Response to

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

Consultation Paper
(Ref: CESR / 03 - 162)

The areas covered by this Consultation Paper concern:

- minimum information, related to schedules for derivative securities, offering programmes, securities issued by collective investment undertakings of the closed ended type, wholesale debt securities and a building block concerning the underlying for equity securities;
- format of the prospectus;
- annual information.

Responses to the questions and comments are reported below.

Minimum information

First of all we would like to underline that we agree with the approach stated by:

- point 22. on derivative securities, which suggests to set the scope of the proposed disclosures for derivatives by exclusion: every security that can not fit under the equity or debt securities definitions will be deemed to be a derivative (for the purpose of disclosure obligations);

- point 23., which proposes to abandon the split between debt and derivatives for RD purposes. Banks will use the banks RD for any kind of non-equity securities. Non-bank issuers will use the retail debt RD for all non-equity securities except those having a denomination over € 50.000, in which case the wholesale debt RD will apply.

Derivative Securities

Q32: We do not think it relevant for a bank-issuer to provide a description of its principal activities.

Q34: The disclosure about the principal markets where the same types of financial instrument, for which the prospectus is prepared, are already diffused could be useful in order to evaluate the issuer's previous experience and professionality with derivatives.

Q36: We do not think it relevant for a bank-issuer to provide a description of its significant business developments since the close of the financial year to which its last published annual statements relate.

Q37: We think that disclosure of information about administrative, management and supervisory bodies conflicts of interests is relevant.

Q39: We think that disclosure of information about the issuer's major shareholders is relevant.

Q59: We do agree with CESR's revised approach, which states that a non-bank issuing a retail derivative would have to provide the information required in the retail debt disclosures, a non-bank issuing wholesale debt would have to provide the information set out in the wholesale debt disclosure requirements and a bank issuing any non-equity security would have to provide the information set out in the bank disclosure requirements.

Q61: We do not think that disclosure of information about investments for banks issuing wholesale debt securities should be required.

Q64: Information on investments for wholesale debt securities should be disclosed only if material.

Q75: We think that examples on the way the financial instrument works are useful, as long as they are clear and supply an understandable explanation.
We also think that "worst case" scenarios should be used, provided they are based on realistic hypotheses.

Q76: If the formula disclosed in order to explain how the investor's return is calculated is particularly complex, it could be useful to describe its functioning also in words and not just by showing numbers.

Q79: We think that CESR should determine how examples should be prepared, in order to create common standards for all the States.

Q80: We think that the disclosure of the break-even point for the investor is particularly useful for warrants and options. Sensitivity analysis should be introduced as well (in order to explain how the price of warrants changes as a result of a change in the level of the price or volatility of the underlying), together with gearing (as an important indicator of the option riskiness).

Q83: We think it fundamental to supply examples for structured-debt instruments, considering the complexity of their calculation method.

Q89: We agree with the second option: "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".
We anyway underline that such information are not misleading only if it is clearly mentioned that the past does not give any certainty for the future.

<u>Base Prospectuses</u>

Q101: We agree with the generic rule for which the base prospectus shall:

" a) contain all information required by the applicable schedules and building blocks except for that which can – due to the issue's nature – only be determined at the time of the individual issue and is not known when the base prospectus is filed (so called "final terms"); and
b) set out which line items of information will be included as final terms".

Q112: We agree with point 111., which states that "as the purpose of the summary is to convey the essential characteristics and risks associated with the issuer, any guarantor, and the securities, 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 may be items of the final terms that need also to be translated, even if they do not form part of the approved summary".

Q115: We think that it is necessary for an issuer of a base prospectus to include a separate summary for each product included in it.

Q122: Where in addition to the final terms the issuer produces a document that replicates some information already produced in the base prospectus, we think that the information replicated together with the final terms can only be information from the Securities Note.

Q125: In relation to the publication of the final terms, we think that the method of publication should be restricted as set out in Article 14.

Q127: We agree with the analysis set out in point 126., which states that if the method of publication as set out in Article 14 applies to the final terms, on the basis of Article 14(5) the method of publication used for the base prospectus does not need to be the same method used for the publication of the final terms (provided obviously that the method used for publication is one of the methods used in Article 14).

Q131: We agree with the following additional disclosure requirements in relation 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".

Q136: We agree with the described types of base prospectuses (debt securities, warrants to subscribe for new shares, derivative securities, ABS, mortgage bond securities).

Closed ended investment funds

Q151: We do agree with the disclosure obligations set out in Annex G

Q154: We don't think it necessary to distinguish between those entities which invest exclusively, on a passive basis, in real property assets for capital gain, and those which engage primarily in short term rental, development, refurbishment and other similar income generating

activities relating to their property assets. The main reason is that both these "activities" are often provided by the articles of association of the entity.

Format of the prospectus

Q172: We agree with the first option, which states 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.

Q176: We think that the prospectus shall start with the summary, followed either by registration document + securities note or securities note + registration document, depending on the type of issue (es. in case of IPO better registration document followed by securities note; in case of derivatives better securities note followed by registration document).

Q182: Concerning the way to supplement a summary, if necessary, we agree with the first approach, which 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. This means that a new complete summary will be approved together with the supplement to the prospectus.

Annual information

Q237: We agree with the proposed method of publication, which states that the document referred to in Article 10 should be made available, at the issuer's choice, through one of the means allowed in Article 14. The document shall be filed and made available at the latest seven business days after the publication of the annual financial information.

Q238: We do not think that CESR should limit the issuer's choice to one or more methods of publication.

Q239: We agree with the proposed dead-line (7 business days).

Milan, August 6th 2003