THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref.: CESR/03-301

CESR Prospectus Consultation

FEEDBACK STATEMENT

SEPTEMBER 2003

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The Provisional Mandates and the Technical Advice

1. On 27 March 2002, the European Commission requested CESR to provide technical advice on possible implementing measures in connection with certain aspects of the Directive on the Prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive).

2. On 7 February 2003 the European Commission published an Additional Provisional Mandate which supplements the previous one. The latter remains valid for the areas which have not been subject to change or are not revoked by the Additional Provisional Mandate.

3. Five substantive areas were covered in the Commission's Provisional Mandate to CESR. These were as follows:

- The minimum information requirements
- The incorporation by reference
- The availability of prospectus
- Format of the prospectus
- Annual information

4. CESR has already released in July the first Technical Advice to the European Commission (CESR/03-208). The Technical Advice, as far as the minimum disclosure requirements are concerned, concentrated on those concerning equity, debt securities, asset backed securities, wholesale debt, depository receipts issued over shares and non equity securities issued by banks. Additional building blocks concerning pro forma financial information and guarantees were also included. This Technical Advice also dealt with incorporation by reference and availability of the prospectus.

5. Concerning the minimum disclosure requirements, the Technical Advice released in September 2003 (CESR/03-300) is focused on those covering derivative securities, offering programmes and wholesale debt securities. An additional building block concerning the underlying for equity securities is also included.

6. The September Technical Advice for the Commission also deals with format of the prospectus and the method and deadline of the publication of the document referring to the annual information. An explanatory Road Map is also included.

7. This feedback statement provides an overview of the process which CESR followed in finalising its advice to the Commission. It also discusses the main points which were made by respondents to the consultation process and explains the policy options which CESR has selected, following careful consideration of the points raised.

8. The following paragraphs describe the different consultations undertook by CESR before providing the July and the September advices (CESR/03-208 and CESR/03-300). Early consultations that helped CESR to produce its July advice are also included here because

some of the issues discussed on the corresponding consultation papers are also part of the September advice to which the present feedback statement refers.

9. On 27 March 2002, the Commission published its Provisional request for Technical Advice on Possible Implementing Measures on the Future Directive on the prospectus to be published when securities are offered to the public or admitted to trading (the "Provisional Request"). The Commission asked CESR to deliver its technical advice by 31 March 2003.

10. CESR published a Call for Evidence on 27 March 2002, (Ref: CESR 02-048) inviting all interested parties to submit views by 17 May 2002 on what CESR should consider in its advice to the Commission. CESR received around five submissions. The issues covered by these submissions were taken into account in the preparation of the consultation document.

11. CESR's Expert Group on Prospectuses, chaired by Pr. Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Commission and supported by Mr Javier Ruiz of the CESR Secretariat, has been responsible for the drafting of the June consultation paper and the development of the September Technical Advice in response to consultation.

12. In addition, under the terms of CESR's Public Statement of Consultation Practices (Ref: CESR/01-007c), a Consultative Working Group (the "CWG") was established to advise the Expert Group. The members of the Group are the following: Ann Fitzgerald, Wolfgang Gerhardt, Daniel Hurstel, Pierre Lebeau, Lars Milberg, Victor Pisante, Regis Ramseyer, Kaarina Stalhberg, Torkild Varran, Stefano Vincenzi, Jaap Winter. The Expert Group has met the CWG four times and several members of CWG have sent written contributions.

13. Following publication of its consultation paper on October 2002, CESR gave market participants and other interested parties a deadline of 31 December 2002. To facilitate the consultation process, CESR held an open meeting on 26 November 2002 in Paris at the CESR premises. Over 50 people attended the meeting. In addition a number of bilateral meetings were held with individual industry representatives to discuss specific aspects of the proposals.

14. Over ninety responses were received. The responses came from a wide range of market participants with a large number of banks. Regulated markets and exchanges as well as asset managers and accountancy firms also responded to the consultation paper.

15. Since the first consultation paper did not deal with all the issues raised in the Provisional Request, CESR published on December 2002 an "Addendum to the Consultation Paper" (the "Addendum").

16. CESR gave market participants and other interested parties a deadline of 6 February 2003 to answer the additional consultation paper and held an open meeting on 24 January 2003 in Paris at the CESR premises. Over 50 persons attended the hearing.

17. Almost sixty responses to the Addendum have been received. A significant number of answers as for the first consultation paper have come from banks, both individual ones and associations.

18. The Expert Group carefully considered all comments received and, throughout the following months, worked on redrafting the consultation paper. Details on this process can be found in the Feedback Statement.

19. As stated above, on 7 February 2003, the European Commission published an Additional Provisional Mandate that set a new and different series of mandates and fixed four different deadlines for CESR's Technical Advice to the EU Commission: 31 March 2003, 31 July 2003, 30 September 2003 and December 2003.

20. On 7 February 2003, CESR published a Second Call for Evidence (Ref: CESR 03-038) inviting all interested parties to submit views by 31 March 2003. Twenty responses were received. These came both from European and national federations representing issuers and financial services providers, as well as regulated markets, individual issuers and regulatory agencies. All responses which are public can be viewed on the CESR website.

21. On March 31, 2003 the Commission informed CESR that, in consideration of the fact that the European Parliament had not started the second reading on the prospectus proposal and in order to allow CESR to take into account the work in the Parliament before finalising its work, the technical advice on issues initially required for March 31, 2003 could be submitted by July 31, 2003.

22. CESR therefore held on May 27 an additional open hearing with market participants to discuss its proposed modifications to its original proposals in the October consultation paper and Addendum. Around 40 people attended the meeting. For this purpose, CESR had previously released the draft working papers of its final advice (document CESR/03-066b on 25th April and CESR/03-128 on 6th May). These redrafts took into account a significant number of comments received by respondents, where these appeared to CESR to raise valid regulatory concerns. Points which were not accepted, as well as the rationale for those which were accepted, were discussed in the preliminary feedback statements to the above mentioned draft working papers (respectively, CESR/03-067b and CESR/03-129).

23. Following this meeting, a number of further written contributions were submitted. This new consultation period on the draft technical advice closed on 16th June and 30 responses were received. All contributions which were public can be viewed on the CESR website. Final modifications were made to the revised advice as a result of this last consultation.

24. As a result of all this process CESR released in July the first Technical Advice to the European Commission (CESR/03-208).

25. As part of the process for producing the technical advice required by 30 September 2003, CESR published a consultation paper on June 2003 (Ref: CESR/03-162).

26. Following publication of the consultation paper, CESR gave market participants and other interested parties a deadline of 12 August 2003. To facilitate the consultation process, CESR held an open meeting on 9 July 2003 in Paris at the CESR premises. Over 40 people attended the meeting.

27. Over 40 responses to this last consultation document have been received. Those that are public can be viewed on CESR's website.

28. The remainder of this feedback statement will focus on the substantive points which were raised in each of the technical areas in which CESR was requested to provide advice by 30 September 2003.

29. The document published by CESR to which this feedback statement mainly refers is the Consultation Paper released in June 2003 (Ref: CESR/03-162). Nevertheless, there are also some references made to some of the other documents published by CESR: Consultation Paper released in October 2002 (Ref: CESR/02.185b), the Addendum to the Consultation Paper published in December 2002 (Ref: CESR/02-286b) and the revised proposals published in April 2003 (Ref: CESR/03-066b) and in May 2003 (Ref: CESR/03-128).

30. The final proposals by CESR after said consultations are set out in the Advice to the European Commission submitted in September 2003, document CESR/03-300.

PART ONE – MINIMUM INFORMATION

DERIVATIVES SECURITIES AND DEBT SECURITIES

REGISTRATION DOCUMENT

31. In the June consultation, CESR asked questions about two possible approaches to the derivative registration document.

32. The first set of questions sought respondents' views on the appropriateness of a number of disclosure requirements for issuers of derivative securities on the assumption that there was to be a separate registration document disclosure regime for derivatives.

33. The second set of questions sought respondents' views on not having a definition of derivatives or a separate registration document for derivatives securities. Based on the minor differences between the various registration documents, CESR proposed that the disclosure requirements for debt (both retail and wholesale) be used for all non- equity securities (both retail and wholesale). The exception was securities issued by banks. The bank disclosure requirements would be used for all non-equity securities issued by banks.

34. The discussion below sets out the results of this consultation, and explains the reasons behind CESR's final proposals in relation to a derivatives registration document.

Appropriateness of certain disclosure requirements if there is a separate derivatives registration document.

35. CESR asked respondents to consider the appropriateness of the following items of disclosure (Annex D of consultation paper CESR/03-162, ref 6.1.1, 6.1.2,6.2, 8.1, 10.2,12.1,12.2)

36. In determining whether or not these disclosures should or should not be required for these instruments CESR took the following points into consideration:

a) the nature of the respondents arguing that this disclosure is not relevant, namely the issuers, and that those that consider this to be relevant were the representatives of prospectus users (a variety of consumer associations);

b) previous responses to other consultations in which a significant number of respondents pointed out that CESR should avoid where possible the need to have too many building blocks;

c) the large variety of different types of derivative securities that may be issued using the same disclosure requirements.

a) Principal activities – Annex D, ref .6.1.1 & 6.1.2

37. This area of disclosure is divided into two disclosure requirements, and respondents commented on each of these as follows:

38. Overall, respondents considered that a "description of the issuer's principal activities stating the main categories of products sold and/or services performed" (Annex D, 6.1.1)

to be relevant for issuers of derivative securities to disclose. There were however mixed views as to whether or not this disclosure should be changed to "a brief description of the principal activities", which would bring this disclosure in line with the disclosure requirement in the Banks Registration document (see Annex K –item 5.1.1 –CESR /03-208).

39. Some respondents considered that "an indication of any significant new products and/or activities" is not relevant disclosure for derivatives as this does not help investors to make an investment decision about these products.

40. Although CESR sees the merits of both sets of responses and that for some types of derivative instruments such disclosure adds only limited value, this is not the case for all such derivatives. Overall CESR does not consider that the burden of disclosing this information justifies creating a separate registration document for these instruments.

b) Principal markets Annex D, ref 6.2

41. Overall, the requirement to disclose "a brief description of the principal markets in which the issuer competes" (ref Annex D item 6.2), was not considered by respondents to be relevant disclosure for derivatives. The main concern that was raised about requiring this disclosure was that the potential level of detail that needs to be provided – for example disclosure about all the derivatives products that an issuer has issued in each country.

42. It was never CESR's intention that such a level of detail should be disclosed, and as some respondents pointed out, an overview of the principal markets in which the issuer competes may assist investors in evaluating an issuer's experience in issuing such products.

43. CESR therefore believes that it can address these concerns by giving level 3 guidance in relation to the level of detail and type of disclosure that it expects in relation to this disclosure.

44. As such, CESR does not consider it necessary to delete this requirement for derivatives.

c) Trend information Annex D, ref 8

45. Overall, respondents considered that this disclosure was not relevant for derivatives, and some respondents proposed that if this disclosure requirement is retained, then it should be replaced with a statement regarding a material adverse change in the issuer's prospects since the date of its last published audited financial statements".

46. In addition, some respondents raised concerns about the requirement to disclose "information about any known trends, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year." The reason for this concern was that the materiality test that has been built into this requirement is not considered by some respondents to be sufficient to limit the potential risk of requiring issuers to quantify and weigh the impact of different issuer developments against each other.

47. Following consideration of these comments, CESR agrees that 8.1 should be replaced with a material adverse change statement (as has been done for the Bank & retail debt disclosure requirements in the July advice –see for example Annex K item 7.1 CESR /03-208). In

relation to the concerns raised about the nature of the materiality test that has been built into this disclosure 8.2. CESR disagrees that such materiality is insufficient and believes that additional guidance at level 3 can deal with this concern.

d) Administrative, management and supervisory bodies conflicts of interest – Annex D ref 10

48. There was a mixed response to the question of the relevance of this disclosure for derivatives. Some respondents consider this disclosure to be irrelevant for these products. The main argument put forward was that conflicts of interest are not always disclosable to issuers and as such an issuer is not aware of such conflicts and is unable to comply with this disclosure requirement.

49. CESR does not consider this argument to be particularly strong, and although it notes the argument that such information does not assist investors in making investment decisions about such products it is nevertheless considered to be relevant information. In addition, this disclosure requirement has been retained for all other products. The arguments to delete this requirement for derivatives are not strong enough to justify its deletion for derivatives and hence the creation of a separate disclosure regime for these products. However, this requirement might also need further level 3 guidance.

e) Major shareholders Annex D ref 12

50. Overall, respondents consider that disclosure about major shareholders is of no relevance for investors in derivatives. The main argument used is that disclosure about the issuer's shareholder structure does not assist investors in making investment decisions about these products, and as such should not be required.

51. CESR agrees in principle that, mainly where there are no conflicts of interest, this disclosure is of little assistance to investors' assessment of an issuer's potential credit risk or how an underlying may perform. However, the disclosure burden placed on issuers to meet this requirement does not outweigh the benefits of not creating a separate registration document disclosure regime for these products.

Conclusion regarding creating a separate registration document regime for derivatives

52. In summary, respondents did generally support the position that the items of disclosure consulted upon are not strictly relevant for derivatives. However, the conclusion that CESR needs to draw from the responses also had to take into consideration the overarching views that respondents had in relation to whether or not a separate registration document for derivatives should be created. These views varied significantly amongst respondents and can be broadly categorised into the following:

a) some respondents considered that the same registration document requirements should apply to all non equity securities, with no differentiation between wholesale & retail disclosure;

b) some considered that there should be the same registration document requirements for all situations where lower disclosure requirements are justified, so for derivatives, wholesale debt and all non-equity issued by banks;

c) some respondents proposed that the banks registration document should be applied to all derivatives whether issued by banks or non banks.

CESR has considered all the arguments very carefully, taking into account the above and the broad range of derivative products that can be issued using the same disclosure requirements. CESR has come to the conclusion that such a separate registration document for derivatives is not necessary. In practice CESR believes that it would only be relevant for a small group of banks across Europe, which issue solely derivatives. Most banks also issue debt securities and therefore CESR expects them to have already produced a banks registration document.

Views on CESR's new approach to derivatives

53. CESR made two proposals in relation to the new approach.

54. The first was that there was no need to have a definition of derivatives. CESR felt a definition could potentially restrict market innovation. By specifying which securities were considered to be debt, it would mean that all other securities for which there was no specific disclosure regime would be considered to be derivatives.

55. The second proposal was that the registration document requirements should be divided between equity and non-equity securities with the exception of bank issuers who could use the banks registration document for all non-equity securities. This has been discussed above.

No definition of derivatives

56. The nature of the responses to the issue about whether or not there is a need to have a definition of derivatives was not clear-cut. Overall, respondents did not agree with CESR that there was no need to have a definition of derivatives. However, the reasons given, coupled with some of the overarching concerns that were raised by respondents, meant that it was not conclusive that the provision of a definition would deal with the concerns raised of not having one. As such, CESR was unable to conclude that having a definition was the best and only way of dealing with the concerns raised.

57. The respondents mainly put forward two categories of arguments why a definition of derivatives is required. The first category of arguments was that a definition of derivatives is required because derivatives have become an important segment of the market. The second category of arguments was that CESR's proposed differentiation between debt and derivatives which was as stated in paragraph 55 of June CP *"where the security provides for a 100% capital return, it would be considered to be a debt security"*, was not considered to be an adequate or accurate differentiation. There were a variety of different reasons given why this proposed differentiation was not considered to be adequate. Some of these are set out below:

a) some respondents argued that the differentiation between debt and derivatives should be based on whether or not the instrument has a component which is related to an underlying;

b) that the definition of bonds leads to problems in relation to subordinated debt which by definition can not be 100% capital return guaranteed due to its subordinated nature;

c) that instruments that had a 99.9% capital return should be classifiable as debt;

d) the regulatory regime for these products needs to be clear, especially in view of the growth of derivative market segment in Europe;

e) the derivatives market already regards as derivatives some instruments which under CESR's proposals would be classifiable as debt;

f) some investors are restricted from investing in derivatives, by classifying some debt instruments as derivatives, investors may no longer be able to hold or invest in such securities, and at a minimum it creates an element of doubt in relation to such instruments;

g) a definition of derivatives is required for the purposes of the securities note.

58. CESR considered each of these arguments in turn, and as explained below, concluded that the provision of a definition is not the only way to deal with the concerns raised.

a) argument (a), does not deal with the fact that a debt instrument does have a component that is related to an underlying namely in the form of the interest that may be payable and what this might be linked to, and as such, this argument is not persuasive;

b) argument (b), raises a concern that is better dealt with by tightening the definition of debt to eliminate the use of the words "capital return" by "nominal amount" which has been done as explained in the Technical Advise. In addition, in view of the fact that technically all debt is never "guaranteed" as such since the issuer's ability to fulfil its obligations depends on many factors that may affect it. e.g.- not going insolvent;

c) argument (c) amounts to an argument that supports CESR's earlier proposals that because of the broad range of products that are covered by derivatives, there should be a differentiation between derivatives that have some form of capital return element and those that do not. CESR also asked where the dividing line should lie. In addition, this is an argument supporting the view that there should be no difference between the debt and derivative disclosure requirements where the derivative is more akin to a debt than a derivative.

d) argument (d) is better dealt with by making it clear, as has been done in the technical advice, that any classification of products for the purposes of disclosure should only be for the purposes of disclosure under the Prospectus Directive. It should not be used as providing a definition of derivatives for investment mandates, but rather how they should be treated for prospectus disclosure purposes.

e) arguments (e) & (f) raise the same concerns in relation to the broad range of derivative products that currently exist and the problems of trying to provide a definition for such products. As such, by tightening the definition of debt, and allowing derivatives to be classifiable as an instrument that does not fall within another disclosure regime, CESR is able to address these concerns without providing a definition at level 2 that runs the risk of wrongly classifying other products.

f) argument (g), the concern about when to apply the derivatives security note, is better addressed by making it clearer when to apply the other security note requirements by tightening the definition of debt.

59. In conclusion, CESR believes that the best way to address all these concerns is to change the definition of debt, and treat derivatives as instruments that do not fall within another specific disclosure regime.

Investments and wholesale debt disclosure

60. In addition to the above issues that CESR asked respondents about, CESR also asked questions about the relevance of disclosure concerning investments in prospectuses for wholesale debt.

61. In paragraphs 62 & 65 of the June consultation, CESR asked respondents for views on the relevance of disclosure about an issuer's investments (see for example section 5.2 of retail debt RD) for both bank issuers of wholesale debt and for all issuers of wholesale debt.

62. Most of respondents considered that disclosure about investments is not relevant for wholesale investors, this accords with the advice CESR submitted to the Commission in July.

Other concerns that were raised about derivatives securities RD

63. In addition to the above, three other general concerns were raised about the derivatives RD. Namely, disclosure in relation to Special Purpose Vehicles (SPVs); a wholesale regime for such products; and the use of the equities RD for securities that result in physical delivery of shares of the issuer of that security.

SPV disclosure requirements

64. A number of respondents were concerned about the nature of the disclosure requirements that would apply in situations where the issuer is an SPV, and an argument was made that as some of the bank and retail debt disclosure requirements are not relevant for such issuers for example – selected financial information and as such it would create more certainty if CESR set out in level 2 a separate registration document for all SPV issuers.

65. On further consideration of this issue, although in principal CESR agrees that some of the disclosure has a limited significance for investors in securities issued by SPV's, the creation of a separate RD for such issuers is not justifiable as it creates problems of how to define an SPV for such purposes. It also raises the question about whether or not there is a need to establish some form of age limit on such issuers. For example, if an SPV was created 5 years ago can it still be classifiable as an SPV?

66. In addition, some respondents consider that the banks registration document should be used in situations where a bank acts as guarantor for the SPV's issuing activities.

67. CESR has concluded that where an SPV is not prudentially supervised in the same way as a bank, which was CESR's rational for creating a specific disclosure regime for banks, there is no justification for allowing an SPV to use the banks registration document even in situations where it is guaranteed by a bank.

68. CESR sees no problem in an SPV not providing information in relation to disclosure requirements that it cannot meet. For example, where it has only been in existence for two months and as such has no trend information to provide.

69. CESR will consider giving level 3 guidance in this area.

Wholesale regime for derivatives

70. Some respondents raised concerns about there not being a wholesale regime for derivatives. A concern that had been raised during the open hearing in May.

71. At the open hearing it was explained that the problem in relation to derivatives would be how to apply the denomination of Euro 50,000 to non-equity securities where there was no such denomination.

72. On consideration of this issue both CESR and the Commission agree that the use of the word "denomination" in the Directive does not mean that non-equity securities with no denomination can not have a wholesale disclosure regime applied to them.

73. Some respondents put forward proposals as to how best to apply the use of the word denomination to instruments where there is no such denomination and on consideration of the drafting proposals CESR has concluded that a wholesale derivative is best defined as *"any security that can only be acquired on issue for at least EURO 50,000 per security"*

Use of the equities registration document for securities that result in physical delivery or shares of the issuer of that security.

74. Another issue that was raised by respondents was the issue of which registration document should be used for those instruments which under the definition of equity securities as set out in the directive are classifiable as equity, but for the purposes of disclosure taking into consideration the nature of the product it is not necessary to follow the same definition.

75. The particular product group that was mentioned was those securities where the issuer was not creating new shares for the purposes of fulfilling its obligations under the securities being offered, and therefore should not for registration document purposes be treated as equities.

76. On discussion of this issue, CESR agreed that from an investor's point of view, there was no significant information difference about the underlying between an investor buying shares in the secondary market, and the investor buying a convertible bond that may convert at some point in the future into those admitted to trading shares. There is no justifiable rational for imposing on an issuer of such a convertible bond the obligation to provide information about itself as if it were issuing equity.

77. CESR therefore concluded that in the case of securities issued by the issuer of the underlying shares or by an entity belonging to a group of the said issuer, where the conversion obligation will be satisfied by shares that are at the time of approval of the prospectus already in existence and are admitted to trading on a regulated market or an equivalent market outside the EU about which there will be information available about those the issuer of the underlying shares in the market at the time of the approval of the prospectus covering the securities, then the non-equity registration document requirements should apply.

Interims

78. In addition to all the concerns and comments the respondents made to the consultation, some respondents also raised comments about the fact that CESR has changed its view in relation to the need to provide interims as explained in the consultation paper.

79. Banks that only make public offers and do not want to use the mutual recognition process are not currently required to produce interims, and strong comments were made about the CESR proposal to require such issuers to produce interims purely for prospectus purposes. The respondents mainly criticise, that these requirements are not covered by the mandate and belong to level 1 of the Directive. Additionally, it was pointed out, that the third CP on the Review of Capital Requirements for Banks and Investment Firms in general only proposes the disclosure of information according to Annex L on an annual basis.

80. On further consideration of this issue and taking on board the comments made, CESR has concluded that in view of the ability going forward to use the prospectus as a passport interim should be provided. It is also the case that there is no differentiation between a prospectus issued only for a public offer or for admission to trading on a regulated market, as a prospectus that has been created for purposes of a public offer can be used to admit securities to trading on a regulated market for which interims would be required.

SECURITIES NOTE

81. CESR has consulted upon the derivatives securities note three times; in the Consultation Paper issued in October 2002, in the Addendum to the paper issued in December 2002 and in the Consultation Paper issued in June 2003. Quite a number of controversial topics have been discussed in this context since many different opinions have been expressed with regard to this schedule. In the last consultation two important topics were still pending:

82. The first of the major topics was the question whether or not examples should be given in the Derivative SN due to the complexity of derivative products. CESR asked whether **examples** were considered necessary or at least useful to provide a clear and understandable explanation of how an investor's return is calculated and how the instrument works and whether CESR should set out rules accordingly. Overall, respondents representing the trading and issuer side of the market objected to the obligatory insertion of examples and considered easily readable and analysable terms and conditions sufficient. This group of respondents consider the use of examples to be an oversimplification of the product, misleading and even dangerous for investors. The example might be based on too high expectations and is not capable of taking and representing all the potential parameters that may affect the products value into account. However, some of them expressed that if examples were actually considered worthwhile, guidance by CESR on how to best represent them for prospectus purposes would be welcome.

83. On the other hand, several respondents, mainly from the consumer protection side of the market but also one analysts association, one asset management association, one banking association, one stock exchange and one central bank, were in favour of inserting examples in order to make the product more understandable for average investors. They felt that a normal investor cannot understand a complex and highly sophisticated formula as such without further explanation and/or visualisation. They wanted CESR to set out rules for obligatory examples.

84. CESR has considered the comments received during the consultation and has concluded that besides the pure mathematical formula more explanation is needed in the case of derivative products and has decided to include the following in the Derivative SN schedule:

"A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities can only be acquired on issue for at least EURO 50,000 per security".

The same requirement has been introduced in the Debt Securities SN schedule in case the security has a derivative component in the interest payment.

CESR recognises that there are a variety of ways that can be used to meet this disclosure requirement, for instance it could take the form of a graph showing the value, especially at maturity, as a function of the value of the underlying instrument (s). Also, non misleading examples may be used by issuers on a voluntary basis. However, there may be occasions where examples would be the most effective way to explain the nature of the securities to investors.

85. CESR has taken on board the comments that if examples or explanations of how the product works is considered by CESR to be necessary, that such requirements should not apply to derivatives aimed at wholesale investors. CESR has therefore provided a carve out for such issues in this disclosure requirement.

86. The issue of whether or not it is necessary to create a wholesale derivatives securities note may be considered by CESR in the future. Nevertheless, the new wording included in item 4.1.2 does not require a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident when the securities can only be acquired on issue for at least EURO 50,000 per security.

87. CESR also asked respondents to consider if examples should also be requested for the issue of other securities. Respondents representing the Consumer Protection side of the market, one analyst association, one banking association and one stock exchange deemed the extension of such a requirement useful, especially for structured bonds. However, since the majority of these products are normally less complex than derivative securities, CESR, having made a cost/benefit analysis, is of the opinion that it is not necessary to have a specific disclosure requirement that would apply to all the products.

88. Furthermore CESR raised the question whether the Derivative Securities SN should set out information about the **past performance and volatility** of the underlying. Overall respondents suggested not to include information about the past performance and the volatility. They were concerned that the provision of such information in a prospectus can be misleading as it may result in investors developing an unrealistic and false expectation about the potential future performance of the underlying by using the information provided about its past performance. In addition, respondents pointed out that the provision of a warning that the past performance cannot and should not be used as an indication of the future was deemed contradictory. Besides such information has to be updated and can change within one business day. Therefore, it makes no sense to set out such data in the prospectus. On the other hand some respondents argued in favour of such

information as it would always be helpful for the investor as the derivative product's price is based on the past performance and additionally such information is easy to produce. A few respondents suggested to request such information about the underlying only where the issuer has composed the underlying as it is hard to attain further information about such underlying from other sources. Some other respondents conclude that it is much easier to give the investor a current picture of the underlying by indicating the source where to find the up-to-date data, e.g. a webpage of a stock exchange in general. CESR seized this last suggestion and deemed it the most reasonable to provide a source, if available, where the investor can obtain further information about the past performance and volatility of the underlying. Thus the interested investor always obtains up to date information.

89. In addition CESR amended a couple of line items of the Derivatives Securities SN reflecting further comments made by the respondents by both taking the outcome of the consultation into account and bringing the schedule in line with the other SN.

90. The indication regarding responsibility and the information on taxes were amended in line with the other Securities Notes.

91. In addition there was the proposal to narrow certain line items by stating information should only be given unless already disclosed in the Registration Document. CESR did not consider it necessary to amend these line items, as it goes without saying that such information does not have to be repeated unless different because both the RD and the SN together make up the prospectus and have to be considered together.

92. There was also a suggestion that entire text of the terms and conditions should be reprinted in the SN. CESR did not follow this suggestion. CESR acknowledges that the terms and conditions contain core information on the product. However, the expression "terms and conditions" is not understood to mean the same thing in all member states. Therefore such a requirement cannot be stipulated. However, in substance CESR shares the respondents' view that full information on the features and the conditions to which the security is subject has to be provided in the prospectus.

93. Against one proposal by the respondents, item 3.2 of Annex A of CESR/03-300, was not deleted since any specific reason – other than making profit and/or hedging – is deemed useful for the investor.

94. The suggested insertion of "if any" in a number of line items was not followed by CESR due to the general rule that a disclosure requirement which is not applicable to a specific issue cannot be imposed. If there is no such information the disclosure requirement is considered non applicable.

95. CESR amended 4.1.13 of the Derivative Securities SN and inserted "or delivery" taking a suggestion into account.

96. The heading of section 5.1 has not been changed. The proposal to delete "offer statistics" since the meaning would be unclear was not followed. Indeed especially 5.1.2. (total amount) deals with offer statistics so that this heading is considered suitable.

97. CESR retained the line item with regard to pricing concerning the "method" of determining the price. Since the meaning of this term was unclear to some respondents, in

order to meet this disclosure requirement, if for example the price was to be based on an averaging of a number of different variables, a statement of what these variables were to be and a statement of when the price would be determined would suffice.

98. The information regarding placing and underwriting was amended according to the comments received. CESR reflected the criticism towards requiring details of the underwriting agreements and does no longer deem necessary to require the quotas and commissions.

99. One consultee was concerned that 7.2. may also comprise information which is not publicly available, for instance comfort letters. CESR does not share this concern as information which is not supposed to be publicly available will not be included in the Derivative Securities SN.

100. The line item 7.3. was amended in order to be consistent with the Debt SN. Furthermore a new line item 7.4. has been inserted in the Derivative Securities SN in line with the new version of the other SN.

BASE PROSPECTUS

101. CESR has consulted upon the base prospectus in the Addendum to the Consultation Paper issued in December 2002 and in the Consultation Paper issued in June 2003. CESR acknowledges that the base prospectus regime is of major importance for programme issuers and it has become a well-developed practice within the European Union.

102. The respondents have widely agreed with the generic rule in order to divide the base prospectus and the final terms to allow a high degree of flexibility for the market, especially towards future products.

103. Since quite a number of respondents suggested that the wording "line items" should not be used, CESR has decided to amend the generic rule in order to clarify with a more straightforward wording all possible ways how to set out the information which will be included as final terms.

104. Concerning the question of whether the base prospectus can - instead of a single document – also consist of a Registration Document and a Securities Note minus final terms, CESR reconsidered its approach in the light of discussions of level 1 and believes now that the Directive does not explicitly allow for the use of the shelf registration system in the context of a base prospectus. However, as expressed by one respondent, issuers will be able to incorporate by reference information from a previously filed and approved registration document into the base prospectus. The practical differences to the shelf registration system will therefore be limited.

105. As regards the translation of final terms, as a result of the explanations given by the European Commission, according to which the language regime set out by the Prospectus Directive is applicable to the final terms, CESR considers that no level two advice is needed.

106. CESR consulted on whether or not it was necessary to request a separate summary for each product included in the base prospectus in the case of a multiple products base

prospectus. Most of the respondents are of the opinion that it should be up to the issuer how to present the summary in the best way. Some respondents, however, suggested to request one separate summary for each product if a multitude of products is comprised in one base prospectus.

107. CESR did not follow the latter approach since many products contained in one prospectus are usually quite similar. Thus at least most characteristics of different products can very often be described in one summary. If certain products differ significantly from each other in a few details, a separate paragraph just for these differences would be sufficient. It is therefore only necessary to request separate summaries if the products vary significantly. Such differences should not lead to a general request for separate summaries. However, the competent authority may ask for separate summaries in specific cases in line with the principles set out in Art. 5(1) of the Directive according to which the information shall be presented in an easily and comprehensible form.

108. Following some suggestions CESR provides the issuer with a variety of ways how to present the final terms. The final terms can be endorsed by information which is normally required by the Securities Note schedule as long as the additional information is not misleading when taken out of the context. Thus the current market practice in different Member States can be maintained. A clear eye-catching reference to the base prospectus should ensure that the investor does not solely rely on the information set out in the final document.

109. The respondents were split about the question whether or not Article 14 of the Directive should also apply to the final terms. The arguments focus on the interpretation of said provision. While some respondents argued that Article 14 is technically not applicable others pointed out that the wide range of publication methods set out in said Article should be sufficient and that the publication method used for the base prospectus and for the final terms should have the same level. CESR found the arguments of the latter approach more convincing and decided that the final terms should be published in accordance with Art. 14.

110. Following the outcome of the consultation CESR advises to grant the issuer free choice between the different publication means set out in Article 14. Consequently the issuer is not bound to use the same publication method for the final terms as for the base prospectus as long as the other chosen method is also within Article 14.

111. With regard to the programme structure a proposal not to require a general description of the programme was put forward in the consultation process in the belief that it would not have an added value to the investors. CESR has rejected this suggestion as it considers that issuers should describe the programme in general so that the investor is able to assess the extent of the programme and whether the products comprised are interesting.

112. One respondent proposed to require on top a prospectus from the "intermediation company" containing information on their own efficiency on the basis of the profitability of past investment choices and proposals to consumers. Despite the fact that such information may be interesting CESR did not follow this proposal. If at all, such information should not be placed in a prospectus but could rather be dealt with by other community legislation.

113. Furthermore CESR raised the question what kind of products could be comprised in one base prospectus and when to draw separate ones. A lot of respondents proposed a broad scope for a comprehensive base prospectus instead of a split into many base prospectus categories. CESR seized this suggestion also in light of Recital 12a of the Directive. The type of base prospectus set out as indent four of paragraph 72 in the technical advice covers most of the products issued in an offering programme and enables a large majority of issuers to stick to one base prospectus only. The other three types of base prospectus are kept separately since they comprise other product categories with significantly different characteristics.

114. Reflecting the positions of the respondents towards the 2nd call for evidence, CESR is of the opinion that the number of issuers in one base prospectus should not be restricted. In this context the question was raised which is the competent authority in case of a multi-issuer programme with issuers from different home Member States and where the kind of securities to be issued will give no right to choose the competent authority. CESR is aware of this complex problem but decided to give guidance at a later stage.

115. CESR received support from the consultation concerning the proposal that no further advice on non-equity securities as set out in Art. 5(4) (b) is needed and therefore is not giving any further advice on this issue.

WHOLESALE DEBT SECURITIES NOTE

116. Some generic comments were made through consultation on this topic and overall eighteen respondents commented on this schedule.

117. A frequent point raised relates to the responsibility (line item 1 of Annex C, CESR/03-300). As already stated in the first CESR's technical advice to the Commission (CESR/03-208) the details of civil liability are up to the law of each Member State, therefore the disclosure requirements should be open to all possibilities which are in line with Article 6 of the Directive. The wording of the Wholesale SN is the same as all other RD and SN schedules and both documents should have this specific section in so far their separate circulation is allowed.

118. Some respondents argued that this schedule should not only be aimed at debt securities but also all non-equity securities and, therefore, this schedule should be merged with the Derivatives Schedule. CESR believes that, at least for the time being, there are no arguments in favour of following this approach.

119. No additional line items were introduced to deal with structured bonds: in fact, CESR believes that the line items already provided and the sophistication of the wholesale investors are effective tools to deal with such instruments.

120. Most of the respondents agree with the approach CESR has taken with regard this Wholesale Debt SN. Some of them, although, argued that matters such as liability, conflicts of interests, terms and conditions and ratings should be modified. These proposals are specially dealt in next paragraph.

121. One respondent asked for clarification with respect to debt with a US Dollar denomination, others asked for clarification of the situation where the security has no conventional denomination and of the relevant moment to determine whether a security could be regarded as a "wholesale" security.

122. Concerning the securities with a denomination in a foreign currency, CESR is of the opinion that the wholesale debt SN should be applicable to these securities provided that the value of such denomination per security, once converted into euros, is at least equal to EURO 50,000.

123. On the second point CESR considers that it is not usual to have debt securities (bearing in mind the definition of debt security as altered by CESR) without nominal value, so no additional guidance should be produced.

124. Globally, respondents agreed with the content of this schedule. Specific concerns were raised with regard to:

- Risk factors: one respondent commented that this section should only be included if such risks exist. CESR agrees that whenever those factors are not material or simply do not exist, no information on risks should be included. Notwithstanding, CESR believes that situations where the investment is completely without risk will be fairly rare.

- Expenses of the admission to trading: one respondent questioned the need for a detailed breakdown of the expenses. The proposal, as it stands, does not require for such a detailed disclosure, so no amendments were made.

- Credit ratings: several respondents expressed some discomfort with the ratings disclosure. This matter has been previously discussed in detail and CESR has redrafted its previous proposals to limit the disclosure to ratings that are requested or made with the co-operation of the issuer (§ 290 to 296 of CESR/03-209 – Feedback Statement to the First Technical Advice provided by CESR). As no new arguments were presented, CESR believes that this information is relevant and adapted to wholesale investors (no explanation needs to be provided) and not burdensome to issuers.

- Reprint of the complete terms and conditions: several respondents asked for the inclusion of the total terms and conditions of the securities being admitted to trading. CESR believes that this reprint is not necessary in so far all the relevant information is included in the prospectus. CESR has once again considered the disclosure requirements set out in the schedule and has added information on the total amount of securities being admitted to trading. CESR also recalls that the Directive states that all material information must be disclosed, even if no specific line item is provided for, so, if some information contained in the terms and conditions is found missing from the line items CESR has identified, issuers should always include the material information missing.

- Conflicts of interests: some respondents argued that this information was of no use to wholesale investors. CESR believes that this proposal, already redrafted to accommodate concerns raised on previous consultations, adds some value. It was also commented that the issuer might not be aware of such conflicts. CESR recalls that the issuer is, under article 6 of the Directive, only responsible to the extent that, to the best of its knowledge, the information in the prospectus accords with the facts. Respondents argued for the inclusion of examples to provide issuers with some guidance on this matter. Bearing in mind that the

requirement already states that only material conflicts of interests should be disclosed, CESR considers that no further amendment is necessary. CESR also thinks that it is not necessary to add to the requirement a clause stating that only conflicts known by the issuer need to be disclosed because this is the general rule.

125. Respondents were, almost unanimously, unable to identify more items that should be included in this schedule. Notwithstanding, there were calls for the inclusion of information on the total net proceeds of the issue/ offer. Considering that this schedule is aimed solely at admissions to trading and not to offers to the public and that investors will be informed of the estimated costs of listing, CESR considers that this information is not that relevant.

CLOSED ENDED INVESTMENT FUNDS REGISTRATION DOCUMENT

126. In relation to the Closed Ended Investment Funds Registration Document disclosure requirements, CESR raised a question in the Consultation Paper CESR03-162 as to whether it was appropriate to draw a distinction between entities which invest exclusively, on a passive basis, in real property assets for capital gain, and those which engage primarily in short term rental, development, refurbishment and other similar income generating activities relating to their property assets (i.e. trading companies). CSER also asked what would be an appropriate and sustainable distinction between both activities. Given the complexities surrounding this issue, CESR considers that it is appropriate to allow additional time to explore in further detail the consultation responses received. Therefore, CESR has concluded that the closed ended investment funds schedule should form part of the advice to be provided to the European Commission on 31 December 2003.

BUILDING BLOCK ON UNDERLYING FOR EQUITY SECURITIES

127. In its consultation paper issued in June 2003 CESR presented its revised approach to disclosure requirements concerning exchangeable or convertible securities which are equity securities according to Art. 2(1) (b) of the Directive: while CESR had introduced an additional building block for subscription rights in the Addendum to the Consultation Paper (CESR/02-286) covering disclosure rules on the right to convert or exchange and on the securities into which these instruments can be converted or exchanged, CESR simplified its approach in the consultation paper issued in June 2003. The right to convert or exchange are now covered by the debt SN or by the derivatives SN schedule respectively. The requirements to disclose information on the underlying security were set out in Annex H of the consultation paper (CESR/03-162).

128. CESR asked whether market participants agreed with this approach. While respondents generally welcomed the simplification many respondents criticised the applicability of the building block to all exchangeable or convertible equity securities. The main arguments put forward were that those instruments had no "equity character" unless the underlying shares were newly created by a capital increase of the issuer and that due to current market practice e.g. warrants on the issuer's own existing shares function in the same way as warrants on a third party share. Consequently, the underlying building block should not apply to securities where the underlying is related to shares already existing in the market.

129. CESR felt that if the underlying shares (or other transferable securities equivalent to shares) are admitted to trading on a regulated market or equivalent market outside the EU at the time of the approval of the prospectus covering to the convertible/exchangeable securities the issuer is subject to an ongoing disclosure requirement and therefore no additional information as compared to a product with a third party underlying is required.

130. Consequently, CESR decided to limit the applicability of the Building Block on Underlying for Equity Securities to securities that have the following characteristics:

Securities which are:

(i) at the issuer's or at the investor's discretion or by predetermination

(ii) to be converted or exchanged into or give in any other way the possibility to acquire

(iii) shares or other transferable securities equivalent to shares.

Provided that those shares or transferable securities equivalent to shares:

(i) can be physically delivered; and

(ii) are issued by the issuer of the security or by an entity belonging to the group of said issuer; and

(iii) are not physically admitted to trading on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the securities.

Where the shares to be delivered to satisfy the conversion/exchange under the terms of the securities will be newly created shares, they are considered to be shares which are not admitted to trading on a regulated market. In other words, a situation that may involve an increase in capital by the issuer.

131. On the question whether the disclosure requirements of the building block are appropriate CESR received a proposal to delete line item 1.11 of Annex D, CESR/03-300 ("Impact on the issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders") as it would be difficult to give a clear answer to this requirement. However, CESR considered this requirement necessary as it covers e.g. the effects of the capital increase on the issuer.

132. Furthermore, CESR asked a question whether a working capital statement and information on capitalization and indebtedness should be disclosed additionally to the building block on underlying. Most of respondents were of the opinion that this information presents a "snapshot" of the financial situation and will be outdated when the investor finally receives the shares. Others argued that this will not always be the case and that even slightly outdated information might be helpful. Upon consideration of the arguments CESR decided not to require a working capital statement and information on capitalization and indebtedness as in most of the cases the value of such information is

limited as it will be not accurate at the time when the investor will eventually become a shareholder.

133. Finally, for cases which are in the scope of the Building block on Underlying for Equity Securities and where the issuer of the underlying shares is an entity belonging to the same group, CESR has reconsidered its initial position concerning the information to be provided on the issuer of the underlying share, in order to be consistent with the solution adopted for the cases where the underlying shares are from the same issuer. CESR is of the opinion that the information which must be provided on this issuer is the one required by the Equity RD. As a consequence, the line item 2 of the building block has been amended accordingly (see annex D).

134. In the consultation paper CESR set out a roadmap table to visualise the building block approach and specifically asked whether market participants agreed to the combinations with respect to the building block on underlying for equity securities. Apart from the concerns relating to the applicability set out above respondents generally agreed with the systematic approach taken by CESR.

PART TWO - FORMAT OF THE PROSPECTUS AND SUMMARY

Order of the information in the prospectus (Question 172 of consultation paper CESR/03-162)

135. In the Consultation Paper, three different options were expressed. Following the first one, issuers, when drafting their prospectus, should follow the order of the disclosure requirements in the different schedules. Following the second one, the summary, the risk factors and the terms and conditions should be set out at the front of the prospectus. Following the last one, issuers should be able to choose the best way to present the information, which meets the disclosure requirements.

136. The views among respondents were quite divided. Some of the respondents were in favour of the first or the second options, whilst others argued that a prospectus is a commercial document and that issuers should therefore be allowed flexibility in the presentation of the required information.

137. As a compromise, CESR has proposed that the registration document and the securities note should start with the risk factors and should contain a clear and detailed table of content, and that the prospectus as a single document should start with the summary and the risk factors and should also contain a clear and detailed table of content. For the other elements, the order of presentation should be free.

138. Anyway, in cases where the order of the items does not coincide with that contained in the applicable legislation, CESR is of the opinion that the Competent Authority can ask the issuer to provide a cross reference list for the purpose of checking the prospectus in application of Article 21 (3) (b) of the Directive. Such list would identify the pages where each item, as set out in the applicable legislation, can be found in the prospectus.

The prospectus as a single document (Q. 177)

139. Concerning the question of how a single document prospectus should be prepared, two options were proposed. Following the first one, a single document prospectus should start with the summary, followed by the securities note requirements and then the registration document requirements. Following the other option, no specific order should be set.

140. Most of respondents were in favour of not imposing a specific order for the different parts of a single document prospectus.

141. As a consequence and to be in line with the proposal made for the previous question, CESR has proposed that a single document prospectus should start with the summary followed by the risk factors, and that it should contain a clear and detailed table of content. Besides that, the order of presentation should be free.

Cases in which the summary has to be supplemented (Q. 182)

142. In paragraph 181 of the consultation paper, CESR presented two different approaches for the cases in which the summary has to be supplemented:

a. the first one consisted of integrating the new information in the original summary, in order to have an up-to-date summary prior to the closure of the offer or, as the case may be, before the admission to trading on a regulated market takes place;

b. the second one consisted in producing a supplement to the initial summary, limited to the new information.

143. Most of the respondents said that the first option is the preferred one, because of the following advantages:

- it is more transparent;
- it gives at anytime a full picture of the issuer and its securities;
- an up-to-date single summary is easier to use and allows a quicker analysis for investors
- it is not so burdensome for issuers;
- investors should not be forced to consult various texts and compile themselves the final version of the summary;
- this could help to avoid misleading information.

144. On the other hand, other respondents said that the second option would be the best one as the new factors could easily be identified in a new document without any need to compare the original and the new text and it would be a more streamlined and flexible approach.

145. A third option, not considered in the paper, was highlighted by some respondents. This third option consists of giving a total freedom to the issuer/offered to decide the very best way to transmit to the market the new information, since in certain cases the first option might appear to be a simpler solution, whilst in others the second one might be better.

146. CESR has considered the comments received and has concluded that the best approach to supplement the summary in order to meet the investors' needs may vary from one case to another. As a consequence, the issuer should decide on a case-by-case basis whether to integrate the new information in the original summary, or to produce a supplement to the summary, in accordance with the regulator. CESR has also decided that, when the new information is integrated in the original summary, the issuer should ensure that investors can easily identify the new elements, for example by way of a footnote.

General guidelines for the drafting of a summary at level 2 (Q. 186)

147. Following the consultation, CESR has decided to reconsider its position and not to provide guidelines for the drafting of a summary. CESR considers that there is no need to have implementing measures concerning the content of the summary as the level 1 provisions are already sufficiently developed.

PART THREE - ROAD MAP

148. The Road map presented by CESR was welcomed by the respondents and their general appreciation was positive.

149. Although there were no specific questions about the Road Map in the Consultation Paper, 12 comments concerned this part, as well as annex I of the consultation paper. As the Road Map reflects the options taken by CESR for the RD and the SN schedules, most of the comments were discussed and answered by the relevant sections.

150. Most reactions related to three different topics:

- The first one is the need to define the derivative securities and to adapt the definition of debt securities, inter alia in order to exclude "structured bonds" from the scope of the Debt SN schedule. As stated in the explanatory text of the advice, CESR points out that the only purpose of the definitions is for differentiating between the different types of disclosure requirements.

- The second one is the need to restrict the scope of the building block on Underlying for Equity Securities and of the Equity RD.

- The third one is the need to have a European passport for new products. CESR agrees with that concern but, as it only expresses its advice, it has not adapted the last sentence of paragraph 215 of CESR/03-162 document.

151. Besides that, other comments made were in relation to some specific securities, such as credit linked notes and products like currency or interest warrants or reverse convertibles with physical delivery that were not explicitly considered in the annex I. Having in mind that it is not possible to have a physical delivery for a currency warrant or an interest warrant CESR considered that no amendments were appropriate.

152. On the other hand, CESR adjusted the road map in order to clarify which schedules are applicable for securities like reverse convertibles with physical delivery.

153. Finally, CESR wants to remind that annex E of CESR/03-300 is not an exhaustive document.

PART FOUR - ANNUAL INFORMATION

The method of publication proposed (Q. 238)

154. Almost all respondents agreed with CESR´s proposal that the document should be made available, at the issuer's choice, through one of the means allowed in Article 14 of the Prospectus Directive. Only one of the respondents said that CESR should standardize the method of publication in order to exercise a better control of that publication. Other respondent said that a Central Repository should be the best long-term solution because it would give investors a place where they would know they can find any and all documents they need for their investment decisions.

155. Having in mind these comments, CESR thinks that no changes need to be made in what concerns the method of publication proposed.

Method of publication – Should CESR limit the issuer's choice? (Q. 239)

156. As a consequence of the comments received to the first question, most of the respondents said that CESR should not limit the issuer's choice to one or more methods of publication. Besides the duplication of the comments as in the previous answer, there was a suggestion that the annual information, as well as prospectus, should be made available in all the 4 alternatives shown in Article 14. As CESR had a strong support from the market for its original proposal it will maintain it.

The deadline for the publication of the document that contains or makes reference to all disclosure requirements published over the past 12 months (Q. 240)

157. Taking in consideration the answers given to this question we have almost a balanced output although all have said that a deadline was needed: the number of those who are in favour of a deadline of 7 days at most is the same as those who are in favour of a longer period, like 30 days.

158. Some respondents consider that a seven days deadline is very short while there are others who consider that issuers will be preparing the annual information document at the same time that they publish their annual financial statements for the sake of ease and efficiency.

159. CESR having in mind the results from the consultation proposes as a compromise approach a deadline of fifteen business days.

160. Others respondents called the attention for the case of possible dual listings where the publication of annual accounts could be made with different deadlines. CESR considers that the deadline should be established after the moment of the publication of the annual

accounts within the Home Member State and this comment was reflected in the final advice.

161. Others suggested that the advice should make reference to the annual information as the annual general meeting approved it. As under the Company Law Directives the annual information has to comply with certain disclosure requirements CESR does not consider relevant to add any reference in the technical advice.

162. CESR received some other comments to which a response should be given:

- One respondent suggested that the issuer should disclose the proposed method of publication in the prospectus and if this intention is changed, then a supplement should be given. CESR remembers that a supplement is only required in the conditions stated in Article 16 of the Directive and considers that the guideline that issuers should choose a method that is cost-efficient and easy to access will suffice. On the other hand, CESR didn't consider relevant, until so far, to state in the respective securities note what will be the proposed method of publication of the annual information of such issuer.

- Other respondent questioned CESR on the question of liability attached to the annual information and suggested that a document should contain a disclaimer regarding the liability of the document as well as a phrase saying that some part of the information could be out-of-date and that should not be relied upon by investors. CESR thinks that the definition of the liability attached to the annual information document is outside the scope of the mandate, so no technical advice can be given on this topic. CESR considered that the last suggestion presented – a disclaimer that the information might be out-of-date – was a sensible one and took it on board.

- CESR was also questioned whether a reference to where the information could be found would suffice for the purposes of the annual information document. CESR envisages that an indication that certain information was disclosed through a certain mechanism would be enough.

- On the question of issuers with different Home Member States for different issues, a question that was raised also by one respondent, CESR considers that, in so far the Directive only establishes one competent authority per offer or listing, no problem arises.

ANNEX TO THE FEEDBACK STATEMENT

(Respondents to the Consultation Papers)

OCTOBER 2002 PUBLIC CONSULTATION ON POSSIBLE IMPLEMENTING MEASURES OF THE PROSPECTUS DIRECTIVE (REF. CESR/02-185B)

BANKING (some of the entities listed may be investment banks and/or issuers).

European Association of Public Banks (EAPB)
European Savings Bank Group (ESBG), [Annex I], [Annex L], [Annex M]
International Primary Market Association (IPMA)
Austrian Federal Economic Chamber (Bank and Insurance Division)
Association of Foreign Banks in Germany (VAB)
Association of German Mortgage Banks (VDH)
Association of German Public Sector Banks (VÖB)
Belgian Bankers Association
Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)
Danish Bankers Association (joint with Danish Security Dealers Association)
Deutscher Sparkassen-und Giroverband e.V.
Finnish Bankers Association
Hellenic Bank Association
Italian Banking Association (ABI)
Spanish Banking Association (AEB)
Swedish Bankers Association (endorse Swedish Securities Dealers Association response)
Zentraler Kreditausschuss (ZKA)
ABN AMRO
Banco Sabadell
Barclays
Commerzbank, [Annex I], [Annex K], [Annex L], [Annex M]
Deutsche Bank
IntesaBci
Landesbank Hessen-Thüringen (Helaba)
Morgan Stanley & Co. International Limited
Morgan Stanley Bank AG
Société Genérale
UBS Warburg

INVESTMENT SERVICES

Association of Members of the Athens Stock Exchange
Danish Security Dealers Association (joint with Danish Bankers Association)
London Investment Banking Association (LIBA)
Swedish Securities Dealers Association (SSDA) (endorsed by Swedish Bankers Association)

INSURANCE, PENSIONS, ASSET MANAGERS

European Asset Management Association (EAMA)
Association of British Insurers (ABI)
Amanda Capital plc

ISSUERS

Association Française des Entreprises Privées (AFEP – AGREF)
Bundesverband der Deutschen Industrie e.V. (BDI) (joint with Deutsches Aktieninstitut e.V.)
Confederation of British Industry (CBI)
Deutsches Aktieninstitut e.V. (joint with Bundesverband der Deutschen Industrie e.V. (BDI))
Dutch Association of Issuing Companies (VEUO)
Institute of Chartered Secretaries and Administrators (ICSA)
Mouvement des Enterprises de France (MEDEF)
Quoted Companies Alliance (QCA)
Birka Line Abp
CRH plc (endorse Irish Stock Exchange response)
IBI Corporate Finance Limited (endorse Irish Stock Exchange response)
Jerónimo Martins
NCB Corporate Finance (endorse Irish Stock Exchange response)
Statoil (endorse Sigurd Heiberg's response)

REGULATED MARKETS AND EXCHANGES

Federation of European Securities Exchanges (FESE)
AIAF – Mercado de renta fija
Austrian Stock Exchange
Boerse-Stuttgart/EUWAX, [Annex A], [Annex I], [Annex M]
Borsa Italiana
Bourse de Luxembourg (endorse Comité Marché des Valeurs Mobilières response)
Euronext
Irish Stock Exchange (endorsed by CRH plc, Goodbody Solicitors, IBI Corporate Finance & William Fry), [Annex A], [Annex K]
London Stock Exchange
Stockholmbörsen

GOVERNMENT, REGULATORY AND ENFORCEMENT

Austrian National Bank
Capital Markets Board of Turkey
Comité Marché des Valeurs Mobilières (consultative committee of CSSF)
Norwegian Personal Data Inspectorate (Datatilsynet)
Polish Securities and Exchange Commission
Swedish Ministry of Finance
United Nations Economic Commission for Europe (UNECE) - Ad Hoc Group of Experts on the Harmonization of Energy Reserves/Resources Terminology, Committee on Sustainable Energy (endorse Sigurd Heiberg's response)

LEGAL AND ACCOUNTANCY PROFESSION

European Federation of Accountants (FEE)
Auditing Practices Board of the UK and Ireland

Finnish Institute of Authorised Public Accountants (KHT)
Institute of Chartered Accountants of England and Wales (ICAEW)
Swedish Bar Association
A & L Goodbody (endorse Irish Stock Exchange response)
BDO Stoy Hayward
Despacho Albiñana y Suárez de Lezo, S.L.
Freshfields Bruckhaus Deringer, [Annex A], [Annex I], [Annex M]
Jones, Day, Reavis & Pogue
McCann FitzGerald (endorse Irish Stock Exchange response)
PriceWaterhouseCoopers
Uría & Menendez
William Fry (endorse Irish Stock Exchange response)

INVESTOR REPRESENTATIVES

Dutch Shareholders Association (VEB)
Swedish Shareholders Association (Aktiespararna)

CREDIT RATING AGENCIES

Moody's Investors Service

INDIVIDUALS

Dr. Wolfgang Gerhardt (member of the Consultative Working Group)
Paul Goldschmit
Sigurd Heiberg (endorsed by United Nations Economic Commission for Europe (UNECE) - Ad Hoc Group of Experts on the Harmonization of Energy Reserves/Resources Terminology, Committee on Sustainable Energy and Statoil)
Victor Pisante (member of the Consultative Working Group)
Stefano Vincenzi (member of the Consultative Working Group)

OTHER

Commission of Stock Exchange Experts (BSK)
Claros Consulting

DECEMBER 2002 ADDENDUM TO THE CONSULTATION PAPER (REF.: CESR/02-286)

BANKING (some of the entities listed may be investment banks and/or issuers)
European Association of Public Banks (EAPB)
European Savings Bank Group (ESBG)
International Primary Market Association (IPMA)
Association of Danish Mortgage Banks / Realkreditrådet
Association of German Banks (BdB) (NB includes comments to first consultation paper)
Association of German Mortgage Banks (VDH)
Association of German Public Sector Banks (VÖB)
Belgian Bankers' Association (ABB-BVB)
Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)
Danish Bankers Association (joint with Danish Security Dealers Association)
Finnish Bankers' Association (FBA)
German Savings Banks and Giro Association / Deutscher Sparkassen- und Giroverband e.V. - DSGV
Hellenic Bank Association
Italian Banking Association (ABI)
Swedish Bankers Association (Joint with Swedish Securities Dealers Association)
Zentraler Kreditausschuss (ZKA)
Banca Intesa
Banco Sabadell
Bankinter SA
Bank of New York, [Reference Doc 1], [Reference Doc 2], [Reference Doc 3].
Citibank AG
Commerzbank, [Annex 2], [Annex 4], [Annex 10]
Deutsche Bank AG
Morgan Stanley & Co. International Limited

INVESTMENT SERVICES

Danish Security Dealers Association (joint with Danish Bankers' Association)
London Investment Banking Association (LIBA)
Swedish Securities Dealers Association – SSDA (joint with Swedish Bankers' Association)

INSURANCE, PENSIONS, ASSET MANAGERS

Ahorro y Titulización, S.G.F.T. S.A

ISSUERS

American Financial Services Association (AFSA) (NB includes comments to first consultation paper)
Association Française des Entreprises Privées (AFEP – AGREF)
Assonime
Austrian Federal Economic Chamber (Bank and Insurance Division)
Bundesverband der Deutschen Industrie e.V. – BDI (joint with Deutsches Aktieninstitut e.V.)

Central Chamber of Commerce of Finland
Confederation of British Industry (CBI)
Deutsches Aktieninstitut e.V. (joint with Bundesverband der Deutschen Industrie e.V. - BDI)
Mouvement des Enterprises de France (MEDEF)
Union of Listed Companies Athens Stock Exchange
Forum Inmobiliario Cisneros, S.A.

REGULATED MARKETS AND EXCHANGES

Boerse-Stuttgart/EUWAX, [Annex 1-12]
Borsa Italiana
Euronext
Irish Stock Exchange
London Stock Exchange
Stockholmbörsen

GOVERNMENT, REGULATORY AND ENFORCEMENT

Austrian National Bank
Banca d'Italia
Banco de Portugal
Capital Markets Board of Turkey
Hungarian Financial Supervisory Authority (NB includes comments to first consultation paper)
Polish Securities and Exchange Commission

LEGAL AND ACCOUNTANCY PROFESSION

European Federation of Accountants (FEE)
Institute of Chartered Accountants of England and Wales (ICAEW)
Finnish Institute of Authorised Public Accountants (endorse FEE response)
Allen & Overy
Cleary, Gottlieb, Stein & Hamilton
Despacho Albiñana y Suárez de Lezo, S.L.
Jones, Day, Reavis & Pogue
PriceWaterhouseCoopers
Shepherd & Wedderburn
Uría & Menendez

INDIVIDUALS

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Victor Pisante (member of the Consultative Working Group)
Stefano Vincenzi (member of the Consultative Working Group)

OTHER

Danish Shipowners' Association
ETHIBEL asbl (and signatories)
European Securitisation Forum (ESF), [Annex 4], [Annex L] (NB includes comments to first consultation paper)
Friends of the Earth (FOE) (NB includes comments on first consultation paper)
Traidcraft (NB includes comments on first consultation paper)

APRIL AND MAY 2003 CONSULTATION PAPERS (REF. CESR/03-066B & CESR/03-128)

BANKING

International Primary Market Association (IPMA)
European Savings Banks Group (ESBG)
Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)
Zentraler Kreditausschuss (ZKA)
ABN AMRO
Banca Intesa

INVESTMENT SERVICES

Shepherd & Wedderburn

ISSUERS

European Securitisation Forum
Association Française des Entreprises Privées (AFEP)
Deutsches Aktieninstitut e.V. (DAI)
Mouvement des Entreprises de France (MEDEF)
Deutsche Bank AG

REGULATED MARKETS AND EXCHANGES

Boerse-Stuttgart/EUWAX (Annex E) (Annex 1) (Annex 3) (Annex 5)
Euronext

GOVERNMENT, REGULATORY AND ENFORCEMENT

Banca d'Italia
Federal Ministry of Justice of Germany

LEGAL and ACCOUNTANCY PROFESSION

Fédération des Experts Comptables Européennes (FEE)
Finnish Institute of Authorised Public Accountants (supports FEE)
Institute of Chartered Accountants in England and Wales
Law Society of England and Wales
Albiñana & Suarez de Lezo
Clifford Chance
PriceWaterhouseCoopers
Uria & Menéndez

INDIVIDUALS

Dr. Wolfgang Gerhardt (member of the Consultative Working Group)

GENERAL COMMENTS ON THE PROSPECTUS DIRECTIVE

ABI (Italian Bankers' Association), ANIA (National Association of Insurance Companies), ASSOGESTIONI (National Association of Funds and Assets Management Companies), ASSONIME (Association of Italian Stock-Capital Companies), ASSORETI (National Association of Financial Products and Investment services placing firms), ASSOSIM (National Association of Financial Intermediaries) and Borsa Italiana (Italian Stock Exchange) (Joint position paper)
American Financial Services Association (AFSA)
Farm Credit Canada

JUNE 2003 CONSULTATION PAPER (REF. CESR/03-162)

BANKING

International Primary Market Association (IPMA) (Annex E) (Annex F) (Annex G)
European Savings Banks Group (ESBG)
Fédération Bancaire de l'Union Européenne (FBE)
Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR) (supports ZKA)
French Banking Federation (FBF)
Italian Bankers' association (ABI)
Zentraler Kreditausschuss (ZKA)
ABN AMRO
Banco Santander Central Hispano
Commerzbank
Deutsche Bank AG
Federal Home Loan Banks
Realkreditrådet
TradingLab

INVESTMENT SERVICES

Davy Stockbrokers
Swedish Security Dealers Association

ISSUERS

Association Française des Entreprises Privées (AFEP)
Confederation of British Industry (CBI)
Mouvement des Enterprises de France (MEDEF)
Association of Financial Guaranty Insurers (AFGI)
Deutsches Aktieninstitut e.V. (DAI)

REGULATED MARKETS, EXCHANGES AND TRADING SYSTEMS

Boerse-Stuttgart/EUWAX (Annex E) (Annex F)
Borsa Italiana
Irish Stock Exchange

GOVERNMENT, REGULATORY AND ENFORCEMENT

Austrian Federal Economic Chamber
Banca d'Italia
Banco de Portugal
Börsensachverständigenkommission (BSK)
Hungarian Financial Supervisory Authority
Oesterreichische Nationalbank
Polish Securities and Exchange Commission

INVESTOR RELATIONS

European Advocacy Committee of the Association of Investment Management and Research (AIMR)
European Consumers and Assoconsumatori
Federation of German Consumer Organisations (VZBV) (Summary in English provided by Bafin in agreement with VZBV)

INSURANCE, PENSION AND ASSET MANAGERS

Assogestioni

LEGAL and ACCOUNTANCY PROFESSION

Fédération des Experts Comptables Européennes (FEE)
Albiñana & Suarez de Lezo
Ernst and Young
Shepherd & Wedderburn
Uria & Menéndez

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OTHERS

European Securitisation Forum