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Position on

CESR's Advice on Possible Level 2 Implementing Measures for the Proposed Prospectus Directive Addendum to the Consultation Paper December 2002

for

The Committee of European Securities Regulators

Frankfurt am Main, 6 February 2003

Summary

As a member of the Consultative Working Group nominated by CESR to assist in the process of implementing the Level 2 Measures for the proposed Prospectus Directive I am pleased to provide my position on the Addendum to the Consultation Paper and the Annexes as of December 2002.

First of all, I would like to mention that my comments have to be seen in connecetion with my position on the Consultation Paper and the Annexes as of October 2002. The new aspects which I would like to make with regard to the Addendum and its Annexes can be summarized as follows:

- The disclosure requirements for the various registration documents have to be lowered to reflect the need of information by the various groups of investors. The main purpose of the differentiation between "wholesale" and "retail" investors shall be the opportunity for issuers to have a speedy access to a certain group of investors with a powerful placement potential.

- Certain sections of the registration document, especially future investments, trend information based on detailed profit forecasts, major shareholders, conflict of interest and related party transactions have not only to be deleted with regard to the registration document for retail corporate debt, but also for the registration documents presented in the Addendum. The information already disclosed and thereby published in the annual accounts according to the applicable accounting standards should be the standard for the deisclosure requirements..

- As almost all (major) banks are issuers of securities, the disclosure requirements for banks should be brought in line with the disclosure requirements laid down by the respective supervisory authorities, for example in the annual accounts. There is no basic reason for a different approach with regard to the securities business and the non-securitized business of banks.

- A clear definition of derivative securities shall be applied. Debt securities shall consist of plain vanilla bonds only. Structured bonds and reverse convertibles shall be derivative securities. Furthermore, a differentiation between guaranteed and non guaranteed derivatives is not advisable for reasons of market practice, definition of products and even investor protection.

- As the summary will be the most prominent part of any prospectus it should be part of the level 2 process. Guidance is absolute necessary with regard to the content. Such guidance is also important to reduce any uncertainties within the market with regard to the liabilitity for the summary content.

- The base prospectus should be a compilation of the registration document and the respective securities notes. The scope of the information to be defined as "final terms" could be done according to "supplement" rules of the German "unvollständiger Verkaufsprospekt".

Paragraph 9 (Wholesale Debt)

The differentiation between "retail investors" and "wholesale investors" is based on the the proposed Directive. However, it should not be interpreted that "wholesale investors" need less information than "retail investors" because of their professionalism. "Wholesale investors" are the only group of investors who can understand and analyze the information disclosed in a prospectus regarding the diversity and complexity, while the average retail investor is overstrained with too much information. Therefore, even for "retail investors" the information disclosed in a prospectus shall be easily understood. CESR shall reduce the disclosure requirements for retail prospectuses to the necessary minimum. This is the only way to increase the acceptance of a prospectus by retail investors as the only reliable source of information and to prevent issuers from disclosing an "information cemetry" thereby effectively reducing their liability for the correctness and materiality of the information.

The main purpose of the differentiation shall be the opportunity for issuers to have a quick and simple access to a certain group of investors with a powerful placement potential enabling the issuers to make use of favorable market windows for their refinancing needs.

However, concerning the listing of such "wholesale bonds" on an exchange no exemption should be made with regard to the disclosure requirements, as long as they are listed in the same exchange segment as retail corporate debt.

Paragraphs 15 and 16 (Wholesale Debt Securities, Investments)

The basis for this section is formed by the requirements laid down in the registration document for retail corporate debt. As I have explained in my position on the Consultation Paper (paragraphs 124 to 129, paragraphs 153 to 156) it should be deleted even for retail corporate debt. So the same is true for wholesale debt.

Paragraph 18 (Wholesale Debt Securities, Liquidity and Capital Resources)

To be deleted, same argument as for paragraphs 15 and 16. However, the argument, that issuers are often special purpose vehicles, is not convincing in this respect. There should be no differentiation between "normal" issuers and "special purpose vehicles" as it is easier for special purpose vehicles to prepare the relevant information than for normal issuers.

Paragraphs 22 and 23 (Wholesale Debt Securities, Trend Information)

Reference is made to my position on the Consultation Paper (paragraphs 66 to 87). I support the notion of giving investors certain information on the future of an issuer from the perspective of that issuer, even in the case for wholesale debt securities. Any prospective reporting should always be limited to a narrative description of the trends

expected for a period of around 12 months starting from the date of issue, but in any case for no longer than until the end of the current financial year. In addition, forward-looking statements should be unambiguously identified as such by means of appropriate language. This would be achieved by using standard phraseology, such as "expects", "assumes", or "forecasts". Care must also be taken to ensure that it is made clear which assumptions were made in order to make the forecasts, which factors could lead to a failure of the forward-looking statements to materialise, and what the consequences of such a failure may be.

Any further details, particularly a detailed presentation of specific figures and tables, should be avoided, as they could be regarded by investors as having the seal of a certain degree of credibility and reliability – not least because the prospectus is officially approved. However, even so called blue chip companies all over Europe have shown over the last weeks how quickly budgeted figures can become obsolete, due to changes in the general economic climate. To this extent, investors could be misled if too much detail is given. Profit forecasts should not mention exact numbers, but describe the major trends in narrative form.

If CESR decides not to follow this approach, which has been the market standard for many years in Germany, and is also one of the major sources of conflict for issuers seeking a dual listing in Germany and the U.S., but intends to be more open to concrete profit forecasts, it should make clear that such disclosures are voluntarily.

Even if the issuer opts for such disclosures, however, it should not be obliged to submit a special statement by the company's auditors or reporting accountants, but required only to supply detailed information on the assumptions and the implied risk factors which have led to the published numbers for revenues, other income, profit and loss, respectively. Any involvement of external experts will incur high costs. Based on practical experience in the IPO business over the last few years I doubt whether this will substantially raise the quality of the forecast, as such experts will comment only on the link between assumptions and profit forecasts, with no more than a limited appraisal of the assumptions.

Paragraph 25 (Wholesale Debt, Board Practices)

First of all, it has to be defined what is meant with "board", "directors", "management", "audit committee" or "remuneration committee". Under German law, a "Aktiengesellschaft" has only a "Vorstand" (executive board) and an "Aufsichtsrat" (supervisory board) as institutions representing and supervising, respectively, the issuer. Other "committees" are part of the senior management and should not be considered as relevant for disclosure.

Therefore, I suggest to include a list of the names of "Vorstand" and "Aufsichtsrat" and corresponding management levels according to the law in other jurisdictions. For wholesale debt securities a description of the articles of association relating to the board is not necessary. The disclosure of other "board practices" is not applicable according

to German corporate law and even not necessary for wholesale debt investors, because such information discloses technicalities.

A general remark whether or not the issuer complies with it's country's corporate governance regime could be included.

Paragraphs 27 and 28 (Wholesale Debt Securities, Major Shareholders)

Reference is made to my position on the Consultation Paper (Paragraphs 153 to 156). Both requirements should be deleted, as detailed information on all major shareholders will not influence the ability of an issuer to meet its obligations with regard to interest and redemption payments. The requirement should be deleted not only for wholesale debt, but also for retail debt. Such disclosure is relevant for equity securities, as it describes the level of influence an investor might have – whether he/she could influence the business direction together with other groups of investors or is restricted to the level of a "debt" investor with "dividend rights" solely dependent on the decisions of the major shareholders. In addition, for equity securities such information is important, as it gives decisive hints to the price potential, expected volatility and liquidity of the share. Such information is not of relevance for debt and derivative investors.

However, as a compromise, the issuer could be required to publish the names and proportions of major shareholders of the company as long as they have already been published according to the respective national law. Also a negative statement that no information has been published could be included.

Paragraph 30 (Wholesale Debt Securities, Related Party Transactions)

Related party transactions should be revealed to an extent that is already required according to the applicable accounting standards and therefore contained in the annual report to be included in the prospectus. Such level of disclosure will provide the investors with a sufficient level of detail.

Paragraph 33 (Wholesale Debt Securities, Interim Financial Statements)

Interim financial statements should not be mandatory for the issuers of bonds. The trend information shall be sufficient. However, the the more updated financial information is disclosed in a prospectus, the more reliable is the basis for the investment decision. Therefore, issuers shall prepare some more detailed information on the already completed parts of the current financial year which could be included into the section on trend information.

Paragraph 35 (Wholesale Debt Securities, Documents on Display)

Reference is made to my position of 2 September 2002 as well as my position on the Consultation Paper (Paragraphs 92 and 93, 147 to 150). I explicitly reject the proposal for extension of the practice for documents on display. Onerous disclosure requirements should definitely be rejected:

- Contracts with third parties generally contain trade secrets; any effective publication of such secrets would have a material adverse effect on the issuer's ability to compete and could cause real damage to the issuer. Furthermore, such publication could be a violation of insider trading law. Any provision for exemptions or allowing the issuer to conceal certain sections of the text (e.g. with black ink) would create an unacceptable administrative burden.

- In addition, making such documents available would almost certainly involve obtaining the full consent of the relevant third party, which would be almost impossible.

- The prospectus should be complete and contain all material information; additional information would lead to an "information overload", which would impair the acceptance of a prospectus.

- If investors are given access to more information, they would be able to conduct their own due diligence, which would, however, reduce the value of the prospectus and create a knowledge imbalance between the (wholesale) investors, who would inspect and evaluate the additional documents, and those (retail) investors who would rely on the details in the prospectus.

- Both the ability to conduct due diligence and the potential necessity to translate these documents into the same language as the prospectus would burden issuers with a incalculable costs for making available the relevant material and personnel resources. Furthermore, any translation requirement is not in line with the directive as the directive does not require the translation of the prospectus, except for the summary.

Additional Comments (Wholesale Debt Securities, Annex 1)

I would like to mention that these remarks are also relevant for the registration documents already covered by the Consultation Paper of October 2002.

I.A.1 The clause have to be adjusted to reflect that according Article 6 of the Proposed Directive natural persons are not forced to accept responsibility for the contents of a prospectus. In Germany the members of the Vorstand or Aufsichtsrat are not required to accept personal responsibility for a prospectus.

I.A.2 This declaration shall be restricted to those omissions likely to

materially affect the import of such information.

II. Only such risk factors should be named which materially affect the issuer's ability to fulfil ist obligations under the securities. In addition, risks specific to the industry do not provide substantial information to an investor in debt of a certain issuer.

VII.A The paragraphs (a) to (f) shall be deleted, because the content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.

VII.G.1 Reference is made to my paragraph "Annex A and Others" (section VII.G.) position on the Consultation Paper which states that the present time frame will make it practically impossible for issuers to enter the market during certain periods of a year..

VIII.A The term "material contract" is too vague. If it is used at all, it has to be limited to "material with respect to the performance of the security to which the prospectus relates". Nevertheless, one has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature and the major risks of his investments. Accordingly, it should be enough if any risk resulting from such a contract is described in the prospectus.

Paragraphs 43 to 45 (Bank Debt Securities, Introduction)

A special building block for banks is justified as the type of business is different to a manufacturing or service company. Therefore, a prospectus of a bank will have another character than a prospectus for manufacturing or service companies.

Due to the global competition of financial institutions and for reasons of mutual recognition non-EU banks that are subject to an equivalent level of prudential and regulatory supervision should also be subject to this building block.

Furthermore, banks and other financial institutions are permanently regulated and supervised by public authorities. As almost all (major) banks are issuers of securities, the disclosure requirements should be brought in line with the disclosure requirements laid down by the supervisory authorities for the financial sector, for instance in the annual report. There is no reason, why a bank as an issuer of debt and derivative securities should provide substantially more information on its business than the same bank as a borrower of term and saving deposits or seller of OTC derivatives. It is the same type of business, only differentiated by the securitization of the obligation.

Therefore, following disclosure requirements should be adjusted to the level of the information required by the supervisory authorities or even deleted (see also my position under "wholesale securities debt"):

- Names of legal advisers
- Investments
- Profit forecast and trend information
- Management and directors conflict of interest
- Major shareholders
- Related party transactions
- Documents on display

Paragraph 47 (Bank Debt Securities, Future Investments)

See my answers to paragraphs 15 and 16. In addition to these remarks, future investments which are not part of interests in other undertakings (for examples due to equity trading), are only of minor importance to a bank. If decisions on material future investments have been made they shall to be described in the trend information section.

Paragraph 49 (Bank Debt Securities, Profit Forecast)

See my answers to paragraphs 22 and 23. Only solvency ratios or business ratios like capital ratios which are required by the supervisory authorities for the financial sector to be published shall be disclosed in a prospectus. In my opinion, a general statement mentioning that the issuer is subject to certain ratios as determined by supervisory authorities is sufficient.

Paragraph 51 (Bank Debt Securities, Board Practices)

See my answer to paragraph 25. In addition, it shall be taken into consideration, that the rules for corporate governance are different among the various countries and for examples banks either not listed or not having the legal form of a company based on shares might not be obliged to follow such corporate governance rules.

Paragraph 53 (Bank Debt Securities, Major Shareholders)

See my answer to paragraph 27, where I present the arguments why this requirement shall be deleted.

Paragraph 55 (Bank Debt Securities, Related Party Transactions)

See my answer to paragraph 30. In addition, I would like to refer to the following points:

- One of the major fields of regulation and supervision regarding banks is the field of related party transaction, so that the need of special disclosure to investors in debt securities could not be seen.
- A disclosure beyond the level already required by accounting standards could raise conflicts for bank secrecy policies.

Paragraph 57 (Bank Debt Securities, Interim Financial Statements)

See my answer to paragraph 33.

Paragraph 59 (Bank Debt Securities, Documents on Display)

No.

Additional Comments (Bank Debt Securities, Annex 2)

I.A.1	The clause have to be adjusted to reflect that according Article 6 of the Proposed Directive natural persons are not forced to accept responsibility for the contents of a prospectus. In Germany the members of the Vorstand or Aufsichtsrat are not required to accept personal responsibility for a prospectus.
I.A..	This declaration shall be restricted to those omissions likely to materially affect the import of such information.
II.	Only such risk factors should be named which materially affect the issuer's ability to fulfil ist obligations under the securities. In addition, risks specific to the industry do not provide substantial information to an investor in debt of a certain issuer.
VII.A	The paragraphs (a) to (f) shall be deleted, because the content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.
VII.G.1	Reference is made to my paragraph "Annex A and Others" (section VII.G.) position on the Consultation Paper which states that the present time frame will make it practically impossible for issuers to enter the market during certain periods of a year..
VIII.A	The term "material contract" is too vague. If it is used at all, it has to be limited to "material with respect to the performance of the security to which the prospectus relates". Nevertheless, one has to bear in

mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature and the major risks of his investments. Accordingly, it should be enough if any risk resulting from such a contract is described in the prospectus.

Paragraphs 60 to 63 (Derivative Securities, Introduction)

The relevance of the proposed building block on derivative securities have carefully to be reviewed in the light of the interdependencies with regard to the applicability of the securities note on derivative securities. Paragraph 118 of the present Addendum could lead to the interpretation that structured bonds and reverse convertibles are no longer considered as derivative securities but as special types of debt securities. This is in contrast to the Consultation Paper of October where such products are considered as derivative securities with the discussion regarding a differentation between "guaranteed" and "non guaranteed" securities. Therefore, it shall be made clear, that the securities note on debt is only covering plain vanilla bonds (including floating rate notes and zero bonds). Reference is made paragraphs 161 to 173 of my position on the Consultation Paper.

If CESR does not follow this initial approach, the registration document on derivative securities will not have any significant relevance to the market. At least in Germany, which is the most diversified market for derivative securities within the EC, almost all issuers offer various types of derivative securities to the public: reverse convertibles as well as guaranteed certificates or warrants. For these issuers as well as for the public (reference could be made to the presentation of derivative securities in the various magazines or on web sites like onvista.de or zertifikateweb.de) these various product types are considered as the same class of products. If guaranteed certificates or reverse convertibles are no longer considered as derivative securities, the issuers would have to use the registration document for bank debt securities thereby losing any advantage from less onerous disclosure requirements.

Paragraph 66 (Derivative Securities, Future Investments)

See my answers to paragraphs 15 and 16. The price paid by the investor of derivative securities is normally not used for investments by the issuer but for hedging purposes only. Accordingly, investments being made by the issuer are of no relevance for the investor of derivative securities.

Paragraph 69 (Derivative Securities, Directors)

See my answer to paragraph 25. Only the members of the executive board (and the supervisory board, if deemed to be necessary) shall be mentioned. It does not make any sense to disclose for instance the senior management level as these persons neither have the ultimate business power nor they are known to the public.

Paragraph 71 (Derivative Securities, Conflicts of Interest)

Only as far as required by the accounting standards. The issuer generally is not aware of any potential conflicts of interest since the members of its management/directors do not have to inform the issuer of any potential conflicts of interest. There should no disclosure requirements which an issuer cannot fulfill. One could, however, insert a paragraph in the risk factor section stating generally that there may arise conflicts of interest which affect the price of the security.

Paragraphs 73 and 74 (Derivative Securities, Board Practices)

In practice, such information will not useful to investors. So it should be at least limited to my answers to paragraphs 25 and 51.

Paragraph 76 (Derivative Securities, Related Party Transactions)

The annual accounts automatically provide sufficient information on that topic for investors, so that a special section is not necessary in the annex.

Paragraphs 78 (Derivative Securities, Interim Financial Statements)

See my answer to paragraph 33.

Paragraph 80 (Derivative Securities, Documents on Display)

No. See my answer to paragraph 35.

Paragraphs 87 to 89 (Derivative Securities, Guaranteed Derivative Securities)

No. No clear differentiation will be possible. Furthermore, one should avoid to have too many separate disclosure requirements for various products in order to streamline the process to have more acceptable (much lower than currently proposed) requirements for all issuers of all types of derivative securities. Arguments supporting these findings are as follows:

- In both cases, the issuer is liable for the fulfilment of certain obligations. The investor bears the risk that the issuer might not be able to meet its obligations under the derivative securities.

- Almost all issuers of derivative securities are offering “non guaranteed” and “guaranteed” products at the same time. In effect, all prudent issuers will prepare a prospectus unter the disclosure requirements of a “guaranteed” derivative. A special building block for “non guaranteed derivatives” will merely used by issuers.

- Only the index certificates on the German "Neuer Markt" have provided the investors with a loss of up to 95 per cent, while index certificates on the DAX or the Eurostoxx have provided the investors even under the crash scenario in 2002 with a maximum loss of up to 50 per cent, if bought at the top and sold at the bottom. However, index certificates are certainly not to be considered as "guaranteed derivatives", despite their partly "capital guarantee".

- Reversible convertibles do not provide the investors with a guarantee with regard to the capital, but provide an interest payment of up to 30 per cent (the higher the risk regarding the underlying, the higher the "minimum return").

- If reverse convertibles, for example, will be classified as "guaranteed derivatives" than discount certificates (which have no minimum return) have to be – but won't be – classified as guaranteed derivatives. From an economic point of view both products are the same – the only difference is that the option premium is paid to the investor either in the form of an interest payment (reverse convertible) or in the form of a discount on the price of the underlying (discount certificates).

- In case of warrants doubling or quadrupling their value compared to the selling price, the investor must also be sure that the issuer is able to meet its obligations.

- Qualifing a security with a capital guarantee of less than 80 to 75 per cent as "guaranteed" and therefore implicitly "less risky" is misleading with regard to investor protection. The public will not understand why a security which offers a "capital guarantee" of less than the mentioned threshold figure is "less risky".

Paragraphs 92 and 93 (Derivative Securities, Other Issuers)

The approach shall be different with regard to issuers. For special purpose vehicles which are a 100 per cent subsidiary of an entity which could do issues under the derivative securities building block (i.e. special purpose vehicle without a guarantee of such entity) shall also be allowed to use the registration document but should highlight on the cover page and in the risk factor section that the issuance is done without an explicit guarantee of the controlling entity. Such regulation would reflect currenct market practice in Germany where investors buy derivative securities issued by banks as well as issued by special purpose vehicles of major financial institutions without an explicit guarantee. Investors focus on the quality of the product and the quality of the market making in the secondary market.

For sake of simplicity all other issuers of derivative securities shall be obliged to use the retail corporate debt building block. Such requirement is important to avoid that any issuer which belongs to the "grey capital market" have an access to investors applying a standard lower than that for retail corporate debt.

Additional Comments (Derivative Securities, Annex 3)

I.A.1. The clause have to be adjusted to reflect that according Article 6 of the Proposed Directive natural persons are not forced to accept responsibility for the contents of a prospectus. In Germany the members of the Vorstand or Aufsichtsrat are not required to accept personal responsibility for a prospectus.

I.A.2. This declaration shall be restricted to those omissions likely to materially affect the import of such information.

II. Only such risk factors should be named which materially affect the issuer's ability to fulfil ist obligations under the securities. In addition, risks specific to the industry do not provide substantial information to an investor in debt of a certain issuer.

VII.A. The paragraphs (a) to (f) shall be deleted, because the content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.

VII.G.1. Reference is made to my paragraph "Annex A and Others" (section VII.G.) position on the Consultation Paper which states that the present time frame will make it practically impossible for issuers to enter the market during certain periods of a year..

VIII.A. The term "material contract" is too vague. If it is used at all, it has to be limited to "material with respect to the performance of the security to which the prospectus relates". Nevertheless, one has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature and the major risks of his investments. Accordingly, it should be enough if any risk resulting from such a contract is described in the prospectus.

Paragraph 96 (Asset Backed Securities)

With regard to the importance of the underlying assets and the special character of the issuer I agree to the approach. However, I feel it would be necessary to require not only the disclosure of the financial information according to V.II.A of the "Wholesale Debt Registration Document Building Block", but according to the complete section V.II. of such building block. Furthermore, I would recommend to require some brief trend information according to IV.B. The information according to I.C.5 appears to me not sufficient.

Paragraphs 102 to 104 (Depository Receipts)

CESR shall follow the overall and clear concept of splitting the information into a registration document (concerning the issuer of the receipts) and a securities note (concerning the depository receipt and the underlying). Even if an issuer prepares one single document it is easier for an investor to find the relevant information if it is clearly divided in two different sections.

Although I am not an expert in the depository business, I could not follow the argument mentioned under paragraph 99 ("would produce the prospectus in the form of one complete document"). I expect that most equity issuers (for example: IPO, capital increases of small and medium sized companies) will submit one single document to the supervisory authorities for approval (and not having a yearly registration document). Therefore, no expection to the general rule should be made.

The disclosure requirements for the issuer should not exceed the disclosure requirements for retail corporate debt or banks, respectively. The depositary acts as a service provider, but not as the issuer of the respective security which has to be reflected in the registration document.

With regard to these disclosure requirements reference is also made to the guarantor disclosure requirement according to Annex 11 section 5, where a special registration document is required for the guarantor of an issue.

Overall, Annex 5 appears to be superfluous and should be substituted by the registration document on bank debt securities.

Paragraphs 111 to 115 (Shipping Companies)

I do not consider it appropriate to have too many building blocks for "specialist issuers". Furthermore, I believe that any further extension of the number of building blocks is counterproductive. Irrespective of how many building blocks will be added it will be impossible to cover every industry and to ensure to have a building block that will perfectly suit each issuer.

Although I am not an expert in this field, I have some doubts whether a special building block for shipping companies is really necessary. The information required in Annex 6 has to be disclosed by the issuer even if it is not explicitly required by the applicable "normal" registration document. If CESR decides for a special building block for shipping companies in the light of the speciality of the business, Annex 6a should be included under Annex 6, because it does not cover any information on securities, but on the issuer.

I do not consider the concept of a valuation report for appropriate.

- Such valuation reports are only justified if the short term price volatility of the respective underlying (property or ships) is extremely high. However, according to my understanding ships are probably less volatile assets. The major impact comes from the volatility of the cargo rates.

- From a practioner's viewpoint, there should be a clear indication that the valuation report can be prepared in-house.

- However, the time span of 90 days is unrealistic from a technical point of view, bearing in mind the approval periods under to the Proposed Directive (especially its possible renewal in case of missing documents or information) and possible postponement of the placement (i.e. market disruption or insufficient demand). Otherwise the issuer has to bear the substantial cost for a newly prepared valuation report.

See also my position to paragraphs 111 to 113 of the Consultation Paper on property companies.

Paragraph 118 (Securities Note, Introduction)

Reference is made to the answer to paragraph 60. It shall be made clear that structured bonds and reverse convertibles are derivative securities.

Paragraphs 122 to 123 (Securities Note, Blanket Clause)

Yes, I agree. This approach means that any "if any" references can be deleted. With regard to the wording I would like to make reference to the position of the EUWAX which suggests that the wording should not only cover non-applicability but also information of minor materiality or importance. Therefore, the following wording should be used:

"If certain information required in [line items] or equivalent information is not applicable to the issuer or to the securities to which the prospectus relates, or is of minor materiality in relation to the nature of the issue, this information can be omitted and the requirement in relation to such information shall not apply."

Furthermore, it should be specified what it meant by the term "line items" as this is not a term previously used.

Paragraphs 125 to 126 (Securities Note, Working Capital)

As already several times explained I am strictly of the opinion that all information relating to the issuer should be included in the registration document to allow for a clear

split between registration document and securities note. Therefore, any information on the working capital have to be included in the registration document.

Furthermore, I do not see the necessity for a frequent update of such information. If there is a substantial change in the working capital, than the issuer will be required to prepare a supplement to the registration document. Especially for frequent issuers a supplement will provide the total market with the news and not the investors of the most recent issue only.

In addition, also information on liquidity and capital resources shall be part of the registration document, if necessary.

Paragraph 132 (Securities Note, Equity Schedule)

I agree that the information contained in Annex 7 should be included into the "Annex K" securities note on equity. As mentioned under paragraph 122, the blanket clause provision allows for such approach. Especially the section on lock-up agreements is a helpful extension to the securities note (see disclosure requirements for "Neuer Markt" in Germany).

Paragraph 136 (Securities Note, Debt Schedule)

I am only supportive to this approach as long as structured bonds only means a bond with a interest rate component, like a floating rate note or a zero bond. All other structures, including reverse convertibles, are derivative securities and have to be covered by the securities note for derivative securities. See also my answers to paragraphs 60 and 118.

I would like to suggest to require the reprint of the complete conditions of issue which are the only legally binding relationship between an investor and the issuer.

Paragraph 139 (Securities Note, Derivatives Schedule)

As the securities note on derivatives has been included for another time in the Consultation Paper I also will repeat and amend my position on the Consultation Paper (paragraphs 261 and 262).

I.1 To be deleted, because already included in the registration document.

I.2 The company's principal bankers and the legal advisers shall not be mentioned. They are of no relevance for the issue of the securities even if the legal advisers have been involved in the issue. The mentioning of their names is more misleading than helpful for the investors. Furthermore: which banks shall be named by the issuer (which is also a bank) as its "principal bankers"? Business relationships among banks are certainly

confidential information and a disclosure could hamper either the bank or the "principal banker".

I.3 to 5 To be deleted, because already included in the registration document only.

I.6 According to Article 6 of the Proposed Directive it is not necessary that natural persons have to accept responsibility for a prospectus. German law only refers to the legal persons.

II.A The distinction between securities offered for sale and those offered for subscription is unclear.

III.A To be deleted, but included into the registration document only.

III.B Any detailed explaination on the reasons for the offer and use of the proceeds with regard to derivative securities will very often lead to information without any value for investors. Normally, the issue of derivative securities is done as part of the regular - derivatives - business of the issuer or as part of its regular refinancing. In the case of issues to be sold over a long period of time (like warrants, reverse convertibles or discount certificates), no information can be given. Furthermore, even for derivative securities to be offered for subscription, the proceeds can only be qualified after the close of the subscription period, as in most case the upper limit for such issue will not be reached.

III.C.1, 2 For derivative securities the section C.1 will not be applicable due to the special section on risks regarding derivative securities. No update disclosure of risk factors included in the registration document shall be made in the securities note.

III.C.2.c, d The disclosure requirement should be made clear. There should be one general example for each product in a prospectus describing various scenarios based on theoretical assumptions and values. It would not be applicable to have concrete examples for each security issued for example under a base prospectus. As it is market practice in various European countries securities of the same type, but on various underlyings and with different strike prices and maturities will be issued at the same time. It will not only be time consuming for the issuer but also sizing up the final terms with no additional value for an investor (see also my answer to V.B.12). Examples of the "best case scenario" will be misleading as they suggest a profit potential which might become reality under extraordinary circumstances only.

III.C.e This requirement shall be deleted. No objective criteria exist for instruments qualifying as an optimal hedge for a specific derivative security. Furthermore, the optimal hedging instrument for a derivative security (if such a qualification were at all possible) would depend essentially on the individual composition of investors' portfolios and their individual in-

vestment strategy.

Furthermore, it is important to understand that investors explicitly enter into an open position with a certain structure. Issuers of derivative flow products typically undertake continuous market-making efforts over the lifetime of the products. The investor will therefore always be able to close the position held by selling the respective securities. Almost any hedge to neutralise an existing position will raise higher cost than selling the security. In many cases such hedges are only available in the OTC market to which a typical retail investor has no access.

IV.A Which threshold is material to a person? The clause is not applicable to derivative securities. The blanket clause approach will in almost all cases be relevant.

V.A, B Section V.A. shall only deal with certain legal aspects of a security, V.B shall describe the economics of an issue.

Section V.A.8 is irrelevant for investors of derivative securities and shall be deleted.

The addition in V.A.9 is helpful. If it has not been mentioned, however, it would have to be included into the prospectus according to V.A.7 or V.B.8 ("exercise rights"). This fact leads to my suggestion to include the paragraph on interest rates under the section V.B. as such payments form part of the returns on an issue which have to be disclosed under the present proposal under section V.B.

However, in section V.A.9 the wording "the index or variable" on which the interest is based shall be substituted by the word "underlying" to allow for more flexibility with regard to the linkage of a nominal interest rate. In addition, the sentence "Information shall be given concerning the values reached ...." shall be deleted. It is covered by V.B.12. Reference is made to my position on that aspect.

The disclosure according to V.A.14 should be moved to section V.B. Under the present proposal the "exercise price" (V.A.13) is contained unter V.A., while the "maturity" – which is an information of the same importance – has to be disclosed under V.B.15 and V.B.16. Does "reference price" or "reference date" refer to those derivative securities which are redeemed at a certain value depending on a specific value of the underlying (like for index certificates or discount certificates?).

The disclosure according to V.A.15 duplicates the disclosure already required according to V.B.10 and 11. It should be deleted or included under these paragraphs.

V.B.8 is identical to V.A.7.

V.B.8 and V.B.9 require more or less the same information; clearance shall be made.

V.B.10 contains the wording "cashless exercise" which shall be deleted as it is not common to the markets. The sentence shall be read "...for physical settlement how holders are to receive or deliver the underlying instrument and make payment."

A statement concerning the past performance of the underlying and its volatility according to V.B.12 should only be required, if the underlying is specifically construed by the issuer (for example baskets).

- The past performance of the underlying does not give any reliable information with regard to the future performance of the underlying.

- Conduct of Business rules in many EU countries require that investors are made aware of the fact that past performance is no indicator for future performance in any marketing material. It does not make sense to require such information even in a legal document which should used by investors as the main source for making investment decisions.

- Various websites offer investors free of cost a variety of opportunities to analyze the past performance of almost any underlying (for example price and turnover charts for various time spans) which a prospectus could never present. Therefore, a mere reference to public sources is sufficient.

- In the case of issues on various underlyings at the same time, as it is market standard in various European countries (for example warrants or discount certificates on 15 to 20 Eurostoxx shares at the same time), such requirement would cost a lot of time and size up the securities note without providing the investor with helpful information.

- Trading on a regulated market should not be used as a criteria. Indices or currencies are not traded on such markets, but the information on their past performance and their volatility could easily be found.

- Any information on the underlying loses its value for the investors within a short time after the release of the prospectus. When derivative securities are bought by investors during the life time any information on the past performance of the underlying until the release of the prospectus does not provide the investor with any helpful information.

Furthermore, I would like to emphasize that the issuer shall be obliged to reprint the complete conditions of warrants (or "conditions of derivative securities") in the securities note, as these conditions are the only legally

binding document for the relationship between the issuer and the investor. Practical experience over the last thirteen years has shown, that misunderstandings can only be solved in due course when the investor has an immediate access to these conditions.

V.C and D Not applicable to certain types of securities, especially the majority of derivative securities. However, the issue can be solved by allowing the blanket clause.

V.E.1 The section is not applicable with regard to issues under a base prospectus. Neither the expected prices are known nor the method of determining the price nor the amount of any expenses charged to the subscriber or purchaser.

V.E.2 For derivative securities and bonds issued on a tap basis the wording should be "Process for the disclosure of the initial offering price".

V.F.2 The requirement of describing similar subscriptions, creations or placements of securities of the same class is not applicable to issuers of derivative securities, as they are frequent issuers. According to the present market standards, big issuers launch up to 3,000 securities per year. The decision for a specific issue is done very quickly, often within hours. Furthermore, derivative securities are not in competition with each others as they do not hamper the value of an investment in another security of the same class.

V.G Appears to be a duplication of V.F. Please clarify.

V.H. Completely irrelevant for derivative securities. To be deleted.

V.I In general, only the total costs of an issue, divided into banks' commission and external costs, should be included in a prospectus. A more detailed breakdown, particularly in relation to the percentage commissions of the other intermediaries involved or the cost for lawyers, advertising agencies or accountants, would have no additional informative value.

In addition, any detailed division of expenses can only be determined after an issue, because the sales commission is determined according to the actual number of placements achieved by the individual intermediaries. Furthermore, marketing and advertising cost cannot be determined at the time of publication of the prospectus because they may be incurred still after such publication but still in connection with the distribution of the securities. Therefore, any figure is either only a portion or overestimates the cost and is therefore misleading.

Therefore, with regard to the securities note on derivative securities, the whole section should be deleted.

VI.A. To be deleted, but included in the registration document only.

Paragraphs 149 to 151 (Securities Note, Guarantees)

I am fine with the idea of having an additional building block for the various types of guarantees which will avoid a lot of duplication. I would like to strongly recommend the reprint of the text of the guarantee in the securities note. This means, that Section 2 in the Annex 11 could be replaced by the sentence "Reprint of full text of the guarantee" and that section 6 could be deleted.

I support the idea that the prospectus should contain a comprehensive description of both the issuer and the guarantor. From this perspective, however, it was assumed that the guarantee is – at least from an economic point of view – an unconditional and irrevocable guarantee. Any type or level of conditionality shall be clearly highlighted in the prospectus to avoid any misunderstanding by investors. Therefore section 2 should be amended. In this case, I also prefer to have a lower level of disclosure about the "guarantor" in such case.

Paragraphs 145 and 159 (Securities Note, Subscription Rights)

As the current text of the Prospectus Directive has explicitly decided for such definition, it is necessary to have a separate building block for subscription rights.

The definition of "equity securities" covers a wide range of various and totally different products, including products on new shares and derivative securities. As a consequence, the term "subscription right" covers the same wide range. It has to correspond with the rights traded on the German stock exchanges in connection with an ongoing capital increase of a German "Aktiengesellschaft" (so called "Bezugsrechtshandel") for normally ten stock exchange days as well as for the conversion rights in connection with an issue of convertible bonds with a maturity of up to ten years as well as with the rights securitized by an issue of warrants entitling the investor to acquire already outstanding shares.

I am supportive to the idea of splitting the disclosure requirements into those subscription rights referring to new shares and those subscription rights referring to already existing shares. For products on already existing shares the derivatives schedule should be used. Compared to a "normal" issue of derivative securities on the respective underlying, there is only a difference concerning the closeness of the issuer of the warrants to the issuer of the underlying share. However, a detailed disclaimer could be appropriate to make clear, that the issuer might not have the full picture on the underlying, although it belongs to the group.

In addition, it should be mentioned, that – according to my interpretation of said definition on equity securities – only subscription rights are covered by the definition, which give the right to acquire a share. Therefore, any issue of derivatives with a cash settlement only is subject to the rules on derivative securities. So an issuer belonging to

the group can issue derivative securities on the share without any restriction if it decides for cash settlement only (which is market standard in the warrants field). This is an additional argument to apply for products on already existing shares the derivative securities schedule.

With regard to Annex 12 I would like to suggest to delete section 12.11. as the contents is already covered by section 12.3. Furthermore, section 12.12 should be deleted, as it does not make sense to provide the investors with lengthy and detailed theoretical information on the legal framework of a certain country. Such type of disclosure is only required in this Annex and therefore not consistent to the disclosure requirments in any other annexes.

Paragraph 168 (Summary)

The summary should be part of the level 2 process. It should be one of the central elements of the work of CESR with regard to the Prospectus Directive. Disclosure requirements on the content and characteristics of summaries could lead to a market standard with regard to prospectuses which – as a consequence – could increase the willingness of investors to consider the prospectus and not any marketing material as the core element of information. Being successful, the summary will substitute the present "term sheet culture".

The summary will be the most prominent part of any prospectus, because it will contain the core elements of the registration document and the securities note. Therefore, the summary could be expected to be the first (and in many cases only) document to be carefully studied by investors:

- Institutional investors will use the summary as an entrance to find more about the "decisive" elements on the issuer and the issue.

- Private investors in a foreign country, who are not familiar with the language of the registration document and the securities note, have more or less only access to the summary, as it is the only part to be translated in their language.

Taking into account the 2,500 words approach it should be officially stressed that the summary can only serve the purpose to highlight potential risks/investment considerations. In this connection it should be made clear that not all items set out in the indicative list of Annex IV of the Proposed Directive have to be included. Furthermore, since an effective summary cannot contain all relevant risk factors and (if CESR continues, despite my position, to require a disclosure of related party transactions also in the case of debt issues) related party transactions (not to mention the other items) it should also be made clear at level 2 that a very short and abbreviated version of these elements is sufficient for the summary.

Paragraphs 175 and 176 (Base Prospectus)

For the base prospectus I recommend to adopt the procedures for the present "unvollständiger Verkaufsprospekt" according to German law. The "supplement" rules show how investor protection and investor demand for products reflecting the respective market environment can successfully be brought together. Under such regime, the base prospectus shall contain the following information:

- Registration document with all information on the issuer required according the building block corresponding to the respective type securities to be issued under the base prospectus. The issuer shall be free to choose a higher level of disclosure, for example, if it is an issuer of equity. Any update to the registration document part of the base prospectus shall be provided by a supplement according to paragraph 16 of the Proposed Directive.

- Securities note for the respective product. The securities note shall specify the type of product and provide all basic information, including the conditions of issue and the section on risk and examples how the instrument works. All information to be supplemented on the day of issue should be marked by "blanks".

- One base prospectus should contain various securities notes for various types of derivative products, to avoid double paperwork.

In the case of an issue, the securities note for the respective product shall be filled with the "blanks". Although it is possible, that the issuer only publishes the supplement in the form of a list of the blanks as the final terms, I prefer that the issuer provides the investor with a completed version of the "conditions of issue", the "final terms" and the "summary", respectively.

As a basis for further discussion I have added a list of some major "blanks", which have to be covered with regard to an issue of warrants. This list is certainly not complete, some features (especially some variable text sections) have to be added, but it should give a first impression of the scope of the further discussion. It shows, that some general rules are sufficient to describe the scope of what is meant with "final terms".

- Countries of public offering
- Underlying
- Information on underlying (Securities codes, stock exchanges)
- Volume of issue
- Type (call/put)
- Exercise (american/european) (physical/cash settlement) (automatic)
- Exchange ratio
- Strike price
- First date for public offer
- First valuation date
- First exercise date
- Maturity
- Relevant price for determining any exercise value

- Conversion of foreign currency amounts into Euro
- Relevant futures exchange for determining any adjustments
- Initial selling price
- Respective stock exchange for trading
- Security codes
- Stock exchange codes