

General Issues related to the Directive, rising from the discussion of the Implementing Measures

- ❑ Necessity of disclosing all information regarding the issuer within the registration document and all information regarding the securities within the securities notes.
It would be useful to amend the following disposal of art.12 (wording in italics): “ An issuer who already has a registration document approved by the competent authority shall only be required to draw up the securities note and the summary note when securities are publicly offered or admitted to trading on a regulated market. In this case *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 which could affect investors assessments since the latest updated registration document or any supplement according to art.16 was approved.[...]*”
- ❑ Necessity of better describing the responsibility regime (art.6).
It would be useful to provide a complete and specific list of the subjects responsible for the information given in the prospectus. We would opt for a regime that identifies an only responsible subject
- ❑ Necessity of better defining contents and forms of disclosure of the annual information (art.10)
It would be useful to provide an explanatory “schedule” (i.e. an Annex) within the Implementing Measures
- ❑ Necessity of better describing the transitional regime
- ❑ Necessity of disclosing the criteria upon which “the competent authority of the Home Member State may transfer the approval of a prospectus to the competent authority of another Member State [...]”(art.13)
- ❑ Role of auditors:
We think that the auditors’ role should be limited to the work regarding financial statements and pro-forma information.
If the issuer chooses to provide information on forecasts (and the choice shall be in any case optional!) and wishes to have such information revised, a financial advisor different from the auditors shall perform this analysis and give an opinion

Specific issues related to the Implementing Measures

- ❑ Registration Document: Equity Securities (annex A)

We basically agree with the framework of Annex A and have the following remarks:

II.B: Risk Factors:

- insert them just after the paragraph regarding the responsibility for the prospectus and before the financial data (the preventive analysis of risk factors can be useful for the reading of financial data)
- add information about markets and competitors, recurring and non-recurring risks

III.C: Business Overview:

- add information about
 - . main competitors
 - . types of clients and concentration, present and potential target clients
 - . margins

III.D: Organisational Structure:

- insert a list describing equity investments in group companies held by directors and major shareholders

IV.A: Operating Results:

- add a breakdown of the operating results by category of activity, if applicable

IV.C: Research and Development, Patents and Licenses etc.:

- focus on trademarks

IV.D: Trend Information:

- order book: provide information for a period longer than the latest financial year
- forecasts always optional (see general issue: role of auditors)

V.A: Directors e senior management:

- provide information about proxies

V.C: Board practices:

- disclose proxies
- provide information on directors' independence and give justification

VI.A: Major shareholders:

- besides the disclosure of any significant change in the percentage of ownership held during the past three years, provide information about transactions on company shares carried out by these subjects during the same period

VII.K: Legal and arbitration proceedings:

- add fiscal pending proceedings

■ Risk factors:

We agree with the approach of not giving a list of risks and we underline the necessity of supplying guidelines that shall allow the issuer to disclose risks in "hierarchical" order, focusing on a top-priority, so that investors are informed on the most significant risks

■ Pro-forma information:

- necessity of preparing pro-forma information only in case of actual transactions, and not in case of just planned transactions
- agree with the 25% threshold in order to determine the "significant gross change" in the size of the company
- don't agree with the possibility of the competent authority to require at its discretion the drawing up of pro-forma information: better to always refer to the general rule
- necessity of requiring pro-forma information only for the latest financial year
- focus on the harmonisation of core definitions relating to pro-forma as well as appropriate pro forma adjustments and presentation as well as instructions concerning auditors' review
- agree with the compulsory auditors' review of pro-forma information

■ Profit forecasts:

- forecasts always optional (see general issue: role of auditors)
- review of forecasts information always optional and carried out by a financial advisor different from auditors (see general issue: role of auditors)
- necessity of providing the updating of forecasts when disclosed in the prospectus, but only within price sensitive information (not necessary the updating within the prospectus)

- Documents on display:
 - don't agree with the request of putting on display every document the prospectus refers to: a summary of their contents shall be sufficient
- Specialist building blocks:
 - necessity of introducing further blocks (banks, insurance companies...)
- Start-up companies:
 - don't agree with the necessity of disclosing the business plan: agree with the necessity of describing future programs
 - forecasts information review optional (see general issue: role of auditors)
 - agree with the requirement of information about liquidity and capital resources for the period of the next 24 months after the date of the prospectus (focus on the importance of cash-flow analysis)
- SMEs:
 - explore the possibility of introducing a different more favourable regime
 - agree with the disclosure of selected financial data for two years (instead of three)
- Investment companies:
 - necessity of disclosing the NAV, at least quarterly
- Registration document: Debt securities (Annex I)
 - necessity of differentiating the requirements of disclosure for different types of issuers (we refer to the present rules provided by Consob)
 - insert the possibility of disclosing forecasts in Annex I (reminding that such information shall always be optional), especially for corporate issuers whose securities are not admitted to listing/trading yet
 - agree with the disclosure of data for two years (instead of three)
 - par. IV A annex I: Company's capital expenditure commitments: necessity of inserting all information about liquidity and capital resources requested by annex A
- Registration document: Derivative securities

We don't agree with the approach described in the Implementing Measures and have the following remarks:

 - provide different requirements of disclosure for different types of issuers. In particular, "supervised entities" (i.e. banks) shall not supply all the information on issuer required by the Implementing Measures and shall focus especially on the procedures of risk monitoring (see also Basel II) and on supervisory capital. [We think the information on issuer required by Consob rules is exhaustive]
 - provide a different definition of derivative [we don't agree with any of the approaches of the Implementing Measures], making a clear distinction between options and securities that track the underlying. We also define "guaranteed " a derivative that offers a return of the nominal value
- Securities note

We basically agree with the framework proposed and have the following remarks:

 - no information about the issuer (see general issue)
 - focus on rating of instruments

- as regards debt securities: add information on yield : comparison with swap and free-risk yields
- Incorporation by reference
No particular remarks
- Availability of the prospectus
 - availability in electronic format: avoid the disclosing of information only through the issuer's web-site: necessity of publishing the information also on the web-sites of the competent authority and/or the Exchanges

Milan, December 20th, 2002