EUROPEAN COMMISSION
Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE
Company law, corporate governance and financial crime

Brussels, 03.05.06 2000
MARKT/F2/FFP/se D(2006) 5006

Subject: Transparency Directive

Dear Lord Woolf,

Thank you for your letter of 23 March in relation to Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to issuers whose securities are admitted to trading on a regulated market (the "Transparency Directive").

Let me address first the concern that the Transparency Directive could generate a potential liability of issuers and auditors towards investors generally or the public at large. As David Wright explained in his letter of 25 February 2004 to the European Union Committee of the House of Lords, the Transparency Directive does not aim at extending the scope of existing liability regimes in the Member States. It is for Member States, under Article 7 of the Directive, to determine the scope of the responsibility for the information contained in the annual and half yearly financial reports, the interim management statements and any changes to the rights attaching to securities. This is expressly confirmed by Recital 17 which provides that "Member States should remain free to determine the extent of liability". Article 7 only requires that such liability lies at least with the issuer, its administrative management or supervisory bodies. The Directive takes no position as to the scope of the liability regime, nor does it prescribe the persons who should be benefiting from such a regime. This matter is entirely for the Member States. The Directive does not modify the situation currently prevailing in the Member States.

We do not agree with the interpretation that a general duty of care of issuers towards investors could be inferred from the requirement of the Directive that information must be "disclosed to the public", read in conjunction with some of the Recitals which indicate that the overall objective of the directive is to ensure a high level of investor protection throughout the EU. In our view, the words "disclose to the public" have the same meaning in the Directive as "disclose" and "make public". Information which must be "made public", "disclosed" or "disclosed to the public" under the Directive, is "regulated

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information" as defined under Article 2(1)(k) of the Directive and, as such, must be disseminated in accordance with Article 21 of the Directive. Article 21(1) does not require that regulated information actually reaches every investor throughout the European Union. It imposes on Member States to ensure that issuers use "such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community". The obligation relates to the use of appropriate media for dissemination. Article 13(2) of the Working Document on possible implementing measures, which the Services of DG Internal Market published last November on the Internet[1], confirms this interpretation.

Let me now turn to the concern of a potential surge in multi-jurisdictional civil law suits as a result of the Transparency Directive. Though we understand that such a concern may exist, we do not believe, for the reasons which we have outlined in the preceding paragraphs, that the Transparency Directive in itself could be interpreted as warranting the introduction of far-reaching liability regimes or could constitute an incentive for Member States to introduce such regimes. Here also, the Directive, in our view, does not modify the situation currently prevailing in the Member States.

I hope that these remarks usefully address the concerns expressed in your letter. Please do not hesitate to contact Pierre Delsaux should you wish to discuss these matters further.

Yours sincerely,

Alexander Schaub

c.c.: Messrs. Delsaux, Wright, Pellé, Fernandez Salas
Ms. François-Poncet

[1] http://europa.eu.int/comm/internal_market/securities/docs/prospectus/workingdoc-tansparency-dir_en.pdf