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Committee of European
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February 6, 2003
Friedrich/dp
Stock Exchange Listings

CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive – Addendum to the Consultation Paper – December 2002 – Ref: CESR/02-185-b

Dear Mr Demarigny,

Commerzbank Aktiengesellschaft is pleased to take the opportunity to comment on the Addendum to the Consultation Paper on CESR´s advice on possible Level 2 Implementing Measures of the Proposed Prospectus Directive.

We especially welcome the Proposed Prospectus Directive and the related implementation measures as a further important step on the way to an integrated European financial market. The implementing measures proposed by CESR will have a significant impact on the future practice of the capital markets regarding the issuance of securities including the due diligence procedures and the drafting of the prospectus. Therefore, CESR has to ensure the practicability of such measures as they will have a direct impact on the timing and the costs of an issuer as well as on the degree of investor protection and investors`confidence in the European capital market. The aim should be to achieve a balance between protection of the investors and the capital market, on the one hand, and the input in time and expenses for the issuers, on the other. In our response to the consultation paper released by CESR in October 2002 to which we refer, we have already listed certain key points which, from our point of view, could inhibit from reaching this aim. Nevertheless we deem it necessary to stress some additional important points in the following. Furthermore, our responses to the suggested implementing measures and to most of your questions are attached.

· Building Block Approach

As we already emphazised in our response to the first consultation paper we are in principle in favour of the building block approach. Nevertheless, we believe that the building block approach needs to be significantly simplified and improved. The creation of too many building blocks aiming to provide specific disclosure requirements for each sub-type of issuer or security is connected with the risk that flexibility and the ability to deal appropriately and speedily with particular cases will be impaired. An inflexible system could counterbalance the aim of the Prospectus Directive to facilitate the raising of capital. In our opinion any attempt to develop an elaborate system of specific instrument- and industry-based building blocks will not work. It will not be possible to capture every type of issuer or security within such a framework. There is a danger that the competent authority may refuse to list securities if an issue does not fit within one of the pre-determined categories. Therefore, such an approach may have the effect of excluding from the market innovative issues which do not conform to an established annex.

In addition, the application of the disclosure requirements in the various annexes to different types of issuers and instruments has to be clarified. It is not clear whether or not a certain

registration document/securities note will be valid for other kinds of securities. For example, is it allowed for an issuer who has prepared a registration document for equities to issue debt securities and derivative securities on this basis? Furthermore, a clear ranking between the different registration documents/securities notes is completely lacking. For example, which parts of which building blocks would apply to a bank issuing derivative securities and/or retail debts? It would appear to be some combination of the special building block for banks, Annex 2, and Annexes M, 3 and 9 which apply to derivative securities and Annexes I and L which apply to retail debts.Many of the disclosure requirements of the various annexes overlap to a greater or lesser extent but are not always consistent.

· **Another Consultation necessary**

We are aware of the fact that CESR is required by the European Commission to deliver its technical advice by March 31, 2003. Nevertheless, we would like to emphasize the high importance of comprehensive consultations of the market participants. CESR received over 80 responses to its first consultation paper released in October 2002. A similar number of responses to the addendum to the consultation paper can be expected.

We think that the great number of responses to the consultation paper(s) shows that the market participants have recognised the significance of the implementing measures proposed by CESR on the future practice of the European capital market, its liquidity and its capability to compete with other international capital markets. According to the comments of the market participants there is a widespread fear that the regulations proposed in the first consultation paper will lead to an overregulation at Level 2 which will result in a high degree of inflexibility (particularly with new, as yet unknown products) and increased costs to the issuers without the investors having any particular benefit from it.

In our opinion a careful analysis of the comments by CESR is required because of the controversial approaches market participants presented to ensure that the interest of the issuers and investor protection will be balanced by the final implementing measures. Furthermore, we consider it essential to consult the market for a second time about the whole consultation complex after analysing the different responses even if this means that the consultations would not be finalised in March. The development of implementing measures which will be practicable and therefore will have a positive impact on the European capital market appears more important than keeping the set timeframe.

Kind regards,

C O M M E R Z B A N K
Aktiengesellschaft

Sennhenn Gerhardt

Encls.

CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive

Addendum to the Consultation Paper

December 2002

COMMERZBANK

Part one – Registration Document

Debt Securities

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Wholesale Debt Building Block)

QUESTION 15: Do you consider that information about an issuer's principal future investments should be disclosed? Please give your reasons?

An investor in a company's debt will in general primarily be interested in the solvency of the company. Information with respect to the company's investments is not material for an investor in debt securities. In some exceptional cases in which this information might be material it will be disclosed under the general disclosure requirement. We therefore did not consider such information to be disclosed to retail investors. Investors in wholesale securities even need less extensive disclosure than retail investors due to their far greater level of knowledge and experience. Such information therefore should not be disclosed.

QUESTION 16: Do you consider that a description of only some of these items should be made?

No. For the reasons see our answer to question 15.

Liquidity and capital resources – CESR ref: IV.A. (Wholesale Debt Building Block)

QUESTION 18: Do you consider that information about a company's capital expenditure commitments would be of value to "wholesale market investors"?

We are of the opinion that special information about a company`s capital expenditure commitments are not of particular value to wholesale investors. However, such information will be included in the financial statements anyway. In addition, CESR should consider that anything of particular materiality relating to capital expenditure has to be disclosed under the general disclosure requirements.

Trend information – CESR ref: IV. B. (Wholesale Debt Building Block)

QUESTION 22: Should any profit forecast that is included be reported on by the company's auditor or reporting accountant?

As we commented previously in our response to CESR`s first consultation paper, we are of the opinion that there should be neither an obligation to include profit forecasts in the prospectus nor a requirement to report on included profit forecasts by the company`s auditor or reporting accountant.

Issuers are reluctant to include profit forecasts in the prospectus with respect to their liability for this document. To include forecasts seems to be highly risky and sometimes even misleading because a company`s growth/performance depends on certain factors outside the issuer`s control. Therefore, in the United States an issuer is only required to disclose presently known data that will have an impact on the future operating results. Further, profit forecasts could be regarded by investors as having the seal of a certain degree of credibility and reliability (not at least because the prospectus is officially approved).

The requirement to report on profit forecasts by the company`s auditors would be rather costly and it is obvious that auditors would be very reluctant to give such a report if they have not audited the figures yet which would lead to a further delay in the finalization of the prospectus. Under the condition that auditors would be willing to provide a report in some cases we expect that they will comment only on the connection between assumptions and profit forecasts and not on the assumptions themselves. Therefore the report would only be of limited use to investors as it would not substantially raise the quality of the included profit forecast.

QUESTION 23: Do you consider that the requirement to disclose an issuer's prospects should be retained, or should this requirement be deleted?

The requirement to disclose an issuer's prospects should not be made mandatory as such statements are of little meaningful substance. In our opinion the no material change statement possibility would be an adequate disclosure requirement.

Board Practices – CESR ref: V.C.1 and 2 (Wholesale Debt Building Block)

QUESTION 25: Do you consider it necessary to continue to require disclosure of Board practices for issuers of such securities?

We do not consider such disclosure to be necessary because it is, as CESR according to paragraph 24 recognises as well, of much less significance for wholesale investors making an investment decision in relation to this type of securities. As we have mentioned above only information relating to the risk of a potential insolvency of the issuer should be disclosed in the prospectus. Corporate governance failures do not comprise/increase the insolvency risk.

Major Shareholders – CESR ref: VI.A. 1 and 2 (Wholesale Debt Building Block)

QUESTION 27: Do you consider that these disclosure obligations should be required?

QUESTION 28: CESR`s expectation is that either both would be deleted or both retained. Do you consider that only one of these disclosure obligations is necessary and if so, which?

We agree with the majority of CESR members that this kind of information is unlikely to have a significant effect on the investor`s assessment of the issuer`s ability to meet its payment obligations with regard to interest and principal. Both proposed disclosure requirements should be deleted. On those infrequent occasions where there is anything of particular materiality in connection with the identity of the company`s major shareholders for the investor it will have to be disclosed under the general disclosure requirements.

Related party transactions – CESR ref: VI. B (Wholesale Debt Building Block)

QUESTION 30: Do you consider that this disclosure requirement should be retained in relation to this type of issuer?

The disclosure requirements relating to related party transactions should be deleted. Such information is not of significant value to wholesale investors as it is under normal circumstances not important for the assessment of the investor if the issuer is able to meet

its payment obligations with regard to interest and principal. Such infrequent occasions where the disclosure of related party transactions is material, it will be disclosed under the general disclosure requirement. In addition, information about related party transactions will be included in the financial statements. Further disclosure should not be required.

Interim financial Statements – CESR ref: VII. H (Wholesale Debt Building Block)

QUESTION 33: Do you consider this approach to be appropriate?

Yes, we consider this approach to be appropriate. It should not be made mandatory to produce interim accounts as long as those are not required according to corporate law. In addition, we suggest to make clear that it is possible to include such information – if so – by reference rather than reproducing it in the prospectus.

Documents on display – CESR re: VIII.C (Wholesale Debt Building Block)

QUESTION 35: Are your views or comments different from those in response to the first consultation paper?

Our views or comments in relation to documents being on display are not different from those in response to the first consultation paper. Only publicly available documents such as the memorandum and articles of association and (consolidated) annual and interim reports of the issuer should be displayed. Other documents, especially material contracts, are not appropriate for publishing on display. Material contracts often contain confidential information and the secrecy of their contents may be essential for the company. In addition, a complete display of these contracts could affect the competition because such a display would give competitors an easy access to contracts they otherwise would not have access to. Furthermore, with regard to the protection of investors it is not necessary to display such documents as material contracts. The investor has to be informed about the nature and the major risks of his investment. Information will be adequately summarized and disclosed in the prospectus. In connection therewith it is not required to put the investor in the position to carry out an own due diligence. In addition, the requirement to publish on display any document referred to in the prospectus will lead to an overload of information which could deter investors from being interested in the product at all. Last but not least, if such documents like material contracts had to be translated into the same language as the prospectus, this would impose significant extra costs and time delay.

In addition, please also refer to our comments in relation to the proposed Corporate Retail Debt Registration Document Building Block (Annex I).

Securities Issued by banks

QUESTION 43: Having reviewed the disclosure obligations set out in Annex [2], do you consider that a specialist building block for banks is justified?

In our opinion a specialist building block for banks is justified as the majority of CESR`s members recognises that banks are under close regulatory control and prudential supervision. Therefore, less information about the issuer is necessary as compared to corporate issuers because of the significant reduction of the credit exposure. However, CESR proposes that no specific building block is justified where a bank issues equity securities. If so, the disclosure requirements set out in Annex A would need to be modified in order to reflect the specific business activities of banks as opposed to corporates.

QUESTION 44: If so, do you consider that this specialist building block should be applied to non-EU banks, that are subject to an equivalent level of prudential and regulatory supervision, or should only EU banks be covered by this specialist building block?

The specialist building block should be applied to non-EU banks as well. The exclusion of non-EU banks from the scope of the specialist treatment would be unjustified as these banks are subject to a similar supervision in most cases. Furthermore, CESR should consider that inappropriate disclosure requirements for non-EU banks could prevent or deter such issuers from listing on EU markets. That would have a number of adverse consequences. The EU market would lose a significant volume of issuance and would contract in terms of size and liquidity.

However, we would like to propose to change the term “equivalent” into “similar” as, in most cases, the level of supervision non-EU banks are subject to will not be identical to the one EU-banks are subject to.

QUESTION 45: Other than those disclosures considered separately below, do you agree with the disclosure obligations for banks set out in Annex [2]?

See our mark-up of Annex [2].

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Bank Building Block)

QUESTION 47: Do you consider that information about a bank's principal future investments should be disclosed?

As already discussed before information on the issuer’s investments normally does not contribute to the ability of an investor to make an assessment about the issuer’s risk (see also our answers to questions 15 and 16) and therefore should not be disclosed.

Furthermore, due to the specific business activities of banks as opposed to corporates investments - if any - are of minor relevance and should in no case be required to be disclosed (see also our answer to question 43).

Board Practices – CESR ref: V.C.1 and 2 (Bank Building Block)

QUESTION 51: Do you consider it necessary to continue to require disclosure of Board practices by banks?

We do not consider such information to be necessary. The same reasoning applies as with regard to question 25.

Major Shareholders – CESR ref: VI. A. 1, VI. A. 2 and 3 (Bank Building Block)

QUESTION 53: Do you consider that the disclosure obligations [VI.A.1, VI.A.2 and VI.A.3] should be required for banks?

We do not consider such information to be necessary. The same reasoning applies as with regard to question 27 and question 28.

Related party transactions – CESR ref: VI. B (Bank Building block)

QUESTION 55: Do you consider that this disclosure requirement should be retained in relation to this type of issuer?

We do not consider such information to be necessary. The same reasoning applies as with regard to question 30. Furthermore, related party transactions are subject to the regulation and supervision by the supervisory authorities for the financial sector. For reasons of investor protection, there is therefore no need for additional disclosure requirements.

Interim financial statements – CESR ref: VII. H (Bank Building Block)

QUESTION 57: Do you consider the approach set out in VII.H of the Bank Building Block schedule to be appropriate?

Yes, we agree with the approach (see also our answer to question 33).

Documents on display – CESR ref: VIII.C (Bank Building Block)

QUESTION 59: Are your views or comments in relation to securities issued by Banks different from those in response to the Consultation Paper?

Our views or comments in relation to documents being on display are not different from those in response to the first consultation paper. The same reasoning applies as with regard to question 35.

Derivative Securities

Investments (Past, Present and Future) - CESR disclosure ref: III. B (Derivative Building Block)

QUESTION 66: Do you consider that issuers of derivative securities should be required to provide a description of their principal future investments? Please give your reasons.

No. The investor is only interested to verify whether the issuer will be able to meet its payments obligations under a derivative product. Information on planned future investments will not put an investor into a position to properly assess this risk. Furthermore, it is not clear what is considered to be a “future investment” for banks being the main issuers of derivatives.

Directors – CESR ref: V.A.1 (Derivative Building block)

QUESTION 69: Do you consider that the information set out in V.A.1 of the Derivatives Building block should be restricted to the directors of the issuer? Please give your reasons.

The information set out in V.A.1 of the Derivatives Building block should be restricted to the directors of the issuer. However, it must be clarified that only top-level management of the company`s management or its supervisory body may be mentioned as only these persons have ultimate business authority. All other employees should not be named. As this paragraph should only focus on the top-level management it seems advisable to delete the term “administrative” as administrative functions are usally not assumed by the top-level management.

Management and directors conflict of interests – CESR ref: V.B (Derivatives Building Block)

QUESTION 71: Do you consider that the information set out in V.B of the Derivatives Building block to be relevant and necessary disclosure for these products? Please give your reasons.

Such information is neither necessary nor helpful for an investor as a conflict of interest should not in any way inhibit the issuer`s capacity to fulfil its payment obligations under a derivative instrument. Furthermore, an issuer should regularly not be able to detect conflict of interests of its directors as under the current legislation directors do not have an obligation to inform the issuer about any potential conflict of interest.

Board Practices – CESR ref: V.C.1 and 2 (Derivative Building Block)

QUESTION 73: Do you consider it necessary to require disclosure of Board practices for issuers of derivative securities? Please give reasons for your answer.

No. The compliance of corporate governance rules by the Board will not have any impact on the capability of the issuer to fulfil its payment obligation under a derivative product and thus is of no interest for the investor.

QUESTION 74: Do you consider it necessary to require disclosure of Board practices for issuers who are banks of derivative securities? Please give reasons for your answer.

No. See answer to question 73.

Related party transactions – CESR ref: VI. B (Wholesale Debt Building Block)

QUESTION 76: Do you consider that this disclosure requirement should be retained in relation to derivative securities? Please give your reasons.

No. Principally, the investor will not benefit from such information. In addition, information in this respect is disclosed to a certain extent in the issuer`s annual report which is sufficient for the investor`s risk assessment.

Interim financial statements – CESR ref: VII. H (Derivatives Building Block)

QUESTION 78: Do you consider the approach set out in VII.H. of the Derivative Building Block schedule to be appropriate?

We consider the approach to be appropriate.

Documents on display – CESR ref: VIII. C (Wholesale Debt Building Block)

QUESTION 80: Are your views or comments in relation to derivative securities different from those in response to the Consultation Paper?

Our views or comments in relation to documents being on display are not different from those in response to the first consultation paper. The same reasoning applies as with regard to question 35.

The disclosure requirements for guaranteed derivative securities

QUESTION 87: After review of the proposed disclosure requirements for banks set out in Annex [2], do you consider it necessary to set out separate disclosure requirements for guaranteed derivative securities issued by banks (including for these purposes special purpose vehicles whose obligations are guaranteed by banks), or should all such derivative securities irrespective of their percentage return be treated as all other non-equity securities issued by banks (or special purpose vehicles whose obligations are guaranteed by banks)? Please give your reasons.

Guaranteed and non-guaranteed derivative securities should be treated in the same way. It is unnecessary to have separate disclosure requirements.

From an investor`s point of view it does not make any difference whether a purchased derivative is guaranteed by the issuer or not – in both cases he will have to rely on the issuer´s ability to meet its payment obligation under the derivative instrument, i. e. under the “guaranteed” obligation and the “non-guaranteed” obligation.

If the payment obligations of a special purpose vehicle under a derivative are guaranteed by a bank the essential terms of such guarantee must be disclosed in the registration document. Apart from that, for the reasons above, there is no necessity to treat guaranteed and non-guaranteed products differently.

QUESTION 89: Having reviewed the disclosure obligations set out in Annex (3) for derivative securities issued by banks or special purpose vehicles whose obligations are guaranteed by banks, and the disclosure obligations set out in Annex (2) for all other non equity securities issued by banks, what, if any, additional disclosures do you consider a bank issuer or special purpose vehicle issuer whose obligations are guaranteed by a bank of a guaranteed derivative security should provide? Please give reasons for your answers.

See answer to question 87.

The disclosure requirements for derivative securities issued by entities other than banks or special purpose vehicles whose obligations are guaranteed by banks

QUESTION 92: Do you consider that the disclosure requirements for Banks issuing derivative products should also be applied to non-bank issuers of non-guaranteed derivative securities? Please give your reasons.

No. It should be borne in mind that, unlike other issuers, banks are strictly supervised. This certainly allows to reduce the disclosure requirements for bank issuers compared to non-bank issuers.

QUESTION 93:If you consider that there should be different disclosure requirements for non-bank issuers of derivative securities, on review of the derivatives disclosure requirements set out in Annex [3], and the "wholesale debt" disclosure requirements set out in Annex [1] please advise:

(a) what, if any, different disclosure requirements to those set out in Annex [3] should be applied to non-bank issuers of derivatives securities. Please give your reasons; and

(b) what if any, additional disclosure requirements set out in the "wholesale debt" disclosure requirements at Annex [1] should be applied to non-bank issuers of derivative securities. Please give your reasons.

One should take account of the fact that non-bank issuers are not supervised as banks are and that, therefore, the investor's risk when purchasing financial products of non-bank issuers instead of banks is considerably larger. The disclosure requirements should therefore correspond to those of Annex [I] including our comments thereto.

Please find below additional comments in relation to the proposed Derivatives Registration Document Building Block:

I.A.1. According to the current wording we do not understand under what circumstances a person is responsible for the prospectus. What are the legal implications of such responsibility? This needs to be clarified.

Please also bear in mind that all persons named in a prospectus might be sued by a dissatisfied investor regardless of whether his claims are justified or not. Therefore, names of employees not working at the top-level of a company should not need to be disclosed here. The wording in I.A.1 should confirm this.

According to Art. 6 of the ECOFIN Prospectus directive it is contemplated that "… the responsibility for the information given in a prospectus is at least incumbent upon the issuer ***or*** its administrative, management or supervisory bodies, …". In our view this would allow national legislation to determine that only the issuer should be responsible for the information given. I.6. of the Security Note for Derivatives does seem to reflect this by using the term "or". I.A.1. of the Registration Document for Derivatives is neither consistent with Art. 6 nor I.6 by requiring that "…the name and function of natural persons ***and*** name and registered office of legal persons responsible…" are to be provided. Therefore, I.A.1 should be amended.

I.A.2 Please insert after "… anything likely to …" the term "materially".

V.A. Please delete this paragraph to make sure that only top-level employees of a company are addressed in this paragraph – the term “directors” seems not to be precise enough (see answer to no. 69).

VI. Please delete this paragraph because information on the major shareholders will not affect the issuer’s ability to meet its payment obligations.

VII.A Please replace the terms “audit report” by the term “auditor’s report”. Please also make the appropriate change in VII.F.1

VII.B Please replace the terms “accountant's report” by the term “accounts”.

VII.G.1 Please replace “15 months” by “18 months” as the 15 month period seems to be too short.

VIII.C. Please delete “(k) each document mentioned in paragraph VIII.C (Material constracts)” (see answer to no. 80)

Asset Back Securities

QUESTION 96: Do you agree with the disclosure obligations set out in Annex [4] as being appropriate for this type of securities?

Annex [4] does not distinguish between ABS-Programmes or single asset securitisation transactions (CMBS, RMBS, CLO, CDO). They are not comparable enough to have the same features. Please refer to our comments marked-up in Annex [4].

Specialist Building Block for Shipping Companies

QUESTION 111: Do you believe that a specialist building block for shipping companies is appropriate?

A specialist building block for shipping companies is not justified. We would like to stress (as we already did in our response to CESR`s first consultation paper) that the production of too many building blocks aiming to provide specific disclosure requirements for each sub-type of issuer is connected with the risk that flexibility and the ability to deal appropriately and speedily with particular cases will be impaired. In our opinion any attempt to develop an elaborate system of specific industry-based building blocks will not work. It will not be possible to capture every type of issuer within such a framework. That`s why there is a danger that the competent authority may refuse to list securities if an issue does not fit within one of the pre-determined categories.

This applies in particular to the building block for shipping companies. The Core Equity building block could be adapted easily to ensure an appropriate disclosure of such an issuer. Annex 6 does not contain specific or additional disclosure requirements compared to the Core Equity building block. Annex 6 a, proposing valuation requirements, does not provide relevant information for the investor. The value of any of a shipping company`s fixed assets like vessels is not significant for the performance and the prospects of a shipping company. It will, if at all, only have a very limited influence on the share price (other than, for example its profitability or prospects) of such a company. In most cases what is more important is the value of the managing or leasing contracts a shipping company entered in. Though, such material contracts will have to be disclosed according to the general disclosure requirements anyway. Further, with regard to investor protection the provision of a valuation report does

not seem to be necessary as such a report is part of the annual accounts of a shipping company. Therefore, the information of the investors is guaranteed on a regular basis. The additional requirement to provide a valuation report at every time when securities are being issued is too burdensome for a shipping company because of the increased expenditures connected with such a requirement. In addition, the valuation of vessels is quite time-consuming and would lead to a substantial delay in the finalization of the prospectus.

QUESTION 112: Do you agree with the disclosure requirements in the registration documents for shipping companies set out in Annex (6)

No. A specialist building block for shipping companies is not justified. The Core Equity building block could be adapted easily to ensure an appropriate disclosure of such an issuer:

- The relationship to a ship management company that manages the vessels is only relevant if it is material to the issuer, especially if the issuer is dependent on this relationship. This is already covered by item III. C. 7 of Annex A.

- A description of the relationship between controlling shareholders of the issuer and the ship management company has to be disclosed under item VI. B. of Annex A if it is material to either the company or the related shareholder. If it is not material there is no need for specific disclosure with regard to investor protection. An overload of information should be avoided.

- Information regarding the vessels should already have to be disclosed under Annex A, item III. E. A detailed description should be avoided as it would lead to an overload of information.

- A contract to build a new vessel is a principal future investment that has to be disclosed under item III. B. 3 of Annex A; it should also be relevant under Annex A, item III. E.

- Insurance coverage for the issuer`s facilities is important not only for shipping companies and we assume that in the case that there is anything unusual or any specific risk involved (e. g. no or insufficient insurance coverage) this would have to be mentioned under item III. E of Annex A and in the risk factors.

QUESTION 113: Do you agree that valuation reports as set out in Annex (6a) should be required for shipping companies?

No. For the reasons see our answer to question 111.

Part Two – Securities Note

Proposal of a Blanket Clause

QUESTION 122: Do you agree with this approach?

We agree with this approach. A blanket clause is important to ensure that disclosure requirements can be appropriately tailored to the issuer.

QUESTION 123: Are you satisfied with the wording of the Blanket Clause?

We think that not only inapplicable items but also items of minor materiality should not have to be taken into account when drafting a securities note. Therefore, we propose the following amendment of the blanket clause:

"If certain information required in [line items] or equivalent information is not applicable to the issuer or to the securities to which the prospectus relates, *or is applicable but is not material in relation to the nature of the issue, the requirement in relation to such information shall not apply*."

Furthermore, it has to be clarified what is meant by the term "line items". This is not a term previously used.

Working Capital

QUESTION 125: Do you consider that this disclosure is more appropriate to the securities note or the registration document?

We consider that, generally, this disclosure is more appropriate to the registration document as working capital statements deal with information about the issuer. Information relating to the issuer should be included only in the registration document. Information regarding the security should be included only in the securities note in order to make a clear and transparent distinction between the two mentioned documents. Furthermore, CESR should consider that working capital statements in the securities note are of no importance for the investor and could even be misleading if there have not been any material changes in the working capital since the publication of the issuer`s annual report.

Additional information in the SN Equity Schedule

QUESTION 132: Do you agree with this approach?

We agree with this approach provided that the blanket clause is adopted.

Additional information in the SN Debt Schedule

QUESTION 136: Do you agree with this approach?

We strongly object to the requirement of examples in the prospectus. This concept is not followed by the majority of jurisdictions in which derivative products are issued. There is no need for such examples as the terms and conditions of the products sufficiently elaborate the features of the derivative product. However, if examples would be required, it has to be made sure that in the case of a base prospectus such examples will only be done once in the base prospectus and not in the final terms (the "Pricing Supplement").

We also strongly object to the requirement of best and worst case scenarios as it is extraordinary difficult (if at all possible) to summarise the criteria for a best/worst case scenario with respect to the performance of derivative securities. This is especially the case as the number of factors and their interdependence influencing the performance of derivative securities cannot be ultimately defined. However, a clarification (if applicable) that investors may lose the value of their entire investment should in any case be part of the risk warning section.

Additional information in the SN Derivatives Schedule

QUESTION 139: Do you agree with this approach?

Principally, the suggested changes (V.A Description of the securities to be offered / admitted to trading under numbers 9, 14 and 15) are agreeable. However, it seems that no. V.B. 11 already requires the information which is supposed to be provided by no. 9 and 15.

Our comments in relation to the SN Derivatives Schedule (see Annex [M]) remain unchanged.

QUESTION 143: Do you agree with the disclosure requirements set out in Annex [10] as being appropriate for asset backed securities?

Annex [10] does not distinguish between ABS-Programmes or single asset securitisation transactions (CMBS, RMBS, CLO, CDO). They are not comparable enough to have the same features. Please refer to our comments marked-up in Annex [10].

QUESTION 144: On review of the debt security note disclosure requirements set out in annex [L] to the Consultation Paper, please advise what if any of these items of disclosure should not be required for these types of securities? Please give your reasons.

II.B No. 5: After the issue has taken place and the proceeds are used to purchase the assets, no revocation is possible as the assets will not be able to produce sufficient proceeds to repay the Notes in case of such revocation.

III.B: Information can only be given in less detail.

V.A.17 Would lead to a far too complex prospectus. This should be accessible for the investor as available information at request (therefore it is covered by Registration Document - See Annex 4 I.B.6)

V.A.18 The Trustee is taking care of the interests of all creditors to the issuer. A direct claim – and therefore avoiding the trustee and the normal payment order in the ABS structure – is not possible and is contradictory to the ABS structure. The possibility of the Noteholder to receive amounts on enforcement of the assets will be described pursuant to Annex [4].

Additional SN Building Block for Guarantees

QUESTION 149: Do you agree with the proposal to have the disclosure obligations in relation to guarantees in a separate building block so as to allow greater flexibility in structuring the issue of securities?

We agree with this approach. However, regarding the scope of this building block it should be made clear that only such equivalent arrangements are covered which entitle the holder of the security to demand payment from the guarantor or equivalent thereof. A Keepwell Agreement for example does not provide a legal undertaking to the holder of the security. The information to be disclosed should be less extensive or even not be required in the case that the investor has no claims against such other company and the information therefore would be rather misleading.

QUESTION 150: Do you believe that the level of disclosure required by the proposed building block is appropriate? Please give reasons for your answer.

In our opinion the text of the guarantee should be set forth in its entirety because it is the legally binding document for the investors.

Additional SN Building Block for Subscription Rights

QUESTION 155: Do you agree with this approach?

We agree with this approach subject to the following comments/amendments:

- The meaning of items 7 and 9 is not clear.
- Item 12.3: This provision can be deleted as it is also contained in item 12.11.
- Item 12: This item should be deleted as this will lead to an overload of information and will not be of any added value for the investor.

QUESTION 159: Which approach do you deem to be more appropriate?

We deem the latter approach to be more appropriate as for **existing shares** a prospectus with extensive information has already been published.

Part Three – Summary

Need for Level 2 Advice

QUESTION 168: Given the level of detail provided for by the Ecofin Text on the scope, language, length and content of the summary; taking in consideration that the summary is based on the content of the prospectus and that it is up to the issuer to evaluate which elements are essential, do you believe that there is need for level 2 advice on the content and characteristics of the summary and that, in particular, there is need to prepare specific summary schedules? If not, please indicate what level 2 implementing measures should deal with. CESR also welcomes views on the way in which the need to standardise the content of the summary may be compatible with the maximum length the summary should normally have.

Specific summary schedules should not be prepared by CESR. Nevertheless, in our opinion some level 2 advice seems to be necessary despite of the level of detail provided for by the Ecofin Text on the scope, language, length and content of the summary. In principle, the summary document shall significantly increase the understanding of EU investors with respect to an issue, raise investor confidence and therefore expand retail market shares. For the summary document to achieve this goal, it should provide succinct information about a particular offer especially from the perspective of (retail) investors` needs in a simple and short manner (take into account the 2,500 words approach). Therefore, the summary cannot be simply a shortened version of the prospectus but has to be a meaningful synthesis of the key points chosen by the issuer and its advisers.

The specific purpose of the summary to highlight potential risks/investment considerations for the investor has to be officially stressed at level 2. In this connection it has to be made clear

that not all those items set out in the indicative list of Annex IV of the Directive have to be included. According to this list the summary would not be a summary as it should contain the material information of nearly all sections of the prospectus. In addition, if the indicative list of Annex IV of the Directive is mandatory it shall be impossible for the issuer to prepare a document consisting of only 2,500 words which is not misleading, inaccurate or inconsistent when read together with the prospectus (See article 6 para.2 of the Directive.)

Furthermore, since an effective summary cannot contain all relevant risk factors and related party transactions (not to mention the other items) it should also be made clear at level 2 that a summary of the types of risks (e.g. currency risk, high competition, product liability etc.) will suffice. Concerning the related party transactions it should be stated at Level 2 that a summary of the overall volume, parties involved and the fact that these were/were not executed on an at-arms` length basis should be sufficient.

Part four – Base Prospectus/Programmes

QUESTION 175: Do you have any comments on the preliminary views expressed in paragraph [174]?

Concept of Base Prospectus

The concept of a base prospectus shall entitle the Issuer of derivative securities or any other type of securities to issue on a frequent basis a large number of securities under an offering programme without preparing for each issue a full prospectus.

In order to achieve this result, the issuer of securities shall deposit with the competent authority a base prospectus under which the issuer can draw tranches of the relevant securities by executing so called **"Pricing Supplements"** providing the **final terms** of a certain transaction.

Content of the "Base Prospectus"

The Base Prospectus shall be divided into two parts :

1. The first part of the document shall contain a description of the issuer (including the guarantor, if any) and shall be composed of the same components as required for the registration document.

2. The second part shall provide a description of the securities to be issued under the relevant base prospectus including the risk factors as well as general information. (Furthermore, it shall contain a sample Pricing Supplement to be completed by the final terms of a securities issue drawn under the offering programme).

According to Article 5 No. 4 of the Prospectus Directive the base prospectus **does not** contain a summary.

The base prospectus will be presented by the issuer to the competent authority for approval within the frame work as set out in the prospectus directive as well as in the CESR papers.

Content of the "Final Terms" (Pricing Supplement)

The Pricing Supplement will be the final basis for an securities issue under an approved base prospectus and will determine the final details of a certain transaction, which can only be provided by the issuer shortly prior to the issue date of the relevant security.

The Pricing Supplement shall include -but shall not be limited to- the following information:

- Number of securities issued (Volume of transaction);
- Underlying, (in case of derivative securities);
- Coupon,
- Strike; Barriers etc.,
- Lifetime; Exercise Period;
- Evaluation Dates;
- Ratio;
- Risk Factors;
- Tax Language;
- Security Codes;
- Listing.

The Pricing Supplement shall be translated into the language of the market in which the securities are intended to be offered. However, being the final terms the Pricing Supplement is **not subject** to the approval of the competent authority or of any authority in the Member State where the securities are to be offered. Its existence can only be considered as a prerequisite for the offer in the relevant Member State.

QUESTION 176: Bearing in mind that the final terms will not be approved, what information disclosures from the securities note do you consider it would be appropriate to reclassify as being the final terms [for issues off a base prospectus]?

Please refer to our answer to question 175.