

Poland
Polish Securities and Exchange Commission

RESPONSE TO THE CONSULTATION PAPER ON THE
POSSIBLE IMPLEMENTING MEASURES FOR THE
PROPOSED PROSPECTUS DIRECTIVE

The Polish Securities and Exchange Commission (PSEC) operates since 1991 as a central authority of government administration in the field of the public trading in securities.

The Polish Securities and Exchange Commission welcomes the opportunity to comment on the consultation paper setting out the advice of the Committee of European Securities Regulators (CESR) on possible level 2 implementing measures under the proposed Prospectus Directive.

PSEC fully accepts the general objective of CESR which is to find balance between facilitating the widest possible access to capital markets, making regulatory requirements simpler and more flexible to issuers and assure necessary protection and appropriate information for investors.

PART ONE – MINIMUM INFORMATION

International Accounting Standards (33)

In our opinion it is necessary to impose on companies whose securities are admitted to trading on the EU regulated market (especially ‘public interest’ entities: banks, brokerage houses and major non-public companies) an obligation to prepare consolidated accounts in conformity with International Financial Reporting Standards (IFRS).

A. Registration Document

1) EQUITY SECURITIES

Question 44.

Yes, we do agree.

Annex A – CESR Proposals for the Core Equity Registration document Building Block

- **I.A, I.B, I.C – responsibility for the prospectus, advisors, auditors**
Polish regulations on information about people responsible for the content of a prospectus are comparable with CESR proposals and this section does not raise any doubts.
- **I.C.2 – auditors**
According to CESR proposal if an auditor has resigned, been removed or not re-appointed during last three financial years, this fact has to be disclosed if material.

In Polish legal system this kind of information is disclosed in current reports and there is no obligation to include it in a prospectus. However, PSEC agrees that disclosing this information in a prospectus is useful for investors. Whereas information in current reports refers to the last change of an auditor only, information in the prospectus should concern all auditors who were involved in investigation of all issuer's financial accounts included in the prospectus.

- **II.A Selected financial data**

Polish regulations on the scope of the selected financial data disclosed in the prospectus are comparable with CESR proposals and this section does not raise any doubts.

- **II.B Risk factors** (points 45-46)

Polish regulations require description of risk factors for the securities' buyer and in particular factors related to issuer's activity or its capital group or its business environment.

PSEC has the right only to suggest including given risk factor connected with the specific type of issuer's activities. In general this section is clear and does not raise any doubts.

Question 47.

Yes, we agree.

- **III.A History and development of the company**

Polish regulations on issuer's history and legal situation are comparable with CESR proposals and this section does not raise any doubts.

- **III.B Investments**

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts. Polish laws do not require to disclose information about public offers connected with issuer's take-over which might be useful for investors to assess the investment risk.

- **III.C Business overview**

Polish regulations on issuer's business overview are comparable with CESR proposals and this section does not raise any doubts.

- **III.D Organizational structure**

Polish regulations on issuer's organizational structure are comparable with CESR proposals and this section does not raise any doubts.

- **III.E Property, Plants and Equipment**

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.

- **IV.A Operating results**

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.

- **IV.B Liquidity and capital resources**

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.

- **IV.C Research and development, patents and licences etc.**

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.

- **IV.D Trend information** (points 66-87)

Indication and evaluation of trends and forecast in relation to issuer's activities and his financial results may be disclosed in a prospectus but it is not obligatory according to Polish regulations.

Question 73.

General guidelines referring to disclosure of issuer's financial forecasts are reasonable.

Question 85.

Yes, issuers should be required to repeat or immediately update all information and forecasts related to their estimated financial results.

Question 86. – 87.

It is reasonable to impose an obligation to disclose profit forecasts for the current financial year and specific information concerning grounds for such a forecast. It is also reasonable to include mandatory reporting by the company's financial advisor as to the reliability of the assumptions and principles used in the forecast. There should be an obligation for immediate publishing of updated forecasts.

- **V.A, V.B, V.C Directors and Senior Management (88-89)**

Question 89.

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts. It would not breach Polish privacy law.

- **V.D Employees**

Polish regulations concerning issuer's employees are comparable with CESR proposals and this section does not raise any doubts.

- **VI.A Major Shareholders (90-91)**

Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.

Question 91.

All the information referring to issuer's shareholders is important for investors and should be obligatory disclosed in a prospectus.

- **VI.B Related Party Transactions**

According to Polish regulations, there is an obligation to disclose in prospectus related party transactions but only if they exceed certain threshold. The CESR proposal does not indicate any threshold, therefore, we understand that it refers to all related party transactions which is unnecessary since it may blur the real standing of the issuer.

- **VI.C Interests of Experts and Counsel**

Polish regulations do not require disclosing this kind of information, however, we agree that it might be a very important decision factor for investors.

- **VII.A. – VII.H. Financial information**

- **VII.H.2. Interim financial statement**

According to Polish regulations in case when interim financial statement is included in a chapter titled 'Financial statements', it should be audited and the auditor's opinion and report should be attached. If interim financial statement is placed in the chapter 'Additional information' (it concerns only quarterly reports) it does not have to be audited. The other proposals from this section are reasonable and do not raise any doubts.

- **VII.I. Export sales**

Information on issuer's export sales is one of the aspects of its business activity and is not separately regulated in Poland.

- **VII.J. Dividend policy**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VII.K. Legal and Arbitration Proceedings**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VII. L. Significant change in the company's financial or trading position**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.A. Share capital**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.B. Memorandum and Articles of Association**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.C. Material Contracts**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.D. Exchange Controls**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts. In the future in the light of increasing amount of international offers it will be necessary to lay greater stress on this kind of information.
- **VIII.E. Statement by Experts**
Information about persons acting as experts is included in prospectuses in Poland (sometimes obligatory or at issuer's discretion). In our opinion this section does not raise any doubts.
- **VIII.F. Documents on Display**

Question 93.

In our opinion it has to be noticed that excessive amount of documents on display may create additional and unnecessary cost for the issuer which does not lead to investors' benefit. Moreover, we do not think that it would be appropriate to make all business documents publicly accessible at least in order to protect the interest of the other side of a contract who might not be interested in public accessibility of its documents.

- **VIII.G. Subsidiary Information**

Question 95. – 96.

The proposed scope of minimal amount of information to be disclosed in a prospectus seems reasonable, however, it is impossible to carry out practical analysis because it is very rare to come across such issuers as indicated in CESR proposal.

Annex B – Pro forma financial information disclosures for inclusion in the registration document

In our opinion, the scope of pro forma financial information proposed by CESR is reasonable.

Question 51. – 52.

In our opinion, the requirement of submitting pro forma information in case of a significant change in the size of a company, due to a actual or planned transaction, is necessary provided that there are actual conditions for preparing such information (decision of company's competent authorities, conclusion of a contract) which should be described in a general clause.

Question 53.

In our opinion 25% is the correct threshold figure. 10% threshold figure is too low and could cause an obligation of too frequent preparation of pro forma documents.

Question 55.

No, it seems that there should be a general clause that the issuer is responsible for evaluation whether the information on the transaction/planned transaction should be included in the prospectus; the issuer should be responsible for inclusion of pro forma information

Question 64.

Yes. The scope of information set out in Annex B is sufficient and the obligation to examine information pro forma by an independent auditor as well as the obligation that the auditor prepares the statement and report is in our opinion necessary.

Question 65.

No. In our opinion restricting the disclosure of pro forma documents to the issue of securities (requirement of preparing "securities note") is insufficient. Investors should be constantly informed about probable consequences of transactions having significant influence on company's size.

Annex C – Start-up company equity issuers building block

According to Polish regulations there are no special requirements connected with form of prospectus for start-up issuers.

Question 100. – 102.

The solutions for start-up companies set out in Annex C are reasonable in our opinion. However, we think that the obligation of an independent auditor's opinion on company's products and business plan seems to be an unnecessary cost for the issuer. Start-up entities are considered to be risky business but their shares are bought by investors who are aware of that risk.

Question 105. – 107.

The idea of separate treatment of SMEs is to lower the costs connected with preparation of a prospectus. Therefore, we think that it is appropriate to limit all historical information on financial statements to two year period. The same time period should apply to the information on issuer's activity. Issuer's discretionary decision whether disclosure of other information is important or not may cause unclear situations especially when taking into account specific character of various UE member states' financial markets.

Annex D – Property company building block for inclusion in the securities note

Questions 111. – 113.

There are no specific regulations regarding property companies in Poland and therefore it is hard for us to articulate any suggestions, however, CCSR proposals on property evaluation reports seem to be reasonable.

Annex E and F – Mineral company building block for inclusion in the securities note

Questions 116. – 117.

There are no specific regulations regarding mineral companies in Poland (in fact we have only one mineral company on the Polish market) and therefore it is hard for us to articulate any suggestions, however, CCSR proposals on expert reports seem to be reasonable especially in relation to investments in distant locations on the Earth.

Annex G – Investment company building block

Question 120.

Disclosure requirements set out in Annex G are reasonable.

Annex H – Scientific research based company building block

Question 123.

Disclosure requirements on registration documents for scientific research based companies set out in Annex H are reasonable.

Annex I – CCSR Proposals for the Corporate Retail Debt Registration document Building Block

Question 129.

The scope of disclosure requirements for debt securities should be adapted to the specific character of this financial instrument.

- **I.A, I.C Responsibility for the prospectus**

Polish regulations on information about persons responsible for the content of a prospectus are comparable with CCSR proposals and this section does not raise any doubts.

- **I.B. – advisers**

Questions 134. – 135.

Any information on issuer's advisers and banks it cooperates with may be useful to investors in evaluating issuer's financial credibility and therefore should be disclosed as broadly as possible.

- **II.A. – Selected financial data**

Polish regulations on disclosure of issuer's selected financial data are comparable with CCSR proposals and this section does not raise any doubts.

- **II. Risk factors**

Polish regulations on risk factors are comparable with CCSR proposals and this section does not raise any doubts.

- **III.A. History and development of the company**

Polish regulations on disclosure of history and development of the issuer are comparable with CESR proposals and this section does not raise any doubts.

- **III.B. Investments**

Polish regulations on disclosure of issuer's investments are comparable with CESR proposals and this section does not raise any doubts.

Question 137. – 139.

Information on issuer's investments (past, current or future) constitutes one of the most important factors for the assessment of risk in case of debt securities. Profitability of issuer's investments has the direct influence on the ability to manage the issued debt securities. Past and current investments indicate what kind of investments the issuer is running. Therefore, we think all this information should be disclosed in a prospectus.

- **III.C. Business overview**

Polish regulations on disclosure of issuer's business activity are comparable with CESR proposals and this section does not raise any doubts.

- **III.D. Organisational Structure**

Polish regulations on disclosure of issuer's organisational structure are comparable with CESR proposals and this section does not raise any doubts.

- **III.E. Property plants and equipment**

Polish regulations on disclosure of issuer's property and equipment are comparable with CESR proposals and this section does not raise any doubts.

- **IV.A. The company's capital expenditure commitments**

Question 142.

The CESR proposal is reasonable.

- **IV.B. Trend information**

According to Polish regulations information on the most significant trends in issuer's activity may be disclosed in prospectus though it is not a mandatory requirement.

- **V. Directors and Senior Management**

Polish regulations on disclosure of information on issuer's directors and management are comparable with CESR proposals and this section does not raise any doubts.

- **VI.A. Major Shareholders**

Polish regulations on disclosure of issuer's major shareholders are comparable with CESR proposals and this section does not raise any doubts.

- **VI.B. Related Party Transactions**

According to Polish regulations, there is an obligation to disclose in a prospectus related party transactions but only if they exceed certain threshold. The CESR proposal does not indicate any threshold, therefore we understand that it refers to all related party transactions which, in our view, is unnecessary since it may blur the actual standing of the issuer.

- **VII.A. – H. Financial information concerning the issuer's assets and liabilities, financial position and profits and losses**

Polish regulations on disclosure of issuer's financial information are comparable with CESR proposals and this section does not raise any doubts.

Question 145. –146.

In our opinion information requirements (Annex I, VII.H.1) should specify circumstances for disclosure of interim financial statements, as well as their form and scope, as described in Annex A.

- **VII.I. Legal and arbitration proceedings**
Polish regulations on disclosure of issuer's legal and arbitration proceedings are comparable with CESR proposals and this section does not raise any doubts.
- **VII.J. Significant change in the company's financial or trading position**
Polish regulations on disclosure of significant changes in issuer's financial or trading position are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.A Share capital**
Polish regulations on disclosure of issuer's share capital are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.B Memorandum and Articles of Association**
Polish regulations in this field are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.C Material contracts**
Polish regulations on disclosure of issuer's material contracts are comparable with CESR proposals and this section does not raise any doubts.
- **VIII.D Statement by Experts**
Information about persons acting as experts is included in prospectuses in Poland (either obligatory or at issuer's discretion). In our opinion this section does not raise any doubts.
- **VIII.E Documents on display**

Question 148.

In our opinion it has to be noticed that excessive amount of documents on display may create additional and unnecessary cost for the issuer which does not lead to investors' benefit. Moreover, we do not think that it would be appropriate to make all business documents publically accessible in order to protect the interest of the other side of a contract who might not be interested in public accessibility of its documents.

Question 149.

We do not think that it would be appropriate to reveal publicly all issuer's business contracts since it could negatively affect issuer's economic interest. However, in our opinion all corporate documents should be publicly available.

Question 150.

Corporate documents and financial statements should be translated into the language of the country in which the public offer or admission to trading takes place.

Question 153.

Information set out in Annex A III.C.4-5 concerning seasonality of issuer's business should be considered important for the management of the current debt. The same applies to information described in section IV.A.1 concerning factors that affected issuer's financial results in the past.

Question 154.

The disclosure proposals for corporate retail debt are reasonable.

Question 155.

We agree with the proposed scope of disclosure for corporate retail debt

Question 156.

We agree with the proposed scope of disclosure for corporate retail debt.

2) DERIVATIVE SECURITIES

Introduction (157-160)

According to Polish regulations the scope of information disclosed concerning derivative issue is much less specific than in other securities issue.

Question 160.

In many respects debt securities registration document covers the same range of information as should be disclosed in derivative one. In both cases the key issue is the issuer's ability to timely fulfil financial condition connected with derivatives issue. Taking into account specific character of derivatives it would be possible to modify debt securities registration document adding some elements appropriate for derivatives. In Polish conditions the scope of information required in this kind of offers refers to disclosure of issue and trading conditions.

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

Question 170.

Yes. We think that it would be useful.

Question 171.

It seems to be advisable to provide some form of definition or at least set out some characteristic features which constitute derivatives. Therefore, in our opinion the second approach is more appropriate.

Question 172.

No comment.

Question 173.

Does not apply.

Broad categorisation of derivative products in a building block approach

Question 179-180

The proposed broad sub-categorisation seems to be an interesting idea. According to Polish regulations concerning public trading there is no differentiation based on the proposed criteria. On Polish capital market there is a division on instruments which price depends directly or indirectly on securities price and other instruments which do not comply with this condition.

Non – guaranteed return derivatives and guaranteed return derivatives (181-185)

Question 185.

In case of non – guaranteed derivatives the investor has to possess greater risk awareness connected with an investment whereas in case of guaranteed derivatives disclosed information should enable the investor to assess whether issuer will be able to guarantee profit from an investment.

Annex J – CCSR Proposals for the Corporate Retail Debt Registration document Building Block (186-228)

Question 190.

We agree that it is not essential to disclose issuer's senior management. The most important is information on persons who are entitled to represent the issuer as well as persons responsible for his surveillance and liable to the general meeting of shareholders.

Question 192.

As far as issuer's advisers are concerned it is important to disclose entities who participated in preparing an offer and are liable for the data presented in the registration document. In our opinion it is not appropriate to disclose information on all issuer's advisers.

Question 195. – 197.

It seems to be appropriate to disclose in derivative registration document information on risk connected with issuer's ability to fulfil its obligations to the investor. Additionally, we consider important information on risk directly connected with given security. In our practice there is an obligation to list out major risk factors on the first page of prospectus linked to more detailed information in the later parts of prospectus.

Question 199. – 207.

We consider the level of detail set out in IOSCO disclosure standard to be inappropriate for derivatives (it is too wide). Investor is not issuer's shareholder and therefore some information on issuer's activity are useless for investment's assessment. We think information presented in sections IV.B.2.- IV.B.3 may be omitted. The general description of issuer's business activity (profit sources) and organisational structure seem to be an important information.

Operating and financial review and prospects – IOSCO ref IV.D

Question 209. – 210.

In our opinion it is reasonable to omit the information set out in section V.D. However, information set out in section V.A. – V.B. enable the investor to analyse issuer's financial situation which is useful for investment purposes. Section V.C. refers to issuer's activities which do not directly influence issuer's financial condition and may be omitted.

Directors, senior management and employees – IOSCO ref VI

Question 212. – 213.

Information on issuer's employment policy or structure, payments or bonuses is superfluous in our opinion. However, information on issuer's management and supervisory staff should be disclosed since these people have direct influence on issuer's financial results.

Major shareholders and related party transactions – IOSCO ref VII

Question 215.

Information on major shareholders is essential. Investors have to know whether some entity may decide on issuer's most important corporate matters. Information set out in sections VII.B. – VII.C. refers to changes in issuer's capital structure and does not influence directly investor's decisions.

Financial information – IOSCO ref VIII

Question 217. – 220.

All financial statements enabling to assess issuer's financial standing should be disclosed (balance sheet, profit and loss account, changes in equity, cash flow account, introduction to statements, related notes, management board statement). Financial information should cover last financial year and include comparative information. Notes related to financial statement enable to track changes in issuer's assets and liabilities and are important factor for the investor and should be disclosed. If the registration document is to reflect only main information it might be appropriate to focus only on shortened financial information.

Share capital

Question 222.

It seems reasonable to disclose information set out in sections X.A.1. – X.A.4. These include a description of issuer's capital and its changes (also future changes). This information affects financial instruments directly connected with issuer's shares.

Question 223.

The information set out in these sections is relevant to the issue of shares and not derivatives and does not have to be disclosed.

Question 224.

We are unable to present our opinion on this matter.

Question 225.

We do not think this information is relevant to derivative issues.

Question 226.

This information does not refer to derivatives.

Question 227.

If in a registration document an issuer points out documents important for issuing derivatives it should also indicate a place where they can be inspected.

Question 228.

In our opinion information about issuer's subsidiaries does not have to be disclosed.

The disclosure requirements for guaranteed derivative securities

Question 232. – 234.

Construction of derivatives is similar to debt instruments (guarantee of constant return from security), therefore in construing registration document we may base on some elements from debt instruments registration document. These elements should refer to common features of both kinds of securities.

As far as differentiating derivatives according to guaranteed return is concerned we do not think it would be appropriate to set a percentage benchmark for the minimum return. Additionally, taking into account the lifetime of a financial instrument it is necessary to refer in the registration document to anticipated events and issuer's prospective results and to other factors which may affect investment's profitability – provided the instrument has been issued for a period longer than one year.

B. Securities Note

Question 249.

In our opinion it is appropriate that information disclosed should depend on issuer's particular characteristics, type of offer, markets and type of securities. According to Polish regulations information disclosed in prospectus is also based on the above factors. This approach enables the investor to precisely analyse future investment.

Question 250.

Yes, we find the format of schedules appropriate.

Question 251.

We agree that it would be a good idea to create additional regulations referring to other kinds of securities. Additionally, a competent authority should have right to widen the scope of information connected with an instrument. This right is necessary in the light of constant development of capital market and new financial instruments.

Question 252.

Advisers participating in preparation of an offer and other indirectly involved entities (offerers) should be mentioned in a prospectus.

Question 253.

In our opinion the securities note does not have to contain other reports of the auditor than financial statement reports. The report mentioned in CESR proposal could be publicly available at issuer's headquarters or disclosed in current reports (depending on legal regulations).

Question 254.

The responsibility for drawing up all the prospectus documents (register document, securities note, summary) does not have necessarily to rest with the same persons, therefore, it is appropriate to enclose separate statements of entities that prepared particular documents (registered document, securities note, summary).

Question 255.

In case when the return from derivative depends on issuer's financial standing the information from section III.A. (statement of capitalisation and indebtedness) should be disclosed.

Question 256.

This information will not always apply to derivatives. Therefore a note should be added that the information should be disclosed only if there are appropriate offers.

Question 257.

It is difficult for us to assume an attitude towards this matter. Polish regulations require the disclosure of risk factors connected with trading of derivatives. Making forecasts always bears the danger of manipulation especially when predicting 'worst case scenario'.

Question 258.

This information is not necessary in case of derivatives.

Question 259.

An additional information from section a) (Legislation under which securities have been created) may be useful. In case of bonds if the rating differs from previous evaluations (from prospectus or offer document) or has not been published yet it would be appropriate to mention the rating of the issuer or the issues.

Question 260.

If such an information has a significant effect on investor's evaluation of an investment then it should be disclosed especially when the underlying instrument has been admitted to trading on the public market.

Question 261. – 262.

The securities note procedure has not been introduced into Polish legal system so far, therefore we are unable to point out items which should be included in this document.

PART TWO – INCORPORATION BY REFERENCE

Question 281. – 282.

Some information disclosed in a previously publicised prospectus might be out of date. Therefore this document is not appropriate for this kind of disclosures. However, the other documents may be classified as 'incorporated by reference'. It is worth considering how to create an easy access to these documents for investors (at issuer's headquarters, brokerage houses, stock exchange).

Question 289. – 290.

According to Polish regulations only annual reports related to particular offers can be presented in the described way and not every issuer is entitled to such a simplification. Maybe it would be appropriate to include a condition which of the issuers are authorised to use 'incorporated by reference' documents. We are of the opinion that submitting a paper copy of the documents free of charge on request raises costs.

PART THREE – AVAILABILITY OF THE PROSPECTUS

In our opinion the most appropriate is the second proposal (prospectus in the form of a brochure).

Section 295. – 301.

No remarks to this section.

A. Availability in an electronic format

Question 307.

'Easy access' definition should be formulated. Additionally, a technical description should be added which file formats may be deemed appropriate to protect the data presented on a website (without naming the file types)

B. Availability via the press

Question 314.

The scope of presented information seems to be sufficient.

C. Additional technical advice

C.1. Notice stating where the prospectus is available

Question 325.

We consider this requirement appropriate.

Question 326.

Yes, we think that it would be an appropriate solution.

Question 327. – 328.

No, in our opinion it should be issuer's responsibility to disclose such an information.

C.2. Publication in the form of a brochure

Question 331.

It may be assumed that the issuer makes a decision to publish prospectus in the form of a brochure (in paper). However, when issuing securities the issuer, on investor's request, should supply the investor with a prospectus in paper form.

Another approach could be to settle a minimum edition amount in case of an offer of big value addressed to an unidentified investor.

C.3. Delivery of the paper copy

Question 334.

Yes, we agree that the issuer should deliver a paper copy to the investor free of charge.

Question 335.

No, there is not such a need.