THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Date: April 2002
Ref.: CESR/02-020b

STABILISATION AND ALLOTMENT

A EUROPEAN SUPERVISORY APPROACH

17 place de la Bourse - 75082 PARIS CEDEX 02 - FRANCE - Tel.: 33.(0).1.53.45.63.61 - Fax: 33.(0).1.53.45.63.60
Web site: www.europefesco.org

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I. Introduction

The continuing development of the Single Market in financial services, in particular following the introduction of the Euro, is likely to generate a progressive increase in the number of cross-border offerings of securities. For the efficiency of the market and protection of investors, it is desirable that CESR[1] members develop common approaches to key elements of the offering process.

According to the CESR charter, the objectives of protecting investors and ensuring the integrity and transparency of markets are fundamental to achieving and maintaining sound and stable financial markets.

CESR has already published "Market Conduct Standards for Participants in an Offering" (99-FESCO-B; "Market Conduct Standards"). These standards deal with the control and dissemination of information and certain aspects of trading activity. The purpose of this present paper is to address those issues that were not covered in the Market Conduct Standards and where there is a need for harmonisation. These are Stabilisation practices, including the operation of Greenshoes, and the Allotment of securities. The standards set forth in this paper complement and add detail to the Market Conduct Standards for certain areas. However, they are not intended to alter the scope of application of the CESR Market Conduct Standards.

Furthermore, the experts group on market abuse has sent to the European Commission a paper on "Market Abuse; CESR's response to the call for views from the Securities Regulators under the EU's Action Plan for Financial Services COM(1999)232" (FESCO-99-096l, the "Market Abuse Paper") providing input for a future harmonisation of the legal framework against market abuse at the European level. The draft Directive on Insider Dealing and Market Manipulation (COM(2001)281) reflects such input. The standards on Stabilisation in this paper have not been elaborated under a formal mandate of the European Commission in the exercise of its powers under the comitology provisions foreseen in the draft Directive on Insider Dealing and Market Manipulation. They cannot therefore be seen as the final word of CESR on Stabilisation under the future final directive. However, it must be clear that the conclusions of the current work will be important reference points for any future work to be undertaken on the same subject.

Likewise, the experts group on European public offers has sent its proposals for a notification-based, automatic recognition of prospectuses (A European Passport for Issuers, FESCO/00-138b, the "European Passport Paper") to the European Commission. This paper is also reflected in the draft Directive on the Prospectus to be published when Securities are offered to the Public or admitted to Trading (COM(2001)280). Insofar as this paper deals with Prospectus disclosure, it should also be clear that such work has not been undertaken under a formal mandate of the European Commission in the exercise of its powers under the comitology provisions foreseen in the draft Directive on the Prospectus to be published when Securities are offered to the Public or admitted to Trading. The comments made above in respect of the draft Directive on Insider Dealing and Market Manipulation apply also in the context of the draft Directive on the Prospectus to be published when Securities are offered to the Public or admitted to Trading.

The standards on Stabilisation set forth in this paper are applicable to both debt and equity securities, since both types of security are the subject either of existing market abuse

[1] All references in the paper will be to CESR, even where a document was published under the then name of FESCO. This reflects CESR's commitment to continuity as set forth in Article 9.1 of the CESR charter.

regimes, or will be covered under the Commissions proposals as mentioned above. Given that regulatory issues in relation to Allotment have arisen almost exclusively in respect of equity offerings, the section on Allotment is applicable only to Significant Distributions of equity securities which include retail investors, i.e. any Significant Distributions involving not only professional investors acting for their own account.

The concept that Stabilisation is a legitimate form of potential market distortion is already contained for cases of insider trading in the 12th recital of the Insider Directive (89/592/EEC). It is expanded in this paper for the different types of market abuse as defined in the draft Directive on Insider Dealing and Market Manipulation, which are: insider trading and market manipulation including the dissemination of false and misleading information.

The standards on Stabilisation set forth in this present paper are designed first to provide a safe harbour against charges of market abuse, both criminal and administrative under current national laws. This safe harbour provides a defence against charges of market abuse in cases where the standards on Stabilisation as implemented by the national authority were followed. Cases where the standards have not been adhered to do not automatically constitute market abuse. In such cases, however, no defence of legitimate Stabilisation can be raised. The standards on Stabilisation also provide for transparency and disclosure and deal with the accountability of the involved Investment Services Firms.

The harmonisation of national Stabilisation rules should be particularly beneficial in cross-border situations. For cross-border offers of securities effected within EEA-member states, the aim is that all involved parties should be able to rely on substantially the same rules with regard to Stabilisation. This aim should be achieved through a mutual recognition of national rules that implement the standards set forth in this paper. CESR members will seek to obtain such Europe-wide recognition for their national rules and to obtain national recognition for the Stabilisation rules of other CESR members.

For cross-border issues involving securities and markets of EEA and non-EEA jurisdictions it is desirable to have harmonised Stabilisation legislation. CESR members will seek to obtain recognition of their national rules by non-EEA authorities and to recognise relevant foreign Stabilisation rules.

This paper does not seek to address the issue of the competent authority with regard to Stabilisation regulations in cross-border issues of securities. As a result of CESR's commitment to strive for a mutual recognition and harmonisation of respective national Stabilisation rules, the matter of designating a competent authority becomes less relevant.

The work of CESR with regard to Allotment has been far more complicated than work on Stabilisation and Greenshoes. From the beginning it was clear that national systems and also philosophies in this area diverge. Some European jurisdictions have very detailed prescriptions with regard to Allotment which include transparency requirements on issuers as well as more far reaching conduct of business type requirements for both issuers and Investment Services Firms. In some of these jurisdictions, Allotment and/or application processes are centralised which allows requirements of equal treatment. In other jurisdictions, Allotment is not specifically regulated at all or where regulation exists, it is in the form of voluntary codes or recommendations, which results in a significantly more discretionary Allotment process.

Both consultation rounds as well as the open hearing revealed that the consultees were at least as divided as the experts group, if not more so. Broadly speaking, very little common ground could be identified. Some consultees argued that almost any form of regulation, even transparency requirements, would interfere with the fluid, dynamic nature of the Allotment process and result in higher cost of capital. Others defended more rigorous regimes than proposed in the paper, citing the need for the protection of retail investors or even all investors, be they institutional or retail.

Faced with this situation CESR developed an approach which recognises the existing diversity of regulation in Europe, while introducing some elements of harmonisation. It is clearly recognised that in terms of responsiveness to consultation, this procedure is not ideal. However, a consultation which reveals such divergent views is not easy to handle even in a national context. In the European context where the aim is additionally to bridge the differences between the regulatory systems of all 17 CESR members, it is even more complicated. The proposals here represent a step towards harmonisation though not as much as many consultees would like to have seen.

CESR also recognises that against the background of the notification-based, automatic recognition of prospectuses which CESR and now the European Commission is proposing, a system that is not fully harmonised is not ideal. However, as stated above, any single solution would have implied severe changes for a large number of European jurisdictions. At this stage, this was not seen as feasible.

CESR has, however been able to provide fully harmonised prospectus disclosure standards for Allotment. This will contribute to the provision of a broadly similar level of investor information across the EEA. This need is particularly pressing for Allotment, as this is an area, where the interests of participants can and often do diverge. In an offering of securities, issuers expect to be able to achieve an efficient Allotment of their securities and raising of funds, while investors expect to receive an Allotment based on clear and documented criteria. In many instances, however, investors have complained about a lack of reliable information about the Allotment process. This often results in investors receiving Allotments that do not correspond with their reasonable expectations. CESR is committed to provide a framework which is consistent with the requirements of effective disclosure and the application of a clear set of Allotment principles. A more detailed consideration of the problems that have been encountered with regard to Allotment is set forth in Section VI. of this paper.

CESR members will seek to implement the standards set out in this paper in their regulatory objectives and, where possible, in their respective rules. If a CESR member does not have the authority to implement certain standards, it will commend these to its government and/or to the responsible regulatory authority. This commitment is underpinned by the disclosure mechanism agreed upon by CESR members. This provides for regular disclosure by CESR, how far the implementation of CESR standards has progressed in each member's jurisdiction. Where Stabilisation is concerned, implementation may in some countries be deferred until the introduction of a harmonised European framework against market abuse as foreseen in the draft Directive on Insider Dealing and Market manipulation. This may in particular be the case where the current national legal system does not allow for the provision of safe harbours as provided for in this paper.

II. Definitions

Allotment: the process or processes by which the number of Relevant Securities to be received by investors who have previously subscribed or applied for them, is determined.

Associated Securities – Associated Securities shall mean the following financial instruments which are admitted to trading on a Regulated Market or for which a request for admission to trading on such market has been made

(1) contracts or rights to subscribe for, acquire or dispose of Relevant Securities,

(2) financial derivatives on Relevant Securities, and

(3) where the Relevant Securities are convertible or exchangeable debt securities, the securities into which such convertible or exchangeable debt securities may be converted or exchanged.

Free Retention - a contingent of Relevant Securities put at the disposal of certain Investment Services Firms by the Allotment Manager for distribution at the discretion of such Investment Services Firms.

Greenshoe - option granted by the Offeror in favour of the Investment Services Firm(s) involved in the offering, providing that for a certain period of time after the offer of the Relevant Securities such firm(s) may purchase up to a certain amount of Relevant Securities at the offer price.

Investment Services Firms - investment firms and credits institutions as defined in Article 1 Nos. 2 and 3 of the Investment Services Directive (Directive 93/22/EEC).

Offeror - the person(s) who were prior holders of or the entity issuing the Relevant Securities.

Overallotment – Allotment of a greater number of Relevant Securities than originally offered, i.e. before taking into account any Overallotment Facility.

Overallotment Facility - a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase in respect of a greater number of Relevant Securities than originally offered.

Prospectus - the prospectus or listing particulars as referred to in Directives 89/298/EEC and 2001/34/EC respectively or, where no prospectus exists, comparable offering, listing or other documentation.

Relevant Securities - shares, as well as securities equivalent to shares (such as depository receipts) and in addition for the purposes of sections IV. and V of this paper also debt securities including convertible and exchangeable debt securities as well as securities equivalent thereto (such as depository receipts) which are the subject of a Significant Distribution and which are admitted to trading on a Regulated Market or for which a request for admission to trading on such market has been made, as well as, where the context so requires securities identical thereto which are already admitted to trading on a Regulated Market.

Regulated Market - the markets as defined in Article 1 No. 13 of the Investment Services Directive (Directive 93/22/EEC).

Significant Distribution - an offering of Relevant Securities publicly announced no later than at the beginning of the offering that is distinct from ordinary trading both in terms of the amount of securities offered and the selling methods employed. This would encompass initial public offerings as well as secondary offerings of Relevant Securities. Block trades would, however, not be comprised in the definition as they are strictly private transactions.

Stabilisation - any purchase or offer to purchase Relevant Securities or any transaction in Associated Securities equivalent thereto which is undertaken in the context of a Significant Distribution of Relevant Securities for the purpose of securing a market price for such Securities that would not otherwise prevail.

III. The Standards

STABILISATION

1. Stabilisation shall be under a safe harbour provided that it is undertaken by Investment Services Firms in the context of a Significant Distribution of Relevant Securities in order to support the price of such Relevant Securities for a limited period of time.

2. The responsibility for Stabilisation must be borne by one Investment Services Firm per jurisdiction within the offering consortium (the "Stabilisation Manager").

3. The possibility of Stabilisation must be disclosed in the Prospectus. Stabilisation activity must be recorded and disclosed in an appropriate manner.

OVERALLOTMENT

4. The Greenshoe may only be exercised in connection with an Overallotment of securities. The Overallotment Facility and the Greenshoe must be disclosed in the Prospectus.

ALLOTMENT

5. Investment Services Firms involved in a Significant Distribution of Relevant Securities involving retail investors should adhere to certain principles governing the Allotment process.

6. Allotment must be recorded and disclosed in an appropriate manner

7. The responsibility for Allotment must be borne by one Investment Services Firm per jurisdiction within the offering consortium (the “Allotment Manager”).

IV. Stabilisation

1. Stabilisation - the Regulatory Regime

This section deals with the requirements applicable to Stabilisation transactions. Stabilisation is an optional activity undertaken by Investment Services Firm(s) involved in a Significant Distribution of securities. The main conditions of the Stabilisation process are agreed between the Offeror and such firm or firms.

The main purpose of these transactions is to provide support for the price of the new issue if it comes under selling pressure. Stabilisation can under certain circumstances be beneficial by alleviating sales pressure generated largely by short term investors (so called flippers). Stabilisation facilitates the distribution process for new issues by giving the involved Investment Services Firms a safe harbour for certain activities within a regulatory framework that sets appropriate controls on these activities.

The benefits to the markets to be gained through Stabilisation can be considerable. New, particularly small and medium sized companies are encouraged to access the capital market and established issuers will be more comfortable raising funds through capital increases if they know there will be some support for the price of their offer. Stabilisation may also contribute to a lower cost of funding for the issuer. Investors, however, must always be aware that there is no guarantee, that Stabilisation will be undertaken. Investors should therefore not base an investment decision on the assumption that the involved Investment Services Firms will actually undertake Stabilisation.

Stabilisation also poses some risks to the market. Generally, there is a risk that Stabilisation activity could conceal the true market demand by sustaining a price for too long a time at a potentially artificial level. Taking into account that furthermore:

- Stabilisation transactions are undertaken to affect the market price of the Relevant Securities (potential of market manipulation); and
- the entity undertaking Stabilisation may have insider information (within the meaning of Directive 89/592/EEC) (potential of insider trading); and
- the fact that Stabilisation may be undertaken is material to the market price of the Relevant Securities (potential dissemination of false or misleading information or omission of material information);

stabilisation must be conducted according to specific rules if it is to have the benefit of the safe harbour under appropriate national rules.

National Stabilisation rules therefore must deal with permissible Stabilisation transactions (i.e. time and price rules), market transparency safeguards and investor information requirements. The standards set out below are drafted to confine Stabilisation transactions narrowly to certain time periods and to certain prices. Moreover, they provide for prior disclosure of Stabilisation arrangements to investors as well as for limited public disclosure after the end of the Stabilisation period. With these requirements, the potential risks associated with Stabilisation are, if not counterbalanced, at least contained.

For regulatory purposes, it is also important to establish a clear accountability obligation. To achieve this, Standard No. 2 states that one entity within the offering consortium should be accountable to the relevant national authority with regard to the Stabilisation activity. This obligation of accountability requires it to act as central point of inquiry for any regulatory intervention. In case of Stabilisation in multiple jurisdictions one entity must fulfil the accountability obligations for Stabilisation activity in each jurisdiction.

Certain types of transactions that are typically also carried out during the stabilisation period are not included in the Stabilisation rules. These are firstly proprietary trading (*i.e.* own-account transactions undertaken in the normal course of business without a Stabilisation purpose) and market making activity (i.e. the provision of liquidity and quoting of prices for the Relevant Security) of the Stabilisation Manager and other consortium members. Secondly, where a naked short[2] was entered into during the Allotment to provide additional Stabilisation means, such a naked short may have to be closed out where the Relevant Securities trade above the offering price, and where consequently no safe harbour is available. These transactions are different from Stabilisation transactions, because they are not aimed at influencing the trading price of the Relevant Securities, nor is such an influence necessarily the result of such transactions. Because of this lack of influence on the price and of the lack of corresponding purpose, they are not per se in breach of the applicable market manipulation provisions, and consequently do not need a safe harbour. It should be emphasised that where manipulative effect or purpose are present, such transactions, just like any other market transaction with such effect or purpose may be considered as manipulative. However, in itself, proprietary trading, market making or the closing out of a naked short where the Relevant Securities trade above the offering price cannot be considered as manipulative. In any event, these transactions should not interfere in the stabilisation process.

2. CESR European Standards for Stabilisation

Stabilisation shall be under a safe harbour provided that it is undertaken by Investment Services Firms in the context of a Significant Distribution of Relevant Securities in order to support the price of such Relevant Securities for a limited period of time.

a. The Safe Harbour

Stabilisation in the context of a Significant Distribution shall be under a safe harbour provided that national rules implementing the following provisions are complied with.

(1) Stabilisation Period

Stabilisation shall be undertaken only during a defined period disclosed to the market in advance:

(a) for equity securities

- in the case of a secondary offering beginning with the public announcement of the final price of the Relevant Securities and ending no later than 30 days after Allotment; or
- in the case of an IPO, beginning with the commencement of trading of the Relevant Securities on a Regulated Market and ending no later than 30 days thereafter and
- where in an IPO, there is trading prior to the commencement of trading on a Regulated Market (i.e. when issued trading where it exists), beginning with the public announcement of the final price of the Relevant Securities and ending

[2] Which is not prohibited by the standards on Stabilisation but may be legally problematic under other aspects in certain jurisdictions.

no later than 30 days thereafter provided that any such trading fulfils the following conditions:

- it is undertaken subject to/under the rules of a Regulated Market,
- it is subject to trade reporting requirements, and
- it is undertaken subject to an appropriate level of regulatory supervision and monitoring.

(b) for debt securities

- commencing with the public announcement of the offer of the Relevant Securities; and
- ending no later than 30 days after the closing date/the date on which the issuer of the securities received the proceeds of the issue, or if earlier than that, ending no later than 60 days after the date of Allotment

(c) for debt securities convertible or exchangeable into equity securities

- commencing with the public announcement of the final terms of the Relevant Securities; and
- ending no later than 30 days after the closing date/the date on which the issuer of the securities received the proceeds of the issue, or if earlier than that, ending no later than 60 days after the date of Allotment

(2) Stabilisation Price

(a) Equity Securities

Stabilisation may only be undertaken to support the market price of the Relevant Securities having due regard to prevailing market conditions and in any event may not be executed above the offering price.

(b) Debt Securities including debt securities convertible or exchangeable into equity securities

Stabilisation may only be undertaken for the purpose of price support.

b. Liquidation of Stabilisation transactions

The Relevant Securities bought by Investment Services Firms within the offering consortium during the Stabilisation period may be used to cover any Overallotment. If any Relevant Securities are disposed of in the market, this should happen so as to minimise market impact.

The responsibility for Stabilisation must be borne by one Investment Services Firm per jurisdiction within the offering consortium (the "Stabilisation Manager").

c. The Stabilisation Manager

One Investment Services Firm within the consortium must be accountable vis à vis each relevant competent national authority, in order to act as central point of inquiry for any regulatory intervention. There must be adequate co-ordination between all Investment Services Firms undertaking Stabilisation.

The possibility of Stabilisation must be disclosed in the Prospectus. Stabilisation activity must be recorded and disclosed in an appropriate manner.

d. Pre-Stabilisation disclosure

The Prospectus must contain adequate disclosure on the following items in one clearly identified section:

- the fact that Stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;

- the beginning and end of the period during which Stabilisation may occur,

- the identity of the Stabilisation Manager for each relevant jurisdiction unless this is not known at the time of publication;

- the fact that Stabilisation transactions may result in a market price that is higher than would otherwise prevail; and

- other aspects of Stabilisation which could be material to an investor's decision to subscribe for or purchase the Relevant Securities.

e. Record keeping requirements

All Stabilisation orders and transactions must be recorded separately. The information to be recorded shall include for each order and transaction, at least the information set forth in Article 20 para (1) of the Investment Services Directive (93/22/EEC). This information must be at the disposal of the competent authority at all times.

f. Post Stabilisation Disclosure

Within one week after the end of the Stabilisation period, the Stabilisation undertaken must be adequately disclosed to the public. This disclosure has to contain the following information:

- the date at which the Stabilisation period ended;

- whether or not Stabilisation was undertaken;

- the price range between which Stabilisation was undertaken; and

- the date at which the Stabilisation last occurred.

V. Overallotment Facility and Greenshoe

Within the context of the agreement entered into between the Offeror and the Investment Services Firms involved in the offering, an Overallotment Facility and/or a Greenshoe may be agreed. The Overallotment Facility allows an Overallotment, *i.e.* the Allotment of more Relevant Securities than originally offered under the same terms and conditions as the original offer and without an increase in the size of the offer at that time; such Relevant Securities may originate from a stock lending or another appropriate device. The Greenshoe permits the purchase of up to a certain amount of additional Relevant Securities from the Offeror, at the offering price, within a specified time after the end of the offering period.

It is common practice where demand warrants it for the lead manager or underwriter to accept subscriptions or offers to purchase Relevant Securities above the size of the original offer. CESR members consider it to be best practice to allow such an Overallotment Facility up to 15% of the original offer. The lead manager or underwriter may also obtain from the Offeror an option to acquire additional shares at the offer price. Such Greenshoe should, as a matter of best practice be consistent with the Overallotment Facility in terms of size and with the Stabilisation period in terms of exercise time.

During the period after the offer, when the Greenshoe may be exercised to acquire additional shares from the Offeror, a short position is established and two possible scenarios may occur

- The market price drops below the offer price – in this case the short position can be covered with Relevant Securities bought on the market;
- The market price goes up - in this case the short position can be covered through the exercise of the Greenshoe.

Both the Overallotment Facility and the Greenshoe are closely related to Stabilisation. The use of the Overallotment Facility enables the Stabilisation Manager to buy Relevant Securities in the aftermarket (reducing the risk of obtaining a long-position) and thus enhancing chances to achieve a balanced market. The Greenshoe hedges the Overallotment, its exercise has a neutral market effect.

Alternatively or in addition to the Overallotment Facility, which is hedged by the Greenshoe, an Overallotment can also be undertaken without a hedging device which results in a naked short. Transactions to cover such a naked short may be Stabilisation transactions which fall under the safe harbour, provided that the standards set forth in Section IV of this paper as implemented by the national regulator are followed.

Concerns that attach to the Overallotment Facility and the Greenshoe relate to investor information and protection, to market transparency and to market integrity. To alleviate these concerns, the following standards as implemented in national law must be adhered to. Disclosure matters are also covered by the CESR European Standards on Allotment (see below) which must be read in conjunction with these standards. It is important to stress that these standards do not allow Investment Services Firms to choose whether they want to act in accordance with the standards and consequently be able to raise the safe harbour defence, or whether they want to act outside of the standards with the risk that their actions may be prosecuted as market manipulation. These standards as implemented in national law in their entirety must be adhered to in every instance.

The Greenshoe may only be exercised in connection with an Overallotment of Relevant Securities. The Overallotment Facility and the Greenshoe must be disclosed in the Prospectus.

a. Disclosure

The Prospectus must give proper disclosure of the existence and size of any Overallotment Facility or Greenshoe, the exercise period of the Greenshoe and any conditions for the use of the Overallotment Facility or exercise of the Greenshoe.

b. Market Transparency

The exercise of the Greenshoe must be disclosed to the public promptly and in suitable detail, including the date of exercise and the number and nature of Relevant Securities involved.

c. Market Integrity

The Greenshoe must not be exercised where Relevant Securities have not been overalloted by the beneficiary or beneficiaries of the Greenshoe.

VI. Allotment

1. Allotment - the Regulatory Regime

CESR members have faced a number of different kinds of problems over how Allotment decisions have been handled. In cases when offerings are heavily oversubscribed regulators receive complaints that Allotment procedures are not treating all investors fairly. Retail investors may complain that institutional investors obtain better Allotments and/or that the employees of the Investment Services Firm are accorded preferential treatment. In some jurisdictions, there are also complaints that investors in the same tranche and/or category are treated differently, for example subscriptions made through syndicate members are given preference over other subscriptions or preference is given to syndicate members´ own clients, whereas in other jurisdictions, this is a normal and accepted commercial practice. Alternatively, where the issue turns out to be "cold" or a failure, there have been complaints that in some jurisdictions Relevant Securities have been "dumped" on retail customers or into managed portfolios. There are also occasions of complaints of misuse of dominant positions by Investment Services Firms in cases where an investor is forced into a customer relationship with an Investment Services Firm in order to ensure an Allotment or where the customer has to promise to give certain amount of business to the Investment Services Firm in order to get an Allotment. Finally, concerns relate to the retention of funds and charging of subscription fees in cases where investors have not been allotted Relevant Securities.

Some of these issues are already covered by conduct of business rules but there are wider concerns from investors who are not satisfied with the level of information on this process. This relates to the information provided before the Allotment on how the Allotment will be conducted, how the offering is shaped and how this can be altered. Investors are also interested in reliable information about so called friends and family programmes, i.e. programmes where preferential treatment is accorded to friends and family of the Offeror or of the involved Investment Services Firms. In order to avoid uneconomically small shareholdings, the information on any minimum Allotment is of significance to investors. In jurisdictions where multiple subscriptions are not admitted, investors need to know how such multiple subscriptions will be treated, i.e. whether all of several subscriptions will be deleted or whether one subscription will be maintained.

Such needs for information before the offering correspond to needs for information after the Allotment. Investors require this information to be able to judge the success of the offer and evaluate how the Allotment processes were actually undertaken. This is particularly important, where the Offeror has reshaped the original structure of the offer to respond to the demand situation. In some cases there are also complaints about misleading disclosure of the demand situation of the offer.

Where the retail investor has a customer relationship with the Investment Services Firm then the investor should already have a measure of protection in his dealings with the Investment Services Firm. Regardless of the existence of a customer relationship the application of the disclosure standards set forth below should ensure at least that adequate information about the Allotment process is available.

Friends and family programmes and other forms of preferential treatment are an expression of the Offeror’s prerogative to favour certain groups of investors or individual investors. The transparency requirement for friends and family programmes as set forth in this paper does not constitute an endorsement of such programmes by CESR. On the other hand, CESR acknowledges that different categories of investors such as institutional and retail investors, or investors belonging to different tranches as disclosed in the Prospectus, may quite legitimately be treated in a different manner in the Allotment process.

The standards deal first with certain Allotment principles applicable to the retail and employee tranches. Secondly, they aim at enhancing the information on Allotment available to investors both before and after the Allotment. The requirement for Prospectus disclosure is addressed to the Offeror, as this is the person which is responsible for Prospectus disclosure under the applicable European Directives. The requirement for post-Allotment disclosure is addressed to the Allotment Manager, as this will be the entity which is in possession of all the necessary information for making such disclosure. The record-keeping requirement is addressed to all Investment Services Firms involved in the Allotment.

The Allotment principles are generally to be implemented by requirements on Investment Services Firms. This recognises that all CESR members have authority over and supervise Investment Services Firms. However, certain CESR members may go farther by extending the scope of application also to Offerors and by imposing additional and more stringent Allotment principles, but not, however, additional and more stringent disclosure requirements. This will result in the application of different Allotment processes in different European jurisdictions. To ensure adequate transparency in this situation, the disclosure of the basic structure of the offer shall also contain the division of retail tranches by country or group of countries with similar allotment processes. This division is subject to change only as disclosed in the prospectus (e.g. through use of the claw-back). The application of different Allotment regimes will not result in retail investors being bound to their home country regime, as they can always choose the Allotment regime of another jurisdiction by subscribing with an Investment Services Firm situated in such other jurisdiction as part of this jurisdiction's national tranche.

The provisions dealing with the responsibility of the Allotment Manager have been drafted along the lines of the provision dealing with the Stabilisation Manager. This does not impose regulatory responsibility on the Allotment Manager for the actions of other consortium members. It is recognised that civil law remedies are available under the consortium agreement to the Allotment Manager against other consortium members. These may be less relevant in some jurisdictions, where retail Allotments are carried out centrally on the basis of data collected from the syndicate.

In a number of jurisdictions, subscriptions must be treated in the same manner, regardless of which Investment Services Firm they are made through. However, in many other jurisdictions it seems to be current practice that subscriptions made through certain, in particular non-syndicate Investment Services Firms, will not be allocated any securities in oversubscribed offerings. It would seem prudent to ensure that investors are informed in the Prospectus in the latter case. This information is of particular importance in cases where subscription fees are charged regardless of a subsequent Allotment.

2. CESR European Standards on Allotment

Investment Services Firms involved in a Significant Distribution of Relevant Securities involving retail investors should adhere to certain principles governing the Allotment process.

These Standards are applicable to Allotments of Relevant Securities in the context of a Significant Distribution involving retail investors and are to be applied on a country by country basis or on a group of countries basis, where similar allotment processes exist. Compliance with these standards shall be adequately monitored by the competent authority, with adequate enforcement mechanisms in place. Any firm participating in a Significant

Distribution shall monitor compliance with these standards in accordance with its responsibilities and with special regard to Allotments to employees, managers, directors or board members of such firms.

The Allotment Manager of the Significant Distribution should be in a position to demonstrate that the Relevant Securities have been allotted in accordance with the Allotment principles stated below and with the disclosed Allotment method.

1. Allotment Principles

In choosing the method or methods to be used in an Allotment of Relevant Securities to retail investors, the Investment Services Firms involved should consider the individual characteristics of the offering. These methods may include scaling down, progressive scaling down, or lottery, or may take into account the timing of subscriptions or applications; however, methods giving a priority to early responses should not prevent retail investors having adequate time to assess the offer and make an informed investment decision. The same method or combination of methods must be used within the issuer's employee tranche on the one hand, and the retail tranche or any subtranches thereof on the other hand, including any Overallotment. The above is without prejudice to the possibility to treat investors in different tranches, categories, classes or types in a different manner.

A minimum percentage must be provided for the retail tranche which cannot be reduced in the event that the relevant tranche is fully subscribed or oversubscribed. Changes to the disclosed division between tranches (claw back) should not unduly be used to the detriment of the retail tranche. Free Retention can only be used in the institutional tranche.

Investment Services Firms involved in an offering may subscribe for the Relevant Securities for their own account only for the purposes of underwriting or market-making. Employees, managers, directors and board members of Investment Services Firms so involved may be allowed to subscribe or apply for the Relevant Securities offered, but such persons may not participate in the institutional tranche nor may they be treated differently than ordinary retail investors.

Allotment must be recorded and disclosed in an appropriate manner

2. Allotment Disclosure and Record-Keeping

a. Pre-Allotment Disclosure

The following information must be included in the Prospectus in one clearly identified section. Where the Prospectus is not available on a sufficiently timely basis to allow investors to review the information before the start of subscription, it must also be made available in another adequate manner.

- The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches;

- the conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches;

- the Allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches;

- a description of any pre-determined preferential treatment[3] to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the Allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups;

- whether the treatment of subscriptions or bids to subscribe in the Allotment may be determined on the basis of which firm they are made through or by;

- a target minimum individual Allotment if any within the retail tranche;

- the conditions for the closing of the offering as well as the date on which the offering may be closed at the earliest;

- whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled; and

- other aspects of Allotment which could be material to an investor's decision to subscribe for or purchase the Relevant Securities.

b. Post-Allotment and Demand Disclosure

The Allotment Manager must ensure that the final size of the offer and the result of the Allotment together with the allocation between the various tranches such as institutional, retail, issuer's employee and any other tranche and the use of the Overallotment Facility and the claw back are made public in an adequate manner after the Allotment. The percentage of the offer used for preferential treatment and free retention programmes should also be disclosed.

Where public disclosure about the demand situation is made, such disclosure may not be misleading including by omission. Any such disclosure must allow an adequate analysis of the information provided. If the level of subscription is indicated, this should include only demand at or above the offer price.

c. Investor Information

Investors must be informed of the manner and timing for refunding excess amounts paid upon subscription, including the terms of any interest. Investors must be informed as soon as possible (in writing or by other means providing an adequate record) of their individual Allotment[4]. This information requirement also applies in the event that no Allotment is obtained.

d. Record keeping and Disclosure to the Regulator

The Allotment Manager and the other Investment Services Firms involved in the Allotment must keep adequate records of the Allotment process. Such information should be provided to the regulator on request.

This includes, in particular, information on the recipients of Allotments from the Free Retention, on the beneficiaries of preferential treatment and on the Allotments to employees of Investment Services Firms participating in the offering.

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[3] Such as advantages in the allotment process or discounts.

[4] CESR considers it as desirable that investors should at least be able to access information about the amount allotted them before trading on a Regulated Market may begin and ideally that Relevant Securities allotted to them should be credited to their accounts at such time..

The responsibility for Allotment must be borne by one Investment Services Firm per jurisdiction within the offering consortium (the "Allotment Manager").

3. Allotment Manager

One Investment Services Firm within the consortium must be accountable vis à vis each relevant competent national authority, in order to act as central point of inquiry for any regulatory intervention. There must be adequate co-ordination between all Investment Services Firms undertaking Allotment.