
***MEDEF***
*Economic, Financial and*
*Fiscal Affairs*

*Paris, Tuesday 31th December 2002*

**CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive**
**Consultation Paper - Ref: CESR/02.185b**

**Medef Position**

The new directive proposal does not provide us with detailed transitional provisions regarding the implementation of new requirements for prospectus. As the minimum information required by CESR is very detailed, we would like to know the deadline for the issuer to comply with the total requirements. Does it mean that the issuers will have to comply with all requirements as soon as they will do the first annual update of the registration document ? It was stated in the former directive proposal that the first annual update would take place in 2006 at the earliest, and the choice of an earlier application date would be unrealistic.

## PART I - Minimum information

### *A - REGISTRATION DOCUMENT*

### *EQUITY SECURITIES*

Disclosure standards

| 44. Do you agree with the disclosure obligations set out in Annex A? |
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We agree with the concept that the registration document must contain all necessary information for an investor decision. Nevertheless, some difficulties must be treated :

- The proposed requirements for registration document (Annex A) correspond to a maximalist approach and could result in a document that would be complex and expensive to establish for the issuer. Furthermore, as the registration document will be voluminous, it may be confusing for the reader, especially for retail investors, who would have some difficulties to know what are relevant information.

- In order to simplify, we think that it would be appropriate to have a single model of registration document for any type of issue and to implement a different treatment only in the securities note. This approach could be adopted for equity, debt securities and instrument giving access to the capital. Regarding other derivatives, a specific approach, limited to minimal relevant information, should be implemented.

- To obtain readable information, it is essential to avoid redundant information in several places of the document. Some information required in the security note is redundant with the registration document. We propose that in that case, the issuer only makes a reference to the specific paragraph of registration document.

Regarding the requirements, we have some questions and some precise comments on three areas:
- Confidentiality
- New obligations compared to existing practices
- Privacy

- Confidentiality

§ III E : we believe that issuers should not be obliged to produce information regarding productive capacity and extent of utilisation of the company facilities because those information may be confidential and reveal important data on production process.
§ IV B 1c : details of the main loan agreement including interest rates : issuers should have the choice to disclose interest rates by type of loan (with equivalent maturity and conditions) if it enables to protect confidentiality of the rates granted by their banks. Otherwise those prospectuses could create some problems for banks whose customers would be able to compare tariffs granted to their competitors.
§ VIII F : It is not acceptable to require that a company put on display, especially to the use of its competitors, its material contracts, even if it concerns contracts not entered into in the ordinary course of business. Our arguments regarding this point are detailed in our answer to question 93.

- New obligations compared to existing practices

§ V D : in French common practices, it is improper to give any qualitative information regarding relationship between management and labour union.
§ VI C : Interest of experts and counsel : we suppose that, as in market abuse, those obligations are required for individuals as for legal persons. We would like to know which threshold is judged material and propose to choose a level of 10 %, as in paragraph VI B.
§ VIII B : We perfectly understand that it is useful that an issuer precise all specificities of its memorandum and articles of association, but we think that it is not in its object to explain company law to investors. It would be more appropriate to refer precisely to a specialized website, that could be national or European.
§ VIII D : As we have just answered above, it is not normal to ask issuers to explain tax specificities or company law to investors. Issuers do not have enough precise qualifications to do such an exercise. Furthermore, it would be particularly complex as tax issues differ according to the investor country. What is the limit to this information, in the perspective of financial market globalisation and in respect of equal information of all investors ? As for memorandum and articles of association, we think that a better global solution could be found, to provide investors with complete and reliable information. We suggest to engage a general reflexion on this point, in order to find a way for issuers to refer precisely to a specialized website, that could be national or European.
§ VIII B 7 : action delaying or preventing a change of control : such an obligation of description must be defined into the takeovers directive and we think that it is a matter of Level 1.

- Privacy

§ V A 1 : in our national law, amnestied sentences are considered as having never occurred, and therefore must not be disclosed in any public information.

§ VI B : related party transactions : the scope of this information is too wide to be useful to investors. This obligation would result in an enormous amount of information especially for companies that are in the business of mass-market products. The close members family should be at least excluded from this information obligation, as well as enterprises that have a member of key management in common which is not sufficient for suspecting any conflict of interest. Besides the definition of the close members family is far from being clear. It would be appropriate to include a general criterion according to which information on significant transactions is only to be provided.

- Ask for clarification

§ V A 2 : management and directors' conflicts of interest : we think that the description is very wide and could be précised by CESR (what type of conflicts of interest are concerned) so that issuers disclose correctly that information.

§ VI A 1 a : we suggest, in order harmonizing the obligation of information, to adopt a threshold of 10 %, as in paragraph VI B.

§ VII E True and fair view : we do not understand the meaning of this paragraph, could you give us some clarification ?

§ VIII C : material contracts, other than contracts entered into in the ordinary course of business : some clarifications are necessary regarding this description, especially as we may not have the same understanding of the word "ordinary". Regarding other contracts (second part of the VIII C paragraph), concepts used may not be easy to compare with concepts used in French law, and we think that some clarifications are also necessary.
We understand that contracts not entered into in the ordinary course of business refer to contracts that are cumulatively non-recurring and non-operating. Is it the correct interpretation of paragraph VIIIC ? It would be useful to provide us with an illustrative (exhaustive if possible) list.

<u>Risk factors</u>

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| CESR decided that a better approach would be to have a disclosure requirement for risk factors. But that CESR would later produce guidance on the sort of risk factors that might be expected to be included under this disclosure requirement. This guidance would be amended in the light of experience and future developments in the market.<br>47. Do you agree with this approach? |

Yes, we agree

Pro forma information

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| 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?<br>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?<br>53. Do you agree that 25% is the correct threshold figure? Would a different figure, say 10%, be more appropriate? |

Yes, we agree with points 51 and 52 if the threshold of 25 % is adopted under conditions mentioned with the answer § 65.

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

No, we don't, threshold notion has to be defined at Level 2, so that 25% is used in every countries.

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| 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? |

Yes, we agree

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| 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 believe that it would be more appropriate to restrict this obligation where securities are being issued in connection with the transaction, but we want to stress the fact that some operations could be damaged by such an obligation of pro forma, if the planned transaction has not been revealed to the public. We propose to restrict the disclosure of pro forma information to the occasions where securities are being issued in connection with a transaction announced to the public.

Profit Forecast

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| 73. Do you have any comments at this stage about this preliminary definition of a profit forecast?<br>85. Should issuers be required to repeat or update outstanding ad-hoc profit forecasts in the prospectus?<br>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")?<br>87. Do you agree with the arguments set out regarding mandatory reporting by the company's financial advisor? |

We agree with profit and loss forecasts and estimates definitions. We think that it would be appropriate to require that issuers repeat or update outstanding ad-hoc profit forecasts in the prospectus only when updating the whole prospectus. The disclosure requirement (ref IV.D.3 (a) and (b) Annex "A") seems to be relevant. We think that it is very important that investor be aware that forecast must be taken with precautions, such statements contain a remark stating that investors should not rely on such statements in making their investment decisions.

Regarding mandatory reporting by the company's financial advisor, we think that such an obligation would be unrealistic. It would be restraining and would not provide useful improvements of financial information quality.

Directors and senior management privacy

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| 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 we want to stress the fact that, in our national law, amnestied sentences are considered as having never occurred, and therefore must not be disclosed in any public information.

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

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

Yes, we think that such a disclosure is useful.

Documents on Display

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| 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)?<br>Would this cause problem due to privacy laws or practical problems as a result of having to review lots of documents for commercial information? |

It is not acceptable to require that a company put on display, especially to the use of its competitors, its material contracts (cf. VIIIF b), even if it concerns contracts not entered into in the ordinary course of business. We have no doubt regarding the fact that competitors for their own profit would systematically use such a disclosure.
We understand that contracts not entered into in the ordinary course of business refer to contracts that are cumulatively non-recurring and non-operating. Is it the correct interpretation of paragraph VIIIC ? It would be useful to provide us with an illustrative (exhaustive if possible) list.
In any case, those contracts are confidential elements of business and must not be disclosed to the public, especially to competitors. It can be a material advantage for non-listed competitors that would not have to display their own contracts. Besides, all listed company do not have an equivalent use of such contracts that is the reason why it could be a competition distortion even between listed companies.
Some member states may give a possibility to hide parts of the contracts if it brings commercial information, which is a first step but is insufficient. Indeed, it will create a lack of harmonization between European countries. Furthermore, it is important to stress that information regarding the global functioning of a company, even if it is not commercial information, can be strategic information for competitors.

In question 150 (in the debt securities part), the possibility to ask for a translation of those documents is mentioned. We think that this question is also applicable for all financial instruments. We want to stress the fact that it is not necessary to ask for a translation of the whole contracts and documents as requirement of Annex A comprises a summary of each material contracts and documents, disclosing all important terms and conditions. Besides, it would be expensive for the issuer.

Specialist Building Blocks

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

We are still waiting for some answers of professionals concerned by those specific blocks. At this stage, we can already note that we have no problem with annexes E, F and H. Regarding annex D, the date of valuation (42 days before the publication maximum) does not seem to be relevant, as valuation takes many time. Three months would be more appropriate, as a minimum. We are still waiting for specific comments on Annex D § 6 and Annex G, will add it, if any, in our answer to the addendum.

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

We are waiting for the addendum publication, and we think that a specific scheme is particularly necessary for banks.

Start-up Companies

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| 100. Do you agree with the specific disclosure requirements set out in the building block for start-up companies?<br>101. Do you feel that additional disclosure requirements should be included, for example, an independent expert opinion on the products and business plan? |

We are still waiting for specific comments on Annex C and will add it, if any, in our answer to the addendum.

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

Yes, we feel that this disclosure is useful and may be applied to all companies, with a statement that they're a no such restriction if that is the case.

SME's

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| 105. Do you believe that SME's should only be required to provide details for two years under disclosure requirement II.A?<br>106. If so, do you believe that all historical information should be restricted to this two-year period?<br>107. Bearing in mind the materiality tests in the disclosure requirements contained in the Core Equity building block, if you believe that there should be some specific disclosure requirements for registration documents for SME's, please list them. |

To enable an access for SME's to financial markets, it is essential to tailor obligations required in the prospectus to take into account their size, as proposed in the prospectus directive proposal. CESR proposition mainly consists in a reduction to two years instead of three. It is relevant but insufficient. Indeed, a number of the disclosure requirements contained in the Core Equity building block are burdensome for SME's and we have no doubt that if there is no specific disclosure regime for SME's, they will be excluded of the financial European market. Furthermore, listed SME's would ask to discontinue the listing of their company.

We disagree with the idea that, as SME's activity is simpler, its obligations of information are lightened, because its means are also more limited. It is consequently more difficult and expensive to produce information.
We propose a specific disclosure for SME's, (see draft proposal in annex), that could be completed for two years at the beginning and then updated on a three years basis. We established this model of prospectus keeping in mind investor's protection.
Especially for the SME, it would be useful to accept, as it is possible in France, the registration of the annual report as a prospectus.

Property Companies

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| 111. Do you agree that valuation reports, as set out in Annex D should be required for property companies?<br>112. Do you consider it appropriate that the date of valuation must not be more than 42 days prior to the date of publication?<br>113. Do you agree that it would be more appropriate for such reports to be required when securities are being issued by a property company and hence should form part of the securities note? |

Regarding annex D, the date of valuation (42 days before the publication maximum) does not seem to be relevant, as valuation takes many times. Three months would be more appropriate, as a minimum. We believe that the approach described in § 113 is relevant.
We are still waiting for specific comments on Annex D § 6 and will add it, if any, in our answer to the addendum.

Mineral Companies

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| 116. Do you agree that expert reports should be required for mineral companies? Do you agree that it would be more appropriate for such reports to be required when securities are being issued by a mineral company and hence should form part of the securities note?<br>117. Do you agree with the disclosure requirements in registration documents for mineral companies set out in Annex "E"? |

We have no problem regarding annex E

Investment Companies

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

We are still waiting for specific comments on Annex G and will add it in our answer to the addendum.

Scientific Research Based Companies

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| 123. Do you agree with the disclosure requirements in registration documents for scientific research based companies set out in Annex "H"? |

We have no problem regarding annex H

***DEBT SECURITIES***

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

Yes, we think that it would be simpler, for issuers and investors, to have the same disclosure requirements. This would be appropriate especially to avoid problems for debt instrument giving potential access to capital, existing or that could be developed.
It seems to be more logical to have a different treatment only in the securities note.

Disclosure about the advisers of the issuer – CESR disclosure ref: I.B (Corporate Retail Debt Building Block)

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| 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? |

Yes, we do.

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| 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? |

No, it would give an incomplete view of the issuer financial situation.

History of the company's investments – CESR ref: III.B (Corporate Retail Debt Building Block)

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| 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?<br>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?<br>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? |

Yes, we consider that that information is material for an investor, for past, current and future investments.

Operating results, Liquidity and capital resources – IOSCO ref V.A and V.B

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| 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? |

No, we disagree. As we answered to the question n°129, we think that it would be simpler, for issuers and investors, to have the same disclosure requirements for equity and debt securities. It seems to be more logical to have a different treatment only in the securities note.

Age of the latest accounts – CESR ref VII.H.1 (Corporate Retail Debt Building Block)

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

We consider that any requirement regarding interim financial statement form, content and periodicity, must be stated by the directive Transparency. It is not relevant to determine those points in the prospectus legislation. The utility to make a difference between equity or debt or derivative issuer for the periodicity or content of interim financial statement is also exclusively in the scope of the directive transparency.
That is the reason why we think that requirements regarding those points in Annex A must be perfectly in compliance with the Transparency directive.

Documents on display – IOSCO ref X.H

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 problem due to privacy laws or practical problems as a result of having to review lots of documents for commercial information?
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?

As we answered to question 93, it is not acceptable to require that a company put on display, especially to the use of its competitors, its material contracts (Annex A - VIIIF b), even if it concerns contracts not entered into in the ordinary course of business. We have no doubt regarding the fact that such a disclosure would be systematically used by competitors for their own profit.
In any case, those contracts are confidential elements of business and must not be disclosed to the public, especially to competitors. It can be a material advantage for non-listed competitors that would not have to display their own contracts. Besides, all listed company do not have an equivalent use of such contracts, which is the reason why it could be a competition distortion even between listed companies.
Some member states may give a possibility to hide parts of the contracts if it brings commercial information, which is a first step but is insufficient. Indeed, it will create a lack of harmonization between European countries. Furthermore, it is important to stress that information regarding the global functioning of a company, even if it is not commercial information, can be strategic information for competitors.

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 think that it is not necessary to ask for a translation of the whole contracts and documents as requirement of Annex A comprises a summary of each material contracts and documents, disclosing all important terms and conditions.

Additional information – IOSCO Ref: - X.I

153. On a review of the equity disclosure requirements (CESR ref VIII.G of the Core Equity Building Block) set out in Annex "A", please advise which if any of these requirements you consider to be relevant for retail corporate debt. Please give your reasons.
154. Do you agree with the CESR disclosure proposals for corporate retail debt as set out in Annex "I"?
155. Please advise which if any items of disclosure should not be required for corporate retail debt. Please give your reasons.
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.

As we answered to the question n°129, we think that it would be simpler, for issuers and investors, to have the same disclosure requirements for equity and debt securities. It seems to be more logical to have a different treatment only in the securities note. That is the reason why we think that additional information must be the same for debt issuer as for equity issuer.

***DERIVATIVE SECURITIES***

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.

We think that derivative instrument is so specific that it is not possible to use the same disclosure requirement as for equity security.

Types of securities that are covered by the word "derivative"

170. Do you think it is useful to provide some form of definition for these securities?
171. If so, which of the two approaches set out above do you prefer? Please give your reasons.
172. If you prefer the approach based on a wide definition of derivatives, do you have any comments on the proposed definition?
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?

Yes, we think that a definition is really useful for derivative instruments. We prefer the first definition (§166) because this definition is more concise, is easier to understand and can cover more easily new instrument in the future.

Other questions

Regarding other questions about derivatives, we think that banks are more qualified to answer, as in France derivative are mostly issued by banks or investment firm.
We just would like to note that most derivative products are issued by financial institutions. 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. 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.

We have seen that the addendum provides us with specific schemes for many derivative products. We will therefore complete our analysis in our answer to the addendum.

***B –SECURITIES NOTE***

***LEVEL 2 ADVICE***
***246. CESR recommends to adopt three main schedules encompassing the three following main types of securities: equity securities, debt securities and derivative securities.***
***247. These three main schedules should consist of: a) a list of common items identical whatever the type of offer or admission considered, and b) a list of specific items relating to the type of security offered of for which admission is sought.***
***248. In order to draft securities notes for securities that do not strictly belong to one of the three main types, the issuer should be able, under guidance of the competent authority, to add some specific items of another schedule to the main schedule chosen in accordance with the most relevant characteristics of the securities offered.***

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| 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? |

It is relevant to create specific building blocks on particular characteristics of some **offers, markets and securities**. On the contrary, all the particular characteristics of the **issuer** have to be disclosed in the registration document only. For example, the proposal of Annex F should rather be included in the registration document.

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| 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 in one single document. Is this approach sensible or should the common items and the specific items form distinct blocks? |

Regarding specificities for derivatives, we think that banks are more qualified to give an opinion on CESR proposals, as in France derivative are mostly issued by banks or investment firm.

**NB: Some information required in the security note is redundant with the registration document. We propose that in that case, the issuer makes a reference to the specific paragraph of registration document.**

We think that common items and specific items for each type of securities must be amalgamated in one single document.

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?

It is necessary to have adequate disclosure requirements for securities that do not fall within just one of the three main types, at level 2, in order to harmonise European practices. It is important that level 2 defines a single model (main schedule chosen and specific items added) for each instrument, in order to have an easy comparison between different countries for an investor.

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?

Advisers must be mentioned only when they have taken part in the issue / offer.

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"?

Auditors report regards the complete prospectus and therefore includes the security note audit. The issuer should only make a reference to the concerned paragraph of the registration document.

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?

We think that responsibility for each of these three parts must rest with the same persons.

255. Section III.A. - Under Section III.A. All securities notes must contain a statement of capitalization and indebtedness. Is such a statement necessary for derivatives?

It is necessary in the cases where it gives information on the underlying security (when the underlying is a security instrument).

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?

It is important for derivatives when the underlying is a security instrument.
**NB: Besides, we note that it would be useful to extend the requirement of §IIIB-4 (Annex K) to debts securities.**

257. Section III.C.2.(d) – 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 think that an information with best and worst scenarios is not appropriate, as it is difficult to establish and can be confusing for investors.
Regarding worst case, we prefer the solution 3), which could be a good way to give a real warning to the investor of what he may lose.

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?

Yes, we think it is useful in any case.

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"?
Should information about the rating of the issuer or of the issues be mentioned under that item?
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 organization 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 organization whose rating is disclosed and explaining the meaning of the rating".

Those additional items are useful. The first proposal for rating wording is more appropriate to show the rating agency independence.

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 depending 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?

This information is useful. Those requirements for disclosure vary depending upon the nature of the underlying instrument. We think that the useful information regarding the market is to specify where the underlying is listed or traded.

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

Some information required in the security note is redundant with the registration document. We propose that in that case, the issuer makes a reference to the specific paragraph of registration document.

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

We note that it would be useful to extend the requirement of §IIIB-4 (Annex K) to debts securities

**PART TWO – Incorporation by reference**

***A – DOCUMENTS THAT CAN BE INCORPORATED BY REFERENCE IN A PROSPECTUS***

***LEVEL 2 ADVICE***
***279. The documents that can be incorporated by reference in a prospectus, besides the characteristics provided for by article 11 paragraph 1 of the Commission proposal:***
***- Should be drawn up in the same language of the prospectus or of the documents composing it (registration document, securities note, supplements) into which the information is incorporated by reference.***
***- Should have been filed with the competent authority either previously or together with the prospectus.***

***280. According to the above listed characteristics the following documents may be incorporated by reference in a prospectus:***

- ***annual and interim financial statements;***
- ***merger and de-merger documents;***
- ***auditor's report ;***
- ***memorandum and articles of association***
- ***earlier approved and published prospectuses;***
- ***press releases.***

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

Yes, we think that the above list is acceptable. No further technical advice is needed.

***B. DOCUMENTS THAT CAN BE INCORPORATED BY REFERENCE FOR ANNUAL UPDATING OF THE REGISTRATION DOCUMENT***

(No question)

### *C. ADDITIONAL TECHNICAL ADVICE*

***LEVEL 2 ADVICE***

***287. The documents incorporated by reference should be made available with the same modalities as the prospectus. Therefore the documents incorporated by reference should be available at no cost in the same places where the prospectus should be made available and for the same period of time. A paper copy should be given free of charge on request.***

***288. When the prospectus is made available in electronic form the documents incorporated by reference, and solely these documents, should be linked to the prospectus with easy and immediate technical modalities.***

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|---|
| 289. Should other aspects concerning the accessibility of the documents incorporated by reference be considered?<br>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. |

We think that the above advice is satisfactory and sufficient.

## PART THREE - AVAILABILITY OF THE PROSPECTUS

### *A. AVAILABILITY IN AN ELECTRONIC FORMAT*

***LEVEL 2 ADVICE***

***305. The publication of the prospectus in electronic form, pursuant to Article 14 (2) c) of the proposed Directive or as an additional mean of availability, should be subject to the following requirements: a) The prospectus should be easily accessed when entering the web- site; b) The file format should be such that the prospectus cannot be modified (e.g. pdf-file); c) The prospectus cannot contain hyper-links, with exception of links to the electronic addresses where information incorporated in the prospectus by reference is available (in such a case only the documents incorporated by reference should be made available); d) The investors should have the possibility of downloading and printing the prospectus.***

***306. If a prospectus for public offer is made available on the web sites of issuers and financial intermediaries, these should take measures, such as the insertion of warnings related to the addressees of the offer, to avoid targeting residents in other jurisdictions where the public offer does not take place.***

| |
|---|
| 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? |

We think that the above advice is satisfactory and sufficient.
There is no need to further define which file formats are accepted.

### *B. AVAILABILITY VIA THE PRESS*

***LEVEL 2 ADVICE***

***313. The newspaper where the prospectus is inserted according to Article 14 (2) a) of the proposed Directive should comply with the following requirements: a) It should have a national or supra-regional scope; b) It should be one of the 8 national newspapers with more circulation in the Member State, as ranked by an independent entity; c) It should be a general or financial information newspaper.***

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 think that the above advice is satisfactory and sufficient.

## *C. ADDITIONAL TECHNICAL ADVICE*

C. 1. Notice stating where the prospectus is available

***LEVEL 2 ADVICE***

***322. When a prospectus is published or made available pursuant to Article 14(2) of the proposed Directive, a notice stating that such document has been published and where it is available should be disclosed by the issuer / offeror according to the following arrangements: a) When the prospectus is inserted in one or more newspapers or is published in the form of a brochure, the notice shall be made available on the issuer's web-site; b) When the prospectus is published in electronic format, the notice shall be inserted on one or more newspapers that fulfil the requirements for publication of prospectuses.***

***323. The notice shall be made available or published no later than the next business day following the date of publication of the prospectus.***

***324. The notice shall contain, at least, the following items of information: a) The identification of the issuer; b) The type, class and amount – if already known- of the securities to be offered and/or in respect of which admission to trading is sought; c) The intended time schedule of the offer /admission to trading; d) A statement that a prospectus has been published and where it is available; e) If the prospectus has been published in the form of a brochure, the addresses where and the period of time during which such brochures are available to the public; f) If the prospectus has been made available in electronic form, the addresses to which investors should refer to ask for a paper copy; g) The date of the notice.***

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

As the Commission proposal now provides for a publication of a notice in its lately amended version, this question is treated at level 1. Nevertheless, proposed text creates a competition distortion.

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

As stated in article 14 § 2 bis, the sole requirement for such a notice is how the prospectus has been put on display and where it can be found.
The proposed level 2 advice § 324 is far too detailed and such a publication would be too expensive for issuers.

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?

We believe that the web site of the competent authority should always be used to publish any issuer information. At a minimum, the web site of the competent authority should mention where the prospectus is available.

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/offeror?

Yes, it should be considered as sufficient.

C. 2. Publication in the form of a brochure

***LEVEL 2 ADVICE***
***330. If the prospectus is composed of more than one separate document, each of them should clearly mention that it does not constitute the complete prospectus brochure.***

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

None

C.3 Delivery of a paper copy

***LEVEL 2 ADVICE***
***333. The following measures should apply to the duty of delivering a paper copy (also a print of a computer file) free of charge of the prospectus to the investors on request, when the prospectus is available in an electronic format: a) The issuer should deliver a paper copy to the investor, as soon as possible, allowing investors to consult the prospectus in due time; b) The issuer/ offeror, or their representatives, are not required to deliver more than one paper copy to each investor; c) The investor should not be required to pay mail costs.***

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

We agree that the issuer should deliver one paper copy or one print of a computer file to the investor on request, as soon as possible. We think that it would be relevant to define a lump sum for the investor to contribute to deliver and mail costs, even for a small amount, in order to prove the real interest of the investor who asks a paper copy.

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

No, there are no additional issues.


***MEDEF***
*Economic, Financial and*
*Fiscal Affairs*

*Paris, Tuesday 31th December 2002*

**CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive**
**Consultation Paper - Ref: CESR/02.185b**

**Annex to Medef Position**

## PROPOSAL FOR THE REGISTRATION DOCUMENT

PROPOSED SCHEME FOR SMES

- **Responsibility for the prospectus**

**I.A.1** Name and position of the natural persons or the registered name and registered office of legal entities who are responsible for the prospectus or, where applicable, some parts thereof, with in such cases, reference to those parts.

**I.A2** Declarations of the persons responsible referred to in point I.A.1, stating that to their knowledge in respect of the part of the prospectus for which they are responsible, the information therein is in accordance with the facts and does not contain any omissions that would affect the import of the registration document.

**I.C** Name, address and qualifications of the auditors

- **General information on the issuer and the issuer's share capital**

### III.A General information on the issuer

**III.A.1** Registered name, registered office and headquarters if different to registered office

**III.A.2** Trade registry and registration number

**III.A.3** Formation date and expiry date of the issuer; length of life of the issuing except where indefinite

**III.A.4** Legal form of the issuer - only specific provisions need to be stated

**VIII B** The company's objects and reference to the specific Article in the Articles of Association under which the objects are stated

**VIII F(except (b))**Locations where the issuer's legal documents (e.g. Articles of Association, minutes of General Meetings of Shareholders, auditors' reports, etc.) may be examined

Financial year - start date, end date and duration

**VIII B 5** Describe the conditions governing the manner in which annual general meeting and extraordinary general meeting of shareholders are convoked, including the conditions of admission and functioning.

**(VIII A 7)** General information on the company's capital
Capital history covering the last two years or since its formation date if formed less than two years ago

**VIII A 1 & VIII B 3** Current distribution of shares and voting rights

- **Information on the issuer's activities**

**III C 1** Description of the issuer's main activities
The issuer shall cover the following details if they are material:
- Turnover part realised with the most important customer
- Turnover part realised on the most important product
- Part of the most important supplier in purchases

V D Average number of employees and movements over the past two financial years in the case of significant changes

**III B** Investment policy

The issuer shall cover the following details if they are material :

- Numeric details of the main investments carried out over the past two financial years and during the months since the last year-end

- Main investments in progress and details of funding

- Details of the issuer's principal future investments that have been firmly committed to by the company management or directors, excluding any interests to be acquired in other companies in cases where the information is confidential

**II B Issuer risks**

By way of example, the issuer shall give details of the following risks if they are relevant and of a significant amount:

**II B 1** General or industrial risk

Disclose the following risks, if they are relevant and material :
- Political risk (turnover part realised with risky countries)
- Risks relating to natural phenomena (level of direct dependency toward natural phenomena)
- Any possible dependency that the issuer may have with respect to patents, licences, supply, industrial, sales or financial agreements, or to new manufacturing procedures if these factors are of major significance to the activities or to the profitability of the issuer
- Seasonal nature of activities
- Competitive position

**II B 2** Financial risk

Disclose the following risks, if they are relevant and material:
- Exchange rate risk
  Reflects the fact that a drop in exchange rates may cause a fall in the value of assets denominated in foreign currencies
- Interest rate risk
  Risk of capital losses due to interest rate fluctuations

**II B 3** Other risks specific to the issuer, where relevant:

Disclose the following risks, if they are relevant and material :
- Counterparty risk
  Risk of the definite loss of an outstanding account if the debtor is unable to meet all its commitments
- Is the issuer subject to a specific legislation? If so, give a brief description of this legislation and its impact on the company.
- Links and/or dependency, where applicable, between the issuer and other companies (dealing agreements, marketing, distribution or manufacturing licences)
- Details of assets required for operations but not owned by the company
- Specific fiscal arrangements
- Details of any dispute or arbitration that may in the future have, or has in the recent past had, a considerable effect on the issuer's financial position, activities, profit and, where applicable, on its group.

**II B 4** Insurance – Coverage of potential risks to which the issuer may be subject

Disclose the following risks, if they are relevant and material :
- List of the insurance policies taken out by the issuer
- Amount of coverage in respect of all general or specific risks

- **Assets - Financial position and results**

**VII A Issuer's financial statements**

**VII A 1** Audited financial statements for the last two financial years drawn up by the issuer's company management or directors presented in the form of a comparative table with Notes to the annual accounts for the most recent financial year.

**VII A 2** Total earnings and earnings per share for the year, before and after taxation, including profit on ordinary operations and net profit, specifying the non-consolidated and consolidated figures, for the two latest financial years

**VII J** Cost of dividend and dividend per share for the two latest financial years

**VII A 3** Existing bank borrowings classified by maturity dates

**IV B 1c & IV B 3** Details up to the latest available date :

- of total outstanding loans broken down between unsecured loans and loans secured by the lender itself or by third parties through sureties or otherwise;
- of the total amount of conditional commitments

must be given if they are of significant amounts

**VII A 3** Source and application of funds statement for the past two financial years - cash flow statement

- **Directors and senior management**

**V A 1** Directors and senior management

The issuer shall state, notably, in addition to a detailed curriculum vitae, any convictions for offences (not amnestied), personal bankruptcy, receiverships, liquidations and details of any public criticisms made by a regulatory body or professional body against a director, whilst in office or during the twelve months preceding the event.

- **Management and directors' interests in the share capital of the issuer and in a company which has a controlling interest in it, a subsidiary of the issuer or a major customer or supplier of the issuer**

**V B** Total amount of compensation paid and benefits in kind granted during the financial year directly or indirectly paid in name to each company management or director by the issuer or by a group company

**VIII A 6 & V D 1** Share subscription or purchase options granted to and exercised by each company management or director

- Number, maturity date and price of share subscription options granted to each company management or directors and the options that have been exercised by said management or directors

- Number and price of shares subscribed or purchased during the financial year by each company management or directors as a result of the exercise of one or more of the options held in the companies referred to above

**VI B** Information on the nature and importance of transactions concluded between the company and its managing director, joint managing directors, directors and members of the management board or supervisory board, shareholders holding a fraction of the voting rights over 10%, or in the case of a shareholder company, the company that controls it. If such transactions were concluded during previous financial years without the approval of the competent body, information on these transactions shall also be provided, particularly the auditors' special reports on these transactions. Transactions realised according to normal market terms and conditions are excluded of the disclosure scope.

**VI B** Overall description of loans and guarantees granted in respect of the administrative and supervisory bodies and directors

**V D 2** Details of employee profit sharing agreements and incentive schemes

- Date, description and principal terms of these agreements
- Sums allocated under these schemes to employees over the past two years

- ♦ **Recent developments and future outlook**

**IV D 1** Recent developments

General information on the development of the issuer's business since the date of the latest published annual accounts, notably, the most significant recent trends in:

a) production
b) sales
c) inventory
d) order book volumes
e) costs and selling prices

As far as possible, the issuer shall show a comparison with the equivalent details for the previous year.

The issuer shall give the market trends for the various factors.

**IV D 1 & III E & III B 3** Strategic policy
- General policy: diversification, specialisation, retraining;
- Former or new activities to be expanded;
- Where applicable, general details about the projected investment programme.

**IV D 2** Forecast information

The issuer shall specify if this heading includes any targets or estimates which are unlikely to be achieved, and particularly:

- forecast turnover and profits
- details of negotiations in progress or on the state of advancement of transactions of any type and of which the outcome or nature shall have a significant influence on the assessment of the financial position, activities or profits of the issuer.

**IV D 2** The market

- Probable factors relating to foreseeable market developments