

Securities Note : Derivatives Schedule

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE ¹	
1. Directors and senior management (company's directors;² mMembers of its administrative, supervisory and/or management bodies; partners with unlimited liability, if any; nominees to serve in any of the aforementioned positions³; founders if the company has been established for fewer than 5 years)⁴ : names and functions.	IDS I-A
2. Advisers that have taken part in the issue/offer: Provide the names and addresses of the company's principal bankers and legal advisers⁵ to the extent the company has a continuing relationship with such entities, the sponsor for admission to trading (where required by the host country regulations), and the legal advisers to the issue.	IDS I-B
3. Auditors: names and addresses of the company's auditors (together with their membership in a professional body) for the period covered by the consolidated financial statements included in the prospectus, as required by the relevant schedules in accordance with national law.	IDS I-C DIR. 2001/34, Schedule A, 1.3

¹ This whole section should appear in the Registration Document only!!! There is no reason to repeat this information in the Securities Note if it is contained already in the Registration Document. A duplication does not make a prospectus better. A thick prospectus rather frightens than entices an investor. Wherever the following information appears, however, the following amendments have to be made.

² The term "senior management" is not known in Germany.

³ meaning unclear

⁴ not relevant for derivative securities

⁵ The legal advisers should not be mentioned in the prospectus. The mentioning of the legal advisers is misleading if the advisers do not carry out a complete due diligence (often no complete due diligence is carried out!) and if they do not have to take care of all legal issues (what also happens frequently). Even if the legal advisers carried out a complete due diligence and were involved with all legal issues, the mentioning of the legal advisers is not to be recommended since the mentioning of their names could be interpreted by courts as the assumption of a liability by the lawyers for the prospectus. If this were the case, the legal advisers would have to increase their fees substantially to cover an additional insurance coverage. The increase of the lawyers' fees would be substantial per transaction which increase can neither be in the interest of the issuer nor in the interest of the investor.

4. Statement whether the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reason given.	DIR. 2001/34, Schedule A, 1.3
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5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or legal persons responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts. ⁶	DIR. 2001/34, Schedule A, 1.1
3. 7. Declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the securities note, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	DIR. 2001/34, Schedule A, 1.2
II OFFER STATISTICS AND EXPECTED TIMETABLE	
II. A Offer statistics	
Total amount of the issue/offer; distinguishing the securities offered for sale and those offered in subscription. ⁷	FESCO/01-045, II. 5. a. i) and DIR. 2001/34, Schedule A, 2.2.0
If the amount is not fixed, a statement to this effect must be made.	DIR. 2001/34, Schedule B, 2.1.0
Describe arrangements and time for announcing to the public the definitive amount of the offer.	Members' proposal
II.B Method and expected timetable	
For all offerings and separately for each group of targeted potential investors:	
1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	IDS II-B.1
2. Describe whether the purchase period may be extended or shortened and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public.	IDS II-B.1
3. Describe the possibility to reduce subscriptions and/or size.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing	IDS II-B.1

⁶ There should not be a prospectus liability for natural persons. Therefore the names of the natural persons do not need to be included.

⁷ Distinction is unclear.

the final or definitive date or period.	
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	FESCO/01-045, II. 5. e. ii) and iii)
6. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.	IDS II-B.2
7. Method and time limits for delivery of the securities (including provisional certificates, if applicable) to subscribers or purchasers.	IDS II-B.3
8. A full description of the manner and date in which results of the distribution of securities are to <u>be</u> made public and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid) ⁸ .	IDS II-B.5
III. KEY INFORMATION ABOUT THE ISSUER	
III.A Capitalization and indebtedness	
A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness and the total amount of any contingent liabilities) as of a date no earlier than 60 days prior to the date of the document shall be provided. Indebtedness also includes indirect and contingent indebtedness. An appropriate negative statement shall be given, where relevant, in the absence of any loan capital, borrowings and indebtedness and contingent liabilities.⁹	IDS III-B
III.B Reasons for the offer and use of proceeds	
Reason for the offer and, where applicable, the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering.¹⁰	IDS III-C.1

⁸ Meaning unclear.⁹ Should be included in registration document only.¹⁰ This does not make sense with regard to derivative securities.

III.€ Risk factors	
1. Prominent disclosure of risk factors that are specific to securities to be offered and/or admitted to trading in order to assess the market risk associated with these instruments. Provide also, if applicable, update disclosure of risk factors included in the Registration Document when useful to readers assessing the risk associated with the securities to be offered.¹¹ To the extent that an item has been disclosed fully in other sections, only a summary should be included in this section and a cross reference to the section where a more detailed discussion is contained should be made.	IDS III-D
2. Risks involved in purchasing the derivative securities. This section should include:	Members' proposal
a) direct or indirect specific risk factors affecting the value and trading price of the derivative securities; and	
b) specific risk factors affecting the realization of the value of the derivative securities.	
c) examples of the way the instrument works¹²	
d) examples based on the best and explanation of the worst case scenario¹³	
e) Mentioning of hedging instruments and whether the investor can buy such instruments¹⁴	
IV.A Interests of Experts in the issue/offer	
If any of the named experts or counselors was employed on a	IDS VII-C

¹¹ Risk factors should be set forth only in the securities note and not in the registration document to avoid duplication.

¹² One example is sufficient. For a call warrant, for instance, it should be sufficient to explain that the investor receives the difference between the price of the underlying on the valuation date and the strike price. The example should be in generic terms as in the sentence before. It should not be required that an example for each strike price is made. Otherwise the prospectus would be inflated without any valuable information being added.

¹³ Examples of the best case scenario could be misleading for potential investors because these examples could create false expectations for a very high return which, however, most likely will not happen. The explanation of the worst case scenario in the event of a warrant could be that the investor risks to lose its entire investment.

¹⁴ It is unclear whether the hedging instruments of the issuer or potential hedging instruments of the investor are meant. Whatever is meant, hedging instruments should not be disclosed. How the issuer hedges itself is often confidential and therefore may not be disclosed. An advice as to the hedging of the investors depends largely on the individual composition of the portfolio of the investor and his investment strategy. It therefore cannot be given generally for all investors in the prospectus.

contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.	
IV.B Conflicts of interest in the issue/offer	
Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	Members' proposal
V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/ admitted to trading	
1. Describe the type and the class of the securities being offered and/or admitted to trading.	IDS IX-A.5
2. Indicate the IL aw applicable to the securities.	Members' proposal
3. Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
4. Indicate the currency of the securities issue.	Members' Proposal
5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records	Members' proposal
6. Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu and others similar clauses, if any (event of default...)	Members' proposal FESCO/01-045, IX-A-8 a)
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	DIR. 2001/34, Schedule A 2.2.2.
8. If the rights evidenced by the securities being offered or admitted to trading are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification or its effect on the rights evidenced by the securities to be admitted to	IDS IX-A.6

¹⁵ This information is irrelevant for derivative securities.

	trading or offered. ¹⁵	
	9.8. A statement of the resolutions, authorisations and approvals <u>if</u> <u>any.</u> ¹⁶ by virtue of which the securities have been or will be created and/or issued.	DIR. 2001/34, Schedule A 2.2.0 and Schedule B. 2.2.0.
	10.9. The issue date of the securities.	Members' proposal
	11.10. Arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.	DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045, II. 5. j.
	12.11. Other specific legislation regarding the issue/offer.	Members' proposal
	13.12. the exercise price or final reference price ¹⁷ of the derivatives securities	2001/34/EC Sch B 2.1. – 2.2.
	14.13. the price ¹⁸ at maturity	

¹⁶ In some jurisdictions such resolutions etc. are not required. Therefore, such information should not be compulsory.

¹⁷ What is a final reference price???

¹⁸ of what?

V.B Terms and conditions of the offer and action required to apply for the offer	
1. Description of the application process, details of where application forms are available, <u>if any</u> ¹⁹ .	FESCO/01-045, II.5. i. i) and ii)
2. Details of the minimum and/or maximum amount of application, if any (whether in number of securities or aggregate amount to invest).	FESCO/01-045, II.5. i. iv)
3. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made, <u>if any</u> ²⁰ .	FESCO/01-045, II.5. i. vi)
4. Possibility of multiple and/or joint applications, <u>if any</u> ²¹ , and description of the penalties for infringements.	FESCO/01-045, II.5. i. vii)
5. Indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Members' proposal
6. Dealing conditions to which the offering is subject, if any.	FESCO/01-045, II.5. f. i)
7) a section setting out the definitions applicable to the terms and conditions ²²	Members' proposal
8) all applicable exercise rights ²³	
9) a description of the exercise procedures, <u>if any</u> , and any limitations in relation to the same	Members' proposal
10) a description of the settlement procedure of the derivative securities detailing the following: – for cash settlement, how holders are to receive or make payments – for physical settlement (=cashless exercise) how holders are to <u>receive</u> take or make delivery of the underlying instrument <u>and make payment, if any</u>	Members' proposal
11) a description of how any return on derivative securities takes	Members' proposal

¹⁹ Derivative securities will often be bought through banks or via a stock exchange, and there is no formal application process. Accordingly, the description of an application process should not be compulsory.

²⁰ See footnote above.

²¹ See footnote above.

²² The definitions do not necessarily have to be contained in one section but may be contained in the terms and conditions in various sections, wherever appropriate. Rather the complete terms and conditions should be set forth.

²³ Is identical to V.A 7.; do not duplicate.

place, the payment date, and the way it is calculated – for cash settlement: disclosure setting out how the cash settlement amount is calculated – for physical settlement: disclosure setting out how the amount of the underlying instrument to be delivered is determined – in the case of a choice between cash and physical settlement: disclosure as set out above	
1211) information required in respect of the underlying, a statement setting out the type of the underlying and details of where information on the underlying can be obtained: – past performance of the underlying in a practical form or otherwise and its volatility over a period corresponding to at least the maturity of the derivative security; in any case a period of two years is sufficient²⁴ – where the underlying is a security • the name of the issuer of the security • the ISIN (International Security Identification Number) or other such security identification code – where the underlying is an index • the name of the index – where the underlying is an interest rate • a description of the interest rate – others where the underlying does not fall within the categories specified above the securities note must contain equivalent information. – where the underlying is a basket consisting of more than one asset of derivative securities • Disclosure of the relevant weightings of each asset in the basket	2001/34/EC Schedule B 2.4.1. FESCO 01-045 Schedule B IV, p.2 / 3
1312) a description of any market disruption or settlement disruption events	
1413) adjustment rules with relation to events concerning the underlying	

²⁴ The past performance of the underlying does not give any reliable information with regard to the future performance of the underlying. The good performance in the past could even make an investor believe that the performance will continue as it did in the past, which may be very misleading.

15) 14)	expiration or maturity date of the derivative securities, <u>if any</u>	
16) 15)	exercise date or final reference date ²⁵ , <u>if any</u>	
17) 16)	name omination of a calculation agent, <u>if any</u>	

²⁵

What is a final reference date?

V.C Plan of distribution	
1. The various categories of potential investors to which the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a <i>tranche</i> has been or is being reserved for certain of these, indicate any such <i>tranche</i> .	FESCO/01-045, II.5. b IDS IX-B.3
2. If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees or past employees of the company or its subsidiaries, provide details of these and any other preferential arrangements.	IDS IX-B.4
3. To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intended to subscribe in the offering, or whether any person intends to subscribe for more than five per cent of the offering.	IDS IX-B.2
V.D Placing	
1. Details of the co-ordinator(s) of the global offering and of single parts of the offering.	FESCO/01-045, II.5. c. i)
2. Details of the placers in the various countries where the offer takes place.	FESCO/01-045, II.5. c.) ii)
3. Name and address of any paying or depository agents in each country.	Members'proposal
V.E Pricing	
1. Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.²⁶	IDS IX-A.1 IDS II-A
2. Process for the disclosure of the <u>initial</u> offering price.	FESCO/01-045, II.5.d.iv)
V.F Admission to trading and Dealing arrangements	
1. An indication as to whether the securities offered will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other markets. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be	IDS IX.C

²⁶ The process of the disclosure of the initial offering price is sufficient (see below.)

approved. Indication as to whether the issuer has already filed the application to trading, and, otherwise, indication of the dates when the issuer has the intention to file this application, and, if known, the earliest dates on which the securities will be admitted to trading should be given. An indication of the markets where admission to trading is or will be sought, and if securities of the same class are already traded on one or more regulated markets, indication of the most relevant.	
2. If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the securities to which they relate.²⁷	IDS IX.B.8
3.2. Entities which may act as intermediaries in secondary trading, providing liquidity through bid and offer rates. If any, A description of the terms of their commitment will be included.	Members' proposal
V.G Markets	
Disclose all stock exchanges and other markets on which, to the knowledge of the issuer, the securities to be offered or admitted to trading are traded.	IDS IX-C (reviewed by members)
V.H Selling securities holders²⁸	
1. Name and address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three yrs. with the company or any of its predecessors or affiliates.	IDS IX-D.1
2. The number and class of securities being offered by each of the selling security holders.	IDS IX-D.2
V. I Expense of the Issue/Offer	
1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuerecompany or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per	IDS IX-F.1.

²⁷ The text seems to relate only to share issues. It is not relevant for derivative securities.

²⁸ Information is completely irrelevant for derivative securities. It only relates to share issues.

security.	
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2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be admitted to trading or offered and by whom the expenses are payable, if other than the company. ²⁹ If any of the securities are to be offered for the account of a selling securities holders, indicate the portion of such expense to be borne by such security holder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identifies as such) shall be given. ³⁰	IDS IX-F.2
VI ADDITIONAL INFORMATION	
VI.A Articles of Association ³¹	
Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles.	IDS X-B.1
VI.AB Exchange controls	
Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect: - the import or export of capital, including the availability of cash and cash equivalents for use by the company's group; - remittance of dividends, interest or other payments to non-resident holders of the company's securities.	IDS X-D
VI.BC Taxation	

²⁹ An itemized statement of all major expenses risks to be materially misleading for potential investors. An investor who sees a high fee for a bank, an accountant firm or a law firm set forth in a prospectus could have the impression that the high fee is a waste of money and impairs the liquidity of the issuer whereas in reality the high figure could be justified because the respective adviser undertook an extensive business, financial, legal or tax due diligence and acted very diligently and therefore absolutely was worth the money and acted for the benefit of the investor by highlighting certain risks which otherwise would not have been disclosed. On the other hand, an investor who sees a low fee for an adviser set forth in a prospectus could have the impression that the issuer is very cost efficiently run and worth an investment in it whereas in reality the reason for the low expenses is that no or only a very tiny due diligence has been undertaken and important risks were not disclosed. For example, in Germany the proposal would have materially mislead investors in so far as Gonhard & Metallbank AG, Goldzack AG and Concord Effekten AG (being among those lead managers responsible for most failures and insolvencies shortly after lead managed IPOs) would have been regarded by potential investors as very "cost efficient" managers since no sound financial and legal due diligence was conducted and investor relations companies (!) were asked to draft offering circulars.

³⁰ This information is relevant only for share issues.

³¹ To be included in registration document only.

Provide information regarding taxes to which securities holders may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties.	IDS.X-E
VI.D Statement by Experts³²	
Where a statement or report attributed to a person as an expert is included in the document, provide such persons' name, address and qualifications and a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorized the contents of that part of the document.	IDS X-G
VI.CE Documents on display	
Provide an indication of where the documents concerning the issuerecompany which are referred to in the document may be inspected, by physical or electronic means.	IDS X-H
VI.DF Registration Document	
1. Indication of where the Registration Document of the issuer is available for consultation.	Members' proposal
2. The securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the registration document was published.	Draft Directive

³² To be included in registration document only.