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Total of: - 3 - pages

The Committee of
European Securities Regulators
Mr. Fabrice Demarigny
Secretary General
11 – 13 avenue de Friedland
75008 Paris
France

Frankfurt am Main, 26 November 2002

Re.: EU-Prospectus Directive
Amended Proposal, dated 5 November 2002
Comments of UBS Warburg AG, Germany

Dear Mr. Demarigny,

We appreciate very much your invitation to comment on "CESR's Advice on Possible Level 2 Implementing Measures for the Proposed Prospectus Directive" (referred to hereinafter "Consultation Paper") and even more the opportunity still to comment on the latest version of the Proposed Prospectus Directive, dated 5 November 2002, (referred to hereinafter "Proposal") itself.

Although some issues regarding the Proposal have been changed and even improved, we would like to draw your attention to the following issues:

1. Definition of the term "Securities"

While reading the latest version of the above-mentioned Proposal, especially Article 2 "Definitions", lit. (a), together with the published "Recital 11", it seems to be the intention to cover all kind of securities: "The wide definition of securities in this Directive, which includes warrants, covered warrants and certificates is only valid for this Directive".

Going forward within this Article 2 and reading lit. (m) ii) gives another impression: "... , and for any issues of non equity securities giving the right to, as a consequence of them being converted or the rights conferred by them being exercised, ...". E.g. certificates are not covered by this wording because certificates are not converted or are not exercised.

Compared to the original intention ("Recital 11") this wording can only be understood as an editorial mistake and should be corrected in the meaning of Article 2 "Definitions" lit. (a). Identical editorial mistakes seem to be in Article 2 "Definitions" lit. (k) and in Article 5 "The prospectus" paragraph 4 (a):) "... non-equity securities, including warrants in any form, ...". Again, the term "non-equity securities" should be defined as intended in the above-mentioned "Recital 11".

A clear definition of the term securities, which cannot be misunderstood, especially of the term "non-equity securities", will, of course, have an impact on the requirements to be determined on Level 2.

2. Denomination as decisive criterion for definition and choice of "home Member State"

To our understanding it is not very helpful to link the free choice of the "home Member State" with regard to any registration process to the nominal value of "non-equity securities" and even more to fix it to the amount of EUR 5.000. Such a criterion does not take into account that there are securities, like derivatives, that do not have a nominal amount and are still different from the term equity securities.

Again, a clear assignment of any type of securities to a specific category will have an impact on the requirements to be determined on Level 2

Our suggestion would be to give to any issuer the right of the free choice of the "home Member State" for all non-equity securities.

Indeed there is no valid reason to limit the free choice of the "home Member State":

Following the Proposal, registration process will be identical in any EU Member State. Therefore, the only valid reason for the free choice of the "home Member State" can be the interest of the issuer to have the securities offered (and registered) in a specific "home Member State".

Such a free choice of the relevant "home Member State" would also have some positive impact of the general cost of a registration process: the registration document has not to be produced in too many different language versions.

3. Expert's liability

Another major issue with a direct impact on the Level 2 requirements is the necessity to insert accountant's certificate/report/audit opinion regarding the annual financial accounts ("Jahresabschluß") (referred to hereinafter "Annual Financial Accounts") of the issuer into every registration document/prospectus.

To our understanding the insertion of such accountant's certificate/report/audit opinion is only required if there is a registration document/prospectus concerning "Start-up Company Equity Issuers Building Block" according to "Annex C" of your Consultation Paper.

Annual Financial Accounts, which are shown within a registration document/prospectus, should be disclosed together with an accountant's certificate/report/audit opinion, if any. This would strengthen the international existing unlimited liability of experts in connection with registration documents/prospectuses and the protection of the investors as well ("Anlegerschutz"). However in Germany, the current wording of section 323 para (II) of the Commercial Law (Handelsgesetzbuch – HGB), still allowing a limitation of liability on behalf of German accountant's, seems not to be in conformity with a uniform European capital market and international standard.

We would like to thank you in advance for your attention to the above-mentioned issues and would be glad to hear from you.

Should you have any questions or would like to discuss one or more of the above-mentioned aspects or require additional information, please do not hesitate to contact us.

Kind regards,

UBS Warburg AG

Barbara Rühlmann

Holger Meyer