

Annex K

Securities Note : Equity Securities Schedule

General remark: Article 5 of the proposed Directive makes it clear that the information required for the prospectus **may be divided** between separate documents (registration document, securities note and summary note). This implies that there should be no duplication between the separate documents and article 7 specifically recognises this fact. This structure has not however been followed in the CESR Proposals. There are a number of areas where the disclosure requirements in the registration document and securities note are duplicated. Therefore the approach in the proposals to the Securities Note for equities, debt securities and derivative securities requires a radical rethink. Much more flexibility as between the registration document and the securities note need to be introduced.

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE	
1. Directors and senior management (company's directors; members of its administrative, supervisory or management bodies; partners with unlimited liability; nominees to serve in any of the aforementioned positions; founders if the company has been established for fewer than 5 years): names and functions. <u>DUPLICATION</u>	IDS I-A
2. Advisers that have taken part in the issue/offer: Provide the names and addresses of the company's principal ¹ bankers and legal advisers ² 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 for the preceding 2 financial years (together with their membership in a professional body) in accordance with national law. <u>DUPLICATION</u>	IDS I-C DIR. 2001/34, Schedule A, 1.3
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	DIR. 2001/34, Schedule A, 1.3

¹ The mentioning of the company's **principal** bankers does not have an added value as they are typically not specialists for securities and capital market law. They are neither involved in the preparation of the prospectus nor responsible for its content.

² (Legal) Advisors should only be mentioned if they could be held liable by an investor. For the reasons of not mentioning the legal advisors see our comments to question 44 I, B and question 129.

given-<u>DUPLICATION</u>	
5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors-<u>DUPLICATION</u>	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or ³ 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.	DIR. 2001/34, Schedule A, 1.1
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 those offered for sale and those offered in subscription.	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.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing the final or definitive date or period.	IDS II-B.1
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after	FESCO/01-045, II. 5. e. ii) and iii)

³ There should not be a prospectus liability for natural persons. Therefore the names of natural persons do not need to be included.

dealing has begun.	
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). ⁴	IDS II-B.5
9. The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	DIR. 2001/34, Schedule A, 2.3.4. and IDS II-B.4
III. KEY INFORMATION ABOUT THE ISSUER	
III. A Capitalization and indebtedness⁵	
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.	IDS III-B
III. B Reasons for the offer and use of proceeds	
1. 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.	IDS III-C.1
2. If the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the company or their associates, disclose the persons from whom they will be acquired and how the cost to the company will be determined.	IDS III-C.2

⁴ Meaning of the last part of the sentence ("... and when appropriate, the manner...") is unclear.

⁵ Should be included in the registration document only.

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3. If the proceeds may or will be used to finance acquisitions of other businesses, give a brief description of such businesses and information on the status of the acquisitions.	IDS III-C.3
4. If any material part of the proceeds is to be used to discharge, reduce or retire indebtedness, describe the interest rate and maturity of such indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.	IDS III-C.4

III.C Risk factors	
Prominent disclosure of risk factors that are specific to securities to be offered 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. 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
IV.A Interests of Experts in the issue/offer	
If any of the named experts or counselors was employed on a 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.	IDS VII-C
IV.B Conflicts of interest in the issue/offer⁶	
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 or admitted to trading.	IDS IX-A.5
2. Indicate the law applicable to the securities 3. Indicate whether the securities are registered or bearer ones. ⁷ 4. Indicate the currency of the securities issue. 5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records. 6. Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu and others	Members' Proposal Members' Proposal Members' Proposal FESCO/01-045, IX-A-8 a)

⁶ This section should be deleted because of its vagueness. The term "conflict of interest" as well as the target group are not defined. Further, CESR should consider that conflicts of interest are dealt with by various national regulatory requirements. A number of potential conflicts of interest can as a matter of law not be disclosed due to the confidential nature of potentially conflicting transactions or customer relationships. As far as financial institutions are concerned (apparently being the main focus of the provision) the issue of conflicts of interest is sufficiently dealt with by appropriate compliance measures.

⁷ Should be deleted as identical disclosure is required under section V.A, item 13.

similar clauses, if any (event of default...)	
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 trading or offered.	IDS IX-A.6
9. A statement of the resolutions, authorisations and approvals 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. The issue date of the securities.	Members' proposal
11. 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. ⁸	Members' proposal
13. Indication whether the securities are in registered or bearer form an, if registered, whether they will be capable of being held in uncertificated form.	IDS IX-A. 5 (a)
14. Legal framework Reference to the basic legal framework applicable to the equity at least with regard to: - disclosure of major holdings; - transactions of own shares; - mandatory takeover bids; - squeeze-outs and sell-outs	Members' proposal
15. Takeover bids Indication of any of the following which have occurred during the last financial year and the current financial year: - public takeover bids by third parties in respect of the issuer's equity;	DIR. 2001/34, Schedule A, 2.4.5.

⁸ The securities note shall contain information in a concentrated manner concerning the securities and necessary to enable an investor to make an informed assessment of its investment. In this content a general description of the applicable legislation appears neither necessary nor useful. On the contrary, such a description could lead to "information overload", which would impair the acceptance of the securities note.

- public takeovers bids by the issuer in respect of other companies' equity; The price or exchange terms attaching to such offers and the outcome thereof are to be stated.	
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.	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.	FESCO/01-045, II.5. i. vi)
4. Possibility of multiple and/or joint applications, 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)
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
4. Pre-Allotment Disclosure:	CESR/02 – 020b
a) The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any	

other tranches;	
b) The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches;	
c) The Allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches;	
d) A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the Allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups.	
e) Whether the treatment of subscriptions or bids to subscribe in the Allotment may be determined on the basis of which firm they are made through or by;	
f) A target minimum individual Allotment if any within the retail tranche;	
g) The conditions for the closing of the offering as well as the date on which the offering may be closed at the earliest;	
h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled; and	
i) Other aspects of Allotment which could be material to an investor's decision to subscribe for or purchase the Relevant Securities.⁹	
5. Over-allotment and greenshoe:	CESR/02 – 020b
a) The existence and size of any over-allotment facility and / or greenshoe.	
b) The existence period of the over-allotment facility and / or greenshoe.	
c) Any conditions for the use of the over-allotment facility or exercise of the greenshoe.	
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	FESCO/01-045, II.5. c.) ii)

⁹ ~~Should be deleted because of its vagueness.~~

takes place.	
3. Name and address of any paying or depository agents in each country.	
4. Underwriting:	
a) Names, addresses and descriptions of the natural or legal persons underwriting or guaranteeing the issue for the issuer. Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered.	Dir. 2001/34, Schedule A, 2.3.7
b) Describe the features of the underwriting relationship together with the amount of securities being underwritten by each underwriter in privity of contract with the company or selling security holders. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or the type of "best efforts" arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.¹⁰	IDS IX-B.9
c) When the underwriting agreement is reached.	FESCO/01-045, II.5.g..ii)
d) Description of provisions enabling termination of the offering in certain circumstances.	FESCO/01-045, II.5.g. iv)
e) Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the broker(s) or dealer(s) that will participate in the offering and state the amount to be offered through each.¹¹	IDS IX-B.6
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.	IDS IX-A.1 IDS II-A

¹⁰ The details of the underwriting agreement and the underwriting quotas are irrelevant for the investor and not material for the assessment of the company or its securities. Thus, there is no reason to disclose this information. Such a description would lead to "information overload", which would impair the acceptance of the securities note.

¹¹ The terms of the agreements among selling group members are irrelevant for the investor and not material for the assessment of the company or its securities. Thus, there is no reason to disclose this information. Such a description would lead to "information overload", which would impair the acceptance of the securities note.

2. Process for the disclosure of the <u>initial</u> offering price.	FESCO/01-045, II.5.d.iv)
3. Criteria for the determination of the offering price: i.e. who has set the criteria (issuer or independent experts), the various factors considered and the valuation's method or methods (if any) applied in order to determine the price of the securities.	FESCO/01-045, II.5.d.iii)
4. If there is not an established market for the securities; the document shall contain i) the offer price and ii) information regarding the manner of determination of the offering price as well as of the exercise price of warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price.	IDS IX-A.2. and FESCO/01-045, II.5.d.iii) (4)
5. If the company's equity holders have pre-emptive purchase rights and where the exercise of the right of pre-emption of equity holders is restricted or withdrawn, the company shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction or withdrawal and the beneficiaries of such restriction or withdrawal if intended to benefit specific persons.	IDS IX-A.3
6. Price history	IDS IX-A.4
a) Information regarding the price history, if any, of the equity security to be offered or admitted to trading shall be disclosed as follows:	
- for the five most recent full financial years: the annual high and low market prices;	- IDS IX-A.4a
- for the two most recent full financial years and any subsequent period: the high and low market prices for each full financial quarter;	- IDS IX-A.4b
- for the most recent six months: the high and low market prices for each month;	- IDS IX-A.4c.
- for pre-emptive issues, the market prices for the first trading day in the most recent six months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to publication of the document. Information shall be given with respect to the market price in the host market and the principal trading market outside the host market. If significant trading suspensions occurred in the prior three years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.	IDS IX-A.4d.

b) Indication of the source of the information referred to in the previous paragraph and place where it could be available in the future.	Members' proposal
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 approved. ¹² If known, the earliest dates on which the securities will be admitted to trading and dealt in 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.	IDS IX.C
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.	IDS IX.B.8
3. Name and address of any 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. ¹³	Members' proposal
4. Stabilization:	CESR/02-020b (These items are required to be disclosed in one clearly identified section).
Where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilizing activities may be entered into in connection with an offering:	
a) The fact that stabilization may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time,	
b) The beginning and the end of the period during which stabilization may occur,	
c) The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of	

¹² Meaning is unclear.

¹³ The terms of the commitments of such entities are irrelevant for the investor and not material for the assessment of the company or the securities. Thus, there is no reason to disclose this information. Such a description would lead to "information overload" which would impair the acceptance of the securities note.

publication,	
d) The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail, and	
e) Other aspects of stabilization which could be material to an investor's decision to subscribe for or purchase the relevant securities. ¹⁴	
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 holders	
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 company 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 security. ¹⁵	IDS IX-F.1.
2. The amount or an estimate of the issue costs, in total or by share, separately identifying the aggregate compensation including commissions of the persons or companies involved in the issuance and distribution of the securities to be admitted to trading or offered. 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 ¹⁶ . If any of the securities are to be offered for the	IDS IX-F.2

¹⁴ Should be deleted because of its vagueness.

¹⁵ Discounts and commissions agreed upon by the mentioned persons or entities are irrelevant for the investor and not material for the assessment for the company or the securities. Such a description would lead to "information overload", which would impair the acceptance of the securities note.

¹⁶ An itemized statement of all major expenses risks to be materially misleading for potential investors. An investor who sees a high fee for 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 as

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 (identified as such) shall be given.	
V.J. Dilution	
1. Where there is or could be a material disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of equity securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.	IDS IX-E.1
2. Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per equity security and the net book value per equity security for the equivalent class of security, as of the latest balance sheet date.	IDS IX-E.2
3. In the case of a subscription offering to existing equity holders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.	IDS IX-E.3
VI ADDITIONAL INFORMATION	
<u>VI. A</u> Article of Association¹⁷	
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. <u>DUPLICATION</u>	IDS X-B.1
<u>VI. B</u> Exchange controls¹⁸	
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. <u>DUPLICATION</u>	IDS X-D

certain risks were highlighted which was for the benefit of the investor. 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 nor or only a very tiny due diligence has been undertaken and important risks were not disclosed. Therefore we recommend to require the disclosure of the issue costs in total and of commissions paid to persons or companies involved in the transaction only.

¹⁷ Should be included in the registration document only.

¹⁸ Should be included in the registration document only.

VI. C Taxation	
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 Experts¹⁹	
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. DUPLICATION	IDS X-G
VI. E Documents on display	
Provide an indication of where the documents concerning the <u>issuer</u> company which are referred to in the document may be inspected, by physical or electronic means.	IDS X-H
VI. F 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

¹⁹ Should be included in the registration document only.