Additional Provisional Prospectus Mandate
Response to CESR's Second Call for Evidence

31 March 2003

Introduction

Deutsches Aktieninstitut e.V. is the association of German exchange-listed stock corporations and other companies and institutions which are interested in the capital markets with a particular focus on equity. Its most important task is to promote the acceptance for equity among investors and companies.

We fully refer to our comments on the Consultation Paper dated 31st December, 2002 and on the Addendum to the Consultation Paper dated 6th February, 2003.

I. Format of the prospectus (Article 5(5) of the proposed Directive)

1. Single Prospectus

The level of information to be included in a single prospectus should not be less than the information to be provided under a prospectus drawn up as separate documents. However, the disclosure level to be included in a prospectus should, in particular in respect of non-equity securities, be significantly less than the disclosure requirements based on the IOSCO standards set out in the Consulation Paper, the Addendum to the Consultations Paper and the relevant annexes (as set out in more detail in our comments on each of the Consultations Paper dated 31st December, 2002 and our comments on the Addendum dated 6th February, 2003).

2. Base Prospectus and Offering Programmes

The key features of a base prospectus are that:

- It can be used for a multiple number of issues of non-equity securities which are covered by such base prospectus;
- The terms and conditions of the base prospectus as such are not complete but the base prospectus provides for various sets of terms of conditions and sometimes (depending on the type of issuance and/or the governing law) a form of

Deutsches Aktieninstitut e.V.
Börsenplatz 5 60313 Frankfurt am Main
Telefon 0 69 / 9 29 15-0 Telefax 0 69 / 9 29 15-11
E-Mail dai@dai.de Internet http://www.dai.de

Deutsches Aktieninstitut e.V.
31, rue du Commerce 1000 Bruxelles
Phone +32 2 290 89 90 Fax + 32 2 290 89 91
E-Mail europa@dai.de Internet http://www.dai.de

a pricing supplement the specific terms and conditions of which (e.g. bearer notes or registered notes, floating rate or fixed rate, index linked or share or share basket linked certificate etc.) are chosen or specified (but not amended) in a supplement to be published in respect of the individual issuance under the base prospectus.

- A full review of the supplement and the base prospectus by the regulator is not required since the base prospectus as such has already been approved by the relevant supervisory authority.

A base prospectus may in particular used for offering programmes so that the following applies to offering programmes accordingly.

The proposed Prospectus Directive seems to envisage that the base prospectus shall not be drawn up as separate documents, i.e. as registration document, securities note and summary note although this would be technically possible and very useful for issuers which issue various types of securities (e.g. medium term notes and derivatives) and which would therefore able to use one Registration Document for all such issuances.

Given however that, pursuant to the proposed Prospectus Directive as currently drafted, the base prospectus is to be drawn up as a single prospectus (except for the supplement), in general, the same principles should apply to both a single prospectus and a base prospectus.

In principle, a base prospectus together with the relevant supplement should therefore contain the same amount of information as a normal prospectus. However, the pecularities of a base prospectus should be taken into account. Moreover, in accordance with Article 5(4) of the proposed Prospectus Directive which does not explicitly provide for a summary, a summary should not be required.

The base prospectus should contain disclosure on the issuer and a description of the types of instruments which are envisaged to be issued and the related risk factors. Disclosure on the issuer may be updated by means of a supplement in the form of the supplement contemplated in Article 16 of the proposed Prospectus Directive.

As set out above, the supplement should be drawn up on the basis of the terms and conditions set out in the base prospectus and it should contain the specific terms and conditions of the instrument to be issued which are elected by the issuer in respect of the individual issue.

As set out in Article 5(4) of the proposed Prospectus Directive, it should be possible on the basis of the terms set out in the base prospectus to provide the final terms (e.g. the offer price, the interest rate, the type of security elected such, as for instance, bearer notes or registered notes, any subscription ratios in the case of derivatives, the specific underlying such as, for instance, the shares or index to

which a derivative security is linked etc.) immediately prior or on the date of public offer. This would be acceptable since the relevant type of security has already been approved by the relevant supervisory authority.

Due to the variety of derivative instruments, we would not recommend to classify certain terms as "final terms" in a base prospectus annex. A definition of "final terms" based on the description above should be sufficient, e.g. the following: "Final terms are those terms and conditions of a security issued pursuant to a base prospectus which can be determined only shortly before or on the date of public offer."

II. Minimum Information (Article 7(1) of the proposed Directive)

Schedules for certain types of securities and the "building block" approach

With respect to the schedules for various types of issuers and securities, at least three structural issues should be raised (in relation to the advice and the annexes which CESR has provided in the Consultation Paper and the Addendum to the Consultation Paper):

First, the ranking among the company disclosure requirements for the registration document and the correspondent disclosure to be included in the securities note should be harmonised. Ideally, any new information about the company should be provided in a supplement to the registration document rather than in a securities note. Otherwise, the registration document would, as such, become outdated while, for each new issue, the same new disclosure about the company has to be included in each securities note. Obviously, this would result in a duplication of information, work and costs. Given however, that the current draft of Article 12 of the proposed Prospectus Directive actually provides for some information about the company even in the securities note, this has to be respected as long as this provision has not been amended. The scope of the disclosure to be included in a securities note is however very limited. Article 12 of the proposed Prospectus Directive refers to a "material change and recent development". According to Annex III of the proposed Prospectus Directive, in terms of disclosure about the financial condition of the company, the disclosure to be provided for in the securities note seems to be limited to "capitalisation and indebtedness". The disclosure described in the current drafts of the various annexes however goes far beyond these limited number of disclosure requirements to be dealt with in the securities note. Thus, it would be more time and cost effective if an issuer were in the position to update its data only once and to use it for a bigger number of issues. It would also be more transparent for investors if the registration document were limited to disclosure about the company while the securities note only deals with disclosure on the relevant securities.

Secondly, for the same reasons, the ranking among the various registration documents should be clear. It should be possible for issuers to base a bond issue, for instance, on a registration document for equity issues as long as this registration document is still valid. In other words, each "higher ranking" registration document should cover the issue of other securities which, as such, would only require a less comprehensive registration document. An unnecessary duplication of registration documents would lead to a lack of transparency and would therefore not give additional benefit to investors.

Thirdly, the reasons for the differentiation between the building blocks for whole sale debt, bank debt and derivative securities are not very clear. The derivative securities building block is designed to provide for lower disclosure requirements in respect of the issuer than other building blocks. It however contains some requirements which are not provided for in the bank building block. This contrasts to the fact, that the derivative building block is designed to apply only to banks or entities the obligations of which are guaranteed by a bank. That means that the disclosure requirements for derivative securities should not be higher (but lesser) than disclosure requirements for other bank debt securities. In line with the nature of such products, the disclosure for such instruments should focus on the product specific risks rather than the issuer.

III. Annual Information (Article 10(1) and (4) of the proposed Directive)

The list of information published within the last 12 months should, in principle, be published in the same manner as the prospectus. In addition, it should be possible that issuers may publish such list on their website or via a central website of the competent authority. It is crucial that disclosure on the issuer is easily available at a central location or on a central website. In this context, CESR should ensure that the relevant requirements are in line with the respective requirements under the proposed Transparency Directive and that both CESR mandates are coordinated in this respect.

IV. Incorporation by Reference (Article 11(3) of the proposed Directive)

The incorporation of memoranda of articles and annual and interim accounts by reference should be possible. However, press releases are, in general, published for marketing purposes rather than for regulatory reasons. Hence, press releases should not be explicitly recognised by CESR as eligible documentation to be included in a prospectus.

V. Publication of the prospectus (Article 14(2a) of the proposed Directive)

If a notice relating to the prospectus is published pursuant to Article 14 (2a), then such notice should be published on the website of the issuer and in a newspaper of supra-regional circulation which is customary in the relevant Member State for exchange and capital markets related announcements. Such newspaper should not be defined by the number of customers/readers as otherwise even tabloids may fall within the category of eligible newspapers. Such notice should contain a brief description of the key features of the relevant securities (issuer, the date of the prospectus, the type of securities, the securities identification number, the underlying [if any] etc.) and it should mention where the prospectus is made available to the investor (including the relevant website if the prospectus is published via internet etc.). Please see also our comments on questions 307 to 335 of the Consultation Paper.

A notice in relation to a base prospectus and a supplement should be published in accordance with the same principles as set out above. Moreover, a notice regarding a supplement under a base prospecuts should be published on the date of the public offer or the admission to trading at the latest.

With respect to the option to publish a prospectus exclusively via the internet as provided for in the proposed Prospectus Directive, CESR may consider wether it can, under the current or an amended draft of the Prospectus Directive ensure that, in any case, a prospectus should also be made available (and deliverable to the investor) as hard copy since not all retail investors have the technical facilities to use the internet and to print out a large prospectus of hundreds of pages. With respect to such hard copy made available to investors, it should be required to publish the prospectus by means of an announcement in an eligible newspaper as set out above.

VI. Advertising (Article 15(7) of the proposed Proposed Directive)

In Germany, advertisements in connection with a public offer of securities or an admission to trading on a stock exchange do not require any approval of the supervisory authorities. However, in the case of a public offer of securities each publication (including advertisements) of an offer of securities shall contain a reference to the prospectus and to the location where it is made available to investors. Moreover, if admission to trading in the official or regulated market has been

sought any publication shall, after such publication has been made, be filed with the stock exchange without undue delay.

A number of restrictions relating to advertisements are explicitly set forth in the proposed Prospectus Directive (see Art. 15(2) to (5)). These requirements already go beyond the rules which exist in Germany. Among others, such requirements also cover advertisements made prior to the publication of a prospectus or the public offer of securities (see Art. 15(2) of the proposed Prospectus Directive). Additional rules regarding the dissemination of advertisements do therefore not seem to be necessary.