

**Poland**  
**Polish Securities and Exchange Commission**

**RESPONSE TO THE CONSULTATION PAPER ON THE**  
**POSSIBLE IMPLEMETNTING MEASURES FOR THE**  
**PROPOSED PROSPECTUS DIRECTIVE**  
**(JUNE 2003)**

The Polish Securities and Exchange Commission (PSEC) operates since 1991 as a central authority of government administration in the field of the public trading in securities.

The Polish Securities and Exchange Commission welcomes the opportunity to comment on the consultation paper setting out the advice of the Committee of European Securities Regulators (CESR) on possible level 2 implementing measures under the proposed Prospectus Directive.

PSEC fully accepts the general objective of CESR which is to find balance between facilitating the widest possible access to capital markets, making regulatory requirements simpler and more flexible to issuers and assure necessary protection and appropriate information for investors.

### **III.1 DERIVATIVE SECURITIES**

CESR presents a definition of derivative securities in point 166 of „CESR’s Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive” (October 2002). CESR’s proposes that derivative securities should be understood as securities which comprise of forward transactions in the form of firm transactions or options transactions whose value/price directly or indirectly depends on:

- a) the exchange or market price of securities,
- b) the exchange or market price of money market instruments,
- c) interest rates or other returns,
- d) the exchange or market price of goods or precious metals, or
- e) the forward exchange rates or units of account.

That, as well as new approach included in point 22 of „CESR’s Advice on Level 2 Implementing Measures for Proposed Prospectus Directive” (June 2003), indicates that CESR envisages a mandatory prospectus for all kinds of derivatives securities.

**Point 32 - 39**

Disclosure about the matters mentioned in these points can apply only to these derivative securities which have an issuer from the legal point of view (i.e. warrants). Meanwhile, from the legal point of view, the majority of derivatives securities (i.e. options, futures) have not an issuer, but a seller (the real “issuer”) and purchaser – generally unknown for the entity making up the turnover rules for these securities and its prospectus. In other words, the entity making up the turnover rules for derivative securities is not its issuer from the legal point of view, unless it is simultaneously its sole seller.

Bearing it in mind, the fundamental question is: How CESR understand the word “issuer” in respect of derivative securities?

**Point 65 – 83**

As the title of this part is “Derivatives Securities Note Schedule”, all topics mentioned in it should take up derivative securities. Ipso facto the questions 81 and 82 are misleading.

Nevertheless, examples, as method of showing how the instrument works, should not be obligatory. If an example can provide investors with a clear and understandable explanation of how an investor’s return is calculated and how the instrument works, the issuer should have the possibility to use it. Of course, if example was to be included in the prospectus, there should be a clear warning to the investors stating that example do not give reliable guidance on future profitability or riskiness of the security.

It should be the possibility to use examples to all kind of securities if, up to issuer, it could be useful for investors.

**Point 89**

The option 2 from the point 86 looks to be the most relevant to help investor to take an investment decision without increasing cost for issuer.

**III.2 BASE PROSPECTUS****Point 101**

Yes, we agree with this generic rules.

**Point 112**

The items of the final terms that in other cases would be part of the summary, if not all, should be translated to convey all essential characteristics and risks associated with the issuer and the securities.

**Point 115**

As the information about the issuer (activity, risks, etc.) is the same, there is no reason to make up few summaries. The issuer should have the possibility to decide how to comply with the general requirement of summary content.

**Point 122**

The final terms document should generally provide only information on final terms. But the issuer should have the possibility to add some information from the base prospectus if in its opinion it could be useful for investors. In such a case the presentation of added information should not give a misleading impression and the final terms document should clearly state that the only document containing the complete information is the base prospectus.

**Point 125 and 127**

Methods set out under Article 14 is a vast range of possibilities to publish prospectus. Practically, it contains all channels of distribution of the information to the public. Bearing it in mind, the final terms document should be published according to these methods and, in order to organize a clear system, in the same way as the base prospectus. However the issuer should have the possibility to choose another method (set out under Article 14) on condition that it indicates this fact in the base prospectus.

**Point 131**

Yes, we agree with the additional requirements.

**Point 136**

Yes, we agree with the enumerated types of base prospectus.

**Point 138**

In Poland one issuer can issue securities under a prospectus (base prospectus). Thus, the question is: what does it mean that more than one issuer can issue securities under a prospectus?

**Point 143**

Yes, we agree with this approach.

**Point 162**

Yes, we agree with this approach.

**Point 165**

In such a case the issuer could present a pro forma statement of Working Capital Statement and Capitalization and Indebtedness taking into consideration the minimum and maximum amount of new shares.

**Point 167**

Yes, we agree with this approach.

**Point 168**

Yes.

**Point 172**

Option 1 because it would ensure a full and easy comparability of prospectuses in the European market as well as in Member States markets.

**Point 176**

Option set out in the point 174 because it looks as a natural sequence of information.

**Point 182**

As the summary is the only document published in investors' language they should always have an up-to date information in a form of single document and not a set of updating information.

**Point 237-239**

“Annual information” document should be rather disclosed using the same methods allowed for the prospectus, at issuer's choice. The deadline should be defined. 7 business days after publication of the annual financial information looks reasonable. As that would be a deadline, the issuer should have also a possibility to make up “annual information” document as a part of the annual report containing the annual financial information and the auditor report. It could be a cost-efficient solution for issuer and give investors an easy access to a full set of information on the issuer.