

**CESR's Advice on Level 2 Implementing Measures for the Proposed
Prospectus Directive (doc: CESR/03-162)**

Comments by Banca d'Italia
(Rome, August, 2003)

I)- DERIVATIVE SECURITIES

Issues for derivatives – highlight questions

Questions:

32 (a) *Principal activities - Annex D, ref 6.1.1&6.1.2); 34* (b) *Principal markets - Annex D, ref 6.2); 36* (c) *Trend information - Annex D, ref 8.1 (wording as in banks column); 39* *Major shareholders - Annex D, ref 12.1&12.2)*

Comment: we share the view that the banks derivatives RD should deliver only essential information on the issuer, given the nature of the instrument and of the issuer. This kind of simplification should be provided for any kind of financial instrument, other than shares, issued by banks.

A new approach to derivatives

Questions:

59 (revised approach in relation to retail non-equity securities and wholesale non-equity securities), *62* (information about investments for banks issuing wholesale debt securities)

Comment: although we agree with the proposal to keep the disclosure requirements for non-banks issuing debt securities (both retail and wholesale) separated from the banks disclosure requirements, in our view all issuers (banks and non-banks) should be required to provide the same information on the characteristics of the issuing non-equity security and the related risks. The differences of the information to be disclosed should only be those relating to the issuer (i.e. the information to be included in the R.D.) We therefore agree with CESR's proposed approach to make clear that banks issuing wholesale debt securities (including derivatives) are not required to provide information about the past, present and future investment, given that

such aspects are already scrutinised by the competent supervisory authorities of the banking sector.

Derivatives Securities Note schedule. Examples

Questions:

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

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

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

81 *Are there other type of securities for which you consider examples should be provided, for example structured debt instruments that have a derivative component.*

Comment: In order to provide investors with a clear and understandable explanation of how the return is calculated and how the instrument works our advice is that two types of examples should be inserted:

- 1) examples to explain how the instrument works; it should be based on realistic assumptions and should be accompanied by a disclaimer stating that the example does not provide any indication of the return of the instrument in the future;
- 2) worst case scenario examples, to clearly indicate to investors which is the worst possible return of the instrument.

In our view examples should be provided for all kind of complex securities, such as structured debt instruments having derivative components.

Although it is necessary to grant that the examples must be realistic and provide a neutral view of how the instrument works without being misleading, it seems not advisable to stipulate which methodology has to be used. To this purpose, it should be sufficient to base the example on a methodology recognised on the market and on objective parameters .

Past performances and volatility

Question 89: *Which of the 3 options do you consider should be adopted by CESR:*

- 1. No past performance and no volatility should be required;*
- 2. Mandatory indication of where information about past performance and volatility can be found or, if easily accessible, indication by the issuer of the past performances and the volatility.*
- 3. Mandatory indication of past performances and volatility only where the issuer has composed the underlying of the derivatives instrument.*

Comment: In our view, the indication of the volatility of derivatives could supply useful information on the risks associated to the instrument, provided that it is referred to the instrument, not the underlying, and is calculated according to acknowledged criteria, based on a common time period (i.e. those based on historical annual volatility data). Nevertheless, the sole indication of volatility provides the investor only with partial information: we believe that in order to supply the investor with the information necessary to correctly assess the risks connected with the instrument, the indication of volatility should be provided together with the indication of the expected return.

On the other hand, the inclusion of past performances could be misleading, and therefore should be avoided.

In addition, for the sake of a clear and understandable information, the rating of the issue would be a helpful element for investors to take the investment decision.

II)- BASE PROSPECTUS

The particular format of base prospectus and supplement

Question:

101 *(a) general remarks; b) division between final terms and base prospectus*

Comment: we share the view that the base prospectus should offer the same level of clear and understandable information to the investor as the "complete" prospectus. However, as already stated in previous comments sent to the CESR, we would like to underline the need to simplify as much as possible the information about the issuing bank.

Summary/translation

Question:

112 *(translation of summary)*

Comment: The final terms could contain items (e.g. the indication of the guarantor) not included in the summary which could be relevant for a full comprehension of the nature of the risks associated to the product (such information should be contained in the summary of the ordinary prospectus). We therefore agree that in this case the final terms too should be translated.

115 *(Summaries and multiple products in the same base prospectus)*

Comment: We share the view that the issue of different products under the same base prospectus should be possible. Therefore, bearing in mind the function of the summary and in order to ensure a clear and easy understandable information for investors, a separate summary for each product should be included in the base prospectus.

Questions: 122, 125, 127 *(form and method of publication of the final terms), 131* *(additional disclosure requirements in relation to base prospectuses)*

Comment: We share the CESR's view that the final terms presented to the competent authorities should make clear that the document has to be read in conjunction with the base prospectus. Although in principle the final terms should not unnecessarily replicate information already provided in the base prospectus, we do not believe that it is necessary that the CESR identifies the information the issuer should not repeat in the final terms.

As to the methods of publication of the final terms, we believe that in principle they should be the same as those of the base prospectus (according to article 14 of the proposed Directive). Should they be different, the base prospectus should contain a clear information on the method of publication provided for the final terms.

We therefore agree with the proposed additional information to be included in the base prospectus regarding the final terms and its line items and the description of the offering programme. Such additional information will contribute to ensure a clear and exhaustive information of the entire programme.