

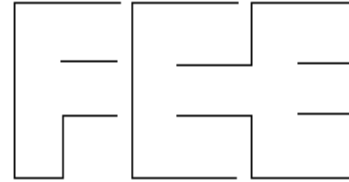
Date
16 May 2003

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Mr Fabrice Demarigny
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Dear Mr Demarigny,

Re: Prospectus Mandate – Second Call for Evidence

FEE is pleased to express some thoughts in relation to the additional provisional mandate to CESR for Technical Advice on Possible Implementing Measures concerning the proposed Prospectus Directive. FEE already submitted its views in letters dated 7 January 2003 and 6 February 2003 on the CESR proposed technical advice on possible implementing measures as a result of the first provisional mandate on prospectuses. FEE has also written on various occasions to the Commission and to the European Parliament directly on the proposed Prospectuses Directive notably expressing our concerns about incorporation by reference, the yearly update of the prospectus, access to information and the responsibilities and role of the auditor.

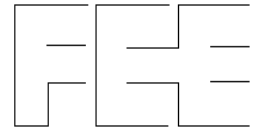
In relation to the second call for evidence we would in particular like to make some observations in relation to annual information (3.3) and incorporation by reference (3.4). In these areas we see a need for further guidance in order to reach the level of harmonisation needed for the “single passport”. The observations below are initial observations. Detailed comments will be provided once CESR has exposed its technical advice on possible implementing measures concerning the proposed Prospectuses Directive.

We reiterate our full support for the proposals to facilitate the creation of a European capital market through harmonising the regulatory framework across the European Union. We feel that enhancing harmonised cross-border confidence in information contained in prospectuses will promote internal market efficiency.

Annual financial information

The initial Level 2 proposals from CESR defined financial information requirements at a relatively high level and used a variety of terms to describe historical and other financial information without providing guidance on their meaning. It is clear that there should be a common understanding across Member States of what the terms mean and how the rules should work in practice in order that the objectives of the Directive can be met.

At this stage it appears to us that current national practices for the preparation of prospectus information may be sufficiently different that guidance should also be prepared to help establish a common understanding of the new requirements and that the accounting profession has an important role to play in alerting regulators to the issues involved and offering to support the work that is required.



FEE is at present developing a proposal for a project on the disclosure and presentation of financial information in prospectuses with a view to achieving consistency across the EU for the benefit of investors, preparers and others.

It is necessary to define consistent methods of presentation and to provide common principles for the provision of assurance in relation to historical financial information. Otherwise there is a risk of inconsistency in the content and quality of financial information provided in prospectuses which may not be immediately apparent to investors.

Guidance is also necessary in the area of prospective financial information where it should be possible to develop a common framework for preparing and presenting such information which will enable auditors to provide public assurance where this is required. In some Member States no such requirements to report currently exist and auditors tend not to report voluntarily because of their perception of the risks inherent in prospective financial information.

FEE is interested in putting forward a proposal to establish an infrastructure and approach through which guidance for both preparers and auditors of financial information in prospectuses can be drafted and issued before the Prospectus Directive is implemented in 2005. This would include clarifying the involvement of the auditor in the various rules and procedures. FEE could then bring together an experienced team to develop the guidance. Guidance might be developed for three broad types of information in prospectuses.

Firstly, such guidance could cover:

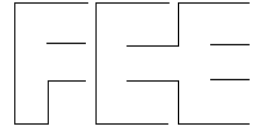
- historical financial information for completed financial periods;
- interim historical financial information for current periods;
- prospective financial information for future periods; and
- pro forma financial information to illustrate the impact of significant changes.

Secondly, there are a number of statements often required to be included in prospectuses that are based on financial information which independent accountants or auditors would not be expected to provide public assurance on, including:

- selected financial information disclosed elsewhere in the prospectus;
- operating and financial review or MD&A type disclosures;
- working capital statement; and
- statements about significant or material adverse changes in financial and trading positions.

Independent accountants or auditors are often expected to provide private comfort on such information or even to provide in broad terms public assurance as to the fairness of the financial information presented in a prospectus taken as a whole as part of the due diligence process supporting the issue of a prospectus.

Thirdly, prospectuses often include numerical information of a non-financial nature reflecting the metrics used by an issuer to manage its business. Because of the linkages and similarities of such non-financial information with financial information, independent accountants or auditors may be invited to provide private comfort as part of the prospectus due diligence process. A number of aspects need further discussion in the context of the liability of the auditor when providing private comfort on numeric non-financial information.



Incorporation by reference

Article 11 of the proposed Prospectus Directive allows information to be incorporated in the prospectus by cross reference (referring to one or more previously published documents). We are concerned if the current good practice that the prospectus contains updated financial information is no longer maintained, but instead includes only the last annual financial statements. There risks to be a gap in financial information as to what has happened since the year end. It raises also questions in relation to responsibility: is it to the date of signature of the prospectus or the date of the cross-referenced document? We are of the opinion that any such ambiguity is unhelpful for investors and that any exposure to further liability in respect of previously issued financial information on the part of directors and auditors should be avoided. Moreover, we cannot see a compelling reason why investors should not receive up-to-date financial information. The principle should be that prospectuses contain up to date financial information. We are therefore of the opinion that there is a need for further discussion on the consequences of incorporation by reference and the update of financial information on the date of signature of the prospectus.

Moreover we would like to point to a proposal for upcoming change to IAS 8, whereby in future prior year figures need to be adjusted for all errors and not only for fundamental errors. The consequences of a change to IAS 8 for the incorporation of information in prospectuses by reference will have to be addressed.

We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,

David Devlin
President