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Madrid, August 12, 2003

**Mr. Fabrice Demarigny**  
Secretary General  
COMMITTEE OF EUROPEAN SECURITIES REGULATORS  
11-13 Avenue Friedland  
75008 Paris

Dear Mr. Demarigny:

**Consultation paper dated June, 12, 2003 on CESR's advice on level 2  
implementing measures for the proposed prospectus directive (Ref: CESR/03-162)**

We welcome the opportunity to respond to your call for comments on the advice that CESR proposes to give to the European Commission on the implementing measures for the Proposed Prospectus Directive.

Please find below our answers to the questions raised in the Consultation Paper dated June, 12, 2003 regarding CESR's mentioned advice on additional level 2 implementing measures for the proposed Prospectus directive (Ref: CESR/03-162). For ease of reference, we have followed the same numbering used in the Consultation Paper.

**Questions**

**III.1. DERIVATIVE SECURITIES**

**Question 32:** *Do you consider that this disclosure is relevant for these products? Please give your reasons.*

A brief description of the issuers' principal activities is certainly useful in assessing the future financial solvency of such issuers. Accordingly, it seems that the disclosure of this information even for derivative products is relevant to the investor. It should be taken into account that although derivatives are products where the investors return depends upon the performance of the underlying asset over which such derivatives are

issued, their behaviour can be compared to that of debt securities. Considering that information on principal activities is required in both wholesale debt and banks' registration documents, we believe this information might also be helpful for an investor intending to acquire derivatives. However, given the great diversity of possible activities or practices carried out by the issuers, we think it is neither realistic nor desirable to list all the existing activities, products and services performed by the issuer where such activities, products or services are not relevant. In particular, the "indication of any significant new products and/or activities" required in bank registration documents could be in our opinion omitted in the derivatives prospectus. In addition, information on principal activities, categories of products and services performed by issuers, is especially valuable when the underlying asset over which the derivatives are issued are securities also issued by the issuer in question.

**Question 34:** *Do you consider that disclosure about the principal markets in which the issuer operates is relevant for these products? Please give your reasons.*

As we stated in question 32, it should be considered that although derivatives are products where the investors' return depends upon the performance of the underlying asset over which such derivatives are issued, their behaviour can be compared to that of debt securities. Additionally, as information on principal markets is not required in wholesale debt we think that this information might not be excessively useful for an investor intending to acquire derivatives.

**Question 36:** *Do you consider that disclosure about an issuer's significant business developments is relevant for these products? Please give your reasons.*

Disclosure of a description of the issuers' most significant recent trends in production, sales and inventory, costs and sale prices since the end of the last financial year would appear to be relevant to the investor. However, we think that in accordance with our criteria stated in both questions 32 and 34, derivatives' behaviour can be compared and likened to that of debt securities. Consequently, although such information on trends is required in both wholesale debt and bank registration documents, we believe this information might not be helpful to an investor, a disclosure about an issuer's significant business development being too detailed for level 2 implementing measures.

**Question 37:** *Do you consider that this disclosure is relevant for these products? Please give your reasons.*

Despite the fact that the disclosure of the potential conflicts of interest between members of the administrative, management or supervisory bodies or partners with unlimited liability is relevant information, in the case of a limited partnership with share capital, it is currently a controversial aspect in Europe, subject to special regulation in order to protect investors' interests by improving market transparency (i.e. the Winter report). We would like to insist on our view expressed in our previous answers, where we state that the disclosure of such information may not be relevant or useful either for the products mentioned in the present Section or for investors.

**Question 39:** *Do you consider that disclosure about an issuer's major shareholders is relevant for these products? Please give your reasons.*

We believe that only in the case where shares issued by a Company are equivalent to the underlying asset, will the disclosure of information on major shareholders be relevant for investors making an investment decision on derivatives. However, in all other cases, the disclosure of the identification of those persons who are major shareholders could be in our opinion omitted in the derivatives prospectus.

**Question 59:** *Do you agree with CESR's revised approach in relation to retail non-equity securities and wholesale non-equity securities? If not please give your reasons.*

Yes. We generally agree with CESR's revised approach.

**Question 61:** *Do you agree that information about investments should not be required for banks issuing wholesale debt securities? Please give your reasons.*

Yes. We consider that, in accordance with CESR's approach, there should be a provision making it clear that where a bank issues wholesale debt it would not be required to provide such information about investments.

**Question 64:** *Do you consider that information on investments is relevant for wholesale debt securities? Please give your reasons.*

We think that information on investments is only relevant for wholesale debt securities insofar as such information may be considered as material information.

**Question 75:** *Do you consider that examples are necessary in order to fulfil the principle that the prospectus must contain a clear and understandable explanation of how an investor's return is calculated and how the instrument works? Please give your reasons.*

We think that it would be necessary for level 2 implementing measures to give examples in order to provide a clear and comprehensible explanation of how an investor's return is calculated and how the instrument works.

The terms and conditions of several derivatives products are usually complex and difficult to read and understand, not least for retail investors. Consequently, as stated in the CESR's approach, the information included in the prospectus "shall be presented in an easily analyzable and comprehensible form". Additionally, as long as new and sophisticated investment strategies arise, only practical examples will make it possible to understand how these products work.

**Question 76:** *What other methods (if any) do you consider can be used to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works? Please give your reasons.*

We believe that several methods could be used in order to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works. In order to avoid being misleading, these methods must be realistic and must show the impact of a positive, negative or neutral evolution of the underlying asset, determining both the gains/profits and losses that the investor could obtain

together with the limits of such gains or losses. We consider that a chart or a graph complies with these requirements and might be useful to clearly show the investors how their returns are calculated (i.e. the need to insert the break even point for the investor).

**Question 77:** *If you do not consider that examples are necessary to provide investors with a clear and understandable explanation of how an investor's return is calculated and how the instrument works, do you consider that the provision of examples in the prospectus is useful for investors? Please give your reasons.*

As we have stated in previous answers, we believe that examples are necessary to make the content of the prospectus understandable for investors.

**Question 78:** *Do you consider that the use of examples in the prospectus is dangerous and misleading and should not be mandatory? Please give your reasons.*

No. We concur with the approach adopted by CESR.

**Question 79:** *If examples are to be included in the prospectus, do you consider that CESR should stipulate how the examples should be prepared, for example that they should be realistic, not misleading and should provide a neutral view of how the instrument works?*

Yes. Considering that it is not sufficient for an investor to know that a product is risky and in order to ensure a similar, equivalent, realistic and non-misleading way of providing examples, we believe that CESR should stipulate how the examples should be prepared. At least some basic guidelines on how to give examples should be provided.

**Question 80:** *If your answer to the previous question is yes do you think that examples should also fulfil other requirements (for example: the need to insert the break even point for the investor)? Please state these other conditions.*

As we have stated/expressed in question 76 above, in order to clarify for the investors how their returns are calculated, we consider that it might be useful for examples to provide additional information, such as a graph or a chart that demonstrates the positive, negative or neutral evolution of the underlying asset, determining both the gains/profits and losses that the investor could obtain together with the limits of such gains or losses.

**Question 81:** *Do you consider that examples should be provided for derivatives? Please give your reasons.*

Taking into account that nowadays financial engineering allows the creation of more and more complex derivatives products, making it more difficult for investors to understand precisely in what circumstances they can obtain a positive return, we consider that a general rule might be provided by CESR including all requirements of the derivatives products.

**Question 82:** *If yes, for which types of derivatives should examples be provided? Please give your reasons.*

Considering the complexity of derivatives products, and given that this situation is likely to deteriorate in the coming years, we think that examples must be provided of all types of derivatives.

**Question 83:** *Are there any other type of securities for which you consider examples should be provided, for example structured debt instruments that have a derivative component?*

As we have stated/expressed in question 82 above, in order to clarify for investors how derivatives work, including the evolution of the underlying asset, it may be necessary to provide examples on every single type of derivative.

**Question 89:** *Which of the above options do you consider should be adopted by CESR (1, 2 or 3)? Please state your reasons.*

A brief description of the past performance of an underlying asset and its volatility is helpful for investors to understand the product and to assess its risk and its volatility or to take an investment decision. However, there are several scenarios where past performance does not provide any reliable guidance as regards future performance, which may result in an investor relying on it unduly. Consequently, we consider that option 2 must be adopted by CESR, in order to allow investors to be directly provided with either information about the past performance and the volatility of the underlying asset or where such information can be found.

### **III.2 BASE PROSPECTUSES.**

**Question 101:** *Do you agree with this generic rule?*

A single issue prospectus in which all disclosure requirements are included is certainly useful for investors in order to acknowledge the relevant information and data about issuers. Accordingly, it seems that the disclosure of this information in a single issue prospectus format, even with a supplement, may give investors a better and simpler understanding of its content. However, bearing in mind the complexity of the sophisticated financial products recently developed by issuers, and considering that the complexity of such products is likely to increase in the future, it becomes a necessity to accommodate the format of the prospectuses to current market practices. Consequently we concur with the general rule provided by the CESR, according to which issuers should provide all the information currently available on which the base prospectus is prepared leaving the specific terms of the final issue to be provided as close to issue date in the same way as the final terms, since this practice might allow market flexibility.

**Question 112:** *Which of these two approaches do you think should be applied to base prospectuses? Please give your reasons.*

A brief description of the issuers' principal activities and characteristics is essential to assess the future financial solvency and risks of such issuers and their securities. This relevant information, as set forth in Article 5 of the Directive, must be included in a

summary of no longer than 2,500 words drafted in the language in which the prospectus was originally written. In order to allow investors to understand the content of the base prospectus, the summary must be written as far as is possible in non-technical language and translated into other European languages. We believe that some items of the final terms also need to be translated, even if they do not form part of the approved summary, especially considering that some items in the final terms could contain relevant information for investors and would have been translated had they been included in a single format issue prospectus.

**Question 115:** *Which of these views do you consider should apply to base prospectuses with multiple products? Please give your reasons.*

As set forth in Article 5 (1) of the Directive, “the prospectus shall contain all the information which, according to the particular nature of the issuer and the securities offered to the public, is necessary to enable investors to make an informed assessment of such securities”. Furthermore, in order to provide such relevant information in an easily analysable and comprehensible form for investors, a separate summary for each product included in the base prospectus could be considered as a useful piece of information to assess the financial position, profits and losses and risks of such issuers. However, it should be taken into account that the purpose of the base prospectus is to ensure the necessary flexibility for innovation in the development of financial products in the future. Consequently, we think that issuers may decide in each particular case whether to draw up the summary as a single or separate document relating to single or multiple products, but always complying with the requirements set out in the abovementioned Article.

**Question 122:** *Which of these views do you consider should apply to the form of final terms? Please give your reasons.*

According to the declared purpose of the base prospectus which is to give the market maximum flexibility, allowing issuers to create and innovate in the development of financial products, we consider that issuers may be free to replicate in the final terms some of the information already included in the base prospectus. If issuers chose to do so, it is our understanding that there would be no misleading if such final terms are clearly identified and it is clearly stated that the documents should be read in conjunction with the base prospectus.

**Question 125:** *In relation to the publication of the final terms, should the method of publication be restricted as set out in Article 14?*

We consider that publication of the final terms should not be restricted to the methods set forth in Article 14 provided that the base prospectus sets out how they will be published and that they are easily accessible and free of charge.

**Question 127:** *Do you agree with this analysis?*

According to our previous answer, we believe that the method of publication used for the base prospectus does not need to be same method used for the publication of the

final terms. Additionally, we consider that provided that methods used for publication of final terms can be stipulated and clearly specified in the base prospectus, such method should not be restricted to that provided in Article 14.

**Question 131:** *Do you agree with the above additional disclosure requirements in relation to base prospectuses?*

Yes. We think that, as set forth in Article 7 of the Directive, it should be taken into account the information which must be included in the base prospectus. In particular, additional information regarding how the final terms will be published, which line items are to be included in such final terms and a general description of the programme structure regarding the issuer's base prospectus, might be also be valuable for investors.

**Question 132:** *Are there any other disclosure requirements that are not specified above that you consider necessary for base prospectuses? If so, please specify what these are and give your reasons for why you think they are necessary.*

No. We consider that the above-mentioned disclosure requirements regarding base prospectuses guarantee market transparency. In particular, such requirements oblige issuers to provide more accurate information to the market about their activities, size and their securities issued, allowing the general public to be kept informed. As a result, we do not think that any additional disclosure requirements are needed.

**Question 136:** *Do you agree with the above types of base prospectuses?*

Given the great diversity and complexity of possible sophisticated products developed and carried out by issuers, we think it is neither realistic nor desirable to have base prospectuses alternatives and/or list all of them. In particular, we think it would be appropriate to consider the possibility of including these new types of products, taking into account their compliance with the base prospectus requirements, in a general type/open format base prospectus. This alternative implies higher efficiency and flexibility provided that information on different products is disclosed in a separately and not misleading form.

**Question 137:** *Are there any other types of base prospectuses that you consider are necessary? Please give your reasons.*

As stated in 136 above and for the reasons therein, we think it more appropriate to have one multi-product base prospectus.

### **III.3 WHOLESALE DEBT SN**

**Question 143:** *Do you agree with this approach?.*

Yes. We agree with the CESR approach.

**Question 144:** *Do you consider that the information provided for in Annex F is adequate for wholesale investors? Please give your reasons.*

Yes. If the Proposed Directive on Prospectuses exempts securities with a denomination of at least EUR 50,000 per unit from the obligation to publish a prospectus in the case of a public offer, the scope of the Wholesale Securities Note is not to provide investors with information but, instead, to lead to admission of such securities to trading on regulated markets.

**Question 145:** *Are there any other items included in the retail debt SN that should be included for wholesale investors? Please give your reasons.*

No. We do not think there are any other items from the retail debt Securities Note that should be included for wholesale investors. In connection with minimum disclosure requirements for securities aimed at wholesale markets, we believe that since wholesale investors are more sophisticated investors because of their professionalism, they do not require as much detailed information as retail investors. In addition, we would suggest allowing an adaptation of the disclosure requirements for equity securities and non-equity securities in circumstances where the issue is targeted at qualified investors, as per Article 2.1 (e) of the Proposed Directive.

#### **III.4 CLOSED ENDED INVESTMENT FUNDS**

**Question 151:** *Do you agree with the disclosure obligations set out in Annex G as being appropriate for this type of issuer? Please give reasons for your answer.*

Yes. We believe the disclosure items included in the Closed End Investment Funds Registration Document of Annex G are sufficient and appropriate for that type of issuer, which are passive investors and do not take or seek to take legal or management control of any of the issuers of their underlying asset investments. However, we would suggest to provide further detail of the scope of the legal and management control and the cases in which it will determine whether the Closed End Investment Funds is a passive investor or not.

**Question 154:** *Do you consider there is a distinction to be drawn between these two types of activities, as set out above? Please give reasons for your answer.*

Yes. We consider appropriate the distinction drawn by the CESR between entities investing exclusively in real property assets for capital gain and entities engaging in other activities relating to their property assets, since the latter can not be considered as funds investing directly in real property and therefore must be subject to full disclosure requirements.

**Question 155:** *What would you consider to be an appropriate and sustainable distinction between both activities?*

The distinction between both activities proposed by CESR seems appropriate, sustainable and reasonable to us. Being a passive investor not taking or seeking to take legal or management control justifies the applicability of the Minimum Disclosure Requirements and brings closer general disclosure requirements and the actual need to provide investors of closed ended funds with sufficient information.

### **III.5 SN BUILDING BLOCK ON UNDERLYING FOR EQUITY SECURITIES**

**Question 162:** *Do you agree with this approach?*

In connection with information concerning the offered security and the underlying securities, we agree with the approach proposed by CESR of applying the Securities Note corresponding to the main characteristics of the security or completing the information provided on the underlying share, as the case may be.

Additionally, we agree with CESR's approach concerning the information on the issuer of the underlying security and the distinction made therein as per 161 above.

**Question 163:** *Do you agree with the disclosure requirements of the building block concerning the underlying for equity securities as set out in Annex H?*

Yes. We generally agree with the disclosure requirements of the building block regarding underlying asset for equity securities as set out in Annex H. We believe the information required in such Annex to be complete and sufficient to provide the investor with the necessary information to assess the underlying asset of the equity securities in which he intends to invest.

**Question 165:** *Do you deem the Working Capital Statement and the information on Capitalization and Indebtedness necessary for an informed assessment of the securities in cases of products which can be converted or exchanged in newly created shares? Please give your reasons.*

Yes. We consider that the Working Capital Statement and the information on Capitalization and Indebtedness is advisable for an informed assessment of the securities when such securities can be converted or exchanged into or give the right to acquire newly created shares. Although it may be possible that such additional information is out of date by the time the investor finally receives the shares, this will not always be the case. In any event, we believe that even slightly outdated information on Capitalization and Indebtedness and the Working Capital Statement may be helpful for the investor and may allow him to assess the securities of which he might be an equity holder.

In order to avoid providing outdated and misleading information on these additional matters, we would suggest that a reference is made to the place where updated and current information on Capitalization and Indebtedness and the Working Capital Statement can be obtained.

**Question 167:** *Do you agree with this approach?*

Yes. We agree with the approach proposed by CESR according to which the underlying asset is described by the items included in the Derivatives Securities Notes schedule, when the issuer of the underlying shares is a third party. Accordingly, we also agree to applying the relevant item of the Derivatives Securities Notes schedule, in addition to the relevant Securities Note schedule, in certain cases where the Derivative SN schedule

is not applicable (i.e. in cases of a convertible bond, convertible into shares of another issuer).

**Question 168:** *Do you agree with the combinations set out in the table?*

Yes. We agree with the combination set out in the table by CESR.

#### **IV. FORMAT OF THE PROSPECTUS.**

**Question 172:** *Which of the options set out above do you support? Please give your reasons for your choice.*

The first of the abovementioned views seems to serve best the main objectives of the Directive, such as the harmonization of the information contained in each prospectus, the elimination of inconsistencies in the methods used to check the information and the improvement of the mutual recognition mechanism, facilitating and simplifying its implementation. A single way of presenting the information, following the order of the disclosure requirements of the schedules, clearly helps both investors and the competent authorities to understand and compare prospectuses. This single-format approach would also save time and simplify the drafting of the prospectus by the issuer.

**Question 176:** *Which of the options set out above do you support? Please give your reasons for your choice.*

The option described in 174 is more convenient. The same reasons given in our answer to question 172 for having a uniformed document are applicable.

**Question 182:** *Which of the options set out above do you support? Please give your reasons for your choice.*

According to the principles of protection and sound information for investors, the first approach, which suggests an up-to-date summary that incorporates the new information in the original summary, is better for the transparency of the markets and easier for providing the investors with a full picture of the issuer and the securities.

#### **V. ROAD MAP.**

#### **VI. ANNUAL INFORMATION.**

**Question 237:** *Do you agree with the method of publication proposed?*

Yes. We concur with the method of publication sustained by CESR.

**Question 238:** *Do you consider CESR should limit the issuer's choice to one or more methods of publication? Which ones?*

We think CESR should not limit the issuer's ability to choose the method of publication it deems most appropriate, in view of the specific characteristics of the information and its cost-efficiency for the relevant investors. However, an extensive and regular use of issuers' web-sites should be encouraged as an efficient and effective method of disclosure and communication between issuers, investors and the market in general. In addition, it would be advisable to have this compilation of disclosures filed with the competent authority and published in electronic form on its web-site.

**Question 239:** *Do you consider that a deadline should be defined? If so, do you agree with the proposed deadline or would you suggest a different one? Please give reasons for your answer.*

For the purposes of uniformity and compliance it is helpful to have a fixed deadline to fill and make the document available.

Considering the time and effort that the issuer may require to prepare the annual financial information, we would suggest an extension of the proposed deadline from seven to fifteen business days after the publication of the annual financial information.

\* \* \*

I trust the foregoing proves helpful. Please do not hesitate to contact me if I can be of any further help.

Yours sincerely,

Luis de Carlos Bertrán