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CESR's Advice on Level 2 Implementing Measures for the Proposed Prospectus Directive
Consultation Paper
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DERIVATIVE SECURITIES

Question 32. Do you consider that this is relevant for these products? Please give your reasons.

Investor's return on derivatives mostly depends on the performance of the underlying, still the HFSA considers that a brief introduction to the principal activities of the issuer is essential as the performance of the issuer influences considerably the reimbursement of the obligation.

Question 34. Do you consider that disclosure about the principal markets in which the issuer operates is relevant for these products? Please give your reasons.

The HFSA considers that – taking into account the nature of the product - such information is not a necessary element of the disclosure, however providing such data might offer guidance but the relevant briefing of underlying is more important.

Question 36. Do you consider that disclosure about an issuer's significant business developments is relevant for these products? Please give your reasons.

Since the issuer's business performance 'guarantees' the reimbursement of the derivative, substantial information on the issuer's business developments provide an orientation concerning future prospects. The HFSA considers that such disclosure influences the market of the product essentially.

Question 37. Do you consider that this disclosure is relevant for these products? Please give your reasons.

Since all information that may influence the rate (and future) of the product has a great relevance, such information should be disclosed to prevent insider trading or exploitation of insider information.

Question 39. Do you consider that disclosure about an issuer's major shareholders is relevant for these products? Please give your reasons.

See answer to Question 37.

Question 59. Do you agree with the CESR's revised approach in relation to retail non-equity securities and wholesale non-equity securities? If not please give your reasons.

The HFSA agrees if the distinction between wholesale and retail debt disclosure requirements is adopted, a distinction between wholesale and retail non-equity securities should be consequently applied.

Question 61. Do you agree that information about investments should not be required for banks issuing wholesale debt securities? Please give your reason.

The HFSA agrees and considers that in this case the characteristics of 'banks' are prior to those of 'wholesale'.

Question 64. Do you consider that information on investments is relevant for wholesale debt securities? Please give your reasons.

The HFSA agrees with the current proposal. If the issuer is not a bank, further risk factors arise, therefore additional information on the business operation - including investments - should be introduced.

Question 75. Do you consider that examples are necessary in order to fulfil the principle that the prospectus must contain a clear and understandable explanation of how an investor's return is calculated and how the instrument works? Please give your reasons.

The HFSA considers that such examples – as not all scenarios may be introduced – might mislead investors, as their understanding of the risk might be limited to the presented cases. A detailed explanation of the products completed with the return calculation is essential.

Question 76. What other methods (if any) do you consider can be used to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works? Please give your reasons.

Examples make it easier to understand a sophisticated financial product, however in case of examples the presentation of risk factors and the main characteristics might fade. The HFSA considers that detailed explanations are adequate and sufficient – even without examples. (Investors without sound financial knowledge may turn to investment advisors.)

Question 77. If you do not consider that examples are necessary to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works, do you consider that the provision of examples in the prospectus is useful for investors? Please give your reasons.

The HFSA considers that the issuer may provide example(s) for the investors in the disclosed document on its own individual choice, as they are in the position to know their potential investors and their conduct.

Question 78. Do you consider that the use of examples in the prospectus is dangerous and misleading and should not be mandatory? Please give your reasons.

The HFSA considers that such examples might be misleading, however the HFSA neither prescribes nor forbids the use of examples, allowing the issuer to decide on its own. (See above.)

Question 79. If examples are to be included in the prospectus, do you consider that CESR should stipulate how the examples should be prepared, for example that they should be realistic, not misleading and should provide a neutral view of how the instrument works?

Question 80. If your answer to the previous question is yes do you think that examples should also fulfil other requirements (for example: the need to insert the break even point for the investor)? Please state these other conditions.

Question 81. Do you consider that examples should be provided for derivatives? Please give your reasons.

The HFSA does not consider this. See answer to Question 76.

Question 82. If yes, for which types of derivatives should examples be provided? Please give your reasons.

Question 83. Are there any other type of securities for which you consider examples should be provided, for example structured debt instruments that have a derivative component?

Question 89. Which of the above options do you consider should be adopted by CESR (1,2 or 3)? Please give your reasons.

The HFSA considers that option 2 should be adopted, as the future prospect of the derivatives and the underlying cannot be separated, however warning set under paragraph 87 is necessary.

BASE PROSPECTUS

Question 101. Do you agree with this generic rule?

The HFSA agrees with the generic rule that determines those line items, which are specified as final terms and those, which shall be filed in the base prospectus.

In the HFSA's point of view, the generic rule accommodates to the current market practice where the issuer provides all information except for that which can only be determined at the time of the issue. Those information that are not known when the base prospectus is filed (so called final terms) will be provided as close to issue date as possible in order to facilitate quick access to the market.

Question 112. Which of these two approaches do you think should be applied to base prospectuses? Please give your reasons.

The HFSA agrees with the proposal, which says that there may be items of the final terms that also need to be translated, even if they do not form part of the approved summary because it is essential for the investors to understand all the circumstances of an issue.

Question 115. Which of these views do you consider should apply to base prospectuses with multiple products? Please give your reasons.

The HFSA thinks that there is no need to make separate summaries for each product included in the base prospectus. The main thing is that the issuer meets the legal obligations written in Article 5 (1) and (2), which says that the prospectus shall contain all the relevant information,

which is necessary to enable investors to make their investment decisions, and the information shall be presented in an easily analysable and comprehensible form. The HFSA would allow the issuer to decide on its own how to comply with the general requirement of the content of the summary and the HFSA would not prescribe the use of a separate summary.

Question 122. Which of these views do you consider should apply to the form of final terms? Please give your reasons.

The HFSA agrees with the third view, which gives free choice to the issuer to decide whether to file the full prospectus (base prospectus plus final terms) or only the final terms.

If the issuer decides to file only the final terms then the issuer is not allowed to file only “some” information of the base prospectus, because the free selection of some information may give a misleading impression for the market players. The issuer should include a note in the final terms, which calls the investors’ attention to the fact that the document is to be read in conjunction with the base prospectus.

Question 125. In relation to the publication of the final terms, should the method of publication be restricted as set out in Article 14.

In the HFSA’s point of view, the method of publication of final terms should be restricted as set out in Article 14, because the Directive gives all the methods of publication, so it is controllable to the competent authority and easier to follow for the investors.

Question 127. Do you agree with this analysis?

The HFSA thinks, that the method of publication of the base prospectus should be the same as the method of publication of the final terms because it makes easier for the investors to follow all information in connection with the issue and the prospectus.

This practice will promote the transparency of the market because consistency is one of the most important factors for the investors and for the authority.

Question 131. Do you agree with the above additional disclosure requirements in relation to base prospectuses?

The HFSA agrees with the additional disclosure requirements regarding base prospectuses, because inclusion of a general description of the programme, identification of line items and information regarding how the final terms will be published are very essential for the investors.

Question 132. Are there any other disclosure requirements that are not specified above that you consider necessary for base prospectuses? If so, please specify what these are and give your reasons for why you think they are necessary.

The HFSA thinks that there is no need for further disclosure requirements in relation to base prospectus.

Question 136. Do you agree with the above types of base prospectuses?

The HFSA agrees with the base prospectus of debt securities, warrants, derivatives, asset backed securities, mortgage bond securities.

Question 137. Are there any other types of base prospectuses that you consider are necessary? Please give your reasons.

The HFSA thinks that debt securities base prospectus, prospectus for warrants, derivative securities base prospectus, asset backed securities base prospectus and mortgage bond prospectus cover the range of securities which can be issued and there is no need for further types of prospectuses.

Question 143. Do you agree with this approach?

It is hard to determine the real connection of the size of denomination and the obligation to publish a prospectus in case of a public offer. The HFSA thinks that without respect to the size of the denomination, it is essential that the issuer publishes a prospectus, because in case of a public offer investors have the right to know every information.

Question 144. Do you consider that the information provided for in Annex F is adequate for wholesale investors? Please give your reasons.

The HFSA thinks that the information provided in Annex F is adequate for wholesale investors, because it contains all information, necessary to enable investors to make their investment decisions.

Question 145. Are there any other items included in the retail debt SN that should be included for wholesale investors? Please give your reasons.

The HFSA does not think that there are other items included in the retail debt SN that should be included for wholesale investors, because - as it was stated in Answer 144. - it contains all information, necessary to enable investors to make their investment decisions.

Question 151. Do you agree with the disclosure obligations set out in Annex G as being appropriate for this type of issuer? Please give your reasons for your answer.

The HFSA agrees with the disclosure obligations of closed ended investment funds, because it contains all information, necessary to enable the investors to make their investment decisions.

Question 154. Do you consider there is a distinction to be drawn between these two types of activities, as set out above? Please give reasons for your answer.

There is a relevant distinction between the two types of investment property funds drawn by CESR. Although in Hungary there is another type of distinction: there are two types of investment property funds. One is the property-trading fund, which engages in rental, development and refurbishment activities. The other one is the property development fund, which is a closed ended fund and it is established for a long-term investment project.

Since in Hungary there are only property-trading funds, the HFSA accepts the distinctions proposed by CESR.

Question 155. What would you consider to be an appropriate and sustainable distinction between both activities?

The HFSA agrees with the concept proposed by CESR regarding the closed ended property investment funds where the main distinction between the two property investment funds is the ‘quality’ of the activity. In the first category, entities act on a passive basis and wait for an appropriate time when they can sell or buy property assets with the best capital gain. In the other category the entities act more actively, they rent, develop and refurbish the property assets.

The other distinctive characteristic is the period – long-term or short-term – during which the issuer gets the appropriate capital gain when investing in property assets. The second category, where the trading companies act, is based on short-term activities.

Question 162. Do you agree with this approach?

The HFSA thinks that in both cases (first case: the shares to be acquired are the shares of the issuer itself; second: the shares to be acquired are the shares of an entity belonging to the group of the issuer) it is essential to require more information on the issuer and not only details of where information on the issuer can be obtained.

Question 163. Do you agree with the disclosure requirements of the building block concerning the underlying for equity securities as set out in Annex H?

The HFSA agrees with the building block concerning the underlying for equity securities as set out in Annex H.

Question 165. Do you deem the Working Capital Statement and the information on Capitalization and Indebtedness necessary for an informed assessment of the securities in cases of products which can be converted or exchanged in newly created shares? Please give your reasons.

The HFSA believes that any additional information can be useful for the investor who might be an equity holder thus the Working Capital Statement and information on Capitalization and Indebtedness is necessary for an informed assessment of the securities in cases of products which can be converted or exchanged in newly created shares.

Question 167. Do you agree with this approach?

The HFSA agrees with this approach and the information required in respect of the underlying which is described in Annex E Derivatives SN point 4.2.2. There is a need for information of the issuer of the underlying because the investor can make the investment decision in possession of the appropriate information.

Question 168. Do you agree with the combinations set out in the table?

The road map in Annex I - which shows the combination of the appropriate registration Document and Securities Note in case of an issue - gives a clear and transparent picture for the issuer and the HFSA agrees with the combinations set out in the table. This approach would help the competent authorities as well, because in case of a uniformed order it is easier to control if the issuer meets the legal obligations.

Question 172. Which of the options set out above do you support? Please give your reasons for your choice.

The HFSA thinks that the summary, the risk factors and the terms and conditions of the security could be emphasized and set out at the front of the prospectus, as the most important parts. Further disclosure requirements should be met in an order written in the different schedules. In this way, investors could find the most important parts much easier and the prospectuses would be more comparable, as well.

Question 176. Which of the options set out above do you support? Please give your reasons for your choice.

The HFSA is of the opinion that the single document prospectus should start with the summary, followed by the securities note and then the registration document requirements to ensure a full and easy comparability in the European market. The HFSA thinks that it is also important that the SN and RD information be kept separated. The investors could see through the information of the security or that of the issuer as a whole. The most important parts of the prospectus (see answer 172) could be also set out at the front of the document if needed.

Question 182. Which of the options set out above do you support? Please give your reasons for your choice.

When a supplement must be published to the prospectus, the HFSA suggests the new information to be integrated in the original summary, being emphasized. In this case, the investors need not read the original summary, and the new information would be easily recognized, as well. It should be taken into consideration that the summary might be the only document published in the investor's language and a new complete up-to-date summary would be more understandable and could help avoid misleading information.

ANNUAL INFORMATION

Question 237. Do you agree with the method of publication proposed?

The HFSA agrees with the method, still there is a great variety of possible methods of publication. The HFSA thinks that the supplements and the final terms should be published in the same way as the prospectus. The issuers should also be advised to choose the same methods each time when they publish their prospectus, though under no obligatory provisions.

Question 238. Do you consider CESR should limit the issuer's choice to one or more methods of publications? Which ones?

The HFSA considers that the prospectus should be published by a conventional, print-based method of publication and in electronic form additionally. In this way, the issuer could be free to choose among the methods of publication written in Article 14. However, the prospectuses should be recommended to be published in all three ways written in Article 14 Section (2): by insertion in a newspaper, in a form of a brochure and in electronic form on the issuer's website. Further limit would not be needed.

Question 239. Do you consider that deadline should be defined? If so, do you agree with the proposed deadline or would you suggest a different one? Please give reasons for your answer.

The HFSA agrees with the proposed deadline, its definition and length are correct. It seems adequate to the market expectations, and the issuers would need several days to compile the documents to disclose them.