31 December 2002

RH/VS

Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11 - 13, Avenue de Friedland
75008 Paris
France

Dear Sir

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

The Institute of Chartered Accountants of England and Wales ("The Institute") is pleased to respond to your request for comments on the October 2002 Consultation Paper in connection with possible implementing measures for the proposed Prospectus Directive.

In particular, as noted in our response to questions 4 and 86, we have extensive experience in developing guidance to companies preparing pro forma and prospective financial information to meet the requirements of the UK Listing Rules. We would welcome the opportunity to assist CESR in similar ways through our involvement in the Fédération des Experts Comptables Européens (FEE).

It will be fundamental to the creation of a harmonised European capital market that the detail in the Level 2 implementing measures is such, that there is sufficient detail and clarity to promote consistent interpretation across member states.

There are a number of key issues which are not specifically addressed in the questions set out in the Consultation Paper on which we have comments as follows:

- Use of IOSCO Disclosure Standards;
- Definition of the issuer or company for the purposes of prospectus disclosure;
- Issues of securities with different characteristics;
- Presentation of historical financial information;
- The role of accountants;
- Non-EU issuers.

We comment on these matters in Appendix 1. Responses to certain specific questions raised in the Consultation Paper are set out in Appendix 2, and comments on other issues are set out in Appendix 3.

Should you wish to discuss any matters contained in this response please contact Vera Sabeva at +44 20 7920 8796 (e-mail vera.sabeva@icaew.co.uk).

Yours sincerely

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Appendix 1

Key issues

Use of IOSCO Disclosure Standards

We are broadly supportive of the use of the IOSCO Disclosure Standards ("IDS") as the basis for creating the equity building blocks. We note however that there are a number of areas of difference between the equity building blocks and IDS. In our view, there should be no significant differences unless a clear case can be made for such differences. In particular, it would be unfortunate if omissions were to become a barrier to reciprocity for an EU issuer's prospectus in another market.

We have noted the following IDS omissions from Annexes A and/or K:

- IV.B.8 – Description of effect of Government regulations
- V.B.1a part – Working capital statement
- X.A.7 – Share issue authorisations etc
- X.E – Taxation
- X.F – Dividends and Paying Agents

Relationship between the registration document and the securities note

We are concerned that there is unnecessary duplication between the registration document and securities note requirements, for example the inclusion in both documents of factual information about the identity of directors and senior management. The value to issuers of the separation of a registration document and a securities note is in the ease with which a securities note can be produced. On this basis, the disclosures in the securities note should be limited to details of any material changes in the information set out in the registration document together with details of the securities being offered and the terms of any offer.

Securities note requirements

A number of the securities note requirements may impact the ability of issuers to issue securities notes in short time periods and thus reduce efficiency in capital markets. Examples are:

- The requirement in Annex D for a property valuation not more than 42 days prior to the date of the document;
- The requirement for a statement of capitalisation and indebtedness as of a date no more than 60 days prior to the date of the document.

We discuss the question of the timing of property valuations in Appendix 2. We would suggest that a more appropriate basis in relation to the indebtedness statement would be to require disclosure of the position at the latest accounts or interim reporting date at which time issuers would have drawn up a balance sheet from which such data could be readily derived.

Definition of "issuer" for the purposes of disclosure

An "issuer" can include an entity which has existed for at least three years, or a new company, formed immediately prior to the issue, as a holding company for a group. In the former case, information restricted to the issuer may well reflect all the information which is relevant to investors. In the latter case, information restricted to the issuer may be wholly inadequate to meet the reasonable needs of investors.

In addition, an entity to be listed may have made significant acquisitions of other entities through the three-year financial history period. Information on the trading history of such entities prior to their acquisition may be of fundamental importance to inevstors.

Although the principle of Prospectus Directive Article 5 (1) that a prospectus "shall contain all the information … necessary to enable investors to make an informed assessment of the assets liabilities, financial position, profits and losses, and prospects of an issuer" would be expected to be applied to ensure the disclosure of relevant information, there are likely to be differences in interpretation and therefore practice. We would favour prescriptive requirements which would ensure that information on pre-acquisition records of significant acquired entities is disclosed on a consistent basis.

Issues of securities with different characteristics

We believe that there is merit in establishing disclosure requirements which vary depending upon the characteristics of particular types of issue. For example, the information needed to be disclosed in a prospectus at the time of an initial public offer or initial registration might be more extensive that the information required for further issues. Within further issues, a distinction could also be made between pre-emptive and non-pre-emptive issues.

Examples of information, which could be omitted, in relation to pre-emptive issue prospectuses reflecting the fact that it has already been disclosed to shareholders, include:

- Details of directors, senior management and advisors;
- Description of the company's business;
- The issuer's financial history; and
- Details of the issuer's constitution

A suitable structure in this area would help to balance the costs to issuers of preparing information with the needs of investor protection.

Historical financial information

The presentation of historical financial information is a fundamental prospectus disclosure. There are, however, issues surrounding the selection and disclosure of relevant data which need to be analysed.

We consider that in addition to the Level 2 disclosure rules as drafted in "Annex A" there should also be more detailed implementing measures.

Firstly, however, in relation to the current draft text set out in "Annex A", we have a number of detailed concerns that must be addressed before the text is finalised. In particular, the text variously refers to:

- "financial statements" (articles IV.A.2, VII.A and VII.G.1);
- "accountants' report" (article VII.B);
- "comparative table" (article VII.B);
- "comparative financial statements" (article VII.C);
- "consolidated annual accounts" (articles VII.D and VII.E); and
- "annual accounts" (article VII.F.1)

There are distinct advantages in ensuring that consistent terminology is used. A suitable term might perhaps be "historical financial information".

The presentation of historical financial information for three years, and the question of comparability, is complex and requires very careful handling. It is clearly possible for a company to reproduce its annual accounts, but since the audit opinion on annual accounts relates only to the current period, in order to cover a three year period, this would require the inclusion of three sets of accounts. The information thus presented would not be presented to aid comparison, and if the group structure has changed, or if different accounting policies have been adopted in different periods, the information may not be comparable. Detailed supplemental guidance is therefore needed to describe the ways that historical financial information might be presented.

One of the key issues that needs to be addressed when presenting historical financial information is the fact that accounts only present two years' financial information, only the latest of which has an audit opinion on it, whereas the prospectus requirement is for three years' information. Potential approaches include:

- to require special purpose accounts to be prepared and presented that disclose three years' information whenever a prospectus is required, as is often the case today on an initial public offering;
- to extract the necessary information from the underlying accounts and present in a table in the prospectus (a "comparative table"); or
- to require an "accountants' report" on the relevant historical financial information

- to require an issuer with securities traded on a regulated market to prepare its annual accounts so as to present three year's information (and for an audit opinion to be expressed on all three years) thus facilitating inclusion in or incorporation by reference into a prospectus.

Subject to the final form of any requirements for the preparation and presentation of historical financial information, any of the above approaches may be appropriate, and we would support the development of rules which retained an element of choice for issuers. The second and fourth options may well be the most appropriate for existing registered companies. However, the first or third options are often needed in order to facilitate an initial registration particularly where an issuer may have been "carved out" of a larger group.

The fourth option would involve an interaction with annual financial reporting, and it would be appropriate for changes in this regard to be implemented through the Transparency Obligations Directive.

Details relating to the presentation and preparation of historical financial information which we consider should be dealt with in the Implementing Measures include:

- Format of presentation (as discussed above – special purpose accounts, comparative table accountants' report or annual accounts);

- Consistency of disclosure and format with 4th and 7th Company Law Directives;

- Consistency of disclosure with IAS;

- Need for inclusion of cash flow statement (if not addressed by either of previous points);

- Disclosure of/treatment of information relating to significant past or planned acquisitions;

- Consistency of accounting policies/ presentation of historical financial information over the period for which information is presented;

- Omission of an issuer's own accounts when consolidated accounts are prepared;

- Age of most recent financial information and whether any subsequent historical financial information should be audited; and

- Scope for modifying disclosure depending on nature of securities issue (eg whether the issue is an equity or non-equity issue, and whether the prospectus is being prepared for initial registration or in connection with a further issue of securities).

The role of accountants

The draft text uses a number of different terms to describe the involvement of accountants in a prospectus including (references to "Annex A" unless indicated):

- "auditors" (eg I.C, IV.D.2, Annex B paragraph 7, Annex C paragraph IV.D and Annex C paragraph VII)
- "reporting accountants" (eg IV.D.2)
- "independent auditor" (eg VII.A and VII.H.2)
- "official auditors" (eg VII.F.1)
- "an accountant acceptable to the competent authority" (Annex F Financial matters paragraph (iii)).

We suggest that CESR should identify two primary roles for accountants which are significant to investors. Firstly, that of the "statutory auditor" of the issuer and, secondly, that of the "independent accountant" who is reporting on the financial information, historical, pro forma and/or prospective, in the prospectus.

As regards the "statutory auditor" role the provisions I.C.1 and I.C.2 in Annex A appear sensible. Items 3 and 4 in Annex K should not be required unless there is a change from the information in the registration document.

All reporting obligations imposed through the disclosure requirements should refer to the "independent accountants" for which a definition should be established. This may include that the independent accountants should be a person as being qualified to be appointed as auditor. The independent accountant may be the statutory auditor but does not have to.

As explained further in Appendix 2, we have concerns over the nature of certain of the opinions envisaged to be given by accountants, and the extent to which accountants can reasonably be expected to provide certain reports in the absence of detailed and generally accepted principles for the preparation and presentation of financial information to which the reports relate.

Non-EU issuers

Article 20 of the draft Prospectus Directive would permit the acceptance by EU competent authorities of prospectuses prepared by non-EU issuers where:

"(a) It has been drawn up according to international standards set out by international securities commission organisations, including the IOSCO Disclosure Standards; and

(b) The information requirements, including information of a financial nature, are broadly equivalent to the requirements under this Directive."

The question of equivalence of disclosures needs to be addressed in formal guidance in order to minimise the risk of divergent practices being adopted by competent authorities in different Member States.

We are particularly concerned that there should be no uncertainty as to the meaning of the term 'broadly equivalent' (and the extent to which its interpretation might vary depending on the nature of the securities issue) and that there should be a clear indication of the consequences if information is not.

We consider it appropriate for differential rules to apply to debt or equity securities issuers, *inter alia* because the local GAAP of the issuer concerned may well be significant for the purposes of measuring covenant compliance.

For wholesale debt issuers, therefore, local GAAP financial statements should be acceptable provided that a narrative description of the differences between the issuer's local GAAP and IAS is also given.

We would however support a requirement for some form of quantifiable reconciliation to IAS for non-EU equity and retail debt issuers. This could range from a requirement for financial information to be presented which is fully restated to IAS to a requirement for a statement reconciling key financial statement components. The latter approach would have the disadvantage that IAS requirements which relate to disclosures as opposed to accounting policies would not be dealt with. Any decisions on the principles will need to be accompanied by an exercise to develop detailed guidance as to the approach to preparation and the form of presentation of any required reconciliations to IAS.

Subject to an appropriate level of guidance, we would also be supportive of a requirement for independent accountants to report on the compilation of any reconciliation.

Appendix 2

Responses to specific questions

Equity securities

44 *Do you agree with the disclosure obligations set out in Annex A?*

Whilst we agree with approach to setting disclosure requirements in Annex A, we have a number of comments on particular points. Where these have been raised in the Consultation Paper by you as questions they are addressed below. Otherwise they are dealt with in Appendix 3.

Risk factors

47 *Do you agree with this approach?*

We agree with this approach particularly given that the IDS text is merely illustrative of the factors which may be disclosed.

We would support the issuance of national guidance by individual Member States as to the application of this requirement in their jurisdiction albeit acknowledging the need for you to ensure that practices are not significantly divergent.

Pro forma information

In addition to responding to your specific questions in relation to pro forma financial information, we have a number of general observations we would like to make.

In our view the primary financial information in any prospectus must be that which is in compliance with Generally Accepted Accounting Principles ("GAAP"). To permit non-GAAP information which purports to present events which have not actually happened as more important than GAAP information can only mislead investors.

Clearly, some form of pro forma financial information clearly labelled can act as a guide to investors to assess the impact of a significant change on an issuer's historical financial position or results in order to assist them in making assessments as to an issuer's future performance. Accordingly, to ban pro forma financial information would be inappropriate.

It is essential that rules as to the presentation of pro forma information be issued in order to ensure comparability and consistency between issuers. Conditions could include that a pro forma adjustment should be factually supportable, not be dependent on future events or decisions and be directly attributable to the transaction or offering concerned.

We also believe that it is necessary for more detailed guidance to be issued assisting issuers in the interpretation of the detailed rules. The Institute of Chartered Accountants in England and Wales has issued guidance in similar circumstances on the UK's equivalent Listing Rules which has proved to be particularly useful.

Such rules and guidance will also be critical to the ability of accountants to provide an appropriate form of report whose meaning and limitations will be comprehensible to users of the prospectus.

51 *Do you agree that pro forma should be mandatory in case of a significant gross change in the size of a company, due to a particular actual or planned transaction?*

52 *Do you agree that pro forma financial information should also be required in all cases where there is or will be a significant gross change in the size of a company?*

We answer questions 51 and 52 together.

We note that Annex B indicates that where material changes have occurred in the issuer's business, pro forma or '*additional'* information shall be disclosed (Annex B, para 2). Annex B paragraph 4 makes the statement, in the context of pro forma financial information, that 'if applicable, the financial statements of acquired businesses or entities will be included in the prospectus'.

The difficulties surrounding pro forma financial information mean that, even if prepared with due care, it may not always be possible to be satisfied that the information will not confuse or mislead investors. We would consider that pro forma financial information should be a permitted option in cases where there has been or is to be a significant gross change, but that as a standard position it should be sufficient for disclosure of supplemental information on the subject of the transaction to be given (as is perhaps being suggested in the wording at the end of paragraph 4, which we have discussed above).

The plans for standardising and harmonising pro forma financial information for cases where a company wishes to include information in that form to aid pan-European comparison are to be welcomed.

53 *Do you agree that 25% is the correct threshold figure? Would a different figure, say 10%, be more appropriate?*

We are comfortable that 25% is the correct threshold.

Although we recognise that there is scope for anomalous results to occur with any system which involves pre-defined measurements of size, we would prefer rules to be developed which can be complied with by preparers of prospectuses without the need for reference to a Competent Authority. Hence we would not agree with the suggestion in paragraph 50 that Competent Authorities might substitute other indicators of size.

55 *Do you agree that the competent authority should be able to insist on pro forma information being included where this would be material to investors?*

No. We do not agree that competent authorities should have such power. This reflects our views that pro forma financial information should not be mandatory, and that preparers should be able to prepare prospectuses based on published rules without the uncertainty of additional obligations being imposed at the discretion of the Competent Authority.

64 *Do you agree with the disclosure requirements in respect of pro forma financial information as set out in Annex B, in particular with the obligation of an independent auditor's report?*

In general, we agree with the disclosures advocated in "Annex B". However, we do not consider that paragraph 1 should be included in Appendix B. The matters referred to in paragraph 1 relate to one aspect of the much wider question of the preparation and presentation of 'historical financial information' which we have discussed in Appendix 1.

We note the suggestion in paragraph 5 that the pro forma financial information must be prepared in a manner consistent with the accounting policies adopted by the issuer. Given that in paragraph 48 of the consultation paper it is explained that pro forma financial information is 'results or other financial data on a basis of methodologies different than that of Generally Accepted Accounting Principles', the requirement would benefit from clarification. We would recommend that the reference to accounting policies be deleted, which would have a corresponding knock on effect for the report of the auditor (paragraph 7). We are supportive of the requirement for an independent accountant (as referred to in Appendix 1) to report, subject to appropriate rules for preparers, as discussed above.

65 *Would it be more appropriate to restrict the disclosure of pro forma information to the occasions where securities are being issued in connection with the transaction and hence require pro forma information in the securities note?*

Pro forma financial information should not be restricted to the securities note. In general, the information might be expected to appear in the registration statements, with pro forma financial information only appearing in the securities note only where transactions have occurred since the registration document was prepared.

<u>Profit forecasts</u>

73 *Do you have any comments at this stage about this preliminary definition of a profit forecast?*

We recognise that a definition of a profit forecast may be useful, but it would appear difficult to reconcile the wide definition contained in paragraph 72 with the desire for standardisation of presentation and disclosure which underpins the discussions in paragraphs 75 to 79. It will also be necessary for any definition to be capable of distinguishing a 'forecast' from a 'projection'.

We would note that a definition of a "profit estimate" is also required, being a statement similar to that for a forecast but for a completed period that has not been reported to the market in accounts or an interim announcement.

85 *Should issuers be required to repeat or update outstanding ad-hoc profit forecasts in the prospectus?*
Yes, subject to establishing a suitable definition for a forecast.

86 *Do you agree with the disclosure requirements in respect of profit forecasts set out in disclosure requirement CESR reference IV.D.3(a) and (b) of Core Equity Building Block (Annex "A")?*

As a basic framework we consider the disclosure requirements in IV.D.3(a) to be adequate. There is, however, a need for more detailed guidance as to the preparation and presentation of prospective financial information. The Institute of Chartered Accountants in England and Wales is consulting on such guidance at the moment.

As for the requirement in IV.D.3(b), it is not clear how a 'statement' can ensure that a forecast is properly prepared. In this regard, we would recommend that IV.D.3.(b) should indicate that the accounting policies and calculations for the forecast should be examined by the auditor or reporting accountant, and that the auditor or reporting accountant should opine on whether, so far as the accounting policies or calculations are concerned, the forecast has been properly prepared on the basis of the assumptions made by the directors, and that the accounting policies are consistent with those of the company. This should in our view replace the proposal in IV.D.2 that the auditors should provide a due and careful enquiry opinion.

87 *Do you agree with the arguments set out regarding mandatory reporting by the company's financial advisor?*

We believe that there is value to investors in requiring a financial advisor's opinion, for a number of reasons including that investors can be given reassurance that appropriate due diligence has been performed in relation to the forecast information.

We are not, on the whole, persuaded that the limitation in the level of comfort is sufficient ground for opposing the FESCO recommendation. We noted above that we consider that an obligation to opine on the question of whether a forecast has been made after due and careful (but not to give a confirmation), should not be that of a reporting accountant or auditor. We do however believe that such an opinion might appropriately be given by a financial advisor.

<u>Directors and senior management privacy CESR reference V.A of Core Equity Building Block (Annex "A")</u>

89 *Do you agree that such information may be material to an investor's decision to invest? Would the provision of such details breach privacy laws in your jurisdiction?*

We believe that investors need to have an understanding of the matters contained in V.A.1 4th subparagraph in relation to each director in order to make an appropriate assessment of the entity's securities.

Controlling shareholders CESR reference VI.A.2 of Core Equity Building Block (Annex "A")

91 Do you that the additional disclosures of any limiting measures should be required?

We consider that comprehensive disclosure of the position regarding controlling shareholders should be expected from issuers. We recognise however that there are difficulties in prescribing specific additional disclosures and that regard may need to be had to the general obligation on disclosure.

Documents on display

93 *Do you feel that issuers should be required to put on display all documents referred to in the prospectus (as set out in CESR reference VIII in Annex A)? Would this cause problems due to privacy laws or practical problems as a result of having to review lots of documents for commercial information?*

We question whether there is any value to investors of requiring documents to be put on display. Disclosures that are material to investors should be included in a prospectus.

Specialist Building Blocks

95 *Do you believe that the building blocks in Annexes D, E, F, G and H are appropriate as minimum disclosure standards?*

96 *What other specialist building blocks (if any) should CESR consider producing in the future?*

We would suggest that industry specialist building blocks could be created for banks and insurance companies.

Start-up Companies

100 *Do you agree with the specific disclosure requirements set out in the building block for start-up companies?*

The requirement in I.C is unclear. If the intention is that previously unaudited historical financial information should be audited for inclusion in a prospectus, this should be stated explicitly.

It is not appropriate to impose on accountants requirements to report as to the reasonableness of assumptions; accountants do not have an appropriate basis for making such an assessment. Responsibility for the assumptions is solely that of the issuer and its directors.

101 *Do you feel that additional disclosure requirements should be included, for example, and independent expert opinion on the products and business plan?*

We do not consider it to be practical to specify additional disclosures, given the widely different circumstances for which the rules need to cater. Regard may need to be had to the general obligation on disclosure and developing market practice. The same principle applies to the inclusion of independent expert's opinions.

102 *Do you feel that disclosure of restrictions regarding holdings by directors and senior management etc should be applied to all companies through the core building block? Or should this only be required for companies where there are such restrictions?*

Where there are such restrictions, regarding holdings by directors and senior management, as well as major shareholders, should be a required disclosure for all equity prospectuses.

SMEs

105 *Do you believe that SMEs should only be required to provide details for two years under disclosure requirement II.A?*

106 *If so, do you believe that all historical information should be restricted to this two year period?*

To the extent that an SME has existed for more than three years, we consider that companies should disclose that information in a prospectus.

107 *Bearing in mind the materiality tests in the disclosure requirements contained in the Core Equity building block, if you believe that there should be some specific disclosure requirements for SMEs, please list them*

We do not believe that there any specific disclosure requirements for SMEs over and above those required by the main Annexes.

Property Companies

111 *Do you agree that valuation reports as set out in Annex D should be required for property companies?*

Yes. We do believe that valuation reports should be required for property companies.

112 *Do you consider it appropriate that the date of valuation must not be more than 42 days prior to the date of publication?*

We would be concerned that imposing a time limit would add costs and restrict the speed with which an issuer could issue a document. A valuation which is more than 42 days old might be appropriate provided that it was reasonable to conclude that there was no significant change in the value since the date at which the valuation was made.

113 *Do you agree that it would be more appropriate for such reports to be required when securities are being issued by a property company and hence form part of the securities note?*

Yes, we agree with this proposal.

Mineral companies

116 *Do you agree that expert reports should be required for mineral companies? Do you agree that it would be more appropriate for such reports to be required when securities are being issued by a mineral company and hence should form part of the securities note?*

We consider that it is more efficient if the expert report is included in the registration document, with disclosure in the securities note if there has been a significant change since the date of the registration document.

117 *Do you agree with then disclosure requirements in registration documents for mineral companies set out in Annex "E"?*

As noted above in relation to profit forecasts, we do not consider it appropriate to formulate a requirement for "an accountant acceptable to the competent authority" in terms of being satisfied as to whether the estimated cash flows have been stated "after due and careful enquiry". Consequently, we consider that there should be appropriate consultation with auditing bodies across Europe to determine an acceptable form of reporting for accountants and competent authorities.

Investment Companies

Consideration should be given to whether the term 'investment company' appropriately covers all investment type entities to which the rules may be relevant.

120 *Do you agree with the disclosure requirements in registration documents for investment companies set out in Annex "G"?*

The proposed requirements provide an initial high level disclosure standard for investment companies. However, it may be appropriate to expand on these standards as to such matters as the information to be provided in respect of material investments. Other disclosures which should be considered include information about valuation bases and any impairments in value.

Scientific Research Based Companies

121 *Do you agree with the disclosure requirements in registration documents for scientific research based companies in Annex "H"?*

The interaction of these requirements with those for start-up companies in Annex C needs to be clarified. We consider that the disclosures in Annex C should apply as appropriate to scientific research based companies.

Debt securities

129 *Do you consider that the disclosure requirements for debt securities should be identical to those for equity; as set out in Annex "A"?*

In our view, reflecting the different interests and needs of investors in debt as opposed to equity, the disclosure requirements for debt securities, whether retail or not, do not need to be identical to those for equity securities. An investor in debt is primarily interested in interest cover and security of capital; an equity investor has a greater interest in dividend cover and prospects for growth.

134 *Do you consider disclosure about the issuer's bankers and legal advisers to the extent that the company has a continuing relationship with such entities to be relevant for corporate debt?*

We are doubtful whether such disclosure would be of much relevance to investors in corporate debt.

135 *Do you consider that disclosure relating to the bankers and legal advisers who were involved in the issue of that particular debt instrument to be relevant?*

We are doubtful whether such disclosure would be of major relevance to investors in a debt instrument.

137 *Do you consider disclosure about a company's past investments in other undertakings to be material for an investor to make an investment decision about investing in the company's debt?*

Information about a company' past investments may be important for an investor in its debt securities if it sheds light on the security of the principal element of the debt.

138 *Do you consider that disclosure about a company's current investments in other undertakings to be material for an investor to make an investment decision about investing in the company's debt?*

To the extent that an issuer prepares consolidated accounts there is likely to be limited value in disclosing details of a company's current investments in other undertakings.

139 *Do you consider that disclosure about a company's future investments in other undertakings to be material for an investor to make an investment decision about investing in a company's debt?*

Disclosure of a company's material future investments are likely to be relevant for an investor in an issuer's debt securities.

142 *Do you agree that these different interests should be reflected by different disclosure standards and in particular that retail bondholders do not need the same disclosures as shareholders in respect of those sections of the IOSCO IDS?*

We agree that the different needs of investors demand different disclosure in relation to a non-equity issuer's liquidity and capital resources.

145 *Do you consider it necessary for a disclosure requirement that stipulates when interim financial statements should be disclosed in the registration document, to also stipulate what the form and content of these statements should be?*

We consider that the question of the form and content of interim financial statements should be addressed in the Transparency Obligations Directive.

146 *If you consider that the reduced level of detail is more appropriate, should the same approach be taken for equity?*

We consider that this question should be addressed in the Transparency Obligations Directive.

148 *Do you feel that issuers should be required to put on display all documents referred to in the prospectus (as set out in CESR reference VIII in Annex A)? Would this cause problems due to privacy laws or practical problems as a result of having to review lost of documents for commercial information?*

As noted above in relation to equity securities, we would question the usefulness of the process of placing documents on display.

149 *On review of the list of documents set out in CESR ref VIII.E of the corporate retail debt building block in Annex "I", please advise with reasons: (1) Whether or not there are any documents that are listed that you consider do not need to be put on display? (2) Whether or not there are any documents that are not listed that should be put on display?*

See our response to question 148 above.

150 *Please give views on which if any of the documents that are not in the language of the country in which the public offer or admission to trading is being sought should be translated.*

Given that there is to be no requirement included in the Prospectus Directive for the prospectus itself to be translated, it would not be appropriate for there to be a requirement for documents to be put on display to be translated.

153 *On a review of the equity disclosure requirements (CESR ref VIII.G of the Core Equity Building Block) set out in Annex "A", please advise which if any of these requirements you consider to be relevant for retail corporate debt. Please give your reasons.*

We do not consider that there are any additional disclosure requirements which are relevant.

154 Do you agree with CESR disclosure requirements for corporate retail debt as set out in Annex "I"?

See comments above.

155 *Please advise which if any items of disclosure should not be required for corporate retail debt. Please give reasons.*

Disclosures that we believe should not be required for corporate retail debt include:

V.C.2 regarding corporate governance disclosures (as noted above)
VI.B regarding related party transactions (because covered by International Financial Reporting Standards)

156 *Please advise if there are any items of disclosure for retail corporate debt that are not set out in the schedule, but should be. Please give your reasons.*

We have not identified any additional disclosures which should be required.

Incorporation by reference

A. Documents that can be incorporated by reference in a prospectus

281 *Do you think that the above illustrative list is acceptable?*

List:
Annual and interim financial statements
Merger and de-merger documents
Auditor's report
Memorandum and articles of association
Earlier approved and published prospectuses
Press releases

On the basis that the principles which are to be applied are clearly set out in paragraph 279, we question whether it is necessary to provide a list.

282 *Should further technical advice be given on the documents that can be incorporated by reference in the prospectus? In the case of an affirmative answer please indicate which technical advice should be given.*

We believe that further technical advice is necessary as to the question of partial incorporation by reference. This is particularly relevant, for example, where disclosures as to a company's history or constitution may well have been made in a prospectus at the time of initial registration or admission to trading and would naturally fall to be included by reference.

Appendix 3

Other points of detail

Annex A

Section IV. We are concerned that the disclosure requirements in section IV in relation to matters such as "operating results" and "liquidity and capital resources" will prove to be too inflexible in an area where reporting practice by existing public companies is still evolving. A more appropriate requirement would be to require disclosure of an "Operating and Financial Review" with only the key themes to be covered being prescribed. Detailed disclosures should then be left to individual Member States to determine as appropriate to their markets;

VI.B We question the effective duplication of the disclosure requirements in relation to "related party transactions" as set out in VI.B and those in the equivalent International Financial Reporting Standard. Our view is that, in general, the requirements should be part of an issuer's financial statements and that no additional disclosure requirement should be necessary in a prospectus. It should only be necessary for a requirement to exist in relation to the period since the latest financial statements through to the date of the prospectus and that requirement should be to update the disclosures required by International Financial Reporting Standards

Section VII.F.2. It is not clear what information this requirement is intended to cover, or why this requirement is needed. There would not appear to be significant risk attached to a situation information is included which has in fact been audited, but which the document fails to acknowledge as such. Perhaps the requirement should be that where information purports to be extracted from an audited source, the document should disclose any relevant audit qualification relating to that source.

VII.H.1 We do not believe that it is necessary for the form and content of interim financial statements to be stipulated in detailed rules governing the content of prospectuses. As such requirements will be set out in the Transparency Obligations Directive, it should only be necessary for a prospectus to require information to the standard that would be required under the Transparency Obligations Directive. In addition the timing requirements in Annex "I" article VII.H.1 should be conformed to that in the Transparency Obligations Directive.

Section VII.L. Significant change in the company's financial or trading position: The phrase financial *or trading* position which is not used in the IOSCO IDS, but does appear in the Listing Directive, has created a number of difficulties in interpretation. We believe that it would be more helpful either to adopt the language of the IOSCO IDS, or perhaps better, simply use the term 'financial position'.

Section VIII.G.1. We do not believe that it is necessary for a prospectus to set out details relating to an issuer's subsidiaries to the extent envisaged by VIII.G.1. In our view, the overarching requirement in III.D.2 is sufficient and meets the IDS requirement. There may be benefit from requiring issuers to make disclosure as to the quality of their financial reporting systems as an addition to the core IDS disclosures.