

CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive (ref: CESR/02.185b)

Consultation Paper

October 2002

The Swedish Shareholder's Association (SARF) has been represented in the Consultative Working Group of experts assisting CESR in its work with the Level 2 Implementing Measures for the Proposed Prospectus Directive by Mr Lars Milberg. That way many of our opinions on the work of the CESR has already been communicated with the CESR. SARF is very pleased with the work of the CESR. However, SARF would like to give additional comments to the consultation made available to the public. SARF has primarily focused on issues connected with equity securities.

PART ONE – MINIMUM INFORMATION

A. Registration Document

Equity securities

(44) Disclosure obligations set out in Annex A

Annex A contains the core registration building block for prospectuses. SARF is in favor of the disclosure obligations recommended in Annex A but would strongly recommend **a more distinct requirement for a corporate governance statement as recommended by the Winter report.**¹

(47) Risk factors

CESR has decided that there should be no list of specific risk factors but that there should be a disclosure requirement for risk factors. Later on there will be a guidance on the sort of risk factors that might be expected to be included under this disclosure requirement.

SARF agrees with this approach. Relevant risk factors might vary depending on the situation.

(51-53, 55, 64-65) Pro forma information

CESR considers that pro forma financial information should be required in case of a significant gross change in the size of a company due to a particular actual or planned transaction. Significant gross change should mean a variation of more than 25 %. The CESR wants to know if pro forma should be mandatory in all cases of significant gross change in the size of a company or if it is sufficient to

¹ Report of The High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, Brussels, 4 November 2002

require it when the change is due to an actual or planned transaction. CESR also wants to know if 25% is a relevant figure or if 10% would be more appropriate.

SARF is of the opinion that pro forma information should always be produced unless the competent authority agrees that a change in size is not significant which could be the case if the total change is less than 10%.

SARF agree with the disclosure requirements set out in Annex B.

(73, 85-87) Profit forecasts

SARF agrees with the CESR definition of profit forecasts. However SARF is of the opinion that profit forecasts should be mandatory in a prospectus. Profit forecasts are very important when making investment decisions and the investor should be provided with some kind of initiated forecast about the future. SARF is also of the opinion that profit forecasts should be updated continuously.

(89) Directors and senior management privacy

SARF believe that as much information as possible about previous history of directors is useful when making decisions to invest. Information about previous history of directors relating to fraudulent offences, previous bankruptcies and/or public criticisms are material to decisions to invest and are very useful when protecting shareholders.

(91) Information about controlling shareholders

SARF agrees that disclosure of any limiting measures should be required.

(93) Requirement to put all documents on display

We agree that all information about a company cannot always be disclosed to the public. However, as much information as possible must be disclosed at all times and SARF is of the opinion that the information required by Annex A VIII is appropriate.

(95-96) Specialist building Blocks

No comment at this time

(100-102) Start up companies

SARF is of the opinion that the information requirements on start up companies must be comprehensive and extensive. SARF would appreciate an independent expert opinion on the products and business plan.

Information about restrictions regarding holdings by directors and senior management are essential for all companies and should be included in the core building block.

(105-107) SMEs, Small and Medium Sized enterprises

SARF is of the opinion that SMEs should be required to disclose at least the same information as other companies that are admitted to trading. There is no need for a special disclosure regime for SME's.

(111-123) Disclosure for special companies (property, mineral, and investment)

No comment at this time

Debt securities

(129) Disclosure requirements for debt securities

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No comments

(134-156)

No comments

Derivative securities

(160, 170-173) Disclosure requirements for derivative securities

Securities offered to the public aiming at making the investor a shareholder of the issuing company will need to be encompassed by the same disclosure requirements as equity securities since the outcome is the same, the investor becomes a shareholder of the company.

(179-234)

No comments

B. Securities Note

(249-251)

SARF considers it an appropriate approach to create specific building blocks on particular markets and securities. SARF would prefer separation of common items and specific items in distinct blocks for better overview, instead of including them into the same document.

(252-254) Responsibility

Advisors should be mentioned in all cases and not only if they can be held liable. The securities note should contain the auditors report relating to audited information, or there should be a clear indication on how to find it. The same persons should be responsible for all the parts of the prospectus.

(255-256) Information necessary for derivatives

SARF defines derivatives as securities aiming at making the investor a shareholder in the company. These investors will need the same information as equity securities investors.

(257) Worst case scenario information

SARF is in favor of a worst case scenario information requirement. Even though this will deter some investors it is appropriate when dealing with this kind of investments.

(258) Information about experts interests

This information is necessary in the case of derivatives (se above)

(259) Information about ratings

SARF is of the opinion that if the company directly or indirectly has initiated an official rating or has knowledge of one or more such assessments being available in the market the rating shall be disclosed. The wording of the first example of the CESR consultative report is preferable.

(260-262)

No comments

PART TWO – INCORPORATION BY REFERENCE

(281-290) Technical advice on documents that can be incorporated by reference.

SARF agrees with the advice given by the CESR

PART THREE – AVAILABILITY OF THE PROSPECTUS

A. Availability in an electronic format

(307) Technical advice defining “easy access”

SARF agrees with the advice given by the CESR

B. Availability via the press

(314) Newspapers where the prospectus can be inserted

SARF agrees with the advice given by the CESR

C. Additional Technical Advice

325-327 Publication of notice

SARF agrees with the advice given by the CESR and is also in favor of the competent authority mentioning where the prospectus is available but this should not be considered as an alternative to the publication of a formal notice by the issuer/offeror.

(331-335) Delivering the prospectus

SARF is absolutely against asking the investor for the payment of the deliver or mail costs.

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