

CESR'S ADVICE ON LEVEL 2 IMPLEMENTING MEASURES FOR THE PROPOSED PROSPECTUS DIRECTIVE

32. Do you consider that this disclosure is relevant for these products? Please give your reasons. **No, this disclosure may be relevant for equity, as the activities and performance of the issuer affects its value, but not for derivatives, which value depend on a certain underlying. It is not relevant when making an investment decision about derivatives.**

34. Do you consider that disclosure about the principal markets in which the issuer operates is relevant for these products? Please give your reasons. **No, for the same reason as in question 32.**

36. Do you consider that disclosure about an issuer's significant business developments is relevant for these products? Please give your reasons. **No, for the same reason as in question 32.**

d) Administrative, management and supervisory bodies conflicts of interests – Annex D, ref 10.2

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QUESTION

37. Do you consider that this disclosure is relevant for these products? Please give your reasons. **No, for the same reason as in question 32.**

e) Major shareholders – Annex D, ref 12.1 & 12.2
QUESTION

39. Do you consider that disclosure about an issuer's major shareholders is relevant for these products? Please give your reasons. **We have not a firm position on this question. We admit however that it may be relevant for some investors.**

A new approach to derivatives

54. Any differentiation between debt and derivative disclosure requirements will require some kind of definition of derivatives, which could potentially restrict market innovation. If CESR were to express an opinion, it would be that where the security provides for a 100% capital return, it would be considered to be a debt security. Hence, all other securities, for which there is no specific disclosure regime, would be considered to be derivatives. **We would prefer to use other term instead of derivatives. Non debt / Non equity securities?**

57. It should be noted that an SPV whose obligations in respect of retail non-equity securities are guaranteed by a bank would be required to provide the information set out in the retail debt disclosures. This is a change in approach to that set out in paragraph 62 of the Addendum (CESR/185-b). However CESR does not believe that this will significantly increase the cost of preparing documents for such entities as many of the disclosure requirements will not be relevant/applicable.

58. Clearly, this would be a simpler arrangement. However, it will impact on the desirability of changing the disclosure requirements set out above in paragraphs 31-40 above. Consultees should consider this aspect when providing their answers to the questions above.

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 don't agree; when investing in spv's securities guaranteed by a bank, many investors buy those securities in light of such guarantee and therefore they would like to see the same type of documents as when they invest in the bank's securities.**

60. One particular disclosure requirement needs careful consideration under this proposed approach. Currently, the disclosure requirements for wholesale debt require information about past, present and future investments. However, the disclosure requirements for banks do not require such information. So, if this approach were to be adopted, CESR considers that there should at least be a provision making it clear that where a bank issues wholesale debt it would not be required to provide such information about investments.

QUESTION

61. Do you agree that information about investments should not be required for banks issuing wholesale debt securities? Please give your reasons. **Yes, wholesale investors have the means to obtain enough information about banks without the need for such disclosure.**

QUESTION

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

74. During this discussion the main arguments put forward by CESR members were the following ones.:

a) Against the inclusion:

- Examples can be misleading as, by their very nature, they can only present a limited number of scenarios. Investors may potentially place undue reliance on examples contained in a prospectus.
- The terms and conditions are sufficient to answer the requirement of Article 5(1) of the Proposed Directive and to provide any material information to investors and a clear and understandable explanation of how an investors return is calculated and the instrument works.
- Examples oversimplify the working of products.
- Examples raise too much expectation.
- People who buy sophisticated products are educated and do not need examples.
- The risk factors section of a prospectus should contain a risk that an investor may lose the value of his investment.
- Rules of conduct are sufficient to meet the concerns of investor protection without the need for examples in the prospectus.

b) In favour of the inclusion:

- The information included in the prospectus "shall be presented in an easily analyzable and comprehensible form"² and the terms and conditions for some complex products are not easily understandable and readable.
- Only examples make it possible to understand how sophisticated products work.
- In order not to be misleading, examples must be realistic and show the impact of a positive, negative or neutral evolution of the underlying.

² Art. 5 (1), of the Common Position of 24 March 2003.

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- It is not enough to know that a product is risky and that investors can lose their entire investment (see risk factors and warnings): for those who want to take that risk, it is important to be able to understand precisely in what circumstances they can obtain a positive return.

- The term “guaranteed products” and other such marketing terminology might be potentially misleading. In such cases, concrete examples demonstrating, for instance, that investors would earn more by investing on a risk-free investment, such as government bonds, than by investing in the product, even in the best-case scenario, can be particularly relevant.

QUESTIONS

On the basis of this discussion, CESR decided to consult on the need to include examples in order to

provide a clear and understandable explanation of how an investor’s return is calculated and how the instrument works.

Questions 75-83

We think that examples can be misleading and are costly and time consuming. A clear explanation of how the instrument works, including formulas if relevant, should be included without the need for an example. From the explanation the investor will be able to produce its own scenarios and therefore not place undue reliance on examples included by the issuer. No worst scenarios should be included but instead a disclaimer, with warnings if the principal invested is at risk.

86. Without a clear answer to the question, CESR discussed the topic internally without fixing its opinion at this juncture. Three options were discussed:

1. No past performances and no volatility should be required.
2. Mandatory indication of where information about past performances and volatility can be found or, if not easily accessible, indication by the issuer of the past performances and the volatility.

³ The question was:

QUESTION

89. Which of the above options do you consider should be adopted by CESR (1, 2 or 3)? Please state your reasons. **Number one is the option we consider. It may be also misleading and even if updated continuously by the issuer (which would be too costly) we think it does not help to take an investment decision.**

100. CESR believes that this generic rule will accommodate current market practice whereby the issuer provides as much information as possible in the base prospectus leaving final issue specific terms to be provided as close to issue date as possible in order to facilitate quick access to the market. Maintaining this practice will also ensure that the necessary flexibility for innovation in the development of financial products in the future will continue.

QUESTION

101. Do you agree with this generic rule? **Yes we agree**

109. In relation to this, CESR discussed that in case of a summary for a base prospectus, some information (which would be included if the prospectus was a single issue prospectus) may not be available when the summary is prepared, filed and approved because it will be available later on as final terms. CESR member’s have not yet fixed their final view on whether or not such final terms do or do not need to be translated.

110. Some CESR members consider that as the summary forms part of the base prospectus that gets approved by the competent authority, and the final terms do not, the final terms can not form part of the summary, and therefore do not have to be translated as the requirement to translate only relates to the summary;

111. Other CESR members consider that as the purpose of the summary is to convey the essential characteristics and risks associated with the issuer, any guarantor, and the securities, it is

argued that there may be some items in the final terms that would if the issue was done as a single issue form part of the summary and therefore be translated. On this basis, there is a proposal that there may be items of the final terms that need also to be translated, even if they do not form part of the approved summary.

QUESTION

112. Which of these two approaches do you think should be applied to base prospectuses? Please give your reasons. **We don't think that the final terms should be translated for wholesale investors; for retail investors it should be an option of the issuer.**

QUESTION

115. Which of these views do you consider should apply to base prospectuses with multiple products? Please give your reasons. **The issuer should have the option to decide. If the products have alike characteristics, they could fall under the same summary.**

e) Final terms

QUESTION

122. Which of these views do you consider should apply to the form of final terms? Please give your reasons. **We think that the reference to the base prospectus should be enough. The investors have access to the base prospectus and therefore there is no need to replicate 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? **If it is set out in the base prospectus and they are easily accessible and free of charge, the restriction should not apply.**

126. Following on from the above, those members who believe that the methods of publication as set out in Article 14 applies to the final terms, also believe that on the basis of Article 14(5) the method of publication used for the base prospectus does not need to be same method used for the publication of the final terms provided that the methods used for publication is one of the methods used in Article 14.

QUESTION:

127. Do you agree with this analysis? **No**

The content of the prospectus to be used for offering programmes (Art. 7 par.1 letter c)

a) Additional information concerning the programme structure

130. In addition to the disclosure requirements as set out in the applicable registration document, or securities note, or other building blocks, CESR considers that the following additional disclosure requirements should apply to base prospectuses:

1. Information regarding how the final terms will be published, in the event that the issuer is not able to determine the method of publication when the base prospectus is filed, the issuer has to set out how the public will be informed about which method will be used for the publication of the final terms.
2. Identification of line items that are to be included in the final terms.
3. Include a general description of the programme.

QUESTIONS:

131. Do you agree with the above additional disclosure requirements in relation to base prospectuses? **Yes**

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**

b) Types of securities that can be issued under the same base prospectus

QUESTIONS

136. Do you agree with the above types of base prospectuses? **Yes, it is yet not very clear to us which products could be issued under offering programmes. We think they should be all kind of derivatives, not only warrants, and in some type of products such as reverse convertibles, no difference should be made if they are cash or physically settled as the economic rationale is the same for both settlement procedures. It should be clearly explained to the investors that they may receive securities that they could afterwards sell or maintain in their portfolio as they may consider.**

IV. FORMAT OF THE PROSPECTUS

- Some CESR members are of the opinion that issuers, when drafting their prospectus, should follow the order of the disclosure requirements in the different schedules in order to ensure a full and easy comparability of prospectuses in the European market.
- Other CESR members felt that the summary, the risk factors and the terms and conditions of the security were the most important parts of the prospectus and so should be set out at the front of the prospectus. The other disclosure requirements could then be met in an order chosen by the issuer.
- Others consider that issuers should be able to choose the best way to present the information which meets the disclosure obligations. This would allow issuers to choose the order of the information to best describe to investors the activities of the issuer and the nature of the securities. This could change from one issuer to another.

QUESTION

172. Which of the options set out above do you support? Please give your reasons for your choice. **We think option 2 confers both investor protection and issuer's right to present its own information.**

173. CESR has also considered the question of how a single document prospectus should be prepared. The Directive requires that a single document prospectus must include a summary. However, the information that would otherwise be included in the securities note and the registration document must also be included in the single document prospectus. This gives rise to the question of whether the SN and RD information should be kept separate from each other even in a single document prospectus.

174. Some CESR members believe that in a single document prospectus, the prospectus shall start with the summary, followed by the securities note requirements and then the registration document requirements.

175. Others consider that no specific order should be set although they would anticipate that the summary would probably be towards the beginning of the prospectus.

QUESTION

176. Which of the options set out above do you support? Please give your reasons for your choice. **We think the order proposed in 174 is more appropriate for investor information.**

181. Concerning the way to supplement the summary, if necessary, CESR considers two different approaches:

- The first one consists of integrating the new information in the original summary, in order to have an up-to-date summary prior to the closure of the offer or admission to trading on a regulated market. This means that a new complete summary will be approved together with the supplement to the prospectus. This approach takes into account the fact that the summary might be the only document published in investors' language according to Art. 19 of the draft Directive.
- The second one consists in producing, together with the supplement to the prospectus, a

supplement to the summary which is limited to the new information. In this case, investors will have to read the original summary together with the supplement to the summary in order to have a full picture.

QUESTION

182. Which of the options set out above do you support? Please give your reasons for your choice. **We think it should be the issuer's option to decide considering the new information and size of the summary.**

Level 2 Advice

235. The document referred to in Article 10 of the Proposed Directive of the European Parliament and of the Council on prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC should be made available, at the issuer's choice, through one of the means allowed in Article 14 of that Directive.

236. This document shall be filed and made available at the latest seven business days after publication of the annual financial information.

QUESTIONS

237. Do you agree with the method of publication proposed? **Yes**

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238. Do you consider CESR should limit the issuer's choice to one or more methods of publication? **No**

Which ones?