



VERBAND DER AUSLANDSBANKEN IN DEUTSCHLAND E. V.
ASSOCIATION OF FOREIGN BANKS IN GERMANY

INTERESSENVERTRETUNG AUSLÄNDISCHER BANKEN, KAPITALANLAGEGESELLSCHAFTEN, FINANZDIENSTLEISTUNGSPROVIDENTEN UND REPRÄSENTANZEN
REPRESENTATION OF INTERESTS OF FOREIGN BANKS, INVESTMENT MANAGEMENT COMPANIES, FINANCIAL SERVICES INSTITUTIONS AND REPRESENTATIVE OFFICES

Mr. Fabrice Demarigny
Secretary General
CESR

secretariat@europafesco.org

December 20, 2002

Dear Mr. Demarigny,

We appreciate very much your invitation to comment on CESR's Advice on Possible Level 2 Implementing Measures for the Prospectus Directive" (the „Consultation Paper“).

We would like to draw your attention to the issue of expert's liability. The issue has implications to level 1.

PROPOSAL:

In Annex A VII.F.1 the following should be inserted:

Original wording of the audit certificate (certification of the annual financial statement).

Art. 6 of the Proposed Prospectus Directive (the "Proposal") is not harmonising the still existing national law regimes as far as the liability of auditors is concerned. We have heard that this is due to a compromise, because complete harmonisation proves to be too difficult at present. However, we believe that this harmonisation may be possible in the future.

This leads to the following consideration:

- The disclosure requirements that have to be drafted now by CESR should either encourage the harmonisation process, or at least not build up further difficulties to it. Therefore disclosure requirements that are already common throughout the EU should not be missing in EU prospectuses.
- The liability of auditors would be necessary for a level playing field in the EU. According to national law of many member states (e. g. UK, Austria, Italy, Spain) auditors are responsible not only to the audited issuers of securities, but to investors, too, for the correctness of their auditing of the annual accounts of the issuer.



- The situation in Germany is different. According to section 30 of the German Admission Regulations (Börsenzulassungsverordnung - BörsZulV) the audit certificate has to be disclosed in the prospectus. Nevertheless the German Commercial Law Act (Handelsgesetzbuch – HGB) states in section 323 Para 2 that the auditor's liability should only compensate damages of the issuer itself.
- The requirement of disclosing the audit certificate would presently predict neither the national law of the member states nor the EU-law as long as there is no harmonisation. But it would facilitate harmonisation of the auditor's liability in the future, as issuers and market players will already get used to disclosing the audit certificate in the meantime.

Should you have any question please do not hesitate to contact us.

Yours sincerely,

(Jan Marwede)

(Wolfgang Vahldiek)