

ANNEX E  
DERIVATIVES SN

1.	<b>PERSONS RESPONSIBLE</b>
1.1.	Names and functions of natural persons or of members of the issuer's administrative, management or supervisory bodies and/or <sup>1</sup> name and/or registered office of legal persons responsible for the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts, <u>unless already disclosed in the Registration Document.</u>
1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and contains no omission likely to <u>materially</u> affect its import, <u>unless already disclosed in the Registration Document.</u> As the case may be, declaration by those responsible for certain parts of the prospectus 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 prospectus for which they are responsible is in accordance with the facts and contains no omission likely to <u>materially</u> affect its import, <u>unless already disclosed in the Registration Document.</u> <sup>2</sup> <u>A statement that where third party information is included in the prospectus the issuer etc. is only responsible for the proper extraction of that information and not the information itself.</u>
2.	<b>RISK FACTORS</b>
2.1.	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "risk factors", <u>unless already disclosed in the Registration Document.</u> This should include a risk warning to the effect that investors may lose the value of their entire investment, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect.
2.2.	Risks involved in purchasing the derivative securities <sup>3</sup>

Supprimé : This section should include:

Supprimé : 2.2.1.

Supprimé : Examples of the way the instrument works

<sup>1</sup> 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).

<sup>2</sup> The section on the persons responsible should appear either in the Registration Document or in the Securities Note but not in both documents. A repetition of information does not give any added value to the investor but rather deters him from reading the document due to its thickness.

<sup>3</sup> Examples are more misleading than helpful. Therefore, they should not be mandatory.

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3.	KEY INFORMATION
3.1.	<sup>4</sup>
3.2.	<sup>5</sup>
4.	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING
4.1.	<u>Information concerning the securities</u> <sup>6</sup>
4.1.1.	<u>The entire text of the terms and conditions of the securities</u> <sup>7</sup>
4.1.2.	<u>Unless already contained in the disclosed terms and conditions:</u>
4.1.2.1.	<u>A specification of the type of the securities being offered and/or admitted to trading.</u>
4.1.2.2.	Legislation under which the securities have been created.
4.1.2.3.	An indication whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
	<sup>8</sup>
4.1.2.4.	<u>Ranking of the securities being offered and/or admitted to trading.</u>
4.1.2.5.	<u>A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise, if any, of said rights.</u>
4.1.2.6.	<u>In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued, if any.</u>
4.1.2.7.	<u>The issue date of the securities.</u>
4.1.2.8.	<u>A description of any restrictions on the free transferability of the securities.</u>
4.1.2.9.	<u>- The expiration or maturity date of the derivative securities.</u> <u>- The exercise date or final reference date, if any.</u>
4.1.2.10.	<u>A description of the settlement procedure of the derivative securities.</u>
4.1.2.11.	<u>A description of how any return on derivative securities takes place, the payment or delivery date, and the way it is calculated.</u>

**Supprimé : Interest of natural and legal persons involved in the issue/offer**<sup>¶</sup>

A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.

**Supprimé : Reasons for the offer and use of proceeds**<sup>¶</sup> when different from making profit and/or hedging certain risks.<sup>¶</sup>

If reasons for the offer and use of proceeds are disclosed provide the total net proceeds and an estimate of the total expenses of the issue/offer.

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**Supprimé :** A description of the type and the class

**Supprimé :** of the securities being offered and/or admitted to trading.

**Supprimé :** 4.1.4.

**Supprimé :** An indication of the currency of the securities issue.

**Supprimé :** 5

**Supprimé :** , including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.

**Supprimé :** 6

**Supprimé :** 7

**Supprimé :** 8

**Supprimé :** 9

**Supprimé :** 10

**Supprimé :** 1

**Supprimé :** 2

<sup>4</sup> The term "any interest" is much too vague. Regarding "conflict of interests" it is not necessary to require a disclosure because such conflicts are already dealt with sufficiently by other regulatory requirements. Last but not least, the issuers often do not know all (conflicting) interests which may exist. Therefore, this requirement needs to be deleted or at least restricted to the knowledge of the issuer.

<sup>5</sup> This information is not relevant to investors in derivative securities.

<sup>6</sup> There is no reason to pick only some items of the terms and conditions of the securities. For derivative securities as well as for debt securities, the entire terms and conditions are important for the investor. In the following all items are deleted which always appear already in the terms and conditions.

<sup>7</sup> Derivative securities do not have classes.

<sup>8</sup> This item does not make sense since most derivative issues do not have a denomination and thus no currency.

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4.1.2.12 <sub>2</sub>	<p>In respect of the country of origin and the country(ies) where the offer is being made or admission to trading is being sought:</p> <ul style="list-style-type: none"><li>- Information on taxes on the income from the securities withheld at source,</li><li>- Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.</li></ul> <p>Recommendation to investors to seek individual tax advice with respect to other issues.<sup>9</sup></p>
4.2.	<b><u>Information concerning the underlying, unless already contained in the disclosed terms and conditions</u></b>
4.2.1.	The exercise price or the final reference price of the underlying, if any.
4.2.2.	<p><b><u>Information required in respect of the underlying</u></b>, a statement setting out the type of the underlying and details of where information on the underlying can be obtained</p> <p><sup>10</sup></p> <ul style="list-style-type: none"><li>- where the underlying is a security<ul style="list-style-type: none"><li>• the name of the issuer of the security</li><li>• the ISIN (International Security Identification Number) or other such security identification code</li></ul></li><li>- where the underlying is an index<ul style="list-style-type: none"><li>• the name of the index and a description of the index if it is composed by the issuer</li></ul></li><li>- where the underlying is an interest rate<ul style="list-style-type: none"><li>• a description of the interest rate</li></ul></li><li>- others</li></ul> <p>where the underlying does not fall within the categories specified above the securities note must contain equivalent information.</p> <ul style="list-style-type: none"><li>- where the underlying is a basket of underlyings<ul style="list-style-type: none"><li>• disclosure of the relevant weightings of each underlying in the basket</li></ul></li></ul>
4.2.3 <sub>2</sub>	A description of any market disruption or settlement disruption events that affect the underlying.
4.2.4 <sub>2</sub>	Adjustment rules with relation to events concerning the underlying.

Supprimé : 3

Supprimé : Information on taxes to be paid by the investors in connection with the offer.

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past performance of the underlying – in a practical form or otherwise – and its volatility over a period corresponding to at least the maturity of the derivative security; in any case a period of two years is sufficient

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<sup>9</sup> Otherwise, the consequence of an offer of securities in a multitude of EU countries, or an admission to trading in such countries, would be that detailed tax descriptions would have to be given for all such countries, which would lead to a voluminous tax section in the prospectus and would create substantial practical problems for the issuer which could endanger multinational offers, as it will often be difficult to obtain detailed tax advice for a large number of jurisdictions before the prospectus is submitted to the competent authority.

<sup>10</sup> Indications about the past performance and volatility can be very misleading.

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5.	<b>TERMS AND CONDITIONS OF THE OFFER</b>
5.1.	<b><u>Conditions, <i>[Meaning is unclear]</i>, expected timetable and action required to apply for the offer</u></b>
5.1.1.	Conditions to which the offer is subject.
5.1.2.	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.
5.1.3.	The time period, including any possible amendments, during which the offer will be open and description of the application process.
5.1.4.	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).
5.1.5.	Method and time limits for paying up the securities and for delivery of the securities.
5.1.6.	A full description of the manner and date in which results of the offer are to be made public.
5.2.	<b><u>Plan of distribution and allotment</u></b>
5.2.1.	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
5.2.2.	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
5.3.	<b><u>Pricing</u></b>
	Indication of the expected price at which the securities will be offered or the <sup>11</sup> time of determining the price and the process for its disclosure. Indicate the amount of any expenses specifically charged to the subscriber or purchaser.
5.4.	<b><u>Placing and Underwriting</u></b>
5.4.1.	Details of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.
5.4.2.	Name and address of any paying agents and depository agents, <u>if any</u> , in each country.

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<sup>11</sup> What is meant by "method of determining the price"?

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5.4.3.	<del>Entities agreeing to underwrite the issue on a firm commitment basis, entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements.<sup>12</sup> Where not all of the issue is underwritten, a statement of the portion not covered.</del>
5.4.4.	When the underwriting agreement has been or will be reached.
5.4.5.	Name and address of a calculation agent, <u>if any</u> .
6.	<b>ADMISSION TO TRADING AND DEALING ARRANGEMENTS</b>
6.1.	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. 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 should be given.
6.2.	All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
6.3.	Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.
7.	<b>ADDITIONAL INFORMATION</b>
7.1.	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, 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.
7.4.	The issuer shall indicate in the prospectus whether or not it intends to provide post-issuance information. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported and where such information can be obtained.

**Supprimé** : Details of the e**Supprimé** : and details of the**Supprimé** : Indication of the material features of the agreements, including the quotas and the commissions.

<sup>12</sup> A breakdown of the quotas and the commissions is not necessary for investor protection. On the other hand, it affects the issuers and the banks a lot. Commissions are confidential information and should not be required to be disclosed.