10 February 2003

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

Reply of Euronext to the Addendum to the Consultation Paper
(ref. CESR/02-185-b)

Introduction :

As already stated in its reply to the main consultation paper, Euronext believes that the harmonisation of the content of the prospectus in Europe is essential in order to create a true integrated European market for issuers as well as to avoid regulatory forum shopping.

A number of concerns underlined in our first reply apply also to the measures proposed in the addendum to the consultation paper.

In particular, we believe that the sectorial building block approach will bring forward very little benefit.

We also want to stress that too much information will make it difficult for the investor to obtain a clear view on important issues. In this respect, the approach finally chosen must ensure that the issuer is not deprived from its responsibility to deliver the most relevant information. This is particularly true for issues or issuers that would be potentially concerned by several building blocks since the consultation paper does not give clear indications on the way the several building blocks may interact between one another. In complex cases, the elaboration of the prospectus cannot indeed be reduced to providing information on a very rigid pre-determined list of issues.

Moreover, there is a real need for dealing with forecasts and prospects with greater care.

Concerning the consultation process, Euronext believes that the consultation would have been easier for the consultees and more useful for CESR, if the consultation paper had been more synthetic and opinions required on more general principles, rather than very detailed and repetitive questions. In addition, a number of the questions put in the addendum to the main consultation, presuppose that certain issues have already been agreed upon, whereas it is not the case (e.g. information on profit forecasts, documents on display, etc.).

Moreover, Euronext wants to stress that the timeframe in which the consultees are required to deliver their contributions (a bit more than a month for this addendum) is inappropriate and does not allow for the quality reply CESR is seeking. Although, fully aware of the fact that CESR is under pressure to meet the time limit set by the

European Commission, Euronext underlines that the time constraints imposed to the consultation process is very likely to result in poor quality EU legislation which is in contradiction with the very aim of the Lamfalussy procedure.

Please find below replies to the specific questions contained in the addendum to consultation paper that we are able to deliver at this point in time.

Part One- Registration document

Debt Securities (wholesale)

In principle, we are of the opinion that information on issuers of products designed for wholesale investors may be more limited since such investors are deemed to be well informed or have easy access to information.

Investments (Past, Present and Future)

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

As mentioned in the reply to the main consultation, we believe that, due to the uncertainty of this type of information, such requirement, like for profit forecasts or prospects, can both be misleading to investors and create the potential for open-ended liability for issuers. Moreover, this requirement would oblige issuers to reveal to the public at large (including their competitors) information about their commercial or industrial strategy, which is not acceptable.

§ 16. Do you consider that a description of only some of these items should be made? If so, which ones?

We believe that information should be given only when the future principal investments would be tightly linked to the issue for which the prospectus is prepared or when already widely public.

Liquidity and capital resources

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

This information may be useful in order to assess the quality and solvency of the issuer but only to the extent that the commitments for capital expenditure are material and significant.

Trend information

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

As mentioned in our reply to the main consultation, we are not in favour of the inclusion of profit forecasts in the prospectus as a matter of principle (especially if the

issuer is induced to do it against its will by a broad definition of profit forecasts). Therefore, we believe that profit forecasts should not be reported on by the company's auditors or reporting accountant. Doing so could be all the more misleading for investors since they may rely even more on this uncertain information, if reported on by auditors.

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

This requirement should be deleted for the reasons mentioned in the reply to question of § 15.

Board Practices

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

In principle, we are of the opinion that disclosure of Board practices is useful for the general assessment of a company's general policy. However, since there are no European common general rules in this respect, we believe that this requirement is not essential. This particularly true with respect to highly complex products or products aimed at wholesale investors, where investors interests are not in the general policy of the issuer.

Major Shareholders

§ 27. Do you consider that these disclosure obligations should be required?

We would be in favour of a brief summary of what the issuer believes as being relevant regarding shareholders and control as well as agreed and material changes. This information is also important in relation to guarantees.

§ 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?

See reply to § 27

Related party transactions

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

We believe that the costs to comply with this requirement are much too high in comparison with the benefit that can be expected. Only the related party transactions that the issuer believes as being relevant for the investors should be disclosed.

Interim financial statements

§ 33. Do you consider this approach to be appropriate?

We agree that an obligation to produce interim reports solely to form part of the prospectus should not be imposed. Moreover, we refer to our reply to the main consultation: these issues should be dealt with by the IAS and the transparency directive.

Documents on display

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

No, our views are identical to those expressed in our reply to the main consultation: only documents of a significant importance should be put on display. A requirement to put on display all documents referred to in the prospectus is impossible to fulfil in practice. It would not help investors and may put issuers in a difficult position vis-à-vis competitors and counterparties (especially, when the contracts include a confidentiality requirement). We believe, this disclosure requirement will even be counterproductive since it will induce issuers to avoid referring to documents in order not to have to display them. Only memorandum and articles of association, trust deeds (when they exist) and audited accounts should be put on display.

Securities issued by banks

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

First of all, we reiterate the strong reservation we expressed in the main consultation with respect to sectorial building blocks. Please refer to our replies to § 95 and 96 of the main consultation.

On the one hand, we recognise that when banks issue debt or derivative securities, the close regulatory control and prudential supervision imposed on them should lead to less disclosure requirements in the registration document. Therefore, a number of disclosure requirements should be waived when the issuer is a bank.

On the other hand, we believe that a specific sectorial building block for banks is not necessary to reach this end.

For debt securities, we propose that the registration document building blocks (retail and wholesale) foresee, in an introductory part, the disclosure requirements which are not needed for banks.

For derivative securities, given the fact that such products are primarily issued by banks, we would propose to reverse the approach and take the disclosure for banks as the standard. The registration document building block for derivative securities would therefore foresee, in an introductory part, specific disclosure requirements for non-banks aimed at assessing the quality and solvency of such type of issuers.

Moreover, the specific building block for banks, as currently set out in Annex 2, does not appear useful since it does not allow much difference with the general building blocks for debt or derivative securities.

§ 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?

See reply to § 43

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

See reply to § 43

For questions contained in § 47 to 59, we refer to the replies given in relation to debt securities, the questions being on the same issues.

Derivative Securities

Investments (Past, Present and Future)

§ 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.

See reply to question in §15

Directors

§ 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.

As mentioned in our reply to question 190 of the main consultation, we believe that for such type of complex products and when the issuer is a credit institution, this information will not be material to the investor.

Management and directors conflict of interests

§ 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.

If any, such obligation should be limited to the disclosure of interests in the underlying security or derivative products linked to this underlying security.

Board Practices

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

See reply to question in § 25

§ 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.

See reply to question in § 25.

Related party transactions

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

See reply to question in § 30

Interim financial statements

§ 78. Do you consider the approach set out in V11.H of the Derivative Building Block schedule to be appropriate?

See reply to question in § 33

Documents on display

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

See reply to question in § 35

The disclosure requirements for guaranteed derivatives securities

§ 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 obligations are guaranteed by banks)? Please give your reasons.

As already mentioned in our reply to the main consultation, we do not see the need for a specific building block for guaranteed derivative products, nor for a specific building block for banks (please see §43 of this consultation). Therefore, the proposed additional building block does not seem relevant to us. We believe that there should be only one registration document building block for all derivative securities (be they guaranteed or non-guaranteed derivative securities). The specific aspects that can distinguish guaranteed and non-guaranteed derivative products should be included in the securities note.

Moreover, given that such products are primarily issued by banks, it seems logical that the registration document building block for derivative securities be designed for banks. Furthermore, as proposed in § 43, we believe that such registration document building block should foresee, in an introductory part, specific disclosure requirements for non-banks aimed at assessing the quality and solvency of such type of issuers.

For the purpose of adapting the registration document building block to banks and in addition to the comments given in relation to the disclosure requirements dealt with under this section, we want to stress the following:
Item II of Annex II (risks factors) should be able to only be discussed in very broad and generic terms.
Item III.C.2 of Annex II (description of principal markets in which the issuer competes) is not needed.

§ 88. If you consider that there should be a difference between the disclosure requirements for a bank (or a special purpose vehicle whose obligations are guaranteed by a bank) issuing a guaranteed derivative security, and the disclosure requirements for a bank issuing all other types of non-equity securities, please indicate what percentage return should be applied to differentiate between these different disclosure requirements. Please give your reasons.

As already mentioned, we think that there should be no difference in the registration document.

§ 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.

None. See replies to § 87 and 88

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

§ 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 you reasons.

No. The non-bank issuers of derivative securities (without a guarantee of a bank) should give information allowing to easily assessing their quality and solvency. (material information about operating results and liquidity and capital resources).

§ 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 derivative 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.**

Material information about operating results and liquidity and capital resources in order to allow to easily assess their quality and solvency.

Asset backed securities

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

In relation to item I.B.6.c (possibility of inspection of material contracts referred to in the registration document) and item I.B.6.d (possibility of inspection of all documents, balance sheets, valuations and statements by any experts any part of which is included or referred to in the registration document) we refer to the comments made in § 35.

We find item I.B.7 too detailed it could be replaced by a brief description of the share capital of the issuer.

Regarding item I.B.9. more importantly the risk one runs on the underlying assets should be disclosed, maybe in the securities note.

Depository receipts

§ 102. Do you agree with the disclosure obligations set out in Annex [5] as being appropriate for this type of security?

§ 103. In particular, do you consider that any information regarding the depository is required in addition to that set out in 1X.A?

§ 104. If there is recourse to the depository under the terms of the DR issued, what disclosure requirements do you consider would be appropriate in relation to the depository?

We believe the depository receipt should not be treated differently from ordinary shares.

Specialist building block for shipping companies

§ 111. Do you believe that a specialist building block for shipping companies is appropriate?

For all the reasons already stated in our reply to the main consultation, we are not in favour of such a building block. In particular, it may be very difficult to decide when such building block should apply since shipping companies may be part of large and complex groups. Moreover, specific requirements could only be justified for types of companies representing a significant part of the industry in Europe and we do not think that it is the case of shipping companies as such. Please refer to our reply to question 95 & 96 of the main consultation.

§ 112. Do you agree with the disclosure requirements in registration documents for shipping companies set out in Annex [6]?

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§ 113. Do you agree that valuation reports as set out in Annex [6a] should be required for shipping companies?

No, please refer to our reply to question 95 & 96 of the main consultation.

§ 114. Do you consider it appropriate that the date of valuation must not be more than 90 days prior to the date of publication?

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§ 115. Do you agree that it would be more appropriate for such valuation reports to be required when securities are being issued by a shipping company and hence should form part of the securities note?

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Part Two- Securities Note

Proposal of a blanket clause

§ 122. Do you agree with this approach?

Yes, we agree with the need to authorise omission when the information is inappropriate for the issuer or the securities concerned. It is indeed important, that the issuer keeps the responsibility of determining the information which is relevant and material and which should be revealed to investors.

We also want to stress that it is essential that this blanket clause be used in an harmonised way throughout Europe.

§ 123. Are you satisfied with the wording of the Blanket Clause?

Yes.

Working capital

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

Since the working capital concerns the issuer it should be included in the registration document.

§ 126. If you consider that this disclosure is more appropriate to the securities note, do you believe that the other disclosures regarding liquidity and capital resources currently in the registration document should be included in the securities note instead?

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Additional information in the SN equity schedule

§ 132. Do you agree with this approach?

Yes, we agree to add to the Equity Securities Schedule a few items of information in order to make it suitable to be used as a SN for any class of shares.

Additional information in the SN debt schedule

§ 136. Do you agree with this approach?

Yes, we agree to consider that a structured bond could be construed as a debt security which incorporates also certain elements of a derivative security and therefore include some requirements of the derivative schedule in the debt schedule.

However, we believe that the requirement under item III.C.2, requesting examples based on the best and worst scenario, will not be useful and potentially misleading.

Additional information in the SN derivative schedule

§ 139. Do you agree with this approach?

We want to stress that the securities note should not duplicate the registration document. Moreover, we have the following remarks:

I.1- This requirement should only apply to MB and SB members.

II.B- In some countries this level of details would not be appropriate since there would be no significant differences in the way the different groups of potential investors would be treated as far as method and expected timetable are concerned. The possibility to make a more general description should be offered.

II.B.8- We agree to this disclosure provided this does not oblige the issuer to make public the results of the distribution of securities since this is not customary in certain countries (i.e. the Netherlands).

III.A- The reports should be as recent as possible.

III.C.2.d Examples based on the best and worst scenario will not be useful, and potentially misleading.

III.C.2.e Mentioning of hedging instruments and whether the investor can buy such instruments, can be very burdensome for the issuer since it may have to envisage many different situations. Moreover, it seems to put a disproportionate liability on the issuer.

V.B.4- We have serious doubts about the requirement to describe the penalties for infringements in relation to the possibility of multiple and/or joint applications. It will add to the burden of the issuer.

V.B.12- We would like to have added that the information should be supplied in a graph / stock chart.

V.C.1-3- Regarding information on the plan of distribution, we do not see the added value for investors.

V.E- In certain countries (e.g. in the Netherlands) the current practice is to have a fixed price mentioned on the cover or in an advertisement since they believe that disclosing ratios and valuation methods could be misleading for the investor. This possibility should be kept.

V.F.3- We do not see the use of a description of the terms of the commitments of intermediaries in secondary trading providing liquidity.

V.I.1- We believe that requiring expenses as a whole is sufficient. Details at the level of one security are of no added value.

V.I.2- Here again too many details are asked for.

VI.E- Documents should be available free of charge.

VI.F- Registration document should be handed out with SN as a rule or should be very easily accessible (e.g. a website)!

Additional SN building block for asset backed securities

§ 143. Do you consider the disclosure requirements set out in Annex [10] to be appropriate for asset backed securities?

No specific comments at this stage.

§ 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.

No specific comments at this stage.

Additional SN building block for guarantees

§ 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?

Yes, since it can be used for any type of securities.

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

Yes. The requirement should remain rather general in order to allow for sufficient flexibility. However, in relation to information to be disclosed about the guarantor, the information to be provided should be those "to be disclosed by an issuer of the type of securities concerned" and not, as stated currently, those "to be disclosed by the issuer of the security". Indeed, in certain cases (specific vehicle) the information "to be disclosed by the issuer of the security" will be limited.

§ 151. If, in answer to the previous question, you said the requirements were inappropriate please indicate which of the proposed disclosure requirements you believe to be excessive and/or which additional disclosures should be required of guarantors.

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Additional SN building block for subscription rights

§ 155. Do you agree with this approach?

No specific comments at this stage.

§ 159. Which approach do you deem to be more appropriate?

No specific comments at this stage.

Part Three- Summary

§ 168. Given the level of detail provided for by the Ecofin Text on the scope, language, length and content of 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 yes, 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.

We believe that specific summary schedules are not needed. However, general advice at level II would be useful to ensure that the summary - presenting in a brief manner

and in non-technical language, under the responsibility of the issuer, the essential risks associated with the issuer, any guarantor and the securities- is conceived in the same manner by each of the competent authorities of the Member States. It would, for instance, be useful to known the format of the financial data, if any, to be include in the summary.

Part Four – Base prospectus / programmes

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

First of all, we are of the opinion that a proper consultation on the base prospectus is needed given that an increasing amount of securities are issued under such programmes.

Moreover, we believe that the information for a programme will include some elements that can normally be found in the securities note.

§ 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)?

The final terms of the offer are the very specific terms of the tranche of securities concerned: interest rates, method for calculation of the interests, etc.

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