EUROPEAN SAVINGS BANKS GROUP
GROUPEMENT EUROPEEN DES CAISSES D'EPARGNE
EUROPÄISCHE SPARKASSENVEREINIGUNG

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European Savings Banks Group (ESBG)

Response to the Addendum to the Consultation Paper on CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive (Ref. CESR/02-185b)

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Profile European Savings Banks Group

The European Savings Banks Group (ESBG) represents 26 members from 26 countries (EU countries, Norway, Iceland, Bulgaria, Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic) consisting of nearly 1000 individual savings banks with around 67,000 branches and nearly 730,000 employees. At the start of 2001, total assets reached almost EUR 2800 billion, non-bank deposits were standing at over EUR 1675 billion and non-bank loans at just under EUR 1550 billion. Its members are retail banks that generally have a significant share in their national domestic banking markets and enjoy a common customer oriented savings banks tradition, acting in a socially responsible manner. Their market focus includes amongst others individuals, households, SMEs and local authorities.

Founded in 1963, the ESBG has established a reputation as the advocate of savings banks interests and an active promoter of business cooperation in Europe. Since 1994, the ESBG operates together with the World Savings Banks Institute (WSBI, with 109 member banks from 92 countries) under a common structure in Brussels.

General Remarks

Banks Registration Document

The ESBG welcomes CESR's decision to develop a building block for a registration document specifically designed for banks (Annex 2). This registration document will be of paramount importance for all small and medium sized credit institutions when issuing debt securities. In view of the high degree of protection an investor in a bank debt security is afforded by means of continuous prudential supervision (see the detailed and well-developed rules under the Banking Directive 2000/12/EEC) we strongly believe that the transparency regime for credit institutions should be significantly "lighter" than for unsupervised issuers (e. g. industrial enterprises). The banks registration document proposed by CESR takes this aspect into account - but not to a sufficient degree. CESR should be aware of the fact that submitting small and medium sized banks to excessively far-reaching prospectus requirements will have a significant negative impact on their competitiveness in funding loan capital. We would like to explain this by way of the following example: The requirement proposed by CESR that the last year of audited financial statements shall not be older than 15 months (Banks RD VII. G) entails a considerable threat to generally accepted issuance practices in the debt securities area: as hardly any non-listed credit institution will have audited financial statements in place before the end of the first quarter of the year this requirement will make any issue between 31 March and the date of completion of the audit impossible. For small and medium sized issuers which depend on continuously funding money on the debt capital market this is a clear competitive disadvantage.

We therefore recommend that careful consideration be given to whether the bank registration document can be more streamlined than has been the case.

Need for a clear ranking of different types of Registration Documents

A second point of major concern relates to the complex relationship between different registration documents which have been proposed by CESR so far.

For our credit institutions, it is absolutely crucial to be able to determine the correct registration document to be used for each individual issue. For instance, a savings bank planning to issue a derivative security has to know whether to draw up the required registration document on the basis of the banks building block or the derivatives building block. Regrettably CESR's recommendations do not give sufficient guidelines in this respect. We hope you will appreciate that it is somewhat difficult for us to assess CESR's proposals as long as there is some uncertainty about the scope of applicability of the individual building blocks.

Need for a second round of consultation

Bearing in mind the amount of substantive input submitted by market participants on CESR proposals so far, we believe, that it is absolutely necessary to launch a second round of consultation before CESR presents its final proposals to the Commission. We are fully aware of the time constraints the CESR working group is currently subject to. However, we believe, that the quality of level 2 implementing measures is such an important goal that it should not be impaired by any time pressure. As we have already done in our comments on the first CESR consultation paper dated 31 December 2002 we once again recommend a re-engagement of discussions with the industry after CESR has evaluated all comments received during the first round of consultation. In this respect we fully support any of CESR's efforts to achieve an appropriate extension of the deadline set up by the Commission for the presentation of CESR's recommendations under the first mandate (31 March 2003 so far).

PART ONE - REGISTRATION DOCUMENT

DEBT SECURITIES

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Wholesale Debt Building Block)

15. *Do you consider that information about an issuer's principal future investments should be disclosed? Please give your reasons.*

No. Since debt investors are only exposed to the risk that the issuer becomes insolvent and consequently incapable of fulfilling its obligations under the debt security (i.e. paying interest and repaying the capital), only information relating to such risk needs to be disclosed. In most cases, however, information on the issuer's (future) investments does not enable investors to assess the risk of insolvency. If future investments are really material for the business strategy of the company they already have to be disclosed in the section on the outlook of the company, if they bear a significant risk for the company disclosure is required under the risk factor's section. This is sufficient.

For the same reasons neither should the issuer's principal future investments be disclosed in the RD for a retail debt security as we have already explained in our position paper on CESR´s first consultation paper.

16. *Do you consider that a description of only some of these items should be made?*

No, see answer to question 15.

Liquidity and capital resources – CESR ref: IV.A. (Wholesale Debt Building Block)

18. *Do you consider that information about a company's capital expenditure commitments would be of value to "wholesale market investors"?*

No. Information about a company's capital expenditure commitments are neither required for wholesale debt investors nor for retail debt investors.

Trend information – CESR ref: IV.B. (Wholesale Debt Building Block)

22. *Should any profit forecast that is included be reported on by the company's auditor or reporting accountant?*

No. Such reports would not only be rather costly but, what is even more important, auditors might be very reluctant to draw up such a report if they have not audited the

underlying figures yet. This reluctance would lead to a substantial delay in the finalization of the prospectus. Costs and delay would outweigh by far any benefit for an investor.

Once again, we would strongly recommend keeping the preparation of any profit forecast strictly on a voluntary basis.

23. *Do you consider that the requirement to disclose an issuer's prospects should be retained, or should this requirement be deleted?*

The requirement to disclose an issuer's prospects should be deleted for the reasons set out in our answers to question 15.

Board Practices – CESR ref: V.C.1 and 2 (Wholesale Debt Building Block)

25. *Do you consider it necessary to continue to require disclosure of Board practices for issuers of such securities?*

No. They are of no interest for a debt investor. The non-compliance of an issuer with corporate governance rules does not lead to a significant insolvency risk for the issuer.

Major Shareholders – CESR ref: VI.A.1 and 2 (Wholesale Debt Building Block)

27. *Do you consider that these disclosure obligations should be required?*

No. Such disclosure obligations should be deleted in the Wholesale Debt Security RD as well as in the Retail Debt Security RD for the following reasons: First: Information on major shareholders of the issuer is so remote from the relevant insolvency risk that an obligation to disclose any such information in the RD cannot be justified under a risk-benefit ratio. Secondly: A general description of the issuer's position within the group of undertakings the issuer belongs to is already required under III.D.1.

Related party transactions - CESR ref: VI.B (Wholesale Debt Building Block)

30. *Do you consider that this disclosure requirement should be retained in relation to this type of issuer?*

No. Information about transactions with third parties do not, under normal circumstances, contribute to the assessment of the relevant risk. Compliance with such disclosure obligation would, however, be highly burdensome for issuers. On the infrequent occasions where the disclosure of related party transactions is material, it will be disclosed under the Risk Factors section. In addition, information about related party transactions will be included in the financial statements anyway.

Interim financial statements - CESR ref: VII.H (Wholesale Debt Building Block)

33. *Do you consider this approach to be appropriate?*

Basically, yes. As we have already put forward in our response to the first CESR consultation paper it must, however, be ensured that no requirements regarding interim financial statements are established which go beyond those set out in the IAS or the future Transparency Directive. Credit institutions which make a public offer of debt securities only, without having any securities issued which are admitted to trading on a regulated market, will presumably not be subject to an interim financial reporting obligation under the forthcoming Transparency Directive as mentioned in Nr. 31-32 of the Addendum. On no account should such an obligation be imposed on such issuers under Level 2 implementing measures for the proposed Prospectus Directive. We appreciate that CESR follows this approach with regard to the Wholesale Debt RD and strongly recommend to take the same approach in respect of the Corporate Retail Debt RD.

Documents on display - CESR ref: VIII.C (Wholesale Debt Building Block)

35. *Are your views or comments different from those in response to the first consultation paper?*

No. Only publicly available documents should be displayed. Other documents, in particular material contracts, often contain confidential information and therefore may not be publicly displayed. In addition, a complete display of these contracts would give competitors of the issuer an easy access to contracts they otherwise would not have access to. Furthermore, if all material contracts on display had to be translated into the same language as the prospectus, this would be so cost and time consuming that most issues would become too burdensome for issuers. After all it should be taken into account that the prospectus or any documents relating to the issuer should not serve as a due diligence report but should inform the investor only about the nature and the risks of the security involved.

SECURITIES ISSUED BY BANKS

Introduction

43. *Having reviewed the disclosure obligations set out in Annex [2], do you consider that a specialist building block for banks is justified?*

Definitely yes. Banks are subject to a very comprehensive prudential supervision pursuant to the Directive relating to the taking up and pursuit of the business of credit

institutions (2000/12/EC) - hereinafter referred to as the "Banking Directive". As a consequence, any investor investing into a bank´s security is exposed to a significant lower insolvency risk than an investor acquiring a security issued by a non-regulated entity (e.g. an industrial enterprise). Therefore, disclosure obligations for banks should be significantly lower than for other entities.

44. *If so, do you consider that this specialist building block should be applied to non-EU banks that are subject to an equivalent level of prudential and regulatory supervision, or should only EU banks be covered by this specialist building block?*

Banks from non-EU countries with an equivalent level of prudential supervision should not be excluded from the use of the special Registration Document. Otherwise, non-EU banks might be deterred from listing on EU markets.

45. *Other than those disclosures considered separately below, do you agree with the disclosure obligations for banks as set out in Annex [2]?*

See our marked-up amendments in Annex 2 (**Attachment**).

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Bank Building Block)

47. *Do you consider that information about a bank's principal future investments should be disclosed?*

No. See the reasons set out in our answer to question 15 above which also prevail with regard to banks.

Profit forecasts and trend information – CESR disclosure ref: IV.A.1 (Bank Building Block)

49. *Do you consider that a bank's actual solvency ratio should be disclosed?*

No. Solvency ratios are under a permanent change and do not help normal investors to assess the relevant issuer risk for debt securities and derivative securities issued by banks. As is stated in the Addendum, a normal investor could only grasp the meaning of the ratios if "the significance were fully explained and put in context" (No. 48). Such an explanation in plain terms is a more than difficult task and would burden issuers unnecessarily. The obligations for the disclosure of solvency ratios are laid down in the Banking Directive 2000/12/EC and in the Capital Adequacy Directive (93/6/EEC). They are dealt conclusively there and should not be broadened at Level 2 of the Prospectus Directive.

Board Practices – CESR ref: V.C.1 and 2 (Bank Building Block)

51. *Do you consider it necessary to continue to require disclosure of Board practices by banks?*

No. See our answer to question 25.

Major Shareholders – CESR ref: VI.A.1, VI.A.2 and 3 (Bank Building Block)

53. *Do you consider that the disclosure obligations [VI.A.1, VI.A.2 and VI.A.3] should be required for banks?*

No. Supervision exercised over banks also covers persons holding major interests in banks (see e.g. Art. 16 of the Banking Directive 2000/12/EEC). Therefore, there is no need for a disclosure of major shareholder-related facts in the prospectus. See also our answer to question 27.

Related party transactions - CESR ref: VI.B (Bank Building Block)

55. *Do you consider that this disclosure requirement should be retained in relation to this type of issuer?*

No. As far as banks are involved in related party transactions such transactions are already supervised under current prudential law (see e.g. Art. 16 par. 5 of the Banking Directive - 200/12/EEC). Therefore, we do not see a need to disclose details of related party transactions in the Banks RD for investor protection reasons.

See also our answer to question 30.

Interim financial statements - CESR ref: VII.H (Bank Building Block)

57. *Do you consider the approach set out in VII.H of the Bank Building Block schedule to be appropriate?*

No. See our answer to question 33.

Documents on display - CESR ref: VIII.C (Bank Building Block)

59. *Are your views or comments in relation to securities issued by Banks different from those in response to the Consultation Paper?*

No.

DERIVATIVE SECURITIES

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Derivatives Building Block)

66. *Do you consider that issuers of derivative securities should be required to provide a description of their principal future investments? Please give your reasons*.

No. Similar to the investor of a debt security the investor acquiring a derivative security bears - as far as issuer-related risks are concerned - the risk that the issuer becomes insolvent and therefore cannot fulfil its contractual obligations under the derivative security (e.g. delivery of the underlying). As a consequence, the same reasons against a description of a debt securities issuer´s principal future investments prevail with regard to the issuer of a derivative security: Such information does not sufficiently help the investor to assess the relevant (insolvency) risk.

Directors - CESR ref: V.A.1 (Derivatives Building Block)

69. *Do you consider that the information set out in V.A.1 of the Derivatives Building block should be restricted to the directors of the issuer? Please give your reasons.*

The information set out in V.A.1 should be confined to those persons who have the ultimate business authority and responsibility. Therefore, only the members of the management and supervisory bodies, if any, should be mentioned, while "management" is to be understood as the directors of the company. Information about any employees below this level should not be disclosed.

Management and directors conflict of interests – CESR ref: V.B (Derivatives Building Block)

71. *Do you consider that the information set out in V.B of the Derivatives Building block to be relevant and necessary disclosure for these products? Please give your reasons.*

The information set out in V.B of the Derivatives RD is not relevant for investors in debt or derivative securities. Furthermore, the issuer generally is not aware of any potential conflicts of interest since the members of its management/directors do not have to inform the issuer of any potential conflicts of interest.

Board Practices – CESR ref: V.C.1 and 2 (Derivatives Building Block)

73. *Do you consider it necessary to require disclosure of Board practices for issuers of derivative securities? Please give reasons for your answer.*

No, such information is not necessary for investors of derivative securities. If the issuer does not comply with corporate governance rules this fact alone does not help the investor to assess a potential insolvency risk of the issuer.

74. *Do you consider it necessary to require disclosure of Board practices for issuers who are banks of derivative securities? Please give reasons for your answer.*

See our answer to question 73.

Related party transactions - CESR ref: VI.B (Wholesale Debt Building Block)

76. *Do you consider that this disclosure requirement should be retained in relation to derivative securities? Please give your reasons.*

No. See our answers to questions 55 and 30.

Interim financial statements – CESR ref: VII.H (Derivatives Building Block)

78. *Do you consider the approach set out in VII.H. of the Derivative Building Block schedule to be appropriate?*

Yes. If interim financial statements are published, they should also be inserted in the registration document (prospectus). There should, however, be no obligation to publish interim financial statements beyond the scope of the forthcoming Transparency Directive. See also our answer to question 33.

Documents on display - CESR ref: VIII.C (Wholesale Debt Building Block)

80. *Are your views or comments in relation to derivative securities different from those in response to the Consultation Paper?*

No. See our answer to question 35.

The disclosure requirements for guaranteed derivative securities.

87. *After review of the proposed disclosure requirements for banks set out in Annex [2], do you consider it necessary to set out separate disclosure requirements for guaranteed derivative securities issued by banks (including for these purposes special purpose vehicles whose obligations are guaranteed by banks), or should all such derivative securities irrespective of their percentage return be treated as all other non-equity securities issued by banks (or special purpose vehicles whose obligations are guaranteed by banks)? Please give your reasons.*

As set out in our response to the first Consultation Paper, we believe that no difference should be made between guaranteed and not guaranteed derivatives, as the investor´s risk is identical for both kinds (risk of insolvency of the issuer).

88: *If you consider that there should be a difference between the disclosure requirements for a bank (or a special purpose vehicle whose obligations are guaranteed by a bank) issuing a guaranteed derivative security, and the disclosure requirements for a bank issuing all other types of non-equity securities, please indicate what percentage return should be applied to differentiate between these different disclosure requirements. Please give your reasons.*

As set out above in our answer to question 87, there should not be a special regime for "guaranteed" derivatives. Each percentage return selected would, for the reasons set in our answer to question 87, be arbitrary and lack a reasonable justification.

The disclosure requirements for derivative securities issued by entities other than banks or special purpose vehicles whose obligations are guaranteed by banks

92. *Do you consider that the disclosure requirements for Banks issuing derivative products should also be applied to non-bank issuers of non-guaranteed derivative securities? Please give your reasons.*

Considering that the number of RD´s should be limited to a reasonable extent and that derivatives are almost always issued by banks we think it will be sufficient to have only one Registration Document for derivatives in place, which should be based on the disclosure requirements for banks and which can also be used in the rare cases of non-bank issuers of non-guaranteed securities.

ASSET BACKED SECURITIES

96. *Do you agree with the disclosure obligations set out in Annex [4] as being appropriate for this type of securities?*

No comments.

DEPOSITORY RECEIPTS

102. *Do you agree with the disclosure obligations set out in Annex [5] as being appropriate for this type of security?*

No comments.

SPECIALIST BUILDING BLOCK FOR SHIPPING COMPANIES

111. *Do you believe that a specialist building block for shipping companies is appropriate?*

No comments.

PART TWO - SECURITIES NOTE

PROPOSAL OF A BLANKET CLAUSE

122. *Do you agree with this approach?*

Yes, we strongly agree with this approach. This approach would have the positive consequence that any "if any" references are redundant.

123. *Are you satisfied with the wording of the Blanket Clause?*

The wording should not only cover non-applicability but also information of minor materiality or importance. Therefore, we propose the following wording:

"If certain information required in [line items] or equivalent information is not applicable to the issuer or to the securities to which the prospectus relates, or is of minor materiality in relation to the nature of the issue, this information can be omitted."

Furthermore, it should be specified what is meant by the term "line items" as this is not a term previously used.

WORKING CAPITAL

125. *Do you consider that this disclosure is more appropriate to the securities note or the registration document?*

All information relating to the issuer should be included only in the registration document. All information regarding the security should be included only in the securities note. Since information on the working capital is issuer-related it should be included in the registration document.

ADDITIONAL INFORMATION IN THE SN EQUITY SCHEDULE

132. *Do you agree with this approach?*

No comments.

ADDITIONAL INFORMATION IN THE SN DEBT SCHEDULE

136. *Do you agree with this approach?*

No. For securities which provide for fixed income and at the same time have derivative elements, it would seem preferable only to make the Derivatives Securities Note applicable. Structured bonds fall under the definition of "derivative securities" as proposed by the ESBG in the first consultation.

In this context, we would like to emphasize that also reverse convertibles referred to in Clause 118 of the Addendum should be covered only by the SN Derivatives.

ADDITIONAL INFORMATION IN THE SN DERIVATIVES SCHEDULE

139. *Do you agree with this approach?*

Yes. Our approval is, however, subject to the amendments marked in Annex 9.

ADDITIONAL SN BUILDING BLOCK FOR ASSET BACKED SECURITIES

143. Do you consider the disclosure requirements set out in Annex [10] to be appropriate for asset backed securities?

No comments.

144. On review of the debt security note disclosure requirements set out in annex [L] to the Consultation Paper, please advise what if any of these items of disclosure should not be required for these types of securities? Please give your reasons"

No comments.

ADDITIONAL SN BUILDING BLOCK FOR GUARANTEES

149. *Do you agree with the proposal to have the disclosure obligations in relation to guarantees in a separate building block so as to allow greater flexibility in structuring the issue of securities?*

Yes.

150. *Do you believe that the level of disclosure required by the proposed building block is appropriate? Please give reasons for your answer.*

The level of disclosure should be as marked in Annex 11.

ADDITIONAL SN BUILDING BLOCK FOR SUBSCRIPTION RIGHTS

155. *Do you agree with this approach?*

No. Derivative securities, such as warrants and certificates, giving the right to acquire securities issued by the same entity as the issuer of the derivative securities should not be covered by Annex 12 but only by Annex 9, the building block RD for derivative securities. Warrants and certificates giving the right to acquire securities by the same entity as the issuer of the derivative securities (so-called physically settled securities) are just as well derivative securities as cash settled warrants and certificates. The directive defines physically settled derivative securities linked to securities of the issuer (of the derivative securities) as equity securities and not as non-equity securities. The main reason for this is to have a system which ensures that the competent authority that reviews the prospectus under the home country principle is always the authority in the Member State where the issuer has its registered office and not the authority where the securities are being offered or traded. For the determination of the disclosure obligation and the question of the content of the securities note, however, the derivative character of the security should be the only decisive factor. Therefore only the building block for the derivative securities should apply.

159. *Which approach do you deem to be more appropriate?*

The latter approach is more appropriate.

PART THREE - SUMMARY

NEED FOR LEVEL 2 ADVICE

168. *Given the level of detail provided for by the Ecofin Text on the scope, language, length and content of the summary; taking in consideration that the summary is based on the content of the prospectus and that it is up to the issuer to evaluate which elements are essential, do you believe that there is need for level 2 advice on the content and characteristics of the summary and that, in particular, there is need to prepare specific summary schedules? If not, please indicate what level 2 implementing measures should deal with. CESR also welcomes views on the way in which the need to standardise the content of the summary may be compatible with the maximum length the summary should normally have.*

Some level 2 advice seems to be helpful. With a view to the 2,500 words approach it should be clarified that the summary can only highlight potential risks/investment considerations providing for a reasonable synthesis of the prospectus key issues chosen by the issuer and its advisers. In this respect it should be made clear that not all those items set out in the indicative list of Annex IV of the Directive have to be included. Furthermore, since an effective summary cannot contain all relevant risk factors and (in the case of equity issues or if CESR, despite our advice, continues to require a disclosure of related party transactions also in the case of debt issues) related party transactions (not to mention the other items) it should also be made clear at level 2 that a summary of the types of risks (e.g. currency risk, high competition, product liability) will be sufficient.

PART FOUR – BASE PROSPECTUS/PROGRAMMES

175. *Do you have any comments on the preliminary views expressed in paragraph [174]?*

For the time being it is too early to judge whether the base prospectus should have the same content as the "normal" prospectus. Details of the base prospectus, which will probably be the prospectus most commonly used in future, have not yet been worked out. We argued above that the Banks RD Building Block is too detailed and should be shortened. For this reason it is difficult for us to agree that the base prospectus should comprise the same amount of information when there is not even a satisfying framework for a normal prospectus matching our needs. **Once again we would like to stress that especially small and medium sized banks issuing debt securities on a regular basis will heavily depend on a suitable Banks RD and/or base prospectus regime in order keep their capital costs at a level which does not push them out of the market.** CESR should take this aspect carefully into account when further elaborating on the base prospectus regime.

176. *Bearing in mind that the final terms will not be approved, what information disclosures from the securities note do you consider it would be appropriate to reclassify as being the final terms [for issues off a base prospectus]?*

There should not be a tight definition of the term "final terms" because the variety of the various products is too broad. One should rather try to have a generic definition, e.g. "final terms are those terms of the security or the offer which can only be determined shortly before or on the launch of the security". Under this definition for instance the following items might remain open: number of securities issued, underlyings (in the event of derivative securities), interest rates, term of the securities, valuation dates, exercise, exercise form, exercise dates, ratios, strike prices, exercise prices, thresholds (e.g. caps, floors), securities codes, listing. There may, however, also be other features depending on the security. The final terms could be supplemented either directly into the terms and conditions which are a part of the securities note by filling in the blanks contained in the base prospectus or by way of a supplement in the form of a pricing supplement containing a list of the items which have been left open or blank.

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Brussels, 25 February 2003
JEA

Specific remarks to Annex [2]

CESR Proposals for the Banks Registration Document Building Block

based on

IOSCO International Disclosure Standards and European Directive 2001/34/EC

CESR PROPOSAL		IDS ref
I.A	**Responsibility for the prospectus or certain parts of them**	I.A.
I.A.1	Provide the name and function of natural persons and/or name and registered office of legal persons responsible for the prospectus or, as the case may be, for certain parts of them, with, in the latter case, an indication of those parts[1].	
I.A.2	Provide a declaration by those persons that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information given in that part of the prospectus for which they are responsible is in accordance with the facts and does not omit anything likely to materially affect the import of such information.	
I.B	**Auditors.**	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with ~~their~~ any membership in any relevant professional body).	I.B.
I.B.2	If auditors have resigned, been removed or not been re-appointed during the last two financial years, details must be disclosed if material.	I.C.

[1] It is not clear what kind of responsibility is meant and what consequences such responsibility has: personal liability or liability of the legal person. Furthermore, the cumulative "and" seems to be inconsistent compared to the alternative "or" - requirement envisaged by the Securities Note, I.6 and the Prospectus Directive itself (Art. 6). As it has to be left to each Member State whether to extend liability to natural persons, the word "and" should be replaced by an "or".in order to clarify that the responsibility may be taken either by named individuals or by a named legal entity (including the issuer), at the choice of the issuer.

II.	**Risk Factors.** The document shall prominently disclose risk factors in a section headed "Risk Factors" that ~~are~~: (a) ~~specific to the issuer and its industry; and~~ [2] (b) ~~any other factor that~~ may materially affect the issuer's ability to fulfil its obligations under the debt securities to investors.	III.D.

[2] A requirement to describe risks specific to the issuer and its industry would be disproportionate. Industry related risks for banks mainly depend on general economic conditions that can be assumed to be common knowledge. Further, extraordinary exposures of the issuer, if any, are dealt with under prudential law and thus should not amount to a level that might affect the issuer's ability to fulfil its obligations under the securities covered by this RD.

III	**Information about the issuer**	IV
III.A.	**History and development of the Issuer:** The following information shall be provided:	IV.A.
III.A.1	The legal and commercial name of the issuer.	IV.A1.
III.A.2	The place of registration of the issuer and its registration number.	
III.A.3	The date of incorporation and the length of life of the issuer, except where indefinite.	IV.A2.
III.A.4	The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, ~~website address~~[3], and the address and telephone number of its registered office (or principal place of business if different from its registered office).	IV.A2.
III.A.5	Disclosure regarding any recent events relevant to the evaluation of the issuer's solvency, for example the nature and results of any bankruptcy, receivership or similar procedures with respect to the issuer or its significant subsidiaries.	IVA.4.
III.B	**Investments**	
III.B.	~~**Principal future investments**~~ ~~Information concerning the issuer's principal future investments, with the exception of interests to be acquired in other undertakings, on which its management bodies have already made firm commitments.~~ [4]	IV.A6.
III.C	**Business Overview**	
III.C.1	**Principal activities:** The following information shall be provided:	IV.B.

[3] The proposed requirement to mention the issuer's web-site should be deleted. The issuer's web-site cannot be seen as an adequate source of additional information for investors. By mentioning it in the prospectus, there would thus be an increased risk of investors basing their investment decision not only on the prospectus, but also on the content of the issuer's web-site, which would contradict the purpose of a prospectus. Therefore, if the prospectus contains all the information necessary to the investor to make an informed investment decision (and is thus compliant with the requirements of the Prospectus Directive), a reference to the issuer's web-site is neither necessary nor useful.

[4] Since debt investors are only exposed to the risk that the issuer becomes insolvent and consequently incapable of fulfilling its obligations under the debt security (i.e. paying interest and repaying the capital), only information relating to such risk needs to be disclosed. In most cases, however, information on the issuer's (future) investments does not enable investors to assess the risk of insolvency. If future investments are really material for the business strategy of the company they already have to be disclosed in the section on the outlook of the company, if they bear a significant risk for the company disclosure is required under risk factor´s section. This is sufficient.

III.C.1.a	A brief description of the issuer's principal activities and principal geographical markets in which the issuer competes.	IV.B.1.
III.C.1.b	The basis for any statements made by the issuer in the registration document regarding its competitive position shall be disclosed.	IV.B.7.
III.D	**Organisational Structure**	
III.D.1	If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.	IV.C.
III.D.2	If the issuer is dependant upon other entities within the group for the purpose of fulfilling its obligations, this must be clearly stated together with an explanation of this dependence.	
IV.A	**Trend information & profit forecasts**	
IV.A.1	The issuer should identify its most significant business developments since the close of the financial year to which its last published annual financial statements relate; in particular the most important recent trends in the developments of its main business areas, as well as its commitments or other events that are reasonably likely to have a material effect on its main business areas and the most recent trends for profitability, liquidity, solvency, expenses and revenues shall be disclosed	V.D.
IV.A2	Information on the issuer's prospects for at least the current financial year should be included. There is, however, no obligation to produce a profit forecast or estimate.[5]	V.D.
IV. A.3(a)	Where a profit forecast, profit estimate or any other kind of issuer's prospect appears in the prospectus, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated; ~~the forecast or estimate should be examined and reported on by the reporting accountants or auditors and their report should be set out; the report should include confirmation from the auditors that the forecast has been made after due and careful enquiry by the directors.~~[6]	
IV. A.3(b)	Any profit forecast set out in ~~it~~ the registration document should include a statement of the principal assumptions for each factor which could have a material effect on the achievement of the forecast. The assumptions should be clearly segregated between assumptions about factors which the directors can influence and assumptions about factors which are exclusively outside the influence of the directors; be readily understandable by investors; be specific and precise; and not relate to the general accuracy of the estimates underlying the forecast. A profit estimate may be subject to assumptions only in exceptional circumstances.	

[5] It should be set out more clearly that providing profit forecasts is voluntary.

[6] Such reports would not only be rather costly but, what is even more important, auditors might be very reluctant to draw up such a report if they have not audited the underlying figures yet. This reluctance would lead to a substantial delay in the finalization of the prospectus. Costs and delay would outweigh by far any benefit for an investor.

IV. A.3(c)	Any profit forecast set out in the registration document shall be accompanied by a statement ~~ensuring~~ confirming that said forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the issuer.	
V	~~**Directors**~~ **Management** The following information shall be disclosed:	VI
V.A	~~Provide the names, business addresses and functions of the issuer's directors.~~[7]	I.A
V.A.1	Names, addresses and functions in the issuing undertaking of the following persons, and an indication of the principal activities performed by them outside that undertaking where these are significant with respect to that undertaking: (a) members of the ~~administrative,~~ management ~~or~~ and supervisory bodies, if any; (b) partners with unlimited liability, in the case of a limited partnership with a share capital.	VIA1
V.B	~~**Management and directors conflicts of interests**~~ ~~Potential conflicts of interests between any of the directors duties to the issuing entity and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a negative statement to that effect should be made.~~ [8]	VIA5
V.C	~~**Board Practices**~~[9]	VI.C.
V.C.1	~~Details relating to the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.~~	VI.C.3.
V.C.2	~~A statement as to whether or not the issuer complies with it's country's of incorporation corporate governance regime should also be included. In the event that the issuer does not comply with shuc a reigeme a~~	

[7] Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. The information set out in V.A.1 should be confined to those persons who have the ultimate business authority and responsibility. Therefore, only the members of the management and supervisory bodies, if any, should be mentioned, while "management" is to be understood as the directors of the company. Information about any employees below this level should not be disclosed.

[8] The information is not relevant for investors in debt or derivative securities issued by banks. Furthermore, the issuer generally is not aware of any potential conflicts of interest since the members of its management/directors do not have to inform the issuer of any potential conflicts of interest.

[9] If the issuer does not comply with corporate governance rules this fact alone does not help the investor to assess a potential insolvency risk of the issuer.

	~~statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.~~	
~~VI~~	~~**Major Shareholders.**~~[10]	~~VII.A.~~
~~VI.A.1.~~	~~In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, has an interest notifiable under the issuer's national law in the issuer's capital or voting rights, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.~~	~~VII.A.1.a.~~
~~VI.A.2~~	~~To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by another corporation(s), by any government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.~~	~~VII.A.3.~~
~~VI.A.3~~	~~Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.~~	~~VII.A.4.~~
~~**VI.B**~~	~~**Related Party Transactions**.~~[11] ~~Provide the information required below for the period since the beginning of the issuer's preceding two financial years up to the date of the document, with respect to transactions or loans between the issuer and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer; (b) associates; (c) to the extent known to the issuer, individuals owning, directly or indirectly, an interest in the~~	~~VII.B~~

[10] Supervision exercised over banks also covers persons holding major interests in banks (see e.g. Art. 16 of the Banking Directive 2000/12/EEC). Therefore, there is no need for a disclosure of major shareholder-related facts in the prospectus. Further, the following aspects should be taken into account: First: Information on major shareholders of the issuer is so remote from the relevant insolvency risk that an obligation to disclose any such information in the RD cannot be justified under a risk-benefit-ratio. Secondly: A general description of the issuer´s position within the group of undertakings the issuer belongs to is already required under III.D.1.

[11] As far as banks are involved in related party transactions such transactions are already supervised under current prudential law (see e.g. Art. 16 par. 5 of the Banking Directive - 200/12/EEC). Therefore, we do not see a need to disclose details of related party transactions in the Banks RD for investor protection reasons. Further, the following aspects should be taken into account: Information about transactions with third parties do not, under normal circumstances, contribute to the assessment of the relevant risk. Compliance with such disclosure obligation would, however, be highly burdensome for issuers. On the infrequent occasions where the disclosure of related party transactions is material, it will be disclosed under the Risk Factors section. In addition, information about related party transactions will be included in the financial statements anyway.

	~~voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family; (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors of companies and close members of such individuals families; and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a member of key management in common with the issuer. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the issuer. An associate is an unconsolidated enterprise in which the issuer has a significant influence or which has significant influence over the issuer. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer.~~ ~~1. The nature and extent of any transactions during the preceding or current financial year or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiaries was a party. Where such transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given (in particular any special reports of the auditors on those transactions).~~ ~~2. The amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.~~	
VII	**<u>Financial Information concerning the issuer's assets and liabilities, financial position and profits and losses</u>**	**VIII**

VII.A	**Consolidated Statements and Other Financial Information** The document must contain consolidated financial statements (where consolidated statements are prepared). Any financial statements contained in the prospectus (whether consolidated or own accounts) must be audited by an independent auditor and accompanied by an auditor's[12] report or opinion as required by applicable accounting principles. , ~~comprised of:~~ ~~(a) balance sheet;~~ ~~(b) profit and loss account;~~ ~~(c) statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity);~~ ~~(d) cash flow statement;~~ ~~(e)accounting policies;~~ ~~(f) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared~~[13]	VIII.A.1.

[12] The term "audit report" may be understood as the auditor's "long form" (sometimes more then 1,000 pages) report on the audit work which is given only internally and confidentially to the client. It is not reasonable to include this into a prospectus. Rather only the "auditor's report" or "opinion" should be inserted, whatever is required according to the applicable accounting principles.

[13] The content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.

VII.B	**Notes to the accounts** The notes to the accounts~~ant's report~~[14] and comparative table must, as a minimum cover: a) the last balance sheet; and b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for the latest period covered by the auditor's report or opinion ~~all periods included in the accountants report or comparative table.~~	
VII.C	**Standard of account preparation** The document should include comparative financial statements that cover the latest two financial years, audited in accordance with a comprehensive body of auditing standards.	
VII.D	**Own versus consolidated accounts** If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus. If the issuer prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the issuer may include either the own or the consolidated annual accounts, on condition that the accounts which are not included do not provide any significant additional information.	
VII.E	**True and fair view** If the own or consolidated annual accounts do not comply with the Council Directives on undertakings' annual accounts and do not give a true and fair view of the issuer's assets and liabilities, financial position and profits and losses, this fact and the reasons for it must be stated ~~more detailed and/or additional information must be given.~~ In the case of issuers incorporated in a non-member state which are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.	

VII.F	**Auditing of accounts**	
VII.F.1	A statement that the annual accounts of the issuer for the last two financial years (if available) have been audited. If auditor's[15] reports on any of those accounts have been refused by the official auditors or if they contain qualifications or diclaimers, such refusal or such	VIII.A.3.

[14] Use same term as in headline.
[15] See footnote 12.

	qualifications or disclaimers shall be reproduced in full and the reasons given.	
VII.F.2	Indication of other information in the prospectus which has been audited by the auditors.	
VII.F.3	Where financial data in the prospectus is extracted with material adjustment from the issuer's audited accounts the issuer must state the source of the data and state that the data is unaudited.	
VII.G	**Age of latest annual accounts**	
VII.G.1	The last year of audited financial statements may not be older than ~~15~~ 18[16] months from the date of the prospectus. In exceptional cases this period of time may be prolonged by the competent authority. In the event of a prolongment a statement for the reason of the prolongment has to be included in the prospectus.	VIII.A.4.
VII.H	**Interim financial statements**	
VII.H.1	If the document is dated more than nine months after the end of the last audited financial year, and the issuer has published own or consolidated interim financial statements it should contain own or consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year.	VIII.A.5.
VII.I	**Legal and arbitration proceedings – change as per derivatives** Provide information on any legal or arbitration proceedings where the issuer is a party (including any such proceedings which are pending or threatened of which the issuer is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, a significant effect on the issuer's ability to meet its obligations under the proposed issue of securities. Or provide an appropriate negative statement.	VIII.A.7.

VII.J	**Significant change in the issuer's financial or trading position** A description of any significant change in the financial or trading position of the issuer which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published in accordance with VIID, or an appropriate negative statement.	VIII.B.

[16] 3 months following the end of a financial year for the establishment / approval of the financial statements are too short. 6 months are required. Therefore the last year of audited financial statements should be allowed to be as old as 18 and not only 15 months. Otherwise there would be hardly any new issues / prospectuses between April 1 and June 30.

VIII	**Additional information**	
VIII.A	~~**Material contracts**~~ ~~Provide a brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligation to security holders in respect of the class of securities being issued.~~ [17]	X.C.
VIII.B	**Statement by Experts** Where a statement or report attributed to a person as an expert is included in the document, provide such person's name, business 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 authorised the contents of that part of the document.	X.G.

V.III. C	**Documents on display** A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer; (b) any trust deed of the issuer; ~~each document mentioned in paragraphs VIII.C (material contracts)~~ [18] (c) all publicly available reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the registration document / prospectus; (d) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary	X.H.

[17] The term "material contract" is too vague. If it is used at all, it has to be limited to "material with respect to the performance of the security to which the prospectus relates". Nevertheless, one has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature and the major risks of his investments. Accordingly, it should be enough if any risk resulting from such a contract is described in the prospectus.

[18] Only publicly available documents should be displayed. Other documents, in particular material contracts, often contain confidential information and therefore may not be publicly displayed. In addition, a complete display of these contracts would give competitors of the issuer an easy access to contracts they otherwise would not have access to. Furthermore, if all material contracts on display had to be translated into the same language as the prospectus, this would be so cost and time consuming that most issues would become too burdensome for issuers. After all it should be taken into account that the prospectus or any documents relating to the issuer should not serve as a due diligence report but should inform the investor only about the nature and the risks of the security involved.

	undertakings for each of the two financial years preceding the publication of the registration document. The issuer shall provide an indication of where the documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means.	