

Ms Saskia Slomp  
FEE Technical Director  
FEE  
Avenue d'Auderghem 22-28  
1040 Bruxelles  
Belguim

29 August 2005

**Re: Discussion paper on Comfort Letters Issued in relation to Financial Information in a Prospectus**

Dear Ms Slomp

I refer to the above discussion paper which was sent to Dr Liam O'Reilly, Chief Executive of the Irish Financial Services Regulatory Authority (Financial Regulator) by David Devlin, President of FEE. The Financial Regulator assumed the role of competent authority in Ireland for the Prospectus Directive on transposition of the Directive into Irish Law on 1 July 2005.

As I understand it the "comfort letter" which is the subject of your discussion paper is provided to the underwriter by the issuer's auditors as part of the underwriters due diligence on the prospectus. The underwriter undertakes the due diligence as a defence in the event that it is held liable for material omissions and/or misstatements in a prospectus. The comfort letter is not included in the prospectus and is only available to the underwriter.

Under Irish Law the following persons can be held accountable for a misstatement in a prospectus:

- (i) the issuer
- (ii) the offeror
- (iii) the person seeking admission
- (iv) the guarantor
- (v) a director of the issuer
- (vi) a promoter of the issue
- (vii) every person who has authorised the issue of the prospectus

Where the prospectus relates to non-equity securities only the offeror, person seeking admission or the guarantor can be held accountable. It is only in the event that the underwriter held one of the above roles that it could be held accountable for a misstatement in a prospectus under Irish Law.

While the Financial Regulator is the competent authority in Ireland for the prospectus directive it does not have a role in regulating auditors or setting auditing standards. As such it does not consider it appropriate for it to comment on the procedures to be performed by an auditor or the nature of the report to be provided in respect a comfort letter to which it would not be party.

However as competent authority for the prospectus directive the Financial Regulator is concerned that all investors are in possession of the same level of information. Given that the comfort letter provides the underwriter with a greater level of assurance in respect of financial information that has not been reported upon by the auditor in the prospectus, it would seem to create a different level of information. It is critical that there are adequate controls within the recipient to ensure that it could not be accused of being an investor when in receipt of the letter.

Yours sincerely

**Mr Donncha Connolly**  
**Deputy Head of Securities and Exchanges Supervisions**