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**INTERNATIONAL PRIMARY MARKET  
ASSOCIATION**

**Response to the European Commission Working  
Document ESC 36/2003 on the Implementation  
of Articles 5, 7, 10, 11, 14 and 15 of the European  
Parliament and Council Directive 2003/71/EC on  
the Prospectus to be Published when Securities  
are Offered to the Public or Admitted to Trading  
on a Regulated Market**

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*The International Primary Market Association is the organisation which represents the managers and lead managers of debt and equity securities in the international capital market. A list of IPMA members may be found on its website at [www.ipma.org.uk](http://www.ipma.org.uk)*

15 December 2003

## **INTRODUCTION**

We would like to reiterate our support for the objective of the Prospectus Directive (*the Directive*) to achieve a harmonised and efficient European capital market while providing an appropriate level of investor protection. We appreciate that in producing this working document the Commission has taken into account the majority of the measures proposed in CESR's "level 2 advices", although in some cases we note that CESR advice has not been followed. We have made comments to both CESR and the Commission on previous occasions and some of these comments have been disregarded in the working document; in this paper we reiterate those which we believe are critical to the continued operation of the EU capital markets.

We reiterate our concern that the meaning of 'equivalent' in relation to financial information has still not been addressed. It is vital that this question is resolved as a matter of priority to provide non-EU issuers with certainty and to prevent them from withdrawing from admission to trading on EU markets due to the current uncertainty, of which we know both CESR and the Commission are well aware.

We highlight areas within the working document which we feel are in need of attention, either by way of redrafting, in which case we have tried to offer drafting suggestions, or by way of reference to CESR advice where this has not been followed.

We have very real concerns in relation to the clarity of the provisions contained in the working document. At present, in many provisions, although we believe we understand the intention behind the words, the actual text is sufficiently unclear that we have serious reservations as to whether any competent authority, let alone an issuer and its advisers, could fully understand the rules they must follow. The nature of the proposed instrument as a Regulation demands the utmost clarity in its drafting.

Our comments reflect the views of our members which include the major European banks and financial institutions active in this market. Several of the institutions we represent have shared concerns with us from their perspective as issuers and investors in their own right.

## **TECHNICAL COMMENTS ON THE WORKING DOCUMENT 36/2003**

### **General**

#### ***Implementation***

The Directive must be implemented uniformly or distortions will occur. We have raised with CESR our concerns about the date of implementation in the various EU Member States but understand that they believe this is not something for CESR to address. Member States have 18 months from the date of the Directive entering into force (being the day it is published in the Official Journal) in which to implement the Directive. However, currently, Member States are free to choose the precise date on which they will implement the Directive and it is not unreasonable to assume that different Member States will choose different implementation dates. We believe that procedurally something needs to be put in place to overcome the problems which will inevitably arise in this case. For example, a prospectus which complies with the Directive could be produced in one Member State but would not be able to be

passport into any other Member State which had not yet implemented the Directive. This would be particularly problematic for issuers of equity or low denomination securities which are “anchored” to particular home Member States.

We know that the Commission is aware of the uncertainty in the market caused by the combination of a lack of information as to when the Directive itself will be published in the Official Journal and the fact that, by its provisions, it comes into force on publication. The market finds this an extremely difficult concept to deal with, particularly those directly affected by its coming into force, namely non- EU issuers who wish to choose their home Member State. We hope the Commission will not allow this to be repeated in the context of implementation. We suggest that one of the key roles of the Commission is to ensure proper and co-ordinated implementation by Member States with regard to the Directive in order to avoid serious market disruption and uncertainty.

### ***Mapping***

We assume that the architecture used to map the “road” to a particular Annex and/or building block, depending on the type of issuer and the nature of the securities, has been developed to harmonise the implementation procedure across Member States. However, as currently drafted, we believe the language is both too complicated and provides insufficiently clear guidance. Adding to this confusion is the fact that the information is repeated in different terms and inconsistently in separate provisions within the working document, including, the Map itself in Annex 2 as well as the detailed mapping provisions within Article 3, there is also guidance given in the Recitals and the derogations given in Article 5.

For example, it is not clear how an issuer would choose the correct Registration Document for securities which are excluded from Appendix D because of the 100% redemption requirement, if the securities are retail.

We would encourage the Commission to include all information on mapping in one place, for example, a simple statement within Article 3. Article 3 could then refer to a table or flow chart, containing all the guidance and definitions in footnotes.

Unless these issues are addressed there is a risk that competent authorities will interpret the provisions differently, leading to patchy implementation across the different Member States. We give the following two examples to illustrate why the interconnection between the substantive provisions and mapping require a clearer approach.

(i) *Annexes I and K*

Annexes I and K of CESR/03/208 set out respectively the minimum disclosure requirements for inclusion in the Wholesale Debt Registration Document and the Bank Registration Document. While Annex I allows a 'wholesale debt issuer' to describe the accounting differences and draft a warning notice, this is not provided for in Annex K even where a bank issues non-equity securities of greater than €50,000 denomination. Although we understood that this was an oversight, it still has not been addressed in the current document. As currently drafted, questions have been raised over the interaction of the Annexes and whether a bank issuer will be able to use Annex I (which would possibly avoid the 'difficult for banks' disclosure in line with Annex K). Further, it is not clear whether a competent authority will require a bank trying to issue wholesale debt to comply with Annexes I and K, thereby giving rise to a full IAS accounts requirement.

(ii) *Treatment of Exchangeables*

We note that there is currently no specific building block which deals with exchangeables and would request clarification as to whether it is envisaged that there will be such a building block. If such a building block is not included, we believe there may be a requirement to create a separate approach under 'level 3'. As currently drafted it is not clear whether exchangeables would be dealt with as 'Derivatives', in which case Annexes I and L will apply. If this is the case then presumably the only requirement with regard to the underlying is contained in item 4.2.2. However we are unsure where the reference in the map to "admitted on a regulated market" comes from and what it is really intended to mean. It seems from the map that, if the third party underlying shares are not listed on a regulated market they do not fit into the map at all as they would not appear to fit into the next category (resulting in the application of the underlying share building block) because, according to the map, that only applies when it is the issuer's own shares which are not on a regulated market.

A major issue in the case of exchangeables is that the issuer can only produce publicly available information and there is no possibility of changes eg. restated accounts to IAS. Accordingly, applying normal equity treatment to the underlying might require IAS accounts for financial information when it is not available and cannot be created by a third party. This would, in effect, close the market for non-IAS exchangeables. Alternatively exchangeables might be treated as 100% repaid debt as in most exchangeables the debt element subject to the exchange represents the right repay 100% of nominal amount. Given the importance of the exchangeables market, especially for those securities that are not listed on a regulated market (for example, because they are listed on another major stock exchange like Tokyo or New York) we strongly request that the Commission deals with this issue.

***Avoidance of duplication***

The interaction of the provisions to do with convertibles and exchangeables throughout the Regulation is very hard to follow. We believe that where a security gives a right to a share which is already admitted to trading on a regulated market, and full disclosure in respect of the underlying share has been made in accordance with the Directive, there should be no need to duplicate that disclosure in the new

prospectus; a cross reference should be sufficient. This situation should be made clear beyond doubt.

### ***Programmes***

The vast majority of issues in the international debt market use a programme structure. The total annual volume of straight debt using programmes approaches €2,000,000,000,000. The programme structure is an efficient and cost-effective way to issue debt securities, which are issued at short notice to take advantage of market conditions or to meet specific funding or investment requirements. Speed, flexibility, cost-effectiveness and an ability to respond to market conditions are essential. It is therefore extremely important to the EU economy that disruption to this market is avoided.

The opportunity to do a particular trade at a particular price is only available for a very short time and so it is imperative that there should be no prior approval process for the terms of each drawdown. The base prospectus sets out the most common of the expected terms of issues under the programme. If an opportunity arises in the market for an issue that represents a variation on those common terms, it must be possible to conclude the transaction without a further approval process. Accordingly, in order to preserve the flexibility and speed of the current system, we believe any information which, as currently proposed, would be in the Securities Note should also be capable of inclusion in the final terms if it forms part of the terms of the debt being issued.

### ***Transitional Arrangements***

Given the importance of programmes within the EU markets, we believe the Commission should consider introducing transitional arrangements to avoid the need for hundreds of programmes which already exist to be redrafted and reapproved by the relevant competent authority. To ignore this practical transitional issue risks causing chaos in the market, extreme pressure on competent authorities, and both commercial and financial disruption for issuers and investors.

### ***Multi issuer programmes***

Although we have previously made this point to CESR, it has not been reflected in the working document. There is nothing within the current proposals, or in CESR's advice, which gives any guidance as to which Member State is to be the home Member State for multi issuer programmes for low denomination debt securities.

This is a very real and practical problem which must be addressed by providing a mechanism to determine the home Member State for such programmes, or else there will be a cumulative need for several Member States to review the prospectuses. We do not believe this result or the current lack of certainty is in the interests of the market, the issuers or the competent authorities or that it is in the spirit of the Directive.

Although we appreciate that this is a problem deriving from Level 1 of the Directive, we suggest that the Commission could use the power within Article 2(4) of the

Directive to vary the definition of home Member State and deal with this as a technical matter.

The preferred market result would be one which is consistent with current practice and which gives issuers free choice between the home Member States of the relevant issuers and guarantors, if any. This is not the absolute free choice that exists currently i.e. it is restricted to those “affected” home Member States and is therefore consistent with the overall balance in the Directive between complete free choice and the more restrictive approach adopted for equity and low denomination securities. An alternative would be to provide for the home Member State to be that of the guarantor, where there is one, although not all multi issuer programmes will have guarantors.

### ***Equivalence***

While Annex 1, appendix 1, para 11.1 provides for the use of a statement of material differences instead of full IAS in the case of debt with a denomination of E 50,000 or more, our concerns remain in respect of low denomination debt. We consider that this should be dealt with at the same time as the same point in the transparency directive, and recommend that action is taken as soon as possible and a statement made to the market as to which non EU accounting standards will be deemed equivalent to IAS.

### **Recitals**

#### *Recital 6*

We are concerned that the generality of this Recital will adversely effect the interpretation of the mapping and related provisions which must specify, in a clear and uncomplicated way, what types of securities fall within which Annexes. For example, there are types of equity securities for which the equity Annex will not be appropriate. We would therefore recommend the definition of equity securities be amended to keep it within the definition in the Directive.

#### *Recital 11*

The description of the guarantee in the Recital goes beyond the concept of credit support which is central to a guarantee; it is even broader than the definition contained in the relevant building block in the Annex. As a result, it is not clear what purpose the Recital is intended to serve.

#### *Recital 13*

This Recital and certain of the subsequent Articles and Annexes do not clearly reflect the fact that many derivative securities do not have a ‘denomination’ and for this reason we believe the present wording ‘derivative securities with a denomination per unit of at least EUR 50,000’ is both unhelpful and misleading. We suggest that all such wording throughout the document be replaced with the wording used in Article 3 (I) i - ‘debt or derivative securities with a denomination of at least EUR 50,000 or that can only be acquired on issue for at least EUR 50,000’.

We are pleased that this Recital acknowledges currencies other than the Euro; as previously noted, 60% of issuance in the international debt market is in currencies other than the Euro. However, we believe that a substantive provision of the Regulation should clearly specify when the exchange rate is to be determined. The new draft Transparency Directive deals with this problem by fixing the equivalent on the date of issue.

We also ask that some guidance be given as to the meaning of ‘nearly equivalent’ for the purposes of the €1,000 denomination and how the various limits in relation to the €50,000 denomination should be construed when issuance is in a currency other than the Euro in terms of “closeness” to €50,000. This is a serious practical issue that must be addressed to meet the objectives of the Directive.

#### *Recital 15*

This Recital confuses rather than clarifies. It is also not clear which Annex this Recital refers to. Following CESR advice, we note that where a bank guarantees a special purpose vehicle, it cannot use Annex K. CESR’s advice goes on to say that banks, for the purposes of Annex K, should include not only ‘credit institutions’, as defined in the Directive, but also regulated firms such as investment banks that have substantial experience of issuing securities. It appears CESR’s advice on this point has not been taken, and, therefore, it is not clear which provisions apply to investment banks. Investment banks are large issuers in their own right and therefore this is a serious market concern. We therefore encourage the Commission to draft the Recital in order to bring it into line with CESR’s advice. In addition, this critical matter should be covered by a new substantive provision, probably by way of a definition.

We previously suggested that insurance companies should also be provided with a specific Annex. CESR did not take up this point, but as insurance companies and their affiliates are large issuers, we do not think it should be forgotten. Insurance companies are subject to very detailed regulation which means that the information they are able to produce is in a particular form which may make it impossible for them to meet the same requirements as a corporate issuer, while at the same time being designed by international agreement to reduce their risk of insolvency. It is hard to see why the same arguments that apply to banks do not apply to insurance companies.

#### *Recital 16*

As this Recital indicates, “derivative” includes those debt instruments that are not strictly “debt” (because of the 100% payback definition), but which the market views as debt. Derivatives have been put in the ‘everything else box’, but we suggest that their position should be clarified in a substantive provision and in the map. As the definition of debt is so restricted, “derivatives” are a large market sector and therefore it is important that their position is beyond doubt.

#### *Recital 17*

We assume that this Recital refers to Appendix N, although the purpose of this Recital is not clear. The Recital requires amendment in order to clarify the position it is

trying to achieve; otherwise there is a danger that competent authorities will interpret this Recital in different ways.

#### *Recital 18*

As currently drafted the Recital goes further than the position which is set out in the Directive with regard to the final terms. We assume that this is not the intention. As a solution, we suggest the addition of the words ‘where appropriate’ after the words ‘...Directive applicable to a prospectus are applicable’ in the third line of the Recital.

#### *Recital 20*

This Recital should be cross-referenced to the substantive provisions. By way of amendment the words ‘have the possibility’ should be replaced with ‘be able’.

#### *Recital 23*

In order to preserve the current system in relation to the final terms and in particular its flexibility and speed, we believe any information which would otherwise be in a securities note, should be capable of inclusion in the final terms, if it forms part of the terms of the debt being issued.

This Recital is not drafted consistently with the text of Directive or its intent. In particular the reference to ‘detailed pricing characteristics’ is too narrow; the “final terms” concept is much broader - as provided for in Article 5(4) of the Directive. The Recital appears to conflict with Article 6.4 of the Directive and *inter alia* Article 4.1 and 4.2 of the working document. In drafting terms, we think the Recital should be amended by deleting the words up to the first comma and replacing them with ‘Where the final terms do not contain any material information on the issuer or only contains such information which is also contained within the relevant base prospectus.....’.

#### *Recital 27*

In order to avoid prospectuses being published in inappropriate national newspapers, the words ‘and be appropriate to the securities being offered’ should be added after the words ‘in each Member State’ in the final line of the Recital.

The number of copies sold should not be used to determine the criteria for selecting a publication. The wording “(number of copies sold)” is also inconsistent with Article 12 and should therefore be deleted. We also suggest that the wording ‘the assessment of circulation’ be replaced with ‘the assessment of scope’ to be consistent with Article 12.

#### *Recital 28*

We are not clear as to which Member States have power to require publication of notice. The second and third sentences refer to “a” Member State and “These Member States” respectively. We believe these references should be to the home Member State only. Otherwise, issuers under programmes could be complicated by



different national requirements on publication and severe timing difficulties could result.

## Articles

### Article 2

The definition of ‘risk factors’ is in danger of going further than the definition used in the Annexes. Accordingly, the definition should be simplified to mean ‘a risk factor as defined in the relevant Annex’. It is unhelpful to issuers to have to apply multiple standards when drafting their disclosure document, nor does it help investors.

### Article 3

Article 3(1), as currently drafted, overrides the maximum harmonisation objective of the Directive which aims to prevent competent authorities requiring more information to be included. We therefore recommend that the second sentence of the first paragraph of Article 3 (1) be deleted.

Article 3(1)(a)(ii): This Article introduces a new definition of ‘other shares’. The new definition has narrowed the definition of equity, and causes confusion because it conflicts with the Directive. The definition removes the entitlement to the wholesale regime for certain securities. It seems to be drafted so that there is a division between the Securities Note and the Registration Document as to where disclosure appears. This division will only add confusion for the investor. We believe that an investor would expect to see the disclosure in relation to the issuer in the Registration Document and the terms and conditions of the issue in the Securities Note. A suggestion would be to leave the decision of whether to include information on the securities in the Registration Document to the issuer. We strongly recommend that the definition of equity securities here should be the same as it is in the Directive.

Article 3(1)(a)(ii) – Under the second limb in the third line, after the comma should read ‘, are or will be issued by the issuer of the security and *securities of that class* are not...’

Article 3(1)(a)(ii) and n) contain the wording "at the issuer's or at the investor's discretion". This is in contradiction to Article 2(1)b) of the Prospectus Directive. The Prospectus Directive refers to securities "giving the right to acquire any of the aforementioned securities". Those securities which are exercised or converted at the discretion of the issuer contain an obligation, but not a right to acquire equity for the respective investor.

In connection with exchangeables, referring to Article 3(1)(a)(ii), it is not clear what is meant by ‘equivalent market’. The criteria for “regulated market” status include, first, meeting certain tests, and then being nominated by a Member State or its competent authority (so that some markets may choose not to apply for regulated status even if they meet the objective criteria – and we understand that some markets do intend to choose unregulated status). Therefore, it is not possible to know which characteristics a third country market has to have before it is “equivalent”. We do not understand why, if convertibles are included, exchangeables are not included too.

This provision is not drafted clearly enough to identify the distinction of underlying securities and the securities actually being issued.

The situation of convertibles under Article 3(1)(c) needs to be dealt with separately.

In Article 3(1)(d), the use of the words ‘corporate debt’ is unnecessary and incorrect. This should instead, make reference simply to ‘debt’, and in any event references to ‘debt’ should be ‘non-equity securities’.

Article 3(1)(d) – 100% should be at Securities Note stage, rather than at the registration document stage

Some convertibles are not equity, as they do not fall within the equity definition in the Directive. Under the draft Regulation, however, all convertibles are currently collected into Annex A. This treatment does not accurately reflect the Directive. Instead, Annex A should be limited in scope to those convertibles that are treated as equity under the Directive and the remainder should fall into the wholesale or retail debt regime (depending on denomination).

Article 3 (1) (i) needs to deal with issues denominated in currencies other than euros. Recital 13 contains some useful language that could be copied across; but it will need to be amended to make it clear when the the relevant exchange rate is to be determined. It would be helpful to both issuers and competent authorities if the date for determination of the exchange rate were around the time of application for listing. Otherwise, a lot of time and effort may be spent by issuers and competent authorities in preparing and reviewing a prospectus on the assumption that the securities will fall within the wholesale regime, which will be wasted when the exchange rate moves in the wrong direction shortly before admission.

In Article 3(1)(k) the words ‘and similar institutions’ should be added into the sixth line after ‘non EU banks’ to cover credit unions. In any event, as stated above, EU and non-EU investment banks should receive a more specialised treatment.

#### *Article 4*

Article 4(1) is currently too broad and gives insufficient guidance to the competent authority. At the end of the first paragraph, the reference to ‘amended and completed on a case by case basis’ should be amended to read ‘can be adapted but not extended’.

We assume that, where the Article makes reference to a case-by case decision as to whether to supplement the summary of the base prospectus with a summary of the material information included in the final terms, it does not mean producing a summary of the final terms. If this requires an issuer to summarise the final terms, it means that when new final terms were produced, a new summary would be required which would subsequently require approval. This would effectively make the base prospectus provisions of the Directive impossible to operate.

To make the drafting clearer we recommend that the words ‘or produce a new summary of both the base prospectus and the final terms’ be deleted from the sixth line of Article 4(6). Also, after the words ‘by way of footnotes’ in the last line, should be added ‘, blacklining or otherwise.’

We are unclear why Article 4(4) requires the preparation of separate prospectuses for the four designated categories as we believe they could be dealt with by means separate sections within the same prospectus. We would prefer the latter result. As drafted it is clearly unhelpful, as it would require four separate documents, four separate approvals and four several sets of fees charged by the competent authority.

If there were to be four categories, it needs to be made clear, as recommended by CESR, that each category can contain and deal with as many different types of securities, within each category, as the issuer chooses. This is consistent with CESR advice. We believe the use of “shall not mix” is unhelpful. The point is that the information should be presented in an “easily analysable and comprehensible form”, as required by Article 5 of the Directive.

We also recommend the deletion of the words ‘When a base prospectus covers issues of various types of securities’ in the first line of Article 4(4), as this does not appear to add any meaning.

#### *Article 5*

We recommend amending Article 5(2) by deleting the words ‘not relevant’ at the end of the last paragraph and replacing with ‘is not suited to meet the Article 5 requirement’.

We also recommend an amendment to Article 5(3) by adding the words ‘including by way of materiality’ after the words ‘is not relevant’ in the third line. This deals with the requirement under Article 5 in the Directive for only disclosing what is material.

#### *Article 7*

In both Article 7(1) and Article 7(2), the words ‘linked to the issue and the type of security covered by the issue’ should be deleted from the relevant lines after the words ‘the risk factors’ so this is consistent with the proposals in the Annexes. Also, the second bullet point of Article 7(1) should be amended to insert the words ‘if required’ after ‘the summary’, because a summary is not required under the Directive for non-equity securities with a denomination of EUR 50,000 or above.

#### *Article 8*

The words ‘linked to the issue and the type of security covered by the issue(s)’ should be deleted from the sixth line after the words ‘the risk factors’ in Article 8(1). Again, as with 7(1) above, the second bullet point of Article 8(1) should be amended to insert the words ‘if required’ after ‘the summary’.

Article 8(2) should be amended by replacing the words ‘not be mixed up but shall be clearly segregated’ in the last line of the paragraph with the words ‘be presented in an easily analysable and comprehensible form.’

The first bullet point contained within Article 8(4), should be amended by inserting the words ‘providing such information has not been updated or is otherwise not current and/or complete or correct’ after the words ‘of this Regulation’ in the last line.

### *Article 9*

Article 9(2) The term "publication" should be replaced by the wording "official publication as required by national corporate law" because in some jurisdictions the term "publication" may be interpreted as including a press conference, a press release or an internal approval.

We believe that there may be a risk that, through publishing the list required by Article 10 of the Directive, issuers may be incurring additional liability. The fact of publication might directly result in their being liable for that information under the laws of the country in which they publish the list – for example, under the law of negligence and similar torts. This point could be dealt with, at least in some jurisdictions, if the Regulation permitted inclusion of a paragraph stating that the issuer assumes no additional liability for the Article 10 information beyond that which was assumed on the original publication of the document.

### *Article 10*

We need a practical approach to dealing with incorporation by reference. There are two particular issues we believe the Commission needs to address within the Regulation. Firstly, how should non-EU issuers incorporate information which they have filed with non-EU regulatory authorities? This question is critically important given the number and importance of non-EU issuers. There must at least be an acceptance for voluntary filing with an EU regulatory authorities when a non-EU issuer has filed with a non-EU authority, and which can then subsequently be incorporated by reference.

Secondly, the Directive does not permit incorporation by reference of future documents. This will result in practical problems in connection with programmes, especially in the context of quarterly reports. If quarterly reports published under the Transparency Directive lead to the need to publish a supplement to a Registration Document or base prospectus, there will be *de facto* blackout periods for programme issuers, because there will be a delay every quarter (or even half-year) while supplements are awaiting approval. We therefore suggest a fast track approval process for prospectus supplements resulting from information published under the Transparency Directive.

Article 10(1) should also be amended by replacing the word ‘notably’ with ‘including’ in the second line. In Article 10(1), information should clearly be capable of being incorporated even though not formally reviewed or approved by the relevant Competent Authority. It can, according to the Directive, be merely ‘filed’ with a Competent Authority.

Clarification is necessary on the meaning of ‘regulated information’ and ‘circulars to security holders’.

There should also be an eighth bullet point added which should read ‘or filed with the relevant home Member State at the same time as the relevant prospectus or base prospectus.’

To deal with the issue of part incorporation, we recommend the amendment of Article 10(3) to insert the words ‘or part of the document’ after the words ‘If the document’ in the first line. Also, the words ‘or refers to’ need to be added after the words ‘incorporated by reference contains’ in the first line of this Article.

We do not understand Article 10(5). The Directive allows incorporation by reference without any qualification as to “comprehensibility and accessibility of the information”. As Article 11 of the Prospectus Directive limits incorporation by reference to information provided under the Directive and CARD (presumably soon to be replaced by a reference to the Transparency Directive), the information so incorporated will already be “comprehensible and accessible”. Adding the qualifying words in the regulation only adds to issuer’s uncertainty as to what they are permitted to do; and makes it a hostage to fortune at the hands of aggrieved investors who may seek to argue, in reliance on the words of the Regulation, that the information should have been set out in full in the Prospectus. We believe that the Regulation conflicts with the substance of the Directive in this area.

#### *Article 11*

Is there any such thing as an IT format which “cannot be modified”? PDF files are reasonably robust; but determined IT specialists will be able to alter them. It would be much more helpful to specify existing formats that are acceptable, if only by way of example.

We also believe that consideration should be given, in Article 11(2), to permitting more than warning notices to investors. The laws in the area of electronic information dissemination are not at all clear at present; but there appears to be a tendency to make laws apply depending on whether the information was “directed at” the relevant jurisdiction. To avoid directing information at particular jurisdiction, it may be necessary to require people attempting to log into issuer websites to identify themselves, so that issuers (say) in the United States of America can be screened out. After correct identification, a password will be issued to the person attempting access.

The risk of the Regulation exposing EU (and other) issuers to liability in other jurisdictions is, we believe, significant unless appropriate amendments are made.

#### *Article 13*

As currently drafted, this Article gives the Member State the option to require the publication of a notice. Given that the publication requirement is optional, it should be left to the Member State which has this option, and not the Regulation to determine the content of the notice. If the Regulation determines the content requirement, this does not produce harmony, as Member States have the option in any event – it is therefore redundant.

#### *Annexes*

For reasons of space, we will not set out again the points we have previously made in regard to the Annexes, but we point out that a number of them are still valid.

## **Conclusion**

We urge in the strongest terms that these issues, many of which have been raised repeatedly, should be dealt with. It is particularly important that a Regulation, the text of which becomes law without further interpretation, should be as free as possible of ambiguities or inconsistencies.

If there are any questions, please do not hesitate to contact the IPMA secretariat. Full contact details are shown on the IPMA website [www.ipma.org.uk](http://www.ipma.org.uk) .