

Annex I

**CESR Proposals for the Corporate Retail
Debt Registration document Building Block
based on
IOSCO International Disclosure Standards
and European Directive 2001/34/EC**

CESR PROPOSAL		IOSCO IDS ref
I.A	<u>Responsibility for the prospectus or certain parts of them</u>	I.A.
I.A.1	Provide the name and function of natural persons and/or name and registered office of legal persons responsible for the prospectus or, as the case may be, for certain parts of them, with, in the latter case, an indication of those parts.	
I.A.2	Provide a declaration by those persons that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information given in that part of the prospectus for which they are responsible is in accordance with the facts and does not omit anything likely to affect the import of the prospectus.	
I.B	<u>Advisers.</u> Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities.¹	I.B.
I.BC	<u>Auditors.</u>	
I.BC.1	Provide the names and addresses of the company's auditors for the preceding three years (together with their membership in a professional body).	I.C.
I.BC.2	If auditors have resigned, been removed or not been re-appointed during the last three financial years, details must be disclosed if material.	I.C.

¹ The mentioning of the legal advisers does not have an added value. On the contrary it may even be misleading, e.g. if the advisers did not carry out a complete due diligence (often no complete due diligence is carried out!) or if they did not have to take care of all legal issues (what also happens frequently) or if they were not involved with respect to the issue of the securities described in the prospectus at all. Even if the legal advisers carried out a complete due diligence and were involved with all legal issues, the mentioning of the legal advisers is not to be recommended since the mentioning of their names could be interpreted by courts as the assumption of a liability by the lawyers for the prospectus. If this were the case, the legal advisers would have to increase their fees substantially to cover an additional insurance coverage. The increase of the lawyers' fees could be really substantial per transaction which can neither be in the interest of the issuer nor in the interest of the investor.

Annex I

CESR PROPOSAL		IOSCO IDS ref
H	<u>Selected financial data</u> ²	
H.A.1	The company shall provide selected historical financial data regarding the company, which shall be presented for the two most recent financial years (or such shorter period that the company has been in operation), in the same currency as the financial statements.	III.A.2
H.A.2	If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be un-audited, provided that fact is stated. If selected financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information).	III.A.2
H.A.3	The selected financial data shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock).	III.A.2

² The inclusion of the financial statements (VII.) is sufficient. An investor of bonds/derivative securities does not invest in the equity of the company.

Annex I

CESR PROPOSAL		IOSCO IDS ref
II.B	<u>Risk Factors.</u> The document shall prominently disclose risk factors in a section headed "Risk Factors" that are: (a) specific to the company and its industry; and (b) any other factor that may affect the company's ability to fulfil its obligations under the debt securities to investors.	III.D.
III	<u>Information about the issuer</u>	IV
III.A.	<u>History and development of the Company:</u> The following information shall be provided:	IV.A.
III.A.1	The legal and commercial name of the company.	IV.A1.
III.A.2	The place of registration of the company and its registration number.	
III.A.3	The date of incorporation and the length of life of the company, except where indefinite.	IV.A2.
III.A.4	The domicile and legal form of the company, the legislation under which the company operates, its country of incorporation, website address, and the address and telephone number of its registered office (or principal place of business if different from its registered office).	IV.A3.
III.A.5	Disclosure regarding any recent events relevant to the evaluation of the company's solvency, for example the nature and results of any bankruptcy, receivership or similar procedures with respect to the company or its significant subsidiaries.	IVA.4.

Annex I

CESR PROPOSAL		IOSCO IDS ref
III.B	<u>Investments</u>	
III.B.1	<u>Principal Past investments Holdings in Companies</u> Provide a <u>listdescription, with figures</u>, of the <u>holdings of the issuer in other companies to the extent required to be disclosed in accordance with the accounting principles applicable to the issuermain investments made, including interests such as shares, debt securities, etc., in other undertakings over the past twothree³ financial years and the months already elapsed of the current financial year.</u>	IV.A5
III.B.2	<u>Investments being made</u> Information concerning the principal investments being made – including interests such as shares, and debt securities with the exception of interests being acquired in other undertakings. Distribution of these investments geographically (home and abroad). Method of financing (internal or external).	
III.B.3	<u>Principal future investments</u> Information concerning the company's principal future investments, with the exception of interests to be acquired in other undertakings, on which its management bodies have already made firm commitments.	IV.A6.
IIIC	<u>Business Overview</u>	
IIIC1	<u>Principal activities:</u> The following information shall be provided:	IV.B.
IIIC.1.a	A description of the issuer's principal activities stating the main categories of products sold and/or services performed.	IV.B.1.

³ This change should be made at least with regard to derivative securities. The money paid by the investor of derivative securities is not used for investments by the issuer but for hedging purposes only. Accordingly, investments being made by the issuer (in particular past investments) are of no relevance for the investor of derivative securities.

Annex I

CESR PROPOSAL		IOSCO IDS ref
IIIC.1.b	An indication of any significant new products and/or activities.	IV.B.1.
IIIC.2	<u>Principal markets</u> A brief description of the principal markets in which the company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last 2 financial years.	IV.B.2.
IIIC.3	The basis for any statements made by the company regarding its competitive position shall be disclosed.	IV.B.7.
IIID	<u>Organisational Structure</u>	
IIID.1	If the company belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.	IV.C.
IIID.2	If the company is dependant upon other entities within the group, this must be clearly stated together with an explanation of this dependence.	
IIIE	<u>Property plants and equipment</u>⁴ Location and size of the issuer's principal establishments and summary information about real estate owned. Any establishment which accounts for more than 10 % of turnover or production shall be considered a principal establishment.	IV.D.
IV	<u>Liquidity and capital resources</u>⁵	
IV.A	<u>The company's capital expenditure commitments</u> Information regarding the company's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfil such commitments.	V.B.3.

⁴ This is irrelevant for the issuer and the investor of derivative securities.

⁵ This is irrelevant for the issuer and the investor of derivative securities.

Annex I

CESR PROPOSAL		IOSCO IDS ref
IV.B	Trend information	
IV.B.1	[The <u>A producing</u> company should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition. ^{6]}	V.D.
IV.B.2	Information on the issuer's prospects for at least the current financial year should be included. <u>There is no obligation to produce a profit forecast or estimate.</u> Where a profit forecast, profit estimate or any other kind of issuer's prospect appears, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated; the forecast or estimate should be examined and reported on by the reporting accountants or auditors and their report should be set out; the report should include confirmation from the auditors that the forecast has been made after due and careful enquiry by the directors. ⁷	V.D.
IV.B.3(a)	The profit forecast, <u>if any</u> , or prospects should include a statement of the principal assumptions for each factor which could have a material effect on the achievement of the forecast. The assumptions should be clearly segregated between assumptions about factors which the directors can influence and assumptions about factors which are exclusively outside the influence of the directors; be readily understandable by investors; be specific and precise; and not relate to the general accuracy of the estimates underlying the forecast ⁸ . A profit estimate may be subject to assumptions only in exceptional circumstances.	

⁶ With regard to bond issuers, "producing" should be inserted to be consistent with the rest of the sentence. With regard to issuers of derivative securities the whole section should be deleted because issuers of derivative securities are generally not "producing" companies.

⁷ An examination of the forecast / estimate currently is not required and generally not done. Auditors might be very reluctant to make such an examination if they have not audited the figures yet. This reluctance would lead to a substantial delay in the finalization of the prospectus.

⁸ meaning is unclear

Annex I

CESR PROPOSAL		IOSCO IDS ref
IV.B.3(b)	Any profit forecast shall be accompanied by a statement ensuring that said forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the company.	
V	Directors and Senior ⁹ Management The following information shall be disclosed:	VI
V.A	Provide the names, business addresses and functions of the company's directors and senior management. ¹⁰	I.A
V.A.1	Names, addresses and functions in the issuing undertaking of the following persons, and an indication of the principal activities performed by them outside that undertaking –where these are significant with respect to that undertaking: (a) members of the administrative, management <u>and or</u> supervisory bodies, <u>if any</u> ; (b) partners with unlimited liability, in the case of a limited partnership with a share capital.	VIA1

⁹ The distinction between "directors" and "management" as well as "senior management" is unclear. For the protection of the investors it should be sufficient if information regarding the board of directors (Geschäftsführung) or in two tier companies of the board of directors (Vorstand) and the supervisory board (Aufsichtsrat) is given. In any event, this paper has to specify what is meant by the terms.

¹⁰ Can be deleted because all management members are mentioned already in the next paragraph.

Annex I

CESR PROPOSAL		IOSCO IDS ref
V.B	<u>Management and directors conflicts of interests</u> Potential conflicts of interests between any of the directors duties to the issuing entity and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a negative statement to that effect should be made. ¹¹	VIA5
VC	<u>Board Practices</u>	VI.C..
V.C.1	Details relating to the company's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.	VI.C.3.
V.C.2	A statement as to whether or not the company complies with it's country's of incorporation corporate governance regime should also be included. In the event that the company does not comply with such a regime a statement to that effect must be included together with an explanation regarding why the company does not comply with such regime,.	
VI	<u>Major Shareholders</u>	VII.A.
VI.A.1.a	The name of the shareholders, provided that the issuer has been notified by the shareholders about their shareholdings in the company and is obliged to publish such notifications according to national law. In so far as is known to the company, the name of any person other than a director who, directly or indirectly, has an interest notifiable under the company's national law in the company's capital or voting rights, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.	VII.A.1.a:

¹¹ This section should be deleted because the issuer generally is not aware of any potential conflicts of interest since the members of its management/directors do not have to inform the issuer of any potential conflicts of interest. One should not impose obligations on the issuer which it cannot fulfill. One could, however, insert a paragraph in the risk factors stating generally that there may arise conflicts of interest which affect the price of the security. This could be a compromise.

Annex I

CESR PROPOSAL		IOSCO IDS ref
VI.A.1.b¹²	Indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement.	VII.A.1.e.
VI.A.2	To the extent known to the company, state whether the company is directly or indirectly owned or controlled by another corporation(s), by any government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote. A description of any measures in place to ensure that: 1.all transactions and relationships between the company and such controlling corporation(s), government or other person(s) are, and will be, at arm's length and on a normal commercial basis; and 2.such controlling corporation(s), government or other person(s) will not exercise their control against the interests of the company. Where there are no such measures in place a statement to this effect must be made.	VII.A.3.
VI.A.3	Describe any arrangements, known to the company, the operation of which may at a subsequent date result in a change in control of the company.	VII.A.4.
VI.B	<u>Related Party Transactions</u>¹³ Provide the information required below for the period since the beginning of the company's preceding three financial years up to the date of the document, with respect to transactions or loans between the company and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the company; (b) associates; (c) to the extent known to the company, individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the company, and close members of any such individual's family; (d) key management	VII.B

¹² The information given in III.D and VI.A.1.a (as amended) about the organisational structure is enough for bonds and derivative securities. Details about the major shareholders are important for equity investments only.

¹³ If this paragraph is not deleted, the time period should be shortened to one year.

Annex I

CESR PROPOSAL	IOSCO IDS ref
personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the company, including directors and senior management of companies and close members of such individuals' families; and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the company and enterprises that have a member of key management in common with the company. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the company. An associate is an unconsolidated enterprise in which the company has a significant influence or which has significant influence over the company. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the company are presumed to have a significant influence on the company. 1. The nature and extent of any transactions during the preceding or current financial year or presently proposed transactions which are material to the company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party. Where such transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given (in particular any special reports of the auditors on those transactions). 2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.	

Annex I

CESR PROPOSAL		IOSCO IDS ref
VII	<u>Financial information concerning the issuer's assets and liabilities, financial position and profits and losses</u>	VIII
VII.A	<u>Consolidated Statements and Other Financial Information</u> The document must contain consolidated financial statements (where consolidated statements are prepared). Any financial statements contained in the prospectus (whether consolidated or own accounts) must be audited by an independent auditor and accompanied by an audit report, comprised of: (a) balance sheet; (b) profit and loss account; (c) statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity); (d) cash flow statement; (e) accounting policies; (f) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared	VIII.A.1.
VII.B	<u>Notes to the accounts</u> The notes to the accountant's report and comparative table must, as a minimum cover: a) the last balance sheet; and b) the profit and loss accounts and cash flow statements (or source and application of funds statements) for all periods included in the accountants report or comparative table.	
VII.C	<u>Standard of account preparation</u> The document should include comparative financial statements that cover the latest two financial years, audited in accordance with a comprehensive body of auditing standards.	

Annex I

CESR PROPOSAL		IOSCO IDS ref
VII.D	<u>Own versus consolidated accounts</u> If the company prepares consolidated annual accounts only, it shall include those accounts in the prospectus. If the company prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the company may include either the own or the consolidated annual accounts, on condition that the accounts which are not included do not provide any significant additional information.	
VII.E	<u>True and fair view</u> If the own or consolidated annual accounts do not comply with the Council Directives on undertakings' annual accounts and do not give a true and fair view of the issuer's assets and liabilities, financial position and profits and losses, more detailed and/or additional information must be given. In the case of issuers incorporated in a non-member state which are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.	
VII.F	<u>Auditing of accounts</u>	
VII.F.1	A statement that the annual accounts of the company for the last two financial years have been audited. If audit reports on any of those accounts have been refused by the official auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given.	VIII.A.3.
VII.F.2	Indication of other information in the prospectus which has been audited by the auditors.	
VII.F.3	Where financial data in the prospectus is not extracted without material adjustment from the company's audited accounts the company must state the source of the data and state that the data is unaudited.	

Annex I

CESR PROPOSAL		IOSCO IDS ref
VII.G	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older -than 18¹⁴ months from the date of the prospectus; -provided, however, that in the case of the company's first initial public offering or admission to trading on a regulated market the audited financial statements also shall be as of a date not older than 12 months from the date of the prospectus. In such cases, the audited financial statements may cover a period of less than a full year. <u>In exceptional cases this period of time may be prolonged by the competent authority. In the event of a prolongment a statement for the reason of the prolongment has to be included in the prospectus.</u>	VIII.A.4.
VII.H	<u>Interim financial statements</u>	
VII.H.1	If the document is dated more than nine months after the end of the last audited financial year, it should contain own or consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year.¹⁵	VIII.A.5.
VII.I	<u>Legal and arbitration proceedings</u> Provide information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the company is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, or have had in the recent past (covering at least the previous 12 months), significant effects on the company and/or group's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.	VIII.A.7.

¹⁴ 3 months following the end of a financial year for the establishment / approval of the financial statements are too short. 6 months are required. Therefore the last year of audited financial statements should be allowed to be as old as 18 and not only 15 months. Otherwise there would be much less new issues / prospectuses between April 1 and June 30 than currently.

¹⁵ Interim financial statements should not be mandatory for the issuer of bonds and derivative securities because such interim financial statements are not relevant for the investors who do not invest into the equity.

Annex I

CESR PROPOSAL		IOSCO IDS ref
VII.J	<u>Significant change in the company's financial or trading position</u> A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.	VIII.B.
VIII	Additional information	
VIII.A	Share Capital	X.A.
	The amount of the issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics : the part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.	X.A.1.
VIII.B	<u>Memorandum and Articles of Association.</u>	
VIII.B.1	Indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles.	X.B.1.
VIII.C	<u>Material contracts</u> Provide a brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligation to security holders in respect of the securities being issued. ¹⁶	X.C.

¹⁶ The term "material contract" is too vague. If it is used at all, it has to be limited to "material with respect to the performance of the security to which the prospectus relates". Nevertheless, one has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to inform him about the nature and the major risks of his investments. Accordingly, it should be enough if any risk resulting from such a contract is described in the prospectus.

Annex I

CESR PROPOSAL		IOSCO IDS ref
VIII.D	<u>Statement by Experts</u> Where a statement or report attributed to a person as an expert is included in the document, provide such person's name, business address and qualifications and a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorised the contents of that part of the document.¹⁷	X.G.
V.III.E	<u>Documents on display</u> A statement that for the life of the registration document <u>the</u> following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer; (b) any trust deed of the issuer; (c) each document mentioned in paragraphs VIII.C (material contracts)¹⁸ (d) <u>(c)</u> all <u>publicly available</u> reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the registration document <u>/ prospectus</u>; (d) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. The company shall provide an indication of where the documents concerning the company which are referred to in the document may be inspected, by physical or electronic means	X.H.

¹⁷ Often such statements / reports are taken from publicly available documents. Therefore, a consent of the person having made the statement should not be required. Rather, only a statement where the information has been drawn from shall be made.

¹⁸ Only publicly available documents should be displayed. Other documents, in particular material contracts, often contain confidential information and therefore may not be publicly displayed. In addition, a complete display of these contracts could affect the competition because such a display would give competitors an easy access to contracts they otherwise would not have access to. Furthermore, if all material contracts on display had to be translated into the same language as the prospectus, this would be so cost and time consuming that most issues would become too burdensome for issuers. Last but not least, as already stated with regard to VIII.C the prospectus or any documents relating to the issuer should not be a due diligence report but should inform the investor only about the nature and the risks of the

Annex I

security involved. An overload of information generally does not make the investors happier or more informed but rather deters them from being interested in the product.