

ANNEX 5

Minimum Disclosure Requirements for the Retail Debt Registration Document

1.	PERSONS RESPONSIBLE	
1.1.	Names and functions of natural persons or of members of the issuer's administrative, management or supervisory bodies and/or ¹ name and/or registered office of legal persons responsible for the registration document and, as the case may be, for certain parts of it. In the latter case, an indication of such parts.	Supprimé :
1.2.	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the registration document is in accordance with the facts and contains no omission likely to materially affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the part of the registration document for which they are responsible is in accordance with the facts and contains no omission likely to materially affect its import.	
2.	AUDITORS	
2.1.	Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in any relevant professional body).	
2.2.	If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, details must be disclosed if material.	
▼	▼	Supprimé : 3.
▼	▼	Supprimé : SELECTED FINANCIAL INFORMATION ¶
▼	▼	Supprimé : 3.1.
		Supprimé : Selected historical financial information regarding the issuer, which shall be presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.¶ ¶ The selected historical financial information should provide key figures that summarise the financial condition of the issuer.¶
		Supprimé : 3.2.
		Supprimé : If selected financial information 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.
		Supprimé : ¶

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) but not cumulatively. Whether or not directors shall be liable is an issue of local corporate law and should not be dealt with by the Prospectus Directive or CESR in connection with the Prospectus Directive. It is important that a country may choose that only the issuer itself takes responsibility for the prospectus and that the directors are liable for instance only towards the company if they violate their fiduciary or diligence obligations (as e.g. currently in Germany).

² Historical financial information is covered already (and even more broadly) by 13.

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4.	RISK FACTORS Prominent disclosure of risk factors that may <u>materially</u> ³ affect the issuer's ability to fulfil its obligations under the debt securities to investors in a section headed "Risk Factors"
5.	INFORMATION ABOUT THE ISSUER
5.1.	<u>History and development of the Issuer:</u>
5.1.1.	the legal and commercial name of the issuer;
5.1.2.	the place of registration of the issuer and its registration number;
5.1.3.	the date of incorporation and the length of life of the issuer, except where indefinite;
5.1.4.	the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office); and
5.1.5.	any recent events relevant to the evaluation of the issuer's solvency.
5.2.	<u>Investments</u>
5.2.1.	A description of the principal investments made since the date of the last published financial statements.
5.2.2.	Information concerning the issuer's principal future investments, on which its management bodies have already made firm commitments.
5.2.3.	Information regarding the anticipated sources of funds needed to fulfil commitments referred to in 5.2.2.
6.	BUSINESS OVERVIEW
6.1.	<u>Principal activities:</u>
6.1.1.	A description of the issuer's principal activities stating the main categories of products sold and/or services performed. ▼
6.2.	<u>Principal markets</u> A brief description of the principal markets in which the issuer competes.

Supprimé : ; and

Supprimé : 6.1.2.

Supprimé : an indication of any significant new products and/or activities.

Supprimé : ¶

³ A mandatory requirement to disclose every and any risk factor would lead to a very long list of risk factors, thereby overload the prospectus and be of limited use to the investors because the "real" or "material" risk factors would be buried somewhere in the middle. Therefore, the risk factors should be limited to the ones materially affecting the issuer's liability to fulfill its obligations.

⁴ This issue is covered already by 8.

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6.3.	The basis for any statements made by the issuer regarding its competitive position shall be disclosed.
7.	ORGANISATIONAL STRUCTURE
7.1.	If the issuer is part of a group, a brief description of the group and of the issuer's position within it.
7.2.	If the issuer is dependent upon other entities within the group, this must be clearly stated together with an explanation of this dependence.
8.	TREND INFORMATION
8.1.	<p><u>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.</u></p> <p><u>In the event that the issuer is unable to make such a statement, then the issuer should provide the details of this material adverse change.⁵</u></p>
8.2.	Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
9.	<p>PROFIT FORECASTS OR ESTIMATES</p> <p>If an issuer chooses to include:</p> <ul style="list-style-type: none"> a) a profit forecast which is defined as a form of words which expressly or by implication states a <u>figure (approximate or certain) or a</u> minimum or maximum <u>figure</u> for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that, or contains data from which a calculation of an approximate figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used; or b) a profit estimate which is defined as a profit forecast for a financial period which has expired and for which results have not yet been published, <p>then the registration document should include the following:</p>
9.1.	<p>A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.</p> <p>The assumptions used 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.</p>

Supprimé : The most significant recent trends in production, sales and inventory, costs and selling prices since the end of the last financial year to the date of the registration document.

⁵ Use the same wording as in Annex 1 regarding wholesale debt. The other wording is too vague and could mean any market change. The disclosure requirement shall be restricted to changes of the financial position.

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9.2.	A report prepared by independent accountants or auditors should be included and should state that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
9.3.	The profit forecast or estimate should be prepared on a basis comparable with the historical financial information.
10.	ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES
10.1.	Names, business addresses and functions in the issuer of the following persons, and an indication of the principal activities performed by them outside the issuer where these are significant with respect to that issuer: (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.
▼	6
▼	▼
▼	▼
▼	7
12.	MAJOR SHAREHOLDERS
12.1.	To the extent known to the issuer, state whether the issuer is directly or indirectly <u>own more than 50% of the voting rights</u> ⁸ or controlled and by whom and describe the nature of control, and describe the measures in place to ensure that such control is not abused.
12.2.	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
13.	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS, LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

Supprimé : 10.2.

Supprimé : Administrative, Management, and Supervisory bodies conflicts of interests¶

¶ Potential conflicts of interests between any of the persons referred to in 10.1 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

Supprimé : 11.

Supprimé : **BOARD PRACTICES**¶

Supprimé : 11.1.

Supprimé : Details relating to the issuer's audit committee, including the names of committee members and a summary of the terms of reference under which the committee operates.¶

Supprimé : 11.2.

Supprimé : 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.

Supprimé : ¶

⁶ This section should be deleted because the issuer generally is not aware of any potential conflicts of interest since the members of its administrative, management and supervisory bodies 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. Furthermore, a description of any conflicts of interest is not necessary for an investor to evaluate a potential insolvency risk of the issuer. 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 This information is completely irrelevant for investors in debt products.

⁸ The requirement to disclose information on major shareholders needs to be specified further (by introduction of a threshold) in order to interpret "major" and to avoid that it applies to any shareholder.

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13.1.	<p><u>Historical Financial Information</u></p> <p>Audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation), and the auditors' report in respect of each year. Such financial information must have been prepared according to IAS Regulation, or IAS as applicable, or if not applicable to local GAAP.</p> <p><u>If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must have been prepared in accordance with the standards applicable to annual reports under the IAS Regulation, or IAS as applicable, or if not applicable to local GAAP. This historical financial information must have been fully audited.</u></p>
13.2.	<p><u>Own versus consolidated financial statements</u></p> <p>If the issuer prepares both own and consolidated financial statements, it shall include the consolidated financial statements in the registration document.</p>
13.3.	<p><u>True and fair view for issuers incorporated in a non- EU Member State</u></p> <p>If the historical financial information of an issuer incorporated in a non-EU Member State does 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 as set out in Annex [] must be given unless the issuer is not obliged to draw up its financial statements so as to give a true and fair view, but is required to draw them up to what is considered to be an <u>equivalent</u>¹⁰ standard in which case the latter would be sufficient.</p>
13.4.	<p><u>Auditing of historical financial information</u></p>
13.4.1.	<p>A statement that the historical financial information of the issuer for the last two financial years has been audited. If audit reports on the historical financial information 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>

Supprimé : If the audited financial information is prepared according to local GAAP, the financial information required under this heading must include at least:¶

¶ (a) balance sheet;¶

<#> income statement; ¶

<#> cash flow statement; and¶

accounting policies and explanatory notes.

Mise en forme : Puces et numéros

⁹ 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.

¹⁰ The term "equivalent" has to be specified further. So far it is much too vague. The requirement that the accounts are drawn up by an "equivalent" standard can be, if narrowly interpreted, very prejudicial to third-country issuers and may deter them to seek admission to EU-regulated markets. Therefore, this term should be interpreted very liberally and appropriate guidance for such an interpretation should be given in the CESR document.

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13.4.2.	An indication of other information in the registration document which has been audited by the auditors.
13.4.3.	Where financial data in the registration document is not extracted from the issuer's audited financial statements the issuer must state the source of the data and state that the data is unaudited.
13.5.	<u>Age of latest annual accounts</u>
▼	The last year of audited financial information may not be older than 18 months from the date of the registration document. <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>
13.6.	<u>Interim and other financial information</u>
13.6.1.	If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information is unaudited that fact must be stated.
13.7.	<u>Legal and arbitration proceedings</u>
▼	Information on any governmental, legal or arbitration proceedings <u>where the issuer is</u> (including any such proceedings which are pending or threatened of which the issuer is a during a period covering at least the previous 12 months which may have, or have had recent past, significant effects on the issuer and/or group's financial position or profitability provide an appropriate negative statement.
13.8.	<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 group has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or an appropriate negative statement.
14.	<u>ADDITIONAL INFORMATION</u>
14.1.	<u>Share Capital</u>
14.1.1.	The amount of the issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics, the part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.
14.2.	<u>Memorandum and Articles of Association.</u>

Supprimé : 13.5.1.

Supprimé : 13.6.2.

Supprimé : If the registration document is dated more than nine months after the end of the last audited financial year, it should contain interim financial information, covering at least the first six months of the financial year. If the interim financial information is unaudited that fact must be stated. ¶

¶ The interim financial information 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 years end balance sheet.

Supprimé : ¶

¹¹ This requirement goes beyond the requirements of the EU Transparency Directive, is too far-reaching and should therefore be deleted.

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14.2.1.	The register and the entry number therein, if applicable, and a description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.	
16.	<p>¹²</p> <p>STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST</p> <p>Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's name, business address and qualifications, material information in the issuer and a statement to the effect that such statement or report is included, in full form and context in which it is included, with the consent of that person, who has authenticated the contents of that part of the registration document.</p>	<p>Supprimé : 15.</p> <p>Supprimé : MATERIAL CONTRACTS¶</p> <p>¶ 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 securities being issued.</p>
17.	<p>DOCUMENTS ON DISPLAY</p> <p>A statement that for the life of the registration document 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) all <u>publicly available</u>¹³ reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document; (c) the historical financial information of the issuer or, in the case of a group, the historical financial information of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. 	<p>Supprimé : ¶</p>

¹² 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.

¹³ Any disclosure of not publicly available information may violate business secrets, insider trading, data protection or similar laws. Furthermore, see note 67 of CESR's feedback statement of May 2003.