Response
of the *Zentraler Kreditausschuss*
to the Addendum
to the Consultation Paper

(Ref. CESR/02-185-b)

on

CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive December 2002

Berlin, 6. February 2003

Az.: 413-CESR-Prosp

Dear Mr. Demarigny,

We are pleased to take the opportunity, as the Zentraler Kreditausschuss (ZKA), to comment on the Addendum to the Consultation Paper on CESR's Advice on possible Level 2 Implementing Measures for the future Directive for the prospectus to be published when securities are offered to the public or admitted to trading.

The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Hypothekenbanken (VDH), for the mortgage banks. Collectively, they represent more than 2,500 banks.

EXECUTIVE SUMMARY

Before we reply to the questions you specifically raise and comment on some of your remarks, we should like to make the following general observations. For our general remarks we refer to our response to the consultation paper of 30 December 2002. However, we feel somewhat uncomfortable answering the second round of questions without knowing your reaction to the first response.

➢ **Another consultation necessary**

Please let us stress that our main concern relates to the finalisation of the consultation and the fulfilling of your mandate. CESR announced at the last hearing in Paris that a second consultation on the revised possible implementing measures which will be sent to the Commission was unlikely to be held in the light of the tight timeframe. Both hearings showed there is a widespread fear that the regulations proposed in both consultation papers will result in a high degree of inflexibility. Market participants made a lot of suggestions in their written comments as well as during the open hearings. According to most market participants, care should especially be taken to ensure admission to trading is as flexible as possible, particularly with new, as yet unknown, products in minds. Furthermore a clear-cut ranking between the different registration documents is necessary to give issuers the necessary legal certainty. Although of high priority, the shape of a guideline to be given by CESR in this respect has not yet emerged.

Bearing in mind the above-mentioned complexity of the issue and its implications for the European capital market and despite the fact that CESR is under pressure to work to a very tight schedule, we would like to underline the high importance of comprehensive consultations. In our view, therefore, it is essential to consult the market for a second time about the whole consultation complex even if this meant that the consultations would not end in March but at a later date (maybe May or June).

- **Base prospectus**

As we have mentioned in our last response and at the hearing, the base prospectus is of high importance for the banking industry. It will probably be the mainly used prospectus in the future in the whole European banking industry because this sector will use offering programmes for issuing non-equity securities. CESR has not yet been instructed by the Commission to consider this format. Since it will be highly important, however, the building block approach now proposed for derivative products should therefore also be revised against the background of the requirements which must be drawn up for a base prospectus. We therefore consider it essential to develop valid disclosure requirements for base prospectuses so as to give market participants as well enough time to contribute to the search for a practicable solution for all market participants during the consultation process. One important point is the flexibility which the base prospectus must grant to the issuer, especially in respect to the finalisation of the incomplete prospectus. Here it is absolutely necessary to pay attention to the necessities arising out of the current practices in the market.

➢ Building Block Approach

As we already stressed in our response to the first consultation paper we are generally in favour of the building block approach. Nevertheless we believe that the building block approach has to be significantly simplified and improved. The production of too many building blocks aiming to provide specific disclosure requirements for each sub-type of issuer or security risks impairing flexibility and the ability to deal appropriately and speedily with particular cases will be impaired. An inflexible system could counteract the aim of the Prospectus Directive to facilitate the raising of capital for issuers. In our opinion any attempt to develop an elaborate system of specific instrument- and industry-based building blocks will not work. It will not be possible to capture every type of issuer or security with such a framework. There is a danger that the competent authority may refuse to list securities if an issue does not fit in one of the pre-determined categories. Therefore, such an approach may have the effect of excluding from the market innovative issues which do not conform to an established annex.

In addition, the application of the disclosure requirements in the various annexes to different types of issuer and instrument has to be clarified. It is not clear whether or not a certain registration document/securities note will be valid for other kinds of securities. For example, will it be allowed for an issuer who has prepared a registration document for equities to issue debt securities and derivative securities on this basis? Furthermore, as we have already mentioned in our response to the consultation paper, a clear ranking between the different registration documents/securities notes is completely lacking. For example, which parts of which building blocks would apply to a bank issuing derivatives securities and/or retail debts? It would appear to be some combination of the special building block for banks, Annex 2, and Annexes M, 3 and 9 which apply to derivative securities and Annexes I and L which apply to retail debts. However, many of the disclosure requirements of the above-mentioned annexes are not consistent.

➢ The building block for credit institutions

Nevertheless, we welcome that the addendum encloses a specialist building block for banks. Preferable might be the expression credit institutions which is used and defined by the proposal for the Prospectus Directive to consider the whole range of this industry. Credit institutions are indeed subject to close regulatory control and supervision, and therefore carry a lower insolvency risk. This has to be reflected by lower disclosure obligations. 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 investment (see also Art. 5 para. 1 of the Prospectus Directive).

There should not be an obligation to disclose the actual solvency ratio for the following reasons: Currently, there are two solvency ratios, at least for international banks. This information will not assist the investor. Solvency ratios are permanently changing. The disclosed figures would be incorrect after a short time. As is mentioned in the addendum, a normal investor could only grasp the meaning of the ratios if “the significance were fully explained and put in context” (Nr. 48). Such an explanation in plain terms is obviously not an easy task and would burden issuers unnecessarily. The obligations for the disclosure of solvency ratios are laid down in the Banking Directive 2000/12/EC and in the Capital Adequacy Directive (93/6/EEC). They are dealt with conclusively there and should not be broadened at Level 2.

➢ Summary: Need for Level 2 Advice

In our opinion some Level 2 advice on the content of the summary is necessary despite the level of detail provided for by the ECOFIN text of the Prospectus Directive on the scope, language, length and content of the summary. In principle, the summary document is intended to significantly increase the understanding of EU investors with respect to an issue. For the summary document to achieve this goal, it should provide succinct information about a particular offer, especially from the perspective of (retail) investors` needs, in a simple and short manner (take into account the 2,500 word approach). Therefore, the summary cannot be simply a shortened version of the prospectus but has to be a meaningful synthesis of the key points chosen by the issuer and its advisers.

This point, especially the purpose of the summary to highlight potential risks/investment considerations for the investor by providing for a meaningful synthesis of a prospectus` key points chosen by the issuer, has to be officially stressed at level 2. In this connection it has to be made clear that not all those items set out in the indicative list of Annex IV of the Directive have to be included. Otherwise the summary would not be a summary as it would have to contain the material information of nearly all sections of the prospectus. In addition, if the indicative list of Annex IV of the Directive was mandatory it would be impossible for the issuer to prepare a document consisting of only 2,500 words which is not misleading, inaccurate or inconsistent when read together with the prospectus (See article 6 para.2 of the Directive.)

Furthermore, since an effective summary cannot contain all relevant risk factors and related party transactions (not to mention the other items) it should also be made clear at level 2 that a summary of the types of risks (e.g. currency risk, high competition, product liability etc.) will suffice. Concerning the related party transactions it should be stated at level 2 that a summary of the overall volume, parties involved and the fact that these were/were not executed on an at-arms` length basis should be sufficient.

Yours sincerely
For the Zentraler Kreditausschuss
Federation of German Cooperative Banks/
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V.
by proxy

gez. Möller gez. Lange
(Dr. Möller) (Dr. Lange)

Questionnaire

Question 15: Do you consider that information about an issuer's principal future investments should be disclosed? Please give your reasons.

Question 16: Do you consider that a description of only some of these items should be made? If so, which ones?

There should not be a requirement to disclose information about the issuer's principal future investments. For debt securities generally, the assessment of the investor which the prospectus information is meant to allow is that of the risk of the issuer becoming unable to fulfil its obligations to pay interest and to repay the capital. Only information which directly contributes to this assessment should be required for the prospectus. Information on the issuer's investments does not, under normal circumstances, enable investors to make an assessment about the issuer's insolvency risk.

Question 18: Do you consider that information about a company's capital expenditure commitments would be of value to "wholesale market investors"?

Capital expenditure does not generally affect investors in debt securities. As set out in our comments on the first Consultation Paper, this requirement should already be deleted for the retail debt Registration Document.

Question 22: Should any profit forecast that is included be reported on by the company's auditor or reporting accountant?

As set out in our initial response to the Consultation Paper, we basically believe it is extremely problematic to require a concrete profit forecast. Although it may at first sight be desirable from an investor's perspective to have concrete information about the issuer's prospects rather than only a general statement, it is not realistic to expect that a forecast that would serve this purpose can actually be reliable. Such a forecast is highly speculative by its nature and thus potentially misleading as it might be overlooked by the investors that in reality the results of a company may develop in a significantly different manner, even if the respective company has prepared the forecast diligently. Inserting a forecast may also create an unjustifiable liability risk for persons responsible for the prospectus. Furthermore, it appears questionable whether an expert would be willing to give any statement to this effect. If an expert was willing to issue such a statement at all, it cannot be expected that such statement will give sufficient comfort as to the reliability of the forecast. Rather, such an expert statement might appear more substantive than it actually is and thus contribute to the "expectation gap" that is currently being discussed in connection with experts' statements.

Further, as regards debt securities, such a requirement already seems even more unjustified for the retail debt Registration Document , given the issuer risk for debt securities as set out above for nos. 15, 16, which is not related to the issuer's business success as such, but only to an insolvency of the issuer. The risk for the occurrence of the latter cannot, under normal circumstances, be assessed on the basis of a profit forecast. Thus, if the issuer – voluntarily – decides to include profit forecasts, there is no reason why investors in debt securities need to be "protected" by a statement that the forecasts have been properly prepared.

Question 23: Do you consider that the requirement to disclose an issuer's prospects should be retained, or should this requirement be deleted?

Given that the relevant issuer risk for debt securities cannot, under normal circumstances, be assessed on the basis of business or profit forecasts (see our comments for nos. 15, 16 and 22), this requirement should not be retained.

Question 25: Do you consider it necessary to continue to require disclosure of Board practices for issuers of such securities?

Board practices are of no interest for an investor in debt securities. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

Question 27: Do you consider that these disclosure obligations should be required?

Question 28: CESR's expectation is that either both would be deleted or both retained. Do you consider that only one of these disclosure obligations is necessary and if so, which?

Due to the relevant issuer risk for debt securities (as set out above for nos. 15, 16), this information is even of limited value for investors in retail debt securities. It should certainly not be required for wholesale investors. Further it should be noted, that a general description of the issuer´s position within the group of undertakings the issuer belongs to is already required under III.D.1.

Question 30: Do you consider that this disclosure requirement should be retained in relation to this type of issuer?

The risk-benefit analysis set out in no. 29 already holds true for the retail debt Registration Document. Transactions with third parties do not, under normal circumstances, contribute to the assessment of the relevant risk; the fulfilment of such an obligation would, however, be highly burdensome for issuers. On the infrequent occasions where the disclosure of related party transactions is material, it will be disclosed under the general disclosure requirement. In addition, information about related party transactions will be included in the financial statements anyway. This obligation should therefore be abolished.

Question 33: Do you consider this approach to be appropriate?

In general, we strongly support having less detailed disclosure requirements for wholesale investors in view of their greater sophistication and their experience in assessing the risks and benefits of investing in certain securities. May we repeat the statement in our response to the consultation paper that it should be ensured no requirements regarding interim financial statements are established which go beyond those set out in the IAS or the future Transparency Directive. Credit institutions which make a public offer of debt securities only, without having any securities issued which are admitted to trading on a regulated market, will presumably not be subject to an interim financial reporting obligation under the forthcoming Transparency Directive as is mentioned in Nr. 31-32 of the Addendum. On no account should such an obligation be imposed on such issuers under Level 2 implementing measures for the proposed Prospectus Directive.

Question 35: Are your views or comments different from those in response to the first consultation paper?

No. As for the retail debt Registration Document, we take the view that only publicly available documents should be on display. Other documents, in particular “material contracts”, often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all “material contracts” displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if the investors are laymen in the field the respective “material contracts” cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

We have the following additional comments regarding the proposed wholesale debt Registration Document:

I.A.1. It is not altogether clear what kind of responsibility is envisaged and what consequences such responsibility has: personal liability or liability of the legal person. Furthermore, the cumulative (“and”) designation seems to be inconsistent compared to the alternative (“or”) designation requirement envisaged by the Securities Note, I.6

II.(a) For wholesale debt, there should not be a requirement to describe risks specific to the issuer and its industry. This would not be in line with the level of disclosure appropriate for such securities.

III.A.4 The proposed requirement to mention the issuer’s internet address should be deleted. The issuer’s web-site cannot, at least not in all cases, be seen as an objective source of additional information for investors. By mentioning it in the prospectus, there would thus be an increased risk of investors basing their investment decision not only on the prospectus, but also on the content of the issuer's web-site, which would contradict the purpose of a prospectus. Therefore, if the prospectus contains all the information necessary for the investor to make an informed investment decision (and thus is compliant with the requirements of the Prospectus Directive), with a reference to the issuer's web-site is neither necessary nor useful.

IV.B.2 Given that the relevant issuer risk for debt securities and derivatives cannot, under normal circumstances, be assessed on the basis of business or profit forecasts (see our comments for nos. 15, 16 and 22), this requirement should not be retained.

IV.B.3(a) It should be set out more clearly also in IV.B.3.a that providing profit forecasts, profit estimates (and so forth) is voluntary (e.g. by saying – as in IV.D.2 "If a (voluntary) profit forecast..."). Further, not only a profit forecast, but also a profit estimate cannot be made without being subject to general assumptions as it inevitably depends on future developments that can only be assumed.

V.B & V.C Conflicts of interests as well as Board practices are of no interest for an investor in debt securities. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

VII.A The reference to the "audit report" apparently intends to mean the "auditor's report". The expression "auditor's report" is generally understood to mean the entire text of the auditor's official expert statement made and published as a result of his audit, including the audit opinion (see, for example, AICPA Professional Standards, AU Section 508; IFAC Handbook 1999, ISA 700.28). The prospectus must, indeed, contain the (entire) auditor's report. This contributes to the intended high level of transparency. This is also already common practice and prescribed by applicable law (also in the

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U.S.); the EU should on no account fall behind already existing and accepted international practices.

The expression “audit report”, in contrast, is usually understood to mean the auditor’s “long-form” report on the audit work, which is given internally to the client only. This long-form audit report is not suitable for inclusion in a prospectus. It is confidential and normally of a size (sometimes up to more than 1,000 pages) that, as a matter of fact, excludes publication.

VII.B It is unclear what “notes to the accountant’s report” is intended to mean. In the heading, it appears that this provision addresses the “notes to the financial statements” (IAS 1 para. 91 et seq.).

“Accountant’s report” is apparently something different. If the auditor’s report is meant, the wording is inconsistent. Also, this is already covered by “VII”. Thus, CESR should clarify what VII.B intends should be stated in the prospectus.

VII.E It is unclear what an “equivalent standard” is, if such standard does not meet the “true and fair view” requirement.

VII.F.1 The mere “statement that the annual accounts have been audited” is not sufficient. Rather, the auditor’s report issued in relation to the annual accounts must be included in the prospectus, as it is common practice and required by applicable laws in the major international capital markets (see above comment on “VII.A”). Also, VII.A already provides for this. CESR should rephrase “VII.F.1” in order to clarify that it is not intended to qualify “VII”.

VII.G.1. Three months following the end of a financial year for the establishment/ approval of the financial statements is too short. Six months are required. Therefore, the last year of audited financial statements should be allowed to be as old as 18 and not only 15 months. A period of only 15 months is not feasible for the vast majority of issuers in the debt securities market, so there would be hardly any new issues between April 1st and June 30th!

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VII.J It is generally unclear what is meant by changes in the issuer's "trading position". Only the financial position is relevant in this respect.

VIII.A The term "material contract" is too vague. 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 of, and the major risks associated with, his investments (see also Art. 5 para. 1 of the Prospectus Directive). The additional condition that the contract has to be able to result in an obligation "that is material to the issuer's ability to meet its obligation to security holders" does not constitute a real restriction: this only describes the issuer's insolvency risk, and it remains unclear have to be regarded as "material" in creating such a risk. It should therefore be enough if any risks resulting from such a contract that are material for an assessment of the company and/or the securities have to be described in the prospectus.

VIII.C In general, only publicly available documents should be on display. Other documents, in particular "material contracts", often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all "material contracts" displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more if investors are laymen in the field the respective "material contracts" cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

Question 43: Having reviewed the disclosure obligations set out in Annex [2], do you consider that a specialist building block for banks is justified?

Yes. Banks are indeed subject to close regulatory control and supervision, and therefore carry a lower insolvency risk. This has to be reflected by lower disclosure obligations.

Question 44: If so, do you consider that this specialist building block should be applied to non-EU banks that are subject to an equivalent level of prudential and regulatory supervision, or should only EU banks be covered by this specialist building block?

It would not be justified, in our view, to exclude banks from non-EU countries with an equivalent level of prudential and regulatory supervision from the use of the special Registration Document. CESR should consider that inappropriate disclosure requirements for non-EU banks could prevent or deter such issuers from listing on EU markets. That would have a number of adverse consequences. The EU market would lose a significant volume of issuance.

However, we would like to propose changing the term "equivalent" into "similar" as, in most cases, the level of supervision non-EU banks are subject to will not be identical to that which EU-banks are subject to.

Question 45: Other than those disclosures considered separately below, do you agree with the disclosure obligations for banks as set out in Annex [2]?

We have the following additional comments regarding the proposed Registration Document:

I.A.1. It is not altogether clear what kind of responsibility is envisaged and what consequences such responsibility has: personal liability or liability of the legal person. Furthermore, the cumulative ("and") designation seems to be inconsistent compared to the alternative ("or") designation requirement envisaged by the Securities Note, I.6 and the Prospectus Directive itself (Art. 6). As it has to be left to each Member State whether to extend liability to natural persons, the word "and" should be replaced by an "or".

II.(a) For securities issued by banks, there should not be a requirement to describe risks specific to the issuer and its industry. This would not be in line with the level of disclosure appropriate for non-equity securities issued by banks. Industry related risks for banks mainly depend on general economic conditions that can be assumed to be common knowledge. Further, extraordinary exposures of the issuer, if any, are dealt with under the banking supervisory regime and thus should not amount to a level that might affect the issuer's ability to fulfil its obligations under the securities covered by this building block.

II.(b) Given the supervision regime exercised over banks, as a result of which banks carry a lower insolvency risk than companies in other sectors, this information should be not required for banks.

III.A.4 The proposed requirement to mention the issuer's web-site should be deleted. The issuer's web-site cannot, at least not in all cases, be seen as an objective source of additional information for investors. By mentioning it in the prospectus, there would thus be an increased risk of investors basing their investment decision not only on the prospectus, but also on the content of the issuer's web-site, which would contradict the purpose of a prospectus. Therefore, if the prospectus contains all the information necessary to the investor to make an informed investment decision (and is thus compliant with the requirements of the Prospectus Directive), a reference to the issuer's web-site is neither necessary nor useful.

IV.A.3(a) It should be set out more clearly also in IV.B.3.a that providing profit forecasts, profit estimates (and so forth) is voluntary (e.g. by saying – as in IV.D.2 "If a (voluntary) profit forecast..."). Further, not only a profit forecast, but also a profit estimate cannot be made without being subject to general assumptions as it inevitably depends on future developments that can only be assumed.

V.B & V.C Conflicts of interests as well as Board practices are of no interest for an investor in debt securities or derivatives. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

VII.A The reference to the "audit report" apparently intends to mean the "auditor's report". The expression "auditor's report" is generally understood to mean the entire text of the auditor's official expert statement made and published as a result of his audit, including the audit opinion (see, for example, AICPA Professional Standards, AU Section 508; IFAC Handbook 1999, ISA 700.28). The prospectus must indeed contain the (entire) auditor's report. This contributes to the intended high level of transparency. This is also already common practice and prescribed by

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applicable law (especially also in the U.S.); the EU should on no account fall behind already existing and accepted international practices.

The expression “audit report”, in contrast, is usually understood to mean the auditor’s “long-form” report on the audit work that is given internally to the client only. This long-form audit report is not suitable for inclusion in a prospectus. It is confidential and regularly of a size (sometimes more than 1,000 pages) that, as a matter of fact, excludes publication.

VII.B It is unclear what “notes to the accountant’s report” is intended to mean. In the heading, it appears that this provision addresses the “notes to the financial statements” (IAS 1 para. 91 et seq.).

“Accountant’s report” is apparently something different. If the auditor’s report is meant, the wording is inconsistent. Also, this is already covered by “VII”. Thus, CESR should clarify what VII.B intends should be stated in the prospectus.

VII.E It is unclear what an “equivalent standard” is, if such standard does not meet the “true and fair view” requirement.

VII.F.1 The mere “statement that the annual accounts have been audited” is not sufficient. Rather, the auditor’s report issued in relation to the annual accounts must be included in the prospectus, as is common practice and required by applicable laws in the major international capital markets (see above comment on “VII.A”). Also, VII.A already provides for this. CESR should rephrase “VII.F.1” in order to clarify that it is not intended to qualify “VII”.

VII.G.1. Three months following the end of a financial year for the establishment/ approval of the financial statements is too short. Six months are required. Therefore, the last year of audited financial statements should be allowed to be as old as 18 and not only 15 months. Otherwise there would be fewer new issues between April 1st and June 30th than at present.

VII.J It is generally unclear what is meant by changes in the issuer's "trading position". Only the financial position is relevant in this respect.

VIII.A The term "material contract" is too vague. 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 of, and the major risks associated with, his investments (see also Art. 5 para. 1 of the Prospectus Directive). The additional condition that the contract has to be able to result in an obligation "that is material to the issuer's ability to meet its obligation to security holders" does not constitute a real restriction: this only describes the issuer's insolvency risk, and it remains unclear have to be regarded as "material" in creating such risk. Accordingly, it should be enough if any risks resulting from such a contract that are material for an assessment of the company and/or the securities have to be described in the prospectus.

VIII.C In general, only publicly available documents should be on display. Other documents, in particular "material contracts", often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all "material contracts" displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if investors are laymen in the field the respective “material contracts” cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

Question 47: Do you consider that information about a bank’s principal future investments should be disclosed?

There should not be a requirement to disclose information about the issuer’s principal future investments. For debt securities and derivatives generally, the assessment of the investor which the prospectus information is meant to allow is that of the risk of the issuer becoming unable to fulfil its obligations to pay interest and to repay the capital. Only information which directly contributes to this assessment should be required for the prospectus. Information on the issuer’s investments does not, under normal circumstances, enable investors to make an assessment about the issuer’s insolvency risk.

Question 49: Do you consider that a bank’s actual solvency ratio should be disclosed?

There should not be an obligation to disclose the actual solvency ratio for the following reasons: Currently, there are two solvency ratios, at least for international banks. This information will not assist the investor. Solvency ratios are permanently changing. The disclosed figures would be incorrect after a short time. As is mentioned in the addendum, a normal investor could only grasp the meaning of the ratios if “the significance were fully explained and put in context” (Nr. 48). Such an explanation in plain terms is obviously not an easy task and would burden issuers unnecessarily. The obligations for the disclosure of solvency ratios are laid down in the Banking Directive 2000/12/EC and in the Capital Adequacy Directive (93/6/EEC). They are dealt with conclusively there and should not be broadened at Level 2.

Question 51: Do you consider it necessary to continue to require disclosure of Board practices by banks?

Board practices are of no interest for an investor in debt securities and derivatives. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

Question 53: Do you consider that the disclosure obligations [VI.A.1, VI.A.2 and VI.A.3] should be required for banks?

The supervision regime exercised over banks also extends to persons holding major interests in banks. Therefore, there is no need for disclosure of these facts in the prospectus.

Question 55: Do you consider that this disclosure requirement should be retained in relation to this type of issuer?

The risk-benefit analysis set out in no. 29 for the wholesale debt Registration Document also holds true for the Registration Document for banks. Transactions with third parties do not, under normal circumstances, contribute to an assessment of the relevant risk; the fulfilment of such an obligation would, however, be highly burdensome for issuers. In addition, such transactions are also subject to the supervision exercised over banks. This obligation should therefore be dropped.

Question 57: Do you consider the approach set out in VII.H. of the Bank Building Block schedule to be appropriate?

See answer to Question 33.

Question 59: Are your views or comments in relation to securities issued by Banks different from those in response to the Consultation Paper?

No. As for the retail debt Registration Document, we take the view that only publicly available documents should be on display. Other documents, in particular “material contracts”, often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all “material contracts” displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if investors are laymen in the field the respective “material contracts” cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

Question 66: Do you consider that issuers of derivative securities should be required to provide a description of their principal future investments? Please give your reasons.

There should not be a requirement to disclose information about the issuer's principal future investments. For derivatives, as for debt securities, the assessment of the investor which the prospectus information is meant to allow is that of the risk of the issuer becoming unable to fulfil its obligations to pay interest and to repay the capital. Only information which directly contributes to this assessment should be required for the prospectus. Information on the issuer's investments does not, under normal circumstances, enable investors to make an assessment about the issuer's insolvency risk. In addition, due to the lower insolvency risk of banks, the disclosure obligations should generally be lower than for other issuers.

Question 69: Do you consider that the information set out in V.A.1 of the Derivatives Building block should be restricted to the directors of the issuer? Please give your reasons.

It would not be justified, in our view, to treat derivatives differently from debt securities in this way.

Question 71: Do you consider that the information set out in V.B of the Derivatives Building block to be relevant and necessary disclosure for these products? Please give your reasons.

Disclosing conflicts of interest would not be practicable for derivatives. Furthermore, an issuer would normally not be able to detect conflicts of interest of its directors as under current legislation directors do not have an obligation to inform the issuer about any potential conflict of interest. This requirement should therefore be deleted.

Question 73: Do you consider it necessary to require disclosure of Board practices for issuers of derivative securities? Please give reasons for your answer.

Question 74: Do you consider it necessary to require disclosure of Board practices for issuers who are banks of derivative securities? Please give reasons for your answer.

Board practices are generally of no interest for an investor in derivatives. If the issuer does not comply with corporate governance rules, for example, this alone does not make it more likely that it will become insolvent.

Question 76: Do you consider that this disclosure requirement should be retained in relation to derivative securities? Please give your reasons.

The risk-benefit analysis set out in no. 29 for the wholesale debt Registration Document also holds true for the derivatives Registration Document. Transactions with third parties do not, under normal circumstances, contribute to an assessment of the relevant risk; the fulfilment of such an obligation would, however, be highly burdensome for issuers. In addition, this information is disclosed to a certain extent in the issuer`s annual report. This is sufficient for the investor`s risk assessment.

Question 78: Do you consider the approach set out in VII.H. of the Derivative Building Block schedule to be appropriate?

Due to the lower risk associated with securities issued by banks (see comments for no. 43 above), it seems appropriate not to require the production of interim reports. See answer to Question 33.

Question 80: Are your views or comments in relation to derivative securities different from those in response to the Consultation Paper?

No. As for the retail debt Registration Document, we take the view that only publicly available documents should be on display. Other documents, in particular "material contracts", often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all "material contracts" displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if investors are laymen in the field the respective "material contracts" cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

We have the following additional comments regarding the proposed derivatives Registration Document:

I.A.1. It is not altogether clear what kind of responsibility is envisaged and what consequences such responsibility has: personal liability or liability of the legal person. Furthermore, the cumulative ("and") designation seems to be inconsistent compared to the alternative ("or") designation requirement envisaged by the Securities Note, I.6 and the Prospectus Directive itself (Art. 6). As it has to be left to each Member State whether to extend liability to natural persons, the word "and" should be replaced by an "or".

II.(a) For derivatives, there should not be a requirement to describe risks specific to the issuer and its industry. This would not be in line with the level of disclosure appropriate for such securities. As set out in our initial response to the Consultation Paper, derivatives are almost always issued by banks, so the disclosure standards appropriate for banks should be applied to derivatives as well. As set out in our comments to no. 45, II.(a), industry related risks for banks mainly depend on general economic conditions that can be assumed to be common knowledge. Further, extraordinary exposures of the issuer, if any, are dealt with under the banking supervisory regime and thus should not amount to a level that might affect the issuer's ability to fulfil its obligations under the securities covered by this building block.

III.A.4 The proposed requirement to mention the issuer's web-site should be deleted. The issuer's web-site cannot, at least not in all cases, be seen as an objective source of additional information for investors. By mentioning it in the prospectus, there would thus be an increased risk of investors basing their investment decision not only on the prospectus, but also on the content of the issuer's web-site, which would contradict the purpose of a prospectus. Therefore, if the prospectus contains all the information necessary to the investor to make an informed investment decision (and thus is compliant with the requirements of the Prospectus Directive), a reference to the issuer's web-site is neither necessary nor useful.

IV.A.2(a) It should be set out more clearly also in IV.B.3.a that providing profit forecasts, profit estimates (and so forth) is voluntary (e.g. by saying – as in IV.D.2 "If a (voluntary) profit forecast..."). Further, not only a profit forecast, but also a profit estimate cannot be made without being subject to general assumptions as it inevitably depends on future developments that can only be assumed.

VI. The supervision regime exercised over banks also extends to persons holding major interests in banks. Therefore, there is no need for a disclosure of these facts in the prospectus.

VII.A The reference to the "audit report" apparently intends to mean the "auditor's report". The expression "auditor's report" is generally understood to mean the entire text of the auditor's official expert statement to be made and published as a result of his audit, including the audit opinion (see, for example, AICPA Professional Standards, AU Section 508; IFAC Handbook 1999, ISA 700.28). The prospectus must indeed contain the (entire) auditor's report. This contributes to the intended high level of transparency. This is also already common practice and prescribed by applicable law (especially also in the U.S.); the EU should on no account fall behind already existing and accepted international practices.

The expression "audit report" is, in contrast, usually understood to mean the auditor's "long-form" report on the audit work that is given internally to the client only. This long-form audit report is not suitable for inclusion in a prospectus. It is confidential and regularly of a size (sometimes more than 1,000 pages) that, as a matter of fact, excludes publication.

VII.B It is unclear what "notes to the accountant's report" is intended to mean. In the heading, it appears that this provision addresses the "notes to the financial statements" (IAS 1 para. 91 et seq.).

"Accountant's report" is apparently something different. If the auditor's report is meant, the wording is inconsistent. Also, this is already covered by "VII". Thus, CESR should clarify what VII.B intends should be stated in the prospectus.

VII.E It is unclear what an "equivalent standard" is, if such standard does not meet the "true and fair view" requirement.

VII.F.1 The mere "statement that the annual accounts have been audited" is not sufficient. Rather, the auditor's report issued in relation to the annual accounts must be included in the prospectus, as is common practice and required by applicable laws in the major international capital markets (see above comment on "VII.A"). Also, VII.A already provides for this. CESR should rephrase "VII.F.1" in order to clarify that it is not intended to qualify "VII".

VII.G.1. Three months following the end of a financial year for the establishment/ approval of the financial statements is too short. Six months are required. Therefore, the last year of audited financial statements should be allowed to be as old as 18 and not only 15 months. Otherwise there would be fewer new issues between April 1st and June 30th than at present.

VII.J It is generally unclear what is meant by changes in the issuer's "trading position". Only the financial position is relevant in this respect.

VIII.A The term “material contract” is too vague. 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 of, and the major risks associated with, his investments (see also Art. 5 para. 1 of the Prospectus Directive). The additional condition that the contract has to be able to result in an obligation “that is material to the issuer’s ability to meet its obligation to security holders” does not constitute a real restriction: this only describes the issuer’s insolvency risk, and it remains unclear have to be regarded as “material” in creating such risk. Accordingly, it should be enough if any risks resulting from such a contract that are material for an assessment of the company and/or the securities have to be described in the prospectus.

VIII.C In general, only publicly available documents should be on display. Other documents, in particular “material contracts”, often contain confidential information and therefore may not be publicly displayed due to privacy laws, contract laws, data protection laws, criminal law provisions, etc. In addition, a complete display of these contracts may affect competition since it would give competitors easy access to contracts they would otherwise have no access to. Furthermore, if all “material contracts” displayed had to be translated into the same language as the prospectus, this would be costly and time consuming, and hence extremely burdensome for issuers without any real benefit for investors. This applies even more, if investors are laymen in the field the respective “material contracts” cover. Therefore, only a brief summary of these documents, containing the most essential information, should be presented in the prospectus.

Question 87: After review of the proposed disclosure requirements for banks set out in Annex [2], do you consider it necessary to set out separate disclosure requirements for guaranteed derivative securities issued by banks (including for these purposes special purpose vehicles whose obligations are guaranteed by banks), or should all such derivative securities irrespective of their percentage return be treated as all

other non-equity securities issued by banks (or special purpose vehicles whose obligations are guaranteed by banks)? Please give your reasons.

As set out in our comments on the first Consultation Paper, we believe that no difference should be made between guaranteed and not guaranteed derivatives, as the issuer risk is identical for both kinds (in both cases, the risk of insolvency) and differentiation would, in practice, only cause additional expenditure. Differentiation would also be at odds with the fact that a capital guarantee for derivatives is usually equally financed by issuers with hedging transactions as the other features of the respective derivative. Differentiation between “real” and “bond-like” derivatives (in order to subject the latter to higher disclosure obligations) could only be made on the basis of the question of whether the issuer wants to use the proceeds from the issue for hedging transactions or spend them on general or particular corporate purposes; such a differentiation would, however, also not be very practical, and would only justify additional information in the Registration Document on the purpose of the issue, not a generally different treatment of both types (as the issuer risk, which is the only relevant factor in this respect, is exactly identical).

Question 88: If you consider that there should be a difference between the disclosure requirements for a bank (or a special purpose vehicle whose obligations are guaranteed by a bank) issuing a guaranteed derivative security, and the disclosure requirements for a bank issuing all other types of non-equity securities, please indicate what percentage return should be applied to differentiate between these different disclosure requirements. Please give your reasons.

As set out above for no. 87, there should not be a special regime for “guaranteed” derivatives. Each percentage return selected would, for the reasons set out for no. 87, be totally arbitrary and would lack justification.

Question 89: Having reviewed the disclosure obligations set out in Annex [3] for derivative securities issued by banks or special purpose vehicles whose obligations are guaranteed by banks, and the disclosure obligations set out in Annex [2] for all other non equity securities issued by banks, what, if any, additional disclosures do you consider a bank issuer or special purpose vehicle issuer whose obligations are guaranteed by a bank of a guaranteed derivative security should provide? Please give reasons for your answers.

As explained in the introductory remarks above, it cannot be the case that derivatives issued by banks are subject to higher disclosure requirements than debt securities issued by banks. The general idea behind the special regime for derivatives is that these securities should be subject to lower disclosure requirements than debt securities; otherwise there would be no need for a special Registration Document for derivatives.

Question 92: Do you consider that the disclosure requirements for Banks issuing derivative products should also be applied to non- bank issuers of non-guaranteed derivative securities? Please give your reasons.

As set out in our comments on the first Consultation Paper and in the introductory remarks above, we regard it as highly important to limit the number of disclosure standards, especially for Registration Document and Securities Notes, as much as possible. This approach naturally requires a certain degree of abstraction from the particulars of each type of security, issuer etc.; however, it cannot be the intention to create rules specifically tailored to cover every possible feature and case. Against this background, and considering the fact that derivatives are almost always issued by banks, we think that there should be only one Registration Document for derivatives, which should be based on the disclosure requirements for banks.

Question 93: If you consider that there should be different disclosure requirements for non-bank issuers of derivative securities, on review of the derivatives disclosure requirements set out in Annex [3], and the "wholesale debt" disclosure requirements set out in Annex [1] please advise:

(a) what, if any, different disclosure requirements to those set out in Annex [3] should be applied to non-bank issuers of derivative securities. Please give your reasons; and

(b) what, if any, additional disclosure requirements set out in the "wholesale debt" disclosure requirements at Annex [1] should be applied to non-bank issuers of derivative securities. Please give your reasons.

As explained in the introductory remarks above, it would be advisable to create a single Registration Document for all cases in which lower disclosure requirements seem justified.

Question 96: Do you agree with the disclosure obligations set out in Annex [4] as being appropriate for this type of securities?

We have the following comments regarding the proposed disclosure requirements:
Introduction: In practical terms, we cannot think of a vehicle or entity that "has no separate legal identity". This reference should therefore be deleted.

I.A.1.pp It is not clear what kind of responsibility is envisaged and what consequences such responsibility would have: personal liability or liability of the legal person. Furthermore, the cumulative ("and") designation seems to be inconsistent compared to the alternative ("or") designation requirement envisaged by the Securities Note, I.6 and the Prospectus Directive itself (Art. 6). As it has to be left to each Member State whether to extend liability to natural persons, the word “and” should be replaced by an “or”. We also do not understand why the language in I.A.1, I.A.2. and I.A.3 deviates from the equivalent sections in other Registration Documents.

I.B.1 A fund could also per se be an issuer within the meaning of this section. Therefore, “or fund” can be deleted.

I.B.2 As mentioned above, we cannot think, in practical terms, of a vehicle or entity that “has no separate legal identity”. Even if such vehicle or entity were used in practice, we do not see any reason for the distinction made here. Therefore, reference should be made to “the issuer” in general.

I.B.3 Since it is not clear whether the tax or the corporate domicile is envisaged (both can be different from the place of incorporation) , this subject of disclosure needs further clarification.

I.D.1 We do not consider a disclosure requirement concerning activities outside the group as necessary.I.B.3 The proposed requirement to mention the issuer’s web-site should be deleted. The issuer’s web-site cannot, at least not in all cases, be seen as an objective source of additional information for investors. By mentioning it in the prospectus, there would thus be an increased risk of investors basing their investment decision not only on the prospectus, but also on the content of the issuer’s web-site, which would contradict the purpose of a prospectus. Therefore, if the prospectus contains

. . .

all the information necessary to the investor to make an informed investment decision (and thus is compliant with the requirements of the Prospectus Directive), a reference to the issuer's web-site is neither necessary nor useful.

Question 102: Do you agree with the disclosure obligations set out in Annex [5] as being appropriate for this type of security?

Question 103: In particular, do you consider that any information regarding the depository is required in addition to that set out in IX.A?

As regards depository receipts, we only see the need for additional disclosure requirements regarding information on the peculiarities of the depository receipt itself. Depository receipts are basically tools used to better deal with settlement issues in cross-border situations. The depository only acts as a service provider, but in economical terms is not the issuer of the respective securities. Thus the risk associated with depository receipts is identical to the risk associated with the underlying securities. Thus, the investment decision will hardly depend on the identity of the depository bank but rather on the assessment of the underlying. The information to be disclosed in respect of depository receipts can be limited to the peculiarities of the depository receipts that are relevant for the investor. This is basically the information set out in Annex 5, items IX.A and XI, namely basic information on the identity of the depository, description of the legal basis of the depository receipts and description of the specific rights attaching thereto, as well as the exercise and benefits arising from the rights attaching to the underlying securities (we suggest using this expression consistently instead of ”original securities”, as in Annex 5).

Regarding the "underlying" security, it is sufficient to refer to the Registration Document and the Securities Note dealing with such securities and its issuer. There is no reason why the level of disclosure on the "underlying" security should be different from that which would be required if this security itself was issued. Further, disclosure requirements in relation to depository receipts must be capable of adaptation according to the nature of the underlying security. Annex 5 appears to apply only to depository receipts issued on equity despite the fact that depository receipts can be issued on any type of underlying security. The necessary flexibility that takes the diverse nature of depository receipts into account is currently completely lacking. We consider that the simplest way of dealing with the diverse nature of depository receipts is by means of our proposal mentioned above.

Furthermore, it is incomprehensible why the proposed disclosure regime for depository receipts does not distinguish between the information that is to be set out in the Registration Document and that which is to be set out in the Securities Note. The reason given for the lack of distinction in paragraph 99 is not convincing.

In addition, to allow a clear distinction from derivative securities, a definition of "depository receipts" should be given. This definition should be based on the question of whether the owner of the respective security holds a position which is, in economic terms, equivalent to that of the owner of the "underlying" security itself.

A definition of a depository receipt might read as follows:

"*Certificates issued by a depository bank, representing ownership of one or more securities of an issuer different from the depository held by the depository bank, so that the holder of a depository receipt economically becomes the owner of the underlying security, the depository receipts thus being subject to the same economic risks and opportunities as the underlying securities*."

For the sake of completeness, we should nevertheless like to comment on item I.C.3 in Annex 5 providing for an alternative solution where the inclusion of an auditor's report is prohibited (as to the terminology see our comments on no. 35, item VII.A et seq.). We are not aware of such restrictions. In any case, item IC.3 is in this respect inconsistent with Annex A of the Consultation Paper (so-called Equity Building Block), with the following building blocks derived there from, as well as with item VII. A in Annex 5 itself (assuming that "audit report" is to be read as "auditor's report" as set out earlier under no. 35, item VII.A et seq.), where the auditor's report is correctly understood to be an integral part of audited accounts that consequently has to be included in the prospectus as well. An omission of the auditor's report would also be contrary to the current practice in major capital markets. It is also unjustified and contrary to the interests of investors. It would be questionable whether investors would still be entitled to recourse claims against auditors in the case of (negligently) wrong audit opinions that otherwise exist under the laws of many jurisdictions. In view of the fact that one of the objectives of the prospectus directive is investor protection (see no. 13 of the preamble to the directive), CESR should not water down existing investor protection mechanisms like the inclusion of auditors reports Rather, CESR should strive for the abolition of national restrictions on publishing auditors reports in a prospectus, since these are at odds with the objectives of the directive.

Question 104: If there is recourse to the depository under the terms of the DR issued, what disclosure requirements do you consider would be appropriate in relation to the depository?

Even if there is recourse to the depository, this does not require making the same disclosure as if the depository were the issuer of the underlying. The depository basically acts as a service provider similar to a clearing house. Claims against the depository are conceivable in the case of a breach of the depository's obligations under the depository agreement that is deemed to have been concluded when an investor acquired depository receipts. Accordingly, recourse claims against the depository do not result from the depository receipt as a security (as it only represents the underlying security). Rather, they are based on the contractual relationship with the depository as a service provider. Thus, a description of the claims and duties of the depository and the investor arising from the depository agreement should be sufficient.

Question 111: Do you believe that a specialist building block for shipping companies is appropriate?

No. We do not believe that it is necessary or even helpful to have specific disclosure requirements for various industries. These already appear already too specific and, as a result, cumbersome. They may also be difficult to handle if a company is a conglomerate or has activities in several of the industries addressed by specific building blocks. The important information should already be covered by the general list of items in the building block for the respective type of securities. A more general approach, as has so far been taken in Germany, enables both issuers and their advisers as well as the supervisory authority and stock exchanges, to take a more flexible approach with regard to individual issuers and offerings.

This applies in particular to the building block for shipping companies. We do not see why the risks associated with an investment in a shipping company cannot be sufficiently covered by general disclosure requirements. Thus, we strongly support the opinion of those CESR members who feel that also shipping companies should, and can, be covered by the Core Equity building block.

Question 112: Do you agree with the disclosure requirements in registration documents for shipping companies set out in Annex [6]?

The issues listed for disclosure in Annex 6 can easily be covered by general disclosure requirements for any kind of company, as is further explained below:

- The relationship with a ship management company that manages the vessels is only relevant if it is material to the issuer, especially if the issuer is dependent on this relationship. This is already covered by item III.C.7 of Annex A.

. . .

- A relationship between controlling shareholders of the issuer and the ship management company, if it is material to either the company or the related shareholder or if it is unusual, is already covered by item VI.B of Annex A. If it is neither material nor unusual, there is no need for specific disclosure.

- The details of the vessels should already have to be disclosed under Annex A, item III.E (which might, for the sake of clarity, be further specified).

- We believe that a contract to build a new vessel is a principal future investment that has to be disclosed under item III.B.3 of Annex A; it should also be relevant under Annex A, item III.E.

- Insurance coverage for the issuer's facilities is important not only for shipping companies and we assume that if there is anything unusual or any specific risk involved (e.g. no or insufficient insurance coverage), this would have to be mentioned under item III. E of Annex A. So here too, there is no need for a separate building block for shipping companies.

Question 113: Do you agree that valuation reports as set out in Annex [6a] should be required for shipping companies?

No, we doubt that the relevance of the value of the fixed assets of a shipping company justifies a separate valuation report. As with other kinds of companies, the value of the company's assets will, if at all, only have a very limited influence on its share price (other than, for example, its profitability or prospects). Further, the value of the fixed assets also needs to be reflected in the balance sheet of the company, which has to be disclosed anyway. There is no need to have a separate valuation report, the preparation of which will also be costly and time-consuming.

Question 114: Do you consider it appropriate that the date of valuation must not be more than 90 days prior to the date of publication?

114: Apart from our general reservations as explained in no. 113, we wonder whether a valuation that is not older than 90 days will be feasible. We assume that the valuation of a vessel will require an on-site visit to the vessel. This might be travelling on the high seas and thus be inaccessible with justifiable efforts. The same exercise for a number of vessels would seem too costly and time-consuming, also with regard to the limited use of such a valuation, as explained under no. 113.

Question 115: Do you agree that it would be more appropriate for such valuation reports to be required when securities are being issued by a shipping company and hence should form part of the securities note?

Although related rather to the issuer rather than to the securities, an additional up-to-date valuation, if it is regarded as necessary, would be better in the Securities Note (rather than the Registration Document, which could become out of date by the time the securities are actually issued).

Question 122: Do you agree with this approach?

It seems reasonable to provide for a blanket clause for the mentioned cases, as it would not be possible to describe them in more detail on a general level.

Question 123: Are you satisfied with the wording of the Blanket Clause?

The proposed reference to information which is “not applicable” would leave the scope of this rule somewhat unclear. We think that not only inapplicable items but also items of minor materiality should not have to be taken into account when drafting a securities note. The proposed provision in the Directive speaks of information which is “inappropriate”. The words “not applicable to” in the proposed clause should therefore be replaced by “not relevant for, or otherwise inappropriate to”. Therefore, we propose the following amendment of the blanket clause:

“If certain information required in (line items) or equivalent information is not relevant for, or not material in relation to, the nature of the issuer or to the securities to which the prospectus relates, the requirement in relation to such information shall not apply.”
Furthermore, it has to be clarified what is meant by the term “line items”. This is not a term previously used.

Question 125: Do you consider that this disclosure is more appropriate to the securities note or the registration document?

We consider that (in general) this disclosure is more appropriate to the Registration Document as working capital statements deal with information about the issuer. Information relating to the issuer should be included in the Registration Document only. Information regarding the security should be included in the Securities Note only in order to make a clear and transparent distinction between the two documents. Further, CESR should consider that working capital statements in the Securities Note are of no importance for the investor and could even be misleading if there have not been any material changes in the working capital since the publication of the issuer`s annual report.

Question 126: If you consider that this disclosure is more appropriate to the securities note, do you believe that the other disclosures regarding liquidity and capital resources currently in the registration document should be included in the securities note instead?

See answer above to question 125.

Question 132: Do you agree with this approach?

In so far, it seems sufficient only to provide for the general rule that “a description of the rights attached to the securities” has to be given. Such rights can take a wide variety of forms; it will not be possible to cover all possibilities by specifying detailed disclosure obligations. Rather, the general rule should be clarified so that it becomes clear that a detailed description of the rights has to be given.

Question 136: Do you agree with this approach?

For securities which provide for fixed income and at the same time have derivative features, it would seem preferable only to make the derivatives Securities Note applicable. After all, interest rates can also be regarded as an “underlying”. The Consultation Paper also proposes amending the derivatives Securities Note so that it could also deal with the payment of interest rates (nos. 137, 138). There would then be no need to supplement the debt Registration Document with information on derivative features. Generally, the division of securities into three main categories should be made on a purely functional basis, without reference to the question of what is generally understood to be a bond or derivative. Furthermore, regarding the disclosure requirements included under III.C.2, we have the same comments as on the derivatives Securities Note itself: a best and worst case scenario should not be required, as such calculation would not help investors to understand the economic nature of, and the risk associated with, the security. Investors would benefit far more from a description of the economic nature of the respective security, in the course of which best and worst cases could be mentioned. What is meant by “Examples of the way the instrument works” remains unclear; should further exemplary calculations be meant (in addition to the ones referred to under d)), these specimen would not help investors to understand the economic nature of the respective security. Again, it would make far more sense to require a description of the economic nature of the respective security.

Question 139: Do you agree with this approach?

There is undoubtedly a need for disclosure on interest rates, which derivative securities sometimes provide for (V.A.9). However, as already set out in our comments on the first Consultation Paper, there should not be a requirement to disclose historical values. Historical data, especially with respect to interest rates, is by nature potentially misleading if the market environment changes. The information required under the newly inserted V.A.14 and 15 is already covered by V.B.11.

Question 143: Do you consider the disclosure requirements set out in Annex [10] to be appropriate for asset backed securities?

- We doubt that this definition is sufficiently precise, and that it covers all ABS transactions and synthetic securitisations currently existing in, and regarded as such by, the market.

With respect to the building block proposed in Annex 10, we have the following comments:

B. The footnote is missing.

B.1. This item is merely descriptive and does not contain any added value for the investor. We are of the opinion that the disclosure requirements with respect to the underlying assets should be stated in general terms and the additional information as envisaged in B should not be specifically required. Given the multitude of different structures of ABS transactions or synthetic securitisations, necessary additional information has to be singled out on a case by case basis.

B.2 It is not altogether clear what kind of information has to be disclosed if there is no such ownership interest.

B.2.1 This qualification itself may vary from jurisdiction to jurisdiction. Moreover, it is not clear on what basis the relevant legal jurisdiction(s) to which the assets are subject are to be determined.

B.2.3 It should be clarified what is meant by “legal nature”.

B.2.8 In synthetic securitisation structures, significant representations and warranties may not be given to the issuer. Therefore, the words “if any” should be added here.

B.2.11 It is not clear why the thresholds in this section (5 or less, 20 per cent or more) differ from those set in B.2.15 for equity securities (five per cent).

B.2.12 Given the huge amount of obligors regularly covered by ABS transactions, it seems impossible to disclose details of the relationship between the issuer, guarantor and each and every obligor.

B.2.13 It should be made clear that this information may be given by specifying ranges of yield and maturity, etc.

B.2.15 As set out above in B.2.11, it is not clear why different thresholds have been set for the two cases. Furthermore, it is not clear if the 5 per cents figure refers to the equity securities share in total or to a single issuer. Moreover, the information in the Core Equity Registration Block in respect of the underlying securities should only have to be disclosed if it is publicly available.

B.3 Again, it is not clear what kind of information has to be disclosed if there is no such ownership interest (see above under B.2).

C.1 The disclosure of subordination or other details relating to further issues of securities is not practicable at this stage where the details of any further issue have not yet been determined, except in cases of programmes.

C.2 It is becoming increasingly uncommon for average life figures to be given, as these do not constitute relevant information for investors. Therefore, this information should not be required.

D.1.6 In our view, the information required under B.2 and B.3 should be restricted to what is publicly available.

Question 144: On review of the debt security note disclosure requirements set out in annex [L] to the Consultation Paper, please advise what if any of these items of disclosure should not be required for these types of securities? Please give your reasons"

We do not see that the disclosure requirements for asset backed securities should generally be different from those set out for debt securities in Annex L. Regarding the requirements for debt securities, we refer to the comments made regarding Annex L in this response and in our first response to the Consultation Paper.

Question 149: Do you agree with the proposal to have the disclosure obligations in relation to guarantees in a separate building block so as to allow greater flexibility in structuring the issue of securities?

This approach seems sensible.

Question 150: Do you believe that the level of disclosure required by the proposed building block is appropriate? Please give reasons for your answer.

Question 151: If, in answer to the previous question, you said the requirements were

inappropriate please indicate which of the proposed disclosure requirements you believe to be excessive and/or which additional disclosures should be required of guarantors.

The proposed disclosure obligations seem appropriate except for the requirement to put material contracts relating to the guarantee on display (no. 6), which is rejected for the same reasons put forward against a disclosure of material contracts in the Registration Documents for other non equity-securities (see e.g. our answers to questions 28 und 53 above). In particular, they provide for a description of the guarantee itself (nos. 1 and 2) and of the guarantor (no. 5). For the latter, it makes sense to require the same information as for the issuer of the security itself. However, regarding the scope of this building block, it should be clarified under no. 1 that only arrangements which give the holders of securities a right to demand a payment from the issuer, or a financial backing of the latter in other form, are covered.

Question 155: Do you agree with this approach ?

No. The definitions used for the determination of the disclosure obligations should be independent of the definitions used within the directive. The main reason that, in the directive, derivatives linked to shares of the issuer itself are defined as equity securities is that otherwise the home country principle for the competent authority could be circumvented. For the determination of the disclosure obligation should, on the other hand, the derivative character of the security should generally be the only decisive factor; only of the issuance of the derivative corresponds in economic terms to the issuance of the respective underlying should the standards for the respective kind of underlying be applied, in combination with the Securities Note for derivatives. Therefore, for example, to warrants linked to shares of the issuer the Registration Document and Securities Note for derivatives should generally apply; only in cases in which the issuance of the derivative corresponds in economic terms to the issuance of the respective underlying should the Registration Document and Securities Note for equity securities be applied in combination with the Securities Note for derivatives. There is thus no need for an additional Securities Note building block for subscription rights.

Further, a number of items in Annex 12 have to be clarified. The exact meaning of items 7 and 9 is unclear. Within item 12, sub-ref. 3 and 11 appear to be almost identical. One of them is sufficient.

Question 159: Which approach do you deem to be more appropriate?

The latter approach is preferable. Only in cases in which the issuance of the derivative security corresponds in economic terms to the issuance of the respective underlying can it be justified to require all information on the issuer of the underlying as if the latter itself were issuing a security (see comments no. 155); this will hardly ever be the case if the issuer of the underlying belongs to the group of the issuer of the derivative.

Question 168: Given the level of detail provided for by the Ecofin Text on the scope, language, length and content of the summary; taking in consideration that the summary is based on the content of the prospectus and that it is up to the issuer to evaluate which elements are essential, do you believe that there is need for level 2 advice on the content and characteristics of the summary and that, in particular, there is need to prepare specific summary schedules? If yes, please indicate what level 2 implementing measures should deal with. CESR also welcomes views on the way in which the need to standardise the content of the summary may be compatible with the maximum length the summary should normally have.

In our opinion some level 2 advice seems to be necessary despite the level of detail provided for by the ECOFIN text on the scope, language, length and content of the summary. In principle, the summary document is intended to significantly increase the understanding of EU investors with respect to an issue. For the summary document to achieve this goal, it should provide succinct information about a particular offer especially from the perspective of (retail) investors` needs in a simple and short manner (take into account the 2,500 word approach). Therefore, the summary cannot be simply a shortened version of the prospectus but has to be a meaningful synthesis of the key points chosen by the issuer and its advisers.

This point, especially the purpose of the summary to highlight potential risks/ investment considerations for the investor by providing for a meaningful synthesis of a prospectus` key points chosen by the issuer, has to be officially stressed at level 2. In this connection it has to be made clear that not all the items set out in the indicative list of Annex IV of the Directive have to be included. Otherwise, the summary would not be a summary as it should contain the material information of nearly all sections of the prospectus. In addition, if the indicative list of Annex IV of the Directive was mandatory it would be impossible for the issuer to prepare a document consisting of only 2,500 words which is not misleading, inaccurate or inconsistent when read together with the prospectus (See article 6 para.2 of the Directive.)

Furthermore, since an effective summary cannot contain all relevant risk factors and related party transactions (not to mention the other items) it should also be made clear at level 2 that a summary of the types of risks (e.g. currency risk, high competition, product liability etc.) will suffice. Concerning the related party transactions it should be stated at Level 2 that a summary of the overall volume, parties involved and the fact that these were/were not executed on an at-arms` length basis should be sufficient.

Question 175: Do you have any comments on the preliminary views expressed in paragraph [174]?.

It seems somewhat early to judge whether the base prospectus should offer on the whole the same content of information as the normal one. Details of the base prospectus, which will probably be the prospectus mostly used in future, have not yet been worked out. We argued above that the list of obligatory items for the Banks Registration Document Building Block should be shortened. For this reason it is difficult for us to say the base prospectus should have the same amount of information when there is not even a satisfying framework for a normal prospectus matching our needs. As we have already stated in the summary, we underline the need for the greatest possible flexibility for the base prospectus, taking into account the current practices in the market.

Question 176: Bearing in mind that the final terms will not be approved, what information disclosures from the securities note do you consider it would be appropriate to reclassify as being the final terms [for issues off a base prospectus]?

What is required here is a general rule on the basis of which it can be decided what information can be left to the final terms. As the major purpose of the special regime for base prospectuses and programmes is to allow issuers to adapt the final terms of a security to the market conditions prevailing at the time of issuance without a delay, the general rule could be drafted as follows: “Final terms are those terms of an offer which can only be determined shortly before the offer due to the offer’s nature.” This would correspond to the current practice in Germany and also address the needs of the Eurobond market mostly covered by offering programmes, which has proven to be both appropriate and practicable for many years. Given the multitude of possible features and cases, it would not be possible to specify in detail what conditions can be left to the final terms.