

20 December 2002

To the Committee of European Securities Regulators

CESR'S ADVICE ON POSSIBLE LEVEL 2 IMPLEMENTING MEASURES FOR THE PROPOSED PROSPECTUS DIRECTIVE

The Finnish Bankers' Association (FBA) respectfully submits the following comments on the CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive.

The proposed directives included in the CESR's consultation paper are intended to be used as a basis for the Level 2 legislative process based on the Lamfalussy Report. The FBA pays attention to the fact that the proposed regulation is in many parts unnecessary detailed (especially the Annexes) to be a Level 2 regulation. Instead, the regulation should be of a more general nature. The flexibility of the regulation should be increased by taking better into account the specific circumstances in each individual case. More detailed regulation could, of course, be given as a Level 3 regulation, as well.

The FBA would like to note the fact that there are no proposals for regulation of medium term note programs in the CESR's consultation paper. The Finnish Bankers' Association considers it justified that CESR takes a stand also on the programs to the extent needed.

a) Registration document

EQUITY SECURITIES

Question 44

The FBA agrees basically with the disclosure requirements set out in Annex A. They function as a best practice model. The competent authorities should have the possibility to allow exemptions from the set requirements in individual cases.

However, the FBA would like to draw attention to the following sections of the Annex:

IV.D.1

Information proposed to be published is not included in the area of regular/continuous disclosure obligation.

Part of the information belong to the area of business secrecy, which implies that it may not be published. As far as banks are concerned, banking secrecy requirements may restrict banks' possibilities to disclose information.

V.A.1

The proposed requirements are too detailed, especially concerning item g.

V.A.2

The wording "potential conflicts" is open for various interpretations. In Finland, it is quite usual that the managing director of a company takes part in the work of the Board and owns shares in the company. It may be appropriate to ask, whether e.g. this kind of practices may cause potential conflicts.

V.B.1.

It should be sufficient that the amount of compensation be published as a total sum. More detailed information does not serve the interest of investors, but may risk the privacy protection of the members of management or the administrative body.

V.C.2

This information is secret, so it cannot be published as such.

VIII.C and VIII.F

This information falls under the business secrecy, so it cannot be published.

Question 47

The FBA does not consider it appropriate to include a list of specific risk factors in the disclosure requirements. The FBA prefers the CESR's approach to have a disclosure requirements for risk factors.

Question 51

The FBA agrees that pro forma should be mandatory in case of a significant change in the size of a company. The FBA wants to point out that the calculation principles and differences to GAAP should be stated clearly and in full.

Question 52

The FBA considers the issue raised to be a good starting point. However, the competent authority should be able to allow exemptions from this rule, because pro forma information is in any case additional information and is meant to supplement the historical information. Furthermore, it should be possible in exceptional cases to disclose pro forma information from more than one accounting period, for instance, from a maximum accounting period of three years.

Question 53

The FBA considers that 25 per cent is the correct threshold. However, an issuer should have the possibility to ask permission to disclose pro forma information, even in cases under this limit, if this information is regarded as an important additional information to the investor.

Question 55

The FBA considers it appropriate that the competent authorities should be allowed to require pro forma information to be included, when this is material to investors. However, common EU wide practices are very important in this respect.

Question 64

The FBA considers justified the requirements as regards pro forma information as set out in Annex B in all other parts than what is stated in paragraph 7. To paragraph 7 should be added information on how the auditing of the accounts has been carried out.

Question 65

The FBA does not consider it appropriate to restrict the disclosure of pro form information to occasions, where securities are being issued in connection with a transaction. Because pro forma information can be important to the investors also when an issue does not take place, there should at least be possibility to disclose them otherwise, too.

Question 73

The issuer shall have the possibility not to disclose profit forecasts, even if it often would be important from the viewpoint of the investor to receive such information.

The FBA would also like to note that profit forecasts might mislead investors. Caution should be exercised, when requiring that profit forecasts should be included in the prospectus.

The relation between proposed disclosure requirements and regular/continuous information obligations is unclear.

Question 85

The FBA finds it appropriate that ad-hoc profit forecasts in the prospectus are updated, when necessary.

Question 86

The FBA is in agreement with the disclosure requirements concerning profit forecast as set out in the sections of Annex A.

Question 87

The FBA does not consider it appropriate that the financial adviser of a company be obliged to report on profit forecasts. The obligation would raise the costs accrued to the company without justification.

Question 89

According to paragraph 88, also public criticism of directors is a kind of information to be disclosed. The FBA considers the concept of public criticism too vague. The obligation to disclose information should in this respect be restricted to a legal public

note or a note of warning given by the supervisory authority. Too far reaching information obligation violates the privacy protection of the members of the management.

Question 91

The FBA does not consider it appropriate that a company shall be obliged to report on measures taken to limit the degree of control operated by the controlling shareholders.

Question 93

The FBA does not consider it appropriate and not even possible, that all documents referred to in the prospectus should be put on display. The documents may contain information that should be kept secret, e.g. business trade secrets or under a contractual obligation prohibiting its disclosure.

Question 95

The FBA believes that the building blocks in Annexes D, E, F G and H are appropriate as minimum disclosure standards.

Question 96

The FBA finds that it should be considered whether banks need an own building block.

Question 100

The FBA agrees with the specific disclosure requirements set out in the building block for start-up companies.

It would be appropriate to set out specific reporting requirements for start-up companies.

Question 101

The FBA considers that additional disclosure requirements concerning an independent expert opinion may be set forth as a recommendation. However, disclosure of an expert opinion cannot be set as a mandatory requirement.

Question 105

The FBA considers it appropriate that SME's provide detailed information only from a period of two years.

Question 106

The FBA does not consider it appropriate to restrict all historical information to a two year period.

DEBT SECURITIES

Question 129

The Finnish Bankers' Association does not consider it justified to require the same information of debt securities as it is required of equities. Among other things, the risks relating to debt instruments differ from those of equities. In case the issuer of a debt instrument is not been quoted on a regulated market, it may not be even possible to require the same information. In the situation, where an unlisted company issues officially quoted debt securities, the information obligation should not be equally strict.

Question 134

The FBA does not consider it relevant for an investor that information about the company's bankers and legal advisers to which an issuer has a continuing relationship, be disclosed.

Question 135

The FBA does not consider it appropriate that the question is formulated in a way which ties the disclosure of information to the "banker". The FBA considers it justified that about the arranger is disclosed information in accordance with the way mentioned in the question.

Question 137

The FBA believes that past investments of the company should not be disclosed regularly. The information should be disclosed only in situations, where it may have significant importance for an investment decision. The FBA pays also attention to the fact that - in practice - it is difficult to define which past investments are significant.

Question 138

The FBA considers it justified that the current investments by the company in other undertakings are disclosed in accordance with the way mentioned in the question.

Question 139

The FBA focus the attention on the fact that it is not always even possible in practice to disclose information on the company's future investments in other undertakings. The requirement should not be included as such in the regulation.

Question 142

The FBA is of the opinion that holders of retail bonds do not need the same amount of information as do shareholders.

Question 145

The FBA does not consider it necessary to regulate separately the form and content of interim reports.

Question 146

The interim report should be included as such in the registration document.

Question 148

The FBA does not consider it appropriate and not even possible, that the issuer must put on display all documents referred to in the prospectus. These documents may also contain information that should be kept secret, e.g. information that are business secrets.

Question 149

The FBA does not consider it appropriate to include in the list items a, c and d of paragraph VIII.E of Annex I.

Question 150

The FBA does not consider it appropriate to translate the documents mentioned in the paragraph.

Question 153

As far as the retail corporate debt is concerned, there is no need to require information stated in the last section of paragraph VIII.G in Annex A. The risk profile of the retail corporate debt differs from that of the equity securities.

Question 154

Information on the bankers and legal advisers to which an issuer has a continuing relationship is not justified, as stated in the paragraph I B of Annex I. For this part, only those bankers and legal advisers involved in the arrangement should be disclosed.

Question 155

Information concerning prospects should not be included as such in the paragraph IV.B.1 of Annex I.

DERIVATIVE SECURITIES

Question 160

The FBA does not consider it necessary to have specific requirements for a derivative registration document. Basically, the same requirements should be used for derivatives as are required for other instruments. In addition, information about the products behind the derivatives should be disclosed.

SECURITIES NOTES

The FBA notes that here are reiterated - perhaps even unnecessarily - the same requirements that have been set for the prospectus.

Advice 246

The FBA does not consider the division between equity securities, debt securities and derivative securities clear enough. The concept of derivative securities is not unambiguous.

Question 249

The FBA considers it justified to increase flexibility by creating specific building blocks, on particular characteristics of some issuers, offers, markets and securities.

Question 250

The FBA considers that the content of the concept of derivative securities is not unambiguous in this connection.

Question 251

The FBA does not consider it justified that the competent authority could set extra requirements in the way mentioned in the question.

Question 252

Advisers should be mentioned only in cases where they have been involved as arrangers.

Question 253

The securities note should contain the "auditors report relating to this information".

Question 254

The FBA considers unclear the starting point of the question, according to which the same person has responsibility for all three parts. The FBA believes that the same person should normally have these responsibilities, unless otherwise stated. In practice, the person may however change, e.g. depending on whom the registration document, the securities note and the summary be directed to at different points of time.

Question 255

If derivatives are regarded similar to the securities, there should also be information on the capitalization and the indebtedness in the prospectus.

Question 256

As far as derivatives are concerned, the FBA considers it justified to disclose information on them too, as stated in the question.

Question 259

The Bankers' Association does not regard it as justified that the commercial bank lenders are mentioned separately. The rating should be disclosed irrespective of whether it concerns a debt security or a derivative. The Bankers' Association pays attention to the fact that the rating has not been mentioned in Annex L.

Question 260

It is basically natural to publish past performances. In practice, however, there are significant problems when setting limits for the disclosure of this information. When disclosing information, one must decide, among other things, from what period information is disclosed.

Question 281

The FBA considers that the list mentioned in the question is acceptable.

Question 282

The FBA does not consider it justified to include technical advice in the documents. Technical arrangements change all the time.

Question 314

The Finnish Bankers' Association does not consider it justified that information be disclosed via newspapers.

THE FINNISH BANKERS' ASSOCIATION

Markus Fogelholm
Managing Director

Erkki Kontkanen
Director