International
Capital
Market
Association Ltd

13 November 2007

Ms Raquel Garcia
Rapporteur – Prospectus Level 3 Expert Group
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

Dear Ms Garcia

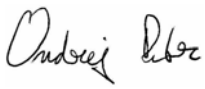
CESR`s frequently asked questions regarding prospectuses

The International Capital Market Association (**ICMA**) would like to take the opportunity to comment on some of the "frequently asked questions" published in September 2007.

ICMA is the self-regulatory organisation and trade association representing investment banks and securities firms issuing and trading in the international capital markets worldwide. ICMA's members are located in some 50 countries across the globe, including all the world's main financial centres, and currently number over 400 firms.

We attach our comments as **Annex 1** to this letter and would be pleased to discuss them with you at your convenience.

Yours faithfully,



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ANNEX
COMMENTS ON FREQUENTLY ASKED QUESTIONS

General Comments

We support all efforts aimed at tackling the uneven implementation and application of the Prospectus Directive and the Prospectus Regulation. Harmonised pan-European guidance from a single source respected by national competent authorities is one of the most powerful and helpful tools in that regard. We therefore welcome the publication by CESR of its frequently asked questions and appreciate the associated efforts of CESR and its members.

While fully supportive of the frequently asked questions in principle, we remain keen to ensure that they:

- do not introduce new legal uncertainties;
- do not unnecessarily increase the costs or extend the timeline of securities offerings; and
- do not introduce new disclosure requirements, incompatible with the second paragraph of Article 3 of the Prospectus Directive Regulation, according to which "*a competent authority shall not request that a prospectus contains information items which are not included in Annexes I to XVII.*"

In this letter, we take the opportunity to highlight several difficulties which are in our view likely to result in the application of some of the frequently asked questions published in September 2007.

We also continue to believe that the process leading up to the publication of further sets of frequently asked questions would be significantly improved if CESR posted on its website questions currently under consideration. This would allow the parties interested in the particular issue to provide informal comments - and CESR to make even better-informed decisions - without inhibiting the desired flexibility and efficiency of the instrument.

Specific comments

<u>Q19 – Supplement to prospectuses: right of withdrawal</u>

We disagree with the suggestion that the right of withdrawal and the actual period for exercising it should be disclosed in the supplement to the prospectus of debt issues.

We recognise that this information is required to be disclosed in the initial prospectus for shares (item 5.1.7 of Annex III) and depository receipts (item 29.1.6 of Annex X). There is, however, no equivalent for debt or any other securities other than shares and depository receipts. This is important because the items in the debt annexes usually copy those in the share annexes. This indicates that the requirement was intentionally not introduced for securities other than shares and depository receipts. The suggestion in Q19 runs contrary to that decision. We are therefore concerned that the answer runs counter to the second paragraph of Article 3 of the Prospectus Directive Regulation.

In some circumstances, reference to the right of withdrawal could be misleading. Base prospectuses, for example, may sometimes be supplemented even where there is no offer pending – and therefore no acceptances to be withdrawn.

If, however, a decision was nevertheless taken that the information should be included in the supplement to the prospectus, we believe that the information should be phrased in general terms and should not elaborate on the length of the period for exercising the withdrawal right and other details.

This is mainly because a prospectus will often be passported into other Member States. In such cases, any requirement for detailed disclosure of the withdrawal right will require the issuer to investigate the law of the home Member States and all the host Member States. This will be no easy task given that the implementation of the withdrawal right and its application in practice is often markedly different (and sometimes unclear) in different Member States. More generally, a requirement to investigate laws in host Member States and include disclosure specific to host Member States is in our view inconsistent with the objective and principles of the Prospectus Directive. This is a point on which we expand below in relation to Q40. In addition, if the prospectus was subsequently passported into a different host Member State than those mentioned in the supplement, another supplement would be required. This would produce the curious result that withdrawal rights would be triggered across all the Member States involved solely as a result of the issuer needing to inform investors in one Member State about their withdrawal rights.

Q40 – Information on taxes on the income from the securities withheld at source

We welcome the clarification that item 4.11 of Annex III of the Prospectus Directive Regulation does not require a full disclosure of the tax regimes in each country where the offer takes place.

Even after this clarification, however, the item could still be interpreted as requiring the issuer to verify tax regimes of all the countries where the offer takes place to confirm what the taxes withheld at source are or that there are no taxes withheld at source in the particular country. This would in practice involve significant costs for the issuer and have timing implications.

More importantly, it would be a largely unnecessary exercise. The item refers to “taxes withheld at source.” This can only mean taxes withheld in the hands of the person making the payment - the issuer (who, being the debtor, is the "source") or the financial institutions paying on behalf of the issuer (the paying agents). There can, therefore, only be “taxes withheld at source” in those countries in which the issuer and the paying agents are tax domiciled. Having to formally verify tax regimes of other countries solely in order to receive a negative confirmation would therefore seem an unnecessary burden on issuers not outweighed by any benefit to investors.

On a more general level, it is widely recognised that the need to include in the prospectus information specific to the host Member States, in particular on local taxation, was one of the factors that prevented the pan-EEA securities market developing before the Prospectus Directive. Any re-introduction of this concept should therefore be considered very carefully and avoided where possible.

It should also be noted that, with the implementation of the Savings Tax Directive, withholding tax is becoming less important in the EU as it has been largely replaced with an information exchange mechanism. It should not therefore be given undue emphasis in the disclosure context.

Another technical implication of a wide interpretation of the item would again be that if the prospectus was passported into a different host Member State than those initially contemplated, a supplement would be required.

We would therefore suggest the following modification of the first paragraph of the answer to Q40:

"…the wording "information on taxes on the income from securities withheld at source" refers to information on any amount withheld at source, that is by the issuer or by any agent appointed by it for the purpose of making payment on the securities. This item seeks to give investors enough information to know the "net" amount that will be received when payment is collected from the issuer or its agent in accordance with the terms of the securities."

Q47: Pro forma financial information included in a prospectus on a voluntary basis

We agree that pro forma financial information prepared voluntarily should be prepared following the requirements of Annex II of the Prospectus Directive Regulation. We disagree, however, with the suggestion that such information should also be subject to a report prepared by an independent accountant or auditor.

The annexes to the Prospectus Directive Regulation were specifically constructed to ensure that such a report is only required through Item 20.2 of Annex I of the Prospectus Directive Regulation for shares. Annex II item 7 of the Prospectus Directive Regulation sets out the form that such an opinion must take and does not itself impose a requirement for a report. This construct was arrived at to specifically avoid the need for a pro forma report when dealing with anything other than shares.

The answer implies, however, that pro forma financial information provided voluntarily in prospectuses for securities other than shares should be subject to such a report. We believe that placing such a reporting burden on issuers of securities other than shares is against the requirements of the Prospectus Directive Regulation and would impose an unwarranted regulatory cost.

Q44 to 47: Pro forma financial information

We note the various differences in approach to the inclusion of pro forma financial information between competent authorities outlined in the answer to Q45. It would be helpful, in the interests of harmonisation, for a common approach in this area to be developed. We therefore hope that this is an area that CESR can take forward and get agreement between the different competent authorities.