International
Capital
Market
Association Ltd

ICMA

Fédération des Experts-Comptables Européens
Avenue d'Auderghem, 22-28
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September 16, 2005

For the attention of Ms Saskia Slomp

Dear Sirs

The International Capital Market Association is grateful for the opportunity to respond to the Fédération des Experts-Comptables Européens discussion paper: *Comfort Letters*, issued in relation to financial information in a Prospectus. We are especially grateful to the Fédération for allowing us to submit our response after the deadline.

The International Capital Market Association (ICMA) is the international trade association that represents the interests of the 430 banks and securities firms that arrange, underwrite, manage, distribute and trade international securities. It is the result of the merger on 1 July 2005 of the International Primary Market Association and the International Securities Market Association. ICMA has members in forty countries, including all of the member states of the European Union.

General

Auditors' comfort letters in relation to securities prospectuses is a very important issue for ICMA's members. Comfort letters are an important part of the due diligence process conducted by underwriters in international securities offerings and placements. Unfortunately, notwithstanding the publication of standard form comfort letters in several countries[1] in Europe and their use over several years, the negotiation of the scope of the auditor's review and assurances and the form of the comfort letter has become an especially time consuming and fraught part of the preparation of international securities issues.

The standard forms have done much to make the process easier and less contentious. Therefore ICMA was surprised that the Discussion Paper did not refer to its standard

[1] E.g. IDW Prüfungsstandard: Grundsätze für die Erteilung eines Comfort Letter (IDW PS 910) and the IPMA Standard Form Comfort letter for Stand- Alone Bond Issues.

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forms and, in several respects, failed to reflect either the approach or the language of the ICMA standard forms.

The ICMA standard forms for stand alone bond issues were prepared by a working group, composed of representatives of the UK affiliates of the Big Five accounting firms and the members of the ICMA and its secretariat and are widely used in the international securities markets. They have proved useful to auditors, issuers and the underwriters[2] over several years.

However, ICMA recognises that there are not infrequently situations where additional or different agreed procedures and assurances may be appropriate, and auditors, issuers and underwriters should be free to agree that such additions or differences should be adopted. Examples of such situations are issues of asset-backed securities and high yield bonds.

We therefore disagree with the Discussion Paper when it does not allow any variation from the format and the standards it proposes.

We also disagree with the Discussion Paper's premise that the Prospectus Directive changes the liability regime for auditors, whether with regard to the financial statements or comfort letters. Questions of liability are left to existing national law. In addition, under the previous EU prospectus regime, international offerings of securities could be, and usually were, offered in multiple jurisdictions.

We also note that international offerings of securities can continue to benefit from exemptions under the new Prospectus Directive and may, for example, be admitted to trading on an Exchange-regulated market. Comfort letters should continue to be available for prospectuses prepared for all types of securities' offerings.

We have not commented in this letter on those Discussion Issues which considered technical auditing matters (7,10).

Specific Comments

- Discussion Issue 1

ICMA supports the first model as an appropriate approach for Europe, that is, a combination of agreed-upon-procedures and assurance. As the paper notes, this reflects typical current practice in European offerings.

The second model does not reflect the key role of auditors in bringing quality, objectivity and relevance to the financial disclosure in prospectuses.

- Discussion Issue 2

ICMA believes strongly that the auditors must be actively involved in deciding which procedures are to be followed. The auditors are much more familiar with the issuer

[2] The International Primary Market Association also participated in discussions with the American Institute of Public Certified Accountants about the latter's Statement on Auditing Standards No.72.

and its financial reporting than the underwriters, and their input is crucial. However, ICMA members are in principle prepared to sign an engagement letter in order to receive a satisfactory comfort letter. The comfort letter should be capable of being relied upon by others who use the prospectus in connection with securities offerings and placements. ICMA would like to work with the Fédération Project Group to agree a procedure whereby a "dealer for a day"[3] in a medium term note programme can sign an engagement letter and receive the benefit of a comfort letter issued earlier to the permanent dealers.

- Discussion Issues 3 and 8

ICMA does not believe that the issuance of a comfort letter creates a problem with regard to different levels of information. If the auditors, in preparing their comfort letter, or the underwriters in their due diligence, discover anything that is material to investors, that information must be disclosed in the prospectus. If information is discovered that is not material to investors, it need not be disclosed.

- Discussion Issue 4

The issuer should relieve the auditor of any professional secrecy requirements in all cases.

- Discussion Issue 5

ICMA notes the reference to the U.S. standards of due diligence and the customary representation given pursuant to SAS72. This representation is not of course customary or relevant outside the U.S., for example, for a Reg S only issue of securities.

Auditors should be free to decide to whom they will issue a comfort letter in the context of a particular offering, and be willing to issue a comfort letter to any party that may be held liable for the contents of a prospectus, including those who have a "due diligence defence".

- Discussion Issue 6

ICMA does not believe that an audit base is necessary or possible in every case. If the absence of an audit base is understood and disclosed, there should not be any problems for any of the parties involved in the preparation of the prospectus, nor in the provision of a satisfactory comfort letter.

- Discussion Issue 9

It is common practice for auditors to provide comfort on subsequent changes. Definitions of non-GAAP items can be, and are, included in the comfort letter, e.g. EBITDA.

As per Discussion Issue 2, ICMA believes that the auditors' expertise should be utilised in order to help determine the level of materiality of changes in line items.

[3] "a dealer for a day" is appointed for one or more tranches issued under a medium term note programme, not as a permanent dealer on the programme.

ICMA does not believe that the comfort letter, or assurance engagement, should be included in the prospectus. Allowance should be made for the comfort letter being shown to other professional advisers of the issuer and underwriters, e.g. lawyers, and being included in the "bible" for the issue, or as required by law or regulation, as well as to parties in connection with disputes related to the offering. These are standard exceptions in current practice.

- Discussion Issue 11

ICMA believes that auditors should give comfort on narrative statements of differences between national accounting standards and IFRS. Auditors are best placed to know the differences in general as well as the accounting policies and practices of the issuer.

Other Matters

- Governing Law

ICMA disagrees with the proposal that a comfort letter should be expressed to be subject to a governing law, or exclusive jurisdiction. We note that the IPMA standard form of comfort letter does not include a governing law and jurisdiction clause. On the other hand, the IPMA standard form of arrangement letter does provide for the governing law of the arrangement letter to be that of the Subscription Agreement for the securities offering, with exclusive jurisdiction, unless that is not the law of a country with developed jurisprudence in international financial transactions, in which case the parties agree on a suitable alternative.

- Financial Information

We note the FEE proposal that auditors should not comment on pro forma information or financial forecasts in comfort letters. ICMA disagrees with this. It should be possible for issuers and underwriters and other recipients of comfort letters to agree with the auditors that the comfort letter will comment on such information. It is also not necessarily the case that such information will be reported on. For example, the UK Listing Authority does not require pro forma information to be reported on if an issuer of non-equity securities provides such information in a prospectus voluntarily.

- Restriction on Use/Disclosure

The FEE's suggested wording includes the statement that the underwriter is responsible for the content of the prospectus. This is not correct. The issuer alone is responsible for the content of the prospectus. Please see our comment above on Discussion Issue 9.

Please do not hesitate to contact us, as we would be pleased to discuss our response with you.

Yours sincerely

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