

Dear Mr. Demarigny,

The Spanish Banking Association (Asociación Española de Banca –AEB-) greatly appreciates the opportunity of providing input to your important work relating the implementing measures of the proposed Prospectus Directive. You can find in this document our remarks concerning CESR's document, which have been drafted by a group of experts within our organization.

As a first reaction we want to express our concern regarding the annexes that contain the prospectuses schedules. We understand that the drafters of the annexes might aim to produce schedules as comprehensive as possible in order not to omit any relevant information for investors, but this general concern should not lead to very detailed prospectuses. It seems contradictory to require such detailed and extensive prospectuses and, according to the proposed Directive, allow their publication in the press.

CESR should try to simplify the different models. Such a simplification should not be a matter of concern, as regulators are authorised by the Directive and by national legislations to require any information they may deem necessary in a certain case.

A second comment refers to the Registration document. It should be clear that an equity RD (Annex A) may be used to make any type of public offer or admission of any sort of securities.

More specific comments are provided below:

Annex A

I B

This section is a clear example of the excessive level of detail required by the document. Besides, this item would produce problems of interpretation. As issuers might work with a number of different advisers, it could be difficult to assess which banks and legal firms have to be mentioned in the prospectus. And the mentioning of the advisers could give raise to liability issues for them.

III B.3

We would not advise to require specific information concerning future investments. Additionally, the meaning of the exemption provided by this Section is not clear for us (*interests to be acquired in other undertakings on which its management bodies have already made firm commitments*).

IV D.2

It is not clear whether the document makes profit forecasts mandatory or simply sets out a number of conditions to be met in case issuers voluntarily decide to publish such profit forecasts (we favour the second option).

V. A.1

Again this is an example of a too detailed section. It seems odd to require the mentioning of all the companies where a director manager has been a director during the preceding five years. This information could be restricted to positions discharged only in listed companies.

VI. B

There is an inconsistency between the introductory paragraph, that refers to the preceding three financial years, and the first number, that refers only to the preceding and current financial year.

VIII. F

We are against requirements under paragraphs (b) and (c) referring to material contracts and all reports, documents, etc, mentioned in the prospectus. Competent authorities should have the power to inspect those documents in order to check the accuracy of what has been disclosed in the prospectus but issuers should not be required to keep all these documents on display. Such a requirement would be too burdensome and might put at risk confidential agreements.

Annex D

We have doubts whether the valuation report has to be drawn by external experts or it would be possible for the issuer itself to produce such a report.

Finally, the 42 days rule seems a too strict deadline to us.

Annex I

Concerning the retail debt registration document, CESR should aim to produce a document as simple as possible. Taking this principle into account, our response is NO to questions 129, 134, 135, 137, 138, 139, 145, 148, 150 and 153. For similar reasons, we answer YES to questions 142 and 146.

Derivatives

We think is not necessary to have a specific derivative registration document. The registration document for debt securities should be used for derivative securities as well (question 160).

As regards to the definition of derivative securities, we prefer the approach based on fundamental features as proposed in paragraph 168 (questions 170-171).

We do not agree with the sub-categorisation of derivative products (guaranteed and non guaranteed products) for RD purposes. Derivative securities offer a wide spectrum of risk, in terms of their nature and their intensity. That could lead to many other sub-categorisations. In our view, a proper description of the security in the SN is enough.

Securities Note

Question 252

For the reasons stated above in regard of section I B of annex A, advisers should not be mentioned in the prospectus. The responsibility for the information given in a prospectus is incumbent upon the issuer or the offeror, irrespective of the relationship between those entities and their advisers taking part in the issue. It does not seem reasonable for the prospectus to imply a kind of advisers' liability towards investors.

Question 253

Our answer is no. The “yes” route could have undesirable effects, that is, less involvement of auditors in public offers or admission of securities to markets. Now is a current practice that auditors review certain information not included in the annual accounts, in the interest of the syndicate placing the issue. This review usually takes the form of a comfort letter for internal use and restricted distribution. If CESR wanted to make public these sort of documents, the likely outcome would be the end of this practice, as auditors would be reluctant to assume any liability risk.

Question 254

The answer must be clearly no. There is no reason to have only one person responsible for the three documents (RD, SN and the summary). Given the different nature of the documents it is logic that, at least considering the first two, they are signed by different persons.

Question 255

The same solution adopted for debt securities should apply here.

Question 256

No, as the issue of derivative products is normally related to the business of the issuer and not to a pure financing purpose.

Question 257

As a general rule, a risk warning of the possibility of losing the entire investment or the maximum loss should be enough, instead of examples that in many cases are too obvious.

Incorporation by reference

We support a scope as wide as possible for incorporation by reference. Apart from this general remark, here are a few more specific comments:

Paragraph 279

We would find reasonable that the requirement of previous filing of the documents to be incorporated by reference may be complied not only by filing them with the competent authority to approve the prospectus but with any other competent authority within the European Union.

Paragraph 280

We do not think is quite appropriate to use the term “press release”. Instead, or at least in addition to it, a reference could be made to any disclosures the company might have made of any new developments which may lead to substantial movements in the prices of its securities.

Paragraph 287

It should be possible to make the documents available by any of the means which are allowed for prospectuses. But issuers should not be required to make the documents available through

exactly the same means they actually used for the prospectus itself. What is important is availability and that the prospectus states clearly where investors can find the documents.