



10 March 2009

Commissioner Charlie McCreevy
DG – Internal Market
European Commission
rue de la Loi 200
1049 BRUSSELS

E-mail: MARKT-G3@ec.europa.eu

Ref.: CMS/MP/SS/LF/SH

Dear Commissioner,

Re: FEE Comments on EC Consultation on the review of the Prospectus Directive

- (1) FEE (the Federation of European Accountants) is pleased to provide you below with its comments on the EC Consultation on the review of the Prospectus Directive (the "Consultation").

General comments

- (2) We welcome the Consultation in particular in light of the EC Action Programme for reducing administrative burdens, according to which the Prospectus Directive has been identified as an area for specific consideration. This comes in addition to the envisaged review of the Directive five years after entering into force. We support the general assessment of the overall effect of the Prospectus Directive. We are of the opinion that the Prospectus Directive has been very helpful to the European Capital Markets and facilitated their integration. The Directive constitutes a significant advantage when comparing current EU standards with standards outside the EU. The new prospectus regime is indeed a step in the right direction in activating a single European securities market.
- (3) It is important that the quality of the EU regulated markets is not affected by changes to the Directive that may have unintended consequences. In particular we think that there should not be less information required when a small quoted company offers equity to the public. The disclosure requirements should not be related to the size of the issuer concerned, but rather it could be examined to what extent disclosures for a further issuance could be less demanding than for an initial offering.
- (4) In order to achieve the aim of reducing the administrative burdens associated with the Prospectus Directive, we suggest that the EC may invite CESR to revisit the adequacy of the disclosure requirements in the Level 2 Regulation as well as in the Level 3 Guidance. As an illustrative example, we note below (in paragraphs 8 and 9 of this letter) some of the disclosures that could be considered to be removed from the prospectus requirements which in our view would help achieve this purpose.

- (5) We agree that to the extent possible (unintended) differences between the Prospectus Directive, MiFID and the Transparency Directive should be avoided. The requirements of those Directives should be assessed together in order to assess how the administrative burdens (for example the cummulation of the required disclosures) can be reduced.
- (6) In response to the Consultation, we present below specific comments on certain issues which we would like to highlight. We have decided not to respond to all detailed questions.

Disclosure obligations: the prospectus and its summary (section 4.1 of the Consultation background document)

- (7) We note that the review deals more with aspects relating to when a prospectus is needed than the content of the prospectus itself, such as the section on the adequacy of the disclosure requirements including their costs and benefits. In order to reduce the administrative burdens of the prospectus, it might help reviewing the disclosure requirements imposed by the Level 2 Regulation and Level 3 Guidance.
- (8) As an illustrative example, in our view the following disclosures could be omitted from a rights issue, or similar further issue prospectus based on the premise that these or equivalent disclosures are required to be made by companies traded on EU regulated markets under the Transparency Directive obligations and would therefore already have been made available to shareholders:
 - Annex I Item 20.1 - financial history and audit reports;
 - Annex I Item 20.6 - interim financial reports.
- (9) In addition, the interpretation of a number of disclosures required to be made by Annex I and Annex III by CESR's Recommendations can lead issuers to incur cost in preparing disclosures that could otherwise be readily derived from information published under their Transparency Directive obligations. For example:
 - The operating and financial review requirement in a prospectus, Annex I item 9, and the management report requirement in the annual and interim financial reports;
 - The capitalisation and indebtedness statement in a prospectus, Annex III item 3.2, and the disclosures required in an issuer's annual financial statements under IFRS".
- (10) Regarding the yearly update of the prospectus requirement, we are pleased to see that it is proposed to abolish it; we support this amendment.

Disclosure obligations for small quoted companies (section 4.3 of the Consultation background document)

(11) We understand that the EC Services are determined to address the concerns expressed in the review of the Directive that the disclosure requirements linked to the issuance of a prospectus could be overly burdensome and costly for SMEs. Regarding the two alternative solutions proposed in the Consultation background document, we think that none of the alternatives suggested should be favoured. For each of the solutions proposed we note the following:

a) the threshold of € 2.5 million could be raised

We are not aware that the current threshold creates difficulties in raising funds in the EU. While we understand that the EC is aiming to reduce administrative burdens, we think that this might not be an area where the quality of the regulated markets should be compromised by raising the current threshold of 2.5 million Euro.

b) a reduced amount of information could be required for the cases when a small quoted company offers equity to the public. This would result in the creation of a "mini" prospectus which might correspond better to the needs and size of small firms

Since one of the objectives of the Prospectus Directive is investor protection, there should not be less information required when a small quoted company offers equity to the public, since investor protection could be affected when the amount of information is reduced.

In order to guarantee a consistent and high level of investor protection, the information requirements should not be related to the size of the company offering equity to the public. However it could be examined to what extent disclosures for a further issuance could be less demanding than for an initial offering.

For further information on this letter, please contact Ms Saskia Slomp from the FEE Secretariat.

Yours sincerely,



Hans van Damme
President