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12 August 2003

Mr Fabrice Demarigny
Secretary General
Committee of European Securities Regulators

By email

Re: CESR Consultation on Possible Implementing Measures of the Proposed Prospectus Directive

Dear Fabrice

We have set out below our response to the CESR Consultation Paper dated June 2003 “CESR’S advice on Level 2 Implementing Measures for the Proposed Prospectus Directive” (the ‘Consultation Paper’). We have limited our comments to two sections of the Consultation Paper, namely section III.4 Closed Ended Investment Funds and section IV Format of the Prospectus.

CLOSED ENDED INVESTMENT FUNDS

Question 151 Do you agree with the disclosure obligations set out in Annex G as being appropriate for this type of issuer? Please give reasons for your answer.

We would suggest the following amended language (see underlined text) for the proposed new rules 2.2, 2.4 and 8.4:

Rule 2.2: “Where more than 20% of the gross assets of the of the Fund (except where 2.3, 2.4 or 2.5 applies may be....”

The current proposed wording is ambiguous as it stands. It should be clear that where collateral is advanced, as set out under rule 2.4, further disclosure relating to the underlying counterparty is not required.

Rule 2.4: “With reference to 2.2 (c), if collateral is advanced to cover that portion of the exposure to any one counterparty in excess of 20% of the gross assets of any Fund, details of such collateral”.

Again, to avoid ambiguity we have expanded on the wording for this requirement. It should also be noted that counterparty exposure is not ‘reduced’ where collateral is advanced. The exposure still exists, notwithstanding the fact that collateral will be available to the fund in the event of the underlying counterparty’s insolvency etc. Our proposed wording attempts to address this distinction.

Rule 8.4: “An indication of the most recent net asset value should be included in the securities note (and, if unaudited, clearly marked as such)”.

It should be clear to prospective investors whether financial information is audited or unaudited.

Question 154 Do you consider there is a distinction to be drawn between these two types of activities, as set out above? Please give reasons for your answer.

We agree that a distinction should be drawn between passive investment funds and trading companies on the basis that passive investment funds, by virtue of their investment activities, should be able to avail of less onerous requirements than trading companies, however please refer to our comments below.

Question 155 What would you consider to be an appropriate and sustainable distinction between both activities?

We do not agree with the distinction proposed in Question 154. Passive investment funds and trading companies may choose to invest for both capital gain and income generation. It is overly simplistic to polarise the two types of activity by virtue of either ‘capital gain’ or ‘income generation’. We would suggest that a more appropriate definition for passive property investment funds is ‘any fund which invests, on a passive basis, in the holding of real property in the long term’. ‘Long term’ could, for example, be assessed in terms of average leasehold periods and the letting terms of the property assets. Any property vehicles which do not fit into this regime should be categorised as trading companies, to which the normal RD disclosure requirements relating to equity and/or debt would apply.

FORMAT OF THE PROSPECTUS

Question 172 Which of the options set out above do you support? Please give your reasons for your choice.

We support option 3 on the basis that issuers should have maximum flexibility to order disclosure requirements in the manner most appropriate to the type of issue and investor profile. Please note, however that we have no objection to the summary being included at the front of the prospectus together with a prominent statement directing prospective investors to where risk factors are set out in the prospectus.

Question 176 Which of the options set out above do you support? Please give your reasons for your choice.

We support option 3. We concur that the summary should be included towards the beginning of the prospectus and believe that issuers should have maximum flexibility to order the securities note requirements and registration document requirements in the manner most appropriate to the type of issue and investor profile.

Question 182 Which of the options set out above do you support? Please give your reasons for your choice.

We support option 2 on the grounds that a supplement to the summary would be a more streamlined and flexible approach.

If you have queries on any of the responses which we have made please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Maire O'Connor', with a stylized, cursive script.

MAIRE O'CONNOR
PARTNER
INVESTMENT MANAGEMENT GROUP