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 Addendum to the Consultation Paper

(Ref. CESR/03-162)

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

August 2003

Ref.: 413-CESR-Prosp

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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 / 03-162).

EXECUTIVE SUMMARY

We welcome once again the changes made by CESR as a result of the latest consultations. The proposals made in the new Consultation Paper, in our view, once again constitute a big step ahead compared with CESR's original proposals for the securities covered by this document.

We welcome in particular the publication of the road map which should be the guideline for issuers – although there is still a need for some clarification (see below) on the map.

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

- **Derivative products**

Reviewing the various CESR's proposals one of our great concerns is the treatment of derivative products.

[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 appreciate CESR's attempt to create a simple and practical solution for the disclosure requirements for the issuance of derivative products but CESR´s proposal for an indirect definition of derivatives does not yet fulfill in our view theses objectives.

The decisive criterion of a definition cannot be the promise of a 100 % capital return but only the fact that there is an underlying which constitutes the derivative component of the issue. Your definition leads therefore in our view to the unconvincing classification of – for example – subordinated bonds with no derivative feature at all as derivative issues because there is the risk that the money will not be repaid entirely.

As in our view a definition for derivatives is necessary we propose such a definition in our answer to question No. 59.

- **Interim financial information**

As already expressed in our letters before and declared at the hearing on 9 July 2003 we strongly criticise the requirement for public interim financial information where the issued securities are not admitted to trading on a regulated market. The requirement of an interim report stipulated in No. 46 exceeds the respective requirements under the draft Transparency Directive as well as the latest proposals of the Commission for capital requirements for banks and investments firms. If the Council and the Parliament had wanted to set up a specific requirement for interim financial reporting for the mere purpose of the Prospectus Directive, they would have done so on Level 1. CESR should acknowledge that this has not been the case and refrain from introducing such a requirement on Level 2.

- **Examples in the securities note for derivatives**

You raise several questions in your paper regarding the role of examples in the prospectus in order to provide a clear and understandable explanation of how an investor's return is calculated and how an instrument works. In our view this is a question of general

importance in our view and has also to be seen in the light of investment advice given by intermediaries, where examples are sometimes used to explain different products. In addition to this in Germany, bank advisors use a standardised brochure which they hand out to every client in order to inform him or her in general – sometimes on the basis of examples – about several products.

We think indeed that examples in the prospectus could be dangerous and misleading and should not be mandatory. A description of the product and its essential risks mentioning, *inter alia*, all relevant scenarios for the pay out and/or delivery and describing them in abstract terms is in our view much better suited to allow the investor to understand the product. Furthermore the inclusion of examples would, on the other hand, draw the investor's attention solely to single scenarios, but would not allow him to understand the economic nature of, and the risk associated with, the security as a whole.

- **Base Prospectus**

Regarding base prospectuses, it is highly important that Level 2 requirements, especially on the summary, do not impede the speedy issuance of products on its basis. In particular, we refer to our comments on no. 112, 115, 125. It is especially important that issuers can use one single base prospectus to issue all products which the markets currently classifies as "derivatives" (including for example capital guaranteed notes); please see our comment on no. 136.

- **Summary**

In our view, whenever the base prospectus contains several products the summary may also contain the same products. It could be useful and even necessary for the investor to have the parallel description of the different products in the same summary to compare the issues and aspects. Otherwise the investor would have to construct his own comparative tableau out of the different summaries for comparison. For this judicious reason it should be allowed to use more than the 2500 words for the summary in the case of describing more than one product.

- **Road map**

For the purposes of quick orientation, in our view the matrix shaped road map (cf. Annex I) is a useful instrument, but it requires further elaboration because it does not cover the whole meaning of the description in the text. For example, the equities RD should cover the full range of other products, yet this is not visible in the matrix.

QUESTIONNAIRE

Question 32: Do you consider that this disclosure is relevant for these products? Please give your reasons.

Under the premise of a separate Derivatives RD it seems to be necessary to have a similar building block 6.1.1 as is the case for the banks retail debt and wholesale debt RD stating briefly the principal activities. Omitting the indication of any significant new products and/ or activities must be possible on the grounds that the indication is of no importance for the valuation of the derivative and that it could cause an overload for the issuer if he had to describe his financial engineering.

Question 34: Do you consider that disclosure about the principal markets in which the issuer operates is relevant for these products? Please give your reasons.

For derivatives investors, a brief description of the principal markets is equally superfluous. It only creates a high amount of descriptive work.

Question 36: Do you consider that disclosure about an issuer's significant business developments is relevant for these products? Please give your reasons.

Due to the lower insolvency risk of banks which results from the supervision to which they are subject, this information should not be required. The requirement suggested under no. 8.1 of the Wholesale Debt Registration Document (a statement that there has been no material adverse change in the financial position etc.) could be adopted here as well. Although this does not directly relate to the foregoing question, we would like to reiterate our opinion on the information foreseen under 8.2 on any known trends. In line with our last comments letter, we would like to re-emphasise that 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 of material involved in drawing up the necessary information this will hardly be 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 almost impossible to put all these developments into coherent focus, this being a task that would rather fall within the remit of economic think-tanks. The "material impact"-clause does not sufficiently limit this information requirement, since different developments would have to be quantified and weighed against each other, similar to the forecast of outcomes. We consider such a 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 liability for *incomplete description of trends.*

Question 37: Do you consider that this disclosure is relevant for these products? Please give your reasons.

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 issues of derivatives since there is no obvious link with the debtor's risk of insolvency.

Question 39: Do you consider that disclosure about an issuer's major shareholders is relevant for these products? Please give your reasons.

This information is usually of no relevance for investors in debt securities or derivatives in general. Under normal circumstances, disclosure about major shareholders does not help investors to assess the risk of the issuer becoming unable to fulfil this obligations under the securities. It should certainly not be required for derivatives issued by banks, as the supervision regime exercised over them also applies to the persons holding major interests.

Remarks to No. 43 to 47:

We have serious doubts if CESR´s approach to require interim financial information in cases where the issuer does not have to draw up interim financial statements according to the forthcoming Transparency Directive or any other European legislation is in line with the Lamfalussy-process.

First, we do not understand what the "anticipation" made by CESR under no. 46 is based on: The Third Consultation Paper of the Commission on the Review of Capital Requirements for Banks and Investments Firms of July 1 2003 does not at all provide for an obligation for all banks to produce interim financial statements. Where such an obligation is proposed, its applicability is limited to international banks acting on a cross-border basis (cf. Art. 139, 136 and Annex L-1 para.4). If such a far-reaching and cost-sensitive new obligation were to be implemented in the Prospectus Directive this decision should have been taken on Level 1 of the Directive. This has not been the case. Therefore, we do not believe that the Commission will be entitled to introduce such an obligation on Level 2 without a clear statement of the Parliament and the Council to do so.

Secondly, we cannot see a real practical need for interim financial statements from an investor´s point of view. It should be borne in mind that the derivative investor as well as a debt security investor is only interested in information relating to the issuer's ability to fulfill its obligations under the security. If this ability is affected by any event occurring after the date of the latest annual financial statement it has to be disclosed already under the risk-factors-section. We cannot see a need to additionally provide the investor with interim financial statements unless such information has to be prepared by the investor for other reasons (e.g. requirements under the Transparency Directive) and therefore is easily available for the issuer. Where this is not the case no requirement for interim financial information should be introduced on Level 2.

Question 59: Do you agree with CESR's revised approach in relation to retail non-equity securities and wholesale non-equity securities? If not please give your reasons.

We agree only partly with CESR's revised approach:

Your proposal for a definition of derivatives is not persuading. The important criterion of a definition cannot be the promise of a 100 % capital return but only the fact that there is an underlying which constitutes the derivative component of the issue. Your definition leads to the unconvincing classification of – for example – subordinated bonds with no derivative feature at all as derivative issues because there is the risk of having not all the money paid back. Defining derivatives as all securities which do not fit under another schedule therefore does in our view not solve the problem, but only shifts it to the definitions applied to determine the scope of the other schedules, in particular that of a debt security, which in its proposed form refers to the existence of a full capital return (no. 54, 192). In our view, a security which provides for the repayment of only 99,9 per cent of the capital and for the payment of interest should be treated as a debt security, not a derivative.

Therefore regarding the definition of derivatives, we still think that a definition referring to the existence of an ”underlying” other than a ”plain vanilla” interest rate would provide the right basis. We would like to propose therefore the following definition:

> **”Derivative securities are securities where the payment and/or delivery obligations are linked to an underlying (including but not limited to securities, currencies, commodities, indices or other measures), unless the payment of interest is merely linked to a fixed rate or to a recognised inter-bank interest rate.”**

Question 61: Do you agree that information about investments should not be required for banks issuing wholesale debt securities? Please give your reasons.

Question 64: Do you consider that information on investments is relevant for wholesale debt securities? Please give your reasons.

Yes. We take the view that the company’s current and future investments are already of no relevance for investors in retail debt. They should in any case not be a requirement for debt securities targeted at wholesale investors, who have other means of making 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 lead to a lack of co-ordination in the drafting of the two schedules.

Question 75: Do you consider that examples are necessary in order to fulfil the principle that the prospectus must contain a clear and understandable explanation of how an investor's return is calculated and how the instrument works? Please give your reasons.

Generally, examples are in our view not useful as they can be misleading and raise expectations. As mentioned in the summary the question of including examples has to be seen in the light of investment advice, too.

Examples should therefore not be mandatory. A description of the product and its essential risks mentioning, *inter alia*, all relevant scenarios for the pay out and/or delivery and describing them in abstract terms is in our view much better suited to allow the investor to understand the product. Furthermore, examples would be burdensome to prepare on the basis of base prospectuses, which are almost always used for derivatives and similar products. Given that issuers often issue a large number of derivatives on one day, it would be extremely difficult to provide examples tailored for the economic details of each single product.

We therefore strongly recommend leaving it to the issuer to decide when to use examples (and where to provide them, as it should be possible to provide them outside a prospectus), on a discretionary basis, and to mandate rather a description of the economic nature and risks in general terms.

Question 76: What other methods (if any) do you consider can be used to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works? Please give your reasons.

Another method to provide the investor with a clear and understandable explanation of how the return is calculated is the drafting of clear terms and conditions and/or a

description of the features of the security in abstract terms in the general section of the prospectus.

Question 77: If you do not consider that examples are necessary to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works, do you consider that the provision of examples in the prospectus is useful for investors? Please give your reasons.

If examples in the prospectus are not necessary for a clear understanding of the instrument they should not be mandatory or, if at all, then only at a very basic level.

Question 78: Do you consider that the use of examples in the prospectus is dangerous and misleading and should not be mandatory? Please give your reasons.

Generally we think indeed that examples in the prospectus could be dangerous and misleading and should not be mandatory because you cannot give investment advice via prospectuses as mentioned above. While examples can sometimes be helpful, as a general rule, it would not be correct to state that examples always generate truly valuable information on the product. In fact, since by definition examples highlight certain cases without giving a coherent description, they often mislead investors. The inclusion of examples would draw the investor's attention solely to single scenarios, and fail to present the full economic nature and risks associated with the security.

An additional difficulty is that examples could lead to excessive legal risks for the issuer since they could be seen as the basis of a misleading fact in a prospectus, which is a legal document. In practice, if this were required, issuers would be compelled to provide an impractically large number of examples that do not benefit the customer but raise issuance costs for companies.

Question 79: **If examples are to be included in the prospectus, do you consider that CESR should stipulate how the examples should be prepared, for example that they should be realistic, not misleading and should provide a neutral view of how the instrument works?**

No. See our foregoing counter-arguments.

Question 80: **If your answer to the previous question is yes do you think that examples should also fulfil other requirements (for example: the need to insert the break even point for the investor)? Please state these other conditions.**

n/a

Question 81: **Do you consider that examples should be provided for derivatives? Please give your reasons.**

No. See our answer to question 78.

Question 82: **If yes, for which types of derivatives should examples be provided? Please give your reasons.**

n/a

Question 83: **Are there any other type of securities for which you consider examples should be provided, for example structured debt instruments that have a derivative component?**

The reasons set out above against an inclusion of examples apply to derivatives as well as to all other securities.

Question 89: Which of the above options do you consider should be adopted by CESR (1, 2 or 3)? Please state your reasons.

Based on the following reasons, we prefer the first option: in the case of an investment decision in derivative securities, the investor already has a clear understanding of the underlying to which the derivative security is referring. He has already decided that he wants to have a certain exposure to the specific index or share, etc. and is therefore only interested in the mechanics of the respective derivative securities. Any further information on the price and volatility history of the underlying in the securities note is superfluous.

The performance of the underlying in the past does not give any reliable information with regard to the performance of the underlying in future. Consequently, the information on the past performance of the underlying is of no additional value to the investor; such information could even be misleading, and the implementation of the current figures could have a negative impact on the flexibility of the issuing procedure whilst the information included could be already out of date when the securities note is published.

Question 101: Do you agree with this generic rule?

Yes, we do in general. A non-formalised way should be sufficient to indicate the missing information which will be delivered in the form of the final terms. I. e. we think that the issuer should not be obliged for example to indicate the numbers of line items out of the building block. These numbers are not helpful for the investor.

Question 112: Which of these two approaches do you think should be applied to base prospectuses? Please give your reasons.

There is in our view no legal basis for an obligatory translation of the final terms as a whole in the Prospectus Directive. Art. 19 states that only the summary may be required to be translated. CESR should, therefore, not add any new duties to the existing ones. It also seems hardly possible that something in the final terms would be part of a summary.

The function of a summary is to convey the essential characteristics of a security; regarding the conditions of a security, it can therefore not give more than a brief description of the economic nature. The economics of each security type covered by a base prospectus are known at the time when this is filed and can therefore be included in the summary for the base prospectus; the final terms will never vary from the economics described in the base prospectus. Therefore in our view the approach set forth in No. 110 should apply. It is clear enough that for the interest of selling the issue the main points in the final terms will be translated if this is necessary.

Question 115: Which of these views do you consider should apply to base prospectuses with multiple products? Please give your reasons.

If the base prospectus contains several products the summary can also contain the same products in our view. We do not see anything in the Prospectus Directive to prevent this. It could be useful and even necessary for the investor to have the parallel description of the different products in the same summary to compare the issues and aspects. Otherwise the investor would have to construct his own comparative tableau out of the different summaries for comparison. As a result it should be left to the issuer to decide whether it is useful to describe multiple products in one single summary or in different ones.

In this context it should in general be allowed to use more than the 2500 words for the summary especially in the case of describing more than one product in one single summary.

Question 122: Which of these views do you consider should apply to the form of final terms? Please give your reasons.

In our view it should be left to the discretion of the issuer to include in the final terms either the whole base prospectus, the whole securities note, the entire Terms and Conditions or only the information which the issuer was not able to give when filing the base prospectus. It is a case-by-case decision in our view, because there could be either

the need for a replication of the whole prospectus or just some information. The aim should be always to give the investors a useful and comprehensible information.

Question 125: In relation to the publication of the final terms, should the method of publication be restricted as set out in Article 14?

As Article 14 relates in our view to the publication of the prospectus and not to the final terms, so we agree with the view of those CESR members who think that the method of publication should not be determined according to Art. 14. It seems to us that the Level 2 provisions can only deal with this question if Art. 14 is not applicable to the final terms. In our view, such application is prevented by the fact that Art. 5, 4 only requires the final terms to be ”provided” to investors, and does not refer to Art. 14. CESR is therefore free to determine an appropriate way of publication for the final terms. Given the need for a method that allows issuers an easy and speedy information of investors and the fact that it is in the mutual interest of issuers and investors to facilitate such access without which the product would simply not be sold, all ways of publication should be allowed which give investors easy access to the final terms.

Question 127: Do you agree with this analysis?

As has been pointed out in earlier sections, publication of the final terms is not restricted by article 14.

Question 131: Do you agree with the above additional disclosure requirements in relation to base prospectuses?

Yes, with the addition to no. 2 that we mentioned under Question 101, namely that a non-formalized method should be sufficient for indicating the missing information which will be delivered in the form of the final terms, i. e. the numbers of line items out of the building block for example will not constitute meaningful information for the reader.

Question 132: Are there any other disclosure requirements that are not specified above that you consider necessary for base prospectuses? If so, please specify what these are and give your reasons for why you think they are necessary.

No other requirements.

Question 136: Do you agree with the above types of base prospectuses?

Question 137: Are there any other types of base prospectuses that you consider are necessary? Please give your reasons.

We are in principle opposed to the idea of different types of base prospectuses. We find the proposed scheme of different base prospectuses completely at odds with the very purpose of an offering programme, which must be quick and efficient. Furthermore the definition of ”offering programmes” in the Prospectus Directive would allow the inclusion of such other product types in one single base prospectus, as the new Recital 12a to the Directive has clarified. We therefore believe that the paragraph 135 should be modified.

Requesting different types of base prospectuses for debt and derivative products, for example, would create a host of difficulties. Currently, issuers of derivatives use base prospectuses that allow them to issue a great variety of product types, including products providing a capital return while at the same time having derivative features. As discussed previously, under the definition of debt securities proposed by CESR, the latter securities would need to be issued on the basis of a separate debt securities base prospectus, which would be additional to the derivative securities base prospectus needed for the rest of the products. Issuers of debt using Medium Term Note Programmes would have to face considerable difficulties as such issues also often contain derivative elements. Separate base prospectuses would clearly not be helpful for the investor but would slow down the issuance of offering programs.

To avoid these problems and to ensure that the base prospectus fulfils its objectives, it should be possible for derivative securities and debt securities (as well as others falling within the scope of the base prospectus) to be issued under the same base prospectus, with one approval. Finally it should be emphasised that in our view this would not lead to a lack of information for investors as the information on every security in the base prospectus should be the same as in the “normal” prospectus – except the final terms.

Question 143: Do you agree with this approach?

Yes. It seems sensible not to restrict the lower level of disclosure appropriate for wholesale investors to information about the issuer and not to include disclosure on the securities.

Question 144: Do you consider that the information provided for in Annex F is adequate for wholesale investors? Please give your reasons.

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 (no.2 of Annex F).

No. 3 (Key Information): For retail debt, Annex L to the first Consultation Paper contained a requirement to disclose ”Conflicts of interest in the issue/offer”. In the previous consultation, many market participants 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 principle, we agree with these views. Annex F now contains a requirement to disclose ”any interest, including conflicting ones that is material to the issue/offer” – which is worded even more ambivalently than the previous one, providing no guidance to determine interests which are material to the issue/offer.

We find that it is not relevant to include this information in relation to the issuer and therefore recommend to delete it.

Furthermore No. 4.10 is not quite clear and needs some clarification.

Question 145: Are there any other items included in the retail debt SN that should be included for wholesale investors? Please give your reasons.

No other items necessary.

Question 151: Do you agree with the disclosure obligations set out in Annex G as being appropriate for this type of issuer? Please give reasons for your answer.

In our view the proposed requirements seem appropriate for closed-ended investment funds.

Question 154: Do you consider there is a distinction to be drawn between these two types of activities, as set out above? Please give reasons for your answer.

Question 155: What would you consider to be an appropriate and sustainable distinction between both activities?

We agree with the proposed distinction, which in our view for property investments provides the right dividing line between investment companies and trading/holding companies for property investments. However, we doubt that a more precise definition can be found for both types of activity.

Question 162: Do you agree with this approach?

Question 163: Do you agree with the disclosure requirements of the building block concerning the underlying for equity securities as set out in Annex H?

Whilst we welcome that CESR has simplified its approach to securities which can be converted or exchanged into the issuer's own shares or shares of a group entity by creating a building block to be used in addition to the Debt or Derivatives SN, we still think that the mentioned securities should only be treated differently from derivatives or debt securities if their issuance, in economic terms, corresponds to the issuance of the respective underlying, i. e. if the issuer will fulfil its obligations under the securities by delivering *newly created shares.*

In determining the disclosure requirements for the mentioned securities, CESR should not feel obliged to stick to the definition of "equity securities" used in the directive in its currently proposed form, as the purpose for the inclusion of the mentioned securities in this definition is to prevent a circumvention of the provisions for the determination of the competent authority. For the determination of the disclosure obligations should, on the other hand, the economic character of the securities generally be the decisive factor; to the extent that the issuance of a derivative or debt security in economic terms corresponds to the issuance of the respective underlying should the proposed building block and the Equity RD be applied, in combination with the SN for derivatives or debt securities.

In the absence of such economic equivalence, the application of the same disclosure requirements as for equity can, in our view, not be justified by the argument that for the relevant securities, the investor will end up with the issuer's share in its hands, and that the issuer is able to gather all necessary information to compose an Equity RD for its own shares.

We would regard this as a contradiction to the lack of a requirement to give any material disclosure if the relevant security can be converted in the shares of another company (or if the security, as a derivative, in any other form relates to other shares as underlying). In our view, the lack of a disclosure requirement for derivatives generally is not only justified by the fact that the issuer is, under normal circumstances, not able to obtain the necessary information to give disclosure for another issuer; it can also be based on the existence of sufficient information about the other issuer in the secondary market, at least if such issuer's shares are listed on a regulated market.

Accordingly, the application of the Equity RD at least should be limited to cases where the issuer's shares are not listed on a regulated market in the European Union.

Finally, it should be noted that the proposed approach would impede the use of offering programmes for the issuance of derivatives. For example, in the German market, all relevant issuers of derivatives also offer warrants on their own shares, just to allow warrant investments in the full range of big companies. Under the proposed approach, issuers, to continue this practice, would not only have to compose an Equity RD as the basis for their offering programmes, which would be far more complex than drafting a bank RD; they would also have to keep it up to date continuously (Art. 16 of the Directive), which would be hardly worth the effort just for one or two securities.

Consequently, the issuance of warrants on the issuer's own shares would practically be prevented. – The same is true for certain other product types such as reverse convertibles and discount certificates.

We note, in this regard, that CESR's proposal for the types of securities that can be issued under the same base prospectus already includes the distinction proposed by us, in so far as the base prospectus for "warrants to subscribe for new shares" would be limited to such warrants which are "issued for the purpose of capital raising that give the investor the right to receive newly created shares" (no. 135, 2 a)).

Question 165: Do you deem the Working Capital Statement and the information on Capitalization and Indebtedness necessary for an informed assessment of the securities in cases of products which can be converted or exchanged in newly created shares? Please give your reasons.

We agree that Working Capital Statement and Capitalisation and Indebtedness could be useful in certain cases, but agree with those CESR members which believe that such information will not add value for investors as it will be outdated by the time the investor finally receives the shares.

Question 167: Do you agree with this approach?

Although this approach seems sensible we would prefer to modify the definition of derivatives as proposed above in our comment and to make the Derivatives SN directly applicable in all those cases.

Question 168: Do you agree with the combinations set out in the table?

In our view the table adequately reflects the proposed treatment of ”equity securities” as defined by the Directive. However, as set out above, we do not agree with this approach.

Question 172: Which of the options set out above do you support? Please give your reasons for your choice.

Issuers should be permitted to choose the best way to present the information which meets the disclosure obligations. In particular, it would not make sense to force issuers to follow the order of the disclosure requirements in the different schedules, as for example the attribution of disclosure items to the Registration Document and the Securities Note will divide information on the issuer which functionally belongs together, so that a prospectus

drawn up as one document can better be understood by investors if the whole information on the issuer is presented within one section (and is not divided between the parts setting out the contents of the RD and the SN).

Question 176: Which of the options set out above do you support? Please give your reasons for your choice.

Issuers should be permitted to choose the best way to present the information which meets the disclosure obligations.

Question 182: Which of the options set out above do you support? Please give your reasons for your choice.

We think that the answer to this question can only be given on a case-by-case basis. In certain cases the first option might appear to be the simpler solution, while in others the latter might be the more feasible option. CESR should not mandate any restriction and leave it to the discretion of the issuer.

Remarks to No. 186:

We do not totally understand what the role of CESR's guidelines in this respect will be. Assuming that they are aimed at providing general guidance to issuers, we find some useful elements in the first guidelines, but disagree with the last one.

The proposed forth guideline, concerning the fact that in many cases the summary may be the only document published in the investor's language, is self-evident and as such does not provide any guidance to the issuer beyond what is already laid out as a requirement for the content of the summary. On the other hand, it could be misleading if taken as a signal that the summary should be packed with the same information as in the rest of the prospectus (which would contradict the other requirements on Level 1). Given that one of

the main practical objectives of the formulation of the summary obligations in the Directive is to ensure that the summary does not lead to excessive legal risks (and consequently, an unreasonable length) we believe that this guideline would not be helpful.

Remarks to No. 214:

It is essential for the functioning of a single market for all securities that securities of a completely new type, with features completely different from those of the securities for which schedules exist, also benefit from the European passport. The last sentence under no. 214 should therefore amended so to say that such prospectuses do benefit from the European passport. It would also be helpful if this would be turned into a explicit Level 2 provision.

Question 237: Do you agree with the method of publication proposed?

Yes. Requiring issuers to disclose the document in the same way as the prospectus would create problems due to the fact that many issuers will have several securities admitted to trading on a regulated market, which will often have been published in different ways.

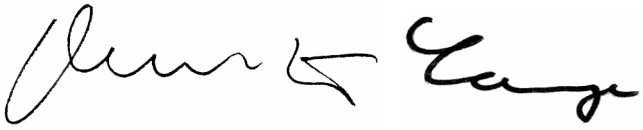
Question 238: Do you consider CESR should limit the issuer's choice to one or more methods of publication? Which ones?

No, please see answer to question 237.

Question 239: Do you consider that a deadline should be defined? If so, do you agree with the proposed deadline or would you suggest a different one? Please give reasons for your answer.

We regard a deadline of thirty business days after publication of the annual financial information as reasonable.

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. Lange)