Swedish Bankers´ Association
Swedish Securities Dealers´ Association

5 February 2003

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

CESR´s Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive

Swedish Bankers´ Association (Svenska Bankföreningen) and Swedish Securities Dealers´ Association (Svenska Fondhandlareföreningen), in the following referred to as the Associations, wishes to present the following comments in respect of CESR´s Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive included in the Addendum to the Consultation Paper.

Securities Issued by Banks

The Associations address the questions posed by CESR.

Question 43-44:
Yes, the Associations are of the opinion that a specialist building block for banks is justified and that this block should be applied also to non-EU banks. The banks are under close regulatory control and prudential supervision, thus less information about the issuer is necessary as compared to other companies. Non-EU banks should be treated in the same way as EU-banks in order to create a level playing field.

Question 45:
We would like to comment on V.III.C Documents on display. There is a requirement that there should be a possibility to inspect material contracts (V.III.C. g). The Associations are of the opinion that this requirement is too far-reaching and that it comes into conflict with provisions on banking secrecy. When it comes to requirements on documents on display the Associations would like to stress that CESR must take into consideration the global implications of publications on the website of a company.

Question 47:
No, the Associations do not consider that information about a banks´ principal future investments should be disclosed. Information about future investments are in general terms to be found in the annual financial statement of the bank. Further disclosure requirements are stipu-

lated by the stock exchanges where the shares of the bank are listed. These requirements are enough. Adding further requirements would not give information of significant value to the investor. A demand to inform about future investments is in conflict with the legitimate interest of a bank to protect trade secrets and it also deviates from the international standard for prospectuses.

Question 49:
No, the Associations do not consider that a banks´ actual solvency ratio should be disclosed. The figures needed to calculate the solvency ratio can be found in the annual financial statement. It must also be emphasised that a specific solvency ratio only gives a "snapshot" of the situation in the bank and thus have a limited value for the investor. If the solvency ratio should be disclosed in this context it could also create misunderstandings when making comparisons with the calculation based upon the figures in the annual financial statement.

Question 51:
No, the Associations do not consider it necessary to require disclosure of Board practices by banks. We agree with the comments made in paragraph 50 that since banks are subject to prudential and regulatory supervision the significance of Board practices is reduced. It can also be added that information on this issue is to be found in the annual financial statement.

Question 53:
Yes, the Associations consider that disclosure obligations concerning major shareholders (VI.A.1, VI.A.2 and VI.A.3) should be required for banks.

Question 55:
No, the Associations are of the firm opinion that the disclosure requirement on related party transactions (VI.B) not should be retained in relation to banks. Since the banks are subject to prudential and regulatory supervision and have to comply with provisions concerning loans and guarantees to members of the board of directors, management personnel, certain shareholders etc. there is no need for further disclosure requirements. – Additional requirements would nevertheless be very burdensome for the banks because of the numerous transactions and persons involved and that the information would have to be compiled and structured in a different way, without giving the investors valuable information.

Question 57:
Yes, the Associations consider interim financial statements in accordance with the approach in VII.H. to be appropriate.

Question 59:
In general our views in relation to securities issued by banks are the same as those in the response to the Consultation paper. However, we are of the opinion that the disclosure requirements on banks can be less far-reaching, since the banks have to comply with numerous provisions and are subject to supervision.

Derivative securities

Question 66:
No, the Associations do not consider that issuers of derivative securities should be required to provide a description of their principal future investments (see comments on question 47).

The Associations would like to stress that the issuer is often a financial institution and not the issuer of the underlying security. If the issuer is a financial institution disclosure requirements concerning its investments seems irrelevant. In the comments from Swedish Securities Dealers´ Association on the Consultation paper submitted to CESR 30 December 2002 we elaborate these aspects regarding derivatives. Swedish Bankers Association agrees with these comments as stated in a message to CESR 2 January 2003.

Question 69:
The Associations are of the opinion that the information required should not include persons in banks or other financial institutions but instead be restricted to directors in the issuer of the underlying security since this information is more relevant to the investor. If the issuer is a bank or financial institution they should supply information but only concerning the directors, since these entities are subject to supervision.

Question 71:
No, the Associations do not consider it to be relevant to disclose information concerning management and directors conflicts of interest. Requirements to disclose information about the private interests of the directors are likely to infringe the private integrity of these individuals and are thus not acceptable. Because of the nature of the instruments it can be put into question whether this information would be valuable to the investors.

Question 73:
No (we refer to question 51). Information included in the annual financial statement can be used in this context too.

Question 76:
No (we refer to question 55).

Question 78:
Yes, the interim financial statement is appropriate.

Question 80:
Yes, and we also refer to the comments to question 45 above.

Consultation Paper

The Associations have some additional comments to a couple of questions in the Consultation Paper which we would like CESR to take into account when considering the final version of the implementing measures.

Question 252:
Should advisers be mentioned in all cases or only if they could be held liable?

The Associations are of the opinion that it is irrelevant for the potential liability if an adviser is mentioned in a prospectus or not. The liability has to be decided in each individual case according to the prevailing circumstances and the degree of involvement of the different advisers.

Question 259:
Should the following additional items be added to section V. A. i.a. court competent in the event of litigation?

The Associations comments on this issue are that it can not be decided in a prospectus which court will be the competent one, since this depends upon the circumstances in the litigation and upon which national law will be applicable. We thus question whether it is of any relevance to mention a court in the prospectus.

Comments to Annex L to the Consultation Paper:

III. C Risk factors
The Associations have the following comments. The disclosure requirements on risk factors can be differentiated between the categories of investors. Wholesale investors have generally a good knowledge of these factors and can make their own judgements. The requirements prescribed in III. C should thus not be applied in relation to wholesale investors, but only to those who invest more limited amounts.

V. Offer and admission to trading details
According to point 16 there should be an indication of yield. The Associations are of the opinion that it is not the issuer but the investor who should have to calculate the yield.

VI. D Material contracts
The Associations are of the opinion that the issuer should be under no obligation to disclose information about material contracts, since this comes into conflict with provisions concerning banking secrecy.

Swedish Bankers´ Association

Tomas Tetzell

Swedish Securities Dealers´ Association

Per-Ola Jansson