Dear Fabrice,

We have submitted the above-captioned consultative paper for comments to the “Comité Marché des Valeurs Mobilières” (hereafter the “Committee”), a consultative committee of the CSSF dealing with securities issues and the members of which are representatives of the professional intermediaries, including bankers, brokers and lawyers.

Please find hereafter the responses of the members of the Committee to the questions contained in the above-mentioned consultation paper.
III. Historical Financial Information

1. **Selected Financial Information**

   Question under point 30:  *Do you agree with this proposal? If not, please state your reasons.*

   The members of the Committee considered that the text was not clear enough, especially provisions under points 26, d) and 29.

2. **Operating and Financial Review**

   Question under point 37:  *Do you consider that it is appropriate to include key performance indicators about past performance?*

   The members of the Committee considered it appropriate to include key performance indicators about past performance. They stressed that one year of past performance would be sufficient in this context.

3. **Capital Resources**

   Question under point 42:  *Do you agree with this proposal? If not, please state your reasons and please provide alternative information.*

   The members of the Committee pointed out that information on funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled as stated under point 39 is going beyond the scope of what may be required under 10.1 to 10.5 without adding value for the investor. In fact, they stressed that this kind of information is covering the short time, subject to changes. This information is not relevant and not necessary for the investor to make an informed assessment of the proposed investment. It may even be considered being misleading information.

4. **Profit Forecasts or Estimates**

   Question under point 50:  *Do you agree with the above approach in relation to profit forecasts and estimates? If not, please state which particular aspects you do not agree with and give your reasons.*

   The members of the Committee had no specific comments on the approach of CESR in relation to profit forecasts and estimates.
Question under point 51: Do you consider that it is appropriate to provide examples of what may or may not constitute a profit forecast or estimate? If so, could you please provide some examples?

The members of the Committee did not consider that it is appropriate to provide examples of what may or may not constitute a profit forecast or estimate.

5. Restatements of historical financial information

Question under point 75: Do you agree with the conclusion stated in the previous paragraph? If not, please state your reasons.

The members of the Committee agreed with these conclusions.

Question under point 85: Do you agree with this proposal? If not, please state your reasons.

The members of the Committee agreed with this proposal.

6. Pro Forma Financial Information

Question under point 92: Do you agree with this proposal? If not, please state your reasons.

The members of the Committee agreed with the proposal in relation to reports prepared by independent accountants or auditors.

Question under point 98: Please provide examples of indicators of size which you consider appropriate.

The members of the Committee were of the opinion that only two figures are appropriate: the turnover and the total balance sheet.

Question under point 99: CESR members had a discussion on appropriate definitions of indicators of size. Should they refer to IAS/IFRS figures, local GAAP figures, other definitions or not defined at all? If you provided examples of indicators of size in response to the preceding question, please explain your preferences on definitions of the proposed indicators.

The members of the Committee considered that, because of all the possible cases which may exist, it would not be appropriate to define the indicators of size.
7. **Financial Data not extracted from issuer’s audited financial statements**

Question under point 103: *Do you agree with this proposal? If not, please state your reasons.*

The members agreed with the proposals made by CESR in relation to financial data not extracted from the issuer’s audited financial statements.

8. **Interim Financial Information**

Question under point 112: *Do you agree with this proposal? If not, please state your reasons.*

The members agreed with the proposals made by CESR in relation to interim financial information.

9. **Working Capital Statements**

Question under point 134: *Do you agree with this proposal? If not, please state your reasons.*

The members agreed with the proposals made by CESR in relation to working capital statements.

10. **Capitalization and Indebtness**

Question under point 136: *Do you agree with this proposal? If not, please state your reasons.*

The members agreed with the proposals made by CESR in relation to the presentation of capitalization and indebtedness.

### IV. Non Financial Information Items

1. **Specialist Issuers**

Question under point 142: *Recital 22 of the Prospectus Regulation invites CESR to produce recommendations on the adapted information that competent authorities might require to the categories of issuers set out in Annex XIX of the Regulation. Do you think...*
detailed recommendations are needed for specialist issuers or do you think the special features of these issuers could be addressed mainly by the disclosure requirements set out in the schedules and building blocks of the Regulation?

The members of the Committee considered the particular types of specialist companies as presented by CESR to be a sufficient list. They did not see any additional types to be added.

Questions under points 150-155 related to property companies.

The members of the Committee pointed out that the prospectus should give information and explanations on the standards applied in relation to the valuations. They further considered that certain assessments in relation to valuation should be left to the expert who prepares the valuation. From their point of view, a summary valuation report should always be accepted if the entire report is available on request or available in electronic format. The members of the Committee considered that the time limit of 60 days of validity of reports is not appropriate, stressing that a report older than 60 days may still be valid and that in other fields as for example for investment funds, valuations are accepted on a yearly base.

Question under point 171: Do you agree with the proposed recommendations? If not, please state your reasons.

The members agreed with the proposals made by CESR in relation to investment companies.

Question under point 177: Do you agree with the proposed recommendations? If not, please state your reasons.

The members agreed with the proposals made by CESR in relation to scientific research based companies.

2. **Clarification of Items**

Question under point 210: Where there are common information requirements according to the Prospectus Regulation to equity, debt or derivative securities, do you think that the same recommendations are valid?

and under point 211: Do you think adaptations are necessary with respect to the different needs as regards debts and derivatives registrations documents?
The members considered that it is appropriate to differentiate between requirements for equity, debt or derivative securities, having regard to the differences in the legal position of the securities holder towards the issuer which will trigger different information needs.

Question under point 305: *What are your views on the proposed recommendations for closed ended investment funds? Please state reasons for your answer.*

The members agreed with the proposed recommendations for closed ended investment funds.

3. **Recommendations on issues not related to the schedules**

Question under point 328: *Do you agree with the proposed recommendations for the base prospectus relating to different securities? If not, please state your reasons.*

and under point 329: *Do you agree with the proposed recommendations for the single document compiling more than one base prospectus? If not, please state your reasons.*

The members of the Committee considered that issuers should have free choice in relation to the competent authority for the approval of these prospectuses. The following arguments were pointed out:

Question 328 relates to base prospectuses where different securities with different denominations (less or higher than €1000) may be approved by more than one Member State competent authority. Question 329 relates to programmes, documented by a single document (a folder), compiling more than one base prospectus.

Although technically there are two different cases, the answer to the two questions can only be the same, because in the practical day by day work the problem is the same.

With both proposals, delays and other problems will be unavoidable. Timetables are imposed on by market conditions. Burdensome and complicated procedures will generate delays and will be in nobody’s interest.

The major aims of the prospectus directive were to simplify the procedures for the issuers and at the same time to improve investor protection.

Both objectives can be achieved when CESR grants the free choice of the home Member State to the issuers of programmes for the approval of those documents.

The free choice for issues with denominations of more than €1000 was a compromise, but nevertheless this compromise is based on mutual trust the Member State competent authorities must have in each other.

Why should this mutual trust not work in this case, where it will be in the interest of all participants in the market.
Question under point 333: *Do you agree with the proposed recommendations? If not, please state your reasons.*

The members agreed with the proposed recommendations in relation to the content of the disclaimer.

Please note that the above-mentioned comments have been made by the members of the Committee during a meeting organized to examine the consultative concept paper.

Yours sincerely,

COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER

Françoise KAUTHEN
Attaché de direction

Charles KIEFFER
Directeur