

# SWEDISH SECURITIES DEALERS ASSOCIATION

Stockholm August 12th 2003

Mr Fabrice Demarigny  
Secretary General CESR  
The Committee of European Securities Regulators, CESR  
11 – 13 Avenue de Friedland  
75008 Paris  
  
FRANCE

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

The Swedish Securities Dealers Association ("SSDA") wishes to present the following comments in respect of the CESR's June 2003 Consultation Paper regarding the Advice referred to above.

### **Re: III.1 Derivative Securities**

#### 1 Company descriptions in the prospectus

It is stated in section 28 that it has not been possible to agree upon a definition of Derivate Securities acceptable to all concerned. Nor has it been possible to reach unanimity on whether sub-groups of derivatives can be distinguished (section 28). It is stated in section 194 that Derivative SN schedule is regarded as an "everything else box". However, it is uncomplicated – and important – to distinguish a sub-group of derivatives which probably also represents a substantial part of all the derivatives which give occasion to prospectuses: i.e. derivatives, the changes in price of which are due to the change in price of an underlying share. Such share derivatives may be issued by the following two types of issuers:

- ❑ The same party which issued the shares, the changes in price of which determines the derivative's change in price. The typical example is a company which issues warrants or a company which issues convertible debentures.
- ❑ A party other than the party which issued the shares, the changes in price of which determines the change in price for the derivative. The typical example is a bank which issues warrants where the cash amount received by the warrant holder upon expiry of the



warrant is dependent upon changes in the prices quoted on the stock exchange of the shares of one or several listed companies. (The bank is not one of these companies.)

If the bank issues derivatives which are dependent upon the changes in price of the company's shares, the company description in the prospectus should be the same as if the company had issued new shares directly. Investors' risks are of the same nature in both cases. Accordingly, Annex A should apply (ref. 03-066B, April 2003).

If a party other than the company issues derivatives which are dependent upon changes in the price of the company's shares, the prospectus should not contain any company description. In fact, such a company description can only be issued by the company itself. It would be absurd to impose such an obligation on the company as soon as any bank desires to issue cash settled, (or other) call options regarding the shares in the company. Accordingly, in this respect, the prospectus should only refer to the company's most recently published annual reports and interim reports. However, the prospectus should contain appropriate facts concerning the underlying share (the shares) and trading in these<sup>1</sup>. Certain information regarding the issuer should also be included in order to permit counterparty risk assessment.

The SSDA agrees with the objection of Federation Bancaires (FBE) to CESR's proposal where the definition of derivative is linked to whether 100 per cent repayment is promised or not.

Accordingly, the questions raised in sections 32, 34, 36, 37, and 39 have been answered.

## 2 Examples of the derivative's possible future changes in price (e.g. certain "worst case scenarios")

As far as is known, no one has demanded that share prospectuses should contain examples of future price trends on the basis of various assumptions (regarding sales volumes, margins, profit multipliers, etc.). Nor should such demands be imposed regarding derivatives prospectuses either. The reasons for this position are:

- ❑ It should be left to the issuer to determine whether examples are required or not in order to make the derivatives prospectuses intelligible.
- ❑ Most derivatives, i.e. those which have one or more shares as underlying factors, are relatively easy to understand: their value on the expiration date is dependent upon a particular share's price at that time.
- ❑ Examples may be misleading for the less well-informed reader; the conditions may have been chosen so that the derivative appears altogether too tempting. The typical case is where three examples are provided: one pessimistic, one optimistic, and one neutral, where even the neutral - which the reader readily perceives as the most probable scenario - is based on relatively optimistic assumptions.
- ❑ Examples may be an appropriate way to illustrate potential outcomes for certain, more complicated derivatives. However, this should not be obligatory; perhaps it would be

---

<sup>1</sup> Section 161 contains similar views on situations which are similar to the one above.



better to have a pedagogically well-structured description of the conditions which are of the greatest significance to the financial outcome.

Accordingly, the questions raised in sections 75-83 have been answered.

### 3 Price trends and volatility thus far

It is natural for all share investors to enquire about changes in the share's price and volatility hitherto – notwithstanding that the persons concerned are aware that such factors do not constitute the most important basis for decision-making. Accordingly, such factors should also be set forth in a derivatives prospectus, with a clear statement that future performance may differ from historical performance. Accordingly, alternative 3 is the most appropriate alternative.

This is the answer to the question in section 89.

### 4 Final terms

Answered in the affirmative in section 101.

### 5 Summary/Translation

Answer to question in section 112: Final terms should be translated in the same way as the summary. Final terms are important and, as a rule, very concise, and thus the translation requirement should not be onerous.

Answer to question in section 115: If a base prospectus relates to several types of security, separate summaries should be included for each type of security. Such is demanded by the requirement for clarity.

Answer to question in 122: When final terms are provided, such should be combined with information previously provided. However, it must be clearly stated which is the new information and in which other documents the information was previously provided.

Answer to question in section 125: Article 14 should also apply in conjunction with the publication of final terms.

Answer to question in section 127: Yes.

Answer to question in section 131: Agree with sections 2 and 3. Section 1 is not relevant it is always possible to say in advance how one is going to publish final terms.

Answer to question in section 136: A base prospectus may be used for any type of security, provided:

- ☐ each type of security is described clearly and in its own section; and
- ☐ the company descriptions in the prospectus, etc. (RD) satisfy all the requirements imposed for the issuance of the securities in question.



### **III.5 SN Building block on underlying for equity securities**

Answer to question in section 162: We agree - on condition that the shares in the company within the issuer's group are listed. The views accord with the comments in the first section of this memorandum.

Answer to question in section 165: The determining factor is not whether the shares which may be acquired pursuant to the derivate are of a new class or not, but, rather, whether the company in which one can become a shareholder via the derivate is already listed, and thus known, or not. If the company and the issuer of the derivative are one and the same, the company should be described in as much detail as though such related to a share issue, otherwise, no company description is required, as stated in section 161.

Answer to question in section 167: Please see comments in section III.1 Derivative Securities, company descriptions section.

### **IV. Format of the Prospectus**

Answer to question in section 172: The third alternative is preferable. The layout must be determined on a case by case basis. Any other system is impossible due to the differences in companies' operations, risk level, and stages of development. However, all prospectuses should include clear headings, sub-headings for different subsections, and a clear table of contents.

Answer to question in section 176: The views expressed in section 175 should apply, anything else would constitute over-regulation, which is of no benefit to investors.

Answer to question in section 182: The second alternative in section 181 should apply. Requiring the reprinting of a whole summary, or an entire prospectus, would delay dissemination of the new information (in addition to that which is published as press releases). When supplementary information is required for an already published prospectus, it is often important to publish the information as quickly as possible through the same channels as the original documents.

### **VI. Annual information**

Answer to question in section 237: Yes. "Annual financial information" should refer to the complete annual report, not the report of unaudited annual earnings figures. The report overview will then take place after the company has, for the last time, submitted reports for the year in question.

SWEDISH SECURITIES DEALERS ASSOCIATION

Per-Ola Jansson

Vigg Troedsson