
**INTERNATIONAL PRIMARY MARKET
ASSOCIATION**

**Response to the consultation request made by
CESR on 16th October 2002 on possible
implementing measures on the proposed
Prospectus Directive**

13 December 2002

*The International Primary Market Association is the organisation which represents the managers and lead managers of debt and equity securities in the international capital market. A list of IPMA members may be found on its website:
www.ipma.org.uk*

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EXECUTIVE SUMMARY

INTRODUCTION

We strongly support the objective of the proposed Prospectus Directive (***Prospectus Directive***) to achieve a harmonised and efficient European capital market while providing an appropriate level of investor protection. We appreciate the constraints under which CESR produced its proposal as possible implementing measures and hope that the following comments will be helpful in enabling CESR to develop revised proposals which support the Prospectus Directive and are consistent with it. Each comment is expanded in more detail in the body of our paper.

SUMMARY RECOMMENDATIONS

General Comments

- **Consistency with other FSAP Directives is essential**

It will be vital to ensure that the proposed implementing measures in relation to the Prospectus Directive are consistent with other disclosure initiatives under the Financial Services Action Plan (***FSAP***) including, in particular, the proposed Transparency Directive, Market Abuse Directive and Investment Services Directive. Any failure to ensure that the proposals work together as a whole will lead to extra costs and an inefficient market defeating the objectives of the FSAP. We refer you to our comments in Part I, section 2.

- **Prospectus Directive Guidelines**

Guidance in recital 33 and article 5 of the Prospectus Directive gives the Commission two clear “roadmaps” when adopting implementing measures. We believe that CESR should adhere more closely to these roadmaps to ensure consistency with the Prospectus Directive and its aims. We refer you to our comments in Part I, section 1.

- **Debt and equity disclosure standards should be appropriately distinguished**

Investors in debt take very different risks from investors in equity and accordingly require disclosure of different information. This is mandated in Article 7.1(a) of the Prospectus Directive. Throughout the proposals this has been insufficiently reflected – a radical rethink is required to meet the objectives of 7.1(a). We refer you to our comments in Part I, section 3.

- **Professional investors and retail investors are different – they require different levels of disclosure**

This is mandated by article 7.1(b) of the Prospectus Directive. Throughout the proposals this has been insufficiently recognised and dealt with – a radical rethink is required to meet the objectives of 7.1(b). For example, the derivatives schedule does not deal with the fact that many derivatives are aimed at professional investors. We refer you to our comments in Part I, section 4.

- **IOSCO is a basis, not a ‘minimum’**

CESR needs to develop appropriate disclosure standards that are suited to the EU markets today whilst permitting change as the markets change. We would emphasise that although the Prospectus Directive requires CESR to use IOSCO as a basis this means using those standards as a guideline and not, especially for debt, as a benchmark of minimum requirements. We refer you to our comments in Part I, section 3.

Problems with current proposals

- **Level of detail should be less – Level 3 is often more appropriate**

Too much detail at Level 2 will create inflexibility and add costs which have no corresponding benefit. Level 3 is the appropriate place for details which can then be applied appropriately in an ever-changing market. The principles established by Lamfalussy have not been followed in the Proposals which have, incorrectly in our view, adopted too much of a “box ticking” list approach. We refer you to our comments in Part I, section 5.

- **Duplication between Registration Document and Securities Note should be minimised**

Article 5 of the Prospectus Directive makes it clear that the information required for the prospectus may be “divided between” separate documents, namely the registration document, the securities note and the summary note. This implies that there should be no duplication between the separate documents and article 7 specifically recognises this fact. Moreover, duplication (especially if partial) always raises questions of analysis and comprehension and so would be contrary to the last sentence of Article 5.1 of the Prospectus Directive. The approach in the proposals to the Securities Notes requires a radical rethink and a much clearer distinction between the registration document and the securities note needs to be introduced. We refer you to our comments in Part I, section 7.

- **Approach to derivatives should be simplified**

Some derivatives are well established in the market and can easily be dealt with but a large volume of derivatives are very ‘ad hoc’ and are purchased and retained by professional investors. The derivative market is fast moving and innovative. These critical facts need to be reflected in the approach and in the suggested disclosure standards. We do not agree that there is a meaningful distinction between guaranteed and non-guaranteed return derivatives. We refer you to our comments in Part I, section 8.

- **Position of guaranteed issues must be clarified**

Many international debt issues are guaranteed, some in complex structures involving both EU and third country entities. This is not currently addressed at all in the proposals and will need to be addressed in an appropriate manner (which will include

a consideration of the reduced disclosure requirements for the issuer). We refer you to our comments in Part I, section 10.

Negative consequences of present proposals

- **Participation of third country issuers in EU markets has significant benefits for EU issuers and investors - the Proposals must be revised to preserve and encourage their involvement - at present they will be driven away**

Third country issuers provide EU issuers with economies of scale and EU investors with diversification of risk. If they are driven away, these benefits would be lost by the EU, possibly to US or Swiss markets, and the participation of EU banks in capital markets worldwide would be weakened. This would be incompatible with the “Lisbon objective” of making the EU the world’s most dynamic and competitive knowledge-based economy by 2010. We refer you to our comments in Part I, section 11.

- **Further thought should be given to a cost/benefit analysis**

The present proposal will increase costs; in many areas these increased costs will not result in increased investor protection – increased disclosure for the sake of increased disclosure is not equivalent to appropriate levels of investor protection. The time that could be taken to prepare some of the suggested disclosure is, of itself, a problem that is disproportionate to the protection provided. Recital 33 requires a cost/benefit analysis.

Further consultation

IPMA and its members stand ready to be fully involved in the revised proposals that CESR will prepare. In our view, consulting a wide range of market participants on a continuing basis is essential if the aims of the Prospectus Directive and the FSAP are to be achieved. We know that this view is shared by CESR as the chairman recently described “Thou shall consult” as the new eleventh commandment in European regulation. We are, however, very concerned that there has been insufficient time to consider these proposals and their consequences adequately. We are further concerned that there will be less consultation on any revised proposal. Inadequate consultation does not fulfil the requirement to consult. We appreciate this is somewhat out of the control of CESR but would urge CESR to note this point to the Commission.

PART I

GENERAL COMMENTS ON PROPOSALS

1. INTRODUCTION

1.1 The Prospectus Directive gives the Commission two clear “roadmaps” when adopting implementing measures. We believe that these “roadmaps” should have been adhered to more closely by CESR in developing its proposals.

1.2 Guidance in recital 33 provides that the Commission should take a number of principles into account when exercising its implementing measures. These include:

- the need to ensure coherence with other Community legislation in this area;
- the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;
- the need to encourage innovation in financial markets if they are to be dynamic and efficient;
- the importance of reducing the cost of, and increasing access to, capital;
- the need to balance the costs and benefits to market participants, including investors; and
- the need to foster the international competitiveness of the Community’s financial markets.

1.3 In addition to the recitals, article 5 sets out the underlying principle on disclosure in the prospectus which requires that it should contain all the information necessary *[and implicitly no information that is unnecessary or merely “nice to have”]* to enable the investors *[not any investors or investors generally]* to make an informed assessment in relation to the securities *[not any securities but these particular securities]*.

1.4 Article 5.1 also requires that information shall be presented in an easily analysable and comprehensible form. Detailed and prescriptive rules at Level 2 will result in disclosure that, whilst relevant to some issuers, is irrelevant to others and obscures the true disclosure.

2. CONSISTENCY WITH OTHER INITIATIVES UNDER THE FINANCIAL SERVICES ACTION PLAN IS ESSENTIAL

It will be vital to ensure that the proposed implementing measures in relation to the Prospectus Directive will be consistent with other disclosure initiatives under the Financial Services Action Plan (*FSAP*) including, in particular, the proposed Transparency Directive, Market Abuse Directive and Investment Services Directive. For example, if the disclosure requirements in the Prospectus Directive are unnecessarily onerous this may lead to burdensome and costly regular reporting obligations under the Transparency Directive. Any failure to ensure that the proposals work together as a whole will lead to an inefficient market defeating the objectives of the FSAP. A lack of consistency will also make the regulators’ job harder and enforcement less effective.

3. DISCLOSURE STANDARDS SHOULD BE TAILORED BY REFERENCE TO THE PRODUCT AND INVESTOR BASE

Level 2 should recognise that investor requirements for debt and equity disclosure are different

3.1 Article 5 of the Directive contains the basic disclosure standard. Investors must be given all information that is necessary in order to decide whether to invest in the securities being issued. This is the guiding principle that must be implemented under Level 2, not whatever happens to be in the IOSCO disclosure standards. These should serve as guidelines not mandatory disclosure. The IOSCO standards were originally proposed over five years ago – the markets have developed and advanced a lot since then. In addition, they were prepared, in effect, as an academic exercise; there was very little real consultation with market participants (other than regulators). Furthermore, they only deal with equity securities. We have very real concerns about adopting IOSCO standards for equity, without appropriate amendments, given that they have not been subjected to either a rigorous consultation process or market testing. The relevant question is, what does this investor (professional/retail) in this security (debt/equity/derivative) need to know; and it should then adopt, adapt or even ignore the IOSCO standards depending on the answer.

3.2 The CESR Proposals recognise that interests of investors in equity and the interests of investors in debt securities will have different focuses. Investors in equity are concerned with the income stream from the shares and the capital growth of the company and investors in debt securities are interested in the issuer's ability to pay interest and principal (paragraph 124). This reflects the approach in article 7 which requires account to be taken of the different types of information needed by investors relating to equity securities compared with non-equity securities. The difference is also recognised expressly by Recital 33 of the Directive. This approach to debt issuers is recognised fully by rating agencies such as Moody's and Standard & Poor's in the way they rate such issues.

IOSCO Disclosure Standards are inappropriate for debt securities

3.3 This difference in focus between investors in equity and investors in debt securities is not however recognised in the proposed implementing measures - Annex I of the CESR Proposals is too closely aligned to Annex A. This alignment results from the fact that Annex I too literally adopts the IOSCO disclosure standards for equity securities. For example, investors in investment grade debt instruments are not generally concerned with the principal past investments or future investments but these requirements have been nonetheless applied to the debt registration document.

3.4 If it were appropriate, in any particular case, to disclose information not covered by the much reduced specific disclosure requirements that we would advocate, this would be covered by the general duty to disclose relevant material under article 5. Annex I should be reduced radically.

3.5 As indicated above, the IOSCO disclosure standards are designed for equity securities and are inappropriate for debt securities. The Prospectus Directive states that the implementing measures shall be "based" on the IOSCO disclosure standards.

While the IOSCO standards must therefore be used as a guideline, there is no requirement in the Prospectus Directive to adopt those standards as the minimum disclosure requirements or floor. Such an interpretation would render the provisions of recital 33 and article 7(1)(b) of the Directive meaningless and will result in disclosure that does not comply with article 5 of the Directive. The disclosure requirements for debt securities should be significantly altered from those set out in IOSCO's equity standards.

3.6 The Lamfalussy approach requires consultation. The IOSCO standards were not subjected to meaningful consultation with the market. If the IOSCO standards are simply to be adopted without question or modification, for equity or debt, Level 2 ceases to involve a consultation element. The IOSCO standards should be seen as a menu to be chosen from, not mandatory terms.

Cost/Benefit Balance and Timing

3.7 Another reason for refocusing and reducing the scope of Annex I is the need to balance cost against benefit. Recital 33 requires the Commission to have regard to the need to balance the costs and benefits to market participants. Failure to do so will result in increased costs to issuers, reduction in market size and reduced supply for investors. Fundamentally the information provided should be "necessary" not "nice to have". Timing is also an important issue in the context of disclosure. Debt markets are very fast moving and opportunities have to be seized within hours. Any disclosure that requires significant updating (such as recalculation of profit forecasts) will prevent issuers from seizing such opportunities, because of the cost and administrative burdens involved.

4. WHOLESALE SECURITIES NEED DIFFERENT DISCLOSURE REQUIREMENTS

Treatment of Wholesale Debt Securities

4.1 Investors in wholesale securities should be treated differently to retail investors. Investors in wholesale securities need less extensive disclosure than retail investors, given their far greater level of knowledge and experience. As such, the requirements of Annex I are far in excess of what is required for professional investors and should be significantly reduced in the proposed (but not yet seen) "professionals annex".

Treatment of Wholesale Derivatives

4.2 As we say in section 8 below, certain types of derivatives are almost exclusively offered to professional investors and remain in the hands of professional investors. Accordingly, the information requirements should be appropriately tailored in line with the suggestion above for wholesale debt securities and taking into account publicly available information about the "underlying".

Treatment of Wholesale Equity Securities

4.3 CESR should consider a more appropriate disclosure regime for non-EU issuers of equity securities targeted at professional investors especially where the

securities are already listed on a home country exchange (outside the EU). The regime should take account of those facts, as envisaged by Recital 33 of the Directive. If the EU disclosure regime is so costly and inconvenient that such issuers decide to avoid it, EU investors can still buy the securities by going to the non-EU issuer's home market (where there may be less protection than a more reasonable EU regime would have afforded). It will damage the EU market by reducing its size and liquidity. If non-EU issuers are welcomed to the market on terms that are appropriately adapted to their circumstances, EU investors have a degree of protection they would not otherwise have were they to buy on the issuer's home market.

Treatment of Wholesale Convertibles

4.4 Investors in convertible securities of all types targeted at professional investors (e.g. where the bond element meets the wholesale security test) require significantly less disclosure. Disclosure should not be required to the extent that information is publicly available e.g. where the underlying shares are listed (whether on an EU or a non-EU exchange).

5. LEVEL OF DETAIL IN PROPOSED LEVEL 2 IMPLEMENTING MEASURES SHOULD BE LESS, LEVEL 3 IS OFTEN MORE APPROPRIATE

5.1 The proposed Level 2 implementing measures are extremely detailed¹. This prescriptive approach is contrary to the spirit of the Lamfalussy process. This level of detail will lead to inflexibility and an inability to deal appropriately and speedily with particular cases.

5.2 If the detail of Level 2 does not fit a particular case, there can, subject to our comments below being accepted, be no derogation except by the Securities Committee, which will only meet infrequently. In such a case, the issue will have to be abandoned, not because appropriate disclosure about the issuer could not be made, but because the disclosure regime was too rigid. An over-rigid disclosure regime would therefore stifle the market and inhibit innovation, which is the opposite result to that required by the Prospectus Directive which requires the Commission to respect the need to encourage innovation in financial markets (recital 33). The markets are fast moving and opportunities may otherwise be missed – the “issue window” can quickly close.

5.3 We do recognise that there is a need to balance the level of detail required at Level 2 with the degree of discretion given to Member States. To the extent, however, that greater discretion may result in inconsistent implementation of the measures across the EU, this should be dealt with in the guidance and recommendations issued at Level 3 which can be issued in a much shorter time frame.

5.4 One example of an area where the Level 2 disclosure requirements are far too detailed is in relation to the disclosure requirements in the proposed securities note for derivative securities. Derivative securities are innovative products. This is

¹ For example, the details in relation to the financial information to be provided are too prescriptive (Annex A, VII and Annex I, VII).

recognised in the CESR Proposals which state that the derivative market is an innovative market where new products are developed on an on-going basis. It is in the interests of issuers and investors that the disclosure regime is flexible enough to adapt to such product innovation and market development and should therefore be expressed at a level of generality to enable this. Otherwise, there will need to be a multitude of specific annexes made under level 2 covering the various types of derivative products but even this approach will not be capable of capturing all derivative products which are continuously developing. As you can see from section 8 below on derivatives, we are suggesting a much more radical and streamlined approach to derivatives.

5.5 We have made suggestions in our mark-up of the Annexes of areas where detailed provisions should be restated in more general terms.

Clear and General Power to Derogate

5.6 It will be imperative to ensure that Member States are given a clear and general power to derogate from the Level 2 requirements to ensure that only information which is appropriate in the circumstances is disclosed.

5.7 Article 5 of the Prospectus Directive requires that a prospectus shall contain all the information necessary to enable investors to make an informed assessment of a number of matters. Information not required to make an investment decision should not be included. The inclusion of information which is not relevant to investors in a particular case pushes up the costs for issuers without any consequential benefits for investors and may lead to the prospectus becoming less easily analysable. This power to derogate needs to be made clear and needs to be more detailed than the general Level 1 power to derogate in article 8 of the Prospectus Directive. The Commission has the power, as part of its power to introduce and promulgate implementing measures at Level 2, to include implementing measures for competent authorities to derogate from and amend the minimum information requirements promulgated at Level 2. This has been introduced in a limited way already in Annex A.VIII.G.1; it needs to be done across the board.

5.8 The power to derogate is also important to ensure that disclosure requirements can be appropriately tailored to the issuer. For example, it will not be possible to disclose the contingent liabilities of banks in a capitalisation table and the competent authority should have power to derogate from this and other requirements where appropriate to the circumstances. The power of derogation contained in article 8(2)(c) of the Directive for information which is of “minor importance” only will not be sufficient and is too ‘high level’.

6. INFORMATION REQUIRED MUST BE APPROPRIATE TO THE MAJORITY OF CASES, NOT THE MINORITY

6.1 The underlying principle on disclosure in the prospectus should be that it should contain all material information that investors would reasonably expect to find for the purposes of making an informed investment decision in relation to the securities to which the prospectus relates but should not contain superfluous information required by an over reliance on box ticking disclosure requirements. As

such, the Level 2 proposals should aim to deal with the disclosure requirements which will be applicable in the majority of cases; not those which may be truly relevant only in a minority of cases. By way of example, in the majority of cases a lot of details on subsidiaries² will not be relevant and there should not be a requirement to disclose this information in all cases.

6.2 The minority of cases should be covered by the general disclosure requirement in article 5 of the Prospectus Directive and, if necessary, Level 3 guidance. Requiring disclosure in all cases increases the costs for issuers, is inefficient, leads to uncompetitive markets and seriously harms comprehensibility.

7. DUPLICATION BETWEEN REGISTRATION DOCUMENT AND SECURITIES NOTE SHOULD BE REMOVED

7.1 Article 5, paragraph 3 of the Prospectus Directive states that the registration document shall contain the information relating to the issuer and that the securities note shall contain the information concerning the securities offered or to be admitted to trading on a regulated market. It is only to the extent that information is not available for inclusion in the registration document or a supplement to the prospectus is required that it should be included in the securities note. Article 7 requires that the implementing measures adopted by the Commission should avoid duplication of information where a prospectus is composed of separate documents.

7.2 This structure has not however been followed through in the CESR Proposals. There are a number of areas where the disclosure requirements in the registration document and securities note are duplicated and this should be rectified. For example, most of the information in section 1 of Annex N (Securities Note: Common Items) on the identity of directors, senior management, advisers etc would already be covered in the registration document.

8. THE APPROACH TO DERIVATIVES SHOULD BE SIMPLIFIED

8.1 Derivative products are innovative products and as such are difficult to define precisely. Rather than attempting an overly complex approach to definitions and distinctions, we would suggest a definition that provides broad guidelines on the types of products falling within this category and, equally importantly, treats those derivative type products (or products that could be caught by a definition of derivatives e.g. a convertible bond has an embedded equity option) which are well defined appropriately.

8.2 The general category of derivative products are almost exclusively wholesale products and the disclosure regime should be limited to a description of the terms of the product, disclosure on the underlying security only insofar as it is not publicly available and disclosure on the issuer only if there is material credit exposure that is relevant in a professional to professional situation. These derivative products could be dealt with under a single annex expressed at such a level of generality that it would be capable of capturing the wide range of present and possible derivative products.

² Annex A, VIII G

8.3 Those products which are well-defined, namely exchangeables, convertibles, asset-backed securities and covered warrants, could be excluded from the scope of the general definition and dealt with in specific annexes and/or by a building block approach. Appropriate disclosure for the second category of products would need to differentiate between those targeted at retail investors, e.g. covered warrants, and those targeted at professional investors, e.g. exchangeables where the bond was a wholesale security or 'regular' ad hoc derivatives.

8.4 Most derivative products are issued by financial institutions or special purpose vehicles. Given the fact that financial institutions are regulated and the credit exposure on the issuer of the derivative is limited, issuers should not need to provide any detailed disclosure. Similarly, special purpose vehicles should be subject to more appropriate disclosure requirements.

8.5 Accordingly, we would propose a much more simplified building block approach for derivative products falling within our proposed definition of a derivative which would require general disclosure on risk factors affecting the value and trading price of derivative securities and specific risk factors affecting the realization of the value of the derivative securities (see Annex M, III, C2(a)) and information on the underlying security if not publicly available. This could be coupled with a discretion for the competent authority to add information as appropriate.

8.6 This approach avoids the need for a multitude of different annexes which would need to be constantly up-dated as new products develop. We have suggested a definition of derivatives in Schedule 1 to this document which adopts this approach. Our suggested definition falls within the scope of the relevant Level 1 definition.

8.7 Derivatives with a maturity of less than 12 months should be excluded completely on the basis that debt instruments with a maturity of less than 12 months are excluded from the scope of "securities" for the purposes of the Prospectus Directive.

8.8 We do not believe that there is a meaningful distinction between guaranteed and non-guaranteed return derivatives.

8.9 Covered warrants should be dealt with in accordance with section 9 below.

9. COVERED WARRANTS

9.1 Broadly, as set out in section 8 above, most derivative products are targeted at wholesale investors. So-called covered warrants are an exception to this as they are often offered to retail investors.

9.2 In relation to covered warrants, information on the issuers of the underlying instrument should not be required to be disclosed in the prospectus even when they are offered to retail investors. Investors in covered warrants can be compared to investors in equities in the secondary market who make investment decisions without the need to be supplied with the most recent publicly available information on the issuer. They could, after all, buy the share itself in the secondary market for forward delivery or buy an over-the-counter option and there would be no disclosure

requirement in either case. Investors in covered warrants can similarly be assumed to have knowledge of the issuer of the underlying instrument and there should not be any requirement to provide this information in the prospectus.

9.3 In addition, most covered warrants are issued by financial institutions. Given the fact that financial institutions are regulated and the credit exposure on the issuer of the covered warrant is limited, issuers should not need to provide any detailed disclosure. A short form of disclosure should therefore be developed which requires minimum disclosure on the issuer, no disclosure on the underlying instruments where they are securities admitted to trading on an EU-regulated market or any mutually recognised market, and very limited disclosure where they are not. Clearly, the terms of the warrants would need to be included.

10. POSITION OF GUARANTEED ISSUES MUST BE CLARIFIED

A significant number of debt securities are guaranteed issues but this has not been addressed. Article 5 of the Prospectus Directive requires that the prospectus must contain all information necessary to enable investors to make an informed assessment of the prospects of, amongst others, any guarantor. This is a difficult area because there is no single rule that can indicate which disclosure should apply to the issuer and which to the guarantor. The decision will depend on the facts. Where the issuer is a small subsidiary of the guarantor, the bulk of the disclosure should be made in relation to the guarantor. Where the issuer is the main operating company in the group, more disclosure on the issuer may be appropriate, though Level 2 rules cannot prescribe the correct balance in all possible situations. Accordingly, great discretion should be given to the home competent authority to decide which elements of the disclosure regime should apply to which party; this needs to include removing disclosure requirements that might otherwise apply to the issuer. This approach should also be taken for “wraps” provided by monolines and other quasi-guarantee structures.

11. THE PROPOSALS ENDANGER ACCESS OF NON-EU ISSUERS TO EU MARKETS

11.1 Well over half of the issuers of debt securities in the markets of the EU are incorporated outside the EU. For example, about two trillion euro equivalent, or more than half of the volume of publicly announced international medium term notes currently outstanding under Medium Term Note Programmes, is issued by issuers from third countries. Given their importance and the Commission’s objective of achieving an effective and competitive European market³, it is imperative that the measures introduced are sufficiently flexible to deal with issuers incorporated outside the EU.

11.2 Whilst it is recognised that this requirement of flexibility needs to be balanced against the principles of protection and appropriate information for investors, a number of the proposals are unnecessarily prejudicial to third country issuers without consequential benefits to investors. These proposals will significantly increase the costs for issuers incorporated outside the EU and for those EU investors who wish to

³ Paragraph 22 of the Proposals.

buy their securities. For example, IPMA have been informed by accountants that the cost of an initial reconciliation or restatement exercise would range from EUR500,000 to EUR5,000,000 depending on the issuer's size, business, complexity and local GAAP and that on-going compliance costs would range from EUR100,000 to EUR1,000,000. In addition, the proposals may drive issuers to other markets, such as the US or Zurich, or to issue securities in their home country only, forcing EU investors into less protected markets.

11.3 The FSAP recognises that “capital raising does not stop at the Union's frontiers”. An EU market that is limited to EU issuers (or where non-EU issuers are driven away in large numbers) would have a number of adverse consequences. It would lose a significant volume of debt issuance and would contract in terms of size and liquidity; this will lead to increased costs for EU issuers as they do not benefit from economies of scale. EU investors will be limited in their ability to diversify their investment portfolios to include non-EU jurisdictions, a fact which runs counter to the requirement some investors may have to seek out non-EU issuers for diversity and other reasons. To the extent that EU investors do invest in non-EU listed securities, they will be deprived of the protections provided to them by an EU listing.

11.4 We recognise that the disclosure regime for non-EU issuers should not be fundamentally more lenient than the disclosure regime which applies to EU issuers. We strongly believe that to ensure that the open and competitive market which has developed to date continues, equivalent or similar information, not identical information, should be accepted from non-EU issuers. Retail investors should not be prejudiced by the acceptance of such equivalent or similar information and the nature of such information could be fully disclosed. In relation to investors in wholesale securities, we strongly believe that they should be able to make their own assessment of information, even where the information is not equivalent or similar, and that an absolutely ‘level playing field’ between EU and non-EU issuers for wholesale offers is not required.

11.5 We note that the proposed Level 2 regime is even stricter than the equivalent regime for foreign registrants in the US (which, for example, does not require US audit and accounting standards, but permits reconciliation instead).

11.6 Examples of areas where we consider the proposals prejudicial to third country issuers include⁴:

- (a) The requirements in relation to the inclusion of financial information concerning the issuer and the requirement to use international audit standards⁵

⁴ We understand that there are many other provisions in the proposed Market Abuse Directive and the Transparency Directive which could impact negatively on third country issuers including the requirements for quarterly reporting and the continuing obligation relating to announcements. Our comment on the inclusion of an ability for competent authorities to derogate is relevant in this context also (see section 5.6).

⁵ Annex A, VII and Annex I, VII

The proposals in relation to the inclusion of accounts will be prejudicial to those countries who do not draw up their accounts in accordance with IAS. Although there is a provision which allows accounts which have been drawn up to a standard equivalent to the required 'true and fair' view⁶, the application of this provision will involve difficult questions of interpretation and is unlikely to be useful in practice. Any restatement of the accounts or reconciliation exercise will be costly for issuers. To illustrate the problems with the present proposal, accountants consulted by IPMA believe that there is doubt as to whether US and Japanese rules would meet the 'true and fair' test as presently drawn.

A more appropriate way of dealing with accounts for non-EU issuers of equity securities would be to permit home country accounts and then to rely on the general materiality test for "truly required" reconciliations (i.e. reconciliations which are required to meet the test of disclosing all that is material and/or necessary) and/or the inclusion of an appropriate risk factor and/or, especially in the case of wholesale securities, disclosure. A narrative description of the differences between the issuer's local GAAP and IAS should be offered as an alternative.

The requirement to use international auditing standards is extremely prejudicial to third country issuers who are presently permitted to use home audit standards. This will lead to even greater costs for third country issuers as it will require them to change their financial reporting systems and will merely serve to drive them to other markets.

(b) Incorporation of documents by reference⁷

The opportunity of allowing issuers to incorporate by reference documents containing the information required to be disclosed under a prospectus is limited to documents that have previously been filed and accepted by a competent authority in accordance with the Prospectus Directive or the Listing Particulars Directive. As a result, this provision is unlikely to be of use to issuers incorporated outside the EU and defeats the purpose of introducing the concept of incorporation by reference. The best way of dealing with this issue would be to allow incorporation by reference of any document that is publicly available. Another alternative in relation to third country issuers would be to allow the filing of documents with the competent authority which could then be incorporated by reference. Either of these alternatives should be acceptable even for retail issues and the arguments are even stronger for wholesale issues.

⁶ Annex A, VII.E and Annex I, VII.E

⁷ Article 11 of the Prospectus Directive

12. CHANGES TO EXISTING REGIMES NEED TO BE JUSTIFIED

Disclosure goes beyond the requirements of IOSCO and/or US regimes

12.1 In many instances, the proposed disclosure requirements are based on existing IOSCO disclosure standards and US disclosure standards for non-US issuers. In some cases, however, the disclosure goes beyond the disclosure required under these regimes. In general, this should be done very sparingly and only where it is seen to be essential and add quality disclosure. One instance of particular concern in the context of the wholesale markets is the requirement to disclose information on prospects for at least the current financial year and the assumptions on which these prospects are based⁸. There is no power of derogation from this disclosure requirement. Neither the IOSCO standards, nor the US standards, nor the current EU regime operated in Luxembourg and London, require such disclosure.

12.2 The preparation of such forward looking information is very costly and time consuming. As indicated above, these factors, if introduced, will make the wholesale debt markets much less attractive to issuers as a source of funding (see 3.8 and 3.9). Under the equivalent US rules, the issuer is required to disclose “presently known data which will have an impact on the future operating results”⁹. This is a much more specific disclosure requirement.

Ability to disclaim liability

12.3 The US litigation safe harbour rules set out in section 27A of the US Securities Act of 1933, as amended, and section 21E of the US Securities Exchange Act of 1934, as amended, provide issuers with some protection including in relation to forward looking statements in their disclosure. A similar rule should have been introduced at Level 1. In the absence of a Level 1 rule, CESR should not require such forward looking disclosure. If CESR continues to require forward looking statements, it will be imperative at Level 2 to allow issuers who provide forward looking statements to, at least, disclaim liability for such statements by stating that investors should not rely on such statements in making their investment decisions.

Changes to Existing Regime

12.4 More generally, the disclosure requirements for debt securities in those EU markets on which most debt securities are issued (including those reduced disclosure requirements where the securities are wholesale securities) have worked effectively for many years while allowing the development of an open and competitive market. For example, the eurobond listing regimes of the London Stock Exchange and the Luxembourg Stock Exchange have worked very effectively. Given this fact, it is important for CESR and the Commission to clearly justify any suggested changes to the existing requirements.

⁸ Annex A, IV.D.2 and IV.D.3

⁹ Item 5 of Form 20-F

13. APPLICATION AND INTERPRETATION

It is important to make clear that information which is not applicable to a particular issuer or offer should not be required to be disclosed in the prospectus. We would suggest that a statement to this effect should be included in a general section which will apply to all provisions of the proposals; it would be dangerous to rely on words such as “if any” all being in the right places. Similarly, it is important to make clear in a general section that where concepts such as “material”, “significant”, “principal” or “substantial” are used, they should be judged against the general duty of disclosure in Article 5 of the Proposed Directive.

14. OTHER ISSUERS

As drafted, the proposals do not take account of certain ‘special’ issuers in the market. For example, non EU governments e.g. Russia and non EU government agencies (e.g. FannieMae) should be subject to disclosure requirements which are appropriately tailored.

15. TIMETABLE FOR SCHEDULES NOT YET PUBLISHED

15.1 A number of schedules have not yet been published including the disclosure requirements for wholesale debt and structured debt instruments such as asset backed securities, mortgage backed securities and other types of securitisations and convertible bonds. We understand that the current intention is to publish these schedules in mid-December and that the date for comment will be around the end of January.

15.2 We recognise that this timetable has been imposed on CESR. We firmly believe however that further time is needed to allow interested parties to do a full and detailed analysis of the proposals and any revised proposals which CESR will publish. We have found it difficult, in the time available to date, to carry out this review of the initial proposals. The proposed deadline for comments should be extended to allow parties time to properly consider the proposals.

SCHEDULE 1

Definition of Derivative

“derivative” means any security

- (a) under any material term of which the amount of any payment fluctuates by reference to an asset or index or the occurrence of an event unless such term is supplementary or customary in international debt markets; or
- (b) under a term of which any asset may or will be delivered

and which security (in either case) is not an equity security, asset backed security, convertible or exchangeable security or covered warrant.

PART II

RESPONSES TO QUESTIONS RAISED IN PROPOSALS

EQUITY SECURITIES

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

No. We believe that CESR needs to develop appropriate disclosure standards that are suited to the EU markets today whilst permitting change as the markets change. Investors must be given all information that is necessary in order to decide whether to invest in the securities being issued. This is the guiding principle that must be implemented under level 2, not whatever happens to be in the IOSCO disclosure standards. Although the Prospectus Directive requires CESR to use IOSCO as a basis this means using those standards as a guideline and not as a benchmark of minimum requirements. The IOSCO standards were originally proposed over five years ago – the markets have developed and advanced a lot since then. In addition, they were prepared, in effect, as an academic exercise; there was very little real consultation with market participants (other than regulators). We have very real concerns about adopting IOSCO standards for equity, without appropriate amendments, given that they have not been subjected to either a rigorous consultation process or market testing. The relevant question is, what does this investor (professional/retail) in this security (debt/equity/derivative) need to know; and it should then adopt, adapt or even ignore the IOSCO standards depending on the answer.

The disclosure standards are extremely detailed and this prescriptive approach is contrary to the spirit of the Lamfalussy process. This level of detail will lead to inflexibility and an inability to deal appropriately and speedily with particular cases. If the detail of level 2 does not fit a particular case, there can be no derogation except by the Securities Committee, which will only meet infrequently. In such a case, the issue will have to be abandoned, not because appropriate disclosure about the issuer could not be made, but because the disclosure regime was too rigid.

Level 2 proposals should aim to deal with the disclosure requirements which will be applicable in the majority of cases; not those which may be truly relevant only in a minority of cases. Requiring disclosure in all cases increases the costs for issuers, is inefficient, leads to uncompetitive markets and seriously harms comprehensibility. There are a number of disclosure requirements in Annex A which will not be applicable to the majority of cases.

It will be imperative to ensure that Member States are given a clear and general power to derogate from the Level 2 requirements to ensure that only information which is appropriate in the circumstances is disclosed.

It is also vital that the measures introduced are sufficiently flexible to deal with issuers incorporated outside the EU. Whilst it is recognised that this requirement of flexibility needs to be balanced against the principles of protection and appropriate information for investors, a number of the proposals are unnecessarily prejudicial to third country issuers without consequential benefits to investors.

Investors in wholesale securities should also be treated differently to retail investors as they need less extensive disclosure than retail investors, given their far greater level of knowledge and experience. The requirements of Annex A are far in excess of what is required for professional investors and should be significantly reduced in the proposed (but not yet seen) “professionals’ annex” for issues targeted at professional investors.

We refer you to Part I of our paper where these issues are discussed in more detail. We also refer you to our mark-up of Annex A.

Risk Factors

Question 47: Do you agree with this approach?

We agree with your approach of rejecting an illustrative list approach in favour of guidance of the type of risk factors that may be disclosed. But, just as the nature of the securities in this market will be varied and fast-changing, so the relevant risks will be difficult to pin down in Level 2 rules without introducing formulaic, unhelpful disclosure. In any event, the general disclosure standard in Article 5 should be left to drive disclosure in this area. We have amended the requirements of Annex A to suggest that risk factors that are specific to the company or its industry and make an offering *unusually* speculative or one of high risk should be disclosed.

Pro forma information

Question 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?

Question 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?

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

We do not believe that inclusion of pro forma financial information should be mandatory in either case. We do not agree with an approach which requires disclosure in all cases. We believe that the question of when pro forma financial information should be included should be governed by the general disclosure requirement in article 5 of the Prospectus Directive. The home state competent authority, issuers and their advisers should decide when pro forma financial information should be included in light of the overriding requirement to disclose all material information to investors. Please also see our response to question 55.

Question 54: 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?

We accept that the competent authority should always have the power to require the inclusion of pro forma information where it is material to investors. If it has this

power, it will not be necessary to include an obligation to disclose it in certain specified cases as suggested in questions 51, 52 and 53. This approach ensures that it is only when the information is material to investors that it will be disclosed.

Question 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?

We do not believe that the disclosure of pro forma financial information should be mandatory. A mandatory requirement to disclose pro forma information will be an additional cost for issuers who would not customarily provide such information. If it is material, it will be disclosed under the general duty of disclosure. In such a case, the pro forma financial information should be accompanied by an independent auditor's report.

Question 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?

We agree that it will, in general terms, only be appropriate to require the inclusion of pro forma information in connection with an actual issue of securities but that it would not be appropriate to prescribe in which part of the prospectus the information is included.

Profit Forecasts

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

We do not believe that there should be a requirement to include a profit forecast. This proposed disclosure requirement will, in our view, encourage disclosure of potentially misleading information as the issuer will be required to hazard a guess as to its general prospects even if these prospects are highly uncertain and the disclosure is based on broad assumptions about facts outside the issuers control. Furthermore, where forecasts are made and then not met, this often leads to significant market volatility notwithstanding the fact that the forecast was still approximately correct i.e. a disproportionate emphasis is placed on the forecast in practice.

If, however, an issuer chooses to make profit forecasts, we believe that the Level 2 requirements should only cover specific and precise profit forecasts. It should be clear that general communications which up-date the market on trends and prospects, in the general sense, should not fall within the scope of the definition.

Question 85: Should issuers be required to repeat or update outstanding ad-hoc profit forecasts in the prospectus?

Yes if there are material changes but subject to a power of derogation from this requirement. Profit forecasts should be carefully distinguished from trading statements for these purposes. In any event, this should be covered by the general disclosure obligation in article 5 and on-going disclosure requirements.

Question 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”)?

We do not agree with a ‘line item’ approach in respect of profit forecasts. Profit forecasts should be consistent with the accounts of the issuer to enable a comparison with the auditor’s report. The question of how profit forecasts are presented should be left to the issuer and its advisers.

Question 87: Do you agree with the arguments set out regarding mandatory reporting by the company’s financial advisor?

For the reasons set out in paragraph 80, we agree there should not be mandatory reporting by the company’s financial advisor. In any event, the financial advisor is not always equipped to provide such a report.

Directors and senior management privacy

Question 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?

Such information *may* be material to an investor’s decision to invest – but equally in some circumstances it may not. If it is material, it will be disclosed under the general disclosure obligation in article 5 of the Prospectus Directive. There should not be an obligation to disclose in all cases. If included, there should be a clear power of derogation. On privacy laws, in practice the consent of the individual will be sought to the inclusion of the information.

Controlling Shareholders

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

We agree that if there are any limiting measures that they should be disclosed.

Documents on Display

Question 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 do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not be necessary for investors to refer to documents on display. In our experience documents available for inspection are very rarely inspected by investors but are inspected by competitors who use the opportunity to examine documents for commercially sensitive information. The requirement to display documents is therefore of limited use to investors when

balanced with the cost of complying with this requirement. In relation to third country issuers, this requirement would be a further barrier to entry, particularly where the contracts in question would require translation.

Specialist Building Blocks

We have not responded to the specific questions in paragraphs 95 to 123 of this section. We would say generally that in relation to any requirement to produce a report (eg the requirement for property companies to produce a valuation report), this should be disclosed initially and up-dated as necessary. There should not be a requirement to produce a new report when a further issue is made. The only requirement should be to up-date the report to the extent that there have been material changes. We disagree with your suggestion (paragraph 110) that the report is of most importance to investors when the securities are being issued. We believe that the report is of most importance on the initial public offering and if there have been material changes. Normal company reporting, eg in the annual accounts, should be sufficient in most cases.

DEBT SECURITIES

Introduction

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

No, we do not consider that the disclosure requirements for debt securities should be identical to those for equity. As your proposals recognise (paragraph 124), the interests of investors in equity and the interests of investors in debt securities will have different focus. This is also recognised in Recital 33 and article 7 of the Directive itself. We do not believe that the Level 2 procedures have the power to ignore this. For investors in debt, the key disclosure factors relate to the issuers ability to pay interest on the debt and to repay the capital sum. The different focus of investors should be recognised by a different disclosure regime. We refer you to our general comments in Part 1, section 3. We also refer you to our comments in response to question 44 which apply equally to the disclosure requirements for debt securities.

Definition of corporate retail debt

Paragraph 130

The Directive itself contains a definition of retail debt – any non-equity security with a denomination of less than euro 50,000. It also clearly indicates that this is the distinguishing feature that is to be used in Level 2. We do not believe that this can or should be ignored at Level 2.

Disclosures about the advisers of the issuer

Question 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 retail debt?

Question 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 do not consider such disclosure to be relevant. Few companies have such a continuing relationship with their bankers; and to describe the relationship where it exists will only raise unfounded expectations in the investor's mind as to the likelihood of the banker supporting the issuer in case of financial difficulty. The involvement of legal advisers in an issue varies from case to case. Sometimes it is extensive, and includes due diligence; sometimes it is limited to purely legal advice. Including the names of the lawyers will therefore, again raise false expectations for investors.

History of the company's investment

Question 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?

We do not consider disclosure about a company's past investments in other undertakings to be material for an investor in the company's debt. An investor in debt is interested in the issuer's ability to pay interest on the debt and to repay the principal. A company's past investments are not generally material to an assessment on investing in the company's debt. In those unusual situations where this information is material, it will be disclosed under the general disclosure requirement. Disclosure should not however be required in all cases. In any event, the information is usually publicly available. We refer you to our general comments in Part 1, section 3.

Question 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?

Similarly, we do not consider 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. It would not be realistic to require disclosure from banks and investment companies.

Question 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 the company's debt?

Again, we do not consider disclosure about a company's future investments in other undertakings to be material for an investor to make an investment decision about

investing in the company's debt. In any event, we believe that disclosure about a company's future investments in the case of equity investors can only realistically be disclosed where management bodies have made firm commitments to invest or are making such commitments as part of the relevant issue. We refer you to our mark-up of Annex A.

Operating results, liquidity and capital resources

Question 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 these sections of the IOSCO IDS?

We agree that these different interests should be reflected by different disclosure standards. Investors in equity are concerned with the income stream from the shares and the capital growth of the company and investors in debt securities are interested in the issuer's ability to pay interest and the principal. This difference in focus between investors in equity and investors in debt securities should be reflected in different disclosure requirements. For example, investors in debt are not generally interested in an issuer's past investments.

Age of latest accounts

Question 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 do not consider it necessary for a disclosure requirement to stipulate the form and content of such statements. On form, there is an overriding obligation in the Prospectus Directive to present information in an easily analysable and comprehensible form. Companies should have discretion as to how interim statements are presented which will be subject to this overriding requirement eg in a form which is consistent with the presentation of annual accounts.

On content, there is an overriding duty to include all material information which is material to an investor's decision to invest and detailed rules on content are not therefore required. Adopting detailed rules would lead to the inclusion of information which is not material and would be complex and difficult to operate, given the many different types of issuer in the market.

Detailed rules would be a barrier to entry to third country issuers who, notwithstanding that they satisfy the overriding requirements of the proposed Prospectus Directive, do not comply with the detailed rules because their interim financial statements were not prepared with those detailed rules in mind.

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

We believe that the same approach should be taken for equity. Our reasoning set out in response to question 145 applies equally here.

Documents on Display

Question 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 lots of documents for commercial information?

We do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not be necessary for investors to refer to documents on display. In our experience documents available for inspection are very rarely inspected by investors but are inspected by competitors who use the opportunity to examine documents for commercially sensitive information. Displaying documents would also cause practical problems in terms of having to review the documents for commercially sensitive information. The requirement to display documents is therefore of limited use to investors when balanced with the cost of complying with this requirement. In relation to third country issuers, this requirement would be a further barrier to entry, particularly where the contracts in question would require translation.

Question 149: On review of the list of documents set out 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?

Please see our response to question 148.

Question 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.

We believe that there should be no requirement to make the contracts public (see our response 148). It follows that, in our view, none of the documents should be required to be translated into the language of the country in which the public offer or admission to trading is being sought. Any translation requirement would be extremely costly to comply with for issuers, lead to time delays and would be of limited use to the very few investors who rarely consult such documents. There should be a summary of the contracts in the prospectus, where relevant and material.

Additional Information

Question 153: On a review of the equity disclosure requirements (CESR ref VIII.G of the Core Equity Buildings 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.

Only those disclosure requirements which are relevant to investors in debt should be required to be disclosed. As we have mentioned, the key disclosure for investors in debt are those which relate to the issuer's ability to pay interest on the debt and to repay the capital sum. The disclosure requirements in Annex "A" would need to be appropriately tailored for investors in debt. We refer you to our mark-ups of Annex "A" and Annex "I".

Question 154: Do you agree with the CESR disclosure proposals for corporate retail debt as set out in Annex "I"?

No, we believe that Annex I should be amended. This difference in focus between investors in equity and investors in debt securities is not recognised in the proposed implementing measures as Annex I of the CESR Proposals is far too closely aligned to Annex A. This alignment results from the fact that Annex I too literally adopts the IOSCO disclosure standards for equity securities. We refer you to our mark-up of Annex I.

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

There are a number of items which we believe are not material to investors in debt and we refer you to our mark-up of Annex I. Material information for investors in debt relates to the issuer's ability to pay interest and to repay the capital sum and the disclosure requirements need to reflect this fact.

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

We do not think there are any further items which need to be added.

DERIVATIVES

Introduction

Question 160: Do you consider it necessary to have specific derivative registration document requirements, or do you consider this unnecessary as the registration document requirements for debt securities should be used for derivative securities as well? Please give your reasons.

Although we believe that a specific derivative registration document is required, we believe that the approach to derivatives could be significantly simplified. Derivative products are innovative products and as such are difficult to define precisely. Rather than attempting an overly complex approach to definitions and distinctions, we have suggested a definition that provides broad guidelines on the types of products falling within this category for the purposes of Prospectus Directive implementation and, equally importantly, treats those derivative type products (or products that could be caught by a definition of derivatives e.g. a convertible bond has an embedded equity option) which are well defined appropriately (see Part I, schedule 1).

A broad definition of derivative could lead to a much more simplified building block approach for these products. Our proposed approach requires general disclosure on risk factors affecting the value and trading price of derivative securities and specific risk factors affecting the realisation of the value of the derivative securities (see Annex M, III, C2(a)) and information on the underlying security if not publicly available. As most derivative products are issued by regulated financial institutions or special purpose vehicles where the credit exposure is limited, issuers should not need to provide any detailed disclosure. The required disclosure could be coupled with a discretion for the competent authority to add information as appropriate.

Those products which are well-defined, namely exchangeables, convertibles, asset-backed securities and covered warrants, could be excluded from the scope of the general definition and dealt with in specific annexes and/or by a building block approach. Appropriate disclosure for the second category of products would need to differentiate between those targeted at retail investors, e.g. covered warrants, and those targeted at professional investors, e.g. exchangeables where the bond was a wholesale security or 'regular' ad hoc derivatives.

Please refer to Part I, section 8 which sets out in full our proposed approach.

Types of Securities that are covered by the word “derivative”

Question 170: Do you think it is useful to provide some form of definition for these securities?

We think that it would be useful to provide such definition. We refer you to our comments in Part 1, section 8 and schedule 1 which sets out our suggested definition and approach to these securities.

Question 171: If so, which of the two approaches set out above do you prefer? Please give your reasons.

Of the two approaches, we prefer the formulaic approach but believe that it needs to be significantly refined and simplified. We prefer this approach as derivative products are innovative products and as such are difficult to define precisely. We would suggest a definition that provides broad guidelines on the types of products falling within this category and, equally importantly, treats those derivative products, such as covered warrants, which are well defined and targeted at retail investors appropriately. We refer you to our comments in Part I, section 8 and our suggested definition in Part I, schedule 1.

Question 172: If you prefer the approach based on a wide definition of derivatives, do you have any comments on the proposed definition?

Please see our responses to questions 170 and 171.

Question 173: If you prefer the approach based on fundamental features, are there other features that should be but are not included in the above list?

We do not believe the fundamental features approach is appropriate.

Broad categorisation of derivative products in a building block approach

Question 179: Do you agree with the above broad sub-categorisation of derivative products?

We believe that a more sensible approach would be one which reflects the innovative nature of these products and avoids the need for a multitude of different annexes which would need to be constantly up-dated as new products develop. We have suggested a definition of derivatives in Schedule 1 to Part I of this document which adopts this approach. We refer you also to our comments in Part I, section 8 and in particular our view that the most important distinction to draw is in connection with those derivatives offered to professional investors.

Question 180: Do you agree with the approach of having two distinct registration document building blocks to reflect this sub-categorisation?

Please see our response to question 179.

Non-guaranteed return derivatives

Question 185: Do you agree that the nature of the decision that an investor is making about the issuer in the case of a non guaranteed derivative is different to the one an investor is making in the case of a guaranteed derivative? Please give your reasons.

Yes, but not one that leads to a materially different disclosure regime given the ‘professional’ nature of the market and given that there is a credit risk under either structure, the distinction that CESR draws would be covered by an accurate

description of the terms of the instrument. We agree that the nature of the decision that an investor is making about the issuer in the case of a non-guaranteed derivative can be different to the one an investor is making in the case of a guaranteed derivative, but the answer depends on the nature of the security. If the guaranteed element is low, the non-guaranteed risks are more important. We see this as an example of the danger of trying to apply rigid rules to a fast-moving, highly innovative market.

Directors and Senior Managers

Question 190: Do you consider that disclosure about the issuer's senior management, as set out in IOSCO reference I.A, is relevant for these products? Please give your reasons.

Certain information on the issuer's senior management may be relevant in certain cases. It depends on the type of derivative. We would suggest a much more general approach to this section.

As most derivative products are issued by regulated financial institutions or special purpose vehicles where the credit exposure is limited, we believe that issuers should not generally need to provide any detailed disclosure.

As a general comment, the proposals should clarify the meaning of "senior management" for these purposes.

Advisers

Question 192: Do you consider disclosure about the issuer's advisers, as set out in IOSCO reference I.B, to be relevant for these products? Please give your reasons.

We do not consider disclosure about the issuer's advisers to be relevant for debt products, derivatives or otherwise. (See answer to 135).

Risk factors

Question 195: Do you have any views at this stage about CESR's provisional guidance in this area?

We agree with your approach of rejecting an illustrative list approach in favour of guidance of the type of risk factors that may be disclosed. But, just as the nature of the securities in this market will be varied and fast-changing, so the relevant risks will be difficult to pin down in Level 2 rules without introducing formulaic, unhelpful disclosure. In any event, the general disclosure standard in Article 5 should be left to drive disclosure in this area.

Question 196: Are there any other sections of key information section at section III of IOSCO that you deem as being relevant disclosure for these products? Please give your reasons.

No.

Question 197: Are there any sections of key information section at section III of IOSCO you consider superfluous as regards the disclosure of these products? Please give your reasons

As we have mentioned, the IOSCO disclosure standards were designed for equity securities. The disclosure requirements for debt and derivative securities should be significantly amended from those set out in IOSCO. We refer you to our general comments in Part I, section 3.

History and development of the company

Question 199: Do you consider the level of detail set out in IOSCO disclosure standard IV.A to be inappropriate for these products? Please give your reasons.

We consider that the level of detail is inappropriate for these products. Derivative products are innovative products, normally issued by regulated entities, whose history is less relevant to investors than the fact that they are regulated. It is in the interests of issuers and investors that the disclosure regime is flexible enough to adapt to such product innovation and market development and should therefore be expressed at a level of generality to enable this. We believe that the current level of detail will lead to inflexibility and an inability to deal appropriately and speedily with particular cases.

Question 200: Which particular items of IOSCO disclosure in this section do you consider to be relevant for these products? Please give your reasons.

We believe that there should be disclosure on risk factors affecting the value and trading price of derivative securities and specific risk factors affecting the realisation of the value of the derivative securities (see Annex M, III, C2(a)) and information on the underlying security if not publicly available. This could be coupled with a discretion for the competent authority to add information as appropriate.

In the case of financial institutions or special purpose vehicles issuing derivatives, we believe the disclosure requirements should be very limited. The credit risk is limited in these cases and financial institutions are regulated. A short form of disclosure should therefore be developed which required minimal disclosure on the issuer, no disclosure on the underlying instruments where it is publicly available and very limited disclosure where it is not.

Other information which is material to investors in derivatives should be disclosed in accordance with the general disclosure obligation under Article 5 of the Prospectus Directive. There should not be a requirement to disclose this information where it is not relevant to credit risk.

Derivatives with a maturity of less than 12 months should be excluded completely on the basis that debt instruments with a maturity of less than 12 months are excluded from the scope of “securities” for the purposes of the Prospectus Directive.

Business Overview

Question 202: Do you consider that a general description of what the issuer's principal activities are is a more appropriate level of disclosure for these products? Please give your reasons.

Please see our response to question 200.

Question 203: Please advise what, if any, other items of Section IV.B of IOSCO you consider to be of relevance for these products. Please give your reasons.

Please see our response to question 200.

Organisation Structure

Question 205: Do you consider that a brief description of the issuer's group and the issuer's position within it, as set out in IOSCO reference IV.C, to be an appropriate disclosure requirement for these products?

Please see our response to question 200. This disclosure will not usually be material. Where it is, it will be disclosed under the general disclosure obligation under article 5 of the Prospectus Directive.

Property, Plants and Equipment

Question 207: Do you consider Section IV.D of IOSCO to be relevant disclosure for these products? Please give your reasons.

Please see our response to question 200. This disclosure will not usually be material. Where it is, it will be disclosed under the general disclosure obligation under article 5 of the Prospectus Directive.

Operating and financial review and prospects

Question 209: Do you consider Section V.D of IOSCO to be relevant disclosure for these products? Please give your reasons.

This section is not relevant to an issuer of derivative securities. The investor's interest in the issuer is limited to its ability to pay out on the derivative. Operating margins and other financial analysis are only of interest to investors in shares, who are looking to capital appreciation and dividends.

Question 210: Please advise what, if any, other disclosure requirements set out in Section V of IOSCO you consider to be relevant for these products. Please give your reasons.

We do not believe that any other disclosure requirements are relevant.

Directors, Senior Management and Employees

Question 212: Do you consider that the name and function of the directors of the issuing company be the appropriate level of disclosure for these products?

Yes.

Question 213: Please advise what if any other items of Section V of IOSCO you consider to be of relevance for these products. Please give your reasons.

Further information is not of relevance to investors in derivatives. Such investors are not making an equity investment in the shares of the issuer.

Major Shareholders and related party transactions

Question 215: Do you consider that a statement setting out whether or not the company is directly or indirectly owned or controlled by another entity and the name of that entity to be the appropriate level of disclosure for these products?

This information is not of relevance to investors in derivatives. Such investors are not making an equity investment in the shares of the issuer.

Financial Information

Question 217: At this stage do you have views about whether the following types of financial information about the issuer are relevant and as such should be disclosed in the registration document for these products? Please give your reasons.

- a) balance sheet***
- b) profit and loss account***
- c) statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognised directly in equity)***
- d) cash flow statement***
- e) accounting policies***
- f) related notes and schedule required by the comprehensive body of accounting standards to which the financial statements are prepared.***

Detailed information on the issuer should not be required. Please see our response to question 200.

Question 218: For how many years should the above disclosure be given?

- a) for the last year, or***

- b) for the last two years.*

Please see our response to question 217.

Question 219: Do you think that there should be a disclosure requirement that the notes to the accounts be included in the registration document for these products? Please give your reasons.

Please see our response to question 217.

Question 220: Please advise which (if any) of the other CESR disclosure standards set out in Sections VII.C-VII.I of the Corporate Retail Debt building block at Annex “I” you deem to be relevant disclosure for these products. Please give your reasons.

Detailed information on the issuer should not be required. Please see our response to question 200.

Additional Information

Question 222: At this stage do you have views about which of the following sections of IOSCO regarding the issuer’s share capital you consider to be relevant information to be disclosed in the registration document for these products? Please give your reasons.

- a) Section X.A.1*
- b) Section X.A.2*
- c) Section X.A.3*
- d) Section X.A.4*
- e) Section X.A.5*
- f) Section X.A.6*

We do not believe that all the disclosure requirements should be detailed in this way. Some of these items may be material to an investors in some circumstances in which case they will be disclosed in accordance with the general obligation of disclosure. We would suggest a much more general approach should be adopted to this section.

Question 223: At this stage do you have views about which of the following sections of IOSCO regarding the issuer’s Memorandum and Articles of Association you consider to be relevant information to be disclosed in the registration document for these products? Please give your reasons.

- a) Section X.B.1*
- b) Section X.B.2*

- c) *Section X.B.3*
- d) *Section X.B.4*
- e) *Section X.B.5*
- f) *Section X.B.6*
- g) *Section X.B.7*
- h) *Section X.B.8*
- i) *Section X.B.9*
- j) *Section X.B.10*

We do not consider any of this information should be required in the case of derivatives securities as it is not material for investors in such securities.

Question 224: In relation to Section X.C of IOSCO which sets out the Material Contracts disclosure requirements, at this stage do you have views about which material contracts for these products should be summarised in the registration document for these products? Please give your reasons.

This information is not relevant to investors in derivatives, unless the contract is part of the derivative structure (in which case, it would be summarised in the prospectus pursuant to the general disclosure requirement.).

Question 225: Do you consider Section X.C of IOSCO which sets out the Exchange Controls disclosure requirements to be relevant for these products? Please give your reasons.

We do not consider this to be relevant. Virtually all issuers of derivatives come from jurisdictions that have no exchange control.

Question 226: Do you consider that the information about the issuer's dividend policy as set out in Section X.F of IOSCO to be relevant for these products? Please give your reasons.

The dividend policy of the issuer is not relevant for these products as the investor is not entitled to any dividend payment of the issuer.

Question 227: In relation to Section X.H of IOSCO which sets out the documents on display disclosure requirements, at this stage do you have views about which documents should be put on display for these? Please give your reasons.

We do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not be necessary for investors to refer to documents on display. In our experience documents available for inspection are very rarely inspected by investors but are inspected by competitors who use the

opportunity to examine documents for commercially sensitive information. The requirement to display documents is therefore of limited use to investors when balanced with the cost of complying with this requirement. In relation to third country issuers, this requirement would be a further barrier to entry, particularly where the contracts in question would require translation.

Question 228: Do you consider that information about the issuer's subsidiaries as set out in Section X.I of IOSCO to be relevant disclosure for these products? Please give your reasons.

We believe that information about the issuer's subsidiaries will not normally be relevant. Derivatives are normally hedged, so that the investor is more dependent on the workings of the hedge than the credit of the issuer's group.

Disclosure Requirements for Guaranteed Derivative Securities

Question 232: Should all guaranteed derivative securities, irrespective of the percentage return they offer an investor, be treated in the same way, or should there be some form of minimum return that is guaranteed for these instruments in order for the product to be classifiable as a guaranteed return derivative as opposed to a non-guaranteed return derivative?

We do not believe that there is a meaningful difference between guaranteed derivatives and non-guaranteed return derivatives.

Question 233: If you consider that a percentage benchmark should be set to distinguish between those products where the return is high and therefore additional disclosure about the issuer is justified, please specify what this percentage of return should be, and give a reason for your answer.

Please see our response to question 232.

Question 234: Do you consider that in addition to the percentage return on the investment, the life of the product should be taken into consideration, so that an instrument that has a 100% capital guarantee return with only a 6 month life cycle should be treated for disclosure purposes differently than a product with 100% capital guarantee but with a 10 year life cycle? Please give reasons for your answers.

We believe that in both cases the relevant disclosure relates to the amount of your minimum return.

SECURITIES NOTE

Building Block approach at the point of issue

As a general point, article 5, paragraph 3 of the Prospectus Directive states that the registration document shall contain the information relating to the issuer and that the securities note shall contain the information concerning the securities offered or to be admitted to trading on a regulated market. It is only to the extent that information is not available for inclusion in the registration document or a supplement to the prospectus is required that it should be included in the securities note. Article 7 requires that the implementing measures adopted by the Commission should avoid duplication of information where a prospectus is composed of separate documents.

This structure has not however been followed through in the CESR Proposals. There are a number of areas where the disclosure requirements in the registration document and securities note are duplicated (eg details on the identity of directors and senior management etc) and this should be rectified. We refer you to our mark-up of the Annexes.

Question 249: Do you consider it an appropriate approach to obtain flexibility by creating specific building blocks on particular characteristics of some issuers, offers, markets and securities?

Yes, we consider it appropriate to create specific building blocks. We believe that a proliferation of building blocks should however be avoided and that the building blocks should be expressed at a level of generality to avoid this.

We would also note that under Article 8 of the Prospectus Directive, those responsible for the prospectus must be at least the issuer or its directors, the offeror or the person asking for admission to trading on a regulated market. The person responsible must give a responsibility statement. Annex A requires a responsibility statement to be given in relation to the registration document and Annex K requires a responsibility statement to be given in relation to the prospectus as a whole. These statements appear to be required from persons taking responsibility for parts only of the registration document or prospectus. This may mean that accountants or other experts, who are required to authorise the inclusion of their reports or statements in the document would have to give a responsibility statement which would look at the import of the whole prospectus. This is considerably more onerous than merely taking responsibility for the accuracy of their own statement or report.

Question 250: Format of the Schedules – Is the format of the three main schedules suitable? These schedules are composed of (i) common items and (ii) specific items for each type of securities, amalgamated into one single document Is this approach sensible or should the common items and the specific items form distinct blocks?

We believe that this approach is sensible. Rather than repeating the common items, we would suggest the addition of a statement in each building block noting which items in the common block apply.

Question 251: Complex financial instruments – In order to ensure adequate disclosure for securities that do not fall within just one of the three main types, do you agree that the Competent Authority should (as envisaged by Article 21(4)(a) of the amended proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC) be able to add specific items of another schedule to the main schedule chosen, that it considers necessary having regard to the characteristics of the securities offered, as opposed to their legal form?

We believe that it is vital that the competent authorities have discretion to add specific items from another schedule having regard to the securities offered. We also believe that the competent authorities should have the discretion not to require disclosure where the disclosure is not relevant to the product. Please see our comments on the power to derogate in Part I, section 5. This flexibility should also apply to the registration document. Each of these concepts is necessarily implicit in the general disclosure standard in Article 5 of the Directive. It is, however, vital that the competent authorities provide reasonable certainty and predictability as to their approach at Level 3.

Question 252: Section I.2 – Should advisers be mentioned in all cases, or only if they could be held liable by an investor in relation with the information given in the prospectus?

We believe that advisers should not generally be required to be disclosed. (See our response to question 135).

Question 253: Section I.5 – Under Section I.5., the securities note should mention any other information in the prospectus besides the annual accounts, which have been audited or reviewed by the auditors. Should the securities note contain the “auditors report relating to this information”?

We believe that it is inappropriate to include this information in the securities note. The securities note should contain the terms of the relevant product only and any information required to be disclosed to up-date the registration note or which was not available for inclusion in the registration note.

Question 254: Sections I.6. and I.7 – Sections I.6. and I.7. both concern the responsibility attached to drawing up a prospectus. Although under the proposed directive it is possible to choose a format consisting of three documents (Registered Document, Securities Note and Summary), these three documents are considered as making one prospectus. Is it therefore correct to assume that responsibility for each of these three parts must rest with the same persons?

No, responsibility should be able to rest with various persons. There may, for example, be practical difficulties in imposing the requirements for the same persons to be responsible for both the securities note and registration document where these are published at different times eg the board of directors might change.

Question 255: Section III.A. – Under Section III.A. all securities notes must contain a statement of capitalisation and indebtedness. Is such a statement necessary for derivatives?

No - this information is not material to investors in derivatives who are interested in the issuer's ability to pay out on the derivative.

Question 256: Section III.B. (III.B.1. for the derivatives schedule) – Section III.B. asks to list the reasons for the offer and the use of proceeds. While this is an important item for shares and bonds, is it also the case for derivatives?

No, we do not believe that this is relevant. Derivatives are not typically issued to raise capital.

Question 257: Section III.C.2.(d) [for the derivatives schedule] – Section III.C.2.(d) requires inclusion of a worked example of the “worst case scenario”.

- 1) *Does this information provide material information for investors?*
- 2) *Are there circumstances in which an example of the worst case scenario is not appropriate?*
- 3) *Would the disclosures as set out below be an appropriate alternative:*
 - a) *a risk warning to the effect that investors may lose the value of their entire investment, and/or*
 - b) *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.*

We do not think that it is helpful to include a “worst case scenario”. We believe that the risks are more appropriately dealt with by a risk warning notices but that risk notices will not generally be required at derivatives directed at professional investors.

Question 258: Section IV.A. – Under Section IV.A., the interests of experts in the issue or the offer must be disclosed. These interests encompass those of any expert or counsellor who “has a material, direct or indirect economic interest in the company”. Is it necessary in the case of derivatives?

We do not believe that disclosure of interests of experts is an appropriate method of dealing with these conflicts. We believe that conflicts of interests should be dealt with under the rules of the relevant professional bodies which would usually prohibit members from putting themselves in a position of conflict. If it is material for disclosure, it probably should not have been allowed in the first place.

Question 259: Section V.A. – Section V.A. lists the items to be disclosed in order to give a description of the securities that are offered or admitted to trading. Should the following additional items be added to Section V.A.:

- a) *Legislation under which securities have been created;*
- b) *Court competent in the event of litigation;*
- c) *Redress Service available for investors, if any?*

Disclosure on the legislation under which the securities have been created should not be required to be disclosed. This would lead to uncertainty as to the level of detail required. If disclosure is material, it will be disclosed under the general duty to disclose anything which is material to investors.

It would not be realistic to disclose the courts of competent jurisdiction as this depends on many factors including the claimant and the nature of the claim being brought.

Should information about the rating of the issuer or of the issues be mentioned under that item?

We do not believe that information on the rating should be required to be disclosed. The issuer should only be required to give information that it can be responsible for. Ratings are outside its control and should only be included if the issuer so wishes.

If yes, which one of the following wording would be more appropriate:

- ***“Rating assigned to the issue or to the securities by rating agencies and/or commercial bank lenders pointing out the name of the rating organisation whose rating is disclosed and explaining the meaning of the rating. If a rating does not exist, to the knowledge of the issuer, it is required to disclose the fact that there is no rating”, or***
- ***“Rating assigned, at the issuers requests or with its co-operation, to the issue or to the securities by rating agencies and/or commercial bank lenders, pointing out the name of the rating organisation whose rating is disclosed and explaining the meaning of the rating”.***

Please see our response above.

Question 260: Section V.B.12, first indent of Annex M – Section V.B.12, first indent of Annex M requires a statement concerning the past performance of the underlying and its volatility. Is this disclosure necessary? Should the requirement for disclosure vary depend upon whether the underlying instrument is admitted to trading on a regulated market and the nature of the market? Should the requirement for disclosure vary depending upon the nature of the underlying instrument?

Please see our response to question 200 on the disclosure requirements we believe necessary for derivative products. We therefore believe that a statement concerning the past performance of the underlying and its volatility should not be required. The past performance of the underlying does not give any reliable information on the future performance of the underlying and is of no value to investors. Furthermore,

investors in derivatives can be compared to investors in equities in the secondary market who make investment decisions without the need to be supplied with the most recent publicly available information on the issuer. They can similarly be assumed to have a basic knowledge of the issuer of the underlying instrument and there should not be any requirement to provide this information in the prospectus.

Question 261: For the three main schedules, please identify those items that you deem unnecessary.

Please see our mark-up of the Annexes. There are a number of items which impose a burden of disclosure on issuers which outweigh any benefit to potential investors.

Question 262: For the three main schedules, please list those items that are missing and that should be in the securities notes.

Please see our mark-up of the Annexes.

INCORPORATION BY REFERENCE

Characteristics of incorporation by reference

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

We believe that there should not be any limitations on the documents that can be incorporated by reference provided that the requirements of the Prospectus Directive are met in relation to that document. We would suggest that the competent authorities should be allowed general flexibility to allow documents to be incorporated by reference.

We believe that third country issuers should be allowed to incorporate by reference any document that is publicly available or, alternatively, to file documents with the competent authority which could then be incorporated by reference. We refer you to our comments in Part I, section 11.6(b).

Question 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.

It would be helpful if it was made clear that parts of documents can be incorporated by reference. It would also be helpful if guidance could be given as to whether documents filed to give pricing information as required by Article 8.1 of the Prospectus Directive are deemed to be part of the prospectus (to which liability and responsibility provisions apply).

Documents that can be incorporated by reference for annual up-dating of the registration document

Question 289: Should other aspects concerning the accessibility of the documents incorporated by reference be considered?

We agree that documents incorporated by reference should be accessible in the same way as the prospectus to which they relate.

Question 290: Should CESR give other technical advice on further aspects of incorporation by reference? In the case of an affirmative answer please indicate which technical advice should be given.

Please see our response to question 282 above.

AVAILABILITY OF THE PROSPECTUS

As a general point, we believe that the prospectus and other documents incorporated by reference should be available in a password protected area of an issuer's website which warns a user as they leave that section that other material on the website does not form part of the prospectus. This is of vital importance to ensure that other material on an issuer's website does not form part of the prospectus.

In addition, we believe that it is important to ensure that the requirements on the availability of the prospectus fit in with international securities law. For example, if you have a Reg. S offering, you must be able to password protect certain areas of your website to avoid breaching US securities legislation.

Question 307: Should there be technical implementing measures at Level 2 further defining what is deemed to be "easy access" and which specific file formats are accepted for this purpose?"

No, it is not necessary to have detailed advice in this area subject to our introductory remarks. In any event, such advice would become out of date in a very short time frame because of technological advances. Alternatively, flexibility needs to be given at Level 3.

Question 314: Are there any additional factors and/or requirements that should be taken into account at Level 2 concerning the availability via the press?

We believe that these requirements are too restrictive. The circulation requirements may mean that certain newspapers, such as "tabloids", fall within this category which would probably not be regarded by issuers as suitable newspapers for the publication of a prospectus. It may also mean that specialist newspapers such as the Financial Times would not be caught. In any event, flexibility should be given at Level 3.

Question 325: Do you consider appropriate the requirement to publish the said notice in the absence of a specific provision in the Directive proposal?

No. In the 21st Century, it is probable that increasing use will be made of internet technology for publication. This technology permits investors to register an interest in particular issues, resulting in an electronic message being "pushed" to the investor when information is updated. The Level 2 arrangements should expressly permit the use of such existing technology. However, we note that the directive has been amended to provide for such notices.

Question 326: Should the minimum content of the notice be determined at Level 2 legislation?

No.

Question 327: When the prospectus is made available by its insertion in one or more newspapers or in the form of a brochure, besides the publication of a specific notice, should the list available at the web-site of the competent authority (see Introduction) mention where the prospectus is available?

Yes.

Question 328: In case of an affirmative answer to the previous question, should the indication in the website of the competent authority be considered enough and, consequently, should it be considered as an alternative to the publication of a formal notice by the issuer/offer?

Yes, as this would lessen the costs to issuers while still providing the information to potential investors. We should note that in cases where issues are targeted at certain specific investors we do not believe that there should any requirement to publish a general notice.

Question 331: Which other issues regarding the availability of the prospectus in the form of a brochure should be covered by CESR's technical advice?

We do not think further advice in this area is necessary.

Question 334: Do you agree that the issuer should not ask the investor the payment of the deliver or mail costs?

We agree.

Question 335: Should additional issues regarding the delivery of a paper copy of the prospectus be dealt with by Level 2 legislation?

We do not believe that this is required.

ANNEX A

Core Equity Registration Building Block

CESR Proposal		IOSCO IDS Reference
I.A	Responsibility for the prospectus or certain parts of them	I.A.
I.A.1	Provide the name and function of natural persons and name and registered office of legal persons responsible for the registration document or, as the case may be, for certain parts of them, with, in the latter case, an indication of those parts. <i>This needs to be amended to make clear that responsibility can be taken by either by personal liability or by liability of legal persons at the choice of the issuer.</i>	
I.A.2	Provide a declaration by those persons that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information given in that part of the registration document for which they are responsible is in accordance with the facts and does not omit anything likely to affect the import of the registration document.	
I.B	Advisers Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities. <i>We do not believe that this disclosure should be required. Please see our response to question 135.</i>	I. B.
I.C	Auditors.	I.C.
I.C.1	Provide the names and addresses of the company's auditors for the preceding three years (together with their membership in a of any relevant professional body).	
I.C.2	If auditors have resigned, been removed or not been re-appointed during the last three financial years, details must be disclosed if material.	
II.A	Selected Financial Data. <i>This section is too detailed. We believe that it should be amended to allow the inclusion of summary financial data (generally described) if appropriate.</i>	III.A.1. III.A.2.
II.A.1	The company shall provide selected historical financial data regarding the company, which shall be presented for the three most recent financial years (or such shorter period that the company has been in operation), in the same currency as	

CESR Proposal		IOSCO IDS Reference
	the financial statements.	
II.A.2	If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be unaudited, provided that fact is stated. If selected financial data 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).	
II.A.3	The selected financial data presented shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); net income (loss) from operations per share; income (loss) from continuing operations per share; total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock); number of shares as adjusted to reflect changes in capital; dividends declared per share, including the formula used for any adjustments to dividends declared; and diluted net income per share. Per share amounts must be determined in accordance with the body of accounting principles used in preparing the financial statements.	
II.B	Risk Factors. The document shall prominently disclose risk factors, <u>if any</u> , that are specific to the company or its industry and make an offering <u>unusually</u> speculative or one of high risk in a section headed "Risk Factors".	III.D.
	<i>Risk disclosure should be linked to the general disclosure requirement. Please see our response to question 47.</i>	
III	Information about the issuer	
III.A	History and Development of the Company. The following information shall be provided:	IV.A.
III.A.1	The legal and commercial name of the company.	IV.A.1.
III.A.2	The place of registration of the issuer and its registration number.	

CESR Proposal		IOSCO IDS Reference
III.A.3	The date of incorporation and the length of life of the company, except where indefinite.	IV.A.2.
III.A.4	The-domicile and legal form of the company, the legislation under which the company operates, its country of incorporation, website address and the address and telephone number of its registered office (or principal place of business if different from its registered office). <i>We believe that it is inappropriate to include the issuer's web-site address in the prospectus. Material on the website may be considered to form part of the prospectus and this raises liability questions.</i>	IV.A.3.
III.A.5	The important events in the development of the company's business, e.g. information concerning the nature and results of any material reclassification, merger or consolidation of the company or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the mode of conducting the business; material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the company or significant subsidiaries. <i>This should not be a 'for all time' requirement. A temporal restriction should be added.</i>	IV.A.4.
III.B	Investments	
III.B.1	A description, including the amount invested, of the company's principal capital expenditures and divestitures (including interests in other companies), since the beginning of the company's last three financial years to the date of the registration document <u>and information concerning the company's principal future investments in connection with which its management bodies have already made firm commitments.</u>	IV.A.5.
III.B.2	Information concerning the principal capital expenditure and divestures currently in progress, including the distribution of these investments (home and abroad) and the method of financing (internal or external). <i>We do not believe that the split of information is material to investors.</i>	IV.A.6.
III.B.3	Information concerning the company's principal future investments, with the exception of interests to be acquired	

CESR Proposal		IOSCO IDS Reference
	in other undertakings on which its management bodies have already made firm commitments. <i>Only interests to be acquired in other undertakings etc on which firm commitments have been made should be required to be disclosed. Other possible future investments are, until that point, uncertain and should not be required to be disclosed.</i>	
III.B.4	An indication of any public takeover offers by third parties in respect of the company's shares or by the company in respect of other companies' shares which have occurred during the last and current financial year. The price or exchange terms attaching to such offers and the outcome thereof are to be stated. <i>This information is not material to investors in the majority of cases. In those circumstances where it is material, it will be disclosed under the general duty of disclosure.</i>	IV.A.7.
III.C	Business Overview	
III.C.1	Principal Activities The following information shall be provided:	IV.B.
III.C.1.a	A description of the nature of the company's operations and its principal activities, stating the main categories of products sold and/or services performed for each of the last three financial years.	IV.B.1.
III.C.1.b	Indicate any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.	IV.B.1.
III.C.2	Principal Markets	IV.B.2.i
	A description of the principal markets in which the company competes, including (<u>if readily available</u>) a breakdown of total revenues by category of activity and geographic market for each of the last three financial years. <i>This information should only be required to be disclosed if it is readily available to companies.</i>	
III.C.3	Where the information given pursuant to III.B.1 and III.B.2 above has been influenced by exceptional factors, that fact should be mentioned.	
III.C.4	If material to the company's business, a description of the	IV.B.3.

CESR Proposal		IOSCO IDS Reference
	seasonality of the company's main business.	
III.C.5	If material to the company's business, a description of the sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile.	IV.B.4.
III.C.6	If material, a description of the marketing channels used by the company, including an explanation of any special sales methods, such as instalment sales.	IV.B.5.
III.C.7	Summary information regarding the extent to which the company is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to the company's business or profitability.	IV.B.6.
III.C.8	The basis for any statements made by the company regarding its competitive position shall be disclosed.	IV.B.7.
III.D	Organizational Structure.	IV.C.
III.D.1	If the company is part of a group, include a brief description of the group and the company's position within the group.	
III.D.2	Provide a listing of the company's significant subsidiaries, including name country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.	

CESR Proposal		IOSCO IDS Reference
III.E	Property, Plants and Equipment. The company shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the size and uses of the property; productive capacity and extent of utilization of the company's facilities; how the assets are held; the products produced; and the location. Also describe any environmental issues that may affect the company's utilization of the assets. With regard to any material plans to construct, expand or improve facilities, describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion. <i>This disclosure requirement is too widely drawn and should be restated in general terms. The second part of this test duplicates the requirements for disclosure of capital expenditure.</i>	IV.D.
IV.A	Operating Results <i>This entire section is too detailed for Level 2. It should be restated in general terms.</i>	V.A.
IV.A.1	Provide information regarding, significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations.	
IV.A.2	To the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.	V.A.I.
IV.A.3	Describe the impact of inflation, if material. If the currency in which financial statements are presented is of a country that has experienced hyperinflation the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business shall be disclosed. <i>There should be no requirement to disclose this</i>	V.A.2.

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	<i>information. Where material, the general duty of disclosure will drive disclosure.</i>	
IV.A.4	Provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments.	V.A.3.
IV.A.5	Provide information regarding any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations. <i>There should be no requirement to disclose this information. Where material, article 5 will drive disclosure.</i>	V.A.4.
IV.B	Liquidity and Capital Resources. <i>This section is too detailed for Level 2. We would suggest that it should be replaced by a single sentence requiring commentary on the fact that the company has adequate working capital for the next year and a description of its liquidity position.</i>	V. B.
	The following information shall be provided:	
IV.B.1	Information regarding the company's liquidity (both short and long term), including:	V.B.1.
IV.B.1.a	a description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity.	V.B.1.a.
IV.B.1.b	an evaluation of the sources and amounts of the company's cash flows, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations.	V.B.1.b.
IV.B.1.c	information on the borrowing requirements and funding structure of the company, including: seasonality of borrowing requirements; details of the level of borrowings at the end of the period under review; details of the main loan agreements including interest rate, interest rate-adjustment clauses, maturity, instalments payable over the next five years and special loan terms which substantially restrict the company's freedom of action or restrict the transferability of	V.B.1.e.

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	shares.	
IV.B.2	If material to an assessment of the company's liquidity, information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.	V.B.2.
IV.B.3	Information regarding the company's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfil such commitments. <i>This duplicates the disclosure requirements on capital expenditure.</i>	V.B.3.
IV.C	Research and Development, Patents and Licenses, etc. Where material, provide a description of the company's research and development policies for the last three years, including the amount spent during each of the last three financial years on company-sponsored research and development activities.	V.C.
IV.D	Trend Information.	V.D.
IV. D.1	The company should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition. <i>This is excessively detailed and should be restated in general terms. For example, the state of most company's order book is not material information for investors. In those cases where it is material, it would be disclosed under the general duty of disclosure.</i>	

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IV.D.2 Information on the issuer's <u>company's</u> prospects for at least the current financial year must be included. Where a profit forecast, profit estimate or any other kind of issuer's prospect appears, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated; the forecast or estimate should be examined and reported on by the reporting accountants or auditors and their report should be set out, the report should include confirmation from the auditors that the forecast has been made after due and careful enquiry by the directors. <i>We do not believe that there should be a requirement to include a profit forecast – this should be clarified. Please see further our response to question 37.</i>	
IV.D.3.a The profit forecast or prospects should include a statement of the principal assumptions for each factor which could have a material effect on the achievement of the forecast. The assumptions 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. A profit estimate may be subject to assumptions only in exceptional circumstances.	
IV.D.3.b Any profit forecast shall be accompanied by a statement ensuring that said forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the company.	
V.A Directors and Senior Management <i>We believe that this entire section is too detailed for Level 2 and that it should be restated in general terms.</i> The following information shall be disclosed:	
V.A.1 The names, business addresses and functions of the company's directors and senior management. Names, <u>business</u> addresses and functions in the issuing company of the following persons and an indication of the principal activities performed by them outside that company where these are significant with respect to that company: (a) members of the administrative, management or supervisory bodies; (b) partners with unlimited liability, in the case of a	VI.A. 1-5.

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limited partnership with a share capital; (c) founders, if the company has been established for fewer than five years; and (d) any senior manager who is relevant to establishing that the company has the appropriate expertise and experience for the management of the company's business. The nature of any family relationship between any of the persons named above. In the case of each director of the company and person described in (a) and (d), details of that person's relevant management expertise and experience and the following information: (a) the names of all companies and partnerships of which such person has been a director or partner at any time in the previous five years, indicating whether or not the individual is still a director or partner. It is not necessary to list all the subsidiaries of a company of which the person is also a director; (b) any convictions in relation to fraudulent offences; (c) details of any bankruptcies or individual voluntary arrangements of such person; (d) details of any receiverships, compulsory liquidations, creditors voluntary liquidations, administrations, company voluntary arrangements or any composition or arrangement with its creditors generally or any class of its creditors of any company where such person was a director with an executive function at the time of or within the 12 months preceding such events; (e) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where such person was a partner at the time of or within the 12 months preceding such events; (f) details of receiverships of any asset of such person or of a partnership of which the person was a partner at the time of or within the 12 months preceding such event; and (g) details of any public criticisms of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever	

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	been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company. or, if there is no such information to be disclosed, that fact.	
V.A.2	Management and directors' conflicts of interests	
	Potential conflicts of interests between any of the directors' 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. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in V.A. I was selected as a director or member of senior management.	
V.B	Compensation <i>We believe that this section is far too detailed and that it should be significantly reduced.</i>	VI.B.
	Provide the following information for the last full financial year for the company's directors and members of its administrative, supervisory or management bodies:	
V.B.1	The amount of compensation paid, and benefits in kind granted, to such persons by the company and its subsidiaries for services in all capacities to the company and its subsidiaries by any person. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company. The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date. If any portion of the compensation was paid (a) pursuant to a bonus or profit-sharing plan, provide a brief description of the plan and the basis upon which such persons participate in the plan; or (b) in the form of stock options, provide the title and amount of securities covered by the options, the exercise price, the purchase price (if any), and the expiration date of the options.	VI.B.1.
V.B.2	The total amounts set aside or accrued by the company or its subsidiaries to provide pension, retirement or similar benefits.	VI.B.2.
V.C	Board Practices.	VI.C.

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	The following information for the company's last completed financial year shall be given with respect to, unless otherwise specified, the company's directors, and members of its administrative, supervisory or management bodies. <i>Issues of corporate governance should not be dealt with by detailed disclosure in the prospectus. As this is an evolving area we would suggest that disclosure should be limited to the general principles.</i>	
V.C.1	Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.	VI.C.1.
V.C.2	Details of directors' service contracts with the company or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.	VI.C.2.
V.C.3	Details relating to the company's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.	VI.C.3.
V.C.4	A statement as to whether or not the company complies with its country's of incorporation corporate governance regime should also be included. In the event that the company does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the company does not comply with such regime.	
V.D	Employees. <i>We believe that this entire section is far too detailed and believe a more general approach is appropriate.</i> Provide either the number of employees at the end of the period or the average for the period for each of the past three financial years (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. Also, where material, disclose any significant change in the number of employees, and information regarding the relationship between management and labour unions. If the company employs a significant number of temporary employees, include disclosure of the number of temporary employees on an average during the most recent financial year.	VI.D.1

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V.D.1	With respect to the persons listed in subsection V.B above (and connected persons), provide information as to their share ownership in the company as of the most recent practicable date (including disclosure on an individual basis of the number of shares and percent of shares outstanding of that class, and whether they have different voting rights) held by the persons listed and options granted to them on the company's shares. Information regarding options shall include: the title and amount of securities called for by the options; the exercise price; the purchase price, if any; and the expiration date of the options.	VI.E.1.
V.D.2	Describe any arrangements for involving the employees in the capital of the company, including any arrangement that involves the issue or grant of options or shares or securities of the company.	VI.E.2.
VI.A	Major Shareholders	VII.A.
VI.A.1.a	In so far as is known to the company, the name of any person other than a director who, directly or indirectly, has an interest notifiable under the company's national law in the company's capital or voting rights, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.	VII.A.1.a.
VI.A.1.b	Insofar as is known to the company, disclose any significant change in the percentage ownership held by any major shareholders during the past three years. <i>This disclosure will not be material to investors in the majority of cases. It should not be required in all cases. Where it is material the general disclosure obligation will drive disclosure.</i>	VII.A.1.b
VI.A.1.c	Indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement.	VII.A.1.c.
VI.A.2	To the extent known to the company, state whether the company is directly or indirectly owned or controlled by another corporation(s), by any government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote. A description of any measures in place to ensure that: 1. all transactions and relationships between the	VII.A.3.

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company and such controlling corporation(s), government or other person(s) are, and will be, at arm's length and on a normal commercial basis; and 2. Such controlling corporation(s), government or other person(s) will not exercise their control against the interests of the company. Where there are no such measures in place a statement to this effect must be made.	
VI.A.3	VII.A.
VI.B	VII.B.
Related Party Transactions. <i>We question the effective duplication of the disclosure requirements in relation to “related party transactions” 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.</i> Provide the information required below for the period since the beginning of the company's preceding two three financial years up to the date of the document, with respect to transactions or loans between the company and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the company; (b) associates; (c) to the extent known to the company, individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the company, and close members of any such individual's family; (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the company, including directors and senior management of companies and close members of such individual's family; and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the company and enterprises that have a member of key management in common with the company. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the company. An associate is an unconsolidated enterprise in which the company has a	

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significant influence which has significant influence over the company. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the company are presumed to have a significant influence on the company. 1. The nature and extent of any transactions during the preceding or current financial year or presently proposed transactions which are material to the company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party. Where such transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given (in particular any special reports of the auditors on those transactions). <i>We would suggest that the final sentence should be deleted to ensure consistency with existing disclosure requirements.</i> 2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.	
VI.C Interests of Experts and Counsel. If any of the named experts or counsellors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries, <u>other than on a discretionary basis</u>, which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest. <i>We believe that conflicts of interests should be dealt with under the conduct of business or the rules of the relevant professional bodies rather than by a disclosure requirement in the prospectus.</i>	VII.C.

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VII	Financial information concerning the issuer's assets and liabilities, financial position and profits and losses	VIII
VII.A	Consolidated Statements and Other Financial Information The document must contain consolidated financial statements (where consolidated statements are prepared). Any financial statements contained in the registration document (whether consolidated or own accounts) must be audited by an independent auditor and accompanied by an audit report, comprised of: (a) balance sheet; (b) profit and loss account; (c) profit or loss per share (d) statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity); (e) cash flow statement; (f) accounting policies; (g) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared; and (h) if not included in the primary financial statements, a note analysing the changes in each caption of shareholders' equity presented in the balance sheet.	VIII.A.1.
VII.B	Notes to the accounts The notes to the accountant's report and comparative table must, as a minimum cover: (a) the last balance sheet; and (b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for all periods included in the accountants report or comparative table.	

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VII.C	Standard of account preparation The document should include comparative financial statements that cover the latest three financial years, audited in accordance with a comprehensive body of auditing <u>accounting</u> standards.	VIII.A.2.
VII.D	Own versus consolidated accounts If the company prepares consolidated annual accounts only, it shall include those accounts in the registration document. If the company prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the company may include either the own or the consolidated annual accounts, on condition that the accounts which are not included do not provide any significant additional information.	
VII.E	True and fair view If the own or consolidated annual accounts do not comply with the Council Directives on undertakings' annual accounts and do 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 must be given. In the case of issuers incorporated in a non-member state which are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient. <i>Query who will determine whether accounts drawn up to a different standard will be sufficient.</i> <i>Please see our comments in Part I, section 11.6(a).</i>	
VII.F	Auditing of accounts	
VII.F.1	Statement that the annual accounts have been audited. If audit reports on the annual accounts 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.	VIII.A.3.
VII.F.2	Indication of other information in the registration document which has been audited <u>reported on</u> by the auditors.	
VII.F.3	Where financial data in the registration document is not extracted without material adjustment from the company's audited accounts the company must state the source of the	

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	data and state that the data is unaudited.	
VII.G	Age of latest annual accounts	
VII.G.1	The last year of audited financial statements may not be older than 15 months from the date of the registration document; provided, however, that in the case of the company's initial public offering or admission to trading on a regulated market the audited financial statements also shall be as of a date not older than 12 months from the date of the registration document. In such cases, the audited financial statements may cover a period of less than a full year.	VIII.A.4.
VII.H	Interim financial statements	
VII.H.1	If the document is dated more than nine months after the end of the last audited financial year, it should contain own or consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year. <i>We believe that the requirement to up-date accounts should be limited to initial public offerings when it will be most relevant to investors.</i>	VIII.A.5.
VII.H.2 I	The interim financial statements should include a balance sheet, income statement, cash flow statement, and a statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the income statement) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements 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 year end balance sheet. If not included in the primary financial statements, a note should be provided analysing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual	

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	reporting date. If, at the date of the document, the company has published interim financial statements that cover a more current period than those otherwise required by this standard, the more current interim financial statements must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.	
VII.I	Export sales If the amount of export sales constitutes a significant portion of the company's total sales volume, provide the total amount of export sales and the percent and amount of export sales in the total amount of sales volume. <i>It is not clear to us what this is intended to cover. Is it intended to cover exports from the EU or intra-EU exports. In any event, this disclosure should not be required as it is not generally relevant.</i>	VIII.A.6.
VII.J	Dividend policy Describe the company's policy on dividend distributions. <i>We agree with the approach here of stating matters in general terms and believe it is a good example of how Level 2 should be drafted.</i>	VIII.A.8.
VII.J.1	The amount of the dividend per share for the last three financial years, adjusted, where the number of shares in the company has changed, to make it comparable.	
VII.K	Legal and arbitration proceedings Provide information on any legal or arbitration proceedings <u>related to it or where it is a party</u> (including such proceedings which are pending or threatened of which the company is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, or have had in the recent past (covering at least the previous 12 months), significant effects on the company and/or group's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.	VIII.A.7.

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VII.L	Significant change in the company's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.	VIII.B.
VIII	Additional information	
VIII.A	Share Capital. The following information shall be given as of the date of the most recent balance sheet included in the financial statements.	X.A.
VIII.A.1	The amount of issued capital and, for each class of share capital: (a) the number of shares authorized; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value, and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the past five years, that fact should be stated. <i>We believe that this should be three years, not five years.</i>	X.A.1.
VIII.A.2	If there are shares not representing capital, the number and main characteristics of such shares shall be stated.	X.A.2.
VIII.A.3	Indicate the number, book value and face value of shares in the company held by or on behalf of the company itself or by subsidiaries of the company.	X.A.3.
VIII.A.4	The amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.	
VIII.A.5	Where there is authorized but unissued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible obligations or other outstanding equity-linked securities, or subscription rights	X.A.4.

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	granted, indicate: (i) the amount of outstanding equity-linked securities and of such authorized capital or capital increase and, where appropriate, the duration of the authorization; (ii) the categories of persons having preferential subscription rights for such additional portions of capital; and (iii) the terms, arrangements and procedures for the share issue corresponding to such portions.	
VIII.A.6	The persons to whom any capital of any member of the group is under option or agreed conditionally or unconditionally to be put under option, including the title and amount of securities covered by the options; the exercise price; the purchase price, if any; and the expiration date of the options, or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving names.	X.A.5.
VIII.A.7	A history of share capital for the last three years identifying the events during such period which have changed the amount of the issued capital and / or the number and classes of shares of which it composed, together with a description of changes in voting rights attached to the various classes of shares during that time. Details should be given of the price and terms of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or instalment payments). If there are no such issues, an appropriate negative statement must be made. The reason for any reduction of the amount of capital and the ratio of capital reductions also shall be given.	X.A.6.
VIII.B	Memorandum and Articles of Association. Constitutional Documents <i>We believe that this entire section is far too detailed and should be replaced with a requirement to summarise as appropriate the company's constitutional documents. We are suggesting changing the term "memorandum and articles" to "constitutional documents" as this general term is more appropriate.</i>	
VIII.B.1	Describe the company's main or principal objects and purposes and where they can be found in the Memorandum	X.B.1.

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	and Articles of Association.
VIII.B.2	With respect to directors, provide a summary of any provisions of the company's articles of association or charter and bylaws with respect to: (a) a director's power to vote on a proposal, arrangement or contract in which the director is materially interested; (b) the directors' power, in the absence of an independent quorum, to vote compensation to themselves or any members of their body; (c) borrowing powers exercisable by the directors and how such borrowing powers can be varied; (d) retirement or non-retirement of directors under an age limit requirement; and (e) number of shares, if any, required for director's qualification.
VIII.B.3	Describe the rights, preferences and restrictions attaching to each class of the shares, including: (a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favour this entitlement operates; (b) voting rights, including whether directors stand for re-election at staggered intervals and the impact of that arrangement where cumulative voting is permitted or required; (c) rights to share in the company's profits; (d) rights to share in any surplus in the event of liquidation; (e) redemption provisions; (f) sinking fund provisions; (g) liability to further capital calls by the company; and (h) any provision discriminating against any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares.

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VIII.B.4	Describe what action is necessary to change the rights of holders of the stock indicating where the conditions are more significant than is required by law.	X.B.4.
VIII.B.5	Describe the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are convoked, including the conditions of admission.	X.B.5.
VIII.B.6	Describe any limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on the securities imposed by foreign law or by the charter or other constituent document of the company or state that there are no such limitations if that is the case.	X.B.6.
VIII.B.7	Describe briefly any provision of the company's articles of association, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the company and that would operate only with respect to a merger, acquisition or corporate restructuring involving the company (or any of its subsidiaries).	X.B.7.
VIII.B.8	Indicate the bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.	X.B.8.
VIII.B.9	Describe the conditions imposed by the memorandum and articles of association governing changes in the capital, where such conditions are more stringent than is required by law.	X.B.10.
VIII.C	Material Contracts. Provide a summary of each material contract, other than contracts entered into in the ordinary course of business, to which the company or any member of the group is a party, for the two years immediately preceding publication of the document, including dates, parties, general nature of the contracts, terms and conditions, and amount of any consideration passing to or from the company or any other member of the group. Provide details <u>which are material</u> of any other <u>material</u> contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.	X.C.

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	<i>Disclosure of material contracts will not be necessary for wholesale investors.</i>	
VIII.D	Exchange Controls. Where material to the company, describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect:	X. D.
VIII.D.1	the import or export of capital, including the availability of cash and cash equivalents for use by the company's group.	X.D.1.
VIII.D.2	the remittance of dividends, interest or other payments to non-resident holders of the company's securities.	X.D.2.
VIII.E	Statement by Experts Where a statement or report attributed to a person as an expert is included in the document, 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, who has authorised the contents of that part of the document.	X.G.
VIII.F	Documents on Display A statement that for the <i>life of the registration document (we are not clear what this phrase means)</i> the following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer (b) each document mentioned in paragraph VIII.C (material contracts) (c) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the listing particulars; (d) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the listing particulars <u>prospectus or registration document</u>. The company shall provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic	X.H.

CESR Proposal		IOSCO IDS Reference
	means. <i>We do not believe that issuers should be required to put these documents on display. Information should be adequately disclosed or summarised in the prospectus and it should not be necessary for investors to refer to documents on display. In any event, documents available for inspection are not often inspected by investors and in our experience it is more often the case that they are inspected by competitors. This disclosure is of limited value to investors when balanced with the cost of complying for the life of the registration document with this requirement.</i>	
VIII.G	Subsidiary Information. <i>We believe that this information is far too detailed and that it should be restated in general terms.</i>	X.1.
VIII.G.1	Individual details listed below relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses. The items of information listed below must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 10 % of the capital and reserves or accounts for at least 10 % of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 10 % of the consolidated net assets or accounts for at least 10% of the consolidated net profit or loss of the group. The items of information listed below need not be given provided that the issuer proves that its holding is of a purely provisional nature. Similarly, the information required under points (e) and (f) may be omitted where the undertaking in which a participating interest is held does not publish its annual accounts. [will need to be determined following IFRS agreement and implementation] Pending subsequent coordination of provisions relating to consolidated annual accounts, the Member States may authorize the competent authorities to permit the omission of the information prescribed in points (d) to (j) if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or if the value attributable to	

CESR Proposal		IOSCO IDS Reference
	the interest under the equity method is disclosed in the annual accounts, provided that, in the opinion of the competent authorities, the omission of that information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the security in question. The information provided for under points (g) and (j) may be omitted if, in the opinion of the competent authorities, such omission does not mislead investors. (a) Name and registered office of the undertaking. (b) Field of activity. (c) Proportion of capital and voting power (if different) held. (d) Issued capital. (e) Reserves. (f) Profit or loss arising out of ordinary activities, after tax, for the last financial year. (g) Value at which the issuer obliged to publish the registration document shows shares held in its accounts. (h) Amount still to be paid up on shares held. (i) Amount of dividends received in the course of the last financial year in respect of shares held. (j) Amount of the debts owed to and by the issuer with regard to the undertaking.	
VIII.G.2	The name, registered office and proportion of capital held in respect of each of the undertakings not referred to in [the paragraph above] in which the issuer holds at least 10 % of the capital. These details may be omitted where they are of negligible importance for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company or its group and of the rights attaching to its securities.	X.1.
VIII.G.3	When the registration document comprise consolidated annual accounts, disclosure: (a) of the consolidation principles applied. (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing	X.1.

CESR Proposal	IOSCO IDS Reference
the assets and liabilities, the financial position and the profits and losses of the issuer. (c) for each of the undertakings referred to in (b): - the total proportion of third-party interests, if annual accounts are consolidated globally; - the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.	

ANNEX I

Debt Registration Building Block

CESR PROPOSAL		IOSCO IDS ref
I.A	Responsibility for the prospectus or certain parts of it	I.A.
I.A. 1	Provide the name and function of natural persons and name and registered office of legal persons responsible for the prospectus or, as the case may be, for certain parts of them, with, in the latter case, an indication of those parts. <i>This needs to be amended to make clear that it is either personal liability or liability of legal persons at the choice of the issuer.</i>	
I.A.2	Provide a declaration by those persons that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information given in that part of the prospectus for which they are responsible is in accordance with the facts and does not omit anything likely to affect the import of the prospectus.	
I.B	Advisers: Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities. <i>We do not believe that this disclosure should be required. Please see our response to question 135.</i>	I.B.
I.C	Auditors	
I.C. 1	Provide the names and addresses of the company's auditors for the preceding three years (together with their membership in a <u>of any relevant</u> professional body).	
I.C.2	If auditors have resigned, been removed or not been re-appointed during the last three financial years, details must be disclosed if material.	I.C.
II.A	Selected financial data <i>We believe that this section is too detailed. We believe that it should be amended to allow the inclusion of summary financial data (generally described) if appropriate.</i>	

CESR PROPOSAL		IOSCO IDS ref
II.A.1	The company shall provide selected historical financial data regarding the company, which shall be presented for the two most recent financial years (or such shorter period that the company has been in operation), in the same currency as the financial statements.	III.A.2
II.A.2	If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be un-audited, provided that fact is stated. If selected financial data 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).	
II.A.3	The selected financial data shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock).	

CESR PROPOSAL		IOSCO IDS ref
II.B	Risk Factors	III.D.
	The document shall prominently disclose risk factors, <u>if any</u>, in a section headed “Risk Factors” that are: (a) specific to the company and its industry; and (b) <u>where the offering of securities of securities is unusually speculative or high risk</u> any other factor that may <u>materially</u> affect the company's ability to fulfil its obligations under the debt securities to investors. <i>The risk disclosure at (a) is not relevant to investors in debt securities because these factors do not affect the company's ability to pay interest on the debt or to repay the principal.</i> <i>Risk disclosure should be linked to the general disclosure requirement.</i>	
III	Information about the issuer	
III.A.	History and development of the Company The following information shall be provided.	IV.A.
III.A.1	The legal and commercial name of the company.	IV.A.1.
III.A.2	The place of registration of the company and its registration number.	
III.A.3	The date of incorporation and the length of life of the company, except where indefinite.	IV.A.2.
III.A.4	The domicile and legal form of the company, the legislation under which the company operates, its country of incorporation, website address, and the address and telephone number of its registered office (or principal place of business if different from its registered office). <i>We believe that it is inappropriate to include the issuer's web-site address in the prospectus. Material on the website may be considered to form part of the prospectus and this raises liability questions.</i>	IV.A.3.
III.A.5	Disclosure regarding any recent events relevant to the evaluation of the company's solvency, for example the nature and results of any bankruptcy, receivership or similar procedures with respect to the company or its significant subsidiaries.	IVA.4.

CESR PROPOSAL		IOSCO IDS ref
III.B	Investments <i>Investors in debt are not concerned with the investments made by a company or to be made. There may be circumstances where this is material information in which case it which case the general duty of disclosure will drive disclosure.</i>	
III.B.1	Principal Past investments Provide a description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings over the past three financial years and the months already elapsed of the current financial year.	IV.A.5
III.B.2	Investments being made Information concerning the principal investments being made including interests such as shares, and debt securities with the exception of interests being acquired in other undertakings. Distribution of these investments geographically (home and abroad). Method of financing (internal or external).	
III.B.3	Principal future investments Information concerning the company's principal future investments, with the exception of interests to be acquired in other undertakings, on which its management bodies have already made firm commitments.	IV.A.6.
III.C	Business Overview	
III.C.1	Principal activities The following information shall be provided:	IV.B.
III.C.1.a	A description of the issuer's principal activities stating the main categories of products sold and/or services performed.	IV.B.1.
IIIC.1.b	An indication of any significant new products and/or activities <u>that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.</u> <i>As currently drafted, the requirement may require disclosure of information not already in the public domain. This goes beyond the existing IOSCO standard.</i>	IV. B. I.

CESR PROPOSAL		IOSCO IDS ref
III.C.2	Principal Markets A brief description of the principal markets in which the company competes, including <u>(if readily available)</u> a breakdown of total revenues by category of activity and geographic market for each of the last 2 financial years. <i>This information should only be required if it is readily available to companies.</i>	IV.B.2.
III.C.3	The basis for any statements made by the company regarding its competitive position shall be disclosed.	IV.B.7.
III.D	Organisational Structure <i>This should be conformed to the requirements of Annex A.</i>	
III.D.1	If the company belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.	W.C.
III.D.2	If the company is dependant upon other entities within the group, this must be clearly stated together with an explanation of this dependence.	
III.E	Property plants and equipment <u>Insofar as it is relevant to an assessment of a company's debt securities, details on the location and size of the issuer's principal establishments and summary information about real estate owned. Any establishment which accounts for more than 10 % of turnover or production shall be considered a principal establishment.</u> <i>Only information which is relevant to an assessment of a company's debt securities needs to be disclosed.</i> <i>For issuers who prepare their accounts in accordance with IAS requirements, this information is included in the accounts and should not be required to be included separately in the prospectus.</i>	IV.D.
IV	Liquidity and capital resources	

CESR PROPOSAL		IOSCO IDS ref
IV.A	The company's capital expenditure commitments Information regarding the company's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfil such commitments. <i>Investors in debt securities are not concerned, in the majority of cases, with a company's capital expenditure. They are in a different position to equity investors who may be required to finance the expenditure. In those cases where it is material to an investor in debt securities, the general duty of disclosure will drive disclosure.</i>	V.B.3.

CESR PROPOSAL		IOSCO IDS ref
IV.B	Trend information	
IV.B.1	The company should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition. <i>This is excessively detailed and should be restated in general terms. For example, the state of most company's order book is not material information for investors. In those cases where it is material, it would be disclosed under the general duty of disclosure.</i>	
IV.B.2	Information on the issuer's <u>company's</u> prospects for at least the current financial year should be included. Where a profit forecast, profit estimate or any other kind of issuer's prospect appears, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated; the forecast or estimate should be examined and reported on by the reporting accountants or auditors and their report should be set out; the report should include confirmation from the auditors that the forecast has been made after due and careful enquiry by the directors. <i>We do not believe that there should be a requirement to include a profit forecast – this should be clarified. Please see further our response to question 37.</i>	V.D.
IV.B.3.a	The profit forecast or prospects should include a statement of the principal assumptions for each factor which could have a material effect on the achievement of the forecast. The assumptions 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. A profit estimate may be subject to assumptions only in exceptional circumstances.	

CESR PROPOSAL		IOSCO IDS ref
IV.B.3.b	Any profit forecast shall be accompanied by a statement ensuring that said forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the company.	
V	Directors and Senior Management The following information shall be disclosed:	VI
V.A	Provide the names, business addresses and functions of the company's directors and senior management.	IA
V.A.1	Names, <u>business</u> addresses and functions in the issuing undertaking of the following persons, and an indication of the principal activities performed by them outside that undertaking where these are significant with respect to that undertaking: (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.	VI.A.1
V.B	Management and directors conflicts of interests Potential conflicts of interests between any of the directors' 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.	VI.A.5
V.C	Board Practices <i>Issues of corporate governance should not be dealt with by detailed disclosure in the prospectus. As this is an evolving area we would suggest that disclosure should be limited to the general principles.</i>	VI.C.
V.C.1	Details relating to the company's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.	VI.C.3.
V.C.2	A statement as to whether or not the company complies with its country's of incorporation corporate governance regime should also be included. In the event that the company does not comply with such a regime a statement to that effect must be included together with an explanation regarding why the company does not comply with such regime.	

CESR PROPOSAL		IOSCO IDS ref
VI.A	Major Shareholders <i>In the majority of cases, this will not be material to investors in a company's debt. Disclosure should not be required in all cases. Where is material, the general duty of disclosure will drive disclosure.</i>	VII.A.
VI.A.1.a	In so far as is known to the company, the name of any person other than a director who, directly or indirectly, has an interest notifiable under the company's national law in the company's capital or voting rights, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.	VII.A.I.a.
VI.A.1.b	Indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement.	VII.A.I.e.
VI.A.2	To the extent known to the company, state whether the company is directly or indirectly owned or controlled by another corporation(s), by any government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote. A description of any measures in place to ensure that: 1. all transactions and relationships between the company and such controlling corporation(s), government or other person(s) are, and will be, at arm's length and on a normal commercial basis; and 2. such controlling corporation(s), government or other person(s) will not exercise their control against the interests of the company. Where there are no such measures in place a statement to this effect must be made.	VII.A.3.
VI.A.3	Describe any arrangements, known to the company, the operation of which may at a subsequent date result in a change in control of the company.	VII.A.4

CESR PROPOSAL		IOSCO IDS ref
VI.B	Related Party Transactions. Provide the information required below for the period since the beginning of the company's preceding <u>two</u> three financial years up to the date of the document, with respect to transactions or loans between the company and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the company; (b) associates; (c) to the extent known to the company, individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the company, and close members of any such individual's family; (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the company, including directors and senior management of companies and close members of such individual's families; and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the company and enterprises that have a member of key management in common with the company. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the company. An associate is an unconsolidated enterprise in which the company has a significant influence or which has significant influence over the company. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the company are presumed to have a significant influence on the company. <i>We question the effective duplication of the disclosure requirements in relation to “related party transactions” 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.</i>	VII.B

CESR PROPOSAL	IOSCO IDS ref
	1. The nature and extent of any transactions during the preceding or current financial year or presently proposed transactions which are material to the company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party. Where such transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given (in particular any special reports of the auditors on those transactions).<i>We would suggest that the final sentence should be deleted to ensure consistency with existing requirements.</i> 2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.

CESR PROPOSAL		IOSCO IDS ref
VII	Financial information concerning the issuer's assets and liabilities, financial position and profits and losses	VIII
VII.A	Consolidated Statements and Other Financial Information The document must contain consolidated financial statements (where consolidated statements are prepared). Any financial statements contained in the prospectus (whether consolidated or own accounts) must be audited by an independent auditor and accompanied by an audit report, comprised of (a) balance sheet; (b) profit and loss account; (c) statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity); (d) cash flow statement; (e) accounting policies; (f) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are reared	VIII.A.1.
VII.B	Notes to the accounts The notes to the accountant's report and comparative table must, as a minimum cover: (a) the last balance sheet; and (b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for all periods included in the accountants report or comparative table.	
VII.C	Standard of account preparation The document should include comparative financial statements that cover the latest two financial years, audited in accordance with a comprehensive body of auditing <u>accounting</u> standards.	VIII.A.2

CESR PROPOSAL		IOSCO IDS ref
VII.D	Own versus consolidated accounts If the company prepares consolidated annual accounts only, it shall include those accounts in the prospectus. If the company prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the company may include either the own or the consolidated annual accounts, on condition that the accounts which are not included do not provide any significant additional information.	
VII.E	True and fair view If the own or consolidated annual accounts do not comply with the Council Directives on undertakings' annual accounts and do 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 must be given. In the case of issuers incorporated in a non-member state which are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient. <i>Query who will determine whether accounts drawn up to a different standard will be sufficient.</i> <i>Please see our comments in Part I, section 11.6(a).</i>	
VII.F	Auditing of accounts	
VII.F.1	A statement that the annual accounts of the company for the last two financial years <u>(if available)</u> have been audited. If audit reports on any of those accounts 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. <i>Only where this information is available should it be required to be disclosed.</i>	VIII.A.3.
VII.F.2	Indication of other information in the prospectus which has been audited <u>reported on</u> by the auditors.	
VII.F.3	Where financial data in the prospectus is not extracted without material adjustment from the company's audited accounts the company must state the source of the data and state that the data is unaudited.	
VII.G	Age of latest annual accounts	

CESR PROPOSAL		IOSCO IDS ref
VII.G.1	The last year of audited financial statements may not be older than 15 months from the date of the prospectus. provided, however, that in the case of the company's initial public offering or admission to trading on a regulated market the audited financial statements also shall be as of a date not older than 12 months from the date of the prospectus. In such cases, the audited financial statements may cover a period of less than a full year. <i>This wording is not relevant to investors in debt securities.</i>	VIII.A.4.
VII.H	Interim financial statements	
VII.H.1	If the document is dated more than nine months after the end of the last audited financial year, it should contain own or consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year.	VIII.A.5.
VII.I	Legal and arbitration proceedings Provide information on any legal or arbitration proceedings <u>related to it or where it is a party</u> (including any such proceedings which are pending or threatened of which the company is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, or have had in the recent past (covering at least the previous 12 months), significant effects on the company and/or group's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.	VIII.A.7.
VII.J	Significant change in the company's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.	VIII.B.
VIII	Additional information	

CESR PROPOSAL		IOSCO IDS ref
VIII.A	Share Capital 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. <i>Information on the shares not yet fully paid up is not relevant to investors in debt.</i>	X.A. X.A. 1
VIII.B	Memorandum and Articles of Association	
VIII.B.1	Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles. <i>This information is not relevant to investors in a company's debt.</i>	X.B. 1.
VIII.C	Material contracts Provide 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 issue.	X.C.
VIII.D	Statement by Experts Where a statement or report attributed to a person as an expert is included in the document, provide such person's name, business 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, who has authorised the contents of that part of the document.	X. G.

CESR PROPOSAL	IOSCO IDS ref
VIII.E Documents on display A statement that for the <i>life of the registration document (we are not sure what this phrase means)</i> the following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer; (b) any trust deed of the issuer; (c) each document mentioned in paragraphs VIILC (material contracts) (d) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the registration document; (d) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the <u>prospectus</u> or registration document. The company shall provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means. <i>We do not believe that issuers should be required to put these documents on display. Information should be adequately disclosed or summarised in the prospectus and it should not be necessary for investors to refer to documents on display. Documents available for inspection are not often inspected by investors and is of limited use to investors when balanced with the cost of complying for the life of the registration document with this requirement.</i> <i>In any event, we do not believe that some of these documents are relevant to investors in a company's debt.</i>	X.H.

Annex K

Securities Note: Equity Securities Schedule

Please see our general comments in Part I, section 7 on duplication between the registration document and securities note. There are a number of areas in the securities note which duplicate the requirements of the securities note and we have struck these out below.

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE	
1. Directors and senior management (company's directors; members of its administrative, supervisory or management bodies; partners with unlimited liability; nominees to serve in any of the aforementioned positions; founders if the company has been established for fewer than 5 years): names and functions.	IDS I-A
2. Advisers that have taken part in the issue/offer: Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for admission to trading (where required by the host country regulations), and the legal advisers to the issue.	IDS I-B
3. Auditors: names and addresses of the company's auditors (together with their membership in a professional body) for the period covered by the consolidated financial statements included in the prospectus, as required by the relevant schedules in accordance with national law.	IDS I-C DIR. 2001/34, Schedule A, 1.3
4. Statement whether the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reason given.	DIR. 2001/34, Schedule A, 1.3
5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or legal persons responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts.	DIR. 2001/34, Schedule A, 1.1
7. Declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the securities note, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	DIR. 2001/34, Schedule A, 1.2
II. Offer statistics and expected timetable	
II.A Offer statistics	
Total amount of the issue/offer; distinguishing the securities offered for sale and those offered in subscription.	FESCO/01-045, II. 5. a. i) and DIR. 2001/34, Schedule A, 2.2.0

If the amount is not fixed, a statement to this effect must be made.	DIR. 2001/34, Schedule B, 2.1.0
Describe arrangements and time for announcing to the public the definitive amount of the offer.	Members' proposal
II.B Method and expected timetable	
For all offerings and separately for each group of targeted potential investors:	
1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	IDS II-B.1
2. Describe whether the purchase period may be extended or shortened and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public.	IDS II-B.1
3. Describe the possibility to reduce subscriptions and/or size.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing the final or definitive date or period.	IDS II-B.1
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	FESCO/01-045, II. 5. e. ii) and iii)
6. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.	IDS II-B.2
7. Method and time limits for delivery of the securities (including provisional certificates, if applicable) to subscribers or purchasers.	IDS II-B.3
8. A full description of the manner and date in which results of the distribution of securities are to be made public and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).	IDS II-B.5
9. The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	DIR. 2001/34, Schedule A, 2.3.4. and IDS II-B.4
III. KEY INFORMATION ABOUT THE ISSUER	
III.A Capitalization and indebtedness	
A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness and the total amount of any contingent liabilities) as of a date no earlier than 60 days prior to the date of the document shall be provided. Indebtedness also includes indirect and contingent indebtedness. An appropriate negative statement shall be given, where relevant, in the absence of any loan capital,	IDS III-B

borrowings and indebtedness and contingent liabilities. <i>We believe that this should only be required to be disclosed where it is not readily available elsewhere or if there has been a material change to that information. Financial institutions such as banks and insurance companies would not be able to comply with this requirement and should be specifically carved out.</i>	
III.B Reasons for the offer and use of proceeds <i>This is far too detailed and should be significantly reduced.</i>	
1. Reason for the offer and, where applicable, the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering. <i>This is far too detailed as to order of purpose and priority and should be restated in much more general terms. Often proceeds will be used for general corporate purposes.</i>	IDS III-C.1
2. If the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the company or their associates, disclose the persons from whom they will be acquired and how the cost to the company will be determined.	IDS III-C.2
3. If the proceeds may <u>are expected to be used</u> or will be used to finance acquisitions of other businesses, give a brief description of such businesses and information on the status of the acquisitions.	IDS 111-C.3
4. If any material part of the proceeds is to be used to discharge, reduce or retire indebtedness, describe the interest rate and maturity of such indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.	IDS III-C.4
III.C Risk factors	
Prominent disclosure of risk factors that are specific to securities to be offered and/or admitted to trading <u>which have not been disclosed in the Registration Document</u> in order to assess the market risk associated with these instruments. Provide also, if applicable, update disclosure of risk factors included in the Registration Document when useful to readers assessing the risk associated with the securities to be offered. To the extent that an item has been disclosed fully in other sections, only a summary should be included in this section and a cross reference to the section where a more detailed discussion is contained should be made. <i>This should only be required to be disclosed where it is not adequately covered in the Registration Document or where it</i>	IDS III-D

<i>needs to be updated.</i>	
IV.A — Interests of Experts in the issue/offer <i>We believe that conflicts of interests should be dealt with under the conduct of business or the rules of the relevant professional bodies rather than by a disclosure requirement in the prospectus.</i>	
If any of the named experts or counselors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.	IDS VII-C
IV.B Conflicts of interest in the issue/offer	
Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	Members' proposal
V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/admitted to trading	
1. Describe the type and the class of the securities being offered and/or admitted to trading.	IDS IX-A.5
2. Indicate the Law applicable to the securities.	Members' proposal
3. Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
4. Indicate the currency of the securities issue.	Members' Proposal
5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records.	Members' proposal
6. Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu and others similar clauses, if any (event of default.) <i>This should only be required to the extent that it is not dealt with in the Registration Document or requires updating.</i>	Members' proposal FESCO/01-045, IX-A-8 a)
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	DIR. 2001/34, Schedule A 2.2.2.
8. If the rights evidenced by the securities being offered or admitted to trading are or may be materially limited or qualified by the rights evidenced by an other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification or its effect on the rights evidenced by the securities to be admitted to trading or offered.	IDS IX-A.6
9. A statement of the resolutions, authorisations and	DIR. 2001/34, Schedule A

	approvals by virtue of which the securities have been or will be created and/or issued.	2.2.0 and Schedule B. 2.2.0
10.	The issue date of the securities.	Members' proposal
11.	Arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.	DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045, 11. 5.j.
12.	Other specific legislation regarding the issue/offer. <i>Disclosure on the legislation regarding the issue/offer should not be required to be disclosed. This would lead to uncertainty as to the level of detail required. If disclosure is material, it will be disclosed under the general duty to disclose.</i>	Members' proposal
13.	Indication whether the securities are in' registered or bearer form and, if registered, whether they will be capable of being held in uncertificated form. <i>This duplicates the requirements of V.A.3.</i>	IDS IX-A. 5 (a)
14.	Legal framework	Members' proposal
	Reference to the basic legal framework applicable to the equity at least with regard to:	
	- disclosure of major holdings;	
	- transactions of own shares;	
	- mandatory takeover bids;	
	- squeeze outs and sell outs. <i>We do not agree that a disclosure should be made on the general legal framework. Such a requirement would lead to uncertainty as to whether a treatise on company law is required. If material, the general duty of disclosure will drive disclosure.</i>	
15.	Takeover bids	DIR. 2001/34, Schedule A, 2.4.5.
	Indication of any of the following which have occurred during the last financial year and the current financial year:	
	- public takeover bids by third parties in respect of the issuer's equity;	
	- public takeovers bids by the issuer in respect of other companies' equity.	
	The price or exchange terms attaching to such offers and the outcome thereof are to be stated.	

V.B Terms and conditions of the offer and action required to apply for the offer		
<i>This section is far too detailed. We would suggest a more general disclosure requirement.</i>		
1.	Description of the application process, details of where application forms are available.	FESCO/01-045, II.5. i. i) and ii)
2.	Details of the minimum and/or maximum amount of application, if any (whether in number of securities or aggregate amount to invest).	FESCO/01-045, II.5.i. iv)
3.	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	FESCO/01-045, II.5. i. vi)
4.	Possibility of multiple and/or joint applications, and description of the penalties for infringements.	FESCO/01-045, II.5.i. vii)
5.	Indication of the period during which an application may be withdrawn if investors are allowed to withdraw their subscription.	Members' proposal
6.	Dealing conditions to which the offering is subject, if any.	FESCO/01-045, 11.5. f. i)
V.C Plan of distribution		
1.	The various categories of potential investors to which the securities are offered.	FESCO/01-045, 11.5. b
	If the offering 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.	IDS IX-B.3
2.	If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees or past employees of the company or its subsidiaries, provide details of these and any other preferential arrangements.	IDS IX-B.4
3.	To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intended to subscribe in the offering, or whether any person intends to subscribe for more than five per cent of the offering.	IDS IX-B.2
4.	Pre-Allotment Disclosure: <i>This section would is far too detailed should be restated in much more general terms.</i>	CESR/02 – 020b
(a)	The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches;	
(b)	The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for	

individual tranches;	
(c) The Allotment method or methods to be used for the retail and issuer's employee tranche in the event of an oversubscription of these tranches;	
(d) A description of any pre-determined preferential treatment to be accorded to -certain classes of investors or certain affini groups (including friends and family programmes) in the Allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups;	
(e) Whether the treatment of subscriptions or bids to subscribe in the Allotment may be determined on the basis of which firm they are made through or by;	
(f) A target minimum individual Allotment if any within the retail tranche;	
(g) The conditions for the closing of the offering as well as the date on which the offering may be closed at the earliest;	
(h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled; and	
(i) Other aspects of Allotment which could be material to an investor's decision to subscribe for or purchase the Relevant Securities.	
5. Over-allotment and greenshoe:	CESR/02 - 020b
(a) <u>If it has been determined</u> , the existence and size of any over-allotment facility and / or greenshoe.	
(b) <u>If it has been determined</u> , the existence period of the over-allotment facility and / or greenshoe.	
(c) <u>If it has been determined</u> , any conditions for the use of the over-allotment facility or exercise of the greenshoe.	
V.D Placing <i>This information is not material to investors.</i>	
1. Details of the co-ordinator(s) of the global offering and of single parts of the offering.	FESCO/01-045, 11.5: c. i)
2. Details of the placers in the various countries where the offer takes place.	FESCO/01-045, 11.5: c.)
3. Name and address of any paying or depository agents in each country.	Members' proposal

4. Underwriting:	
(a) Names, addresses and descriptions of the natural or legal persons underwriting or guaranteeing the issue for the issuer. Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered.	Dir. 2001/34, Schedule A, 2.3.7
(b) Describe the features of the underwriting relationship together with the amount of securities being underwritten by each underwriter in privity of contract with the company or selling security holders. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or the type of "best efforts" arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.	IDS IX-B.9
(c) When the underwriting agreement is reached.	FESCO/01-045, II.5.g.ii)
(d) Description of provisions enabling termination of the offering in certain circumstances.	FESCO/01-045, II.5.g. iv)
(e) Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the broker(s) or dealer(s) that will participate in the offering and state the amount to be offered through each. <i>This duplicates the required disclosure on the use of proceeds in III.B. We believe that this disclosure is not generally relevant to investors:</i>	IDS IX-B.6
V.E Pricing	
1. Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.	IDS IX-A.1 IDS II-A
2. Process for the disclosure of the offering price.	FESCO/01-045, II.5.d.iv)
3. Criteria for the determination of the offering price: i.e. who has set the criteria (issuer or independent experts); the various factors considered and the valuation's method or methods (if any) applied in order to determine the price of the securities. <i>This duplicates the requirements of paragraph 1.</i>	FESCO/01-045, II.5.d.iii)
4. If there is not an established market for the securities; the document shall contain i) the offer price and/or ii) information regarding the manner of determination of the offering price as well as of the exercise price of	IDS IX-A.2. and FESCO/01-045, II.5.d.iii) (4)

warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price. <i>This is covered by the requirements of paragraph 1.</i>	
5. If the company's equity holders have pre-emptive purchase rights and where the exercise of the right of pre-emption of equity holders is restricted or withdrawn, the company shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction or withdrawal and the beneficiaries of such restriction or withdrawal if intended to benefit specific persons. <i>This duplicates the disclosure requirements on preemption rights in V.C.4.</i>	IDS IX-A.3
6. Price history	IDS IX-A.4
(a) Information regarding the price history, if any, of the equity security to be offered or admitted to trading shall be disclosed as follows:	
- for the five most recent full financial years: the annual high and low market prices;	- IDS IX-A.4a
- for the two most recent full financial years and any subsequent period: the high and low market prices for each full financial quarter;	- IDS IX-A.4b
- for the most recent six months: the high and low market prices for each month;	- IDS IX-A.4c.
- for pre-emptive issues, the market prices for the first trading day in the most recent six months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to publication of the document. Information shall be given with respect to the market price in the host market and the principal trading market outside the host market. If significant trading suspensions occurred in the prior three years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.	IDS IX-A.4d.
(b) Indication of the source of the information referred to in the previous paragraph and place where it could be available in the future.	Members' proposal

<i>This information is not material to investors.</i>	
V.F Admission to trading and Dealing arrangements	
1. An indication as to whether the securities offered will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other markets. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. Indication as to whether the issuer has already filed the application to trading, and, otherwise, indication of the dates when the issuer has the intention to file this application, and, if known, the earliest dates on which the securities will be admitted to trading should be given. An indication of the markets where admission to trading is or will be sought, and if securities of the same class are already traded on one or more regulated markets, indication of the most relevant.	IDS IX.C
2. If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the securities to which they relate.	IDS IX.B.8
3. Entities which may act as intermediaries in secondary trading, providing liquidity through bid and offer rates. If any, A description of the terms of their commitment will be included.	Members' proposal
4. Stabilization:	
Where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilizing activities may be entered into in connection with an offering:	CESR/02-020b
(a) The fact that stabilization may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time,	
(b) The beginning and the end of the period during which stabilization may occur,	
(c) The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of publication,	
(d) The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail, and	
(e) Other' aspects of stabilization which could be material town investor's decision to subscribe for or purchase the relevant securities.	

V.G Markets	
Disclose all stock exchanges and other markets on which, to the knowledge of the issuer, the securities to be offered or admitted to trading are traded.	IDS IX-C (reviewed by members)
V.H Selling securities holders	
1. Name and address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three yrs. with the company or any of its predecessors or affiliates.	IDS IX-D.1
2. The number and class of securities being offered by each of the selling security holders.	IDS IX-D.2
V.I Expense of the Issue/Offer	
1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per security. <i>This section is excessively detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.1.
2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be admitted to trading or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered for the account of a selling securities holders, indicate the portion of such expense to be borne by such security holder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identifies as such) shall be given. <i>This section is excessively detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.2
V.J Dilution <i>Previous options which have been granted and exercised are irrelevant to investors and should not be required to be disclosed.</i>	
1. Where there is or could be a material disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of equity securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons. <i>This information should only need to be disclosed to the extent it is not included in the accounts.</i>	IDS IX-E.1
2. Disclose the amount and percentage of immediate dilution Resulting from the offering, computed as the	IDS IX-E.2

difference between the offering price per equity security and the net book value per equity security for the equivalent class of security, as of the latest balance sheet date. <i>We believe that this is excessively detailed and should be significantly reduced.</i>	
3. In the case of a subscription offering to existing equity holders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.	IDS IX-E.3
VI ADDITIONAL INFORMATION	
VI.A Articles of Association	
Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles. <i>This duplicates the requirements of the Registration document and in any event is far too widely drawn.</i>	IDS X-B.1
VI.B Exchange controls	
Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect: — the import or export of capital, including the availability of cash and cash equivalents for use by the company's group; — remittance of dividends, interest or other payments to non resident holders of the company's securities.	IDS X-D
VI.C Taxation	
The issuer shall provide information regarding taxes to which holders in the country (or countries) where the public offer is being made or admission to trading is being sought, may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host Countries, or a statement, if applicable, that there are no such treaties. <i>We strongly believe that there should not be a requirement to set out tax information in relation to investors. If this information is necessary, we believe that it would be more appropriate to follow the FESCO proposal that Member States provide such information. Otherwise the cost to issuers would be huge and it would be a significant barrier to the creation of a pan European market.</i>	IDSX-E
VI.D Statement by Experts	
Where a statement or report attributed to a person as an expert is included in the document, provide such persons' 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, who has authorized	IDS X-G

the contents of that part of the document.	
VI.E Documents on display	
Provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means. <i>We do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not therefore be necessary for investors to refer to documents on display.</i>	IDS X-H
VI.F Registration Document	
1. Indication of where the Registration Document of the issuer is available for consultation.	Members' proposal
2. The securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the registration document was published.	Draft Directive

Annex L

Securities Note: Debt Securities Schedule

Please see our general comments in Part I, section 7 on duplication between the registration document and securities note. There are a number of areas in the securities note which duplicate the requirements of the securities note and we have struck these out below.

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE	
1. Directors and senior management (company's directors; members of its administrative, supervisory or management bodies; partners with unlimited liability; nominees to serve in any of the aforementioned positions; founders if the company has been established for fewer than 5 years); names and functions.	IDS I-A
2. Advisers that have taken part in the issue/offer. Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for admission to trading (where required by the host country regulations), and the legal advisers to the issue.	IDS I-B
3. Auditors: names and addresses of the company's auditors (together with their membership in a professional body) for the period covered by the consolidated financial statements included in the prospectus, as required by the relevant schedules in accordance with national law.	IDS I-C DIR. 2001/34, Schedule A, 1.3
4. Statement whether the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reason given.	DIR. 2001/34, Schedule A, 1.3
5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or legal persons responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts.	DIR. 2001/34, Schedule A, 1.1
7. Declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the securities note, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	DIR. 2001/34, Schedule A, 1.2
II. Offer Statistics and expected timetable	
II.A Offer statistics	
Total amount of the issue/offer; distinguishing the securities offered for sale and those offered in subscription.	FESCO/01-045, II. 5. a. i) and DIR. 2001/34, Schedule A, 2.2.0
If the amount is not fixed, a statement to this effect must be made.	DIR. 2001/34, Schedule B, 2.1.0

Describe arrangements and time for announcing to the public the definitive amount of the offer.	Members' proposal
II.B Method and expected timetable	
For all offerings and separately for each group of targeted potential investors:	
1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	IDS II-B.1
2. Describe whether the purchase period may be extended or shortened and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public.	IDS II-B.1
3. Describe the possibility to reduce subscriptions and/or size.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing the final or definitive date or period.	IDS II-B.1
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	FESCO/01-045, II. 5. e. ii) and iii)
6. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.	IDS II-B.2
7. Method and time limits for delivery of the securities (including provisional certificates, if applicable) to subscribers or purchasers.	IDS II-B.3
8. A full description of the manner and date in which results of the distribution of securities are to be made public and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).	IDS II-B.5
III. KEY INFORMATION ABOUT THE ISSUER	
III.A Capitalization and indebtedness	
A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness and the total amount of any contingent liabilities) as of a date no earlier than 60 days prior to the date of the document shall be provided. Indebtedness also includes indirect and contingent indebtedness. An appropriate negative statement shall be given, where relevant, in the absence of any loan capital, borrowings and indebtedness and contingent liabilities. <i>We believe that this should only be required to be disclosed where it is not readily available elsewhere or if there has been a material change to that information. We would point out that financial institutions such as banks and insurance companies would not be able to comply with this requirement and should be specifically carved out.</i>	IDS III-B
III.B Reasons for the offer and use of proceeds	
Reason for the offer and, where applicable, the estimated net amount of the proceeds broken down into each principal intended use thereof. If the	IDS III-C. I

anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering. <i>Information on use of proceeds is not relevant to debt investors.</i>	
III.C Risk factors	
Prominent disclosure of risk factors that are specific to securities to be offered and/or admitted to trading <u>which have not been disclosed in the Registration Document</u> in order to assess the market risk associated with these instruments. Provide also, if applicable, update disclosure of risk factors included in the Registration Document when useful to readers assessing the risk associated with the securities to be offered. To the extent that an item has been disclosed fully in other sections, only a summary should be included in this section and a cross reference to the section where a more detailed discussion is contained should be made. <i>This should only be required to be disclosed where it is not adequately covered in the Registration Document or where it needs to be updated.</i>	IDS III-D
IV.A Interests of Experts in the issuer/offer	
<i>We believe that conflicts of interests should be dealt with under the conduct of business or the rules of the relevant professional bodies rather than by a disclosure requirement in the prospectus.</i>	
If any of the named experts or counselors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.	IDS VII-C
IV.B Conflicts of interest in the issue/offer	
Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	Members' proposal
V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/admitted to trading	
1. Describe the type and the class of the securities being offered and/or admitted to trading.	IDS IX-A.5
2. Indicate the Law applicable to the securities.	Members' proposal
3. Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
4. Indicate the currency of the securities issue.	Members' Proposal
5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records.	Members' proposal
6. Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu	Members' proposal FESCO/01-045, IX-A-8

and others similar clauses, if any (event of default...)	a)
<i>This should only be required to be disclosed in the Securities Note where it has not been disclosed in the Registration Document.</i>	
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	DIR. 2001/34, Schedule A 2.2.2.
8. If the rights evidenced by the securities being offered or admitted to trading are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification or its effect on the rights evidenced by the securities to be admitted to trading or offered.	IDS IX-A.6
9. A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	DIR. 2001/34, Schedule A 2.2.0 and Schedule B. 2.2.0.
10. The issue date of the securities.	Members' proposal
11. Arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.	DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045. II. 5. j.
12. Other specific legislation regarding the issue/offer. <i>Disclosure on the legislation regarding the issue/offer should not be required to be disclosed. This would lead to uncertainty as to the level of detail required. If disclosure is material, it will be disclosed under the general duty to disclose.</i>	Members' proposal
13. Interest rate	
The nominal interest rate and provisions relating to interest payable, if any. Where the rate is not fixed, the index or variable on which it is based and the method used to relate the two must be clearly described. Among other things, this point must include:	FESCO/01-045, IX-A 1 b) + Members' proposal
— The formal or official name of the reference rate or of the source entity.	
— Place, manner and time where and when the reference rate or index is announced and made public.	
— If applicable minimum and maximum limits permitted as yield or interest to be paid to the holders.	
— Information shall be given concerning the values reached by the reference index or rate over the prior year to the date of the prospectus and the interest rates that would have been applied to the issue pursuant to the variable interest clause by virtue of the said values.	
- The date from which interest becomes payable and the due dates for interest.	
<i>As drafted, this is too widely drawn and should be</i>	

	<i>significantly reduced.</i>	
-	The time limit on the validity of claims to interest and repayment of principal.	FESCO/01-045, IX-A 1 f) (DIR. 2001/34, Sch B-2.1.7)
14,	Procedures for the allocation of any other advantages; the method of calculating such advantages.	FESCO/01-045, IX-A 1 c) (DIR. 2001/34, Sch B 2.1.2)
15.	Period of the loan and any interim due dates	FESCO/01-045, IX-A 1 d) + Members' proposal
-	Maturity date and arrangements for the amortization of the loan, including the repayment procedures. Where advance amortization is contemplated, on the initiative of the issuer or of the holder, it must be described with sufficient detail, stipulating amortization terms and conditions.	
16.	An indication of yield. The method whereby that yield is calculated shall be described in summary form. The annual equivalent rate must be indicated.	FESCO/01-045, IX-A 1 g) (DIR. 2001/34, Sch B, 2.1.8) + Members' proposal
17.	Nature and scope of guarantees, sureties and commitments intended to ensure that the loan will be duly serviced as regards both the repayment of the debt securities and the repayment of interest. Indication of the places where the public may have access to the contracts relating to these guarantees, sureties and commitments.	FESCO/01-045; IX-A-2(DIR. 2001/34, Sch B, 2.2.1)
18.	Representation of debt security holders, if any. Organization of trustees or of any other representation for the body of debt security holders. Main provisions relating to the meeting of noteholders. Name and function and description and head office of the representative of the debt security holders, the main conditions of such representation and in particular the conditions under which the representative may be replaced. Indication of where the public may have access to the contracts relating to these forms of representation.	FESCO/01-045, IX-A-3 (DIR. 2001/34, Sch B, 2.2.2) + Members' proposal
19.	The procedure for the exercise of any right of pre-emption; the negotiability of subscription rights; the treatment of subscription rights not exercised.	DIR. 2001/34, Sch B, 2.4
V.B Terms and conditions of the offer and action required to apply for the offer		
<i>This section is far too detailed. We would suggest a more general disclosure requirement.</i>		
1.	Description of the application process, details of where application forms are available.	FESCO/01-045, 11.5. and ii)
2.	Details of the minimum and/or maximum amount of application, if any (whether in number of securities or aggregate amount to invest).	FESCO/01-045, 11.5. i. iv)
3.	Process for notification to applicants of the amount allotted and	FESCO/01-045, 11.5. i.

	indication whether dealing may begin before notification is made.	vi)
4.	Possibility of multiple and/or joint applications, and description of the penalties for infringements.	FESCO/01-045, 11.5. i. vii)
5.	Indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Members' proposal
6.	Dealing conditions to which the offering is subject, if any.	FESCO/01-045, 11.5. f. i)
V.C Plan of distribution		
1.	The various categories of potential investors to which the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a <i>tranche</i> has been or is being reserved for certain of these, indicate any such <i>tranche</i>.	FESCO/01-045, 11.5. b IDS IX-B.3
2.	If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees or past employees of the company or its subsidiaries, provide details of these and any other preferential arrangements.	IDS IX-B.4
3.	To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intended to subscribe in the offering, or whether any person intends to subscribe for more than five per cent of the offering.	IDS IX-B.2
4.	The names and addresses of the entities underwriting the offering. Where not all of the issue is underwritten, a statement of the portion not covered.	FESCO/01-045, IX-B-1
5.	Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the brokers or dealers that will participate in the offering and state the amount to be offered through each. <i>This information is not relevant to investors in debt securities.</i>	FESCO/01-045, IX-B-5
6.	Unless otherwise described under the response to item X.C Material Contracts, describe the features of underwriting relationships together with the amount of securities being underwritten by each underwriter in privity of contract with the company or selling persons. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or the type of best efforts arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public. <i>Only details on those material contracts relevant to the issue should be required to be disclosed.</i>	FESCO/01-045, IX-B-7

V.D Placing		
<i>This information is not material to investors.</i>		
1.	Details of the co-ordinator(s) of the global offering and of single parts of the offering.	FESCO/01-045, II.5. c. i)
2.	Details of the placers in the various countries where the offer takes place.	FESCO/01-045, II.5. c.) ii)
3.	Name and address of any paying or depository agents in each country.	Members' proposal
V.E Pricing		
1.	Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.	IDS IX-A.1 IDS II-A
2.	Process for the disclosure of the offering price.	FESCO/01-045, II.5.d.iv)
3.	Settlement date	Member's proposal
V.F Admission to trading and Dealing arrangements		
1.	An indication as to whether the securities offered will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other markets. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. Indication as to whether the issuer has already filed the application to trading, and, otherwise, indication of the dates when the issuer has the intention to file this application, and, if known, the earliest dates on which the securities will be admitted to trading should be given. An indication of the markets where admission to trading is or will be sought, and if securities of the same class are already traded on one or more regulated markets, indication of the most relevant.	IDS IX.C
2.	If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the securities to which they relate. <i>This provision relates to share issues.</i>	IDS IX.B.8
3.	Entities which may act as intermediaries in secondary trading, providing liquidity through bid and offer rates. If any, A description of the terms of their commitment will be included. <i>It will not be possible to say who "may" act as an intermediary. This is nothing to do with the issuer, but is a factor of the market itself.</i>	Members' proposal
V.G Markets		
Disclose all stock exchanges and other markets on which, to the knowledge of the issuer, the securities to be offered or admitted to trading		IDS IX-C (reviewed by members)

are traded.	
V.H — Selling securities holders	
1. Name and address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three yrs. with the company or any of its predecessors or affiliates.	IDS IX-D.1
2. The number and class of securities being offered by each of the selling security holders.	IDS IX-D.2
V.I Expense of the Issue/Offer	
1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per security. <i>This section is far too detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.1.
2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be admitted to trading or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered for the account of a selling securities holders, indicate the portion of such expense to be borne by such security holder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identifies as such) shall be given. <i>This section is excessively detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.2
VI. — ADDITIONAL INFORMATION	
VI.A — Articles of Association	
Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles. <i>This duplicates the requirements of the Registration document and in any event is far too widely drawn.</i>	IDS X-B.1
VI.B — Exchange controls	
Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect:	IDS X-D
— the import or export of capital, including the availability of cash and cash equivalents for use by the company's group; — remittance of dividends, interest or other payments to non-resident holders of the company's securities.	

VI.C Taxation	
The issuer shall provide information regarding taxes to which holders in the country (or countries) where the public offer is being made or admission to trading is being sought, may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties. <i>We strongly believe that there should not be a requirement to set out tax information in relation to investors. If this information is necessary, we believe that it would be more appropriate to follow the FESCO proposal that Member States provide such information. Otherwise the cost to issuers would be huge and it would be a significant barrier to the creation of a pan European market.</i>	IDS.X-E
VI.D Material Contracts	
Provide 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 group's ability to meet its obligation to security holders in respect of the securities being issued and contracts relevant to the transaction in question. <i>Only summaries of material contracts relevant to the particular issue should be required to be disclosed.</i>	FESCO/01-045, X-C
VI.E Statement by Experts	
Where a statement or report attributed to a person as an expert is included in the document, provide such persons' 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, who has authorized the contents of that part of the document.	IDS X-G
VI.F Documents on display	
Provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means. <i>We do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not therefore be necessary for investors to refer to documents on display.</i>	IDS X-H
VI.G Registration Document	
1. Indication of where the Registration Document of the issuer is available for consultation.	Members' proposal
2. The securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the registration document was published.	Draft Directive

Annex M

Securities Note : Derivatives Schedule

Please see our general comments in Part I, section 7 on duplication between the registration document and securities note. There are a number of areas in the securities note which duplicate the requirements of the securities note and we have struck these out below.

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE	
1. Directors and senior management (company's directors; members of its administrative, supervisory or management bodies; partners with unlimited liability; nominees to serve in any of the aforementioned positions; founders if the company has been established for fewer than 5 years): names and functions.	IDS I-A
2. Advisers that have taken part in the issue/offer: Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for admission to trading (where required by the host country regulations), and the legal advisers to the issue.	IDS I-B
3. Auditors: names and addresses of the company's auditors (together with their membership in a professional body) for the period covered by the consolidated financial statements included in the prospectus, as required by the relevant schedules in accordance with national law.	IDS I-C DIR. 2001/34, Schedule A, 1.3
4. Statement whether the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reason given.	DIR. 2001/34, Schedule A, 1.3
5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or legal persons responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts.	DIR. 2001/34, Schedule A, 1.1
7. Declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the securities note, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	DIR. 2001/34, Schedule A, 1.2
II OFFER STATISTICS AND EXPECTED TIMETABLE	
II.A Offer statistics	
Total amount of the issue/offer; distinguishing the securities offered for sale and those offered in subscription.	FESCO/01-045, II. 5. a. i) and DIR. 2001/34,

	Schedule A, 2.2.0
If the amount is not fixed, a statement to this effect must be made.	DIR. 2001/34, Schedule B, 2.1.0
Describe arrangements and time for announcing to the public the definitive amount of the offer.	Members' proposal
II.B Method and expected timetable	
For all offerings and separately for each group of targeted potential investors:	
1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	IDS II-B.1
2. Describe whether the purchase period may be extended or shortened and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public.	IDS II-B.1
3. Describe the possibility to reduce subscriptions and/or size.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing the final or definitive date or period.	IDS II-B.1
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	FESCO/01-045, II. 5. e. ii) and iii)
6. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.	IDS II-B.2
7. Method and time limits for delivery of the securities (including provisional certificates, if applicable) to subscribers or purchasers.	IDS II-B.3
8. A full description of the manner and date in which results of the distribution of securities are to be made public and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).	IDS II-B.5
III. KEY INFORMATION ABOUT THE ISSUER	
III.A Capitalization and indebtedness	
A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness and the total amount of any contingent liabilities) as of a date no earlier than 60 days prior to the date of the document shall be provided. Indebtedness also includes indirect and contingent indebtedness. An appropriate negative statement shall be given, where relevant, in the absence of any loan capital, borrowings and indebtedness and contingent liabilities. <i>We believe that this should only be required to be disclosed where it is not readily available elsewhere or if there has been a material change to that information. Financial institutions such as banks and insurance companies would not be able to comply with this requirement and should be specifically carved out.</i>	IDS III-B
III.B Reasons for the offer and use of proceeds	

Reason for the offer and, where applicable, the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering. <i>Information on the use of proceeds is not relevant for investors in debt.</i>	IDS III-C.1
III.C Risk factors	
1. Prominent disclosure of risk factors that are specific to securities to be offered and/or admitted to trading <u>which have not been disclosed in the Registration Document</u> in order to assess the market risk associated with these instruments. Provide also, if applicable, update disclosure of risk factors included in the Registration Document when useful to readers assessing the risk associated with the securities to be offered. To the extent that an item has been disclosed fully in other sections, only a summary should be included in this section and a cross reference to the section where a more detailed discussion is contained should be made. <i>This should only be required to be disclosed where it is not adequately covered in the Registration Document or where it needs to be up-dated</i>	IDS III-D
2. Risks involved in purchasing the derivative securities. This section should include: (a) direct or indirect specific risk factors affecting the value and trading price of the derivative securities; and (b) specific risk factors affecting the realization of the value of the derivative securities. (c) — examples of the way the instrument works (d) — examples based on the best and worse case scenario (e) — Mentioning of hedging instruments and whether the investor can, buy such instruments. <i>Disclosures in section (a) and (b) give the competent authority ability to require specific disclosure and the additional provisions are not therefore required.</i>	Members' proposal
IV.A Interests of Experts in the issue/offer <i>We believe that conflicts of interests should be dealt with under the conduct of business or the rules of the relevant professional bodies rather than by a disclosure requirement in the prospectus.</i>	
If any of the named experts or counselors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.	IDS VII-C
IV.B Conflicts of interest in the issue/offer	
Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	Members' proposal
V. OFFER AND ADMISSION TO TRADING DETAILS	

V.A	Description of the securities to be offered/ admitted to trading	
1.	Describe the type and the class of the securities being offered and/or admitted to trading.	IDS IX-A.5
2.	Indicate the Law applicable to the securities.	Members' proposal
3.	Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
4.	Indicate the currency of the securities issue.	Members' Proposal
5.	Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records	Members' proposal
6.	Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu and others similar clauses, if any (event of default...) <i>This should only be required to be disclosed in the Securities Note where it has not been disclosed in the Registration Document.</i>	Members' proposal FESCO/01-045, IX-A-8 a)
7.	A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	DIR. 2001/34, Schedule A 2.2.2
8.	If the rights evidenced by the securities being offered or admitted to trading are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification or its effect on the rights evidenced by the securities to be admitted to trading or offered.	IDS IX-A.6
9.	A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	DIR. 2001/34, Schedule A 2.2.0 and Schedule B. 2.2.0.
10.	The issue date of the securities.	Members' proposal
11.	Arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.	DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045, 11. 5. j
12.	Other specific legislation regarding the issue/offer. <i>Disclosure on the legislation regarding the issue/offer should not be required to be disclosed. This would lead to uncertainty as to the level of detail required. If disclosure is material, the general duty of disclosure will drive disclosure..</i>	Members' proposal
13.	The exercise price or final reference, price of the derivatives securities	20011341EC Sch B 2.1. - 2
14.	The price at maturity.	
V.B	Terms and conditions of the offer and action required to apply for the offer <i>This section is far too detailed. We would suggest a more general disclosure requirement.</i>	

1.	Description of the application process, details of where application forms are available.	FESCO/01-045, 11.5. i. i) and ii)
2.	Details of the minimum and/or maximum amount of application, if any (whether in number of securities or aggregate amount to invest).	FESCO/01-045, 11.5. i. iv)
3.	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	FESCO/01-045, 11.5. i.iv)
4.	Possibility of multiple and/or joint applications, and description of the penalties for infringements.	FESCO/01-045, 11.5. i.vii)
5.	Indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Members' proposal
6.	Dealing conditions to which the offering is subject, if any.	FESCO/01-045, 11.5. f. i)
7.	A section setting out the definitions applicable to the terms and conditions	Members' proposal
8.	All applicable exercise rights	
9.	A description of the exercise procedures and any limitations in relation to the same	Members' proposal
10.	A of the settlement of the derivative securities detailing the following: - payments - to take or make <u>delivery</u> of the <u>underlying</u> instrument	Members' proposal
11.	A description of how any return on derivative securities takes place, the payment date, and the way it is calculated - settlement amount is calculated - amount of the underlying instrument to be delivered is determined - settlement disclosure as set out above	Members' proposal
12.	Information required in respect of the underlying security, a statement setting out the type of the underlying security and details of where information on the underlying security can be obtained: - 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; Disclosure of volatility is not always appropriate and should not be required in all cases. • the name of the issuer of the security • the ISIN (International Security Identification Number) or other such security identification code • the name of the index • a description of the interest rate - where the underlying does not fall within the categories specified above the securities note must contain equivalent information	2001/34/EC Schedule B 2.4.1 FESCO 01-045 Schedule B IV, p2/3

- asset of derivative securities • disclosure of the relevant weightings of each asset in the basket 13. A description of any market disruption or settlement disruption events. 14. Adjustment rules with relation to events concerning the underlying. 15. Expiration or maturity date of the derivative securities. 16. Exercise date or final reference date. 17. Nomination of a calculation agent.	
V.C Plan of distribution	
1. The various categories of potential investors to which the securities are offered. If the offering 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.	FESCO/01-045, 11.5. b IDS IX-B.3
2. If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees of the company or its subsidiaries, provide details of these and any other preferential arrangements	IDS IX-B.4
3. To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intended to subscribe in the offering, or whether any person intends to subscribe for more than five per cent of the offering.	IDS IX-B.2
V.D Placing <i>This information is not material to investors.</i>	
1. Details of the co-ordinator(s) of the global offering and of single parts of the offering.	FESCO/01-045, 11.5. c. i)
2. Details of the placers in the various countries where the offer takes place.	FESCO/01-045, 11.5. c.) ii)
3. Name and address of any paying or depository agents in each country.	Members' proposal
V.E Pricing	
1. Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.	IDS IX-A.1 IDS II-A
2. Process for the disclosure of the offering price.	FESCO/01-045, II.5.d.iv)
V.F Admission to trading and Dealing arrangements	
1. An indication as to whether the securities offered will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other markets. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. Indication as to whether the issuer has already filed the application to trading, and, otherwise, indication of the dates when the	IDS IX.C

	issuer has the intention to file this application, and, if known, the earliest dates on which the securities will be admitted to trading should be given. An indication of the markets where admission to trading is or will be sought, and if securities of the same class are already traded on one or more regulated markets, indication of the most relevant.	
2.	If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the securities to which they relate. <i>This provision relates to issues of shares.</i>	IDS IX.B.8
3.	Entities which may act as intermediaries in secondary trading, providing liquidity through bid and offer rates. If any, a description of the terms of their commitment will be included. <i>It will not be possible to say who "may" act as an intermediary. This is nothing to do with the issuer, but is a factor of the market itself.</i>	Members' proposal
V.G Markets		
	Disclose all stock exchanges and other markets on which, to the knowledge of the issuer, the securities to be offered or admitted to trading are traded.	IDS IX-C (reviewed by members)
V.H Selling securities holders		
1.	Name and address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the company or any of its predecessors or affiliates.	IDS IX-D.1
2.	The number and class of securities being offered by each of the selling security holders.	IDS IX-D.2
V.I Expense of the Issue/Offer		
1.	The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per security. <i>This section is far too detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.1
2.	A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be admitted to trading or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered to be offered for the account of a selling securities holder, indicate the portion of such expense to be borne by such security holder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimate (identifies as such) shall be given. <i>This section is excessively detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.2
VI ADDITIONAL INFORMATION		

VI.A Articles of Association	
Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles. <i>This duplicates the requirements of the Registration document and in any event is far too widely drawn.</i>	IDS X-B.1
VI.B Exchange controls	
Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect: — the import or export of capital, including the availability of cash and cash equivalents for use by the company's group — remittance of dividends, interest or other payments to non residents	IDS X-D
VI.C Taxation	
Provide information regarding taxes to which securities holders may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties. <i>We strongly believe that there should not be a requirement to set out tax information in relation to investors. If this information is necessary, we believe that it would be more appropriate to follow the FESCO proposal that Member States provide such information. Otherwise the cost to issuers would be huge and it would be a significant barrier to the creation of a pan European market.</i>	IDS.X-E
VI.D Statement by Experts	
Where a statement or report attributed to a person as an expert is included in the document, provide such persons' 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, who has authorized the contents of that part of the document.	IDS X-G
VI.F Documents on display	
Provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means. <i>We do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not therefore be necessary for investors to refer to documents on display. .</i>	IDS X-H
VI.F Registration Document	
1. Indication of where the Registration Document of the issuer is available for consultation.	Members' proposal
2. The securities note shall provide information that would normally be provided in the registration document and there had been a material change or recent development since the registration document was published.	Draft Directive

Annex N

Securities Note: Common Terms

Please see our general comments in Part I, section 7 on duplication between the registration document and securities note. There are a number of areas in the securities note which duplicate the requirements of the securities note and we have struck these out below.

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE		
1.	Directors and senior management (company's directors; members of its administrative, supervisory or management bodies; partners with unlimited liability; nominees to serve in any of the aforementioned positions; founders if the company has been established for fewer than 5 years); names and functions.	IDS I-A
2.	Advisers that have taken part in the issue/offer. Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for admission to trading (where required by the host country regulations), and the legal advisers to the issue.	IDS I-B
3.	Auditors: names and addresses of the company's auditors (together with their membership in a professional body) for the period covered by the consolidated financial statements included in the prospectus, as required by the relevant schedules in accordance with national law.	IDS I-C DIR. 2001/34, Schedule A, 1.3
4.	Statement whether the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reason given.	DIR. 2001/34, Schedule A, 1.3
5.	Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6.	Names, addresses and functions of the natural or legal persons responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts.	DIR. 2001/34, Schedule A, 1.1
7.	Declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the securities note, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	DIR. 2001/34, Schedule A, 1.2
II. OFFER STATISTICS AND EXPECTED TIMETABLE		
II.A Offer statistics		
Total amount of the issue/offer; distinguishing the securities offered for sale		FESCO/01-045, II. 5. a.i)

and those offered in subscription.	and DIR. 2001/34, Schedule A, 2.2.0
If the amount is not fixed, a statement to this effect must be made.	DIR. 2001/34, Schedule B, 2.1.0
Describe arrangements and time for announcing to the public the definitive amount of the offer.	Members' proposal
II.B Method and expected timetable	
For all offerings and separately for each group of targeted potential investors:	
1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	IDS II-B.1
2. Describe whether the purchase period may be extended or shortened and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public.	IDS II-B.1
3. Describe the possibility to reduce subscriptions and/or size.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing the final or definitive date or period.	IDS II-B.1
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	FESCO/01-045, II. 5. e. ii) and iii)
6. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.	IDS II-B.2
7. Method and time limits for delivery of the securities (including provisional certificates, if applicable) to subscribers or purchasers.	IDS II-B.3
8. A full description of the manner and date in which results of the distribution of securities are to be made public and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).	IDS II-B.5
III. KEY INFORMATION ABOUT THE ISSUER	
III.A Capitalization and indebtedness	
A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness and the total amount of any contingent liabilities) as of a date no earlier than 60 days prior to the date of the document shall be provided. Indebtedness also includes indirect and contingent indebtedness. An appropriate negative statement shall be given, where relevant, in the absence of any loan capital, borrowings and indebtedness and contingent liabilities. <i>We believe that this should only be required to be disclosed where it is not readily available elsewhere or if there has been a material change to that information. Financial institutions such as banks and insurance companies would not be able to comply with this requirement and should be specifically carved out.</i>	IDS III-B
III.B Reasons for the offer and use of proceeds	
Reason for the offer and, where applicable, the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering. <i>This is far too detailed as to order of purpose and priority and should be restated in much more general terms. Often proceeds will be used for general corporate purposes.</i>	IDS III-C. I
III.C Risk factors	
Prominent disclosure of risk factors that are specific to securities to be offered and/or admitted to trading <u>which have not been disclosed in the Registration Document</u> in order to assess the market risk associated with these instruments. Provide also, if applicable, update disclosure of risk	IDS III-D

factors included in the Registration Document when useful to readers assessing the risk associated with the securities to be offered. To the extent that an item has been disclosed fully in other sections, only a summary should be included in this section and a cross reference to the section where a more detailed discussion is contained should be made. <i>This should only be required to be disclosed where it is not adequately covered in the Registration Document or where it needs to be updated.</i>	
IV.A — Interests of Experts in the issue/offer <i>We believe that conflicts of interests should be dealt with under the conduct of business or the rules of the relevant professional bodies rather than by a disclosure requirement in the prospectus.</i>	
If any of the named experts or counselors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.	IDS VII-C
IV.B Conflicts of interest in the issue/offer Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	Members' proposal
V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/ admitted to trading	
1. Describe the type and class of the securities being offered and/or admitted to trading.	IDS IX-A.5
2. Indicate the Law applicable to the securities.	Members' proposal
3. Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
4. Indicate the currency of the securities issue.	Members' Proposal
5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records	Members' Proposal
6. Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu and others similar clauses, if any (event of default). <i>This should only be required to be disclosed in the Securities Note where it has not been disclosed in the Registration Document.</i>	Members' proposal FESCO/01-045, IX-A-8 a)
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	DIR. 2001/34, Schedule A 2.2.2.
8. If the rights evidenced by the securities being offered or admitted to trading are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification or its effect on the rights evidenced by the securities to be admitted to trading or offered.	IDS IX-A.6
9. A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	DIR. 2001/34, Schedule A 2.2.0 and Schedule B. 2.2.0.
10. The issue date of the securities.	Members' proposal

11.	Arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.	DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045, II. 5. j.
12.	Other specific legislation regarding the issue/offer. <i>Disclosure on the legislation regarding the issue/offer should not be required to be disclosed. This would lead to uncertainty as to the level of detail required. If disclosure is material, it will be disclosed under the general duty to disclose.</i>	Members' proposal
V.B Terms and conditions of the offer and action required to apply for the offer <i>This section is far too detailed. We would suggest a more general disclosure requirement.</i>		
1.	Description of the application process, details of where application forms are available.	FESCO/01-045, 11.5. and ii)
2.	Details of the minimum and/or maximum amount of application, if any (whether in number of securities or aggregate amount to invest).	FESCO/01-045, 11.5.i. iv)
3.	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	FESCO/01-045, 11.5. i. vi)
4.	Possibility of multiple and/or joint applications, and description of the penalties for infringements.	FESCO/01-045, 11.5. i. Vii)
5.	Indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Members' proposal
6.	Dealing conditions to which the offering is subject, if any.	FESCO/01-045, 11.5. f. i)
V.C Plan of distribution		
1.	The various categories of potential investors to which the securities are offered. If the offering 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.	FESCO/01-045, II.5. b IDS IX-B.3
2.	If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees or past employees of the company or its subsidiaries, provide details of these and any other preferential arrangements.	IDS IX-B.4
3.	To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intended to subscribe in the offering, or whether any person intends to subscribe for more than five per cent of the offering.	IDS IX-B.2
V.D Placing <i>This information is not material to investors.</i>		
1.	Details of the co-ordinator(s) of the global offering and of single parts of the offering.	FESCO/01-045, 11.5. c. i)
2.	Details of the placers in the various countries where the offer takes place.	FESCO/01-045, 11.5. c.) ii)

3. Name and address of any paying or depository agents in each country	Members' proposal
V.E Pricing	
1. Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.	IDS IX-A.1 IDS II-A
2. Process for the disclosure of the offering price.	FESCO/01-045, II.5.d.iv)
V.F Admission to trading and Dealing arrangements	
1. An indication as to whether the securities offered will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other markets. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. Indication as to whether the issuer has already filed the application to trading, and, otherwise, indication of the dates when the issuer has the intention to file this application, and, if known, the earliest dates on which the securities will be admitted to trading should be given. An indication of the markets where admission to trading is or will be sought, and if securities of the same class are already traded on one or more regulated markets, indication of the most relevant.	IDS IX.C
2. If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the securities which to they relate.	IDS IX.B.8
3. Entities which may act as intermediaries in secondary trading, providing liquidity through bid and offer rates. If any, A description of the terms of their commitment will be included. <i>It will not be possible to say who "may" act as an intermediary. This is nothing to do with the issuer, but is a factor of the market itself.</i>	Members' proposal IDS IX-C (reviewed by members)
V.G Markets	
Disclose all stock exchanges and other markets on which, to the knowledge of the issuer, the securities to be offered or admitted to trading are traded	
V.H Selling securities holders	
1. Name and address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the company or any of its predecessors or affiliates.	IDS IX-D. 1
2. The number and class of securities being offered by each of the selling security holders.	IDS IX-D.2
V.I Expense of the Issue/Offer	
1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per security. <i>This section is far too detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F. 1.

2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be admitted to trading or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered for the account of a selling securities holders, indicate the portion of such expense to be borne by such security holder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identifies as such) shall be given. <i>This section is excessively detailed and should be replaced by a requirement to disclose net proceeds.</i>	IDS IX-F.2
VI ADDITIONAL INFORMATION	
VI.A Articles of Association	
Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles. <i>This duplicates the requirements of the Registration document and in any event is far too widely drawn.</i>	IDS X-B.1
VI.B Exchange controls	
Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect: — the import or export of capital, including the availability of cash and cash equivalents for use by the company's group; — remittance of dividends, interest or other payments to non resident holders of the company's securities.	IDS X-D
VI.C Taxation	
The issuer shall provide information regarding taxes to which holders in the country (or countries) where the public offer is being made or admission to trading is being sought, may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties. <i>We strongly believe that there should not be a requirement to set out tax information in relation to investors. If this information is necessary, we believe that it would be more appropriate to follow the FESCO proposal that Member States provide such information. Otherwise the cost to issuers would be huge and it would be a significant barrier to the creation of a pan European market.</i>	IDS.X-E
VI.D Statement by Experts	
Where a statement or report attributed to a person as an expert is included in the document, 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, who has authorized the contents of that part of the document.	IDS X-G

VI.E Documents on display	
Provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means. <i>We do not believe that issuers should be required to put on display all documents referred to in the prospectus. Information should be adequately disclosed or summarised in the prospectus and it should not therefore be necessary for investors to refer to documents on display.</i>	IDS X-H
VI.F Registration Document	
1. Indication of where the Registration Document of the issuer is available for consultation.	Members' proposal
2. The securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the document was published.	Draft Directive