Z E N T R A L E R K R E D I T A U S S C H U S S

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Response
of the *Zentraler Kreditausschuss*
to
the Second Call for Evidence
on Prospectus Mandates
(Ref. CESR /03-038)
March 2003

Az.: 413-CESR-Prosp

Dear Mr Demarigny,

We are pleased to take the opportunity, as the Zentraler Kreditausschuss (ZKA), to comment on the second call for evidence with respect to the Prospectus Mandates.

The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Hypothekenbanken (VDH), for the mortgage banks. Collectively, they represent more than 2,500 banks.

EXECUTIVE SUMMARY

Before we come to the details of the redefined request for technical advice, we should like to make the following general observations.

- **The building block approach**

In all our comments sent to you on 17 May 2002 on the first call for evidence and on the October and December consultation papers (sent on 31 December 2002 respectively on 6 February), we both basically welcomed the building block approach proposed by CESR and suggested that, where innovative products that cannot be covered by the CESR rules are concerned in future, the disclosure requirements for various types of securities should provide for a waiver so that it will not be necessary to draw up a new building block approach before the prospectus can be approved. CESR kindly accommodated this request in its consultation paper, pointing out that it did not regard the disclosure requirement models as exhaustive and that, where necessary, there was to be scope for producing a prospectus tailored to a specific product together with the relevant supervisory authority.

As we have already mentioned in our two responses to the consultation paper and the addendum, we nevertheless fear that the building block approach will result in a high degree of inflexibility. A feature of all building blocks proposed to date has been not only a high level of detail but also allowance for numerous particularities, both in respect to issuers and types of securities. The building blocks for certain types of issuer already included in the paper (start-ups, mineral companies, property companies) suggest there is likely to be an even greater level of detail, especially when further types of securities are addressed. Our fear is confirmed by the additional provisional mandate to CESR proposing to have specific schedules to certain types of issuers, in particular SMEs. This suggestion could potentially lead to a duplication of the whole set of building blocks. This shows in our view how urgent it is to have firstly, an orientation system regarding which building block to use and then to start the completion of the single building blocks – and not vice versa as is now the case. Given the large number of building blocks that is to be expected, we should also like to point out, that in order to make the shelf registration system workable, there should be a clear ranking between the different registration documents. If it is borne in mind that a base prospectus will be additionally possible under Article 5 (4), issuers will possibly be faced with the problem of determining which building block should be used for their issue. Clear-cut rules and lines of demarcations should therefore be drawn up to give issuers the necessary legal certainty. This will probably also raise the question in many cases of whether an issuer can use an already prepared and approved registration document for issues of other types of securities as well. For example, a bank which has prepared the future registration document addressed to banks for equities should be able to issue not only debt securities but also derivatives on this basis.

As far as derivative products are concerned, in particular, drawing up even more detailed building blocks seems to produce such a rigid framework that it is doubtful if it is necessary to fix a building block for each derivative product. A more general approach could be helpful. Care should also be taken to ensure that the procedure for admission to trading is as flexible as possible, particularly with new, as yet unknown, products in mind. It is highly doubtful whether this can be achieved by drawing up rules governing the most intricate

detail. We therefore suggest that, when drawing up further building blocks, a certain amount of scope should be allowed to ensure a more flexible approach.

- **IOSCO standards**

It was pointed out that, when issuing its provisional mandate in March last year, the Commission stipulated that the 1998 IOSCO standards were to be regarded as minimum requirements. In its proposals for the registration document and the description of the securities for the equities prospectus model, CESR therefore adopted the IOSCO standards verbatim as well as proposing further-reaching rules. While small changes were made for the corporate retail bond prospectus model and for the securities note for derivative products, these models are also based largely on the IOSCO standards, which originally were designed only for shares. Hence, there are numerous requirements which are not completely appropriate for debt securities and derivative products.

The additional mandate touches on this crucial point in paragraph 3.1 by saying "The draft schedules should be based on the information items required in the IOSCO Disclosure Standards for cross-border offering and initial listings (Part I)…" This seems to relate to the modified wording that was adopted at the suggestion of the European Parliament (Amendment 29 of 14 March 2002). Whilst the Commission's proposal of May 2001 still stipulated that the prospectus "*shall be **in accordance with** the information requirements set out by the IOSCO*", this wording was changed to read "*the rules .... **shall be based** on the standards in the field of financial information set out by international organisations, and in particular by the IOSCO*". We believe that this change to the wording of Article 7 (2) is intended to make clear that the IOSCO standards are not to be adopted verbatim but are intended to provide (only) a basis for the information requirements. We understand this to mean that the purpose is actually to allow deviation from the IOSCO standards – at least on certain individual issues.

In effect, the proposed Registration Document (RD) and Securities Note (SN) for equities have been drafted using the IOSCO standards as a minimum level. This not only contradicts

the relevant provision of the Commission's revised proposal, which, after massive objections to the provision in the Commission's first proposal, under which the IOCSCO standards were to be used as a minimum level, now requires the measures only to be *based* on standards like the ones developed by IOSCO. It also contradicts the fact that the IOSCO standards have been drafted with the aim of creating maximum harmonisation, i.e. creating disclosure standards acceptable to all national authorities by gathering the requirements in effect in all countries and so allowing – but not forcing – issuers to use a single prospectus as the basis for an offer in different countries.

Using the IOSCO standards as minimum requirements would put a heavy burden especially on smaller issuers, and in many cases prevent them from issuing securities. CESR itself should determine the appropriate level of disclosure for equities. This level should be lower than the "maximum" disclosure level required by the IOSCO standards. Subsequently, the standards should be amended accordingly.

- **Further consultation necessary**

Please let us stress that our main concern relates to the finalisation of the consultation and the fulfilling of your mandate. We welcome the new time schedule for CESR with respect to the technical advice on the different models of prospectuses, especially the base prospectus, the specific schedules to credit institutions and the schedules adapted to the particular nature of derivative securities. In this respect we underline the necessity of having a new round of consultation for all of these documents in written and oral form because of the overwhelming importance for the European capital markets. As market participants already gave comments on these building blocks proposed in the December addendum we would warmly welcome to have a fruitful discussion in these issues until 31 July 2003.

➢ **Accounting and interim financial reporting**

It is essential to ensure that the implementing measures at level 2 of the Prospectus Directive are consistent with the corresponding requirements in the EU Commission Regulation on the application of international accounting standards and the Transparency Directive (Directive of the European Parliament and of the Council harmonising core requirements for providing information about issuers whose securities are admitted to trading on a regulated market and for communicating with securities holders) published on the 26 March 2003.

The same applies to interim financial reporting: credit institutions which make a public offer of retail debt securities only without having any **securities** issued which are admitted to trading on a regulated market, will presumably not be subject to an interim financial reporting obligation under the forthcoming Transparency Directive. On no account should such an obligation be imposed on such issuers under level 2 implementing measures for the proposed Prospectus Directive.

➢ **Public Offer and Admission to Trading of Securities**

One general problem of the building block approach is the insufficient differentiation between public offers and admissions to trading of securities which may be caused by the merging of two existing directives. The wording of article 7 para. lit. b first sentence can be read as a pointer to taking the different nature of public offers and admissions to trading. For instance, there is a big difference between whether a credit institution or another company gains access to the European wide capital market via admission to trading or whether it sells the issues in its local niche to well known clients – they are knowing too their credit institution well - and far from being a player even of domestic importance. Actually, the European Passport is relevant only for some issuers including credit institutions. At present the building block approach does not consider this fact at all, i.e. the difference between an offer to the public and the admission to trading. However, as the different tiers of the capital market – the European wide, the domestic and the local

one – should be reflected by drafting the building blocks we should like to ask CESR to think about this approach.

- **Definition of "Securities"**

Although great importance must generally be attached to consistency between the directive and the technical implementing measures, derogations from the definition of the securities in Art. 2 should be possible whenever disclosure requirements are concerned. Non-equity securities, for example, are also regarded as equity securities if the issuer uses its own securities as the underlying instruments. As a rule, however, these will normally be bonds or derivative products, for which the equity building block would be unsuitable on account of the nature of this security. In our view, such a derogation would also be perfectly feasible. The main reason for the definition of "security" adopted in the directive and particularly the definition of equity securities and non-equity securities was the rules on the choice of regulator.

- **Conflict of Interests**

Almost all the models proposed in the first consultation papers contain the proposal that the prospectus should indicate any conflicts of interest. The question arises whether this issue should be dealt with in a prospectus because in our view this matter is dealt with in several other directives (Market Abuse, ISD etc.), and there is also no indication in the directive that CESR is authorised to formulate such a requirement. Furthermore, disclosure of conflicts of interest only appears to make sense in any case for equities.

THE ADDITIONAL PROVISIONAL MANDATE TO CESR

With respect to the additional provisional mandate which was given to the CESR by the Commission on 31 January 2003, we should like to refer to all our responses to the first consultation paper of October 2002 and the addendum of December 2002. However, we feel again somewhat uncomfortable answering to the second call for evidence without knowing your reaction to the first consultation.

On the items raised in your second Call for Evidence we should like to comment the following:

- **Prospectus as a single document, 3.1 (1)**

As the directive now allows the issuer to choose the format of the prospectus for his issue there should be consistency between the specific information which must be included in a prospectus composed of separate documents (registration document, securities note and summary) and the information given in the full prospectus for the same product. Furthermore the prospectus in the format of a single document should in our view equally include all disclosure information which are included in a prospectus composed by three separate documents without duplication of items. Therefore we would like to draw your attention to our comments given on the first consultation papers from October and December 2002 when working on the information which should be included in a full prospectus.

Concerning the summary, on which CESR has not yet published any proposals, in our view some level 2 advice seems to be necessary despite 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 is intended to significantly increase the understanding of EU

investors with respect to an issue. 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 (taking into account the 2,500 word approach mentioned in the recital 19 of the proposed Directive). 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.

This point, especially the purpose of the summary to highlight potential risks/ investment considerations for the investor by providing for a meaningful synthesis of a prospectus` key points chosen by the issuer, has to be officially stressed at level 2. In this connection it has to be made clear that not all the items set out in the indicative list of Annex IV of the Directive have to be included. Otherwise, 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 was mandatory it would 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 concerning the liability for the summary.)

Furthermore, since an effective summary cannot contain all the 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.

- **Base prospectus 3.1 (2)**

As we mentioned in our last response to the addendum and at the last hearing the base prospectus is thus of high importance for the banking industry. It will probably be the prospectus which is mainly used in the future in the whole European banking industry. CESR

has now been formally instructed by the Commission to consider this format. Since it will be highly important, however, the building block approach now proposed for derivative products should therefore also be revised against the background of the requirements which must be drawn up for a base prospectus. We therefore consider it essential to develop valid disclosure requirements for base prospectuses. One important point is the flexibility which the base prospectus must grant to the issuer, especially in respect to the finalisation of the incomplete prospectus. Here it is absolutely necessary to pay attention to the necessities arising out of the current practices in the market.

As details of the base prospectus have not yet been worked out and it cannot be foreseen which disclosures CESR will propose on the Bank's prospectus it seems somewhat early to judge whether the base prospectus should offer on the whole the same content of information as the normal one. In our comments on the December addendum we argued that the list of obligatory items for the Banks Registration Document Building Block should be shortened. For this reason it is difficult for us to say the base prospectus should have the same amount of information when there is not even a satisfying framework for a normal prospectus matching the needs of the banking industry.

Nevertheless we should like to repeat on this matter our answer to question 175 asked in the December addendum (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]?):
What is required here is a general rule on the basis of which it can be decided what information can be left to the final terms. As the major purpose of the special regime for base prospectuses and programmes is to allow issuers to adapt the final terms of a security to the market conditions prevailing at the time of issuance without a delay, the general rule could be drafted as follows: "Final terms are those terms of an offer which can only be determined shortly before the offer due to the offer's nature." This would correspond to the current practice in Germany and also address the needs of the Eurobond market mostly covered by offering programmes, which has proven to be both appropriate and practicable

for many years. Given the multitude of possible features and cases, it would not be possible to specify in detail what conditions can be left to the final terms.

- **"Pfandbriefe", 3.1 (3)**

The base prospectus should contain a detailed description of the existing safeguard mechanisms for mortgage bond creditors. In our opinion, these already existing, far-reaching, special legal foundations for mortgage bonds justify a waiver from the mandatory disclosure obligation of detailed information by the respective institutions regarding the makeup of their cover funds. The legal foundations for mortgage bonds make for a clear-cut distinction between mortgage bonds and higher-risk MBS products.

Mortgage bonds offer investors comprehensive securities guaranteeing a high degree of credit-worthiness. Apart from the legal framework this is also due to the special supervision to which issuers of mortgage bonds are subjected. The respective rules are laid down in the law on mortgage bonds and related bonds of public sector credit institutions as well as in the mortgage bank act (for private sector mortgage banks). Along with this, there are special laws for the various institutions (e.g. DZ BANK AG Deutsche Zentral-Genossenschaftsbank, Postbank AG (DSL-Bank-Conversion Law) and Landwirtschaftliche Rentenbank (Law on the Landwirtschaftliche Rentenbank).

Those special provisions protecting investors inter alia include:

- **Cover principle/separate cover assets:** At any point in time, mortgage bonds outstanding must be covered by mortgage loans respectively by land charges of at least equal value and yielding at least an equal interest return that is in line with the nominal value of all current issues. In the case of public mortgage bonds, the cover assets come in the form of state loans. In addition to the calculation of the nominal value of the cover assets, the 4th financial market promotion code contained a series of special laws for the calculation of the cover which, at any point in time, has to be on a par with the present value

(present value calculation). This present value calculation which has to be carried out with a view to different stress scenarios enhances the transparency of the cover funds for investors and leads to a 'present value-surplus cover'.

- **In the event of an insolvency, mortgage bonds creditors have a preferential right to payment:** In the event of an insolvency of a mortgage bond issuer - something that has never occurred since the introduction of the foregoing laws - the property inherent in the respective cover funds will exclusively serve to fulfil the liabilities to the mortgage bond creditors. In such an instance the cover assets shall have the status of separate trust assets.

These statutory provisions provide efficient safeguards so that the field of mortgage bonds is marked by a high degree of investor protection. It is therefore not necessary to address issuer-specific idiosyncrasies in the base prospectus.

- **Minimum Information, 3.2.**

With regard to more special building blocks asked for under 3.2. we would like to draw your attention to our comments above on the building block approach.

- **3.2 (2)**

Given the extreme wide and heterogeneous range of issues and issuers covered by the base prospectus regime pursuant to Art. 5 para. 4 (e.g. “big ticket” cross-border bond issues by large credit institutions as well as domestic or even regional public offers of non-equitiy securities outside the system of a regulated market) we would welcome if CESR considers carefully the possibility of drawing up a separate building block for the aforementioned “regional offers” typically issued by small and medium sized credit institutions. This specific building block should provide for less requirements compared to the “standard” base prospectus as to information about the issuer and the offered securities. In this respect the

requirements set out in Article 11 of the Directive 89/298/EC might serve as a proper guideline.

- **Banks' Prospectus, 3.2.(3)**

In our comments to the December addendum we answered all your questions on the banks' Prospectus. Nevertheless we should repeat our comments and answers on the questions you raised:

Our general remarks were as following:

We welcome a special building block for banks. Preferable might be the expression credit institutions which is used and defined by the proposal for the Prospectus Directive to consider the whole range of this industry. Credit institutions are indeed subject to close regulatory control and supervision, and therefore carry a lower insolvency risk. This has to be reflected by lower disclosure obligations. One has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature and the major risks of his investment (see also Art. 5 para. 1 of the Prospectus Directive).

There should not be an obligation to disclose the actual solvency ratio for the following reasons: Currently, there are two solvency ratios, at least for international banks. This information will not assist the investor. Solvency ratios are permanently changing. The disclosed figures would be incorrect after a short time. As is mentioned in the addendum, a normal investor could only grasp the meaning of the ratios if "the significance were fully explained and put in context" (Nr. 48). Such an explanation in plain terms is obviously not an easy task and would burden issuers unnecessarily. The obligations for the disclosure of solvency ratios are laid down in the Banking Directive 2000/12/EC and in the Capital Adequacy Directive (93/6/EEC). They are dealt with conclusively there and should not be broadened at Level 2.

Our answers were the following:

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

Yes. Banks are indeed subject to close regulatory control and supervision, and therefore carry a lower insolvency risk. This has to be reflected by lower disclosure obligations.

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?

It would not be justified, in our view, to exclude banks from non-EU countries with an equivalent level of prudential and regulatory supervision from the use of the special Registration Document. 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.

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

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

We have the following additional comments regarding the proposed Registration Document:

I.A.1. It is not altogether clear what kind of responsibility is envisaged and what consequences such responsibility has: personal liability or liability of the legal person. Furthermore, the cumulative ("and") designation seems to be inconsistent compared to the alternative ("or") designation requirement envisaged by the Securities Note, I.6 and the Prospectus Directive itself (Art. 6). As it has to be left to each Member State whether to extend liability to natural persons, the word "and" should be replaced by an "or".

II.(a) For securities issued by banks, there should not be a requirement to describe risks specific to the issuer and its industry. This would not be in line with the level of disclosure appropriate for non-equity securities issued by banks. Industry related risks for banks mainly depend on general economic conditions that can be assumed to be common knowledge. Further, extraordinary exposures of the issuer, if any, are dealt with under the banking supervisory regime and thus should not amount to a level that might affect the issuer's ability to fulfil its obligations under the securities covered by this building block.

II.(b) Given the supervision regime exercised over banks, as a result of which banks carry a lower insolvency risk than companies in other sectors, this information should be not required for banks.

III.A.4 The proposed requirement to mention the issuer's web-site should be deleted. The issuer's web-site cannot, at least not in all cases, be seen as an objective source of additional information for investors. By mentioning it in the prospectus, there would thus be an increased risk of investors basing their investment decision not only on the prospectus, but also on the content of the issuer's web-site, which would contradict the purpose of a prospectus. Therefore, if the prospectus contains all the information necessary to the investor to make an informed investment decision (and is thus compliant with the requirements of the Prospectus Directive), a reference to the issuer's web-site is neither necessary nor useful.

IV.A.3(a) It should be set out more clearly also in IV.B.3.a that providing profit forecasts, profit estimates (and so forth) is voluntary (e.g. by saying – as in IV.D.2 "If a (voluntary) profit forecast..."). Further, not only a profit forecast, but also a profit estimate cannot be made without being subject to general assumptions as it inevitably depends on future developments that can only be assumed.

V.B & V.C Conflicts of interests as well as Board practices are of no interest for an investor in debt securities or derivatives. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

VII.A The reference to the "audit report" apparently intends to mean the "auditor's report". The expression "auditor's report" is generally understood to mean the entire text of the auditor's official expert statement made and published as a result of his audit, including the audit opinion (see,

for example, AICPA Professional Standards, AU Section 508; IFAC Handbook 1999, ISA 700.28). The prospectus must indeed contain the (entire) auditor's report. This contributes to the intended high level of transparency. This is also already common practice and prescribed by applicable law (especially also in the U.S.); the EU should on no account fall behind already existing and accepted international practices.

The expression "audit report", in contrast, is usually understood to mean the auditor's "long-form" report on the audit work that is given internally to the client only. This long-form audit report is not suitable for inclusion in a prospectus. It is confidential and regularly of a size (sometimes more than 1,000 pages) that, as a matter of fact, excludes publication.

VII.B It is unclear what "notes to the accountant's report" is intended to mean. In the heading, it appears that this provision addresses the "notes to the financial statements" (IAS 1 para. 91 et seq.).

"Accountant's report" is apparently something different. If the auditor's report is meant, the wording is inconsistent. Also, this is already covered by "VII". Thus, CESR should clarify what VII.B intends should be stated in the prospectus.

VII.E It is unclear what an "equivalent standard" is, if such standard does not meet the "true and fair view" requirement.

VII.F.1 The mere "statement that the annual accounts have been audited" is not sufficient. Rather, the auditor's report issued in relation to the annual accounts must be included in the prospectus, as is common practice and

required by applicable laws in the major international capital markets (see above comment on "VII.A"). Also, VII.A already provides for this. CESR should rephrase "VII.F.1" in order to clarify that it is not intended to qualify "VII".

VII.G.1. Three months following the end of a financial year for the establishment/ approval of the financial statements is too short. Six months are required. Therefore, the last year of audited financial statements should be allowed to be as old as 18 and not only 15 months. Otherwise there would be fewer new issues between April 1st and June 30th than at present.

VII.J It is generally unclear what is meant by changes in the issuer's "trading position". Only the financial position is relevant in this respect.

VIII.A The term "material contract" is too vague. One has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature of, and the major risks associated with, his investments (see also Art. 5 para. 1 of the Prospectus Directive). The additional condition that the contract has to be able to result in an obligation "that is material to the issuer's ability to meet its obligation to security holders" does not constitute a real restriction: this only describes the issuer's insolvency risk, and it remains unclear have to be regarded as "material" in creating such risk. Accordingly, it should be enough if any risks resulting from such a contract that are material for an assessment of the company and/or the securities have to be described in the prospectus.

VIII.C In general, only publicly available documents should be on display. Other documents, in particular "material contracts", often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since

it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all "material contracts" displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if investors are laymen in the field the respective "material contracts" cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

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

There should not be a requirement to disclose information about the issuer's principal future investments. For debt securities and derivatives generally, the assessment of the investor which the prospectus information is meant to allow is that of the risk of the issuer becoming unable to fulfil its obligations to pay interest and to repay the capital. Only information which directly contributes to this assessment should be required for the prospectus. Information on the issuer's investments does not, under normal circumstances, enable investors to make an assessment about the issuer's insolvency risk.

Question 49: Do you consider that a bank's actual solvency ratio should be disclosed?

There should not be an obligation to disclose the actual solvency ratio for the following reasons: Currently, there are two solvency ratios, at least for international banks. This information will not assist the investor. Solvency ratios are permanently changing. The disclosed figures would be incorrect after a short time. As is mentioned in the addendum, a normal investor could only grasp the meaning of the ratios if "the significance were fully explained and put in context" (Nr. 48). Such an explanation in plain terms is

obviously not an easy task and would burden issuers unnecessarily. The obligations for the disclosure of solvency ratios are laid down in the Banking Directive 2000/12/EC and in the Capital Adequacy Directive (93/6/EEC). They are dealt with conclusively there and should not be broadened at Level 2.

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

Board practices are of no interest for an investor in debt securities and derivatives. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

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

The supervision regime exercised over banks also extends to persons holding major interests in banks. Therefore, there is no need for disclosure of these facts in the prospectus.

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

The risk-benefit analysis set out in no. 29 for the wholesale debt Registration Document also holds true for the Registration Document for banks. Transactions with third parties do not, under normal circumstances, contribute to an assessment of the relevant risk; the

fulfilment of such an obligation would, however, be highly burdensome for issuers. In addition, such transactions are also subject to the supervision exercised over banks. This obligation should therefore be dropped.

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

See answer to Question 33.

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

No. As for the retail debt Registration Document, we take the view that only publicly available documents should be on display. Other documents, in particular “material contracts”, often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all “material contracts” displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if investors are laymen in the field the respective “material contracts” cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

- **Annual Information, 3.3**

It should be possible to place the required annual information on the website of the issuer as this is foreseen for the publication of the prospectus.

- **Incorporation by Reference, 3.4**

No comments.

Yours sincerely
For the Zentraler Kreditausschuss
Federal Association of German Cooperative Banks/
Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V.
by proxy

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