

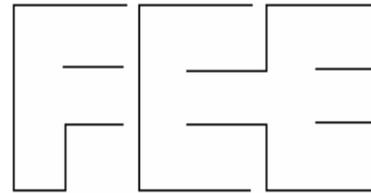
Date  
5 February 2007

Le Président

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des Experts  
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Mr Fabrice Demarigny  
Secretary General  
Committee of European Securities Regulators  
11-13 avenue de Friedland  
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cc Ms Ruth Walters, European Commission

Dear Mr Demarigny,

Re: Call for evidence on the supervisory functioning of the Prospectus Directive and Regulation

We are delighted to respond to your request for evidence as to the supervisory functioning of the Prospectus Directive and Regulation.

We have identified a number of issues where divergent practices are developing and these are set out below. Should you wish to discuss any of these in more detail, we would be delighted to meet with you.

#### Historical financial information

##### *Complex financial histories*

Whilst this would have been a major concern, we are aware of the proposals to amend the Prospectus Regulation to provide principles which should lead to greater consistency in the presentation of historical financial information when an issuer has a "complex financial history". This is of particular importance as there is evidence of divergences in reporting practice emerging.

##### *Audit reports*

An issue that has previously been drawn to your attention, in our responses to your consultations in respect of the drafting of your advice to the European Commission as to the text of the Prospectus Regulation, is the interaction between European Company Law requirements concerning the publication of the auditors' report and the Prospectus Regulation Annex I items 20.1 and 20.6.1.

The need to reproduce the auditors' report for each of the last three years leads to the disclosure of the whole of the financial statements for those years with the consequent printing cost. Whilst for companies who have filed their financial statements with their competent authority this is alleviated by incorporation by reference, it is a major issue for many companies.

We continue to hold the view that reproduction of the auditors' reports in prospectuses is unnecessary and that the disclosure of the fact that the financial statements have been audited, as required by Annex I item 20.6.1 is sufficient.

Confusion also exists as to whether it is necessary to reproduce the statutory audit reports notwithstanding that the last two years have, as required by Annex I item 20.1, been restated by a company on the basis of the next year's accounting policies and reported on by their auditors. We believe that it should only be necessary to include the opinions in a prospectus that relate to the information required to be disclosed.

### Pro forma financial information

There is some suggestion that some competent authorities are taking the view that pro forma financial information, both profit and loss and balance sheet, is required when a company has undergone a significant gross change at any point in the period back to the commencement of the company's last completed financial year. This is notwithstanding Annex I item 20.2 states that "This requirement will **normally** be satisfied by the inclusion of pro forma financial information."

In this context "normally", in our view, provides company's with flexibility to choose to show the effect of a significant gross change without necessarily presenting pro forma financial information. We would encourage the application of flexibility in this regard.

We are concerned that there may be circumstances where an issuer may not have sufficient information, for example in a contested takeover situation, to be able to prepare pro forma financial information to the standard required by Annex II and such that the company's auditors can provide the unmodified opinion required by Annex II item 7.

### Profit forecasts

Whilst market practice is clearly developing some concerns have been expressed as to the range of statements that could be construed as constituting a profit forecast (or estimate). Given the disclosure consequences, including reporting by auditors, we would encourage you to consider sharing best practices and publishing these in order to assist companies in understanding when statements they wish to make might constitute a profit forecast should a prospectus be required to be prepared.

### Capitalisation and indebtedness

Our issues in respect of the capitalisation and indebtedness disclosure required by Annex III item 3.2 arise with the application of the CESR Recommendations as to the consistent implementation of the Prospectus Regulation.

In particular, there is some evidence that the format suggested in paragraph 127 is being treated as a mandatory disclosure rather than as guidance as to how the disclosure obligation should be met. This has the effect of requiring issuers to re-analyse information from that presented in their financial statements with little perceived benefit to investors.

In addition, there is great uncertainty as to the meaning of and/or intention behind the suggestion that "disclosure of indirect and contingent indebtedness".

Yours sincerely,



Jacques Potdevin  
President