewaterhouseCoopers LLP

CC David Wright, European Commission
David Devlin, President Federation des Experts Comptable Europeens

Appendix

Responses to specific questions

Debt securities

Investments (Past, Present and Future)

15 *Do you consider that information about an issuer's principal future investments should be disclosed? Please give your reasons.*

We do not believe that there should be an explicit requirement in a wholesale debt prospectus for disclosure about an issuer's principal future investments. We believe that to the extent that information about future investments is of significance to investors in wholesale debt securities then the general Prospectus Directive disclosure obligation should be sufficient.

16 *Do you consider that a description of only some of these items should be made? If so, which ones?*

See response to question 15

Liquidity and capital resources

18 *Do you consider that information about a company's capital expenditure commitments would be of value to "wholesale market investors"?*

As with our view on future investments, we do not believe that specific disclosure requirements concerning a wholesale debt issuers capital expenditure commitments is necessary.

Trend information

We would draw you attention to the fact that item IV.B.1 which inter alia requires a material adverse change in financial position to be disclosed parallels the requirement in item VII.J concerning disclosure of a significant change in an issuer's financial position.

We suggest that both should not apply – the former is that which is established in wholesale debt markets and thus, we believe VII.J should be deleted.

We would also encourage you to work with market participants in preparing Level 3 advice as to the meaning of "significant change" and "material adverse change" as there already exists a degree of market confusion in this regard. We would be delighted to work with you and other expert bodies such as the Federation des Experts Comptable Europeens ("FEE") in developing such material.

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

Consistent with our response to questions about profit forecast reporting in the first consultation, we agree that there is value in the provision of reports on profit forecasts by independent accountants. However, we believe that such reporting should be predicated on the existence of an agreed framework, including caveats, for the preparation and presentation by issuers of prospective financial information, including profit forecasts, in prospectuses.

In respect of wholesale debt securities offerings, we consider that the definition of a profit forecast which should be reported on should be restricted to those forecasts explicitly made for the purposes of the offering concerned. Consequently, the broader definition capturing all extant statements necessary for equity securities offerings should not apply.

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

We agree with the majority of your members that a prospects statement is of little value to investors in wholesale debt securities.

Board practices

25 *Do you consider it necessary to continue to require disclosure of Board practices for issuers of such securities?*

In practical terms, the issuers of wholesale debt securities will usually be special purpose vehicles or have other securities traded on a regulated market. Accordingly, we do not believe that explicit disclosure of board practices is necessary.

Major shareholders

27 *Do you agree consider that these disclosure obligations should be required?*

We believe that investors are entitled to know who controls an issuer of wholesale debt securities and, therefore, that these disclosure obligations should be required.

28 *CESR's expectation is that either both would be deleted or both retained. Do you consider that only one of these disclosure obligations is necessary and, if so, which?*

We believe that the principal disclosure in VI.A.1 is essential. The additional disclosure in VI.A.2 could be addressed through the overarching Prospectus Directive disclosure obligation Article 5(1).

Related party transactions

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

We believe that the requirements of International Financial Reporting Standards should be sufficient to provide investors in wholesale debt securities with sufficient disclosure about related party transactions. Consequently, no specific requirements are necessary in this Annex.

Secretary General, CESR
6 February 2003

Interim financial statements

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

Consistent with our response to the first consultation, we believe that the requirements for interim financial statements should be consistent with those to be included in the proposed Transparency Obligations Directive as applicable to issuers of wholesale debt instruments.

Documents on display

35 *Are your views or comments different from those in response to the first consultation paper?*

We do not believe that it is necessary for documents to be put on display. To the extent information such as an issuer's constitution or trust deeds governing a debt security are of import to the market they should be made readily available for example through an issuer's website.

Securities issued by banks

We do not agree with your conclusion, as outlined in paragraph 40, that there is no justification for a specific building block where a bank issues equity.

We understand that this annex is designed to address the needs of banks in so far as they are issuing securities in connection with their business activities. However, where they are issuing securities for their own purposes such as to increase their regulatory capital.

Whilst in such circumstances, we agree that it may be appropriate to rely on the overarching disclosure principles to ensure that a bank issuing equity securities makes appropriate disclosures; we believe that such an approach would be inconsistent with the building block model you are advocating.

In particular, we believe that there are a number of additional disclosures that could be required of banks and there are other disclosures that are inappropriate for banks and that a building block for banks issuing equity securities should therefore be developed.

We would note that the United States SEC has specific requirements for disclosure by banks which you should have regard to in drafting your proposals although these do address financial reporting disclosures as well as more general items. Whilst avoiding duplication with disclosures required specifically of banks by International Financial Reporting Standards, additional disclosures might include:

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

Disclosures that may be impracticable for a bank to disclose would include indebtedness and working capital requirements,

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

As noted above, we do believe that a specialist building block for banks is justified to a wider remit than identified in the Addendum to the Consultation Paper.

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?*

If the building block approach is to work then a specialist building block for banks must apply to all regulated banks. We see this as essential when considering disclosures required of non-EU banks when issuing securities to EU investors or seeking admission to trading on an EU domiciled regulated market.

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

We are concerned that the format of Annex [2] is not consistent with the building block approach as articulated by the specialist building blocks exposed for comment in the first consultation. Our view is that the specialist building blocks should articulate amendments to the core building blocks which was the case with those in the first consultation but is not that adopted in this Annex.

We would note that the detailed questions you have asked do not accord with your building block approach and would refer you to our more general responses to disclosure requirements about the relevant core securities. Accordingly, we have not responded to each individual question.

51 Derivative securities

We have not responded to the detailed questions that you have posed as concerns derivative securities.

Our general observation is that any solution you determine for derivative securities should properly reflect the building block approach you are promulgating. Specifically in respect of derivative securities there are two aspects that need to be addressed.

Firstly, disclosure about the issuer of the securities, which should reflect the extent to which the issuer has guaranteed the performance of the security being issued, and secondly disclosure about the investment underlying the derivative. We note that Annex [3] does not distinguish as to whether it is addressing the issuer or the underlying investment and would therefore require substantial revision.

Asset Backed Securities

93 *Do you agree with the disclosure obligations set out in Annex [4] as being appropriate for this type of securities?*

We have a number of concerns with the Annex [4] and its application.

Firstly, it is unclear to us as to whether this annex applies to all offerings of asset-backed securities whether retail or debt or as to whether the debt securities annexes, retail or wholesale as applicable, would also expect to be complied with an issuer of an asset-backed security. This illustrates the importance of the road map or decision tree outlining the building block approach referred to in our covering letter.

In relation to asset-backed securities, we support the creation of a separate building block for wholesale issuers of such securities that should be clearly independent of the debt securities building blocks.

Secondly, and importantly, the registration document annex fails to deal with the main point regarding issues of asset-backed securities and that is information about the assets that are backing the securities.

Whilst much of this disclosure is required in the securities note, Annex 10, our view is that rules should be provided which require disclosure in the registration document about the assets such as legal title, valuation, if appropriate, financial history, if appropriate as well as explaining how the securitisation structure works, in particular the flow of funds.

In addition, we would advise that the asset-backed securities rules should be written such as to be reasonably flexible in order to accommodate a rapidly evolving market place – assets being securitised ranging from financial assets, like mortgages or credit card receivables, through physical assets, like property, to "whole businesses".

Finally, we have some detailed points:

- Special purpose vehicle or entity needs to be defined if it is to be a condition precedent for use of this building block. However, we are not persuaded that it should be what is effectively a condition for the issuance of such securities. If another issuer, not a special purpose vehicle, sought to issue asset-backed securities the additional disclosures advocated above concerning the assets and the structure of the securitisation are just as important.

- We believe you should identify the special purpose vehicles or entities that have no legal identity?

Depository receipts

102 *Do you agree with the disclosure obligations set out in Annex [5] as being appropriate for this type of security?*

We are concerned that the drafting of this Annex has confused the roles of the "company". "issuer", "issuer of the underlying equity securities" and "depository". We agree with the overarching presumption that the information in a depository receipt prospectus should be in respect of the underlying issuer of the securities that have been or are to be deposited with the depository.

We would note that both equity and debt securities have been packaged under depository arrangements and thus both need to be addressed in any building block. In our view, the most appropriate way of creating a depository receipt annex is to either determine additional or modify existing disclosure requirements from the appropriate building block that would apply to the underlying securities.

Furthermore, we do not agree with the conclusion in paragraph 99 of the Addendum to the Consultation Paper to not distinguish between the information to be set out in the registration document and that in the securities note. On the basis that the Prospectus Directive permits the three-document approach for all prospectuses, we do not believe you have the right to disapply this.

103 *In particular, do you consider that any information regarding the depository is required in addition to that set out in IX.A?*

The information set out in IX.A is sufficient.

104 *If there is recourse to the depository under the terms of the DR issued, what disclosure requirements do you consider would be appropriate in relation to the depository?*

We believe that it would be unusual for there to be any recourse to the depository as to the performance of securities and that, consequently, no specific disclosure requirements are necessary unless there is recourse. The overarching Prospectus Directive disclosure requirement together with a competent authority's general powers should be sufficient to address the rare circumstances when this might arise.

Specialist building block for shipping companies

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

We agree with those CESR members who feel that the Core Equity building block can be adapted so that the appropriate information can be captured by those disclosure requirements without producing a specialist building block for shipping companies.

We would be concerned that the issuance of such a specialist building block may lead to demands for a proliferation of similar building blocks for many other types of business.

We believe that specialist building blocks are only necessary where the nature of the business is so unique as to codify best market disclosure practice to ensure consistency within a particular sector. We are not persuaded that shipping companies are so unique.

We would note that there are no specific accounting rules or requirements imposed on shipping companies unlike the other types of business identified for specialist building blocks.

112 *Do you agree with the disclosure requirements in registration documents for shipping companies set out in Annex [6]?*

We are concerned that the level of detail required is in excess of that required by the Core Equity building block for the generality of disclosures and, if retained, would suggest that it should be amended to be consistent with the property plant and equipment disclosure requirement, III.E in Annex A to the first consultation.

113 *Do you agree that valuation reports as set out in Annex [6a] should be required for shipping companies?*

We cannot see why it should be necessary to include valuations of vessels that are managed by a shipping company. Should valuations be required then they should be limited to those ships consolidated on a shipping company's balance sheet.

114 *Do you consider it appropriate that the date of valuation must not be more than 90 days prior to the date of publication?*

As the disclosure is relevant to an issuer's assets, it would be more appropriate for any valuation to be at the latest balance sheet date.

115 *Do you agree that it would be more appropriate for such valuation reports to be required when securities are being issued by a shipping company and hence should form part of the securities note?*

The only requirement in the securities note should be to address any material change in the bases on which the valuation was determined.

Proposal of a Blanket Clause

122 *Do you agree with this approach?*

Whilst it might appear attractive to incorporate a "blanket clause" addressing inapplicable items, we are concerned that you do not believe that the wording of Article 8(3) of the proposed Prospectus Directive does not satisfactorily address concerns as to disclosure of inapplicable items. Further and if the wording of Article 8(3) is deficient, we do not understand how you can override this at Level 2. Accordingly, we would strongly advise you to work with the European Commission in ensuring that Article 8(3) does meet the concerns expressed to you.

We should like to understand as to which of the annexes are the "three draft schedules" referred to in paragraph 120 of the Addendum to the Consultation Paper are?

In our view if a "blanket clause" is to have its proper affect, it must be positioned in such a way as to apply to any prospectus, either in every core annex or more appropriately in the "road map" annex suggested in our covering letter.

123 *Are you satisfied with the wording of the Blanket Clause?*

No, we are not satisfied with the wording, as it does not make sense. How can information that does exist be omitted as inapplicable? Clearly, if the information, or something equivalent, does not exist then the disclosure item is inapplicable.

If the clause is to be retained it should be redrafted as follows:

> "If certain information required in the line items is not applicable to the issuer or to the securities into which the prospectus relates, and information equivalent to that required is also not applicable, then the requirement shall not apply."

Further, why does paragraph 121 of the Addendum to the Consultation Paper limit to blanket clause to the securities note, it should apply to the prospectus and all its constituents, which is as it has been drafted.

Working capital

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

As identified in our response to the first consultation, we are supportive of the inclusion of a "working capital" disclosure requirement in prospectuses. As the disclosure is pertinent to the issuer's position at the date a prospectus is issued, it is appropriate that it is required in the securities note.

In addition, we would encourage you to consider providing Level 3 advice as to the meaning of the working capital statement that would address such questions as to defining "working capital" and "present requirements" which whilst understood through market practice in some Member States are unknown to others. We would strongly encourage you to work with other expert bodies such as the Federation des Experts Comptable Europeens ("FEE") in developing such material.

In addition, we would encourage you to consider the interaction of the working capital statement with the disclosures in respect of liquidity and capital resources required in the registration documents.

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?*

On balance, we believe that the other disclosures regarding liquidity and capital resources are appropriately disclosed in the registration document. This is because they relate to a more general discussion of how an issuer finances its business that would need to be read in conjunction with the rest of the description of the issuer and its business. Clearly, if any material change in any of these other disclosures occurs in the period between the publication of the registration document and the securities note, such additional disclosures as are necessary would be included in the securities note.

Additional information in the SN equity schedule

132 *Do you agree with this approach?*

We have no comments on this question.

Additional information in the SN debt schedule

136 *Do you agree with this approach?*

We have no comments on this question.

Additional information in the SN derivatives schedule

139 *Do you agree with this approach?*

We have no comments on this question.

Additional SN building block for asset backed securities

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

In addition to the comments in response to question 93 above as regards the registration document for asset-backed securities, we note you have included disclosures about the underlying assets in the securities note. We suggest that these should be included in the registration document. Further, the disclosures outlined are quite specific to financial assets and do not readily facilitate disclosures about other asset categories.

In addition, it seems perverse to include the definition of asset-backed securities in the Securities Note annex. Consistent with our response to the first consultation, this should be dealt with in a separate definitions annex.

144 *On review of the debt security note disclosure requirements set out in Annex [L] to the Consultation Paper, please advise what if any of these items of disclosure should not be required for these types of securities? Please give your reasons.*

Additional SN building block for guarantees

149 *Do you agree with the proposal to have the disclosure obligations in relation to guarantees in a separate building block so as to allow greater flexibility in structuring the issue of securities?*

We agree that a separate annex would be appropriate. We have no comment on the specific disclosure questions.

Additional SN building block for subscription rights

We have no comments on these proposals.

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.*

Our view is that the summary should not be standardised as to content or format. The imposition of the 2,500 word limit means that enforced disclosure of standard items may well cause material items to be understated and therefore insufficiently explicit in a summary. Accordingly, we do not believe that it is necessary to prepare specific summary schedules.

However, we believe it would be useful for a schedule to be prepared that makes it clear that Annex IV to the Prospectus Directive is "indicative" of the contents which should be considered in preparing a summary but that it should not be seen as mandating the contents for the reasons articulated above. This would be acceptable through the application of

Article 7(2) of the Prospectus Directive which makes it clear that the annexes to the Prospectus Directive are "indicative.

Base prospectus/programmes

175 *Do you have any comments on the preliminary views expressed in paragraph [174]*

The key to understanding issuance programmes is that the totality of information disclosed is the same as that for other wholesale debt issues. However, the base prospectus reflects a form of registration document albeit with significantly more disclosure about the securities than would normally be the case. Effectively, the only information outstanding relates to pricing and related matters that should be published in the form of a pricing supplement. We believe that the key objective is to ensure that the pricing supplement does not directly create a new prospectus with the consequential implications thereof.

176 *Bearing in mind that the final terms will not be approved, what information disclosures from the securities note do you consider it would be appropriate to reclassify as being the final terms {for issues off a base prospectus]?*

We have no comments on this question.