CESR’s recommendations for the consistent implementation of the European Commission’s Regulation on Prospectuses No 809/2004

The Bank and Insurance Division of the Austrian Federal Economic Chamber, legally representing the Austrian Credit Institutions, would like to comment CESR’s recommendations on the Prospectus Directive as follows:

IV NON FINANCIAL ISSUERS

Question 142
Detailed recommendations are necessary.

1a PROPERTY COMPANIES

Question 150
Yes

Question 151
Those of the country of the competent authority.

Question 152
Condensed reports should be allowed.

Question 153
For each property.

Question 154
In Practice it will be older than 60 days, otherwise it is not practicable.
Question 155
The condensed report should cover at least 80 / 90 % of the property value.

1b MINERAL COMPANIES

Question 164
We agree with the usefulness of a valuation report.

Question 165
Not included in the schemata/definition “mineral resources” in a wide sense could be other mineral resources (e.g., water), and in general other kinds of energy (wind, etc) - an explication is needed.

Question 166
No (in that case the efficiency of their exploration work will be to be assessed).

1c INVESTMENT COMPANIES

Question 171
In general yes, but the following aspects should also be taken into consideration. The guideline should contain at least similar requirements which exist for OGAW’s; additionally they should face the specific problem of closed ended funds: the illiquidity of the sec market/exit strategies of the fund/investors/track record/dependencies on any technical trading systems or key persons, having developed such trading systems.

1d SCIENTIFIC RESEARCH BASED COMPANIES

Question 177
No, because of the high competition concerning patents in this specific field of business, it seems to be unreasonable to require such fundamental statements concerning current developments and (secret) projects. Additional statements may be requested ref. sponsorship, dependencies, promotions, dangerous chemicals and biological products, waste disposal.

1e START UP COMPANIES

Question 187
Basicly yes, there should be added the risk factor “No track record / newly founded company”.

Question 188
Preferred definition: 3 years of existence (its a more objective criteria).

Question 189
i) In General helpful for analysts to assess/evaluate the company’s value / future.

Question 191
Yes.
Additionally: The question remains open, what an auditor audit should / check in case of an for example 2 months existing company. Guidance may be helpful.

1f SHIPPING COMPANIES

Question 200
Yes (but it remains open, why airlines are not included).

Question 201
ii) For material vessels / the report should cover 80-90 % of the turn over / all vessels’ value.

Question 202
Additional information concerning the compliance with EU-rules / other regional guidelines, which may influence the vessel’s value in the long term run basicly / for which routes the respective vessels are admitted (EU waters).

Question 203
Home member state of the issuer or international standards / rules.

Question 204
In Practice it will be older than 90 days, otherwise not practicable.

Question 205
See Question 201.

Question 206
Yes.

2) CLARIFICATION OF ITEMS

Question 210
Yes.

Question 211
Yes.

a) Principal Investment

Question 219
Not really necessary.

Question 220
Yes.

Question 221
No.
b) Property, Plants and Equipment

Question 224
Yes.

c) Compensation

Question 226
No.

Question 227
No.

d) Arrangements for the Involvement of Employees

Question 234
No.

e) Nature of Control and Measures in Place to Avoid it Being Abused

Question 238
Yes.

Question 239
Possible legal mechanism, how further control may be obtained (description of the squeeze out requirements of the respective country of the issuer).

f) Related Parties Transactions

Question 243
Yes.

Question 244
Yes.

g) Legal and Arbitration Proceedings

Question 247
Yes.

Question 248
Yes.

h) Acquisition Rights and Undertakings to Increase Capital

Question 252
Yes.
i) Option Agreements

Question 257
Yes.

j) History of Share Capital

Question 261
Yes.

k) Rules in Respect of Administrative, Management and Supervisory Bodies

Question 265
No.
If yes, additionally helpful: notification of their meetings / notification period / conditions for attending these meetings / minutes.

l) Description of the Rights Attaching to Shares of the Issuer

Question 268
Yes.

Question 269
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m) Material Contracts

Question 274
In general agreed, but for reasons of business secret the required information should be less detailed.

n) Statements by Experts

Question 280
Yes.

Question 281
The Export himself should disclose (his) the % of turnover, based on several mandates of the issuer’s group within the recent 3 business years / dependence on this client. Functions of business partners, component supplying industry, etc.

o) Information on Holdings

Question 291
Yes.

p) Interest of Natural and Legal Persons Involved in the Issue / Offer

Question 295
Yes.
Question 296
Yes.

q) Clarification of Terminology used in the Coll. Inv. Undertakings of the Closed-End Type Schedule

- For “broadly based and published” we think more specifications and requirements are needed (following this wording any private person could for subjective reasons create such a new index).
- If the management is totally free concerning its management style (no internal regulations) this special risk factor should be mentioned + negative statement concerning the required details.
- Should be harmonised with UCITs.

3) RECOMMENDATIONS ON ISSUES NOT RELATED TO THE SCHEDULES

a) Rec. for Documents…

Question 310
Yes.

Question 311
Yes.

Question 312
Yes (language of the issuer’s seat).

Question 313
Yes.

b) Identification of Competent Authority

In general:
For the sake of concentration and more efficiency transfer in all cases seems to be appropriate: To save time during the preparation period of an issue at the end of the day only one authority should be responsible for the whole prospectus.

Question 328
Yes.

Question 329
To be discussed in Paris.

c) Content of a Disclaimer

Question 333
Yes.
Best regards,

Dr. Herbert Pichler
Bank and Insurance Division
Austrian Federal Economic Chamber