ZENTRALER KREDITAUSSCHUSS

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VERBAND DEUTSCHER HYPOTHEKENBANKEN E.V. BERLIN

Response

of the *Zentraler Kreditausschuss*

to

CESR's advice on level 2 implementing measures

for the proposed Prospectus Directive

(Ref. CESR / 03-066b, CESR / 03-128, CESR / 03-067b)

Ref. : 413-CESR-prosp

June 2003

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Dear Mr Demarigny,

as Zentraler Kreditausschuss[1] we would like to thank you for the opportunity to comment on CESR's advice on level 2 implementing measures for the proposed Prospectus Directive (Ref. CESR / 03-066b, CESR / 03-128, CESR / 03-067b).

As already expressed at the hearing on 27 May 2003 in Paris we would like to thank you for the large number of changes which you adopted into the building block approach subsequent to our two letters dated 31 March 2003 and 31 December 2002; this led to a leaner approach that is more in line with practical experience. At level 2, the consultation process has thus been clearly fruitful. We hope that the further exchange of ideas and opinions on the forthcoming consultation packages will be equally fruitful.

At the hearing on 27 May 2003 in Paris there was also the announcement that a provisional so-called road map, i.e. pointers for the choice of the right building block, would be presented during the next consultation round. We will gladly scrutinize this long awaited orientation tool for bond issuers and shall appreciate the opportunity to comment on it.

Although many of our recommendations have been adopted on your part, some of our proposals have remained unconsidered. We should therefore like to stress that it is our endeavour to shape the building block approach in a way that is close to the market and in line with practical needs. This does by no way mean neglecting the interests of consumer protection, - quite the contrary is the case. Being obstructive and driving prices up for the issuing business, an overload of data that lacks meaningfulness and which cannot be analysed, would only have negative repercussions for all market players.

[1] 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.

We should once more like to highlight the respective accounting and reporting requirements (cf. below) since they are of general importance with regard to the remaining and/or newly added unresolved issues.

More specifically we should like to make following further comments on the documents that have been tabled by you. We would like to start with the minimum information to be provided in the 'banks' registration document' whereby the following remarks partly also apply to the further 'registration documents'. Subsequent to this, we will comment on the other annexes.

Banks' registration document

(Annex 3 of the additional draft "CESR's advice on level 2 implementing measures for the proposed Prospectus Directive, Ref.: CESR / 03-128, May 2003)

3: Risk factors

A section about risk factors should only be required if there are such factors; the wording of this item should be amended to clarify this.

7: Trend information

7.1: Due to the lower insolvency risk of banks, which follows from the supervision exercised over them, this information should not be required for banks. The item is sufficiently covered by the requirement under 11.8 to disclose a possible significant change in the issuer's position. Alternatively, the requirement suggested under no. 7.1 of the Wholesale Debt Registration Document (a statement that there has been no material adverse change in the financial position etc.) could be taken over here as well.

7.2: This mandatory information aims at providing the prospectus reader with information on any known trends which may have a material impact at least on the current fiscal year of the issuer. This information request may appear appropriate for industrial and

commercial undertakings, yet due to the sheer scope involved in drawing up the necessary information it will be hardly feasible for credit institutions. As financial intermediaries, credit institutions are directly or indirectly affected by a host of local and global developments. It would appear rather impossible to put all these developments into one coherent focus, this being a task that would rather fall within the remit of economic think-tanks. The material impact does not narrow this information requirement down in any significant way, since different developments would have to quantified and weighed against each other, similar to the forecast of outcomes. We consider such a kind of trend forecast only feasible as a voluntary component under the building block approach. Otherwise, a host of issuing credit institutions would be faced with a new potential penalization for *incomplete description of trends.*

9.2: Administrative, management and supervisory bodies' conflict of interests

By way of organisational measures, conflicts of interests of the credit institutions are avoided and/or reduced as a result of respective supervisory provisions under the Directive on Investment Services. A respective information requirement for investors in general does therefore not arise for bonds, especially since there is no obvious link with the debtor's risk of insolvency.

10: Major shareholders

10.1: This information has no relevance for investors in debt securities generally. Under normal circumstances, disclosure about major shareholders does not help investors to assess the risk that the issuer becomes unable to fulfil its obligations under the securities. It should certainly not be required for securities issued by banks, as the supervision regime exercised over them also extends to the persons holding major interests.

11: Financial information

11.1 Historical financial information

Some German credit institutions do not issue any listed bonds but offer their titles for public trading. Due to the absence of a relation to the capital market, the IAS are not pertinent to these undertakings. The CESR proposal partially takes this into consideration since, on principle, also national accounting rules are viewed as permissible. Nevertheless, for these undertakings c) stipulates an additional information requirement which relates to the cash flow statement. In the absence of national accounting provisions, in the banking industry a cash-flow statement is only drawn up in the event of group accounting or if the balance sheet is already drawn up in line with IAS provisions. Yet, generally speaking for institutions with single accounts, the German statutory accounting standards do not prescribe a cash flow statement. Neither is such a statement the subject of the statutory audit. Thus, the prospectus requirements would introduce an additional, costly requirement which, to date, is unwarranted by the existing European accounting standards. In their current form, particularly the IAS provisions and the Transparency Directive allow for derogation clauses in this respect. Pursuant to this, the Member States shall have the right to regulate, that the drawing up of individual accounts may do away with the need to prepare cash flow statements. Therefore, for the time being it is recommended to abandon any plans for tightening of accounting standards through the introduction of a mandatory obligation to prepare a cash flow statement. We also kindly request that these presentations be taken into account for the other prospectus models.

Currently, the most important liquidity review for credit institutions – as is well known – is essentially based on principle II, the so-called liquidity principle calculating the ratio of short-term and long-term liabilities and allowing prudential supervision thereof. A cash-flow statement, on the other hand, does not bear any direct relation to the assessment of the likelihood of a credit institution's insolvency. As long as national accounting standards thus do not prescribe a cash

flow statement, it is recommended to adhere to currently existing European provisions and not introduce this information request.

Regarding the issuing of publicly listed bonds through credit institutions, the requirement under section 1 regulating that IAS relevant information must relate to the last two fiscal years constitutes a severe cost hurdle for access to the regulated capital market; this applies in particular with a view to smaller principals. This should be reconsidered particularly with a view to the observation contained in no. 35 of document CESR/03-066b under which even for a switch of the accounting to IAS a comparability is contemplated for the past two fiscal years. This does not only result in a significant cost burden for these issuers but the IASB draft on the first time application of international financial reporting standards dated October 2002 is not an issue in the debate on the introduction of the IAS. Here, under item 29 there is merely a consideration of a comparability for at least the last year. This requirement would thus have negative repercussions on the capital market and is therefore in urgent need of revision.

11.3 True and fair view of issuers incorporated in a non-EU-member State:

Regarding the term ‘equivalent standard’ it ought to be mentioned that it is not clear what this standard should involve in cases where such standard does not meet the requirement of a ‘true and fair view’.

11.6.2 Interim and other financial information

The requirement of an interim report stipulated herein exceeds the requirement under the draft Transparency Directive since this also regulates the public offering of bonds. We should like to reiterate that it cannot be within the remit of CESR to autonomously expand reporting obligations that are not covered by European Directives. Due to the lower insolvency risks of banks, due to the supervisions exercised over them, the level of disclosure required for securities issued by banks should generally be lower than that required for (retail) debt of other issuers. Given that the proposed Wholesale Debt Registration Document does not require interim

financial statements, it would therefore be preferable not to require them in the Banks Registration Document either. Therefore, this provision needs to be deleted without any substitution.

11.8 Significant change in the issuers' financial or trading position

It remains unclear what is meant by significant changes in the trading position of a company and why it ought to be necessary to report the latter. From our point of view, the essential information is contained in the data on the financial position of a company. Credit institution's trading positions can be subject to major changes that depend on the respective trading strategy; yet, this does not allow any conclusions as to the company's solvency. We therefore suggest deleting the term 'trading position'.

12. Material contracts

Due to the lower insolvency risks of banks, due to the supervisions exercised over them, the level of disclosure required for securities issued by banks should generally be lower than that required for (retail) debt of other issuers. Given that the proposed Wholesale Debt Registration Document does not require interim financial statements, it would therefore be preferable not to require them in the Banks Registration Document either.

14. Documents on display

We deem it necessary to only publish the internal documents specified in this section if they are already publicly available. This request is also contained in your feedback statement under item 60 for the RD Debt Securities. From our point of view, there are no reasons why the banks' RD should deviate from this. The information under b) may especially constitute a particular burden for issuers, since e.g. expert letters may contain business secrets.

Further consultation documents

Annex A (CESR/03-066b) Equities RD:

14.1: The requirement under (iii) to disclose bankruptcies etc. ”with which a director was associated” is too vague. In so far, the wording proposed in the first Consultation Paper ”where such person was a director with an executive function at the time of or within the 12 months preceding such events” seems preferable. The requirement under (iv) still requires disclosure also of ”public criticisms” of the relevant persons by authorities. In our view, this disclosure requirement should be restricted to ”sanctions” which the persons were subject to. It appears unclear, already, how the term ”public criticism” is to be understood. For example, it could be construed so as to cover statements made by employees of a regulatory authority in an interview; this would clearly not be justified, as such statements would not necessarily imply any wrongdoing on the side of the relevant person worth being disclosed to investors for the next five years. The disclosure of a criticism would only appear justified if it constitutes one of the sanctions which the regulatory authority is entitled to impose. In this case, however, it would already have to be disclosed as a ”sanction”. The reference to ”public criticisms” should therefore be deleted from this item.

20.1: The foregoing reservations regarding 11.1 of Annex 3 –Additional Draft – on the envisaged cash flow statement and/or the preparation of an IAS account which may date back up to three years also apply in this context.

20.2: As set out in our response to the first Consultation Paper, pro forma financial information should, in our view, not be mandatory. As mentioned in the Consultation Paper itself (no. 48), there is a risk that investors are misled by the publication of such information. The recent regulatory developments in the United States have led to restrictions in the use of such information; it would therefore seem odd to require the publication of such information. It needs to be ensured in any case that no pro forma statements have to be prepared for transactions that are still in the planning stage. In line with our proposals, reference to 'planned transactions’ has been deleted from 20.2. Yet, in document Ref. 42, the ‘planned transactions’ are once more mentioned in the context of the requirement to draw up

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pro forma information, so that the presentations under 42 are in contradiction to Annex A 20.2. Also under 42, therefore, reference to ‘planned transactions’ should be deleted in any case.

20.4: It is unclear what an ”equivalent standard” is, if such standard does not meet the ”true and fair” requirement.

20.1: The foregoing reservations regarding 11.1 of Annex 3 –Additional Draft – on the envisaged cash flow statement and/or the preparation of an IAS account which may date back up to three years also apply in this context.

20.10: It is generally unclear what is meant by changes in the issuer’s ”trading position”. Only the financial position is of relevance in so far.

22: We still take the view that the term ”material contract” is too vague. The purpose of a prospectus is not to provide a due diligence report to investors but only to inform him about the nature and the major risks of his investments. Accordingly, it should be sufficient if the risks resulting from a contract that are material for the assessment of the company and/or the securities have to be described in the prospectus. The obligation to disclose such risks already follows from the disclosure requirement no. 4 ”Risk Factors”.

23.1 From our point of view, the scope of application of the disclosure requirement set forth under no. 23 – given its unclear wording – remains misleading. As far as we are concerned, the current wording does not indicate that merely experts who prepared a report which is quoted in the prospectus, need to be mentioned by name and job title.We harbour the particular concern that – without a respective clarification – the German translation of No. 23 might be faulty. Therefore we propose – in line with the wording adopted under no. 24 (b) – the following clarification.

„Where a statement or report attributed to a person as an expert and prepared at the issuer's request is included ...".

Apart from this, the same applies to all building blocks containing the phrase 'statement by experts and declarations of any interests'.

Annex C (CESR/03-066b) Equities SN:

3.3: Annex K to the first Consultation Paper contained a requirement to disclose "Conflicts of interest in the issue/offer". In our response to the Consultation Paper, we suggested to delete this requirement, on the grounds that conflicts of interest are sufficiently dealt with by other (regulatory) requirements, and that the term appears too vague. In the draft Advice, this provision has now been replaced by a requirement to disclose "any interest, including conflicting ones that is material to the issue/offer". This wording is even more vague than the previous one; there is no guidance at all to determine interests which are material to the issue/offer. It will also be especially difficult to fulfil for non-EU issuers, who might have different standards to deal with conflicts of interests. This requirement should thus be deleted. At least, a certain guidance should be provided, for example by inserting examples or restricting the obligation to cases in which there is a concrete risk of a damage for investors.

4.11: As set out in our response to the first Consultation Paper, in our view only information on withholding taxes should have to be provided; regarding further tax issues, a recommendation to investors to seek individual tax advice should be sufficient. Otherwise, an offer of securities in a multitude of EU countries, or an admission to trading in such countries, would mean that detailed tax descriptions would have to be given for all such countries, which would lead to a voluminous tax section in the prospectus and would create substantial practical problems for the issuer which could endanger multinational offers, as it will often be difficult to

obtain detailed tax advice for a large number of jurisdictions, before the prospectus is submitted to the competent authority.

5.3.4: This obligation, which was not contained in Annex K to the first Consultation Paper, does not seem justified. It seems to be based on the idea that any transactions with directors or senior management made at a lower price are an indication that the offer price is too high. However, a disparity between the public offer price and the price directors and senior management had to be paid up to three years before the public offer will in almost all cases simply reflect price movements of the security; in addition, many of the transactions with directors and senior management will be the result of stock option and similar plans. Thus, transactions with directors and senior management have in the vast majority of cases absolutely no relevance for the question if the public offer price is appropriate. This requirement should therefore be deleted.

5.4.3 We object to the disclosure obligation of the quotas and of the commissions of the underwriter. Neither the underwriting quotas nor the commissions going to the syndicate constitute meaningful information for the investor. Rather more, these designate processes at the primary market to which the investor does not have any access. The investors can by no means glean meaningful information for themselves from the respective higher or lower underwriting quota of their financial intermediary via whom they acquire the respective title. Yet, for the underwriting bank, the publication of this underwriting quota has massive implications, since it discloses the competitive positions.

What is more, the commissions flowing inside the syndicate are irrelevant for the investors. What is important for investors is the fees and/or prices which they have to pay on the secondary market for the acquisition of the quotas. Yet, these do absolutely not correspond to the commissions of the primary market that are valid for the underwriters. The primary market commissions are risk compensations for the underwriting whilst the secondary market commissions are compensations for

services. We therefore advocate deleting the respective disclosure obligations. At most, we view a summary quote of the commission total as acceptable.

Annex D (CESR/03-066b) Debt RD:

4: A section about risk factors should only be required if there are such factors; the wording of this item should be amended to clarify this.

5.1.5: This requirement is not congruent with the one contained under the same number in the Equity Registration Document, which could be an obstacle in using an Equity Registration Document for issuing retail debt.

5.2: We still take the view that the company's current and future investments are under normal circumstances not of relevance for investors in debt securities, and that these requirements should therefore be deleted.

5.2.3: This requirement does not appear in the Equity Registration Document, which again could be an obstacle in using an Equity Registration Document for issuing retail debt.

6.1.2: A description in particular of *new* products and/or activities does, under normal circumstances, not help investors to assess the risk inherent in debt securities. Disclosure of new products and/or activities should only be required if they belong to the issuer's principal activities, in which case they would be covered by 6.1.1.

10.2 & 11.2:

We uphold our opinion, as laid down in our response to the first Consultation Paper, that Conflicts of Interest as well as corporate governance practices do not, under normal circumstances, help investors in assessing the risk of a debt security. In our view, these requirements should therefore be deleted. In addition, the

requirement to disclose potential conflicts of interest and corporate governance practices will be especially difficult to fulfil for non-EU issuers, who might have different standards for both.

12: This information has no relevance for investors in debt securities generally. Under normal circumstances, disclosure about major shareholders does not help investors to assess the risk that the issuer becomes unable to fulfil its obligations under the securities.

13.3: It is unclear what an ”equivalent standard” is, if such standard does not meet the ”true and fair” requirement.

13.8: It is generally unclear what is meant by changes in the issuer’s ”trading position”. Only the financial position is of relevance in so far.

15: We still take the view that the term ”material contract” is too vague. The purpose of a prospectus is not to provide a due diligence report to investors but only to inform him about the nature and the major risks of his investments. Accordingly, it should be sufficient if the risks resulting from a contract that are material for the assessment of the company and/or the securities have to be described in the prospectus. The obligation to disclose such risks already follows from the disclosure requirement no. 4 ”Risk Factors”.

Annex E (CESR/03-066b) Debt SN:

13.1: Annex L to the first Consultation Paper contained a requirement to disclose ”Conflicts of interest in the issue/offer”. In our response to the Consultation Paper, we suggested to delete this requirement, on the grounds that conflicts of interest are sufficiently dealt with by other (regulatory) requirements, and that the term appears too vague. In the draft Advice, this provision has now been replaced by a requirement to disclose ”any interest, including conflicting ones that is material to

the issue/offer". This wording is even more vague than the previous one; there is no guidance at all to determine interests which are material to the issue/offer. It will also be especially difficult to fulfil for non-EU issuers, who might have different standards to deal with conflicts of interests. This requirement should thus be deleted. At least, a certain guidance should be provided, for example by inserting examples or restricting the obligation to cases in which there is a concrete risk of a damage for investors.

14.14: As set out in our response to the first Consultation Paper, in our view only information on withholding taxes should have to be provided; regarding further tax issues, a recommendation to investors to seek individual tax advice should be sufficient. Otherwise, an offer of securities in a multitude of EU countries, or an admission to trading in such countries, would mean that detailed tax descriptions would have to be given for all such countries, which would lead to a voluminous tax section in the prospectus and would create substantial practical problems for the issuer which could endanger multinational offers, as it will often be difficult to obtain detailed tax advice for a large number of jurisdictions before the prospectus is submitted to the competent authority.

15.4.3: As set out in our response to the first Consultation Paper, in our view the details of the underwriting agreement and the underwriting quota are irrelevant for investors and not material for the assessment of the company or the securities. The only fact of interest to investors is the total amount of commissions paid, which is already now regularly disclosed in prospectuses; the disclosure requirement should therefore be restricted to this point.

Annex H (CESR/03-066b) ABS:

1.2: Where an undertaking/obligor for which disclosure is to be made is not involved in the issue, the information used for the prospectus can either have been published by the undertaking/obligor, or it can be taken from publicly available sources.

Accordingly, the words ” or contained in publicly available sources” should be added at the end of the second, in the middle of the third and at the end and the last sentence under this number.

2.2.1: The assessment by which jurisdiction the pool of assets is governed may itself vary in the different jurisdictions concerned. Moreover, it is not clear which factors determine the jurisdiction by which the assets are governed.

2.2.3: It should be clarified what is meant with ”legal nature”.

2.2.13: For practical reasons, as the number of assets may be high, it should be made clear that this information may be given by specifying ranges of yield and maturity etc.

2.2.15: As for 2.2.11, the requirement to disclose information about the assets should be restricted to information that the issuer is aware of and/or is able to ascertain from information published by the obligor(s), or from publicly available sources. Furthermore, the relationship of this requirement to the one laid down in 2.2.11 is still unclear. It would be preferable if the two obligations would be merged into one.

2.2.16: We still regard the requirement to provide a valuation report for real property as unduly burdensome to issuers.

Annex 1 (CESR/03-128) Wholesale Debt RD:

3: A section about risk factors should only be required if there are such factors; the wording of this item should be amended to clarify this.

4.2: As set out above in our comments on the proposed Retail Debt Registration Document, we take the view that the company’s current and future investments are already not of relevance for investors in retail debt. They should in any case not be

required for debt securities targeted at wholesale investors, who have other means to make their assessments about the issuer's future development. Furthermore, these items have been deleted from the proposed Banks Registration Document (as explained in CESR's second Feedback Statement, no. 52); this could point to a lack of co-ordination in the drafting of the two schedules.

7.2: Given that it is generally doubtful if the risk of debt securities can be assessed on the basis of forecasts given by the issuer, and that wholesale investors, as confirmed by CESR in its second Feedback Statement, have other means to make their assessments about the issuer's future development, this information should not be required for wholesale debt.

9.2: As set out above for the Retail Debt Registration Document, we take the view that the disclosure of conflicts of interest does not, under normal circumstances, help investors in assessing the risk of a debt security. This is much more true for investors in wholesale debt. In addition, the requirement to disclose potential conflicts of interest will be especially difficult to fulfil for non-EU issuers, who might have different standards to deal with such conflicts.

10: This information has no relevance for investors in debt securities generally. Under normal circumstances, disclosure about major shareholders does not help investors to assess the risk that the issuer becomes unable to fulfil its obligations under the securities. It should certainly not be required for securities targeted at wholesale investors, which have other means to assess the risk connected with the securities.

11.8: It is generally unclear what is meant by changes in the issuer's "trading position". Only the financial position is of relevance in so far.

12: We still take the view that the term "material contract" is too vague. The purpose of a prospectus is not to provide a due diligence report to investors but only to inform him about the nature and the major risks of his investments. Accordingly, it

should be sufficient if the risks resulting from a contract that are material for the assessment of the company and/or the securities have to be described in the prospectus. The obligation to disclose such risks already follows from the disclosure requirement no. 3 ”Risk Factors”.

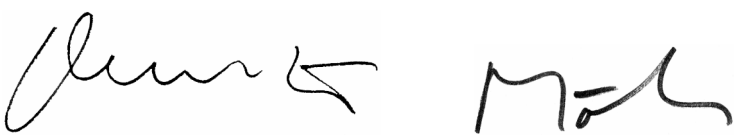
13.3: It is unclear what an ”equivalent standard” is, if such standard does not meet the ”true and fair” requirement.

Annex 2 (CESR/03-128) Depository Receipts:

With regard to this building block, we uphold our view, as laid down in our response to the second Consultation Paper, that it would be preferable (a) to create information requirements not only for depository receipts on shares, but also on other securities, in particular debt securities and (b) to determine the disclosure requirements regarding the underlying securities on the basis of the relevant building blocks, and to provide for additional disclosure requirements to describe the issuer of the receipts and the receipts themselves. The Second Feedback Statement has, in our view, not given an explanation why a full building block is needed to be created for depository receipts, nor has it answered the question on which basis disclosure about receipts on other securities than shares should be given.

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

by proxy



(Dr. Pleister) (Dr. Möller)