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PRESS RELEASE

CESR'S final recommendations for Consistent Implementation of the EU Regulation on Prospectus

CESR publishes today its final recommendations for the consistent implementation of the European Commission's Regulation on Prospectus (Ref. CESR/05-054b) and a feedback statement (Ref. CESR/05-055b) which sets out how CESR has taken into account the comments received. The final set of recommendations follows an extensive consultation with industry that has enabled the views from market participants and end-users to be fully considered when drafting the recommendations which are now in their final form.

The Prospectus Directive and accompanying Regulation establishes a harmonised format for Prospectus in Europe and allows companies to use this Prospectus to list on all European markets without having to re-apply for approval from the local regulator and by doing so, it is intended to help companies avoid the inherent delays and cost that this may involve. As a result of this new legislation, consumers can also be assured of more consistent and standardised information which will enable them to compare more effectively the various securities offers available from a wider number of European companies. This is likely to lead to a greater range of products being available to consumers by making it easier for European companies to list and offer on a number of exchanges or markets due to the strengthening and simplification of the regulatory regime.

During the consultations that CESR undertook in order to develop the level two advice for the European Commission and in the responses to the call for evidence published by CESR in March 2004, market participants expressed the need for a consistent approach to be adopted by competent authorities in the different jurisdictions when implementing the Regulation's requirements. In particular, there was a strong demand for guidance on a number of items of the Regulation.

In response to these demands, CESR members decided to start co-ordinating their views and started a consultation process that has now been finalised with the publication of this paper. The aim of CESR when issuing these recommendations is to provide greater clarity for issuing companies regarding the provision to disclose information on a range of areas and to promote greater transparency in the way in which supervisors will apply the Regulation, without imposing further obligations on issuers.

Following the result of the consultation, CESR has decided to introduce a number of amendments to the original proposals. As suggested, CESR has taken into consideration the overarching principle of the Directive whereby the information included in a prospectus has to be given according to the particular nature of the issuer and of the securities offered to the public or admitted to trading. It has, therefore, set the scope to clarify to what types of securities each recommendation should apply, bearing in mind that investors need a different level of disclosure depending on the type of securities offered or admitted to trading.

In addition, CESR has decided not to issue recommendations on those items included in the consultation paper where there has been a clear consensus on the market on the fact that there is no need for further clarifications, as the Regulation is self explanatory.

Moreover, CESR has clarified the scope of its recommendation in relation to forecasts made outside the prospectus, for instance in the context of a road show; the recommendation on the capitalisation and indebtedness statement has been redrafted to address the concerns from respondents on the need to calculate and publish the level of profits at the date of the statement.



A number of amendments have been introduced in the specialist issuers section. Following criticism from market participants CESR decided to allow that the valuation report required for property companies is dated up to one year prior to the prospectus. In addition, CESR has clarified that the recommendation on scientific research based companies applies only to companies that can be defined as start-up companies. Moreover, for start-up companies, CESR decided not to require a valuation report on the services/products of the issuer. After due consideration of the pros and cons as put forward by the respondents, it was decided that this report should be voluntary.

The measures included in the paper cover:

- **Financial Information Issues:**

The purpose of the recommendations is not to provide interpretations of IAS/IFRS or Member States' local GAAP but to clarify certain disclosure requirements included in the Regulation where necessary. Among others the paper includes recommendations on 'Operating and Financial Review'; 'Profit forecast or estimates'; 'Pro forma financial information' or, 'Working capital statements'.

- **Non Financial Information Issues:**

This section comprises three areas: the first section, CESR proposes to issue recommendations in order to ensure co-ordination among competent authorities when applying Article 23 of the Regulation. This article gives competent authorities the power to require adapted information (in addition to the information items included in the schedules and building blocks) to those issuers listed in the Annex XIX of the Regulation (specialist issuers), such as start-up companies or property companies.

The second area covers recommendations on certain items of the prospectus where CESR feels there is a need of clarification at this stage. Amongst others, the paper includes recommendations on the following items of the Regulation: Related party transactions, history of the share capital, or information on holdings.

In addition, CESR also establishes recommendations on the content of the document required in case of securities offered to employees or offers of shares allotted free of charge to existing shareholders. This is an issue not related to the prospectuses schedules and building blocks.

The Expert Group on Prospectus, chaired by Mr Fernando Teixeira dos Santos, Chairman of the Portuguese Comissão do Mercado de Valores Mobiliários (CMVM) and supported by Mr Javier Ruiz of the CESR Secretariat, together with CESR-Fin in those areas related to disclosure of financial information where specific technical expertise in the field of financial reporting and accounting issues is needed, have developed these measures. CESR-Fin is a permanent group on financial reporting chaired by John Tiner, Chief Executive of the UK FSA and supported by Mr Michel Colinet of the CESR Secretariat.

The group has been assisted by a Consultative Working Group of experts drawn from a broad range of market participants.



Notes for Editors:

1. The work that CESR is carrying out in this capacity forms part of the four level approach to European legislation for financial services. The four level approach was proposed in the report by the working group chaired by Baron Lamfalussy (available on the CESR website as described in para. 5). The approach can be summarised very briefly as follows: Level one measures set out the high level objectives that the legislation must achieve. Level two measures set out some of the technical requirements necessary to achieve these objectives. Level three measures are intended to ensure common and uniform implementation by the use (amongst others) of common interpretative guidance and standards agreed amongst regulators in CESR. Level four measures relate to the enforcement of the legislation. Page 6 of the Lamfalussy report illustrates diagrammatically how these four levels of legislation fit together and the procedure to adopt these measures. The Level 3 'strengthened co-operation between regulators to improve implementation' including the conditions for their adoption are described in more detail on page 37 of the report.
2. The European Commission published the Prospectus Directive (Directive 2003/71/EC) on 31 December 2003. This set out the high level policy objectives that the legislation must achieve and established the areas and scope of what should be included in the implementing measures which later took the form of a Regulation. The Regulation on Prospectus No 809/2004 implementing the Directive (2003/71/EC) was published on 30 April 2004 and this set out the technical implementing measures. The technical measures developed by the European Commission followed a request to CESR for its advice.
3. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States;
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC).It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR's website.
4. Each Member State of the European Union has one member on the Committee. The members are nominated by the Member States and are the Heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.
5. A consultative group of 12 market participants was formed to provide technical advice to the expert group. The market participants are experts drawn from across the European Markets. They are not intended to represent national or a specific firms' interest and do not replace the important process of full consultation with all market participants. A full list of the participants can be found under the page of Expert Groups and 'Prospectus Level 3' under Consultative Working Group on the CESR web site.
6. For further information please contact:

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