



Ref: 02-286Annexes

Date: December 2002

ANNEXES TO THE ADDENDUM

CESR's Advice on
possible Level 2 Implementing Measures
for the Proposed Prospectus Directive

Addendum to the
Consultation Paper
(Ref. CESR/02-185-b)

December 2002



Annex [1]

CESR Proposal for the Wholesale Debt Registration Document Building Block

based on

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



Please note as a general remark that in some places our views have developed since we responded to CESR'S first consultation. Therefore, our responses to this consultation on analogous points may differ. Any such differing views in our present response shall apply mutatis mutandis to those analogous issues in the first consultation.

CESR PROPOSAL		IOSCO
I.A	<u>Responsibility for the prospectus or certain parts of them</u>	
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 <u>materially</u> affect the import of such information.	
I.B	<u>Auditors.</u>	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with their <u>any</u> membership in <u>any relevant</u> professional body).	I.C.
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 should be made clear 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. It is important that the issuer itself may take responsibility for the prospectus since in various countries (e.g. Germany) directors are not generally required to accept personal responsibilities for the prospectus, and to impose such a requirement via the Prospectus Directive will negatively affect the ability of the company to access the European capital markets.



CESR PROPOSAL		IOSCO
II.	<p><u>Risk Factors.</u></p> <p>The document shall prominently disclose risk factors in a section headed "Risk Factors" that are:</p> <p>(a) specific to the issuer and its industry; and²</p> <p>(b) any other factor that may materially affect the issuer's ability to fulfil its obligations under the debt securities to investors.</p>	III.D.
III	<u>Information about the issuer</u>	IV
III.A.	<u>History and development of the Issuer:</u>	IV.A.
	The following information shall be provided:	
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, and the address and telephone number of its registered office (or principal place of business if different from its registered office).	IV.A3.
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	<u>Investments</u>	
III.B.1	<p><u>Principal future investments</u></p> <p>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.³</p>	IV.A6.

² The risk factor mentioned in (a) is not likely to be relevant for investors in debt securities because these factors do not affect a company's ability to pay interest or make a repayment on the capital invested.



CESR PROPOSAL		IOSCO
III.C	<u>Business Overview</u>	
III.C.1	<u>Principal activities:</u> The following information shall be provided:	IV.B.
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.c.	The basis for any statements in the registration document made by the issuer regarding its competitive position shall be disclosed.	IV.B.7.
III.D	<u>Organisational Structure</u>	
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	<u>Liquidity and capital resources</u>	
IV.A	<u>The issuer's capital expenditure commitments</u> Information regarding the issuer's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfil such commitments. ⁴	V.B.3.

³ The issuer's principal future investments should neither be disclosed for wholesale debt investors nor for retail debt investors because debt investors are only concerned with the risk that the issuer becomes unable to pay interest or to repay the capital, i.e. with the risk of a potential insolvency. Accordingly, only information relating to such risk needs to be disclosed. Information on the issuer's (future) investments under normal conditions does not enable investors to assess the risk of insolvency. If future investments are really material for the business strategy of the company they could be explained in the section on the outlook of the company. An investment section, however, should be deleted.

⁴ Information about a company's capital expenditure commitments are neither required for wholesale debt investors nor for retail debt investors.



CESR PROPOSAL		IOSCO
IV.B	<u>Trend information</u>	
IV.B.1	<p>Include a statement that there has been no material adverse change in the financial position, or prospects of the issuer since the date of its last published accounts.</p> <p>In the event that the issuer is unable to make such a statement, then the issuer should provide details of this material adverse change.</p>	V.D.
IV.B.2	Information on the issuer's prospects for at least the current financial year should be included. <u>There is, however, no obligation to produce a profit forecast or estimate.</u>	V.D.
IV.B.3(a)	Any profit forecast set out in 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.	
IV.B.3(b)	Any profit forecast set out in the registration document shall be accompanied by a statement <u>ensuring-confirming</u> 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	<u>Directors-Management</u> The following information shall be disclosed:	VI
V.A	<u>Provide the names, business addresses and functions of the issuer's directors.</u> ⁵	I.A

⁵ Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.



CESR PROPOSAL		IOSCO
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, <u>if any</u> ; (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. ⁶	VIA5
V.C	Board Practices⁷	VIC.
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.	VIC.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 such a regime a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.	

⁶ This section should be deleted because 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. One should not impose obligations on the issuer which it cannot fulfill. One could, however, insert a paragraph in the risk factors stating generally that there may arise conflicts of interest which affect the price of the security. This could be a compromise.

⁷ Such details or the non-compliance with corporate governance rules is irrelevant for an investor in debt or derivative securities because they do not affect the solvency or lead to an insolvency of the issuer.



CESR PROPOSAL		IOSCO
VI	Major Shareholders.⁸	VII.A.
VI.A.1	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.2	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.

⁸ ~~These disclosure obligations should be deleted for wholesale debt as well as for retail debt because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to interest and redemption payments.~~



VI.B	<u>⁹Related Party Transactions:</u>	VI.B
	<p>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 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</p> <p>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.</p>	

⁹ This disclosure requirement should not be retained (neither for wholesale debt nor for retail debt) or, at least, the information required should be limited to the information required according to applicable accounting standards as disclosure in the annual report. Such level of disclosure will provide the investors with a sufficient level of detail.



	<p>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).</p> <p>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.</p>	
VII	<u>Financial information concerning the issuer's assets and liabilities, financial position and profit and losses</u>	VIII
VII.A	<p><u>Consolidated Statements and Other Financial Information</u></p> <p>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's¹⁰ report or <u>opinion as required by applicable accounting principles, comprised of:</u></p> <ul style="list-style-type: none"> (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 prepared¹¹ 	VIII.A.1.

¹⁰ The term "audit report" may be understood as the auditor's "long form" (sometimes more than 1,000 pages) report on the audit work which is given only internally and confidentially to the client. It is not suited for inclusion in a prospectus. Rather only the "auditor's report" or "opinion" should be inserted, whatever is required according to the applicable accounting principles. In any event the terminology should be made consistent with the Accounting Directive.



<p>VII.B</p>	<p><u>Notes to the accounts</u></p> <p>The notes to the accountant's report¹² and comparative table must, as a minimum cover:</p> <p>a) the last balance sheet; and b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for <u>the latest period covered by the auditor's report or opinion</u>all periods included in the accountants report or comparative table.</p>	
<p>VII.C</p>	<p><u>Standard of account preparation</u></p> <p>The document should include comparative financial statements that cover the latest two financial years, audited in accordance with a comprehensive body of auditing standards.</p>	
<p>VII.D</p>	<p><u>Own versus consolidated accounts</u></p> <p>If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus.</p> <p>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.</p>	

¹¹ 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.

¹² Use same term as in headline.



VII.E	<u>True and fair view</u> 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 alternative standard, this fact must be stated¹³ the latter may be sufficient.	
VII.F	<u>Auditing of accounts</u>	
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 ¹⁴ reports on any of those accounts have been refused by the official auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given.	VIII.A.3.
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	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older -than 18 5 ¹⁵ 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	<u>Interim financial statements</u>	

¹³ ~~The proposal discriminates against issuers incorporated in countries where one does not draw up the accounts in accordance with IAS. Furthermore, the application of the proposal involves difficult questions of interpretation. For instance, it is doubtful as to whether US and Japanese rules would meet the true and fair test. Any restatement of the accounts or reconciliation will be rather expensive for the issuer. Our amendment avoids these problems.~~

¹⁴ See footnote 10.

¹⁵ ~~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 much less new issues / prospectuses between April 1 and June 30 than currently.~~



	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.	
VII.I	<u>Legal and arbitration proceedings</u> Provide information on any legal or arbitration proceedings <u>where the issuer is a party</u> (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 debt securities. Or provide an appropriate negative statement	VIII.A.7.
VII.J	<u>Significant change in the issuer's financial or trading position</u> 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.
VIII	<u>Additional information</u>	
VIII.A	<u>Material contracts</u> 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. <small>¹⁶</small>	X.C.

¹⁶ 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.



VIII.B	<p><u>Statement by Experts</u></p> <p>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.</p>	X.G.
V.III.C	<p><u>Documents on display</u></p> <p>A statement that for the life of the registration document <u>the</u> following documents (or copies thereof), where applicable, may be inspected:</p> <ul style="list-style-type: none"> (a) the memorandum and articles of association of the issuer; (b) any trust deed of the issuer; (c) each document mentioned in paragraphs VIII.C (material contracts)¹⁷ (c) (d) all <u>publicly available</u> 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 <u>/prospectus</u>; (d) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. <p>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</p>	X.H.

¹⁷ 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 could affect the competition because such a display would give competitors 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. Last but not least, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the security involved. An overload of information generally does not make the investors happier or more informed but rather deters them from being interested in the product.



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	<u>Responsibility for the prospectus or certain parts of them</u>	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. ¹⁸	
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 <u>materially</u> affect the import of such information.	
I.B	<u>Auditors.</u>	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with <u>their-any</u> membership in <u>any relevant</u> 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.

¹⁸ It should be made clear 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. It is important that the issuer itself may take responsibility for the prospectus since in various countries (e.g. Germany) directors are not generally required to accept personal responsibilities for the prospectus, and to impose such a requirement via the Prospectus Directive will negatively affect the ability of the company to access the European capital markets.



CESR PROPOSAL		IDS ref
II.	<p><u>Risk Factors.</u></p> <p>The document shall prominently disclose risk factors in a section headed "Risk Factors" that are:</p> <p>(b) specific to the issuer and its industry; and¹⁹</p> <p>(d) any other factor that may <u>materially</u> affect the issuer's ability to fulfil its obligations under the debt securities to investors.</p>	III.D.

¹⁹ The risk factor mentioned in (c) is not likely to be relevant for investors in debt securities because these factors do not affect a company's ability to pay interest or make a repayment on the capital invested.



III	<u>Information about the issuer</u>	IV
III.A.	<u>History and development of the Issuer:</u> 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, 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	<u>Investments</u>	
III.B.	<u>Principal future investments</u> 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. ²⁰	IV.A6.
III.C	<u>Business Overview</u>	
III.C.1	<u>Principal activities:</u> The following information shall be provided:	IV.B.

²⁰ ~~The issuer's principal future investments do not need to be disclosed to investors in debt or derivatives securities because they are only concerned with the risk that the issuer becomes unable to pay interest, to repay the capital or to make payments under the derivative securities, i.e. with the risk of a potential insolvency. Accordingly, only information relating to such risk needs to be disclosed. Information on the issuer's (future) investments under normal conditions does not enable investors to assess the risk of insolvency. If future investments are really material for the business strategy of the company they could be explained in the section on the outlook of the company. An investment section, however, should be deleted. Investors of derivative securities furthermore do not need this information because the money paid by the investors as purchase price is used by the issuer for hedging purposes which sufficiently protects the investor.~~



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	<u>Organisational Structure</u>	
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	<u>Trend information & profit forecasts</u>	
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. <u>There is, however, no obligation to produce a profit forecast or estimate.</u>	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. ²¹	
IV. A.3(b)	Any profit forecast set out in 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	

²¹ An examination of the forecast / estimate currently is not required and generally not done. Auditors might be very reluctant to make such an examination if they have not audited the figures yet. This reluctance would lead to a substantial delay in the finalization of the prospectus.



	exceptional circumstances.	
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.²²	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: (b) 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. ²³	VIA5
V.C	Board Practices²⁴	VIC.
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.	VIC.3.

²² ~~Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.~~

²³ ~~This section should be deleted because 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. One should not impose obligations on the issuer which it cannot fulfill. One could, however, insert a paragraph in the risk factors stating generally that there may arise conflicts of interest which affect the price of the security. This could be a compromise.~~

²⁴ ~~Such details or the non-compliance with corporate governance rules is irrelevant for an investor in debt or derivative securities because they do not affect the solvency or lead to an insolvency of the issuer.~~



V.C.2	A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime should also be included. In the event that the issuer does not comply with such a regime a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.	
VI	<u>Major Shareholders.</u> ²⁵	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	<u>Related Party Transactions.</u> ²⁶ 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 voting power of the issuer that gives them significant influence	VII.B

²⁵ These disclosure obligations should be deleted for debt and derivative securities because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to interest and redemption payments or other payments.

²⁶ This disclosure requirement should not be retained or, at least, the information required should be limited to the information required according to applicable accounting standards as disclosure in the annual report. Such level of disclosure will provide the investors with a sufficient level of detail.



	<p>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.</p> <p>2. 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).</p> <p>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.</p>	
VII	<u>Financial Information concerning the issuer's assets and liabilities, financial position and profits and losses</u>	VIII



VII.A	<p><u>Consolidated Statements and Other Financial Information</u></p> <p>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's²⁷ report <u>or opinion as required by applicable accounting principles, comprised of:</u></p> <ul style="list-style-type: none"> <u>(a) balance sheet;</u> <u>(b) profit and loss account;</u> <u>(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);</u> <u>(d) cash flow statement;</u> <u>(e) accounting policies;</u> <u>(f) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared²⁸</u> 	VIII.A.1.
-------	---	-----------

²⁷ The term "audit report" may be understood as the auditor's "long form" (sometimes more than 1,000 pages) report on the audit work which is given only internally and confidentially to the client. It is not suited for inclusion in a prospectus. Rather only the "auditor's report" or "opinion" should be inserted, whatever is required according to the applicable accounting principles. In any event the terminology should be made consistent with the Accounting Directive.

²⁸ 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.



<p>VII.B</p>	<p><u>Notes to the accounts</u></p> <p>The notes to the accountsant's report²⁹ and comparative table must, as a minimum cover:</p> <p>e)a) the last balance sheet; and e)b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for <u>the latest period covered by the auditor's report or opinion</u>all periods included in the accountants report or comparative table.</p>	
<p>VII.C</p>	<p><u>Standard of account preparation</u></p> <p>The document should include comparative financial statements that cover the latest two financial years, audited in accordance with a comprehensive body of auditing standards.</p>	
<p>VII.D</p>	<p><u>Own versus consolidated accounts</u></p> <p>If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus.</p> <p>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.</p>	
<p>VII.E</p>	<p><u>True and fair view</u></p> <p>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, <u>this fact and the reasons for it must be stated</u>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 <u>equivalent alternative standard</u>, <u>this fact must be stated</u>³⁰the latter may be sufficient.</p>	

²⁹ Use same term as in headline.

³⁰ The proposal discriminates against issuers incorporated in countries where one does not draw up the accounts in accordance with IAS. Furthermore, the application of the proposal involves difficult questions of interpretation. For instance, it is doubtful as to whether US and Japanese rules would meet the true and fair test. Any restatement of the accounts or reconciliation will be rather expensive for the issuer. Our amendment avoids these problems.



VII.F	Auditing of accounts	
VII.F.1	A statement that the annual accounts of the issuer for the last two financial years <u>(if available)</u> have been audited. If auditor's ³¹ reports on any of those accounts have been refused by the official auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given.	VIII.A.3.
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	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older -than 18 ³² months from the date of the prospectus. <u>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.</u>	VIII.A.4.
VII.H	<u>Interim financial statements</u>	
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	<u>Legal and arbitration proceedings – change as per derivatives</u>	VIII.A.7.
	Provide information on any legal or arbitration proceedings <u>where the issuer is a party</u> (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.	

³¹ See footnote 27.

³² 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 much less new issues / prospectuses between April 1 and June 30 than currently.



--	--	--



VII.J	<p><u>Significant change in the issuer's financial or trading position</u></p> <p>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.</p>	VIII.B.
VIII	<p><u>Additional information</u></p>	
VIII.A	<p><u>Material contracts</u></p> <p>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.</p> <p>³³</p>	X.C.
VIII.B	<p><u>Statement by Experts</u></p> <p>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.</p>	X.G.

³³ 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.



-V.III.C	<p><u>Documents on display</u></p> <p>A statement that for the life of the registration document <u>the</u> following documents (or copies thereof), where applicable, may be inspected:</p> <p>(e)<u>(a)</u> <u>the memorandum and articles of association of the issuer;</u></p> <p>(f)<u>(b)</u> <u>any trust deed of the issuer;</u></p> <p>(g)each document mentioned in paragraphs VIII.C (material contracts)³⁴</p> <p>(c)- <u>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 / <u>prospectus</u>;</u></p> <p>(h)<u>(d)</u> <u>the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.</u></p> <p>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.</p>	X.H.
----------	---	------

³⁴ 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 could affect the competition because such a display would give competitors 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. Last but not least, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the security involved. An overload of information generally does not make the investors happier or more informed but rather deters them from being interested in the product.



Annex [3]
**CESR Proposals for the Derivatives
Registration document Building Block**



CESR PROPOSAL		IOSCO
I.A	<u>Responsibility for the prospectus or certain parts of them</u>	
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. ³⁵	
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 <u>materially</u> affect the import of such information.	
I.B	<u>Auditors.</u>	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with their <u>any</u> membership in <u>any relevant</u> professional body).	I.C.
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.

³⁵ It should be made clear 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. It is important that the issuer itself may take responsibility for the prospectus since in various countries (e.g. Germany) directors are not generally required to accept personal responsibilities for the prospectus, and to impose such a requirement via the Prospectus Directive will negatively affect the ability of the company to access the European capital markets.



II	<p><u>Risk Factors.</u></p> <p>The document shall prominently disclose risk factors in a section headed "Risk Factors" that are:</p> <p>(e) specific to the issuer and its industry; and³⁶</p> <p>(f) any other factor that may <u>materially</u> affect the issuer's ability to fulfil its obligations under the -derivatives to investors.</p>	III.D.
III	<u>Information about the issuer</u>	IV
III.A.	<u>History and development of the Issuer:</u>	IV.A.
	The following information shall be provided:	
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, and the address and telephone number of its registered office (or principal place of business if different from its registered office).	IV.A3.
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	<u>Investments</u>	
III.B.1	<p><u>Principal future investments</u></p> <p>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.³⁷</p>	IV.A6.

³⁶ The risk factor mentioned in (e) is not likely to be relevant for investors in debt or derivative securities because these factors do not affect a company's ability to make payments on the capital invested.



³⁷ No. The money paid by the investor of derivative securities is not used for investments by the issuer but for hedging purposes only. Accordingly, investments being made by the issuer are of no relevance for the investor of derivative securities.



III.C	<u>Business Overview</u>	
III.C.1	<u>Principal activities:</u> The following information shall be provided:	IV.B.
III.C.1.a	A brief description of the issuer's principal activities.	IV.B.1.
III.C.2	<u>Principal markets</u> A brief description of the principal markets in which the issuer competes.	IV.B.2
III.C.3	The basis for any statements in the registration document made by the issuer regarding its competitive position shall be disclosed.	IV.B.7.



III.D	<u>Organisational Structure</u>	
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	<u>Trend information & profit forecasts</u>	
IV.A.1	<p>Include a statement that there has been no material adverse change in the financial position, or prospects of the issuer since the date of its last published accounts.</p> <p>In the event that the issuer is unable to make such a statement, then the issuer should provide details of this material adverse change.</p>	V.D.
IV.A.2(a)	Where a profit forecast, profit estimate or any other kind of issuer's prospect appears in the registration document, 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. ³⁸	

³⁸ An examination of the forecast / estimate currently is not required and generally not done. Auditors might be very reluctant to make such an examination if they have not audited the figures yet. This reluctance would lead to a substantial delay in the finalization of the prospectus.



IV.A.2(b)	Any profit forecast set out in 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.	
IV.A.2(b)	Any profit forecast shall be accompanied by a statement ensuring con- <u>firming</u> 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. ³⁹	IA
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: (c) members of the administrative, management or and supervisory bodies, <u>if any</u> ; (b) partners with unlimited liability, in the case of a limited partnership with a share capital.	VIA1

³⁹ Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.



V.B	<u>Management and directors conflicts of interests</u> 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. <small>40</small>	VIA5
V.C	<u>Board Practices</u> ⁴¹	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 such a regime a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.	
VI	<u>Major Shareholders</u> . ⁴²	VII.A.
VI.A.1	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.

⁴⁰ This section should be deleted because 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. One should not impose obligations on the issuer which it cannot fulfill. One could, however, insert a paragraph in the risk factors stating generally that there may arise conflicts of interest which affect the price of the security. This could be a compromise.

⁴¹ Such details or the non-compliance with corporate governance rules is irrelevant for an investor in derivative securities because they do not affect the solvency or lead to an insolvency of the issuer.

⁴² These disclosure obligations should be deleted for wholesale debt as well as for retail debt because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to any payments to be made under the derivative securities to the investors.



VI.A.2	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.
VII	<u>Financial information concerning the issuer's assets and liabilities, financial position and profits and losses</u>	VIII
VII.A	<p><u>Consolidated Statements and Other Financial Information</u></p> <p>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's⁴³ report or opinion as required by applicable accounting principles, comprised of:</p> <ul style="list-style-type: none"> (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 prepared⁴⁴ 	VIII.A.1.

⁴³ The term "audit report" may be understood as the auditor's "long form" (sometimes more than 1.000 pages) report on the audit work which is given only internally and confidentially to the client. It is not suited for inclusion in a prospectus. Rather only the "auditor's report" or "opinion" should be inserted whatever is required according to the applicable accounting principles. In any event the terminology should be made consistent with the Accounting Directive.

⁴⁴ 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.



<p>VII.B</p>	<p><u>Notes to the accounts</u></p> <p>The notes to the accountant's report⁴⁵ and comparative table must, as a minimum cover:</p> <p>e)a) the last balance sheet; and f)b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for <u>the latest period covered by the auditor's report or opinion</u>all periods included in the accountants report or comparative table.</p>	
<p>VII.C</p>	<p><u>Standard of account preparation</u></p> <p>The document should include comparative financial statements that cover the latest two financial years, audited in accordance with a comprehensive body of auditing standards.</p>	

⁴⁵ Use same term as in headline.



<p>VII.D</p>	<p><u>Own versus consolidated accounts</u></p> <p>If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus.</p> <p>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.</p>	
<p>VII.E</p>	<p><u>True and fair view</u></p> <p>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 statedmore 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 alternative standard, this fact must be stated⁴⁶the latter may be sufficient.</p>	
<p>VII.F</p>	<p><u>Auditing of accounts</u></p>	
<p>VII.F.1</p>	<p>A statement that the annual accounts of the issuer for the last two financial years (if available) have been audited. If auditor's⁴⁷ reports on any of those accounts have been refused by the official auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given.</p>	<p>VIII.A.3.</p>
<p>VII.F.2</p>	<p>Indication of other information in the prospectus which has been audited by the auditors.</p>	

⁴⁶ ~~The proposal discriminates against issuers incorporated in countries where one does not draw up the accounts in accordance with IAS. Furthermore, the application of the proposal involves difficult questions of interpretation. For instance, it is doubtful as to whether US and Japanese rules would meet the true and fair test. Any restatement of the accounts or reconciliation will be rather expensive for the issuer. Our amendment avoids these problems.~~

⁴⁷ ~~See footnote 43.~~



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	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older than 18 ⁴⁸ months from the date of the prospectus. <u>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.</u>	VIII.A.4.
VII.H	<u>Interim financial statements</u>	
	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.	
VII.I	<u>Legal and arbitration proceedings</u>	VIII.A.7.
	Provide information on any legal or arbitration proceedings <u>where the issuer is a party</u> (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 derivatives. Or provide an appropriate negative statement.	

⁴⁸ 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 much less new issues / prospectuses between April 1 and June 30 than currently.



VII.J	<p><u>Significant change in the issuer’s financial or trading position</u></p> <p>A description of any significant change in the financial or trading position of the group 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.</p>	VIII.B.
VIII	<p><u>Additional information</u></p>	
VIII.A	<p><u>Material contracts</u></p> <p>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 derivatives being issued.</p> <p>⁴⁹</p>	X.C.
VIII.B	<p><u>Statement by Experts</u></p> <p>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.</p>	X.G.

⁴⁹ 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.



<p>-V.III.C</p>	<p><u>Documents on display</u></p> <p>A statement that for the life of the registration document following documents (or copies thereof), where applicable, may be inspected:</p> <p>(+)(a) the memorandum and articles of association of the issuer;</p> <p>(+)(b) any trust deed of the issuer;</p> <p>(k)each document mentioned in paragraphs VIII.C (material contracts)⁵⁰</p> <p>(+)(c) all <u>publicly available</u> 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 / <u>prospectus</u>;</p> <p>(+)(d) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.</p> <p>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</p>	<p>X.H.</p>
------------------------	--	-------------

⁵⁰ 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 could affect the competition because such a display would give competitors 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. Last but not least, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the security involved. An overload of information generally does not make the investors happier or more informed but rather deters them from being interested in the product.



ANNEX 4

CESR Proposal for the Asset Backed Securities Registration Document

Building Block



	<i>The disclosure requirements set out below shall apply to issuers of asset backed securities that are special purpose vehicles or entities, as well as co-issuers that are special purpose vehicles or entities, if appropriate. Where a special purpose vehicle or entity has no separate legal identity, the issuer is the financial services firm that has set up the special purpose vehicle or entity.</i>
I.A	<u>Declarations</u>
I.A.1	Provide the 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.
I.A.2	Provide a declaration by those responsible for the prospectus that, 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 contains no omission likely to materially affect the import of the prospectus.
I.A.3	Provide the names, addresses and qualifications of the auditors to the issuer.
I.A.4	Where a statement or report attributed to a person as an expert is included in the document, 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.
I.B	<u>The issuer and its capital</u>
I.B.1	A statement that the issuer or fund has been established as a special purpose vehicle or entity for the purpose of issuing asset backed debt securities.
I.B.2	The legal and commercial name of the entity and, if that entity has no separate legal identity, also provide the legal and commercial name of the financial services firm that established it.
I.B.3	The domicile and legal form of the issuer, the legislation under which the entity operates, its country of incorporation, website address and the address and telephone number of its registered office (or principal place of business if different from its registered office).
I.B.4	The date of incorporation and the length of life of the issuer, except where indefinite.
I.B.5	The place of registration of the issuer and its registration number.



I.B.6	<p>A statement that for the life of the prospectus the following documents (or copies thereof), where applicable, may be inspected:</p> <p>(a) the memorandum and articles of association of the issuer; (b) any trust deed of the issuer relating to the asset backed securities issued; (c) each material contract referred to in the registration document; and⁵¹ (d) all <u>publicly available</u> 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 / <u>prospectus</u>;</p> <p>The issuer shall provide an indication of where any documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means.</p>
I.B.7	<p>Except where requirement III.A of the “Securities Note: Debt Securities Schedule” is complied with, the amount of the issuer’s authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the securities of which it is composed with details of their principal characteristics; if any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of securities not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.</p>
I.B.8	<p>If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it, or in so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, has a notifiable interest under the issuer’s national law in the issuer’s capital or voting rights, together with the amount of each such person’s interest.</p>
I.B.9	<p>The document shall prominently disclose risk factors in a section headed "Risk Factors" or “Investment Considerations” that are specific to the issuer and its industry.</p>
I.C	<p><u>The issuer’s activities, financial position and assets and liabilities</u></p>
I.C.1	<p>A brief description of the issuer’s principal activities.</p>
I.C.2	<p>Information on any legal or arbitration proceedings <u>where the issuer is a party</u> (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous 12 months) a significant effect on the issuer’s ability to fulfil its obligations or an appropriate negative statement.</p>

⁵¹ 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 could affect the competition because such a display would give competitors 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. Last but not least, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the security involved. An overload of information generally does not make the investors happier or more informed but rather deters them from being interested in the product.

CESR



I.C.3	Where, since the date of incorporation or establishment, an issuer has not commenced operations and no accounts have been made up as at the date of the prospectus, a statement to that effect must be provided in the registration document.
-------	---



I.C.4	Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain the financial information required under Section VII.A of the “Wholesale Debt Registration Document Building Block”, for 2 years or its period of existence, if shorter.
I.C.5	Where an issuer has prepared financial statements, it must include a statement that there has been no material adverse change in the financial position or prospects of the issuer since the date of its last published accounts. Where a material adverse change has occurred, this must be disclosed in the registration document.
I.D	<u>The management</u> ⁵²
I.D.1	The full name, business address and function in the group of each of the <u>members of the management and supervisory bodies</u> directors of the issuer and an indication of the principal activities performed by them outside the group where these are significant with respect to the group.

⁵² "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.



ANNEX 5

CESR Proposal for the Depository Receipt Prospectus

<Annex should be deleted>



CESR Proposal		IOSCO 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 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.	
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 affect the import of the prospectus.	
I.B	<u>Advisors</u>	I.B.
I.B	Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities.	I.B.
I.C	<u>Auditors</u>	I.C.
I.C.1	Provide the names and addresses of the company's auditors for the preceding three years (together with their membership in a professional body).	
I.C.2	If auditors have resigned, been removed or not been re-appointed during the last three financial years, details must be disclosed if material.	
I.C.3	In the case of new applicants, the full text of the auditors' report accompanying the last accounts referred to in the statement must be included. Where inclusion of the full text of the auditors' report in the prospectus is prohibited, a letter from the auditors, confirming that they have audited those accounts and have given an unqualified opinion thereon, may be substituted for their report. If audited accounts have not yet been prepared, the auditors should prepare a report in the format normally adopted for these circumstances for inclusion in the prospectus	
II.A	SELECTED FINANCIAL DATA	III.A.1. III.A.2.
II.A.1	The company shall provide selected historical financial data regarding the company, which shall be presented for the three most recent financial years (or such shorter period that the company has been in operation), in the same currency as the financial statements.	
II.A.2	If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be unaudited, provided that fact is stated. If selected financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information).	
II.A.3	The selected financial data presented shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); net income (loss) from operations per share; income (loss) from continuing operations per share; total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock); number of	



CESR Proposal		IOSCO IDS Ref
	shares as adjusted to reflect changes in capital; dividends declared per share, including the formula used for any adjustments to dividends declared; and diluted net income per share. Per share amounts must be determined in accordance with the body of accounting principles used in preparing the financial statements.	
II.B	<u>Risk Factors</u>	
	The document shall prominently disclose risk factors that are specific to the company or its industry and make an offering speculative or one of high risk, in a section headed "Risk Factors".	III.D.
III	INFORMATION ABOUT THE ISSUER OF THE UNDERLYING EQUITY SECURITIES	IV.A.
III.A	<u>History and Development of the Company</u>	
	The following information shall be provided:	
III.A.1	The legal and commercial name of the company.	IV.A.1.
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 company, except where indefinite.	IV.A.2.
III.A.4	The domicile and legal form of the company, the legislation under which the company operates, its country of incorporation, web-site address, and the address and telephone number of its registered office (or principal place of business if different from its registered office).	IV.A.3.
III.A.5	The important events in the development of the company's business, e.g. information concerning the nature and results of any material reclassification, merger or consolidation of the company or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the mode of conducting the business; material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the company or significant subsidiaries.	IV.A.4.
	Information on interruptions in the group's business which may have or have had during the recent past (at least 12 months) a significant effect on the group's financial position.	
III.B	<u>Investments</u>	
III.B.1	A description, including the amount invested, of the company's principal capital expenditures and divestitures (including interests in other companies), since the beginning of the company's last three financial years to the date of the prospectus .	IV.A.5.
III.B.2	Information concerning the principal capital expenditures and divestitures currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external).	IV.A.6.
III.B.3	Information concerning the company'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.	
III.B.4	An indication of any public take-over offers by third parties in respect of the company's shares or by the company in respect of other companies' shares which have occurred	IV.A.7.



CESR Proposal		IOSCO IDS Ref
	during the last and current financial year. The price or exchange terms attaching to such offers and the outcome thereof are to be stated.	
III.C.1	<u>Business Overview</u> <u>Principal Activities:</u> The following information shall be provided:	IV.B.
III.C.1.a	A description of the nature of the company's operations and its principal activities, stating the main categories of products sold and/or services performed for each of the last three financial years.	IV.B.1.
III.C.1.b	Indicate any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.	IV.B.1.
III.C.2	<u>Principal Markets</u>	
III.C.2	A description of the principal markets in which the company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three financial years.	IV.B.2.
III.C.3	Where the information given pursuant to III.B.1 and III.B.2 above has been influenced by exceptional factors, that fact should be mentioned.	
III.C.4	If material to the company's business, a description of the seasonality of the company's main business.	IV.B.3.
III.C.5	If material to the company's business, a description of the sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile.	IV.B.4.
III.C.6	If material, a description of the marketing channels used by the company, including an explanation of any special sales methods, such as instalment sales.	IV.B.5.
III.C.7	Summary information regarding the extent to which the company is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to the company's business or profitability.	IV.B.6.
III.C.8	The basis for any statements made by the company regarding its competitive position shall be disclosed.	IV.B.7.
III.D	<u>Organizational Structure</u>	IV.C.
III.D.1	If the company is part of a group, include a brief description of the group and the company's position within the group.	
III.D.2	Provide a listing of the company's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.	
III.E	<u>Property, Plants and Equipment</u>	
III.E	The company shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the size and uses of the property; productive capacity and extent of utilization of the company's facilities; how the assets are held; the products produced; and the location. Also	IV.D.



CESR Proposal		IOSCO IDS Ref
	describe any environmental issues that may affect the company's utilization of the assets. With regard to any material plans to construct, expand or improve facilities, describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion.	
IV.A	<u>OPERATING RESULTS</u>	V.A.
IV.A.1	Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations.	
IV.A.2	To the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.	V.A.1.
IV.A.3	Describe the impact of inflation, if material. If the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business shall be disclosed.	V.A.2.
IV.A.4	Provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments.	V.A.3.
IV.A.5	Provide information regarding any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations.	V.A.4.
IV.B	<u>Liquidity and Capital Resources.</u> The following information shall be provided:	V.B.
IV.B.1	Information regarding the company's liquidity (both short and long term), including:	V.B.1.
IV.B.1.a	a description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity.	V.B.1.a.
IV.B.1.b	an evaluation of the sources and amounts of the company's cash flows, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations.	V.B.1.b.
IV.B.1.c	information on the borrowing requirements and funding structure of the company, including: seasonality of borrowing requirements; details of the level of borrowings at the end of the period under review; details of the main loan agreements including interest rate, interest rate-adjustment clauses, maturity, instalments payable over the next five years and special loan terms which substantially restrict the company's freedom of action or restrict the transferability of shares.	V.B.1.c.
IV.B.2	If material to an assessment of the company's liquidity, information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also should include funding and treasury policies and	V.B.2.



CESR Proposal		IOSCO IDS Ref
	objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.	
IV.B.3	Information regarding the company's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfil such commitments.	V.B.3.
IV.C	<u>Research and Development, Patents and Licenses, etc</u>	
	Where material, provide a description of the company's research and development policies for the last three years, including the amount spent during each of the last three financial years on company-sponsored research and development activities.	V.C.
IV.D	<u>Trend Information</u>	V.D.
IV.D.1	The company should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.	
IV.D.2	Information on the issuer's prospects for at least the current financial year must be included. Where a profit forecast, profit estimate or any other kind of issuer's prospect appears, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated.	
IV.D.3.a	The profit forecast or prospects 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.	
IV.D.3.b	Any profit forecast shall be accompanied by a statement ensuring 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 company.	
V.A	DIRECTORS AND SENIOR MANAGEMENT	
	The following information shall be disclosed:	
V.A.1	The names, business addresses and functions of the company's directors and senior management. Names, addresses and functions in the issuing company of the following persons and an indication of the principal activities performed by them outside that company where these are significant with respect to that company:	VI.A.1-5.



CESR Proposa l		IOSCO IDS Ref
	<p>(a) members of the administrative, management or supervisory bodies; (b) partners with unlimited liability, in the case of a limited partnership with a share capital; (c) founders, if the company has been established for fewer than five years; and (d) any senior manager who is relevant to establishing that the company has the appropriate expertise and experience for the management of the company's business.</p> <p>The nature of any family relationship between any of the persons named above.</p> <p>In the case of each director of the company and person described in (a) and (d), details of that person's relevant management expertise and experience and the following information: (a) the names of all companies and partnerships of which such person has been a director or partner at any time in the previous five years, indicating whether or not the individual is still a director or partner. It is not necessary to list all the subsidiaries of a company of which the person is also a director; (b) any convictions in relation to fraudulent offences; (c) details of any bankruptcies or individual voluntary arrangements of such person; (d) details of any receiverships, compulsory liquidations, creditors voluntary liquidations, administrations, company voluntary arrangements or any composition or arrangement with its creditors generally or any class of its creditors of any company where such person was a director with an executive function at the time of or within the 12 months preceding such events; (e) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where such person was a partner at the time of or within the 12 months preceding such events; (f) details of receiverships of any asset of such person or of a partnership of which the person was a partner at the time of or within the 12 months preceding such event; and (g) details of any public criticisms of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company. or, if there is no such information to be disclosed, that fact.</p>	
V.A.2	<u>Management and directors' conflicts of interests</u>	
	<p>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.</p> <p>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in V.A.1 was selected as a director or member of senior management.</p>	
V.B	<u>Compensation</u>	
	Provide the following information for the last full financial year for the company's directors and members of its administrative, supervisory or management bodies:	VI.B.



CESR Proposal		IOSCO IDS Ref
V.B.1	The amount of compensation paid, and benefits in kind granted, to such persons by the company and its subsidiaries for services in all capacities to the company and its subsidiaries by any person. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company. The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date. If any portion of the compensation was paid (a) pursuant to a bonus or profit-sharing plan, provide a brief description of the plan and the basis upon which such persons participate in the plan; or (b) in the form of stock options, provide the title and amount of securities covered by the options, the exercise price, the purchase price (if any), and the expiration date of the options.	VI.B.1.
V.B.2	The total amounts set aside or accrued by the company or its subsidiaries to provide pension, retirement or similar benefits.	VI.B.2.
V.C	<u>Board Practices</u>	
	The following information for the company's last completed financial year shall be given with respect to, unless otherwise specified, the company's directors, and members of its administrative, supervisory or management bodies:	VI.C.
V.C.1	Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.	VI.C.1.
V.C.2	Details of directors' service contracts with the company or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.	VI.C.2.
V.C.3	Details relating to the company'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.4	A statement as to whether or not the company complies with its country's of incorporation corporate governance regime should also be included. In the event that the company does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the company does not comply with such regime.	
V.D	<u>Employees</u>	
	Provide either the number of employees at the end of the period or the average for the period for each of the past three financial years (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. Also, where material, disclose any significant change in the number of employees, and information regarding the relationship between management and labour unions. If the company employs a significant number of temporary employees, include disclosure of the number of temporary employees on an average during the most recent financial year.	VI.D.
V.D.1	With respect to the persons listed in subsection V.B, above (and connected persons), provide information as to their share ownership in the company as of the most recent practicable date (including disclosure on an individual basis of the number of shares and percent of shares outstanding of that class, and whether they have different voting rights) held by the persons listed and options granted to them on the company's shares.	VI.E.1.



CESR Proposal		IOSCO IDS Ref
	Information regarding options shall include: the title and amount of securities called for by the options; the exercise price; the purchase price, if any; and the expiration date of the options.	
V.D.2	Describe any arrangements for involving the employees in the capital of the company, including any arrangement that involves the issue or grant of options or shares or securities of the company.	VI.E.2.
VI.A	MAJOR SHAREHOLDERS	VII.A.
VI.A.1.a	In so far as is known to the company, the name of any person other than a director who, directly or indirectly, has an interest notifiable under the company's national law in the company'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.1.b	Disclose any significant change in the percentage ownership held by any major shareholders during the past three years.	VII.A.1. b
VI.A.1.c	Indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement.	VII.A.1. c.
VI.A.2	<p>To the extent known to the company, state whether the company 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.</p> <p>A description of any measures in place to ensure that:</p> <ol style="list-style-type: none"> 1. all transactions and relationships between the company and such controlling corporation(s), government or other person(s) are, and will be, at arm's length and on a normal commercial basis; and 2. such controlling corporation(s), government or other person(s) will not exercise their control against the interests of the company. <p>Where there are no such measures in place a statement to this effect must be made.</p>	VII.A.3.
VI.A.3	Describe any arrangements, known to the company, the operation of which may at a subsequent date result in a change in control of the company.	VII.A.4.
VI.B	<u>Related Party Transactions</u>	
	Provide the information required below for the period since the beginning of the company's preceding three financial years up to the date of the document, with respect to transactions or loans between the company and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the company; (b) associates; (c) to the extent known to the company, individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the company, 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 company, including directors and senior management of companies and close members of such individual's family; and (e) enterprises in which a substantial interest in the voting power is owned, directly or	VII.B.



CESR Proposa l		IOSCO IDS Ref
	<p>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 company and enterprises that have a member of key management in common with the company. 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 company. An associate is an unconsolidated enterprise in which the company has a significant influence or which has significant influence over the company. 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 company are presumed to have a significant influence on the company.</p> <ol style="list-style-type: none"> 1. The nature and extent of any transactions during the preceding or current financial year or presently proposed transactions which are material to the company 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 company 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 company 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. 	
VI.C	<u>Interests of Experts and Counsel</u>	
	<p>If any of the named experts or counsellors 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.</p>	VII.C.



CESR Proposal		IOSCO IDS Ref
VII	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES	VIII
VII.A	<u>Consolidated Statements and Other Financial Information</u>	VIII.A.1
	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 audit report, comprised of: (a) balance sheet; (b) profit and loss account; (c) profit or loss per share (d) 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); (e) cash flow statement; (f) accounting policies; (g) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared; and (h) if not included in the primary financial statements, a note analysing the changes in each caption of shareholders' equity presented in the balance sheet.	VIII.A.1
VII.B	<u>Notes to the accounts</u>	
	The notes to the accountant's report and comparative table must, as a minimum cover: g) the last balance sheet; and h) the profit and loss accounts and cash flow statements (or source and application of funds statements) for all periods included in the accountants report or comparative table.	
VII.C	<u>Standard of account preparation</u>	
VII.C.1	The document should include comparative financial statements that cover the latest three financial years, audited in accordance with a comprehensive body of auditing standards.	VIII.A.2
VII.C.2	The audited accounts from which the financial information has been extracted need not have been prepared in accordance with UK GAAP, US GAAP or IAS. Similarly, the accounts need not have been audited in accordance with International Standards on Auditing. An explanation of any significant departures from IAS or ISA may be required to be included in the document.	
VII.D	<u>Own versus consolidated accounts</u>	
	If the company prepares consolidated annual accounts only, it shall include those accounts in the prospectus . If the company prepares both own and consolidated annual accounts, it shall include both sets of accounts in the prospectus . However, the company 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	<u>True and fair view</u>	



CESR Proposal		IOSCO IDS Ref
	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, 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	<u>Auditing of accounts</u>	
VII.F.1	Statement that the annual accounts have been audited. If audit reports on the annual accounts have been refused by the official auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given.	VIII.A.3
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 not extracted without material adjustment from the company's audited accounts the company must state the source of the data and state that the data is unaudited.	
VII.G	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older than 15 months from the date of the prospectus ; provided, however, that in the case of the company's initial public offering or admission to trading on a regulated market the audited financial statements also shall be as of a date not older than 12 months from the date of the prospectus . In such cases, the audited financial statements may cover a period of less than a full year.	VIII.A.4
VII.H	<u>Interim financial statements</u>	
VII.H.1	If the document is dated more than nine months after the end of the last audited financial year, 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.H.2	The interim financial statements should include a balance sheet, income statement, cash flow statement, and a 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). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the income statement) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet. If not included in the primary financial statements, a note should be provided analysing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date	



CESR Proposal		IOSCO IDS Ref
	of the document, the company has published interim financial statements that cover a more current period than those otherwise required by this standard, the more current interim financial statements must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.	
VII.I	<u>Export sales</u>	
	If the amount of export sales constitutes a significant portion of the company's total sales volume, provide the total amount of export sales and the percent and amount of export sales in the total amount of sales volume.	VIII.A.6
VII.J	<u>Dividend policy</u>	
VII.J.1	Describe the company's policy on dividend distributions.	VIII.A.8
VII.J.2	The amount of the dividend per share for the last three financial years, adjusted, where the number of shares in the company has changed, to make it comparable.	
VII.K	<u>Legal and arbitration Proceedings</u>	
	Provide information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the company is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, or have had in the recent past (covering at least the previous 12 months), significant effects on the company and/or group's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.	VIII.A.7
VII.L	<u>Significant change in the company's financial or trading position</u>	
	A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.	VIII.B.
VIII	<u>ADDITIONAL INFORMATION</u>	
VIII.A	<u>Share Capital.</u>	
	The following information shall be given as of the date of the most recent balance sheet included in the financial statements:	X.A.
VIII.A.1	The amount of issued capital and, for each class of share capital: (a) the number of shares authorized; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within	X.A.1.



CESR Proposa l		IOSCO IDS Ref
	the past five years, that fact should be stated.	
VIII.A.2	If there are shares not representing capital, the number and main characteristics of such shares shall be stated.	X.A.2.
VIII.A.3	Indicate the number, book value and face value of shares in the company held by or on behalf of the company itself or by subsidiaries of the company.	X.A.3.
VIII.A.4	The amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.	
VIII.A.5	Where there is authorized but unissued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible obligations or other outstanding equity-linked securities, or subscription rights granted, indicate: <ul style="list-style-type: none"> (i) the amount of outstanding equity-linked securities and of such authorized capital or capital increase and, where appropriate, the duration of the authorization; (ii) the categories of persons having preferential subscription rights for such additional portions of capital; and (iii) the terms, arrangements and procedures for the share issue corresponding to such portions. 	X.A.4.
VIII.A.6	The persons to whom any capital of any member of the group is under option or agreed conditionally or unconditionally to be put under option, including the title and amount of securities covered by the options; the exercise price; the purchase price, if any; and the expiration date of the options, or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving names.	X.A.5.
VIII.A.7	A history of share capital for the last three years identifying the events during such period which have changed the amount of the issued capital and / or the number and classes of shares of which it composed, together with a description of changes in voting rights attached to the various classes of shares during that time. Details should be given of the price and terms of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or instalment payments). If there are no such issues, an appropriate negative statement must be made. The reason for any reduction of the amount of capital and the ratio of capital reductions also shall be given.	X.A.6.
VIII.B	<u>Memorandum and Articles of Association</u>	
VIII.B.1	Describe the company's objects and purposes and where they can be found in the memorandum and articles.	X.B.1.
VIII.B.2	With respect to directors, provide a summary of any provisions of the company's articles of association or charter and bylaws with respect to: <ul style="list-style-type: none"> (a) a director's power to vote on a proposal, arrangement or contract in which the director is materially interested; (b) the directors' power, in the absence of an independent quorum, to vote compensation to themselves or any members of their body; 	X.B.2.



CESR Proposal		IOSCO IDS Ref
	(c) borrowing powers exercisable by the directors and how such borrowing powers can be varied; (d) retirement or non-retirement of directors under an age limit requirement; and (e) number of shares, if any, required for director's qualification.	
VIII.B.3	Describe the rights, preferences and restrictions attaching to each class of the shares, including: <ul style="list-style-type: none"> (a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favour this entitlement operates; (b) voting rights, including whether directors stand for re-election at staggered intervals and the impact of that arrangement where cumulative voting is permitted or required; (c) rights to share in the company's profits; (d) rights to share in any surplus in the event of liquidation; (e) redemption provisions; (f) sinking fund provisions; (g) liability to further capital calls by the company; and (h) any provision discriminating against any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares. 	X.B.3.
VIII.B.4	Describe what action is necessary to change the rights of holders of the stock, indicating where the conditions are more significant than is required by law.	X.B.4.
VIII.B.5	Describe the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are convoked, including the conditions of admission.	X.B.5.
VIII.B.6	Describe any limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on the securities imposed by foreign law or by the charter or other constituent document of the company or state that there are no such limitations if that is the case.	X.B.6.
VIII.B.7	Describe briefly any provision of the company's articles of association, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the company and that would operate only with respect to a merger, acquisition or corporate restructuring involving the company (or any of its subsidiaries).	X.B.7.
VIII.B.8	Indicate the bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.	X.B.8.
VIII.B.9	Describe the conditions imposed by the memorandum and articles of association governing changes in the capital, where such conditions are more stringent than is required by law.	X.B.10.
	A summary of the material provisions of the issuer's memo and articles of association including those regarding changes in capital and in the respective rights of the various classes of shares	
VIII.C	<u>Material Contracts</u>	
	Provide a summary of each material contract, other than contracts entered into in the ordinary course of business, to which the company or any member of the group is a party, for the two years immediately preceding publication of the document, including dates,	X.C.



CESR Proposal		IOSCO IDS Ref
	parties, general nature of the contracts, terms and conditions, and amount of any consideration passing to or from the company or any other member of the group. Provide details of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the prospectus .	
VIII.D	<u>Exchange Controls</u>	
	Where material to the company, describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect:	X.D.
VIII.D.1	the import or export of capital, including the availability of cash and cash equivalents for use by the company's group.	X.D.1.
VIII.D.2	the remittance of dividends, interest or other payments to non-resident holders of the company's securities.	X.D.2.
VIII.E	<u>Statement by Experts</u>	
	Where a statement or report attributed to a person as an expert is included in the document, provide such person's 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 authorised the contents of that part of the document.	X.G.
VIII.F	<u>Documents on Display</u>	
	<p>A statement that for the life of the prospectus the following documents (or copies thereof), where applicable, may be inspected:</p> <ul style="list-style-type: none"> (a) the memorandum and articles of association of the issuer (b) each document mentioned in paragraph VIII.C (material contracts) (c) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus; (d) the audited annual accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the prospectus and any interim statements subsequently published. (e) In the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual <p>The company shall provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means.</p>	X.H.
VIII.G	<u>Subsidiary Information</u>	X.I.
VIII.G.1	Individual details listed below relating to the undertakings in which the issuer holds a	



CESR Proposa l		IOSCO IDS Ref
	<p>proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.</p> <p>The items of information listed below must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 10 % of the capital and reserves or accounts for at least 10 % of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 10 % of the consolidated net assets or accounts for at least 10 % of the consolidated net profit or loss of the group.</p> <p>The items of information listed below need not be given provided that the issuer proves that its holding is of a purely provisional nature. Similarly, the information required under points (e) and (f) may be omitted where the undertaking in which a participating interest is held does not publish its annual accounts.</p> <p>[will need to be determined following IFRS agreement and implementation] Pending subsequent coordination of provisions relating to consolidated annual accounts, the Member States may authorize the competent authorities to permit the omission of the information prescribed in points (d) to (j) if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that, in the opinion of the competent authorities, the omission of that information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the security in question.</p> <p>The information provided for under points (g) and (j) may be omitted if, in the opinion of the competent authorities, such omission does not mislead investors.</p> <p>(a) Name and registered office of the undertaking. (b) Field of activity. (c) Proportion of capital and voting power (if different) held. (d) Issued capital. (e) Reserves. (f) Profit or loss arising out of ordinary activities, after tax, for the last financial year. (g) Value at which the issuer obliged to publish the prospectus shows shares held in its accounts. (h) Amount still to be paid up on shares held. (i) Amount of dividends received in the course of the last financial year in respect of shares held. (j) Amount of the debts owed to and by the issuer with regard to the undertaking.</p>	
VIII.G.2	<p>The name, registered office and proportion of capital held in respect of each of the undertakings not referred to in [the paragraph above] in which the issuer holds at least 10 % of the capital. These details may be omitted where they are of negligible importance for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company or its group and of the rights attaching to its securities.</p>	X.I.
VIII.G.3	<p>When the prospectus comprise consolidated annual accounts, disclosure:</p>	X.I.



CESR Proposal		IOSCO IDS Ref
	(a) of the consolidation principles applied. (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, the financial position and the profits and losses of the issuer. (c) for each of the undertakings referred to in (b): <ul style="list-style-type: none"> - the total proportion of third-party interests, if annual accounts are consolidated globally; - the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis. 	
IX.A	INFORMATION ABOUT THE ISSUER OF THE DEPOSITORY RECEIPT	
IX.A.1	Name, registered office and principal administrative establishment if different from the registered office.	Directive 2001/34/EEC, schedule C, 1.1.
IX.A.2	Date of incorporation and length of life of the issuer, except where indefinite.	Directive 2001/34/EEC, schedule C, 1.2.
IX.A.3	Legislation under which the issuer operates and legal form which it has adopted under that legislation.	Directive 2001/34/EEC, schedule C, 1.3.
X	<u>INFORMATION ABOUT THE UNDERLYING SECURITIES</u>	SN Equity
X.A	<u>Offer statistics</u>	
X.A.1	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.



CESR Proposal		IOSCO IDS Ref
X.A.2	If the amount is not fixed, a statement to this effect must be made.	2001/34, Schedule A, 2.2.0
X.A.3	Describe arrangements and time for announcing to the public the definitive amount of the offer.	DIR. 2001/34, Schedule B, 2.1.0
X.B	Method and expected timetable For all offerings and separately for each group of targeted potential investors:	Members proposal
XB.1	1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	Members proposal
X.B.2	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.	Members proposal
X.B.3	3. Describe the possibility to reduce subscriptions.	Members proposal
X.B.4	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.	Members proposal
X.B.5	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)
X.B.6	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.	Members proposal
X.B.7	7. Method and time limits for delivery of the securities (including provisional depository receipts, if applicable) to subscribers or purchasers.	Members proposal
X.B.8	8. A full description of the manner and date in which results of the distribution of securities are to be made public and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).	Members proposal
X.B.9	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.	Members proposal
		DIR. 2001/34, Schedule A, 2.3.4. and IDS



CESR Proposal		IOSCO IDS Ref
		II-B.4
X.C	KEY INFORMATION ABOUT THE ISSUER	
X.C.1	<u>Capitalization and indebtedness</u>	
	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
X.C.2	<u>Reasons for the offer and use of proceeds</u>	
	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
	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
X.D	<u>Risk factors</u>	
	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 prospectus 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
X.E	<u>Interests of Experts in the issue/offer</u>	
	If any of the named experts or counsellors 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
X.F	<u>Conflicts of interest in the issue/offer</u>	



CESR Proposal	Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	IOSCO IDS Ref Member proposal
X.G	OFFER AND ADMISSION TO TRADING DETAILS	
	Description of the securities to be offered/ admitted to trading	
X.G.1	1. Describe the type and the class of the securities being offered or admitted to trading.	IDS IX-A.5
X.G.2	2. Indicate the Law applicable to the securities issue.	Members Proposal
X.G.3	3. Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
X.G.4	4 Indicate the currency of the securities issue.	Members proposal
X.G.5	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
X.G.6	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 proposals FESCO/01-045, IX-A-8 a)
X.G.7	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.
X.G.8	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
X.G.9	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



CESR Proposal		IOSCO IDS Ref
		e A 2.2.0 and Schedule B. 2.2.0.
X.G.10	10. The issue date of the securities.	Member proposal
X.G.11	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
X.G.12	12. Other specific legislation regarding the issue/offer.	Members proposal
X.G.13	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)
X.G.14	14. Legal framework Reference to the basic legal framework applicable to the equity at least with regard to: [drafting to be revised] - disclosure of major holdings; - transactions of own shares; - mandatory takeover bids; - squeeze-outs and sell-outs	Members proposal
X.G.15	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; 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.	DIR. 2001/34 , Schedule A, 2.4.5.
X.H	TERMS AND CONDITIONS OF THE OFFER AND ACTION REQUIRED TO APPLY FOR THE OFFER	
X.H.1	1. Description of the application process, details of where application forms are available.	FESCO/ 01-045, II.5. i. i) and ii)



CESR Proposal		IOSCO IDS Ref
X.H.2	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)
X.H.3	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)
X.H.4	4. Possibility of multiple and/or joint applications, and description of the penalties for infringements.	FESCO/01-045, II.5. i. vii)
X.H.5	5. Indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Member proposal
X.H.6	6. Dealing conditions to which the offering is subject, if any.	FESCO/01-045, II.5. f. i)
X.I	PLAN OF DISTRIBUTION	
X.I.1	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
X.I.2	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
X.I.3	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
X.I.4	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;	



CESR Proposal		IOSCO IDS Ref
	d. 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;	
	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.	
X.I.5	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.	
X.J	PLACING	
X.J.1	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)
X.J.2	2. Details of the placers in the various countries where the offer takes place.	FESCO/01-045, II.5. c.) ii)
X.J.3	3. Name and address of any paying or depository agents in each country	Members proposal
X.J.4	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.	IDS IX-B.9
	c) When the underwriting agreement is reached.	FESCO/01-045, II.5.g..ii



CESR Proposal		IOSCO IDS Ref
)
	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.	IDS IX-B.6
X.K	PRICING	
X.K.1	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
X.K.2	2. Process for the disclosure of the offering price.	FESCO/01-045, II.5.d.iv)
X.K.3	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)
X.K.4	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)
X.K.5	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
X.K.6	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-



CESR Proposal		IOSCO IDS Ref
		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
X.L	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
X.L.1	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. 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
X.L.2	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
X.L.3	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.	Spanish proposal
X.L.4	4. Stabilization:	
	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:	CESR/02-020b (These items are required to be disclosed in one clearly identified section).
	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	



CESR Proposal		IOSCO IDS Ref
	known at the time of 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.	
X.M	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)
X.N	SELLING SECURITIES HOLDERS	
X.N.1	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
X.N.2	2. The number and class of securities being offered by each of the selling security holders.	IDS IX-D.2
X.O	EXPENSE OF THE ISSUE/OFFER	
X.O.1	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.	IDS IX-F.1
X.O.2	2. 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. 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.	IDS IX-F.2
X.P	DILUTION	
X.P.1	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
X.P.2	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
X.P.3	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



CESR Proposal		IOSCO IDS Ref
X.Q	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
XI	<u>INFORMATION REGARDING THE DEPOSITORY RECEIPTS</u>	Directive 2001/34/EEC Schedule C
XI.1	1. Legal status: Indication of the rules governing the issue of the depository receipts and mention of the date and place of their publication.	Schedule C, 2.1
XI.2	2. Exercise of and benefit from the rights attaching to the original securities, in particular voting rights - conditions on which the issuer of the depository receipts may exercise such rights, and measures envisaged to obtain the instructions of the certificate holders - and the right to share in profits and any liquidation surplus.	Schedule C, 2.1.0
XI.3	3. Bank or other guarantees attached to the depository receipts and intended to underwrite the issuer's obligations.	Schedule C, 2.1.1
XI.4	4. Possibility of obtaining the conversion of the depository receipts into original securities and procedure for such conversion.	Schedule C, 2.1.2
XI.5	5. The amount of the commissions and costs to be borne by the holder in connection with: (a) the issue of the certificate, (b) the payment of the coupons, (c) the creation of additional depository receipts, (d) the exchange of the depository receipts for original securities.	Schedule C, 2.2
XI.6	6. Transferability of the depository receipts: (a) The stock exchanges where admission to official listing is, or will be, sought; (b) Any restrictions on the free transferability of the depository receipts.	Schedule C, 2.3
XI.7	7. Supplementary information for admission to official listing: (a) If the depository receipts are to be placed on a stock exchange the number of depository receipts made available to the market and/or the total nominal value; the minimum sale price, if such a price is fixed; (b) Date on which the new depository receipts will be listed, if known.	Schedule C, 2.4
XI.8	8. Indication of the tax arrangements with regard to any taxes and charges to be borne by the holders and levied in the countries where the depository receipts are issued.	Schedule C, 2.5
XI.9	9. Indication of the legislation under which the depository receipts have been created and of the courts competent in the event of litigation.	Schedule C, 2.6



ANNEX 6

CESR Proposal for shipping company Registration Document Building Block

<Annex should be deleted>



**SHIPPING COMPANY BUILDING BLOCK FOR INCLUSION IN THE
REGISTRATION DOCUMENT**

Definitions

A “shipping company” is a company that activates in ocean-going shipping and manages, leases or owns cargo and/or passenger vessels either directly or indirectly, as a main activity.

Disclosure requirements

Brief details of the experience of the directors of the shipping company(s) and any managers of the ship management company(s) should be disclosed in the prospectus.

The issuer should disclose the name of any ship management company or group (if other than the issuer) which manages the vessels, if any, together with an indication of the terms and duration of its appointment, the basis for its remuneration and any arrangements relating to the termination of its appointment.

Provide the relationship between controlling shareholders of the shipping company with the ship management company, if any.

The company shall provide detailed information regarding each vessel which is managed, leased or owned either directly or indirectly by the company: including the type, shipping owning company, financing terms, capacity etc.

If the shipping company has contracts to build new vessels or improve existing vessel(s), the company shall provide detailed information regarding each vessel including a detailed description of the cost and financing of the vessel (refund guarantees, letter of commitment), charter type, dimensions, capacity etc.

Insurance

A description of any relevant insurance policies relating to all vessels leased or owned either directly or indirectly by the shipping company.



ANNEX 6a

CESR Proposal for Shipping Company Securities Note Building Block

<Annex should be deleted>



SHIPPING COMPANY BUILDING BLOCK FOR INCLUSION IN THE SECURITIES NOTE

Valuation Report

The determination of the value of each vessel is performed by an experienced independent valuer.

The valuation report(s) to be included in the prospectus must:

1. be in a form acceptable to the regulation applicable to vessels valuers in the country of origin ;
2. give the date or dates of inspection reports of the vessels and by whom it was prepared;
3. provide all the relevant details (valuation method) in respect of each vessel necessary for the purposes of the valuation.
4. be dated and state the effective date of valuation for each vessel which must not be more than 90_days prior to the date of publication of the document
5. include a statement reconciling the valuation figure with the equivalent figure included in the company's latest published individual annual accounts or consolidated annual accounts, if applicable.

Compliance with this disclosure is not required if the issue does not intend to finance one or more identified vessels, where there has been no revaluation of any of the vessels for the purpose of the issue, and it is prominently stated that the valuations quoted are as at the date of the initial purchase or charter of the vessel(s).



ANNEX 7

CESR Proposal for Additional Information to be included in the Equity Securities Note Building Block



V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/ admitted to trading	
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	
<ul style="list-style-type: none"> • Dividend rights: <ul style="list-style-type: none"> – Fixed date(s) on which the entitlement arises; – Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; – Dividend restrictions and procedures for nonresident holders; – Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. 	DIR. 2001/34, Schedule A, 2.2.2. and 2.2.5. IDS X-B.3. and IDS X-F.
<ul style="list-style-type: none"> • Extent of the voting rights and conditions of their exercise (attendance in general meetings, mail, fax, electronic mail). 	DIR. 2001/34, Schedule A, 2.2.2. IDS X-B.3.
<ul style="list-style-type: none"> • Pre-emption rights in offers for subscription of securities of the same class; 	
<ul style="list-style-type: none"> • Right to share in the company's profits; 	DIR. 2001/34, Schedule A, 2.2.2. IDS X-B.3.
<ul style="list-style-type: none"> • Rights to share in any surplus in the event of liquidation; 	DIR. 2001/34, Schedule A, 2.2.2. IDS X-B.3.
<ul style="list-style-type: none"> • Redemption provisions: conditions, repayment date, redemption price or value or method of its calculation. 	IDS X-B.3.
<ul style="list-style-type: none"> • Sinking fund provisions; 	IDS X-B.3.
<ul style="list-style-type: none"> • Conversion provisions; 	
<ul style="list-style-type: none"> • Liability to further capital calls by the company; 	IDS X-B.3.
<ul style="list-style-type: none"> • Any provision discriminating against any existing or prospective holder of such securities as a result of such securities holder owing a substantial number of securities. 	IDS X-B.3.
V.H Selling securities holders	
3. Lock-up agreements <ul style="list-style-type: none"> i) The parties involved. ii) Content and exceptions of the agreement. iii) Indication of the period of the lock up. 	FESCO/01-045, II.5.h





ANNEX 8

CESR Proposal for Additional Information to be included in the Debt Securities Note Building Block, **[, unless the security is covered already by the SN Derivatives]**⁵³

[Annex should be deleted; structured bonds are derivative securities and should be covered only by the SN Derivatives]⁵⁴

⁵³ This additional wording to apply if the SN Derivatives is limited to issues of banks or issues guaranteed by banks.

⁵⁴ This additional wording to apply if the SN Derivatives is opened up for all issuers of derivatives.



Additional information to be included in the Securities Note Debt Schedule:

III.C Risk factors	
<p>2. Risks involved in purchasing a structured bond. This section should include:</p> <ul style="list-style-type: none"> - direct or indirect specific risk factors affecting the value and trading price of the securities - specific risk factors affecting the realization of the value of the securities - examples of the way the instrument works⁵⁵ - examples based on the best and-worst case scenario⁵⁶ 	DERIVATIVE SCHEDULE
<p>V.A. 13. Interest rate</p> <ul style="list-style-type: none"> - A description of any market disruption or settlement disruption events that affect the underlying index or variable - Adjustment rules with relation to events concerning the underlying index or variable - Nameomination of a calculation agent 	DERIVATIVE SCHEDULE

⁵⁵ One example is sufficient. The example should be in generic terms. It should not be required that an example for each possible price of the underlying is made. Otherwise the prospectus would be inflated without any valuable information being added.

⁵⁶ The requirement of an example of the best case scenario should be deleted because the best case scenario is not a risk factor. Furthermore, examples of the best case scenario could be misleading for potential investors because these examples could create false expectations for a very high return which, however, most likely will not happen. The explanation of the worst case scenario could be that the investor risks to lose its entire investment.



ANNEX 9

Revised CESR Proposal for the SN Derivatives

Schedule



<p>I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT <u>AND SUPERVISORY BODIES</u>, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE⁵⁷</p>	
<p>1. Directors and senior management (company's directors;⁵⁸ mMembers of its administrative, supervisory <u>and/or</u> management bodies; partners with unlimited liability; nominees to serve in any of the forementioned positions⁵⁹; founders if the company has been established for fewer than 5 years⁶⁰; names and functions.</p>	IDS I-A
<p>2. Advisers that have taken part in the issue/offer: Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the⁶¹ sponsor for admission to trading (where required by the host country regulations), and the legal advisers to the issue.⁶²</p>	IDS I-B
<p>3. Auditors: names and addresses of the company's auditors (together with their any membership in <u>any relevant</u> 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.</p>	IDS I-C DIR. 2001/34, Schedule A, 1.3
<p>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.</p>	DIR. 2001/34, Schedule A, 1.3

⁵⁷ **This whole section should appear in the Registration Document only!!! There is no reason to repeat this information in the Securities Note if it is contained already in the Registration Document. A duplication does not make a prospectus better. A thick prospectus rather frightens than entices an investor. Wherever the following information appears, however, the following amendments have to be made.**

⁵⁸ The term "senior management" is not known in Germany. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.

⁵⁹ meaning unclear

⁶⁰ not relevant for investors of derivative securities

⁶¹ The names of the principal bankers and legal advisers to whom the company has a continuing relationship are of no relevance for the issue of the securities if these advisers have not been involved in the issue. The mentioning of their names is more misleading than helpful for the investors.

⁶² The legal advisers to the issue should not be mentioned in the prospectus either. The mentioning of the legal advisers is misleading if the advisers do not carry out a complete due diligence (often no complete due diligence is carried out!) and if they do not have to take care of all legal issues (what also happens frequently). Even if the legal advisers carried out a complete due diligence and were involved with all legal issues, the mentioning of the legal advisers is not to be recommended since the mentioning of their names could be interpreted by the investors or the courts as the assumption of a liability by the lawyers for the prospectus. If this were the case, the legal advisers would have to increase their fees substantially to cover an additional insurance coverage. The increase of the lawyers' fees would be substantial per transaction which increase can neither be in the interest of the issuer nor in the interest of the investor.



5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or legal persons, <u>as the case may be</u> ⁶³ , 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 the securities offered for sale and those offered in subscription. ⁶⁴	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

⁶³ Since the Directive does not mandatorily require a liability of these natural persons, CESR may not do so either.

⁶⁴ Distinction is unclear.



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 made public</u> and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid). ⁶⁵	IDS II-B.5
III. <u>KEY INFORMATION ABOUT THE ISSUER RISK FACTORS</u>	
<u>III.A Capitalization and indebtedness</u>	
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. ⁶⁶	IDS III-B
<u>III.B Reasons for the offer and use of proceeds</u>	
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. ⁶⁷	IDS III-C.1
<u>III.C Risk factors</u> ⁶⁸	
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. ⁶⁹ 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

⁶⁵ Meaning unclear.

⁶⁶ Should be included in registration document only.

⁶⁷ This does not make sense with regard to derivative securities.

⁶⁸ Since these are not risk factors of the issuer but rather of the securities the heading for this section should be "risk factors" and not "key information about the issuer" on the previous page.

⁶⁹ Risk factors should be set forth only in the securities note and not in the registration document to avoid duplication.



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 ⁷⁰	
d) examples based on the best and <u>explanation of the</u> worst case scenario ⁷¹	

⁷⁰ One example is sufficient. For a call warrant, for instance, it should be sufficient to explain that the investor receives the difference between the price of the underlying on the valuation date and the strike price. The example should be in generic terms as in the sentence before. It should not be required that an example for each strike price is made. Otherwise the prospectus would be inflated without any valuable information being added.

⁷¹ Examples of the best case scenario could be misleading for potential investors because these examples could create false expectations for a very high return which, however, most likely will not happen. The explanation of the worst case scenario in the event of a warrant could be that the investor risks to lose its entire investment.



e) Mentioning of hedging instruments and whether the investor can buy such instruments⁷²	
IV.A Interests of Experts in the issue/offer	
If any of the named experts or counsellors 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/offer	
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 L 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.	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.⁷³	IDS IX-A.6

⁷² It is unclear whether the hedging instruments of the issuer or potential hedging instruments of the investor are meant. Whatever is meant, hedging instruments should not be disclosed. How the issuer hedges itself is often confidential and therefore may not be disclosed. An advice as to the hedging of the investors depends largely on the individual composition of the portfolio of the investor and his investment strategy. It therefore cannot be given generally for all investors in the prospectus.

⁷³ This information is irrelevant for investors of derivative securities.



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)
7) a section setting out the definitions applicable to the terms and conditions ⁷⁶	Members' proposal
8) all applicable exercise rights⁷⁷	
9) 8) a description of the exercise procedures and any limitations in relation to the same	Members' proposal
10) 9) a description of the settlement procedure of the derivative securities detailing the following: – for cash settlement, how holders are to receive or make payments – for physical settlement (cashless exercise)⁷⁸ how holders are to receive take or make delivery of the underlying instrument <u>and make payment</u>	Members' proposal
11) 10) 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 underlying 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) 11) 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	2001/34/EC Schedule B 2.4.1. FESCO 01-045 Schedule B IV, p.2 / 3

⁷⁶ The definitions do not necessarily have to be contained in one section but may be contained in the terms and conditions in various sections, wherever appropriate. It is important that the complete terms and conditions are set forth.

⁷⁷ Is identical to V.A 7.; do not duplicate.

⁷⁸ "Cashless exercise" is not correct because the investor generally has to pay an exercise price in order to receive the physically settled underlying.



<p>13)12) least the maturity of the derivative security; in any case a period of two years is sufficient⁷⁹</p> <ul style="list-style-type: none"> - where the underlying is a security <ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> • the name of the index - where the underlying is an interest rate <ul style="list-style-type: none"> • 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 consisting of more than one asset of derivative securities <ul style="list-style-type: none"> • Disclosure of the relevant weightings of each asset in the basket at launch 	
<p>14)12) a description of any market disruption or settlement disruption events</p>	
<p>14)13) adjustment rules with relation to events concerning the underlying</p>	
<p>15)14) expiration or maturity date of the derivative securities</p>	
<p>16)15) exercise date or final reference date⁸⁰</p>	
<p>17)16) nameomination of a calculation agent</p>	
<p>V.C Plan of distribution</p>	
<p>1. The various categories of potential investors to which the securities are offered.</p> <p>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>.</p>	<p>FESCO/01-045, II.5. b</p> <p>IDS IX-B.3</p>
<p>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.</p>	<p>IDS IX-B.4</p>
<p>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.</p>	<p>IDS IX-B.2</p>

⁷⁹ The past performance of the underlying does not give any reliable information with regard to the future performance of the underlying. The good performance in the past could even make an investor believe that the performance will continue as it did in the past, which may be very misleading.

⁸⁰ What is a final reference date? Is this the maturity date?



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.⁸¹	IDS IX A.1 IDS II A
2. Process for the disclosure of the <u>initial</u> 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. 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, 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.⁸²	IDS IX.B.8
3.2. 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.	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 holders⁸³	

⁸¹ ~~The process of the disclosure of the initial offering price is sufficient (see below.)~~

⁸² ~~The text seems to relate only to share issues. It is not relevant for derivative securities.~~

⁸³ ~~Information is completely irrelevant for investors of derivative securities. It is only relevant for share issues.~~



<p>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.</p>	<p>IDS IX-D.1</p>
<p>2. The number and class of securities being offered by each of the selling security holders.</p>	<p>IDS IX-D.2</p>
<p>V. I Expense of the Issue/Offer</p>	
<p>+ The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the <u>issuer company</u> 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.</p>	<p>IDS IX-F.1.</p>



<p>2. 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.⁸⁴ 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 (identified as such) shall be given.⁸⁵</p>	<p>IDS IX-F.2</p>
<p>VI ADDITIONAL INFORMATION</p>	
<p>VI.A Articles of Association⁸⁶</p>	
<p>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.</p>	<p>IDS X-B.1</p>
<p>VI.AB Exchange controls</p>	
<p>Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect:</p> <ul style="list-style-type: none"> - 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. 	<p>IDS X-D</p>

⁸⁴ An itemized statement of all major expenses risks to be materially misleading for potential investors. An investor who sees a high fee for a bank, 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 and acted for the benefit of the investor by highlighting certain risks which otherwise would not have been disclosed. 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 no or only a very tiny due diligence has been undertaken and important risks were not disclosed. For example, in Germany the proposal would have materially mislead investors in so far as Gonthard & Metallbank AG, Goldzack AG and Concord Effekten AG (being among those lead managers responsible for most failures and insolvencies shortly after lead managed IPOs) would have been regarded by potential investors as very "cost efficient" managers since no sound financial and legal due diligence was conducted and investor relations companies (!) were asked to draft offering circulars. Other costs in connection with the distribution of the securities such as marketing or advertising costs cannot be determined in the aggregate at the time of publication of the prospectus because they may be incurred still after such publication but still in connection with the distribution of the securities. Therefore, any figure given up to the publication of the prospectus may only be a portion of the total amount to be accrued during the term of the security and could therefore also be misleading. Since issuers do not know at the time of the publication which costs will still occur thereafter, they also cannot include an estimate. Also for this reason the whole section should be deleted.

⁸⁵ This information is relevant only for share issues.

⁸⁶ To be included in registration document only.



VI.BC 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.CD Statement by Experts	
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.DE Documents on display	
Provide an indication of where the documents concerning the issuer company which are referred to in the document may be inspected, by physical -or electronic means.	IDS X-H
VI.EF 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



ANNEX 10

CESR Proposal for the Asset Backed Securities – Securities Note Building Block



DEFINITIONS:	
Asset Backed Securities:	<p>“debt securities of a type which either”</p> <p>1. represent an ownership interest in a pool of discrete assets (including any rights designed to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable thereunder)⁸⁷; or</p> <p>2. are secured by assets and the securities, which by their terms, provide for payments of principal and interest (if any) relating to payments or reasonable projections of payments calculated by reference to a pool of those identified or identifiable assets.”</p>
DECLARATIONS:	
A. THE SECURITIES	
A.1	The minimum denomination of an issue.
A.2	<p>Where information is disclosed about an undertaking/obligor which is not involved in the issue, disclosure in the following form:</p> <p>‘The information relating to the undertaking/obligor has been accurately reproduced from information published by the undertaking/obligor. So far as the issuer is aware and is able to ascertain from information published by the undertaking/obligor no facts have been omitted which would render the reproduced information misleading.’</p> <p>In addition, the issuer must identify the source(s) of information in the Securities Note that has been reproduced from information published by an undertaking/obligor.</p>
B. THE UNDERLYING ASSETS⁸⁸	
B.1	The Prospectus must demonstrate that the assets backing the issue have characteristics that demonstrate capacity to produce funds to service the interest and principal payments due and payable on the securities and liquidity sufficient to generate repayment of principal on redemption, <u>provided a certain repayment of principal is promised.</u>
<i>Without prejudice to the generality of the foregoing, the following information must be given;</i>	
B.2	Where the assets backing the issue represent an ownership interest ⁸⁹ in a pool of discrete assets, <u>where available:</u>

⁸⁷ ABS typically do not represent an ownership interest in the assets but are merely secured on assets held by the SPV. If ownership of the assets is part of the definition - how do you differentiate investment fund units from ABS? All references to ownership interests should be excluded from the ABS Annex.

⁸⁹ See previous footnote.



B.2.1	the legal jurisdiction(s) to which the assets are subject;
B.2.2	(a) If the obligors are companies, the general characteristics and descriptions of the obligors must be given; (b) a description of the economic environment will be provided, as well as global statistical data referred to the loans [assets] <?> (guarantees of the loans, average yield, geographical distribution of the debtors etc);
B.2.3	the legal nature of the assets;
B.2.4	the expiry or maturity date(s) of the assets;
B.2.5	the amount of the assets;
B.2.6	loan to value ratio or level of collateralisation;
B.2.7	the method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria and any rights or obligations to make further advances;
B.2.8	an indication of significant representations and warranties given to the issuer relating to the assets;
B.2.9	any rights to substitute the assets and a description of the manner in which and the type of assets which may be so substituted; if there is any capacity to substitute assets with a different class or quality of assets a statement to that effect together with a description of the impact of such substitution; and
B.2.10	a description of any relevant insurance policies relating to the assets. Any concentration with one insurer should be disclosed if it is material to the transaction;
B.2.11	Where the assets comprise obligations of 5 or fewer obligors or where an obligor accounts for 20% or more of the assets, or where an obligor accounts for a material portion of the assets, so far as the issuer is aware and/or is able to ascertain from information published by the obligor(s) the information required in respect of each obligor will be the same as that which would be required if it were itself the issuer of the securities unless the obligor has securities already admitted to trading on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, par. 3., of the Directive that the broad equivalence of prospectuses is ensured or the obligations are guaranteed by an entity admitted to trading on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, par. 3., of the Directive that the broad equivalence of prospectuses is ensured, in which case only the name, address, country of



incorporation, nature of business and name of the market in which its securities are admitted must be disclosed in respect of the obligor and also the guarantor (if applicable);



B.2.12	If a relationship exists between the issuer, guarantor and obligor, details of the principal terms of that relationship must be provided in the Securities Note;
B.2.13	Where the assets comprise obligations that are not traded on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, par. 3., of the Directive that the broad equivalence of prospectuses is ensured, a <u>generic</u> description of the principal terms and conditions of the obligations must be provided;
B.2.14	<p>Where the assets comprise equity securities that are admitted to trading on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, par. 3., of the Directive that the broad equivalence of prospectuses is ensured:</p> <p>(a) a description of the securities; and</p> <p>(b) a description of the market on which they are traded including its date of establishment, how price information is published, an indication of daily trading volumes, information as to the standing of the market in the country and the name of the market's regulatory authority; and</p> <p>(c) the frequency with which prices of the relevant securities, are published.</p>
B.2.15	Where more than five (5) per cent of the assets comprise equity securities that are not traded on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, par. 3., of the Directive that the broad equivalence of prospectuses is ensured, a description of those equity securities and equivalent information to that contained in the Core Equity Registration Building Block in respect of each issuer of those securities;
B.2.16	<p>Where a material portion of the assets are secured on or backed by real property, a valuation report, <u>if reasonably feasible</u>, relating to the property setting out both the valuation of the property and cash flow/income streams.</p> <p>Compliance with this disclosure is not required if the issue is of securities backed by mortgage loans with property as security, where there has been no revaluation of any of the properties for the purpose of the issue, and it is clearly stated that the valuations quoted are as at the date of the original initial mortgage loan origination.</p>
B.3	Where the assets backing the issue represent an ownership interest in an actively managed pool of assets;
B.3.1	equivalent information to that contained in B1&B2 to allow an assessment of the type, quality, sufficiency and liquidity of the asset types in the



	portfolio which will secure the issue;
B.3.2	the parameters within which investments can be made, the name and description of the entity responsible for such management including a description of that entity demonstrating suitable expertise and experience, a summary of the provisions relating to the termination of the appointment of such entity and the appointment of an alternative management entity, and a description of that entity's relationship, if any, with any other parties to the issue.
C.	INVESTMENT CONSIDERATIONS
C.1	A statement as to whether the issuer proposes to or may issue further securities backed by the same assets, a prominent <i><meaning unclear></i> statement to that effect and unless those further securities are fungible with or are subordinated to any class of existing debt securities of the same issuer, a statement that, and the manner by which the prior approval of the holders of that class will be sought, <u>if such approval is legally required.</u>
C.2	Average life and method of calculation for the securities for different prepayment rates.
C.3	Details of any ratings issued by a recognised rating agency.
D.	STRUCTURE AND CASH FLOW
D.1	D.1.1 Description of the structure of the transaction
	D.1.2 Description of the entities participating in the issue and description of the functions to be performed by them.
	D.1.3 A description of the method and date of the sale, transfer, novation or assignment of the assets or of any rights and/or obligations in the assets to the issuer or, where applicable, the manner and time period in which the proceeds from the issue will be fully invested by the issuer;
	D.1.4 an explanation of the flow of funds including:
	(a) how the cash flow from the assets will meet the issuer's obligations to holders of the securities; on an illustrative basis, a financial service table and a description of the assumptions used for the development of the table maybe included.
	(b) information on any credit enhancements, an indication of where material potential liquidity shortfalls may occur and the availability of any liquidity supports and indication of provisions designed to cover interest/principal shortfall risks;



	(c) without prejudice to the generality of the generality of (b) above, details of any subordinated debt finance;
	(d) an indication of any investment parameters for the investment of temporary liquidity surpluses and description of the parties responsible for such investment;
	(e) how payments are collected in respect of the assets;
	(f) the order of priority of payments made by the issuer to the holders of the class of securities in question; and
	(g) details of any other arrangements upon which payments of interest and principal to investors are dependent.
D.1.5	the name, address and significant business activities of the originator or creator of the assets backing the issue;
D.1.6	Where the return on, and/or repayment of the security is linked to the performance or credit of other assets which are not assets of the Issuer, the disclosures contained in B2 and B3 are necessary;
D.1.7	the name, address and significant business activities of the administrator, calculation agent or equivalent, (if any), together with a summary of the administrator's/calculation agents responsibilities, their relationship with the originator or the creator of the assets and a summary of the provisions relating to the termination of the appointment of the administrator/calculation agent and the appointment of an alternative administrator/calculation agent;
D.1.8	the names and addresses and brief description of: <ul style="list-style-type: none"> (a) any swap counterparties and any providers of other material forms of credit/liquidity enhancement; and (b) the banks with which the main accounts relating to the transaction are held.
E.	POST ISSUANCE REPORTING
E.1	The issuer shall indicate in the prospectus whether or not it intends to provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported, where such information can be obtained, and the frequency with which such information will be reported.





ANNEX 11

CESR Proposal for Guarantees, etc., Securities Note Building Block



1	<p>Nature of the Guarantee</p> <p>A description of any arrangement intended to ensure that any obligation will be duly serviced, whether in the form of guarantee, surety, Keepwell Agreement, Mono-line Insurance policy or other equivalent commitment (hereafter referred to generically as “guarantees” and their provider as “guarantor” for convenience).</p> <p>Without prejudice to the generality of the foregoing, such arrangements encompass commitments to ensure obligations to repay debt securities and/or the payment of interest and the description should set out how the arrangement will ensure that both payments will be duly serviced.</p>	
2	<p>Scope-Text of the Guarantee</p> <p>Details should be disclosed about the terms and conditions and scope of the guarantee. Without prejudice to the generality of the foregoing, these details should cover any conditionality on the application of the guarantee in the event of any default under the terms of the notes and the material terms of any Mono-line Insurance or Keepwell Agreement between the issuer and the guarantor. Details should also be disclosed of any guarantor’s power of veto in relation to changes to bondholder rights, such as is often found in Mono-line Insurance. The text of the guarantee should be set forth in its entirety.</p>	
3	<p>Declaration of responsibility</p> <p>The name, home or business address and function of each of the persons giving the declaration in paragraph 4 must be included.</p>	DIR 2001/34 Sched. A,1.1
4	<p>A declaration by those responsible for the information provided pursuant to this building block must be included in the terms required under paragraph I.7 of the Securities Note Schedule.</p>	DIR 2001/34 Sched. A,1.2
5	<p>Information to be disclosed about the guarantor</p> <p>The guarantor should disclose information about itself equivalent to that disclosed by the issuer of the security about itself in its Registration Document.</p>	



6	<p>Documents on display</p> <p>Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.</p> <p>⁹⁰</p>	
---	--	--

⁹⁰ It is unclear which documents this should be. The important information is the disclosure of the entire text of the guarantee as requested by ourselves in number 2 above of this Annex.



ANNEX 12

**CESR Proposal for the hBuilding hBlock for
Subscription, Conversion or Exchange rights
concerning Equity Securities with the exception
of Derivative Securities**



**Building block for subscription, conversion or exchange rights concerning “equity securities”
with the exception of derivative securities**

1. Description of the right (nature and form).	CI VA1 IDS IX A 5
2. Conditions and modalities for the exercise of the right (exercise period, strike price, conversion or exchangeable ratio, special circumstances where the right becomes exercisable outside the normal period, possibilities of suspension of the right (conditions and notifications)...)	DS VA3 Specific requests
3. For convertible or exchangeable bonds, the right of bondholders to interest payments on the bonds and dividends in respect of shares delivered	DS VA3 Specific requests
4. How to exercise the right and modalities for the delivery of the underlying share (including the rounding up or down and consequences of such rounding).	DS VB 9+10
5. Admission to trading and dealing arrangements	CI VF
6. Adjustments (type, methodology and notification)	DS VB 14
7. Issuer’s irrevocable undertaking to the right holder <i><meaning unclear></i>	Member’s proposal
8. Taxation The issuer shall provide information regarding taxes to which holders in the country (or countries) where the public offer is being made or admission to trading is being sought, 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.	CI VI D
9. Notification <i><of whom??></i> in case of new issues with a preferential right of subscription.	Member’s proposal
10. Impact on issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders	ES VJ
11. Applicable law.	CI
12. Description of the underlying share	Member’s proposal
1. Describe the type and the class of the shares being offered and/or admitted to trading.	ES VA1 – IDS IX A 5
2. Indicate the law applicable to the shares.	ES VA2 Member’s proposal
3. Indicate whether the shares are registered or bearer ones.	ES VA 3 – FESCO/01-045



4. Indicate the currency of the shares .	Member's 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	Member's proposal
6. A description of the rights attached to the shares and procedure for the exercise of any right attached to the shares.	ES VA7 DIR 2001/34, schedule A 2.2.2
7. If the rights evidenced by the shares 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 shares.	ES VA8 IDS IX-A-6
8. A statement of the resolutions, authorisations and approvals by virtue of which the shares will be created and .	ES VA9 DIR 2001/34 Schedule A 2.2.0
9. The listing place of the shares.	Member's proposal
10. Arrangements for transfer of the shares and (where permitted) any restrictions on their free transferability.	ES VA 10 DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045, II. 5. j.
11. Indication whether the securities are in registered or bearer form and, if registered, whether they will be capable of being held in uncertificated form.⁹¹	ES VA 12 IDS IX-A-5 (a)
11. Legal framework Reference to the basic legal framework applicable to the shares at least with regard to: - disclosure of major holdings; - transactions of own shares; - mandatory takeover bids; - squeeze outs and sell outs⁹²	ES VA 14 Member's proposal
13.11. Takeover bids Indication of any of the following which have occurred during the last financial year and the current financial year <i>as far as known to the issuer</i> : - public takeover bids by third parties in respect of the issuer's equity;	ES VA 15 DIR 2001/34, schedule A 2.4.5 Member's proposal

⁹¹ ~~Can be deleted because mainly covered already by item 12.3 on previous page.~~

⁹² ~~The consequence of this requirement would be an extensive theoretical capital market thesis of many pages. The Annexes should instead require only specific information relating to the security and risks. Investors who are not lawyers are more inclined to read a short, specific and precise prospectus than thesis like, voluminous legal explanations.~~



- 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.



<p>13. [Information concerning the issuer of the underlying share if different from the issuer of the security but belongs to the group of the issuer.</p> <p>The information should be based on the information publicly available with for instance the possibility to incorporate by reference the Registration Document of the issuer of the underlying share (if any) (without prejudice to voluntary additional information which could be given by the issuer of the security on the issuer of the underlying share)]</p>	<p>Member's proposal</p>
--	--------------------------