

Annex M

Securities Note : Derivatives Schedule

General Remark: At the time of these comments we have not yet reviewed the addendum to the Consultation Paper dated December 2002. Consequently, we cannot make any conclusion whether the concept of the base prospectus correlates with the requirements of the Registration Document and the Securities Note. Nevertheless, we would like to stress that under the systematic of a base prospectus the final Pricing Supplement should only include the specific information of the respective issue and should not require any information which would restrict the flexibility of the issuing procedure (e.g. information on the issuer already given in the Registration Document, example calculations etc.).

*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 recognizes 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 MANAGEMENT¹, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE²	
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><i>This information should be included in the Registration Document and we see no reason to repeat it in the Securities Note.</i></u>	IDS I-A
<u><i>General remark: The disclosure requirements mentioned in item 2 are “not relevant” for the Registration Document. Consequently, we see no reason why it should be included in the Securities Note. However, we have the following comment on item 2.:</i></u>	IDS I-B

¹ The term “senior management” is not known in Germany.

² Most of the information in Section I of Annex M on the identity of directors, senior management, advisers etc. would already be covered in the registration document and should be deleted in the securities note therefore. A duplication does not make a prospectus better. A thick prospectus rather frightens than entices an investor.

2. Advisers that have taken part in the issue/offer: Provide the names and addresses of the company's ³ principal bankers ⁴ and legal advisers 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.	
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. This information should be included in the Registration Document and we see no reason to repeat it in the Securities Note.	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 given. This information should be included in the Registration Document and we see no reason to repeat it in the Securities Note.	DIR. 2001/34, Schedule A, 1.3
5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors. This information should be included in the Registration Document and we see no reason to repeat it in the Securities Note.	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. <u>As there is no responsibility of a natural person for the content of the prospectus such a statement cannot be included in the Prospectus.</u>	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. <u>We would like to reiterate that there should be no personal liability of any employee or director of the issuer for the content of the prospectus issued in connection with derivative products.</u>	DIR. 2001/34, Schedule A, 1.2

³ 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.

⁴ (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.

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. <u>We do not understand the reason for such a distinction.</u>	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 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 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). <u>We do not understand the relevance of this provision. What is meant by "excess amounts paid"? Furthermore it should be considered that derivative securities addressed to retail customers (Flow Products) are issued in general as "Tap Issues" –and are</u>	IDS II-B.5

	<i>typically sold over their entire life time. Therefore a notification concerning the results of the distribution of such products is not feasible.</i>	
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. Not to be included in the Securities Note, but in the Registration Document.	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. <i>The issuance of most Derivative Securities is not funding but market driven. For these instruments the proceeds are not used for general financial purposes of the issuer but only for the hedge of the respective derivative products.</i>	IDS III-C.1
III.C 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. 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 works <u>- We strongly object to the requirement of examples in the prospectus. This concept is not followed by the majority of jurisdictions in which derivative products are issued. There is no need for such examples as the terms and conditions of the products sufficiently elaborate the features of the derivative product. However, if examples would be required, it has to be made sure that in the case of a baseis prospectus such examples will only be done once in the basis documentation and not in the Pricing Supplement.</u>	
d) examples based on the best and worst case scenario <u>- We strongly object to the requirement of best and worst case scenarios as it is extraordinary difficult (if at all possible) to summarise the criteria for a best /worst case scenario with respect to the performance of a derivative security. This is especially the case as the number of factors and their interdependence influencing the performance of a derivative security cannot be ultimately defined.</u>	
e) Mentioning of hedging instruments and whether the investor can buy such instruments <u>- We strongly object to the requirement of mentioning hedging instruments as such requirement would result in an unreasonable risk for the issuer because no objective criteria for instruments qualifying as optimal hedge for a specific derivative security do exist. Furthermore, the optimal hedging instrument for a derivative security (if such a qualification would be possible at all) would depend essentially on the individual composition of the portfolio of an investor and his investment strategy. Any advise with respect to the optimal hedging instrument might turn out to be to the disadvantage of the investor. Furthermore, it is important to understand that issuers of Derivative Flow Products typically undertake continuous market making efforts over the lifetime of the products issued. Therefore the investor will always be able to close the position held by selling the respective securities. Consequently, there is no specific need to establish a hedge to neutralize an existing position.</u>	
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	IDS VII-C

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/offer⁵	
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 Law 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. <u>In the case of a base prospectus, this information can only be given in the final Pricing Supplement.</u>	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 trading or offered. <u>We think that this provision has no relevance for derivative securities.</u>	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. <u>However, in some jurisdictions such a special</u>	DIR. 2001/34, Schedule A 2.2.0 and Schedule B. 2.2.0.

⁵ This section should be deleted because of its vagueness. The term "conflict of interest" as well as the target group is 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 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.

	<u>authorization for the issue of derivative products is not required. Consequently, such requirement should not be mandatory.</u>	
10.	The issue date of the securities. <u>In the case of a Base prospectus, this information can only be given in the final Pricing Supplement.</u>	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.	Other specific legislation regarding the issue/offer.⁶	Members' proposal
13.	the exercise price or final reference price of the derivatives securities <u>In the case of a base prospectus, this information can only be given in the final Pricing Supplement.</u>	2001/34/EC Sch B 2.1. – 2.2.
14.	the price at maturity <u>What is meant here? Normally, derivative products will have a cash settlement amount which will be calculated on the calculation date in the manner mentioned in the terms and conditions. That will be the amount payable at maturity.</u>	
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>A predetermined application procedure is not applicable in all cases. Purchases will be effected through banks or through the stock exchange. Therefore, the description of an application process should not be mandatory.</u>	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>Should not be made mandatory</u>	FESCO/01-045, II.5. i. vi)
4.	Possibility of multiple and/or joint applications, and description of the penalties for infringements. <u>Does not apply in the case of derivative securities. In most cases, there is no subscription period and no allotment which is the common practice in share issues/IPOs.</u>	FESCO/01-045, II.5. i. vii)

⁶ The securities not 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.

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	Members' proposal
8) all applicable exercise rights	
9) a description of the exercise procedures 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 <u>In the case of cash settled derivative securities, there is no obligation of the holder to make any further payment in addition to the price paid for the derivative product.</u> — — for physical settlement (= cashless exercise) how holders are to take receive the underlying and make payment to the issuer, if any. — or make delivery of the underlying instrument	Members' proposal
11) a description of how any return on derivative securities takes 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 uunderlying instrument to be delivered is determined — in the case of a choice between cash and physical settlement: disclosure as set out above	Members' proposal
12) 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 sufficient <u>We have to object to this requirement as</u> <u>(i) in the case of an investment decision in derivative securities the investor has already a clear understanding of the Underlying to which the Derivative Security is referring to. He has already decided that he wants to have a certain exposure to the specific Index or Share etc. and is therefore</u>	2001/34/EC Schedule B 2.4.1. FESCO 01-045 Schedule B IV, p.2 / 3

<u>only interested in the mechanics of the respective Derivative Securities. Any further information on the price history of the underlying is redundant in the Securities Note.</u> <u>(i) the performance of the underlying in the past does not give any reliable information with respect to the performance of the underlying in the future. Consequently, the information on the past performance of the underlying is of no additional value for the investor; such information could be even misleading.</u> <u>(ii) It has a negative impact on the flexibility of the issuing procedure.</u> – 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 <u>of underlyingseonsisting of more than one asset of derivative securities</u> • Disclosure of the relevant weightings of each <u>underlyingasset</u> in the basket <u>We appreciate the decision of CESR with respect to the required information on the underlying.</u>	
13) a description of any market disruption or settlement disruption events	
14) adjustment rules with relation to events concerning the underlying	
15) expiration or maturity date of the derivative securities	
16) exercise date or final reference date	
17) nomination of a calculation agent	
V.C Plan of distribution	
1. The various categories of potential investors to which the	FESCO/01-045, II.5. b

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> .	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.	IDS IX-A.1 IDS II-A
2. Process for the disclosure of the 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. ⁷ This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be 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,	IDS IX.C

⁷ Meaning is unclear.

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. <i>This provision seems to relate to share issues only and has no practical relevance for derivative products.</i>	IDS IX.B.8
3. 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. ⁸	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 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. <i>This provision seems to relate to share issues only and has no practical relevance for derivative products.</i>	IDS IX-D.1
2. The number and class of securities being offered by each of the selling security holders. <i>This provision seems to relate to share issues only and has no practical relevance for derivative products.</i>	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 issuer 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. <i>(Not applicable for Derivative Flow Products, see also comments below)</i>	IDS IX-F.1.
2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and	IDS IX-F.2

⁸ *The terms of the commitments of such entities are irrelevant for the investor and not material for the assessment of the issuer 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.*

distribution of the securities to be admitted to trading or offered and by whom the expenses are payable, if other than the company issuer. 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. <u><i>We object to this provision. For the investor in debt securities it is of importance to know that the total amount of funds raised was reduced by expenses. That is NOT the case for the investor in derivative products.</i></u>	
VI ADDITIONAL INFORMATION	
VI.A Articles of Association	
Indicate the register 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. Should be included in the Registration Document and must not be repeated in the Securities Note	IDS X-B.1
VI.B 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. As far as dividend payments are concerned this provision seems to relate to share issues only and has no practical relevance for derivative products.	IDS X-D
VI.C Taxation	
Provide information regarding taxes to which securities holders may be subject. Information should be included as to whether the issuer 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. This information will depend on the market where the derivative products are offered. For a basis prospectus, this information should only be given in the final Pricing Supplement. - Any information regarding taxes to which securityholders may be subject cannot be given on a basis covering all Member States as this would be unreasonably extensive and would therefore substantially increase the issuing expenses for a derivative security. This also applies to the application of double-taxation treaties. However, it could be considered on level 3 whether the summary for a certain Member State in which a Derivative Security is to be offered may possibly require a tax information for the prospective investors.	IDS.X-E

VI.D Statement by Experts⁹	
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.E Documents on display	
Provide an indication of where the documents concerning the company <u>issuer</u> which are referred to in the document may be inspected, by physical or electronic means. <i><u>(not applicable to Derivative Securities as such documents do not have any impact on the ability of the issuer to fulfill its obligations under these securities).</u></i>	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

⁹ Should be included in the registration document only.