

CLEARY, GOTTlieb, STEEN & HAMILTON

ONE LIBERTY PLAZA
NEW YORK, NY 10006-1470
2000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20006-1801
41, AVENUE DE FRIEDLAND
75008 PARIS
RUE DE LA LOI 57
1040 BRUSSELS
MAIN TOWER
NEUE MAINZER STRASSE 52
60311 FRANKFURT AM MAIN

CITY PLACE HOUSE
55 BASINGHALL STREET
LONDON EC2V 5EH
020-7614-2200
FACSIMILE
020-7600-1698

PIAZZA DI SPAGNA 15
00187 ROME
VIA FATEBENEFRATELLI 26
20121 MILAN
PAVELETSKAYA SQUARE 2/3
115054 MOSCOW
BANK OF CHINA TOWER
ONE GARDEN ROAD
HONG KONG
SHIN KASUMIGASEKI BUILDING
3-2, KASUMIGASEKI 3-CHOME
CHIYODA-KU TOKYO 100-0013

February 7, 2003

Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities
Regulators
11-13 avenue de Friedland
75008 Paris
France

Re: Annex 5 - Depositary Receipt Prospectus Schedule

Dear Mr. Demarigny:

We are submitting this letter in response to the request of The Committee of European Securities Regulators ("CESR") for comments regarding CESR's Advice on Possible Level 2 Implementing Measures for the Proposed Prospective Directive (the "Proposal"). This letter relates specifically to Annex 5 with respect to the disclosure requirements in prospectuses relating to depositary receipts.

We welcome much of the Proposal as it relates to depositary receipts (the "DR Proposal") in its intention to harmonise and enhance the disclosure of companies offering and listing depositary receipts in the European Union. However, the extent to which the DR Proposal goes further than the existing regime in the United Kingdom for listings of depositary receipts of the type normally bought and traded by investors who are particularly knowledgeable in investment matters ("Specialist Certificates") may deter many international companies from listing Specialist Certificates on the London Stock Exchange and other European exchanges. Although there are some areas that can be improved (some of which the DR Proposal addresses), we believe that the existing regime in the United Kingdom for listings of Specialist Certificates has on the whole worked well, attracting high-quality companies to the UK market and at the same time demanding good quality disclosure for professional investors. Accordingly, we would respectfully encourage the CESR to consider limited dispensations from the full raft of CESR Proposals for issuers of Specialist Certificates (as opposed to issuers of depositary receipts offered to retail investors) in line with the dispensations that are currently given pursuant to Chapter 23 of the Listing Rules of the UK Listing Authority.

We have set out below some of our specific comments on the DR Proposal.

CESR Proposal	Comments
I.A.1 and I.A.2	We believe that clarification is needed on who is responsible for the prospectus –whether it is the issuer (as is currently the case for Specialist Certificates) and/or the directors. Specific extension of responsibility to directors may well deter international companies from listing Specialist Certificates on European exchanges.
I.C.3	This proposal implies that annual accounts cannot be qualified as it refers to a letter from the auditors confirming that they have, <i>inter alia</i> , given an unqualified opinion on the accounts. This is inconsistent with proposal VII.F.1 which states that qualifications in the audit report shall be reproduced in full and the reasons given.
III.A.4	It should be made clear that the inclusion of a Web-site address does not serve to incorporate the contents of the Web-site into the prospectus.
III.D.2	A definition of “significant subsidiaries” is needed.
IV.A, IV.B, IV.C, IV.D	We believe the proposal to require what is known as the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” or the financial review (the “MD&A”) will be a significant enhancement of the disclosure currently required by the UK Listing Authority listing rules. We question, however, how high the quality of such disclosure would be for Specialist Certificate listings since such listings are not accompanied by substantial diligence by law firms and financial intermediaries unless they are accompanied by a substantial offering in the United States. In our experience, such diligence has tended to improve the quality of MD&A disclosure significantly, particularly for issuers that are presenting such disclosure for the first time. Once issuers have become more experienced in presenting MD&A disclosure, we believe diligence by legal advisors and financial intermediaries has generally had less of an impact in improving the quality of such disclosure.
IV.D.2	In our view, an approach that requires disclosure of known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company’s financial position (CESR Proposal IV.D.1) is a better approach than requiring information on the issuer’s prospects for at least the current financial year. The equivalent disclosure requirement to CESR Proposal IV.D.1 in the United States results, in our experience, in a higher quality of disclosure than the disclosure given in response to UK Listing Authority listing rule 6.G.1. (equivalent to CESR Proposal IV.D.2). Liability concerns regarding forward-looking statements typically limit the disclosure in response to listing rule 6.G.1 to anodyne and relatively uninformative statements.
IV.D.3.a	We do not believe that this CESR Proposal should extend to a statement regarding the prospects. Please see comment on CESR Proposal IV.D.2

	above. Moreover, one would expect material factors that would affect a statement on prospects would be disclosed in the risk factors section or the MD&A section in any event. We respectfully submit that disclosure of technical, business and financial assumptions on which a profit forecast is based is distinguishable from disclosure of assumptions on which a prospects statement is based.
V.A.1	As long as adequate information is giving with respect to the relevant person's relevant management expertise and experience (as required by other parts of CESR Proposal V.A.1), we do not believe that disclosure of the names of all companies and partnerships of which such person has been a director or partner at any time in the previous five years is necessary.
V.A.2	We believe that this CESR Proposal as it relates to "potential conflicts of interests" is overly broad. We believe that determining what would need disclosure would be fraught with problems. The CESR Proposal is not qualified by materiality and many things that would be considered to be insignificant would appear to require disclosure under the current wording. We also believe that if such a requirement can be framed in a workable manner, any negative statement should be qualified by the knowledge of the issuing entity, since an issuing entity has no definitive way of being sure that no such conflicts of interests exist. It should also be noted that there is significant overlap with CESR Proposal V.A.1, which requires an indication of the principal activities performed by the company's directors and senior management outside the company where these are significant with respect to that company. The second paragraph of this CESR Proposal, on the other hand, is clear and easy to apply and we believe that it is, in conjunction with CESR Proposal V.A.1 and the general duty of disclosure of material information, sufficient. We would respectfully urge CESR to undertake detailed consultation regarding any alternative proposal to CESR Proposal V.A.2.
V.C.4	We support disclosure of the extent of compliance with the corporate governance regime of the country of incorporation of the issuing entity. We note, however, that many countries have lax corporate governance regimes thereby limiting the usefulness of any such disclosure. We do though support the concept that the relevant listing authority should show comity to the home jurisdiction in this regard.
V.D.1	We note that this CESR Proposal is inconsistent with CESR Proposal V.B.1 to the extent that CESR Proposal V.B.1 does not require disclosure ownership of stock options by the company's directors and members of its administrative, supervisory or management bodies on an individual basis unless individual disclosure is required in the company's home country and is not otherwise publicly disclosed by the company. In contrast, CESR Proposal V.D.1 would appear to require disclosure on an individual basis.
VI.B	We believe that there should be a specific exception from this CESR

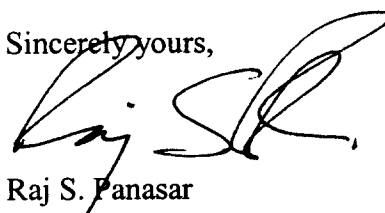
	Proposal for transactions between the company and its consolidated subsidiaries. Although this is how the equivalent rule has generally been interpreted for the purposes of disclosure in the United States, a specific exception should be included in any European legislation for the sake of clarity.
V.II.H.1	We respectfully submit that it should be made completely clear in the rules that interim financial statements (both for inclusion in the prospectus and, on a separate matter, for the purposes of ongoing reporting) can be prepared on an unconsolidated basis, even if annual accounts are prepared on a consolidated basis. It should be noted that many companies, for example, Korean companies, customarily do not prepare (and are not required in their home country to prepare) any interim accounts other than unconsolidated interim accounts. We understand that it would be an unacceptable burden, particularly in terms of expense, for many of these companies to be required to prepare interim accounts on a consolidated basis.
VII.L	Disclosure of known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's financial position (CESR Proposal IV.D.1) would appear to render the disclosure requirement under CESR Proposal VII.L largely redundant. We believe that CESR Proposal IV.D.1 is a better approach than CESR Proposal VII.L since, in our view, CESR Proposal IV.D.1 would result in better quality disclosure. See also our comment on CESR Proposal IV.D.2.
VIII.F	The current UKLA requirement for Specialist Certificates requires that only contracts relating to the issue, as opposed to all material contracts, be put on display. This rule has worked very well for international companies listing Specialist Certificates on the London Stock Exchange. We question whether a requirement to put all material contracts on display is worthwhile and believe that many issuers will consider this requirement to be unnecessarily burdensome. If such a requirement is ultimately imposed, specific provision should be made for the permitted removal of any such documents upon such document terminating or becoming obsolete and otherwise after a specified period. We do not believe that there should be any duty to update such documents. We also believe specific provision should be made for electronic display of such documents.
VIII.G	We respectfully submit that all the information required under VIII.G.1 and VIII.G.2 is unnecessary if consolidated annual financial statements are included and the organisational structure of the group is described under CESR Proposal III.D.
IX.A	Derogation is invariably granted from disclosure of such information upon application, whether the depositary is organised and regulated in a Member State or elsewhere. We note that most of the institutions that act as depositaries are incorporated and regulated in the United States. Accordingly, dispensation from having to disclose information under CESR Proposal IX.A should be provided for irrespective of the jurisdiction of incorporation of the depositary.

X.C.1	Many issuers may find it difficult to provide a capitalisation and indebtedness table as of a date no earlier than 60 days prior to the date of the document. Issuers are likely to find it more practicable to provide such a capitalisation and indebtedness table as of their last balance sheet date and include a statement that there has been no material change in their capitalisation and indebtedness since that date or disclose any material changes as a footnote to such table.
X.D	We respectfully submit that repeating the risk factors specific to the securities in the key information section is unnecessary. Such risk factors would be fully disclosed in the risk factors section under CESR Proposal II.B.
X.F	We respectfully submit that this CESR Proposal is overly broad and unclear. Determining what would need disclosure would be fraught with problems. This CESR Proposal is not qualified by materiality and many things that would be considered to be insignificant would appear to require disclosure under the current wording. We would respectfully urge CESR to undertake detailed consultation regarding any alternative proposal.
X.G.12	It is unclear what is meant by this CESR Proposal.
X.G.13	This CESR Proposal duplicates to a large extent CESR Proposal X.G.3.
X.G.14	We respectfully submit that disclosure under this CESR Proposal would be excessive, particularly because all such information would be publicly available in any case. Contrast this CESR Proposal with the absence of any requirement to provide a description of the particular regulatory regime that applies to the company's specific business -- for example a description of the telecommunications regulatory environment for a telecommunications company.
X.H	It should be noted that this CESR Proposal appears to be more appropriate for retail offerings of depositary receipts, which are very rare.
X.I.4	Much of this CESR Proposal seems to relate to retail offerings of depositary receipts, which are very rare. We also believe that CESR Proposal X.I.4(b) requires further clarification.
X.I.5(c)	We do not believe that disclosure of any conditions for the use of the over-allotment facility or exercise of the greenshoe should extend to conditions imposed by the underwriters on the issuer as such conditions are customary. In addition, if the details of such conditions are indeed of any interest to investors, they would be available in the underwriting agreement on display. It would be more unusual for the issuer to impose conditions upon the underwriters, and if such conditions had been imposed, it may be appropriate to require disclosure of such conditions under this CESR Proposal.
X.J.4(d)	We do not believe that detailed disclosure under this CESR Proposal would be of any significant interest to investors. Disclosure of the force majeure clause is not unusual and would be acceptable. However, detailed disclosure of any other conditions precedent would, in our view, be excessive. It should be noted that details of such conditions would be available in the underwriting agreement on display.

X.J.4(e)	This CESR Proposal appears to duplicate much of the information that has been required to be disclosed in other CESR Proposals in X.H and X.I. This general CESR Proposal would probably allow many of the other CESR Proposals in X.H and X.I to be deleted.
X.K.3	We do not believe that any disclosure in this regard would be of particular use to investors. We would expect issuers to find making any detailed disclosure in this regard very difficult since much depends on the advice of underwriters and the judgment of the issuer and the underwriters at the time of pricing. We believe the any such requirement would ultimately result in anodyne, standard disclosure which would be of little use to investors.
X.L.3	We do not believe that any disclosure in this regard would be valuable. We would expect details of market makers at any time to be publicly available information. It is not unusual to disclose, in an IPO document for example, that a public market in the relevant securities may not develop. Disclosure of a list of market makers existing at the time of the offering may well give investors a false sense that a liquid market will exist and will continue, when in fact, market makers may cease making a market shortly after an offering.

Please do not hesitate to contact the undersigned if you have any questions concerning this letter.

Sincerely yours,



Raj S. Panasar