

OUR REF T0537.34/IW/GXT/PWH
YOUR REF
31 March 2003

M. Fabrice Demarigny
Secretary General
CESR
11 – 13 avenue de Friedland
75008 Paris
France

Dear Sir

We are writing to you in response to CESR's consultation document "CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive – Addendum to the Consultation Paper Ref. CESR/02-185-b" from December 2002. We act for a number of UK issuers in the wholesale debt market.

The *Proposed Directive on the prospectus to be published when securities are offered to the public or admitted to trading* was undoubtedly intended to be a major step forward in opening up access to capital markets throughout the European Union and, consequently, move the EU closer towards an integrated market for financial services. There can also be no doubt that a certain level of detailed disclosure of information on securities and their issuer is required in order to ensure investor confidence and protection, particularly where securities offerings are aimed at retail investors.

However, disclosure requirements for securities intended for the wholesale market need to take into account the professional nature of investors and must not impose requirements on issuers which are unnecessarily burdensome or inappropriate. In particular, those issuers who issue wholesale debt securities to professional investors in their own EU member state without any public offering by the issuer either in that or any other EU member state will be severely disadvantaged in terms of the disclosure requirements as outlined in your proposal.

More specifically, we are especially concerned with the particular disclosure requirements as outlined in Annex [1], CESR Proposal for the Wholesale Debt Registration Document Building Block based on IOSCO International Disclosure Standards and European Directive 2001/34/EC, as follows:

- CESR Proposal IV.A – The issuer's capital expenditure commitments
The requirement to specify an issuer's material commitments and their general purpose could be unduly onerous, due to the volume of disclosure this might entail for particular types of issuer. Substantial cost will likely also be incurred in preparing this information which, currently, is not required under the UK listing regime nor, apparently, sought by prospective noteholders.
- CESR Proposal IV.B – Trend information
The information required in the disclosure requirement outlined in point IV.B.2 would be difficult to produce, considering it would be based on speculative assumptions about future trends in the issuer's markets. An issuer will be concerned to ensure any such prospects report could not be construed as a profit forecast or expose it to liability where a prospects statement based on reasonable assumptions turns out to be untrue in the future. Such concerns may mean disclosure

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is generalised to the point it has little investor value. Point IV.B.1, it is suggested, strikes an appropriate balance between what the issuer can sensibly say and the comfort the investor seeks.

- **CESR Proposal VIII.A – Material contracts**

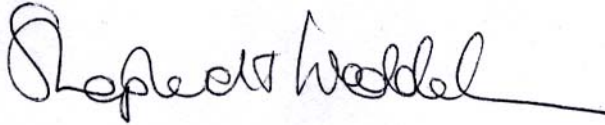
The requirement to provide a brief summary of all material contracts, other than those entered into in the ordinary course of the issuer's business, is onerous and would place an excessive burden on an issuer, whilst possibly infringing confidentiality arrangements. Issuers face a difficult task in deciding with certainty what is "material" or "ordinary course", assuming it is their judgement which is determinative. Will listing authorities be happy policing the numerous applications for dispensation on commercial sensitivity grounds this requirement will likely trigger?

Given that the Commission, in preamble (33) of the Directive, commits itself to encouraging innovation and reducing the cost of capital, we believe that it is incumbent upon CESR, in its technical advice to the Commission, to stress the importance of reducing or at least substantially alleviating the burden of disclosure requirements for issuers of wholesale debt to sophisticated investors. Such requirements oblige issuers to disclose information professional investors do not seek and could lead to the stifling of growth in the EU wholesale debt market.

We understand that you have received similar comments from a variety of sources in the industry and hope you will take these into consideration when drafting your technical advice to the Commission.

If, in the meantime, you require further information on any of the points raised above, please do not hesitate to contact our Inga Wolframm or Gordon Taylor whose details are given below. We are happy for you to publish this letter on your website.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Inga Wolframm', with a long horizontal line extending to the right.

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