

Memorandum

Please note that the disclosure requirements proposed in the three new registration documents are still too high. This is mainly due to the fact that they are based on the registration document for retail debt by deleting various items from it. However, the disclosure requirements proposed in the registration document for retail debt were far too excessive so that it should not be used for any registration document as a basis. Instead the requirements in all registration documents should be lowered in order to strike a proper balance between the information needs of the investor and the costs and timing efforts of the issuer.

PART ONE - REGISTRATION DOCUMENT

DEBT SECURITIES

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Wholesale Debt Building Block)

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

The issuer's principal future investments should neither be disclosed for wholesale debt investors nor for retail debt investors because debt investors are only concerned with the risk that the issuer becomes unable to pay interest or to repay the capital, i.e. with the risk of a potential insolvency. Accordingly, only information relating to such risk needs to be disclosed. Information on the issuer's (future) investments under normal conditions does not enable investors to assess the risk of insolvency. If future investments are really material for the business strategy of the company they could be explained in the section on the outlook of the company. An investment section, however, should be deleted.

16. *Do you consider that a description of only some of these items should be made?*

No, for the reasons given in the answer to question 15.

Liquidity and capital resources – CESR ref: IV.A. (Wholesale Debt Building Block)

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

Information about a company's capital expenditure commitments are neither required for wholesale debt investors nor for retail debt investors.

Trend information – CESR ref: IV.B. (Wholesale Debt Building Block)

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

Any profit forecast should not be reported on by the company's auditor or reporting accountant because such a report would be rather costly and, what is even more important, auditors might be very reluctant to give such a report if they have not audited the figures yet. This reluctance would lead to a substantial delay in the finalization of the prospectus. Last but not least, a report by the auditors would not really raise the quality of the forecast because the experts will most likely comment only on the chain between the assumptions and the profit forecasts but not really on the assumptions themselves. Therefore, the costs and delay outweigh by far any benefit for an investor.

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

The requirement to disclose an issuer's prospects should be retained. It should, however, be limited to a brief disclosure. Furthermore, there should not be an obligation to produce a profit forecast or an estimate. The requirement for the reporting with regard to the future should be limited to a verbal description of the trends expected. Any detailed figures and tables should be avoided as they could be regarded by investors as a guarantee.

Board Practices – CESR ref: V.C.1 and 2 (Wholesale Debt Building Block)

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

No. They are of no interest for a debt investor. The non-compliance of an issuer with corporate governance rules alone does not lead to an insolvency of the issuer.

Major Shareholders – CESR ref: VI.A.1 and 2 (Wholesale Debt Building Block)

27. *Do you consider that these disclosure obligations should be required?*

These disclosure obligations should be deleted for wholesale debt as well as for retail debt because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to interest and redemption payments.

Related party transactions - CESR ref: VI.B (Wholesale Debt Building Block)

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

This disclosure requirement should not be retained (neither for wholesale debt nor for retail debt) or, at least, the information required should be limited to the information required according to applicable accounting standards as disclosure in the annual report. Such level of disclosure will provide the investors with a sufficient level of detail.

Interim financial statements - CESR ref: VII.H (Wholesale Debt Building Block)

33. *Do you consider this approach to be appropriate?*

For both wholesale and retail debt interim reports should only be required if they have been published or if they have to be published according to corporate law. However, no prospectus law obligation should be imposed to produce interim reports. If interim accounts are not mandatory according to corporate law it should be enough for prospectus law purposes if the issuer gives some more detailed information on the past interim period in the section on trend information without, however, squeezing this information in the format of financial statements.

Documents on display - CESR ref: VIII.C (Wholesale Debt Building Block)

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

Our views or comments are not different from those in response to the first consultation paper, i.e. 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, 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 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.

SECURITIES ISSUED BY BANKS

Introduction

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

Only with the amendments marked by ourselves in Annex 2. However, instead of setting up various specialist building blocks one should rather try to find a more acceptable lower level generally for all issuers which does not burden them too much.

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Bank Building Block)

47. *Do you consider that information about a bank's principal future investments should be disclosed?*

Information about a bank's principal future investments should not be disclosed. Here, the same reasoning applies as with regard to other issuers for which we have also taken the view that the principal future investments should not be disclosed. If future investments are really material for the business strategy of the company they could be explained in the section on the outlook of the company. An investment section, however, should be deleted.

Profit forecasts and trend information – CESR disclosure ref: IV.A.1 (Bank Building Block)

49. *Do you consider that a bank's actual solvency ratio should be disclosed?*

No. The solvency ratio does not help normal investors to assess the relevant issuer risk for debt securities and derivative securities.

Board Practices – CESR ref: V.C.1 and 2 (Bank Building Block)

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

No. See answer to question 25.

Major Shareholders – CESR ref: VI.A.1, VI.A.2 and 3 (Bank Building Block)

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

No. See answer to question 27.

Related party transactions - CESR ref: VI.B (Bank Building Block)

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

No. See answer to question 30.

Interim financial statements - CESR ref: VII.H (Bank Building Block)

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

No. See answer to question 33.

Documents on display - CESR ref: VIII.C (Bank Building Block)

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

No.

DERIVATIVE SECURITIES

According to no. 6 of the Addendum to the Consultation Paper the Derivatives Building Block shall apply only to banks or special purpose vehicles whose obligations are guaranteed by banks. Since the Bank Building Block also applies only to banks, it should be made clear that the Bank Building Block does not apply if the Derivatives Building Block applies.

Investments (Past, Present and Future) – CESR disclosure ref: IIIB (Derivatives Building Block)

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

No. 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 are of no relevance for the investor of derivative securities.

Directors - CESR ref: V.A.1 (Derivatives Building Block)

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

The information set out in V.A.1 could be required in the form amended in Annex [3] by us. Only the members of the management and supervisory bodies, if any, should be mentioned, whereby "management" is to be understood as only the highest level, i.e. the directors, of the company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.

Management and directors conflict of interests – CESR ref: V.B (Derivatives Building Block)

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

The information set out in V.B of the Derivatives Building block is not relevant for investors in debt or derivative securities. Furthermore, 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.

Board Practices – CESR ref: V.C.1 and 2 (Derivatives Building Block)

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

No, such information is not necessary for investors of derivative securities.

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

Please refer to the answer to the question 73.

Related party transactions - CESR ref: VI.B (Wholesale Debt Building Block)

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

No. For the reasons refer to the answer to question 30.

Interim financial statements – CESR ref: VII.H (Derivatives Building Block)

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

Yes. If interim financial statements are published, they should also be inserted in the registration document (prospectus).

Documents on display - CESR ref: VIII.C (Wholesale Debt Building Block)

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

No. Please refer to our answer to question 35.

The disclosure requirements for guaranteed derivative securities.

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

No. One should avoid to have too many separate disclosure requirements for various products' issuers. In order to streamline the process and the amount of paper the aim should be to have more acceptable (much lower than currently proposed) requirements for all issuers in all kinds of derivatives. A limitation of the blocks would make the whole process easier and is justified because most issuers issue various kinds of products and it would be quite complicated for them to have a different set of description of the issuer for each product.

The disclosure requirements for derivative securities issued by entities other than banks or special purpose vehicles whose obligations are guaranteed by banks

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

Yes. An investor of derivative securities is mostly interested in the product and the terms and conditions of the product and much less in the type of the issuer. Therefore, at least in the German market, which is a highly developed market for derivative securities, investors buy derivative securities of banks just as well as of special purpose vehicles ("SPV") with very limited stated capital. They only focus on the quality and the terms and conditions of the security itself. However, if the issuer is a SPV with a very limited stated capital and there is not a guarantee of a parent one could insert a risk factor stating this fact. This is of particular importance if the SPV is part of a well-known (banking) group where its securities however are not guaranteed by the parent. In this event one should emphasize in the risk factor that there is no recourse against the parent since there is no guarantee. Then the investor can make a well-informed decision as to whether he prefers the security of an issuer with limited or rather with a larger stated capital.

PART TWO - SECURITIES NOTE

PROPOSAL OF A BLANKET CLAUSE

122. *Do you agree with this approach?*

Yes, we agree to this approach. This approach means that any "if any" references can be deleted.

123. *Are you satisfied with the wording of the Blanket Clause?*

The wording should not only cover non-applicability but also information of minor materiality or importance. Therefore, we propose the following wording:

"If certain information required in [line items] or equivalent information is not applicable to the issuer or to the securities to which the prospectus relates, or is of minor materiality in relation to the nature of the issue, this information can be omitted the requirement in relation to such information shall not apply."

Furthermore, it should be specified what it meant by the term "line items" as this is not a term previously used.

WORKING CAPITAL

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

All information relating to the issuer should be included only in the registration document. All information regarding the security should be included only in the securities note in order to make the distinction between the registration document and the securities note clear and transparent. Therefore, any information on the working capital should be included in the registration document.

ADDITIONAL INFORMATION IN THE SN EQUITY SCHEDULE

132. *Do you agree with this approach?*

Yes, provided that the blanket clause is adopted.

ADDITIONAL INFORMATION IN THE SN DEBT SCHEDULE

136. *Do you agree with this approach?*

No. Structured bonds fall under the definition of "derivative securities" as proposed by ourselves in the first consultation. We propose the following definition:

"Derivative securities are securities where the payment and/or delivery obligations are linked to an underlying [(including but not limited to the price of one or more securities, indices, commodities, energy, yields, currency (rates), weather events etc.)], unless the payment of interest is merely linked to a fixed rate or to a recognized inter-bank interest rate."

Accordingly, only Annex 9, the building block for derivative securities ("**SN Derivatives**") should apply.

Only if CESR came to the conclusion that the SN Derivatives should continue to be limited to issues of banks or issues guaranteed by banks Annex 8 should exist. In this event, however, it should be limited to the issues of issuers not covered by the SN Derivatives.

If Annex 8 were to apply (in the limited events where the issuers are not already covered by the SN Derivatives), it is acceptable only with the amendments marked by ourselves in Annex 8.

In this connection, we would like to emphasize that we think that also reverse convertibles referred to in Clause 118 of the Addendum should be covered only by the SN Derivatives.

ADDITIONAL INFORMATION IN THE SN DERIVATIVES SCHEDULE

139. *Do you agree with this approach?*

Yes, however, with the amendments marked in Annex 9.

ADDITIONAL SN BUILDING BLOCK FOR GUARANTEES

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

Yes.

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

The level of disclosure should be as marked in Annex 11. It is important that the entire text of the guarantee is set forth in the securities note and not only a summary or various details thereof (the same applies to the terms and conditions of the underlying instrument being guaranteed) because this is the legally binding document for the investors.

ADDITIONAL SN BUILDING BLOCK FOR SUBSCRIPTION RIGHTS

155. *Do you agree with this approach?*

Derivative securities, such as warrants and certificates, giving the right to acquire securities issued by the same entity as the issuer of the derivative securities should not be covered by Annex 12 but only by Annex 9, the building block for derivative securities. Even if they are or were regarded as equity securities under the Directive, this does not necessarily mean that they are to be covered under the equity securities note building block plus the securities note building block for subscription rights. They should rather be covered only by the special securities note derivatives schedule. Warrants and certificates giving the right to acquire securities by the same entity as the issuer of the derivative securities (so-called physically settled securities) are just as well derivative securities as cash settled warrants and certificates according to our definition proposal for derivatives (see our definition proposal above in our answer to question 136). If they fall under the definition of "derivatives" they should also be covered only by the securities note devised for derivatives. The main reason that in the Directive physically settled derivative securities linked to securities of the issuer of the derivative securities itself are defined to be equity securities and not non-equity securities is to have a mechanism that the competent authority to review the prospectus under the home country principle always is the authority in the Member State where the issuer has its registered office and not alternatively the authority in the Member State where the securities are being offered or traded. For the determination of the disclosure obligation and the question of the content of the securities note, however, the derivative character of the security generally should be the only decisive factor. Therefore only the building block for the derivative securities shall apply. With regard to the other equity securities having subscription rights Annex 12 may apply with the modifications marked in Annex 12.

159. *Which approach do you deem to be more appropriate?*

The latter approach is more appropriate.

PART THREE - SUMMARY

NEED FOR LEVEL 2 ADVICE

168. *Given the level of detail provided for by the Ecofin Text on the scope, language, length and content of the summary; taking in consideration that the summary is based on the content of the prospectus and that it is up to the issuer to evaluate which elements are essential, do you believe that there is need for level 2 advice on the content and characteristics of the summary and that, in particular, there is need to prepare specific summary schedules? If not,*

please indicate what level 2 implementing measures should deal with. CESR also welcomes views on the way in which the need to standardise the content of the summary may be compatible with the maximum length the summary should normally have.

Some level 2 advice seems to be helpful. Taking into account the 2,500 words approach it should be officially stressed that the summary can only serve the purpose to highlight potential risks/investment considerations and to give the investors the opportunity to decide whether or not they would like to invest on the basis of the (necessarily) bare-boned descriptions of the summary. In this connection it should be made clear that not all those items set out in the indicative list of Annex IV of the Directive have to be included. Furthermore, since an effective summary cannot contain all relevant risk factors and (in the case of equity issues or if CESR, despite our advice, continues to require a disclosure of related party transactions also in the case of debt issues) related party transactions (not to mention the other items) it should also be made clear at level 2 that a summary of the types of risks (e.g. currency risk, high competition, product liability) will suffice. Concerning the related party transactions it should be stated on level 2 that a summary of the overall volume, parties involved and the fact that these were/were not executed on an at-arms' length basis should be sufficient.

PART FOUR – BASE PROSPECTUS/PROGRAMMES

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

The information to be disclosed in a "normal prospectus" on the one hand and in a "programme or base prospectus" on the other hand should - with the exception of the summary - be the same, provided that the base prospectus procedure should provide that the information relating to the specific transaction, i.e. the final terms, may be left blank and may be supplemented later on only. Article 5(4) of the Directive (ECOFIN text) states that "The prospectus shall consist of a base prospectus containing all relevant information concerning the issuer and the securities to be offered.". Since "information concerning the issuer" is the information usually contained in the registration document and "information concerning the securities to be offered" is the information usually contained in the securities note, the information required in these documents should also be inserted in the base prospectus. However, since Article 5(4) does not state that the base prospectus shall contain a summary, no summary may be required either by CESR.

If CESR, due to an overwhelming view of the members, came to the (contrary) view, i.e. that a summary is also necessary in a base prospectus, the summary should be limited to the form of a termsheet customary in the capital markets. This termsheet (summary) could then also be used for translation purposes in other countries.

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

There should not be a tight definition of the term "final terms" because the variety of the various products is too big. One should rather try to have a generic definition, e.g. "final terms are those terms of the security or the offer which can only be determined shortly before or on the launch of the security". This would correspond to the current practice in Germany which has proved to be both appropriate and practicable for many years. Under this definition for instance the following items might remain open: number of securities issued, underlyings (in the event of derivative securities), interest rates, term of the securities, valuation dates, exercise, exercise form (whether American or European or Asian option), exercise dates, ratios, strike prices, exercise prices, thresholds (e.g. caps, floors), securities codes, listing. There may, however, also be other features depending on the security. The final terms could be supplemented either directly into the terms and conditions which are a part of the securities note by filling in the blanks contained in the base prospectus or by way of a supplement in the form of a pricing supplement containing a list of the items which have been left open or blank.

Ref: 02-286Annexes

Date: December 2002

ANNEXES TO THE ADDENDUM

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

Addendum to the

Consultation Paper
(*Ref. CESR/02-185-b*)

December 2002

Annex [1]

CESR Proposal for the Wholesale Debt Registration Document Building Block

based on

**IOSCO International Disclosure Standards and
European Directive 2001/34/EC**

CESR PROPOSAL		IOSCO
I.A	<u>Responsibility for the prospectus or certain parts of them</u>	
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. ¹	
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 materially affect the import of such information.	
I.B	<u>Auditors.</u>	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with any membership in any relevant professional body).	I.C.
I.B.2	If auditors have resigned, been removed or not been re-appointed during the last two financial years, details must be disclosed if material.	I.C.

¹ It should be made clear that the responsibility may be taken either by named individuals or by a named legal entity (including the issuer), at the choice of the issuer. It is important that the issuer itself may take responsibility for the prospectus since in various countries (e.g. Germany) directors are not generally required to accept personal responsibilities for the prospectus, and to impose such a requirement via the Prospectus Directive will negatively affect the ability of the company to access the European capital markets.

CESR PROPOSAL		IOSCO
II.	<u>Risk Factors.</u> The document shall prominently disclose risk factors in a section headed "Risk Factors" that ² may materially affect the issuer'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 Issuer:</u> The following information shall be provided:	IV.A.
III.A.1	The legal and commercial name of the issuer.	IV.A1
III.A.2	The place of registration of the issuer and its registration number.	
III.A.3	The date of incorporation and the length of life of the issuer, except where indefinite.	IV.A2.
III.A.4	The domicile and legal form of the issuer, the legislation under which the issuer 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 issuer's solvency, for example the nature and results of any bankruptcy, receivership or similar procedures with respect to the issuer or its significant subsidiaries.	IVA.4.
III.B	<u>Investments</u>	
III.B.1	³	IV.A6.

² The risk factor mentioned in (a) is not likely to be relevant for investors in debt securities because these factors do not affect a company's ability to pay interest or make a repayment on the capital invested.

³ The issuer's principal future investments should neither be disclosed for wholesale debt investors nor for retail debt investors because debt investors are only concerned with the risk that the issuer becomes unable to pay interest or to repay the capital, i.e. with the risk of a potential insolvency. Accordingly, only information relating to such risk needs to be disclosed. Information on the issuer's (future) investments under normal conditions does not enable investors to assess the risk of insolvency. If future

CESR PROPOSAL		IOSCO
III.C	<u>Business Overview</u>	
III.C.1	<u>Principal activities:</u> The following information shall be provided:	IV.B.
III.C.1.a	A brief description of the issuer's principal activities and principal geographical markets in which the issuer competes.	IV.B.1.
III.C.1.c.	The basis for any statements in the registration document made by the issuer regarding its competitive position shall be disclosed.	IV.B.7.
III.D	<u>Organisational Structure</u>	
III.D.1	If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.	IV.C.
III.D.2	If the issuer is dependant upon other entities within the group for the purpose of fulfilling its obligations, this must be clearly stated together with an explanation of this dependence.	
IV		
IV.A	⁴	V.B.3.
IV.B	<u>Trend information</u>	
IV.B.1	Include a statement that there has been no material adverse change in the financial position, or prospects of the issuer since the date of its last published accounts. In the event that the issuer is unable to make such a statement, then the issuer should provide details of this material adverse change.	V.D.
IV.B.2	Information on the issuer's prospects for at least the current financial year should be included. There is, however, no obligation to produce a profit forecast or estimate.	V.D.

investments are really material for the business strategy of the company they could be explained in the section on the outlook of the company. An investment section, however, should be deleted.

⁴ Information about a company's capital expenditure commitments are neither required for wholesale debt investors nor for retail debt investors.

CESR PROPOSAL		IOSCO
IV.B.3(a)	Any profit forecast set out in the registration document 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. A profit estimate may be subject to assumptions only in exceptional circumstances.	
IV.B.3(b)	Any profit forecast set out in the registration document shall be accompanied by a statement confirming 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 issuer.	
V	Management The following information shall be disclosed:	VI
V.A	⁵	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 management and supervisory bodies, if any; (b) partners with unlimited liability, in the case of a limited partnership with a share capital.	VIA1
V.B	⁶	VIA5
	⁷	

⁵ Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.

⁶ 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.

⁷ Such details or the non-compliance with corporate governance rules is irrelevant for an investor in debt or derivative securities because they do not affect the solvency or lead to an insolvency of the issuer.

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CESR PROPOSAL		IOSCO
	⁸	

⁸ These disclosure obligations should be deleted for wholesale debt as well as for retail debt because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to interest and redemption payments.

	2	
VII	<u>Financial information concerning the issuer's assets and liabilities, financial position and profit 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 auditor's ¹⁰ report or opinion as required by applicable accounting principles. ¹¹	VIII.A.1.

⁹ This disclosure requirement should not be retained (neither for wholesale debt nor for retail debt) or, at least, the information required should be limited to the information required according to applicable accounting standards as disclosure in the annual report. Such level of disclosure will provide the investors with a sufficient level of detail.

¹⁰ The term "audit report" may be understood as the auditor's "long form" (sometimes more than 1,000 pages) report on the audit work which is given only internally and confidentially to the client. It is not suited for inclusion in a prospectus. Rather only the "auditor's report" or "opinion" should be inserted, whatever is required according to the applicable accounting principles. In any event the terminology should be made consistent with the Accounting Directive.

¹¹ The content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.

VII.B	<u>Notes to the accounts</u> The notes to the accounts¹² 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 the latest period covered by the auditor's report or opinion.	
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.	
VII.D	<u>Own versus consolidated accounts</u> If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus. If the issuer prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the issuer 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, this fact and the reasons for it must be stated. 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 alternative standard, this fact must be stated¹³.	

¹² Use same term as in headline.

¹³ The proposal discriminates against issuers incorporated in countries where one does not draw up the accounts in accordance with IAS. Furthermore, the application of the proposal involves difficult questions of interpretation. For instance, it is doubtful as to whether US and Japanese rules would meet the true and fair test. Any restatement of the accounts or reconciliation will be rather expensive for the issuer. Our amendment avoids these problems.

VII.F	<u>Auditing of accounts</u>	
VII.F.1	A statement that the annual accounts of the issuer for the last two financial years (if available) have been audited. If auditor's ¹⁴ 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 extracted with material adjustment from the issuer's audited accounts the issuer must state the source of the data and state that the data is unaudited.	
VII.G	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older than 18 ¹⁵ months from the date of the prospectus. 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.	VIII.A.4.
VII.H	<u>Interim financial statements</u>	
	If the document is dated more than nine months after the end of the last audited financial year, and the issuer has published own or consolidated interim financial statements 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.	
VII.I	<u>Legal and arbitration proceedings</u>	VIII.A.7.
	Provide information on any legal or arbitration proceedings where the issuer is a party (including any such proceedings which are pending or threatened of which the issuer is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, a significant effect on the issuer's ability to meet its obligations under the proposed issue of debt securities. Or provide an appropriate negative statement	

¹⁴ See footnote 10.

¹⁵ 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.

VII.J	<u>Significant change in the issuer's financial or trading position</u> A description of any significant change in the financial or trading position of the issuer which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published in accordance with VIID, or an appropriate negative statement.	VIII.B.
VIII	<u>Additional information</u>	
VIII.A	¹⁶	X.C.
VIII.B	<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.	X.G.
V.III.C	<u>Documents on display</u> A statement that for the life of the registration document the 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; ¹⁷ (c) all publicly available 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 / prospectus; (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 issuer shall provide an indication of where the documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means	X.H.

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 [2]

**CESR Proposals for the Banks Registration
Document Building Block**

based on

**IOSCO International Disclosure Standards and
European Directive 2001/34/EC**

¹⁷ 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, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the 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.

CESR PROPOSAL		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. ¹⁸	
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 materially affect the import of such information.	
I.B	<u>Auditors.</u>	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with any membership in any relevant professional body).	I.B.
I.B.2	If auditors have resigned, been removed or not been re-appointed during the last two financial years, details must be disclosed if material.	I.C.
II.	<u>Risk Factors.</u> The document shall prominently disclose risk factors in a section headed "Risk Factors" that ¹⁹ may materially affect the issuer's ability to fulfil its obligations under the debt securities to investors.	III.D.

¹⁸ It should be made clear that the responsibility may be taken either by named individuals or by a named legal entity (including the issuer), at the choice of the issuer. It is important that the issuer itself may take responsibility for the prospectus since in various countries (e.g. Germany) directors are not generally required to accept personal responsibilities for the prospectus, and to impose such a requirement via the Prospectus Directive will negatively affect the ability of the company to access the European capital markets.

¹⁹ The risk factor mentioned in (c) is not likely to be relevant for investors in debt securities because these factors do not affect a company's ability to pay interest or make a repayment on the capital invested.

III	<u>Information about the issuer</u>	IV
III.A.	<u>History and development of the Issuer:</u> The following information shall be provided:	IV.A.
III.A.1	The legal and commercial name of the issuer.	IV.A1.
III.A.2	The place of registration of the issuer and its registration number.	
III.A.3	The date of incorporation and the length of life of the issuer, except where indefinite.	IV.A2.
III.A.4	The domicile and legal form of the issuer, the legislation under which the issuer 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.A2.
III.A.5	Disclosure regarding any recent events relevant to the evaluation of the issuer's solvency, for example the nature and results of any bankruptcy, receivership or similar procedures with respect to the issuer or its significant subsidiaries.	IVA.4.
III.B	<u>Investments</u>	
III.B.	²⁰	IV.A6.
III.C	<u>Business Overview</u>	
III.C.1	<u>Principal activities:</u> The following information shall be provided:	IV.B.
III.C.1.a	A brief description of the issuer's principal activities and principal	IV.B.1.

²⁰ The issuer's principal future investments do not need to be disclosed to investors in debt or derivatives securities because they are only concerned with the risk that the issuer becomes unable to pay interest, to repay the capital or to make payments under the derivative securities, i.e. with the risk of a potential insolvency. Accordingly, only information relating to such risk needs to be disclosed. Information on the issuer's (future) investments under normal conditions does not enable investors to assess the risk of insolvency. If future investments are really material for the business strategy of the company they could be explained in the section on the outlook of the company. An investment section, however, should be deleted. Investors of derivative securities furthermore do not need this information because the money paid by the investors as purchase price is used by the issuer for hedging purposes which sufficiently protects the investor.

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	geographical markets in which the issuer competes.	
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III.C.1. b	The basis for any statements made by the issuer in the registration document regarding its competitive position shall be disclosed.	IV.B.7.
III.D	<u>Organisational Structure</u>	
III.D.1	If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.	IV.C.
III.D.2	If the issuer is dependant upon other entities within the group for the purpose of fulfilling its obligations, this must be clearly stated together with an explanation of this dependence.	
IV.A	<u>Trend information & profit forecasts</u>	
IV.A.1	The issuer should identify its most significant business developments since the close of the financial year to which its last published annual financial statements relate; in particular the most important recent trends in the developments of its main business areas, as well as its commitments or other events that are reasonably likely to have a material effect on its main business areas and the most recent trends for profitability, liquidity, solvency, expenses and revenues shall be disclosed	V.D.
IV.A2	Information on the issuer's prospects for at least the current financial year should be included. There is, however, no obligation to produce a profit forecast or estimate.	V.D.
IV. A.3(a)	Where a profit forecast, profit estimate or any other kind of issuer's prospect appears in the prospectus, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated. ²¹	
IV. A.3(b)	Any profit forecast set out in the registration document 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. A profit estimate may be subject to assumptions only in exceptional circumstances.	
IV.	Any profit forecast set out in the registration document shall be accompanied	

²¹ 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.

A.3(c)	by a statement confirming 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 issuer.	
V	<u>Management</u> The following information shall be disclosed:	VI
V.A	²²	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: (b) members of the management and supervisory bodies, if any; (b) partners with unlimited liability, in the case of a limited partnership with a share capital.	VIA1
V.B	²³	VIA5
	²⁴	
	²⁵	
	²⁶	
VII	<u>Financial Information concerning the issuer's assets and liabilities, financial position and profits and losses</u>	VIII

²² Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.

²³ 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.

²⁴ Such details or the non-compliance with corporate governance rules is irrelevant for an investor in debt or derivative securities because they do not affect the solvency or lead to an insolvency of the issuer.

²⁵ These disclosure obligations should be deleted for debt and derivative securities because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to interest and redemption payments or other payments.

²⁶ This disclosure requirement should not be retained or, at least, the information required should be limited to the information required according to applicable accounting standards as disclosure in the annual report. Such level of disclosure will provide the investors with a sufficient level of detail.

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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 auditor's²⁷ report or opinion as required by applicable accounting principles.²⁸	VIII.A.1.
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²⁷ The term "audit report" may be understood as the auditor's "long form" (sometimes more than 1,000 pages) report on the audit work which is given only internally and confidentially to the client. It is not suited for inclusion in a prospectus. Rather only the "auditor's report" or "opinion" should be inserted, whatever is required according to the applicable accounting principles. In any event the terminology should be made consistent with the Accounting Directive.

²⁸ The content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.

VII.B	<u>Notes to the accounts</u> The notes to the accounts²⁹ 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 the latest period covered by the auditor's report or opinion.	
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.	
VII.D	<u>Own versus consolidated accounts</u> If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus. If the issuer prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the issuer 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, this fact and the reasons for it must be stated. 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 alternative standard, this fact must be stated³⁰.	

²⁹ Use same term as in headline.

³⁰ The proposal discriminates against issuers incorporated in countries where one does not draw up the accounts in accordance with IAS. Furthermore, the application of the proposal involves difficult questions of interpretation. For instance, it is doubtful as to whether US and Japanese rules would meet the true and fair test. Any restatement of the accounts or reconciliation will be rather expensive for the issuer. Our amendment avoids these problems.

VII.F	Auditing of accounts	
VII.F.1	A statement that the annual accounts of the issuer for the last two financial years (if available) have been audited. If auditor's ³¹ 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 extracted with material adjustment from the issuer's audited accounts the issuer must state the source of the data and state that the data is unaudited.	
VII.G	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older than 18 ³² months from the date of the prospectus. 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.	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, and the issuer has published own or consolidated interim financial statements 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.	VIII.A.5.
VII.I	<u>Legal and arbitration proceedings – change as per derivatives</u> Provide information on any legal or arbitration proceedings where the issuer is a party (including any such proceedings which are pending or threatened of which the issuer is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, a significant effect on the issuer's ability to meet its obligations under the proposed issue of securities. Or provide an appropriate negative statement.	VIII.A.7.

³¹

See footnote 27.

³²

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.

VII.J	<u>Significant change in the issuer's financial or trading position</u> A description of any significant change in the financial or trading position of the issuer which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published in accordance with VIID, or an appropriate negative statement.	VIII.B.
VIII	<u>Additional information</u>	
VIII.A	33	X.C.
VIII.B	<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.	X.G.

³³

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.

V.III.C	<u>Documents on display</u> A statement that for the life of the registration document the 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; ³⁴(c) all publicly available 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 / prospectus; (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 issuer shall provide an indication of where the documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means.	X.H.
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³⁴ 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, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the 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.

Annex [3]

CESR Proposals for the Derivatives Registration Document Building Block

CESR PROPOSAL		IOSCO
I.A	<u>Responsibility for the prospectus or certain parts of them</u>	
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. ³⁵	
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 materially affect the import of such information.	
I.B	<u>Auditors.</u>	
I.B.1	Provide the names and addresses of the issuer's auditors for the preceding two years (together with any membership in any relevant professional body).	I.C.
I.B.2	If auditors have resigned, been removed or not been re-appointed during the last two financial years, details must be disclosed if material.	I.C.

³⁵

It should be made clear that the responsibility may be taken either by named individuals or by a named legal entity (including the issuer), at the choice of the issuer. It is important that the issuer itself may take responsibility for the prospectus since in various countries (e.g. Germany) directors are not generally required to accept personal responsibilities for the prospectus, and to impose such a requirement via the Prospectus Directive will negatively affect the ability of the company to access the European capital markets.

II	<u>Risk Factors.</u> The document shall prominently disclose risk factors in a section headed "Risk Factors" that ³⁶ may materially affect the issuer's ability to fulfil its obligations under the derivatives to investors.	III.D.
III	<u>Information about the issuer</u>	IV
III.A.	<u>History and development of the Issuer:</u> The following information shall be provided:	IV.A.
III.A.1	The legal and commercial name of the issuer.	IV.A1
III.A.2	The place of registration of the issuer and its registration number.	
III.A.3	The date of incorporation and the length of life of the issuer, except where indefinite.	IV.A2.
III.A.4	The domicile and legal form of the issuer, the legislation under which the issuer 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 issuer's solvency, for example the nature and results of any bankruptcy, receivership or similar procedures with respect to the issuer or its significant subsidiaries.	IVA.4.
III.B		
III.B.1	³⁷	IV.A6.

³⁶ The risk factor mentioned in (e) is not likely to be relevant for investors in debt or derivative securities because these factors do not affect a company's ability to make payments on the capital invested.

³⁷ No. 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 are of no relevance for the investor of derivative securities.

III.C	<u>Business Overview</u>	
III.C.1	<u>Principal activities:</u> The following information shall be provided:	IV.B.
III.C.1.a	A brief description of the issuer's principal activities.	IV.B.1.
III.C.2	<u>Principal markets</u> A brief description of the principal markets in which the issuer competes.	IV.B.2
III.C.3	The basis for any statements in the registration document made by the issuer regarding its competitive position shall be disclosed.	IV.B.7.

III.D	<u>Organisational Structure</u>	
III.D.1	If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.	IV.C.
III.D.2	If the issuer is dependant upon other entities within the group for the purpose of fulfilling its obligations, this must be clearly stated together with an explanation of this dependence.	
IV.A	<u>Trend information & profit forecasts</u>	
IV.A.1	Include a statement that there has been no material adverse change in the financial position, or prospects of the issuer since the date of its last published accounts. In the event that the issuer is unable to make such a statement, then the issuer should provide details of this material adverse change.	V.D.
IV.A.2(a)	Where a profit forecast, profit estimate or any other kind of issuer's prospect appears in the registration document, the principal assumptions upon which the issuer has based its forecast, estimate or prospect should be stated. ³⁸	
IV.A.2(b)	Any profit forecast set out in the registration document 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. A profit estimate may be subject to assumptions only in exceptional circumstances.	

³⁸

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.

IV.A.2(b)	Any profit forecast shall be accompanied by a statement confirming 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 issuer.	
V	<u>Management</u> The following information shall be disclosed:	VI
V.A	³⁹	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: (c) members of the management and supervisory bodies, if any; (b) partners with unlimited liability, in the case of a limited partnership with a share capital.	VIA1
V.B	⁴⁰	VIA5
	⁴¹	
	⁴²	
VII	<u>Financial information concerning the issuer's assets and liabilities, financial position and profits and losses</u>	VIII

³⁹ Can be deleted because all management members are mentioned already in the next paragraph and directors are part of the management. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.

⁴⁰ 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.

⁴¹ Such details or the non-compliance with corporate governance rules is irrelevant for an investor in derivative securities because they do not affect the solvency or lead to an insolvency of the issuer.

⁴² These disclosure obligations should be deleted for wholesale debt as well as for retail debt because detailed information on all major shareholders will not influence the ability of the issuer itself to meet its obligations with regard to any payments to be made under the derivative securities to the investors.

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 auditor's⁴³ report or opinion as required by applicable accounting principles.⁴⁴	VIII.A.1.
VII.B	<u>Notes to the accounts</u> The notes to the accounts⁴⁵ 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 the latest period covered by the auditor's report or opinion.	
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.	

⁴³ The term "audit report" may be understood as the auditor's "long form" (sometimes more than 1,000 pages) report on the audit work which is given only internally and confidentially to the client. It is not suited for inclusion in a prospectus. Rather only the "auditor's report" or "opinion" should be inserted, whatever is required according to the applicable accounting principles. In any event the terminology should be made consistent with the Accounting Directive.

⁴⁴ The content of the financial documents should not be specified. Instead, issuers should be able to disclose their accounts in whatever form they are required by corporate law. The Prospectus Directive should not impose changes to corporate law rules.

⁴⁵ Use same term as in headline.

VII.D	<u>Own versus consolidated accounts</u> If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus. If the issuer prepares both own and consolidated annual accounts, it shall include both sets of accounts in the registration document. However, the issuer 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, this fact and the reasons for it must be stated. 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 alternative standard, this fact must be stated⁴⁶.	
VII.F	<u>Auditing of accounts</u>	
VII.F.1	A statement that the annual accounts of the issuer for the last two financial years (if available) have been audited. If auditor's ⁴⁷ 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 extracted with material adjustment from the issuer's audited accounts the issuer must state the source of the data and state that the data is unaudited.	

⁴⁶ The proposal discriminates against issuers incorporated in countries where one does not draw up the accounts in accordance with IAS. Furthermore, the application of the proposal involves difficult questions of interpretation. For instance, it is doubtful as to whether US and Japanese rules would meet the true and fair test. Any restatement of the accounts or reconciliation will be rather expensive for the issuer. Our amendment avoids these problems.

⁴⁷ See footnote 43.

VII.G	<u>Age of latest annual accounts</u>	
VII.G.1	The last year of audited financial statements may not be older than 18 ⁴⁸ months from the date of the prospectus. 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.	VIII.A.4.
VII.H	<u>Interim financial statements</u>	
	If the document is dated more than nine months after the end of the last audited financial year, and the issuer has published own or consolidated interim financial statements 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.	
VII.I	<u>Legal and arbitration proceedings</u>	VIII.A.7.
	Provide information on any legal or arbitration proceedings where the issuer is a party (including any such proceedings which are pending or threatened of which the issuer is aware), including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, a significant effect on the issuer's ability to meet its obligations under the proposed issue of derivatives. Or provide an appropriate negative statement.	
VII.J	<u>Significant change in the issuer's financial or trading position</u>	VIII.B.
	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 in accordance with VIID, or an appropriate negative statement.	

⁴⁸ 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.

VIII	<u>Additional information</u>	
VIII.A	49	X.C.
VIII.B	<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.	X.G.

⁴⁹

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.

V.III.C	<u>Documents on display</u> A statement that for the life of the registration document 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; ⁵⁰(c) all publicly available 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 / prospectus; (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 issuer shall provide an indication of where the documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means	X.H.
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⁵⁰ 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, the prospectus (registration document) or any documents relating to the issuer should not be an extensive due diligence report but should inform the investor only in a summarized form with regard to important matters of the issuer affecting the 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.

ANNEX 7

CESR Proposal for Additional Information to be included in the Equity Securities Note Building Block

V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/ admitted to trading	
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	
- Dividend rights: - Fixed date(s) on which the entitlement arises; - Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; - Dividend restrictions and procedures for nonresident holders; - Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.	DIR. 2001/34, Schedule A, 2.2.2. and 2.2.5. IDS X-B.3. and IDS X-F.
Extent of the voting rights and conditions of their exercise (attendance in general meetings, mail, fax, electronic mail).	DIR. 2001/34, Schedule A, 2.2.2. IDS X-B.3.
Pre-emption rights in offers for subscription of securities of the same class;	
Right to share in the company's profits;	DIR. 2001/34, Schedule A, 2.2.2. IDS X-B.3.
Rights to share in any surplus in the event of liquidation;	DIR. 2001/34, Schedule A, 2.2.2. IDS X-B.3.
Redemption provisions: conditions, repayment date, redemption price or value or method of its calculation.	IDS X-B.3.
Sinking fund provisions;	IDS X-B.3.
Conversion provisions;	
Liability to further capital calls by the company;	IDS X-B.3.
Any provision discriminating against any existing or prospective holder of such securities as a result of such securities holder owing a substantial number of securities.	IDS X-B.3.
V.H Selling securities holders	
3. Lock-up agreements i) The parties involved. ii) Content and exceptions of the agreement. iii) Indication of the period of the lock up.	FESCO/01-045, II.5.h



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ANNEX 8

CESR Proposal for Additional Information to be included in the Debt Securities Note Building Block[, unless the security is covered already by the SN Derivatives]⁵¹

[Annex should be deleted; structured bonds are derivative securities and should be covered only by the SN Derivatives]⁵²

⁵¹ This additional wording to apply if the SN Derivatives is limited to issues of banks or issues guaranteed by banks.

⁵² This additional wording to apply if the SN Derivatives is opened up for all issuers of derivatives.

Additional information to be included in the Securities Note Debt Schedule:

III.C Risk factors	
2. Risks involved in purchasing a structured bond. This section should include: - direct or indirect specific risk factors affecting the value and trading price of the securities - specific risk factors affecting the realization of the value of the securities - example of the way the instrument works⁵³ - example based on the worst case scenario⁵⁴	DERIVATIVE SCHEDULE
V.A. 13. Interest rate - A description of any market disruption or settlement disruption events that affect the underlying - Adjustment rules with relation to events concerning the underlying - Name of calculation agent	DERIVATIVE SCHEDULE

⁵³ One example is sufficient. The example should be in generic terms. It should not be required that an example for each possible price of the underlying is made. Otherwise the prospectus would be inflated without any valuable information being added.

⁵⁴ The requirement of an example of the best case scenario should be deleted because the best case scenario is not a risk factor. Furthermore, examples of the best case scenario could be misleading for potential investors because these examples could create false expectations for a very high return which, however, most likely will not happen. The explanation of the worst case scenario could be that the investor risks to lose its entire investment.

ANNEX 9

Revised CCSR Proposal for the SN Derivatives

Schedule

I. IDENTITY OF MANAGEMENT AND SUPERVISORY BODIES, ADVISERS, AUDITORS AND PERSONS RESPONSIBLE FOR THE SECURITY NOTE⁵⁵	
1. ⁵⁶ Members of its supervisory and/or management bodies; partners with unlimited liability; ⁵⁷⁵⁸ : names and functions.	IDS I-A
2. Advisers that have taken part in the issue/offer: Provide the name and address of the ⁵⁹ sponsor for admission to trading (where required by the host country regulations). ⁶⁰	IDS I-B
3. Auditors: names and addresses of the company's auditors (together with any membership in any relevant professional body) for the period covered by the consolidated financial statements included in the prospectus, as required by the relevant schedules in accordance with national law.	IDS I-C DIR. 2001/34, Schedule A, 1.3
4. Statement whether the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reason given.	DIR. 2001/34, Schedule A, 1.3

⁵⁵ **This whole section should appear in the Registration Document only!!! There is no reason to repeat this information in the Securities Note if it is contained already in the Registration Document. A duplication does not make a prospectus better. A thick prospectus rather frightens than entices an investor. Wherever the following information appears, however, the following amendments have to be made.**

⁵⁶ The term "senior management" is not known in Germany. "Management" should be understood as only the highest level of a company. Any employees below this level should not be disclosed as these persons do not have the ultimate business authority.

⁵⁷ meaning unclear

⁵⁸ not relevant for investors of derivative securities

⁵⁹ The names of the principal bankers and legal advisers to whom the company has a continuing relationship are of no relevance for the issue of the securities if these advisers have not been involved in the issue. The mentioning of their names is more misleading than helpful for the investors.

⁶⁰ The legal advisers to the issue should not be mentioned in the prospectus either. The mentioning of the legal advisers is misleading if the advisers do not carry out a complete due diligence (often no complete due diligence is carried out!) and if they do not have to take care of all legal issues (what also happens frequently). 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 the investors or the 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 would be substantial per transaction which increase can neither be in the interest of the issuer nor in the interest of the investor.

5. Indication of the other information in the prospectus which has been audited or reviewed by the auditors.	DIR. 2001/34, Schedule A, 1.3
6. Names, addresses and functions of the natural or legal persons, as the case may be ⁶¹ , responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts.	DIR. 2001/34, Schedule A, 1.1
7. Declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the securities note, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	DIR. 2001/34, Schedule A, 1.2
II OFFER STATISTICS AND EXPECTED TIMETABLE	
II. A Offer statistics	
Total amount of the issue/offer. ⁶²	FESCO/01-045, II. 5. a. i) and DIR. 2001/34, Schedule A, 2.2.0
If the amount is not fixed, a statement to this effect must be made.	DIR. 2001/34, Schedule B, 2.1.0
Describe arrangements and time for announcing to the public the definitive amount of the offer.	Members' proposal
II.B Method and expected timetable	
For all offerings and separately for each group of targeted potential investors:	
1. The time period during which the offer will be open and where and to whom purchase or subscription applications shall be addressed.	IDS II-B.1
2. Describe whether the purchase period may be extended or shortened and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public.	IDS II-B.1
3. Describe the possibility to reduce subscriptions and/or size.	Members' proposal
4. If the exact dates are not known when the document is first filed or distributed to public, describe arrangements for announcing the final or definitive date or period.	IDS II-B.1
5. Indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	FESCO/01-045, II. 5. e. ii) and iii)
6. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.	IDS II-B.2

⁶¹ Since the Directive does not mandatorily require a liability of these natural persons, CESR may not do so either.

⁶² Distinction is unclear.

7. Method and time limits for delivery of the securities (including provisional certificates, if applicable) to subscribers or purchasers.	IDS II-B.3
8. A full description of the manner and date in which results of the distribution of securities are to be made public. ⁶³	IDS II-B.5
III. RISK FACTORS	
⁶⁴	
⁶⁵	
III. Risk factors⁶⁶	
1. Prominent disclosure of risk factors that are specific to securities to be offered and/or admitted to trading in order to assess the market risk associated with these instruments. ⁶⁷ To the extent that an item has been disclosed fully in other sections, only a summary should be included in this section and a cross reference to the section where a more detailed discussion is contained should be made.	IDS III-D
2. Risks involved in purchasing the derivative securities. This section should include:	Members' proposal
a) direct or indirect specific risk factors affecting the value and trading price of the derivative securities; and	
b) specific risk factors affecting the realization of the value of the derivative securities.	
c) example of the way the instrument works ⁶⁸	
d) explanation of the worst case scenario ⁶⁹	

⁶³ Meaning unclear.

⁶⁴ Should be included in registration document only.

⁶⁵ This does not make sense with regard to derivative securities.

⁶⁶ Since these are not risk factors of the issuer but rather of the securities the heading for this section should be "risk factors" and not "key information about the issuer" on the previous page.

⁶⁷ Risk factors should be set forth only in the securities note and not in the registration document to avoid duplication.

⁶⁸ One example is sufficient. For a call warrant, for instance, it should be sufficient to explain that the investor receives the difference between the price of the underlying on the valuation date and the strike price. The example should be in generic terms as in the sentence before. It should not be required that an example for each strike price is made. Otherwise the prospectus would be inflated without any valuable information being added.

⁶⁹ Examples of the best case scenario could be misleading for potential investors because these examples could create false expectations for a very high return which, however, most likely will not happen. The explanation of the worst case scenario in the event of a warrant could be that the investor risks to lose its entire investment.

e) ⁷⁰	
IV.A Interests of Experts in the issue/offer	
If any of the named experts or counsellors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.	IDS VII-C
IV.B Conflicts of interest in the issue/offer	
Provide a description of any conflict of interest in the issue, detailing the entities involved and the nature of the interest.	Members' proposal
V. OFFER AND ADMISSION TO TRADING DETAILS	
V.A Description of the securities to be offered/ admitted to trading	
1. Describe the type and the class of the securities being offered and/or admitted to trading.	IDS IX-A.5
2. Indicate the law applicable to the securities.	Members' proposal
3. Indicate whether the securities are registered or bearer ones.	FESCO/01-045, IX-A-8 a)
4. Indicate the currency of the securities issue.	Members' Proposal
5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records	Members' proposal
6. Status of the securities being offered and/or admitted to trading: Covenants: Negative pledge, cross default, pari passu and others similar clauses, if any (event of default...)	Members' proposal FESCO/01-045, IX-A-8 a)
7. A description of the rights attached to the securities and procedure for the exercise of any right attached to the securities.	DIR. 2001/34, Schedule A 2.2.2.
⁷¹	IDS IX-A.6

⁷⁰ It is unclear whether the hedging instruments of the issuer or potential hedging instruments of the investor are meant. Whatever is meant, hedging instruments should not be disclosed. How the issuer hedges itself is often confidential and therefore may not be disclosed. An advice as to the hedging of the investors depends largely on the individual composition of the portfolio of the investor and his investment strategy. It therefore cannot be given generally for all investors in the prospectus.

⁷¹ This information is irrelevant for investors of derivative securities.

8. Interest rate The nominal interest rate and provisions relating to interest payable, if any. Where the rate is not fixed, the underlying on which it is based and the method used to relate the two <which two??> must be clearly described. Among other things, this point must include - The formal or official name of the reference rate or of the source entity. - Place, manner and time where and when the reference rate of the underlying is made public. - If applicable minimum and maximum limits permitted as yield or interest to be paid to the holders. ⁷² - The date from which interest becomes payable and the due dates for interest. - The time limit on the validity of claims to interest and repayment of principal.	Debt schedule FESCO/01-045, IX-A 1 b) + Members' proposal FESCO/01-045, IX-A 1 f) (DIR. 2001/34, Sch B 2.1.7)
9. A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	DIR. 2001/34, Schedule A 2.2.0 and Schedule B. 2.2.0.
10. The issue date of the securities.	Members' proposal
11. Arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.	DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01- 045, II. 5. j.
12. Other specific legislation regarding the issue/offer.	Members' proposal
13. the exercise price and/or the (final) reference price⁷³ of the derivatives securities	2001/34/EC Sch B 2.1. – 2.2.
14. Redemption amount or redemption formula	
V.B Terms and conditions of the offer and action required to apply for the offer	

⁷² If an underlying is quoted various times a day, it is quite cumbersome for the issuer of the derivatives to provide such information. Furthermore, the performance in the past does not give any reliable information with regard to the future performance of the underlying. The good performance in the past could even make an investor believe that the performance will continue as it did in the past, which may be very misleading. In particular, interest rates may vary so much from one year to the next that the historical data is very likely outdated at the time of inclusion in the SN and therefore rather harmful (because misleading) than helpful. The benefit cost analysis clearly speaks in favour of a deletion. We recommend to delete a very similar requirement set forth in V.B.11.

⁷³ What is a final reference price???

1. Description of the application process, details of where application forms are available.	FESCO/01-045, II.5. i. i) and ii)
2. Details of the minimum and/or maximum amount of application, if any (whether in number of securities or aggregate amount to invest).	FESCO/01-045, II.5. i. iv)
3. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	FESCO/01-045, II.5. i. vi)
4. Possibility of multiple and/or joint applications, and description of the penalties for infringements.	FESCO/01-045, II.5. i. vii)
5. Indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Members' proposal
6. Dealing conditions to which the offering is subject, if any.	FESCO/01-045, II.5. f. i)
7) the terms and conditions ⁷⁴	Members' proposal
⁷⁵	
8) a description of the exercise procedures and any limitations in relation to the same	Members' proposal
9) a description of the settlement procedure of the derivative securities detailing the following: – for cash settlement, how holders are to receive or make payments – for physical settlement⁷⁶ how holders are to receive or make delivery of the underlying instrument and make payment	Members' proposal
10) a description of how any return on derivative securities takes place, the payment date, and the way it is calculated – for cash settlement: disclosure setting out how the cash settlement amount is calculated – for physical settlement: disclosure setting out how the amount of the underlying instrument to be delivered is determined – in the case of a choice between cash and physical settlement: disclosure as set out above	Members' proposal
11) information required in respect of the underlying, a statement setting out the type of the underlying and details of where information on the underlying can be obtained: – ⁷⁷ where the underlying is a security • the name of the issuer of the security	2001/34/EC Schedule B 2.4.1. FESCO 01-045 Schedule B IV, p.2 / 3

⁷⁴ The definitions do not necessarily have to be contained in one section but may be contained in the terms and conditions in various sections, wherever appropriate. It is important that the complete terms and conditions are set forth.

⁷⁵ Is identical to V.A 7.; do not duplicate.

⁷⁶ "Cashless exercise" is not correct because the investor generally has to pay an exercise price in order to receive the physically settled underlying.

⁷⁷ The past performance of the underlying does not give any reliable information with regard to the future performance of the underlying. The good performance in the past could even make an investor believe that the performance will continue as it did in the past, which may be very misleading.

• the ISIN (International Security Identification Number) or other such security identification code – where the underlying is an index • the name of the index – where the underlying is an interest rate • a description of the interest rate – others where the underlying does not fall within the categories specified above the securities note must contain equivalent information. – where the underlying is a basket consisting of more than one asset of derivative securities • Disclosure of the relevant weightings of each asset in the basket at launch	
12) a description of any market disruption or settlement disruption events	
13) adjustment rules with relation to events concerning the underlying	
14) expiration or maturity date of the derivative securities	
15) exercise date or final reference date ⁷⁸	
16) name of a calculation agent	
V.C Plan of distribution	
1. The various categories of potential investors to which the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a <i>tranche</i> has been or is being reserved for certain of these, indicate any such <i>tranche</i> .	FESCO/01-045, II.5. b IDS IX-B.3
2. If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees or past employees of the company or its subsidiaries, provide details of these and any other preferential arrangements.	IDS IX-B.4
3. To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intended to subscribe in the offering, or whether any person intends to subscribe for more than five per cent of the offering.	IDS IX-B.2
V.D Placing	
1. Details of the co-ordinator(s) of the global offering and of single parts of the offering.	FESCO/01-045, II.5. c. i)
2. Details of the placers in the various countries where the offer takes place.	FESCO/01-045, II.5. c.) ii)
3. Name and address of any paying or depository agents in each country.	Members'proposal

⁷⁸ What is a final reference date? Is this the maturity date?

V.E Pricing	
79	
Process for the disclosure of the initial offering price.	FESCO/01-045, II.5.d.iv)
V.F Admission to trading and Dealing arrangements	
1. An indication as to whether the securities offered will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other markets. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. Indication as to whether the issuer has already filed the application to trading, and, otherwise, indication of the dates when the issuer has the intention to file this application, and, if known, the earliest dates on which the securities will be admitted to trading should be given. An indication of the markets where admission to trading is or will be sought, and if securities of the same class are already traded on one or more regulated markets, indication of the most relevant.	IDS IX.C
80	
2. Entities which may act as intermediaries in secondary trading, providing liquidity through bid and offer rates. If any, A description of the terms of their commitment will be included.	Members' proposal
V.G Markets	
Disclose all stock exchanges and other markets on which, to the knowledge of the issuer, the securities to be offered or admitted to trading are traded.	IDS IX-C (reviewed by members)
V.H ⁸¹	
V. I Expense of the Issue/Offer	
The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuer or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per security.	IDS IX-F.1.

79

The process of the disclosure of the initial offering price is sufficient (see below.)

80

The text seems to relate only to share issues. It is not relevant for derivative securities.

81

Information is completely irrelevant for investors of derivative securities. It is only relevant for share issues.

82 83	
VI ADDITIONAL INFORMATION	
84	
VI.A Exchange controls	
Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect: - the import or export of capital, including the availability of cash and cash equivalents for use by the company's group; - remittance of dividends, interest or other payments to non-resident holders of the company's securities.	IDS X-D

⁸² An itemized statement of all major expenses risks to be materially misleading for potential investors. An investor who sees a high fee for a bank, an accountant firm or a law firm set forth in a prospectus could have the impression that the high fee is a waste of money and impairs the liquidity of the issuer whereas in reality the high figure could be justified because the respective adviser undertook an extensive business, financial, legal or tax due diligence and acted very diligently and therefore absolutely was worth the money and acted for the benefit of the investor by highlighting certain risks which otherwise would not have been disclosed. On the other hand, an investor who sees a low fee for an adviser set forth in a prospectus could have the impression that the issuer is very cost efficiently run and worth an investment in it whereas in reality the reason for the low expenses is that no or only a very tiny due diligence has been undertaken and important risks were not disclosed. For example, in Germany the proposal would have materially mislead investors in so far as Gonthard & Metallbank AG, Goldzack AG and Concord Effekten AG (being among those lead managers responsible for most failures and insolvencies shortly after lead managed IPOs) would have been regarded by potential investors as very "cost efficient" managers since no sound financial and legal due diligence was conducted and investor relations companies (!) were asked to draft offering circulars. Other costs in connection with the distribution of the securities such as marketing or advertising costs cannot be determined in the aggregate at the time of publication of the prospectus because they may be incurred still after such publication but still in connection with the distribution of the securities. Therefore, any figure given up to the publication of the prospectus may only be a portion of the total amount to be accrued during the term of the security and could therefore also be misleading. Since issuers do not know at the time of the publication which costs will still occur thereafter, they also cannot include an estimate. Also for this reason the whole section should be deleted.

⁸³ This information is relevant only for share issues.

⁸⁴ To be included in registration document only.

VI.B Taxation	
Provide information regarding taxes to which securities holders may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties.	IDS.X-E
VI.C Statement by Experts	
Where a statement or report attributed to a person as an expert is included in the document, provide such persons' name, 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 authorized the contents of that part of the document.	IDS X-G
VI.D Documents on display	
Provide an indication of where the documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means.	IDS X-H
VI.E Registration Document	
1. Indication of where the Registration Document of the issuer is available for consultation.	Members' proposal
2. The securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the registration document was published.	Draft Directive

ANNEX 11

CESR Proposal for Guarantees, etc., Securities Note Building Block

1	Nature of the Guarantee A description of any arrangement intended to ensure that any obligation will be duly serviced, whether in the form of guarantee, surety, Keepwell Agreement, Mono-line Insurance policy or other equivalent commitment (hereafter referred to generically as “guarantees” and their provider as “guarantor” for convenience). Without prejudice to the generality of the foregoing, such arrangements encompass commitments to ensure obligations to repay debt securities and/or the payment of interest and the description should set out how the arrangement will ensure that both payments will be duly serviced.	
2	Text of the Guarantee The text of the guarantee should be set forth in its entirety.	
3	Declaration of responsibility The name, home or business address and function of each of the persons giving the declaration in paragraph 4 must be included.	DIR 2001/34 Sched. A,1.1
4	A declaration by those responsible for the information provided pursuant to this building block must be included in the terms required under paragraph I.7 of the Securities Note Schedule.	DIR 2001/34 Sched. A,1.2
5	Information to be disclosed about the guarantor The guarantor should disclose information about itself equivalent to that disclosed by the issuer of the security about itself in its Registration Document.	

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It is unclear which documents this should be. The important information is the disclosure of the entire text of the guarantee as requested by ourselves in number 2 above of this Annex.

ANNEX 12

CESR Proposal for the Building Block for Subscription, Conversion or Exchange rights concerning Equity Securities with the exception of Derivative Securities

**Building block for subscription, conversion or exchange rights concerning “equity securities”
with the exception of derivative securities**

1. Description of the right (nature and form).	CI VA1 IDS IX A 5
2. Conditions and modalities for the exercise of the right (exercise period, strike price, conversion or exchangeable ratio, special circumstances where the right becomes exercisable outside the normal period, possibilities of suspension of the right (conditions and notifications)...))	DS VA3 Specific requests
3. For convertible or exchangeable bonds, the right of bondholders to interest payments on the bonds and dividends in respect of shares delivered	DS VA3 Specific requests
4. How to exercise the right and modalities for the delivery of the underlying share (including the rounding up or down and consequences of such rounding).	DS VB 9+10
5. Admission to trading and dealing arrangements	CI VF
6. Adjustments (type, methodology and notification)	DS VB 14
7. Issuer’s irrevocable undertaking to the right holder <meaning unclear>	Member’s proposal
8. Taxation The issuer shall provide information regarding taxes to which holders in the country (or countries) where the public offer is being made or admission to trading is being sought, may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties.	CI VI D
9. Notification <of whom??> in case of new issues with a preferential right of subscription.	Member’s proposal
10. Impact on issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders	ES VJ
11. Applicable law.	CI
12. Description of the underlying share	Member’s proposal
1. Describe the type and the class of the shares being offered and/or admitted to trading.	ES VA1 – IDS IX A 5
2. Indicate the law applicable to the shares.	ES VA2 Member’s proposal
3. Indicate whether the shares are registered or bearer ones.	ES VA 3 – FESCO/01-045

4. Indicate the currency of the shares .	Member's proposal
5. Means of representation: where book-entry system is to be used, name and address of the entity in charge of keeping such records	Member's proposal
6. A description of the rights attached to the shares and procedure for the exercise of any right attached to the shares.	ES VA7 DIR 2001/34, schedule A 2.2.2
7. If the rights evidenced by the shares are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification or its effect on the rights evidenced by the shares.	ES VA8 IDS IX-A-6
8. A statement of the resolutions, authorisations and approvals by virtue of which the shares will be created.	ES VA9 DIR 2001/34 Schedule A 2.2.0
9. The listing place of the shares.	Member's proposal
10. Arrangements for transfer of the shares and (where permitted) any restrictions on their free transferability.	ES VA 10 DIR. 2001/34, Schedule A 2.2.4 and IDS IX-A.5 (b) and FESCO/01-045, II. 5. j.
⁸⁶	ES VA 12 IDS IX-A-5 (a)
⁸⁷	ES VA 14 Member's proposal
11. Takeover bids Indication of any of the following which have occurred during the last financial year and the current financial year <i>as far as known to the issuer</i> : - public takeover bids by third parties in respect of the issuer's equity; - public takeovers bids by the issuer in respect of other companies' equity; The price or exchange terms attaching to such offers and the outcome thereof are to be stated.	ES VA 15 DIR 2001/34, schedule A 2.4.5 Member's proposal

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Can be deleted because mainly covered already by item 12.3 on previous page.

The consequence of this requirement would be an extensive theoretical capital market thesis of many pages. The Annexes should instead require only specific information relating to the security and risks. Investors who are not lawyers are more inclined to read a short, specific and precise prospectus than thesis like, voluminous legal explanations.

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13. [Information concerning the issuer of the underlying share if different from the issuer of the security but belongs to the group of the issuer. The information should be based on the information publicly available with for instance the possibility to incorporate by reference the Registration Document of the issuer of the underlying share (if any) (without prejudice to voluntary additional information which could be given by the issuer of the security on the issuer of the underlying share)]	Member's proposal
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