

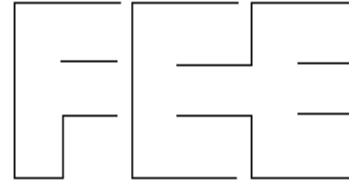
Date  
16 June 2003

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cc Alexander Schaub  
David Wright  
Christopher Huhne

Dear Mr Demarigny,

Re: CESR Prospectus Consultation

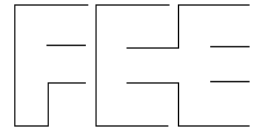
Further to our responses to you to the first and second consultations on possible Level 2 implementing measures for the proposed Prospectus Directive, we are delighted to respond to your request for written comments on the draft Feedback Statements and revised texts for possible implementing measures published in April 2003 and May 2003.

Whilst we reiterate our concerns as regards the very short timescales with which you are having to work, we are pleased that you have taken advantage of the extended reporting period provided to you by the European Commission and exposed for further comment the proposed implementing measures as you have revised them to reflect the comments received by you in response to the first and second consultations.

We are pleased to note that you have addressed many of the points we raised in our responses to the first and second consultations. However, there remain a number of points that we believe should be addressed in order to ensure that the proposed implementing measures achieve the desired objective of facilitating a European Capital Market.

In addition to making some detailed comments that are set out in the appendix to this letter, we have a number of general observations:

- We reiterate our observation from our earlier responses that in order for consistent provision of financial information in prospectuses, whether historical, interim, pro forma or prospective, there needs to be guidance as to the application of the requirements set out in the draft implementing measures. We would be delighted to work with you and your members to prepare such guidance as may be necessary both for preparers of and reporters on financial information in prospectuses.
- We support your efforts in seeking to reduce the level of detail to be proscribed by the implementing measures through adopting a more principles based approach. However, we are concerned that the effect of reducing the level of detail may place too much discretion with individual competent authorities to determine the content of prospectuses, thus creating the risk of inconsistency between Member States. This, we believe, emphasises the need for Level 3 guidance to be prepared for a number of areas.
- As far as competent authority discretion is concerned, we believe that CESR Advice should make clear that (1) no additional reporting from auditors is expected to be requested by the individual competent authority, except in areas specifically identified in level 2 advice, if any, and (2) no

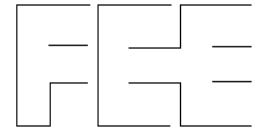


general declaration by auditors is expected in Annex 4 § 1 & 2 (contrary to current practice in certain Member States). These points are essential in relation to the working capital statement and capitalization and indebtedness statement referred to in Annex C (April 2003) paragraph 3, which may require a large amount of work in order to enable auditors to provide assurance.

- We agree with your conclusion to dispense with the detailed industry specific annexes. However, we are concerned that the new provision requiring asset valuations to be included “where the nature of the issuer’s business activities is such that the information set out in the historical financial information can not give ... justification of the value of the issuer” needs some clarification. Guidance as to how this test is to be applied is essential if it is to be consistently applied across Europe. It should also be made clear as to whether there are particular industries such as mining or property where it would be expected that valuations would be required and others where non-financial metrics may be an alternative.
- We believe that the determination of significant gross change for the purpose of assessing whether pro forma financial information is required to be presented should not be at the discretion of competent authorities without some clear guidance. We note that in paragraph 42 to the introduction to the April 2003 draft advice contains a reference to a 25% threshold as measured by “one or more indicators of size”. Issuers need to be able to understand how these rules might apply at an early stage of a transaction as they may well need to obtain audited historical financial information on an entity to be acquired and thus the thresholds and the basic indicators of size should be included in the pro forma annex – currently Annex B.
- We reiterate our concerns that, whilst it may be that requiring auditors or independent accountants to report in prospectuses on profit forecasts may be of benefit to investors, it is essential that a clear framework for the preparation of profit forecasts is developed. Without such a framework it would be inappropriate in many Member States for accountants to be required to publicly report on the compilation of a forecast. This would enable issuers and their auditors or independent accountants to address properly the risks associated with the uncertainties inherent in profit forecasts whilst providing investors with an appropriate quality of information. We would be pleased to work with you and your members in developing such frameworks and any guidance applying these to specific circumstances.
- We note that we have previously suggested that the annexes should be conformed as far as possible with the agreed text of the Transparency Directive in so far as it relates to interim financial reporting. Clearly, this has the impact of imposing similar provisions on issuers making public offers but not seeking admission to trading on regulated markets. In terms of the minimum content of interim financial information this is the most appropriate approach and, we believe that the time thresholds are also appropriate in all cases.
- In relation to the explanatory text in the April 2003 draft concerning incorporation by reference, we note that the text – paragraph 97 - continues to reflect the belief that the audit report can appropriately be incorporated as a standalone item, which we consider to be mistaken. An audit report should not be published or read without the underlying financial statements to which it relates. Any rules or guidance should make it clear that an audit report cannot be incorporated unless the financial information to which it relates is either included directly or by reference in a prospectus or registration document.

Yours sincerely,

David Devlin  
President



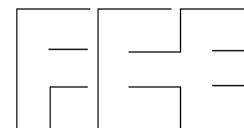
## Appendix

### Detailed comments

We have concentrated our detailed comments on the equity registration document. However, we note that many of the points carry across to all of the other registration document annexes and ask you to take them into account accordingly.

#### Minimum disclosure requirements for the equity registration document (May 2003 - Annex 4)

- 1 We note that paragraph 2.2 requires inter alia that “details must be disclosed” in relation to changes in auditors. This disclosure is not currently required in all Member States at the time of a change in auditor and we question whether the prospectus directive implementing measures is the right place for such a requirement to be imposed. If CESR considers that such a disclosure is important it should do so through a contribution to the current debate on auditor regulation.
- 2 We believe that paragraph 19 should require disclosure only of related party transactions occurring in the period since the last audited balance sheet through the date of the registration document. Disclosure of such transactions which occurred during the period covered by the historical financial information will have been included in the historical financial information prepared according to the IAS Regulation and should not be duplicated.
- 3 The drafting of the new text in paragraph 20.1 does not achieve the desired effect of ensuring that at least some audited financial information is presented in every registration document. We would suggest the following alternative:  
  
“Where the issuer has not been otherwise required to prepare and have audited historical financial information, it should prepare and have audited historical financial information drawn up to a date no later than 90 days before the date of the registration document.”  
  
The 90-day test would provide symmetry with the Transparency Directive proposal for annual reporting timetables.  
  
We also question, in the existing text inserted in the May 2003 version, what is meant by “fully audited”. Either financial statements are audited or they are not; there is no conception of a “partial audit”. The terminology should be adjusted.
- 4 We note the absence in paragraph 20.2 of any definitive explanation of what is meant by “significant gross change” as to relative sizes or the basis on which it is to be measured. In order that a consistent approach is taken to meeting this requirement we encourage the development of guidance for preparers of pro forma financial information which would address this issue as well as expanding on the application of the other requirements. We would be pleased to work with you and your members in assisting in the preparation of such guidance.
- 5 We note that paragraph 20.4 contains a reference to an, as yet, unpublished Annex that will address how non-EU issuers are to meet the historical financial information requirements in a prospectus. We encourage you to consider adopting an approach that differentiates the solution to this question by reference to issue type. For example an issuer of equity securities could be required to provide a reconciliation from their local GAAP to the IAS standard required in the EU, whereas an issuer of wholesale debt securities should be required to provide only a narrative description of GAAP differences. We would be pleased to work with you in drafting such an Annex. In view of the relevance of this issue from an international perspective we also encourage you to pursue an international direction of mutual acceptance.



- 6 Presumably the requirement in paragraph 20.1 for audit reports to be reproduced should be included in section 20.5. Further the requirement for a statement as envisaged by paragraph 20.5 is superfluous if the audit reports are always required to be reproduced.
- 7 We believe that the reference in paragraph 20.6.1(i) to “audited interim financial statements” requires clarification. We believe that there is a choice. Either financial statements should be “audited” in which case the financial statements in question must be full and complete and prepared as they would be at the year end or else normal IAS 34 standard interim financial statements should be required, in which event the extent of an auditors involvement can only be to provide a “review” opinion.
- 8 We suggest that paragraph 20.6.1 should be conformed with the final text of the Transparency Directive, the current draft of which would, for companies already admitted to trading on a regulated market, negate the need for the “18 month” time limit.
- 9 As we noted in our earlier response, we believe that the requirement in paragraph 20.7 for interim information to be included in a prospectus should be aligned with the time limits for publishing such information outlined in the Transparency Directive. Under the Transparency Directive proposals the interim financial information, as in half-yearly financial reports, is required to be disclosed to the public as soon as possible after the end of the relevant period but at latest two months thereafter. In addition, it may be necessary to import whatever quarterly reporting obligations are finally required under the Transparency Directive.
- 10 We suggest that you should provide a basis on which any interim financial information should be prepared. In our view, the proposed text in the Article 5 (3) of the proposed Transparency Directive forms an appropriate model:

“The condensed set of financial statements shall be prepared in accordance with the international accounting standards for interim financial reporting, as adopted pursuant to Articles 2, 3 and 6 of Regulation (EC) No 1606/2002 or, where the issuer has no subsidiary, in accordance with the national law of the home Member State.”

- 11 We believe that the detailed share capital disclosure requirement in paragraph 21.1.1 duplicates information which would in any event be disclosed in the notes to the financial statements and should be deleted. Alternatively it should be a statement giving the information concerned for the period since the last audited balance sheet date to the date of the registration document.

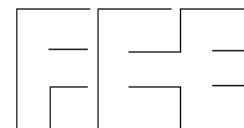
Minimum disclosure requirements for retail debt registration document (May 2003 – Annex 5)

- 12 The comments above apply to this registration document annex with amended references as shown below:

| Comment above: | Paragraph in registration document: |
|----------------|-------------------------------------|
| (1)            | Paragraph 2.2                       |
| (3)            | Paragraph 13.1                      |
| (5)            | Paragraph 13.3                      |
| (8)            | Paragraph 13.5.1                    |
| (9)            | Paragraph 13.6.2                    |
| (10)           | Paragraph 13.6                      |

Minimum disclosure requirements for the wholesale debt registration document (May 2003 - Annex 1)

- 13 The comments above apply to this registration document annex with amended references as shown below:



| Comment above: | Paragraph in registration document: |
|----------------|-------------------------------------|
| (1)            | Paragraph 2.2                       |
| (5)            | Paragraph 11.3                      |
| (9)            | Paragraph 11.5.1                    |

Minimum disclosure requirements for the depository receipts issued over shares (May 2003 – Annex 2)

- 14 All of the comments above apply to this registration document annex with references as shown.
- 15 This highlights the fact that a retail investor approach has been taken to determination of the disclosure requirements for depository receipts. We strongly encourage you to develop a separate building block for wholesale offers of depository receipts, which, in our experience, has been the most common example of the offering of such instruments in Europe's capital markets.

Minimum disclosure requirements for the bank registration document (May 2003 – Annex 3)

- 16 The comments above apply to this registration document annex with amended references as shown below:

| Comment above: | Paragraph in registration document: |
|----------------|-------------------------------------|
| (1)            | Paragraph 2.2                       |
| (3)            | Paragraph 11.1                      |
| (5)            | Paragraph 11.3                      |
| (9)            | Paragraph 11.5.1                    |

Pro forma financial information building block (April 2003 – Annex B)

- 17 As noted in our covering letter, we believe that this Annex should contain the 25% threshold at which significant gross change is determined. The indicators by reference to which such change is to be measured should be explained.
- 18 We note that the word "historical" should be deleted from paragraph 3(a) as 5(a) permits presentation of the current period which could be a profit forecast
- 19 We believe that the provisions of this annex, in so far as they dictate the form in which pro forma financial information should be presented, should be applied in all annexes even though there is no requirement for pro forma financial information in other than equity registration documents.

Minimum disclosure requirements for asset backed securities registration document (April 2003 – Annex G)

- 20 We note that the asset backed securities registration document follows a structure different from the other kinds of registration documents. We question whether - as far as applicable - the same form (e.g. headings and numbering) and content should apply to the asset backed securities registration document. Paragraph 1 "Declaration" deals with "Persons Responsible" (paragraph 1.1. and 1.2.), with "auditors" (paragraph 1.3.) and with other reports attributed to a person as an expert (1.4.). We suggest that it is necessary to make a proper distinction between persons responsible for the registration document, the name and the addresses of the issuers' auditors and other experts and to import the structure of the other kinds of registration document of the drafted annexes to the asset backed securities registration document: paragraph 1 "Persons Responsible", paragraph 2 "Auditors" and a new paragraph "Statement by Experts and Declarations of any interests". We note that the financial information requirements where no audited financial information exist at the time a registration document is filed is not consistent with the provisions throughout the other registration document annexes and that it should be so consistent.