THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref.: CESR/03-209

CESR Prospectus Consultation

FEEDBACK STATEMENT

JULY 2003

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The Provisional Mandates and the Technical Advice

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

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

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

   - The minimum information requirements
   - The incorporation by reference
   - The availability of prospectus

4. As far as the minimum disclosure requirements are concerned, the Technical Advice released in July 2003 (CESR/03-208) concentrates on those concerning equity, debt securities, asset backed securities, wholesale debt, depository receipts issued over shares and non equity securities issued by banks. Additional building blocks concerning pro forma financial information and guarantees are also included.

5. The Technical Advice for the Commission also deals with incorporation by reference and availability of the prospectus. In particular, the latter also includes the content of the notice and its method of publication.

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

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

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

9. CESR's Expert Group on Prospectuses, chaired by Pr. Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Commission and supported by Ms Silvia Ulissi and Mr Javier Ruiz of the CESR Secretariat, has been responsible for the drafting of the consultation paper and the development of the technical advice in response to consultation.

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

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

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

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

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

15. Almost sixty responses to the Addendum have been received, some of them also after the closing date. A significant number of answers as for the first consultation paper, have come from banks, both individual ones and associations.

16. All responses to the Consultation Papers which are public are on the CESR website.

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

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

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

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

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

preliminary feedback statements to the above mentioned draft working papers (respectively, CESR/03-067b and CESR/03-129).

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

23. The remainder of this feedback statement will focus, firstly, on the general points which emerged during the consultation process and secondly, on the substantive points which were raised in each of the three technical areas in which CESR was requested to provide advice.

24. The documents published by CESR to which this feedback statement refers are the Consultation Paper released in October 2002 (Ref: CESR/02.185b), the Addendum to the Consultation Paper published in December 2002 (Ref: CESR/02-286b) and the revised proposals published in April 2003 (CESR/03-066b) and in May 2003 (CESRS/03-128). The final proposals by CESR after said consultations are set out in the Advice to the European Commission submitted in July 2003, document CESR/03-208.

General Observations

25. As a preliminary general observation, CESR received a number of comments which were not directly applicable to the Level 2 measures being proposed in the consultation paper but, rather, related more generally to the Level 1 text, besides, in certain cases a lack of understanding of the exact scope of the Commission's mandate to CESR. In many occasions respondents seemed aware that the solution was not within CESR's power, but nevertheless considered it useful to register their concern about the Level 1 measure, via the CESR consultation process. CESR would reiterate that its advice to the Commission must remain firmly within the parameters of the mandate. This feedback statement will similarly restrict itself to the relevant material.

26. The remainder of this introductory section will highlight the most frequently recurring general points made by respondents. Where applicable, further discussion of these points and CESR's proposed response will then be taken forward in the relevant section later in the feedback paper.

27. Firstly, a key point emerging from a number of responses concerns the amount of detail in level 2 implementing measures. Many respondents considered that Level 2 measures should be relatively light. They suggested that the level of detail proposed by CESR at Level 2 was too extensive and

prescriptive. Some respondents suggested that many of the areas included in the Level 2 advice were more appropriate for treatment at Level 3. Others supported the idea that detailed Level 2 measures could help in achieving a more uniform Single Market.

28. In the light of the comments received, CESR has sought to review, where possible, any excessively detailed measures proposed for Level 2 and to propose, where appropriate, a higher level approach. Nevertheless, it is CESR's view that in some cases the Level 2 measures do need to contain a sufficient level of detail to build upon the high level principles set out at Level 1 and to ensure adequate legal certainty and harmonization for cross border activities in the Single Market. In particular the reduction of the level of detail with respect to the versions submitted to consultation has taken in consideration the nature of the item and therefore has left in Level 2 those that appeared to be the necessary disclosure requirements.

29. Secondly, respondents expressed concern about the short period of time left to the consultation process. A number of respondents commented that the scope and complexity of the required implementing measures would have required a longer period of time in order to achieve a proper return from the consultation. Many respondents therefore sought to be given another opportunity to comment on CESR's proposals before their final transmission to the Commission. CESR acknowledged the usefulness of a double passage through the consultation process. The extension granted by the EU Commission to CESR of the deadline initially fixed for 31 March to 31 July allowed CESR to hold an additional open hearing with the market participants on "non papers" prepared after considering the outcome of the consultation.

30. Thirdly, some respondents noted several overlaps between the Registration Document and the Securities Note schedules. The review process has concentrated on the existing duplications due to the organization of the expert group in two separate drafting groups hopefully eliminating all of them.

31. Another aspect that has raised almost unanimous concern by the respondents is the one linked to the reference made to IOSCO Disclosure Standards. As indicated in the October Consultation Paper CESR has prepared the RD and SN schedules considering the disclosure requirements provided for by IOSCO as the minimum disclosure requirements. In particular this approach had been followed for shares. According to a great number of respondents the said IOSCO Standards should only be considered as a guideline and not, especially for debt securities, a benchmark of minimum disclosure requirements. In light of discussions during the legislative process CESR has significantly modified its approach and has consequently revised the schedules.

32. The remainder of this paper will examine key points raised by respondents in each technical section and explain how CESR dealt with them. Paragraph references in this feedback statement refer to CESR's papers mentioned in paragraph 24 of this document.

PART ONE – MINIMUM REQUIREMENTS

REGISTRATION DOCUMENT – EQUITY SECURITIES

33. More than half of the responses to the consultation raised the question of the high level of detail in the disclosure requirements set out in Annex A of the October consultation paper. CESR has considered the consultation responses on this issue. As mentioned in said consultation paper, CESR's proposals were produced using the view that "based on IOSCO disclosure standards" meant that they should be considered to be the minimum requirements. Obviously this was of most application in relation to the disclosure requirements for equity securities. The advice in relation to the interpretation of this directive requirement has changed. This has allowed CESR to reconsider the level of prescription in the disclosure requirements and take into account the strong message from consultees.

34. CESR has amended the disclosure requirements set out in Annex A to remove excessive amounts of detail. However, in order to achieve a maximum harmonised approach to the contents of prospectuses, and to meet the terms of the original mandate, it has been necessary to maintain a reasonably detailed set of disclosure requirements.

35. This section of the feedback statement discusses the equity registration document disclosure requirements and consolidates all the concerns raised throughout the consultation process.

36. For ease of reference, the discussion is set out in the order of the disclosure requirements set out in Annex A of CESR's Advice to the European Commission (CESR/03-208 Annexes).

Persons responsible –Annex A, 1.1.

37. Some respondents asked to clarify the question of responsibility for the information given in the prospectus and to disclose either the name of natural persons or the name and registered office of legal persons (Annex A, 1.1). As responsibility matters are settled by national law CESR does not propose any kind of civil liability regime. The wording in 1.1. has been adjusted to make it clearer what disclosure has to be made and by whom depending on who is taking responsibility.

Selected financial information – Annex A, 3.1

38. It was considered that the IOSCO disclosure standard in relation to operating and financial review had not been completely captured by the proposed disclosure requirements set out in Part IV of Annex A of the October consultation. An additional requirement to provide a narrative description

of the issuer's financial condition has therefore been added to the selected financial information requirements set out in 3.1 of Annex A.

Risk factors – Annex A, 4.

39. A large number of respondents agreed with the approach adopted by CESR in the October consultation. A minor drafting amendment was made to reflect the restriction of risk factors relevant to the registration document rather than the issue of securities (Annex A, 4).

Events in the development of the issuer's business – Annex A, 5.1.5

40. Some market participants suggested to limit the information on important events in the development of the company's business (Annex A, 5.1.5) to the most recent two or three financial years otherwise there would be an overload of information. As only the important events have to be disclosed CESR does not share the concerns raised. There might well be events which happened four years ago and still have an impact on the issuer's business.

The issuer's principal future investments –Annex A, 5.2.3

41. In relation to the obligation to disclose information concerning the company's principal future investments (Annex A 5.2.3), with the exception of interests to be acquired in other undertakings on which its management bodies have already made firm commitments. A few respondents asked to delete the words "…on which its management bodies have already made firm commitments" and therefore to extend the exception clause. CESR discussed this matter in detail and came to the conclusion that there is no reason for the exception. As only the principal future investments have to be disclosed the amount of information should be limited to the material information. There is no danger that ongoing negotiations for future transactions will be hampered as only those investments on which the management has already made firm commitments have to be disclosed.

Capital resources – Annex A, 10.2

42. Concerns were raised about the proposal to require disclosure about "any material sources of liquidity" (See Annex A IV.B.1a-CESR/02.185b), and some respondents requested that this disclosure be deleted. In addition, concern was raised that "an evaluation of the sources and amounts of the company's cash flows…." (See Annex A IV.B.1.b CESR/02.185b) would be very difficult and had to be prepared by an expert which would increase the costs of the issue. CESR decided not to require a cash flow statement – if not included in the annual financial information anyway - but to require an explanation of the sources and amounts and a narrative description of the issuer's cash flows, as set out in Annex A 10.2.

Profit forecasts or estimates –Annex A, 13

43. There was a degree of confusion raised by the original drafting of this proposal (See Annex A IV.D.3.a CESR/02.185b October 2002) as it was unclear whether or not CESR was proposing that profit forecasts should mandatory. As it was not CESR's intention to make profit forecasts mandatory, this disclosure requirement has been redrafted as set out in Annex A 13 by adding the words "if an issuer chooses to include…".

44. There were strong concerns raised by accountancy firms, who felt that the requirement to give confirmation that the forecast has been made after "due and careful enquiry by directors" (See Annex A IV.D.2) was not something that they could be expected to give an opinion about. As such, this requirement has been removed as set out in Annex A 13.2 which sets out the nature of the report to be provided by accountants or auditors.

45. Some respondents were also concerned about the need to provide a report about the profit forecast or estimate. This was mainly on the basis of the costs involved. Although the scope of the report set out in Annex A 13.2 has been amended to address the concerns raised, overall CESR felt that the comfort for investors gained from a report outweighed the cost involved, and therefore the requirement to provide a report has been retained.

46. There was a great number of respondents who favoured the requirement to update an outstanding profit forecast as proposed in paragraph 70 of the October consultation (CESR/02.185b) and this has been included in the disclosure obligations as set out in 13.4 of Annex A.

47. There was general agreement that the definition of a profit forecast proposed in paragraph 77 of the October consultation (CESR/02.185b) was a sensible one, and as such this was incorporated into the revised proposals set out in 13 a) Annex 4 CESR/03-128 published in May 2003.

48. Concern was raised by some respondents that this definition was potentially too broad, especially in light of the trend information requirements set out Annex A 12.2. CESR has considered the matter further and has revised the definition accordingly as set out in 13. a) of Annex A.

Administrative, management and supervisory bodies and senior management – Annex A, 14.1

49. Although there was some support for the original disclosure requirements that were consulted upon in October, (see V.A Annex A CESR/02.185b) there was a strong message that the requirements were too detailed and should be restricted in timescale. CESR has considered these points and adjusted the disclosure requirements accordingly in an attempt to balance the interests of investors and the privacy of directors and senior management as set out in 14.1 of Annex A.

Administrative, management and supervisory bodies and senior management conflicts of interest – Annex A 14.2

50. Some respondents proposed to delete the line item on management and directors' conflicts of interests (Annex A, 14.2) as they thought that an issuer was generally not aware of potential conflicts of interests and therefore could not fulfil this requirement. CESR considered this as not being a valid argument as issuers have to make the necessary dispositions to recognise material conflicts of interests, and as such has retained this disclosure requirement.

Major shareholders – Annex A, 18

51. Most respondents were in favour of disclosing any limiting measures in place in relation to a controlling shareholder as proposed in the October consultation in requirement VI.A.2 of Annex A. CESR has considered the text and believes that the method of exercise of the control is the important issue at stake and has amended the requirement as set out in requirement 18.3 of Annex A to reflect the need to disclose how the control will not be abused.

Related party transactions – Annex A, 19

52. Some respondents believed that disclosure of related party transactions as set out in VI.B of Annex A, of the October consultation should be to the same standard as the standard in the International Financial Reporting Standard. This would avoid the issuer having to apply two tests to effectively the same information. CESR has taken this sensible suggestion on board and amended the disclosure requirement accordingly, as set out in requirement 19 of Annex A.

Historical financial information – Annex A, 20.1

53. In CESR's original proposals set out in October 2002, item VII.E of Annex A set out the requirement for additional or more detailed information where an issuer's accounts did not comply with the Councils Directives on undertakings and did not give a true and fair view of the issuers assets and liabilities, financial position and profit and losses. In addition, the requirement to provide additional or more detailed information was not to be required where the issuer was not required to draw up their accounts so as to give a true and fair view, but where the issuer is required to draw up its accounts to an equivalent standard.

54. This requirement was amended in requirement 20.4 of Annex 4 of the May 2003 proposals making reference to issuers incorporated in a non EU Member State, and setting out a cross reference to a separate Annex that would set out what these requirements were to be.

55. As CESR is consulting in July about what these requirements should be, the disclosure requirements set out in 20.4 of Annex A have been amended to reflect the proposals made in this consultation, and the disclosure requirement relating to true and fair view (see for example 20.4 annex A CESR/03-066b) for issuers incorporated in a non-EU State has been deleted.

Pro forma financial information – Annex A, 20.2

56. There was a significant number of respondents in favour of not making pro forma information mandatory. On the basis that pro forma information was mandatory many respondents agreed that the 25% threshold proposed in the October consultation was a sensible threshold for the definition of "significant gross change".

57. CESR considered the arguments put forward by the respondents and there were strong views either way in the CESR group. But overall CESR felt that, although there should be some flexibility about how the details of a significant gross change to a company could be provided, it would normally be appropriate to provide pro forma information in the circumstances set out in 20.2 of Annex A.

58. Where pro forma information was provided, it was considered important that this information should be presented in a reasonably standard format. It should also be capable of comparison with the historical financial information. The replies in connection with Annex B of the October consultation were generally supportive, although some amendments were made to reflect the fact that pro forma information does not present the actual financial position of the company.

59. In responding to the proposals set out in April, some respondents considered that a significant gross change should be defined. CESR has further considered this issue, and has decided that the explanatory text on paragraphs 38-44 of the Advice to the Commission (CESR/03-208) provide enough guidance on what might be considered a significant gross change.

60. Some respondents commented on paragraph 42 of the draft explanatory text that accompanies the technical advice published in April (CESR/03-066b), and suggested that pro forma information should not be required in respect of planned transactions as plans may change rapidly and the related information may be misleading to investors. As such, the trigger for this requirement should be limited to planned transactions on which the management bodies of the issuer have already made firm commitments.

61. CESR has taken these comments into consideration and has amended the technical advice accordingly deleting the words "actual or planned" from this paragraph.

Age of latest financial information – Annex A, 20.5

62. A number of respondents argued against the proposal that the last audited financial statements may not be older than 15 months at the time when the prospectus is published (see Annex A, VII.G.1 of the October proposals). They were severely concerned about not being able to issue between March and May because time has to be calculated for the drafting and the approval of the prospectus as many companies do not publish their annual accounts before March or end of April. CESR balanced those reasons and the general interest of investor protection not to base an investment decision on outdated financial information. CESR proposes now that the last year of audited financial information may not be older than: (i) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; or (ii) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.

Interim and other financial information – Annex A, 20.6.1

63. Respondents to the April proposals commented that any audit report produced relating to an issuer's quarterly or half yearly financial information should be disclosed in the prospectus.

64. CESR agrees with this proposal and has re-drafted disclosure requirement 20.6.1 to reflect this.

Third party information and statement by experts and declarations of any interest –Annex A, 23

65. Respondents raised concerns about the disclosure requirement concerning statements by experts set out VIII.E. of Annex A of the October consultation. Some respondents expressed the opinion that the consent of an expert was not always possible to achieve and should therefore be deleted. The intention is that only those experts who gave an opinion at the request of the issuer (this might be interpreted as to include interested parties in the offer like underwriters) are meant in the text thereby excluding all publicly available statements or information of specialised service providers such as for example Reuters. CESR has amended this disclosure to make it clearer when this disclosure requirement is triggered as set out in 23.1 of Annex A.

66. In addition, CESR has included an additional requirement as set out in 23.2 that makes it clear that where information from a third party is included in the registration document, a statement to this effect must be made.

Documents on display – Annex A, 24

67. A large number of respondents believed that the obligation to put documents on display was too detailed and too onerous. CESR has removed the obligation to put material contracts on display and amended the obligation to put expert reports, etc. on display to require only those prepared at the issuer's request.

68. Concerns were also raised that the revised proposals set out in May, would still require that all documents that are referred to in the registration document could be inspected. CESR has given this issue further consideration and has amended the disclosure requirements as set out requirement 24 of Annex A to make it clearer that only those documents that are put on display can be inspected.

SPECIALIST BUILDING BLOCKS

69. This section of the feedback statement sets out a discussion relating to the various building blocks for specialist issuers that CESR proposed in its October consultation.

70. Many of the respondents agree with the building block approach for specialist issuers. However, a number of respondents considered that having specific disclosure requirements for different industries may be too cumbersome and will lead to a lack of flexibility since, for instance, a company may operate in more than one field. It has been suggested that there should be a single set of requirements to cover all issuers recognising that some may not be applicable.

71. On the question of which additional specialist building block should be required, most of the respondents suggested banks and insurance companies. A few respondents suggested a separate building block for construction and shipping companies. A building block already exists for non equity securities issued by credit institutions.

72. The major aspect that was common to many of the specialist building blocks was the need for some experts' or valuation report. CESR considered this further and decided that the main reason for such reports was that the information that could be obtained from the financial statements provided in the prospectus could not be sufficient to explain the valuation being given to the issuer's securities.

73. CESR therefore decided not to include advice in relation to specific issuers/industries, but to retain a disclosure requirement for adapted information, a valuation or other experts' report, to be provided in such circumstances.

74. The proposed additional disclosure requirement was published in CESR's May proposals (see paragraph 11 CESR 03/1128) and the response to CESR's approach was positive.

75. Respondents commented that CESR should provide guidance setting out the situations when it would expect the requirement for the provision of additional information, a valuation or other expert report to be provided by issuers, to ensure that there was consistent application of this information requirement across Member states.

76. In view of these comments, CESR has decided that there is no need to change its approach and will provide such guidance in the future. In addition, CESR has incorporated this additional disclosure requirement into the Equity and Depository receipts issued over shares building blocks as set out in item 26 of Annex A and also in item 26 of Annex J of the Advice to the Commission (CESR/03-208).

77. Set out below is a summary of the comments made to the December proposals.

Start-up companies (Paragraphs 97 – 102 CP)

78. Most of the respondents suggested changes to this annex. For instance, it is stated that the relationship between the profit forecasts provision in the equity registration document and that for Start-up companies is unclear and that there appears to be a duplication between the two. It has also been suggested that new investment companies should be regulated by the investment company building block.

79. Other areas of concern include: the definition of a 'start-up' company should be clarified so that it is defined as a company which has not traded in its current economic form for three years; the requirements for auditors to report on forecasts should be aligned with the Equity Registration Document so that there is no need for an accountant's report on the reasonableness of assumptions; the liquidity and capital resources provision is ambiguous and could prove onerous for start-up companies. This could be replaced by a requirement to update any changes in liquidity and capital resources that would endanger the business.

80. Furthermore, it has been suggested that the requirement for a business plan should be deleted as it is not currently required and is not international practice. Such plans are said to be effectively forecasts and the European capital market is increasingly adopting the American approach of excluding forecast information and only allowing disclosure of presently known data that might impact future results. It is also stated that it is unreasonable to report on business plans.

81. On the question of whether disclosure of restrictions regarding holdings by directors and senior management, etc. should be applied to all companies, all the respondents agree that these disclosures should apply to all companies. Some respondents also consider that there should be a negative statement where there are no restrictions.

82. Based on the responses, CESR has decided that this requirement will now be moved to the equity registration document so as to apply to all companies but that there will no negative statement requirement.

SMEs (Paragraphs 103 – 107 CP)

83. All but one of the respondents stated that there should be no special provisions for SMEs and that historical information should not be restricted to two years.

84. On the basis of the strength of the responses against having a separate building block for SMEs, CESR has confirmed its decision not to have one.

Property Companies (Paragraphs 108 – 113 CP)

85. Many respondents were concerned that valuation reports would have to be provided for every property operated by the issuer and that 42 days was too short a period to prepare such valuation reports. 60 days was considered to be more appropriate by many of the respondents.

86. These comments will be useful in considering what advice, if any, will be issued by CESR in respect of the content of the reports to be produced in order to satisfy the disclosure obligation explained above.

Mineral Companies (Paragraphs 114 – 117 CP)

87. A great number of the respondents did not consider that expert reports should be required for all mineral companies. Some respondents stated that an expert report should only be required on the Initial Public Offer of the issuers' securities. Those respondents who considered that a report was necessary also stated that the scope of the report needs to be clarified and that the disclosure requirements need to incorporate definitions by the Society of Petroleum Engineers.

88. These comments will be useful in considering what advice, if any, will be issued by CESR in respect of the content of the reports to be produced in order to satisfy the disclosure obligation explained above.

Investment Companies (Paragraphs 118 – 120 CP)

89. Most of the respondents do not agree with the Annex as drafted and some do not consider that it is justified to have a separate annex for investment companies.

90. These comments will be useful in considering what advice, if any, will be issued by CESR in respect of the content of the reports to be produced in order to satisfy the disclosure obligation explained above.

Scientific Research Companies (Paragraphs 121 – 123 CP)

91. A number of the respondents expressed concerns about the level of detail of the disclosures, which is said to be excessive. For instance, it is believed that items such as patents would be covered elsewhere in any event and as such, a separate building block is unnecessary. They have also asked for more guidance on the requirements. For instance, it is unclear whether or not these requirements are separate from or in addition to those for 'start-up' companies.

92. Some respondents consider that a discussion of the business plan and strategic objectives is imperative but that disclosure in respect of agreements with organisations of high standing may be onerous for companies that are not seeking admission to trading

93. These comments will be useful in considering what advice, if any, will be issued by CESR in respect of the content of the reports to be produced in order to satisfy the disclosure obligation explained above.

REGISTRATION DOCUMENT- DEBT SECURITIES

94. This section of the feedback statement discusses the retail debt registration document disclosure requirements and consolidates all the concerns raised throughout the consultation process.

95. For ease of reference, the discussion is set out in the order of the disclosure requirements set out in Annex D of CESR's Advice to the European Commission (CESR/03-208 Annexes), with the exception of those items that have been removed from the original proposals set out in the October consultation, which are discussed separately.

96. Overall, most of the respondents consider that identical disclosure requirements for debt and equity securities are inappropriate. The reason being that the interests and risk focus for investors in these securities are different. The IOSCO disclosure standards are said by respondents to be inappropriate for corporate retail debt since they were not designed for such products in the first instance. It is considered that the disadvantages that investors will incur from an identical

disclosure regime for the retail debt disclosure as for the equity disclosure far outweighs the protection offered and the net effect of this will be to drive investors to jurisdictions outside the EU, such as Zurich and the U.S.A.

97. CESR has considered this issue at length and recognised the need to balance investor protection with the cost of issuing securities. It has therefore removed those items of disclosure which are considered to be irrelevant or burdensome for issuers which do not provide sufficient value to investors. CESR has tailored the retail debt disclosure regime to meet the needs of both parties.

98. The following items were in particular considered by respondents to be mostly inappropriate for the disclosure regime of corporate retail debt (references are to the proposals as set out in the October consultation):

(a) I.B – Advisers

(b) II.A.1 – Selected financial information

(c) III.B – Investments

(d) III.C.2 – Principal markets – breakdown is inappropriate

(e) III.E – Property, plants and equipment

(f) VI.A - Major shareholders

(g) VI.B – Related party – instead a general requirement should be given not a detailed one.

(h) V.III.E – Material contracts should not be put on display.

99. CESR has amended the original proposed text based on these responses although there was no specific consultation on some of these issues.

Persons responsible –Annex D, 1.1.

100. The issue of responsibility for the information was raised in relation to all registration documents, and as such, the same concerns were raised as set out paragraphs 5 above apply to the retail debt disclosure requirements. CESR has made the same change to this section of Annex B.

Selected financial information – Annex D, 3

101. Although as stated above, some respondents considered this disclosure requirement to be inappropriate for retail debt, CESR considers that retail investors in these instruments should have information about key figures that summarise the financial condition of the issuer, as set out in requirement 3 of Annex B. This requirement has been amended from the original proposals taking into account the comments made about the IOSCO disclosure standard in relation to operating and financial review not being completely captured by the proposed disclosure requirements as explained in paragraph 6 above.

Events relevant to the evaluation of the issuer's solvency -Annex D, 5.1.5

102. Respondents to the revised proposals published in May commented that the requirement to disclose "any recent events relevant to the evaluation of the issuer's solvency" was too broad and as such did not actually capture the appropriate disclosure.

103. CESR has reviewed this drafting and agrees with the comments made. As such, this requirement has been redrafted as set out in 5.1.5 by requiring disclosure of recent events that are particular to the issuer and are to a material extent relevant to the evaluation of an issuer's solvency.

Investments- Annex D, 5.2

104. The general consensus of respondents was that past investments are not important to investors in debt securities except where it may affect the company's ability to meet its obligations under the issue. The response for current and future investments was however mixed, although most of the respondents stated that current investments are not important for investors in debt securities in particular where such investments would have been reflected in the company's consolidated financial statements.

105. On the other hand, a smaller number of respondents argue that it is important to show where the company has committed, commits and will commit its funds and how liquid those investments are since this could be considered as an indicator of liquidity.

106. In response to this, CESR has altered the original proposed text (see section III.B of Annex I – October consultation) so that disclosure on investments made since the date of the last published financial statements and future investments upon which the issuers' management have made firm commitment will be required.

107. In addition, some respondents to the revised May proposals considered that the requirement to disclose the funding required for future investments as set out in requirement 5.2.3 should not be required for retail debt as this was not required in Equity.

108. CESR has double checked this requirement, and as this is a requirement in the equity registration document, this requirement has remained unchanged.

Principal markets –Annex D, 6.2

109. As mentioned in paragraph 66 above, the respondents considered the original requirement to require a breakdown of the principal markets in which the issuer competes (see III.C.2 of Annex I – October consultation) to be inappropriate for debt. CESR agrees with these comments, and considers that only a brief description of the principal markets in which the issuer competes should be required.

Trend information – Annex D, 8

110. In relation to the revised proposals published in May, respondents considered the requirement to disclose "the most significant recent trends in production, sales and inventory….since the end of the last financial year" as set out in 8.1 of Annex 5 of the May proposals to be inappropriate disclosure for debt, and that the requirement should be restricted to changes in the issuer's financial position, as set out in 7. 1 of the wholesale debt disclosure requirements (Annex 1 of the May proposals).

111. CESR agrees with the comments made and has amended disclosure requirement 8.1 of Annex B. In addition, as this amendment would lead to an overlap between this requirement, and disclosure requirement relating to significant change in the issuer's financial and trading position (13.7 of Annex A). CESR has made additional amendments to this requirement.

Profit forecasts or estimates – Annex D, 9

112. As explained in paragraph 48 above, concern was raised by some respondents that the definition of what a profit forecast or estimate is was potentially too broad. In line with changes made to the Equity RD, CESR has amended this definition as set out in requirement 9 of Annex D.

Administrative, management, and supervisory bodies conflicts of interest –Annex D, 10.2

113. Concern was raised about the drafting of this requirement and the use of the word "negative" in the final sentence of this requirement as set out in 10.2 of Annex 5 of the May proposals.

114. On further consideration, CESR has redrafted this requirement by deleting the word "negative" as the use of this word is confusing.

Major shareholders –Annex D, 12

115. As mentioned in paragraph 98 above, respondents considered disclosure about an issuer's major shareholders as set out in section VI of the October proposals to be inappropriate for debt securities, and that disclosure about major shareholders is not relevant for debt securities, and as such the requirement should be deleted.

116. The view on the issue of disclosure of majority shareholders was split. Those respondents in favour of this disclosure state that it is necessary for the protection of the minority shareholders and for the company as a whole. Further, they state that investors are entitled to know who controls an issuer and as such this should be a requirement which should cross all issuers regardless of the type of securities being issued.

117. Those against disclosure state that it is irrelevant and of limited value. Some go further to argue that it will be particularly difficult for non-EU issuers to comply with this requirement especially as they are not subject to such requirements under local law. It has also been suggested that as a compromise, issuers may be required to provide details of majority shareholders where publication is already required by the national law.

118. As to whether both paragraphs under this requirement should be retained or deleted, again, the view was split here following on from the previous response. The response is a bipolar one such that by and large those who favour disclosure wanted both disclosure requirements to be retained and those who are against disclosure wanted them both to be deleted.

119. CESR considered these comments, and decided to retain both disclosure requirements but with reduced detail and couched in very general terms as set out in requirement 12 of Annex 5 of the amended May proposals.

120. Respondents raised similar comments that the amended disclosure was still inappropriate for debt investors, and as should be limited to information about major shareholders that the issuer has already published according to national law.

121. CESR has further considered these comments, and on review of the revised proposals considers that there is no need to limit the disclosure to what the issuer has already published.

Historical financial information –13.1, Annex D

122. As explained in paragraphs 53-55 above, CESR is consulting on the nature of these requirements, and as such the requirements have been amended to the proposals set out in the July consultation.

Age of latest accountants and interim and other financial information –13.4, 7 13.5 , Annex D

123. In the October consultation, CESR asked respondents whether or not it was necessary to stipulate when interim financial statement should be required for retail debt and whether or not it was necessary to set out what the form and content of interim financial statements should be.

124. The question of **when** interim financial statements should be disclosed was not addressed but as regards the **form and content**, most of the respondents do not consider that it is appropriate to stipulate these. They consider that it is more appropriate to stipulate that it conforms to international accounting standards, for instance, IAS or US-GAAP and further, some respondents envisaged that this will be dealt with in the proposed Transparency Obligations Directive (TOD). Others think that stipulating the form and content will ensure transparency and consistency. Since it is expected that TOD will deal with the content of financial statements, only a requirement of the age of the latest annual accounts and the requirement to include half yearly and quarterly statements have been stipulated by CESR as set out in requirement 13.5.1.

125. In addition, as explained in paragraph 63 above, CESR agreed with the proposal that any audit report produced relating to an issuer's quarterly or half yearly financial information should be disclosed in the prospectus, and CESR has amended requirement 13.6 of Annex D accordingly.

Legal and arbitration proceedings –Annex D, 13.7

126. Respondents commented that the proposed wording of this requirement set out in requirement 13.7 of its April proposals should be drafted as set out in paragraph VII.I of Annex I of the October proposals on the basis that disclosure requirement set out in the October proposals was more appropriate for debt.

127. After careful consideration of this comment CESR does not agree and considers that the requirement as drafted in the April proposals should remain un-amended.

Additional information –Annex D, 14

128. In its October consultation, CESR asked respondents whether or not there were any other requirements that were being proposed in section VIII.G of the October Equity proposals that should be included for retail debt.

129. Most of the respondents did not consider that the detail of information originally proposed as set in the Equity proposals was relevant for retail debt. For instance, information about value of shareholding is considered to be irrelevant. However, it was thought that information about guarantees provided to subsidiaries should be included.

130. As such, CESR has not added any additional requirements to this section of the retail debt disclosure requirements.

Third party information and statement by experts and declarations of any interest –Annex D, 16

131. As explained in paragraph 65 above respondents raised concerns about the disclosure requirement relating to information provided by experts. CESR has amended this disclosure as set out in requirements 16.1 &16.2 of Annex D of the Advice to the European Commission (CESR/03-208).

Documents on display –Annex D, 17

132. A great number of the respondents do not consider that it is appropriate for documents to be put on display but if they must, then they should be restricted to publicly available documents, for instance, the constitution documents of the issuer and the financial statements. They argue that to do otherwise will breach the data protection, privacy laws and possibly even criminal laws of a number of jurisdictions. Further, having to put material contracts on display will be detrimental to the issuer in many respects as it will result in an undue competitive disadvantage on the part of the issuer. There is no added value in displaying these contracts, which could be summarised in the prospectus in any event. In addition, having to display a whole lot of additional documents may cause investors to have 'information overload' and detracts from the value of the prospectus since the investors will then have to conduct their own due diligence.

133. On the whole CESR agrees with this view and in reaching a compromise, has altered the requirements for documents to be put on display by limiting it to publicly available documents as set out in requirement 17 of Annex D.

134. On the issue of translation of documents, most of the respondents consider that translation of the documents will be too time consuming and costly, the burden and detriment to issuers outweigh the benefits. There is no obligation to translate the prospectus and therefore, there should be no corresponding obligation to translate documents. A summary of the documents in the language of the prospectus will suffice. If there is a requirement to translate, then it should be in a language that is customary in the sphere of international finance. Consequently, this has not been required by CESR in its proposed implementation measures for retail debt.

Original proposals that have been deleted.

135. As mentioned in paragraph 98 above, many respondents considered some of the original proposals set out in the October consultation to be irrelevant for retail debt.

136. On consideration of the points raised, CESR has made a considerable reduction to the disclosure requirements for retail debt and has deleted the following requirements:

Related party transactions (see VI.B Annex I October proposals)

137. Related party transactions have been deleted on the basis that they are, on the whole, irrelevant for investors in debt securities and also partly because such transactions would have been disclosed in the annual financial statements.

Disclosure about the advisers of the issuer (see I.B. Annex I October proposals).

138. A great number of the respondents consider that there is no added value in mentioning bankers and legal advisers with whom the issuer has a continuing relationship in prospectuses. It is now uncommon for companies to have such continuing relationships with their advisers since they are appointed on a 'deal by deal' basis and more importantly, to mention them may create a false impression in the mind of the investors that the companies will have their support in the event of financial difficulty.

139. CESR has therefore deleted this requirement since it considers, in line with the consultation response, that regardless of the identity of these advisers, the investor will make an investment decision about the issuer's solvency.

140. On the other hand, there was a split view as to whether there should be a disclosure relating to the bankers and legal advisers who were involved in the issue of a particular debt instrument. This issue has been dealt with in the Securities Note.

141. In addition disclosures relating to Property Plants and equipment (see III.E Annex I October proposals), and Capital expenditure commitments (see IV.A Annex I October proposals), have also been deleted.

REGISTRATION DOCUMENT – ASSET BACKED SECURITIES

General comments

142. In relation to the Asset Backed Securities Registration Document disclosure requirements, CESR raised a question in the Addendum as to whether these disclosure requirements were appropriate for asset backed securities. Only 14 responses were received on this question. However, those who did respond tended to provide detailed comments on the proposed disclosure requirements. CESR has given due consideration to all drafting suggestions made by respondents, when amending the text of the disclosure requirements.

Specific comments raised in responses

143. Several respondents to the December proposals raised comments in relation to the level of detail contained in certain disclosure requirements. CESR has taken these comments into consideration when amending this schedule.

144. The original introductory text included in the ABS registration document stated that the ABS registration document disclosure requirements applied to issuers that were special purpose vehicles or entities, as well as special purpose vehicles with no separate legal identity. It became apparent from the consultation responses that this introductory text was not clear and, in fact, some respondents suggested deleting it. Therefore, CESR has proposed not to include this introductory text in the amended Annex. In addition, references to 'funds' or 'entities with no separate legal identities' have been deleted from all disclosure requirements in this schedule containing such references.

145. Several respondents made comments to the effect that material contracts referred to in the registration document should not be made available for inspection. In line with amendments made by CESR to other disclosure schedules, this requirement has been deleted from this schedule

146. Several respondents suggested that the language used in certain of the disclosure requirements in the ABS registration document should be consistent with that used in other schedules/building blocks. CESR accepts these comments and has sought to ensure consistency between the disclosure requirements in this schedule and other registration document schedules/building blocks.

147. Respondents to the April draft advice made similar comments, and stated that the order and heading titles in the registration document should also be consistent. CESR has taken all these drafting comments on board and amended the registration document accordingly.

148. In line with the other changes that have been made to the historical financial information section of the registration documents, this section has been changed to incorporate the July consultation proposals, and has been split between the requirements for retail and wholesale investors as set out in section 8 of Annex G.

149. In addition, the other changes that have been made to the other registration documents in relation to responsibility statements, third party information, and documents on display requirements, have also been made here.

150. Respondents to the April proposals requested that the document be redrafted to make it clearer that the registration document applies to all asset backed transactions, including those where only one asset is backing the transaction. CESR has taken on board these comments, and does not think that the word "assets" need to be changed, as it is implicit that the word "assets" also applies to situations where there is only one asset.

151. A comment was also raised in relation to the April proposals that the ABS disclosure requirements largely contemplate the issuance of debt securities by a corporate entity, and do not appear to contemplate the situation where a professional trust company issues debt securities as trustee of a trust into which have been transferred the relevant assets collateralising the issue. CESR recognises that the ABS disclosure requirements do not specifically refer to trusts. However, CESR is of the view that information relevant to trusts (equivalent to that of corporate entities) may be disclosed in a prospectus in accordance with Article 8, paragraph 3, of the Prospectus Directive, where, exceptionally, certain information required to be included in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain equivalent information

REGISTRATION DOCUMENT – WHOLESALE DEBT

152. This section of the feedback statement discusses the wholesale debt registration document disclosure requirements and consolidates all the concerns raised throughout the consultation process.

153. For ease of reference, the discussion is set out in the order of the disclosure requirements set out in Annex I of CESR's Advice to the European Commission (CESR/03-208), with the exception of

those items that have been removed from the original proposals set out in the ACP published in December which are discussed separately.

154. Generally, the respondents re-iterated the views they had expressed for the consultation on retail debt. In particular, they emphasised that the disclosure regime for debt should be less onerous than for equity and even more so for wholesale debt where the investors are more sophisticated and therefore do not require detailed information.

155. This is in accordance with the view expressed by CESR in the consultation paper that there should be a differentiated approach to the disclosure requirements for wholesale debt.

156. Consequently, CESR has modified the wholesale debt annex so that disclosure obligations which add to the costs of issuance of securities without providing any real investor protection benefits are removed from the annex in response to the consultation bearing in mind the nature of the investors at which these securities are aimed.

Persons responsible- Annex I, 1.1

157. As discussed in paragraph 37 above, in light of the concerns raised about the responsibility statement, this has been re-drafted as it has for all the registration documents.

Events relevant to the evaluation of the issuer's solvency -Annex I, 4.1.5

158. As discussed in paragraph 102 above, respondents to the revised proposals published in May commented that requirement to disclose "any recent events relevant to the evaluation of the issuer's solvency" was too broad and as such did not actually capture the appropriate disclosure. CESR has reviewed this drafting and changed the drafting accordingly.

Trend information –Annex I, 7

159. Many of the respondents to the December ACP did not consider that it is necessary to have a disclosure requirement relating to the issuer's prospects, as such information is said to be irrelevant and of limited value for investors in wholesale debt securities since they are in practice usually of little meaningful substance. It is thought that a material change statement will be more relevant.

160. On the other hand, there were some respondents who considered that this disclosure should be included as this is useful in assessing the issuer's financial position and that it should be limited to 12 months from the date of issue of the securities.

161. CESR proposed in May not to alter this requirement, but instead the requirement was amended by expanding the word 'trend' to indicate what other events fall under the general banner of 'trends', as it considered that a general information requirement on the issuer's trend is important to provide information to investors as to what to expect of the company's performance in the future.

162. Respondents to the May proposals re-iterated that this information should not be required for investors in wholesale debt and questioned what value this requirement added for wholesale investors, especially in view of the material adverse change statement required under 7.1 of Annex I.

163. CESR has re-considered its position on this, and on further consideration agrees that this disclosure is of no added value to wholesale investors, and as such has amended the trend information requirements to require only a material adverse change statement as set out in 7.1 of Annex I.

164. In addition, as CESR was re-considering this disclosure requirement, it identified an overlap between the wording of this requirement that included a reference to the issuer's "financial position" and a similar requirement in the significant change in the issuer's financial or trading position statement set out in 11.6 of Annex I. As such, CESR has amended the material adverse change statement and deleted the words "financial position" from this requirement.

Profit forecasts or estimates

165. As explained in paragraph 48 above, concern was raised by some respondents that the definition of what a profit forecast or estimate is was potentially too broad. In line with changes made to the Equity RD, CESR has amended this definition as set out in requirement 8 of Annex I.

166. With regard to the issue of whether profit forecasts should be reported upon by the issuer's accountants, most of the respondents consider that profit forecasts by their nature are highly speculative and therefore misleading and not necessary since they do not provide a conclusive financial position of the issuer. It is therefore thought that there should not be a requirement to report on them as the basis of preparation or assumptions should suffice for wholesale investors.

167. CESR agrees with these comments, and has therefore not changed its original proposal for wholesale investors in debt, and as set out in 8.2 of Annex I the requirement has been limited to the provision of a "statement confirming that the said forecast has been properly prepared…".

Administrative, management, and supervisory bodies conflicts of interest –Annex I, 9.2

168. As discussed in paragraph 113 above, concern was raised about the drafting of this requirement and the use of the word "negative" in the final sentence of this requirement. as set out in 9.2 of Annex 1 of the May proposals. CESR has amended this requirement in the same way as in the retail debt registration document, a set out in 9.2 of Annex I.

Major shareholders –Annex I, 10

169. As mentioned in paragraph 98 above, respondents commented that they do not consider disclosure about major shareholders to be relevant for retail investors in debt, and the same applies to wholesale investors in debt.

170. As discussed above in paragraphs 115-121, both disclosure requirements have been retained, but with reduced details and couched in very general terms.

Historical financial information –Annex I, 11

171. As already explained, CESR is consulting on the nature of these requirements, and as such the requirements have been amended to the wholesale historical financial information requirements set out in the July consultation.

Third party information and statement by experts and decelerations of any interest –Annex I, 13

172. As explained in paragraph 65 above respondents raised concerns about the disclosure requirement relating to information provide by experts. CESR has amended this disclosure as set out in requirements 13.1 and 13.2 of Annex I.

Documents on display-Annex I, 14

173. As explained in paragraphs 132-133 above, a great number of respondents consider that only those documents that are publicly available should be put on display. CESR agrees with these comments and has amended this requirement as set out in requirement 13, Annex I.

Original proposals that have been deleted.

174. Many of the respondents considered that some of the proposals set out in the December proposals should be deleted for wholesale investors.

175. On consideration of the points raised, CESR has made a considerable reduction to the disclosure requirements for wholesale debt and has deleted the following requirements:

Investments (see III.B.1 Annex 1-December proposals & 4.2-Annex 1 May proposals)

176. Most of the respondents consider that there should be no specific disclosure in relation to principal future investments but there could be a general disclosure if it is thought to be necessary to provide this disclosure. They consider that such information does not under normal circumstances enable investors to assess the issuer's solvency risks but some respondents consider that this information will assist investors in determining the issuer's ability to fulfil its obligations under the issue.

177. In the May proposals, CESR decided to require the disclosure of information on principal investments made since the date of the last published financial statements and future investments on which management has made a firm commitment on the basis that this is more recent information which will not necessarily be captured by any other information published by the issuer.

178. Respondents to this proposal reiterated that this disclosure was not relevant for wholesale investors of debt, and on further consideration of this issue, CESR has decided that these requirements are not appropriate for wholesale investors, and has deleted this set of requirements.

Liquidity and capital resources (see paragraphs 17-18 of the December ACP)

179. In the December ACP, CESR asked consultees whether or not they considered that disclosure about an issuer's commitments for capital as set out in IV.A of Annex 1 of the ACP was of value to wholesale investors in debt.

180. There was effectively a split view and those respondents in favour of disclosure of the company's capital expenditure considered that it is useful in assessing the quality and solvency of the issuer and that it may affect the issuer's ability to repay interest and capital under the issue. On the other hand, those against considered that it is not relevant and not of value to investors and that again, a general disclosure will suffice for wholesale investors.

181. CESR decided that this disclosure while appropriate for equity, was not relevant for wholesale debt securities, and this proposal has been deleted.

Board Practices (see paragraphs 24- 25 of the December ACP)

182. In the December ACP, CESR asked consultees whether or not they considered that disclosure about an issuer's commitments for capital as set out in IV.A of Annex 1 of the ACP was of value to wholesale investors in debt.

183. Most of the respondents consider that it is unnecessary for issuers of wholesale debt securities to disclose compliance with any corporate governance regime as this does not necessarily guarantee solvency nor does it serve as an indication of inability to fulfil its obligations. Those in favour of disclosure of board practices consider that it is very valuable in determining the level of transparency and protection of minority shareholders and also that such disclosure should not be as extensive as for equity.

184. CESR has deleted this requirement for wholesale investors on the basis that such investors are able to determine how the company's affairs are being conducted from their own due diligence enquiries.

Related party transactions (see section VI.B of Annex 1 of the December ACP)

185. In the December ACP, CESR asked consultees to consider whether or not disclosure about related party transactions as set out in section VI.B of Annex 1 was appropriate for investors of debt.

186. A great number of the respondents considered that it would be too burdensome and expensive for issuers to provide related party disclosure and that under normal circumstances, such transactions do not contribute to the assessment of risks for wholesale debt securities. Moreover, it is thought that IAS is sufficient to provide investors with this disclosure. The remainder of the respondents provided a qualified answer, for instance stating that the disclosure should only be required where it is relevant to form a reasonable opinion about the issuer or where the offer is not aimed to institutional or professional investors.

187. On consideration of these comments, CESR has deleted the disclosure requirement on related party transactions on the basis that they are, on the whole, irrelevant for investors in debt securities and also partly because such transactions would have been disclosed in the annual financial statements.

Interim financial statements (see section VII.H of Annex 1 of the December ACP)

188. In the December ACP, CESR explained that it did not consider that interim financial statements should be mandatory for issuers of wholesale debt.

189. Most of the respondents supported this view, others also stated that this should be dealt with by the proposed Transparency Obligations Directive (TOD). However, those dissenting argue that more up-to-date financial information should be provided where the financial information provided is more than nine months old and regardless of whether it is wholesale or retail securities.

190. CESR has deleted the requirement to produce interim financial information for wholesale investors in debt securities.

REGISTRATION DOCUMENT – BANKS

191. This section of the feedback statement discusses the registration document disclosure requirements for banks and consolidates all the concerns raised throughout the consultation process.

192. In the December ACP, CESR asked consultees whether or not a specialist building block for banks was justified.

193. Overall, most of the respondents were in favour of having a separate set of disclosure requirements for banks, and the three main issues which were addressed in specific questions and considered were whether:

a) this building block should be extended to cover equity securities as well as non-equity securities;

b) non –EU banks should benefit from these requirements; and whether

c) the building block should be applied to all securities issued by banks (including derivatives) or only for certain types of securities, and if so what types?

194. CESR has decided that the banks building block should not be extended to cover equity securities because the rationale for a reduced disclosure regime for banks is the prudential and regulatory supervision providing greater comfort in respect of non equity issues. This comfort would not deal with all the interests of investors in equity securities who are more concerned with the value and growth of the issuer. As such banks who issue equity securities will be expected to disclose information based on the equity registration document.

195. A great number of the respondents consider that a bank building block is justified on the basis that banks have specific characteristics which warrant a differentiated approach in some respects. Some respondents also go further to state that it should be clarified that the building block applies to all credit institutions and investment firms and also that it applies to all securities issued by banks and not just debt.

196. Some respondents on the other hand argue that a separate building block is unjustified but what is appropriate instead is to apply the relevant core building block depending on what securities are being issued. The requirements of the applicable building block should then be modified so that some requirements do not apply to credit institutions or additional requirements imposed as the case may be, because of the prudential and regulatory supervision already exercised over them.

197. Bearing in mind the number and strength of the respondents in favour of having a differentiated approach for banks, CESR has decided to retain a separate building block for banks.

198. Many of the respondents consider that this building block should apply equally to non-EU credit institutions otherwise a large number of banks would be unjustifiably excluded and subject to disclosure requirements which are not relevant for banks. It is said that where non-EU banks are not subject to similar regulatory control as EU banks, this fact should be disclosed to investors.

199. A few of the respondents who stated that the building block should apply to non-EU banks also consider that the 'equivalence' test should be avoided but instead, the building block should apply to all OECD-regulated banks without the need for an 'equivalence' test. The practical difficulties and political sensitivity of applying the 'equivalence test' was a reason cited by one of the respondents as to why this building block should not apply.

200. CESR has taken the view that non-EU banks which are subject to a significantly high standard of prudential and regulatory supervision should benefit from this building block. To do otherwise will result in excluding well regulated non-EU banks that are already issuing large numbers of securities successfully in the EU.

201. Most of the respondents did not state explicitly whether or not they agreed with the rest of proposals set out in annex 2 of the December ACP apart from the key issues raised in the consultation, however, they indicated that they agreed but with some modifications to the disclosure obligations. For instance, they stated that the requirements relating to *Investments* should be deleted in its entirety and should be covered by general disclosure; disclosure requirements relating to *Board Practices* should be deleted and should be driven by the

Commission's other initiatives while *Majority Shareholders* will be immaterial in majority of cases but can be dealt with by general disclosure where material.

202. Respondents to the December proposals also stated that for the disclosure requirements on *Trend information and Profit Forecasts*, the former should be deleted and replaced with a material adverse change clause while the latter should not be made mandatory. *Management and Director's conflict of interests* should be deleted and *Related Party Transactions* should be deleted in their entirety. In addition, it is considered that there should be a requirement to include a brief description of the regulatory environment within which the banks operates.

203. In relation to the May proposals, some respondents suggested that the scope of these requirements should be extended to include holding companies of banks as such holding companies are often the entity within the group from which the issue is made. In addition respondents stated that the words "trading position" be deleted from the significant change disclosure requirement, as this disclosure is inappropriate for such issuers, and that the trend information disclosure requirements should be modified.

204. The suggestions made by the respondents have been taken into account in the modifications made by CESR to the disclosure requirements discussed in the paragraphs below, which for ease of reference follow the order of the disclosure requirements set out in Annex K of document CESR/03-208 Annexes, with exception of those disclosures that have been amended as a result of comments that were made to the other registration documents including banks, and those items of disclosure that have been deleted both of which are discussed separately.

Major shareholders –Annex K, 10

205. In the December ACP, CESR asked respondents to consider whether or not disclosure about majority shareholders should be required for banks. Most of the respondents consider that this was not necessary since on the infrequent occasion that it was material, general disclosure will suffice. It is argued that it will be particularly difficult for non-EU issuers to comply with this disclosure since they are not subject to it under local laws. Further, that limiting the requirement to 'the extent known to the issuer' does not make any difference because there is an assumption that the issuer will make reasonable enquiries which will be costly and time consuming. It is also stated that such disclosure will be redundant since supervision regimes exercised over banks also extend to persons holding major interests in any event.

206. The respondents who considered that the disclosure should be a requirement on the other hand state that it is important to include it because major shareholders can affect the corporate

governance of an issuer. Also, it is considered that it is important for investors to be aware of the management and functioning of the company so that the interests of the company is seen to prevail at all times over the interests of a majority of shareholders.

207. In response to the consultation responses, this disclosure requirement has been retained but modified with reduced detail and couched in general terms as set out in requirement 10.1 and 10.2 of Annex K.

Trend information- Annex K, 7.1

208. Respondents to the May proposals commented that the requirement to "identify its most significant business developments since the close of the financial year to which its last published annual statements relate", was not appropriate for banks, and that it would be better to replace this with the wholesale material adverse change statement that focused on changes in the bank's financial position.

209. CESR agrees with these comments and has amended this disclosure requirement as set out in 7.1 of Annex K.

Historical financial information – Annex K, 11.1

210. As explained in paragraphs 53-55 above, CESR is consulting on the nature of these requirements, and as such the requirements have been amended to include the proposals set out in the July consultation.

211. In addition, respondents to the May proposals commented that banks should not be required to provide cash flow statements.

212. CESR has taken these comments into consideration and has amended the requirements so that cash flow statements will only be required where an issuer is admitting its securities to trading on a regulated market, and not when an issuer is only making a public offer of its securities. The reason for this differentiation is that an issuer whose securities have been admitted to trading on a regulated market will be required to produce such statements on an ongoing basis, however an issuer who is only seeking to offer its securities to the public will not be obliged to produce such statements in the future.

Interim financial statements-Annex K, 11.5

213. Many of the respondents to the December proposals agree that interim financial statements should be included in the prospectus where already published but should not be required to be prepared solely for the prospectus. It was stated that this issue should be left for the Transparency Obligations Directive (TOD). Some of the respondents who agreed with the approach however preferred that interim financial statements should be made mandatory. Some respondents consider that where such financial statements are produced they should be incorporated by reference without any need for further review.

214. The few respondents who did not agree with the approach stated that the trend information should suffice for incorporating information about the bank since the last financial statement and that this requirement could be deleted all together due to the lower risks associated with banks.

215. On consideration of these comments, CESR has decided to amend this disclosure requirement on the basis that it is important for recent financial information to be included in the prospectus as set out in requirements 11.51.and 11.5.2 of Annex K.

Significant change in the issuer's financial position –Annex K, 11.7

216. As mentioned above, respondents to the May proposals commented that it was not appropriate to require a bank to make disclosure about changes in its "trading position", as trading positions can be subject to major changes that are the result of changes in trading strategy. As such, this disclosure does not give investors any information upon which conclusions about bank's solvency can be drawn.

217. CESR agrees with these comments and has deleted the words "trading position" from the significant change statement disclosure requirements as set out in requirement 11.7 of Annex K.

Documents on display – Annex K, 14.

218. Respondents to the December ACP re-iterated their comments that only public documents should be required to be put on display.

219. In line with changes made to this disclosure requirement in all the registration documents, CESR has also amended this disclosure requirement in the Banks registration document as set out in requirement 14 of Annex K.

Disclosure of a bank's solvency

220. In the December ACP (see paragraphs 48-49), CESR asked consultees for their views as to whether or not a bank's actual solvency ratio should be disclosed.

221. Most of the respondents do not consider that it is necessary for the bank's solvency ratio to be disclosed on the basis that such information will already be in the bank's financial statements. In addition, it may be misleading for investors without a full explanation of its significance. Furthermore, it is considered that a brief description of the regulatory environment in which the bank operates will assist investors in evaluating the bank's ability to repay interest on debt and capital.

222. CESR has therefore decided not to include the disclosure requirement for the bank's actual solvency ratio for the time being since it is of little or no value in the context of prospectuses. In any event, if the solvency ratio of a bank were so poor so as to present a serious risk to investors, CESR would expect this fact to be disclosed in the risk factors section. CESR will however reconsider this position if it becomes a requirement to disclose the regulatory solvency ratio assigned by the banking regulators in the EU in the future.

Expanding the scope of the Banks RD

223. As mentioned in paragraph 203 above, respondents to the May proposals considered that the scope of these requirements should be extended to holding companies of banks.

224. On consideration of these comments, CESR has decided that it is not possible to broaden the scope of these requirements to such entities because they are not regulated as banks, and as such the rationale for the lighter touch disclosure regime does not apply to such entities. Obviously, if such an entity is treated as a bank, then it will be able to use the bank's registration document.

Original proposals that have been deleted

225. As mentioned above, many respondents to the December proposals considered that a number of disclosure requirement proposed for banks should be deleted.

226. On consideration of the points raised, CESR has made a considerable reduction to the disclosure requirements for banks and has deleted the following requirements:

Investments (section III.B –Annex 2 December ACP)

227. Some of the respondents considered that a disclosure requirement in respect of a bank's principal future investments is immaterial because the day to day business of these entities involves investments in any event and that further the information will be in the financial statements. There was disagreement as to whether disclosure of future investments may contribute to the investors' assessment of the issuer's ability to fulfil its obligations under the securities.

228. Those who argue for this disclosure to be made, do so on the basis that it would allow investors to have a full understanding of the bank's solvency and ability to pay at least the principal. Those who argue against disclosure state that if such future investments may increase the risk of solvency, then it should be disclosed under general disclosure in the 'prospects' or 'outlook' section.

229. The disclosure requirement in respect of investments has been deleted by CESR on the basis that any principal future investments on which the board has made firm commitments which may affect the bank's ability to meet its obligations in respect of the securities being issued will be disclosed under the 'risks factors' or through the other general disclosure requirements.

Board Practices (section V.C –Annex 2 December ACP)

230. Disclosure on corporate governance practices was not considered to be of importance or necessary by most of the respondents on the basis that this should be driven by other initiatives by the Commission and also that banks are already subject to other regulatory and prudential supervision. Such disclosure is said to be of no interest to investors in debt and derivatives, the type of securities usually issued by banks.

231. On the other hand, some respondents state that this disclosure provides transparency and should be required in light of the recent spotlight on the issue. The role of the board of directors and its practice is at the core of the protection of investors and such information helps to understand how any influence of the potential conflicts of interest can be avoided or reduced by the issuer's corporate governance regime. As such, it should be required regardless of the type of issuer or nature of the securities being issued. One respondent suggested that if the disclosure were to be required then the information should be incorporated by reference since it is already available in public registers of the banks' supervisors.

232. The disclosure requirement on Board Practices has been deleted on the basis that it is of little interest to investors who will normally invest in non equity securities issued by banks.

Related party transactions (section VI.B –Annex 2 December ACP)

233. Nearly all the respondents who responded to the question set out in paragraph 55 of the December ACP as to whether there should be a disclosure obligation with respect to related party transactions did not consider that it is appropriate on the basis that this is one of the major fields of regulation and supervision for banks. As such, any disclosure that is relevant in the context of the issue should be driven by general disclosure or the 'risks' section. Moreover it is stated that the cost of complying with such disclosure far outweighs the benefit since the information will already be available in the financial statements of the issuer.

234. The respondents who advocate the requirement of this disclosure did not provide any substantive reasons except that it would be useful information and that it is already disclosed in the financial statements.

235. This disclosure requirement has been deleted on the basis that this information is, on the whole, irrelevant for investors who will normally invest in securities issued by banks and also partly because such transactions would have been disclosed in the annual financial statements.

Changes made to the Banks registration document requirements in line with other changes made to other registration documents.

236. In addition to the amendments discussed above, CESR has also made amendments to a number of other disclosure requirements that were set out in the May proposals for the same reasons explained above, namely:

a) persons responsible –1.1-Annex K;

b) evaluation of the issuer's solvency-4.1.5-Annex K;

c) profit forecasts and estimates –8-Annex K;

d) administrative, management and supervisory bodies conflicts of interests –9.2 Annex K;

e) interim and other financial information-11.5.1 – Annex K;

f) third party information and statement by experts and declarations of any interests – 13.1 &13.2- Annex K;

g) documents on display –14 - Annex K.

DEPOSITORY RECEIPTS ISSUED OVER SHARES SCHEDULE

237. The responses to the depository receipts building block proposals published in the December ACP were not as many as the responses to the other building blocks, with only 25 responses. This was not unexpected considering that the market is not as extensive in comparison to the market of some of the other products. However, most of those who responded agreed, on the whole, with CESR's approach.

238. In addition to the specific questions, a number of the respondents stated they did not understand nor find convincing the rationale for not allowing the production of a tripartite document for depository receipts. They considered that this approach was contrary to the provisions of the Prospectus Directive.

239. Another issue highlighted by a number of the respondents is the need to distinguish between wholesale and retail depository receipts and the provision of separate requirements for other underlying securities besides equity in particular, debt securities.

240. These responses were reiterated in some of the comments made in response to the May proposals.

Appropriateness of Annex J (CESR/03-208 Annexes)

241. Many of the respondents, on the whole, agreed with the disclosure obligations as set out in Annex 5 of the ACP. However, some respondents also suggested that it was unnecessary to have a separate building block for depository receipts. Instead, the relevant building block relating to the underlying securities should be used by issuers and additional disclosure requirements should be provided to reflect the fact that the securities being issued are depository receipts. Further, it has been suggested that is essential to modify the annex such that where the issuer of the underlying securities is not involved in the issue, the information on that issuer should only be publicly available information.

242. On consideration of these points CESR has decided in view of the unique structure of this product, to stand by its view in respect of the issue of a separate building block for depository receipts. However, on the issue of the need for a tripartite agreement, issuers of depository receipts

will have the option of producing a tripartite agreement but the Registration Document will inevitably be limited to the information on the depository.

The need for a wholesale regime

243. As mentioned above some respondents consider that there is a need to create disclosure requirements for this product tailored to the needs of wholesale investors.

244. At the moment CESR considers that there is no immediate need for a different regime applicable to DR's aimed at wholesale investors, and will asses this need in the future. However, it has introduced a separate section relating to the historical financial information disclosure requirements section, as set out in section 20.1 of Annex J.

The need to create disclosure requirement for underlyings other than shares

245. Some respondents to the December ACP and the May proposals suggested that CESR needs to create additional disclosure requirements for depository receipts issued over other underlyings.

246. CESR has considered these points, and decided that there is no immediate need to create a separate disclosure regime for such products.

Changes made to the original proposals

247. On review of the original proposals CESR has decided to delete certain provisions in the original text of this annex which were considered to be unnecessary or superfluous. For instance, the provisions relating to Lock-Up agreements have been deleted together with the provisions relating to pre-allotment of the underlying shares. The former because it is considered that these agreements are rarely ever relevant for depository receipts and the latter, because these provisions already exist for the depository receipts.

248. Furthermore, this annex was redrafted as set out in the May proposals to ensure that the disclosure requirements for depository receipts are clear, distinct and easily recognisable from the requirements of the underlying shares.

249. In addition to these redrafting changes, all the other changes that have been made to the equity registration document and securities note discussed above as a result of the comments received to the April and May proposals have where applicable been made to this annex.

Additional requirements regarding the Depository to those set out in Annex 5 of the December ACP

250. In the December ACP, CESR asked consultees whether or not there was a need for additional requirements in relation to the depository to those proposed and of the few respondents who responded to this question, most of them considered that it was unnecessary to do so on the basis that such information is not of importance to investors. Some respondents however considered that where there was recourse to the depository by investors, then information relating to the depository's solvency and risk should be provided.

Additional requirements where there is recourse to the Depository to those set out in Annex 5 of the December ACP

251. In the December ACP, CESR asked consultees whether or not there was a need for additional requirements in relation to depository where there is recourse to the depository. Many of the respondents considered that no additional information was required as this issue will be covered by the general materiality disclosure requirement. The rest of the respondents had varying suggestions including: a description of the duties and rights of the depository and investor under the deposit agreement; basic disclosure about the depository's structure, function and financial condition. A few of the respondents considered that where there is recourse, the disclosure should be the same as would be required on the underlying issuer.

252. It is worth noting that one of the respondents, a depository for a vast number of depository receipt issues, considered that this question was a non-issue in itself because the depository serves an agency role and irrespective of any right of recourse, therefore the information about the depository should be minimal.

253. This was supported by a trade association, representing many issuers, who considered that legal recourse to the depository was unusual and a distinction should be made in respect of legal recourse which is as a result of a breach of fiduciary duty.

254. On consideration of these comments, CESR concluded that there was no need to amend its original proposals in relation to this issue as where there is legal recourse to the depository over and above a breach of its fiduciary or agency duties, CESR would expect this fact to be noted in the 'risk factors' section in the prospectus and the circumstances of such recourse to be disclosed in full.

SECURITIES NOTE

255. References made in the following paragraphs refer to the consultation paper published in October (CESR/03-185b) when identified by CP and to the December Addendum (CESR/03-185b) when identified by ACP, unless specified otherwise. Up to paragraph 317 there is a summary of the responses of the market participants to the questions included in the October consultation paper and in the December Addendum.

The building block approach (paragraph 249 of the CP)

256. Many respondents did not answer this question and almost all of those who answered this question supported the creation of building blocks in principle. Many respondents did not give a reason for their support, but where they did, they largely cited the greater flexibility it would provide for the new regime as the reason for their support.

257. However, many respondents who supported the proposal in principle believed that the building block system ran the risk of becoming too prescriptive and gave two reasons for this. Several considered that there was far too much detail in the building blocks. These respondents believed that this high level of detail was too prescriptive and that it might result in the loss of the very flexibility that the system was intended to provide and therefore believed that more generalised and generic blocks should be created.

258. A number of other respondents said that the creation of too many building blocks would mean a loss of flexibility and advocated restricting the number of blocks created to the three main ones (SN Equity, SN Debt and SN Derivatives) and only a few essential additional blocks. Some respondents shared both of these reasons.

259. A few other respondents also believed that there should only be three main building blocks, but argued for an additional block to cover their own particular area of interest, such as asset backed securities, banks or exchanges. A number of respondents pointed out that there was a great deal of unnecessary overlap with the RD.

260. Clearly there is overwhelming support for the building block system, but a significant number felt that it ran the risk of sacrificing its flexibility if it became too detailed and/or resulted in an unnecessary proliferation of building blocks. These comments have been taken into account in the final drafting of the building blocks, as well as for deciding whether additional ones were necessary.

Format of the Schedules (paragraph 250 CP)

261. Only a small number of respondents believed that the Common and Specific Items should be kept separate but there was no consensus on the reason for the objection, even where one was given. For example, one respondent cited clarity as a reason for keeping the blocks separate, whilst another gave ease of amendment in the future as its reason.

262. Other respondents appear to have misunderstood the building block system when formulating their response to the question, for example believing that it would be possible to file the Common Items and Specific Items with the Competent Authority as separate documents, rather than as a single SN. In addition, a number of respondents added that, while they supported the proposal, many of the Common Items were not truly common and were in fact only applicable to Equity. Again some of the respondents also made the point that there was unnecessary overlap between the SN and RD in response to this question

263. Once again, there is overwhelming support for the proposal indicated in the consultation paper. Taking into consideration these comments CESR has produced a number of main schedules combining the common items and the security-specific items blocks. In addition, CESR has prepared a limited number of building blocks with high-level disclosure requirements that can then be added to the schedules in order to deal with disclosure requirements that are not addressed by them.

Complex Financial Instruments (paragraph 251 CP)

264. Most of the respondents did not answer this question and most of those who answered this question agreed that the Competent Authority (CA) should be able to add specific items of another schedule to the main schedule chosen, that it considers necessary having regard to the characteristics of the securities offered, as opposed to their legal form.

265. The key points arising in the responses agreeing with the proposal were as follows

- Disclosure items can be adapted to the characteristics of each security thus proving more flexibility.

- CA should be able to disapply specific disclosure items having regard to the characteristics of the security.

- Avoids delaying an issuer's access to the capital markets by waiting for CESR to issue guidance on a specific type of instrument.

- CA should have to authority to add in specific items but this authority should be provided with specific guidelines in this area.

- CA should always have the right to require additional specific items.

266. The key points arising in the responses disagreeing with the proposal were as follows:

- Main schedule contains sufficient information

- Objective of harmonisation will not be achieved.

267. Taken in consideration the responses to the CP, competent authorities should be able to add specific items of another schedule to the main schedule chosen, as well as disapply specific disclosure items having regard to the characteristics of the securities, as opposed to their legal form.

268. CESR set out its revised proposals on this issue on paragraphs 214-216 of its June consultation paper, taking into accounts comments made to the October consultation paper. The proposals by CESR are replicated on the following three paragraphs:

269. *"It is a fact that not all existing securities can easily be defined as strictly belonging to one of the types of security for which a schedule has been produced. The RD applicable disclosures should be easily determined according to the principles set out above. However, concerning the information of the SN, the scope as defined in the previous paragraphs will determine the SN that should be used as a starting point. Since all relevant information concerning the security must be contained in the prospectus, the issuer might need to add some specific items from another schedule to the main schedule chosen in accordance with the main characteristics of the securities being offered.*

270. *The situation is different when an issuer applies for approval of a prospectus concerning a new type of security, with features completely different from those of the securities for which schedules exist. If the characteristics of those new securities are such that a combination of the existing schedules and building blocks is not suitable, the Competent Authority will decide what*

information should be included in the prospectus in order to comply with Article 5 of the proposed Prospectus Directive. Such prospectus should benefit from the European passport.

271. *If the new type of security becomes a mainstream product, further harmonization would be necessary. CESR Members would assess the convenience of informing the European Commission about the possible need of additional level two measures. Of course that would not prejudice the power of the Commission to take the initiative in such cases".*

Advisers (paragraph 252 CP)

272. Many of the respondents did not answer the question and a small number of the respondents who answered this question believe that advisers should be mentioned in all cases.

273. The key points arising were as follows:

- Information in relation to advisers may give investors an indication of the quality of the information presented.
- Provides the investor with additional information.
- Adviser should be mentioned but the extent of their liability should be detailed.
- Adviser should be co-responsible for the information in the Prospectus.

274. Many of the respondents who answered this question believe that advisers should not be mentioned in all cases. he key points emerging from these responses were as follows:

- Advisers should only be mentioned if they could be held liable for the information provided in a prospectus.
- Question appears to imply that by naming an adviser liability may be attributed to that adviser. Mentioning the adviser does not relieve the directors of their liability for the contents of the prospectus.
- Advisers should only be involved where they have been involved as arrangers.

- Advisers should only be mentioned where their intervention is provided for by a European regulation.

- As the information in relation to the adviser will already be included in the registration document it would not appear necessary to repeat the information in the securities note.

- Mentioning legal advisers would add no value.

- Disclosure of financial and legal advisers would not be relevant in the case of corporate retail debt.

- Advisers should not be mentioned unless there is a conflict of interest

275. CESR has therefore considered that advisors should not be mentioned in all cases. In discussing the responses to this question, CESR noted that it should not be mandatory for issuers to mention advisor(s) in a SN. However, when an issuer discloses the advisor(s) connected with an issue, it should also state the capacity that the advisor(s) acted in.

Audited information (§ 253 CP)

276. Many of the respondents did not answer the question. Most of the respondents who answered this question are in favour of requiring the audit report on all information which has been audited but which forms no part of the annual financial statements. Most of them believe that the audit report is valuable information and an important basis for investor confidence. One respondent is of the opinion that the report should not be included but a note that this other information has been audited.

277. Another respondent warned that auditors would then refrain from the current practice to review certain information not included in the annual financial statements due to the fear of liability.

278. Some responses dealt with the question where the audit report should be published. The following alternatives were given:

- It should generally be contained in the RD. Some respondents are of the opinion that the SN should then contain a reference.

- It should generally be contained in the RD except where relating to the specific offer in which case it should be contained in the SN

- Report should generally be contained in the SN

- Report should only be contained in the SN where it is different from the report contained in the RD otherwise a cross-reference is sufficient

- Report should be included where the financial information is published (SN, RD or both)

279. CESR considered the audit report to reveal valuable information for investors. However, it points out that the disclosure requirement is confined to cases where a report was actually produced by the auditors. CESR has decided to require the reproduction of the report or, with permission of the competent authority, a summary of the report, where the information to which the report refers is given.

Responsibility (§ 254 CP)

280. As discussed in paragraph 37 above, in light of the concerns raised about the responsibility statement included in the registration document, this item has been re-drafted as it has for all the registration documents and all the securities notes.

281. Concerning the specific question included in the CP relating to responsibility disclosure requirement set out in the original proposal of the SN schedules, a number of the respondents did not answer the question and many of those who answered this question feel that there is no necessity that responsibility must rest with the same persons. Those respondents suggesting to split responsibility up argue that for practical reason it is not possible to make the same persons responsible for all parts of the prospectus. It could well be that people change in the time between the release of RD and release of SN.

282. As the details of civil liability are up to the law of each Member State, the disclosure requirements should be open to all possibilities which are in line with Article 6 of the Directive. This includes the possibility that certain persons are liable only for certain parts of the prospectus. However, CESR feels that there should be at least one person or body who is responsible for the entire prospectus. The scope of liability should be disclosed in the RD and in the SN.

283. Taking into consideration the additional comments made by some respondents during the consultation process of the April document (CESR/03-066b), CESR has decided to amend this item again in order to clarify with a more straightforward wording all possible situations of liability: the responsibility for the securities note may be taken either by natural persons, by legal entities or by both. Accordingly, this wording will be the one used in all schedules. As mentioned before, this change has been applied to all proposed schedules (securities notes and registration documents).

Legislation under which securities have been created (§ 259 CP)

284. Only a small number of respondents answered the question. Out of those respondents who have answered this question many are in favour of this requirement. One says is would be a duplication of information asked for under V.A 2 and 12 Annex K CP (law applicable and other specific legislation regarding the issue/offer). Another believes it would lead to uncertainty as to level of disclosure. Those who have answered yes without any comment could possibly be satisfied with information under V.A.2 and 12 Annex K CP.

285. CESR agreed that the line items under V.A.2 and 12 would cover the information asked for and that V.A.2 could be deleted. Therefore the last proposed SN schedules only refer to "legislation under which securities have been created".

Court competent in the event of litigation (§ 259 CP)

286. A significant number of the answers were positive ones and many noticed it might be useful. Some noticed that it would not be possible in pan-European offers and that it may be too burdensome to require the issuer to predict every possible situation for every type of investor in every country an issuer offers in, for a pan-European offer and it may be unnecessary (expensive to investigate) to always have to cover it in every prospectus.

287. CESR has considered this point and has decided that this requirement might be too burdensome for issuers and therefore has deleted it.

Redress service available if any (§ 259 CP)

288. Out of those respondents who have answered this question a great number are against this requirement. It is said that it would be potentially extremely broad and could cover all European consumer protection legislation. A suggestion would be that of not requiring this, or to limit it to the name of the relevant consumer protection legislation and possibly the name of the relevant consumer protection authority.

289. CESR decided to delete this requirement. If there is a redress service available on contractual grounds it is always possible to mention it.

Rating (§ 259 CP)

290. An important number of the respondents who answered this question favour disclosure of rating (at least for debt instruments) and many of those prefer the second wording. The rating agency that has answered the CP suggests that the disclosure item should only encompass ratings made by rating agencies and not by commercial banks. It suggested defining a rating agency as "an entity whose primary business is the issuance of credit ratings made broadly available to the general public for the purpose of evaluating the credit risk of debt securities."

291. It has to be noticed that if the information is "direct" in the meaning of the Market Abuse Directive it must be disclosed by the issuer. This would be the case if the rating has been requested. To avoid a situation were an issuer terminates co-operation with the rating agency in order to avoid disclosure an addition under (ii) is suggested: "…which are assigned to an issuer or its debt securities (i) at the issuer's request or with its co-operation in the rating process or (ii) which may have consequential impact on the issuer or its debt securities".

292. The same rating agency also suggests making a reference with a link or a similar means, to the rating agency for the explanation of the meaning of the rating.

293. A change in rating would probably be a significant new factor in the meaning of Article 16 of the amended proposal for the Directive of the European Parliament and of the Council on the Prospectus, and require a supplement to the prospectus if it occurs before the closing of the offer.

294. CESR came to the conclusion that ratings would be required for debt instruments which were a result of a request or co-operation of the issuer. CESR did not want to create doubt as to the scope of the rule by putting in that non-requested ratings are covered. Indeed, CESR is of the opinion that interrupted co-operation would equal information of "direct effect" and be covered by the market abuse directive. In addition, such a situation could be regarded as a "significant new factor" (Article 16 of the prospectus directive) or as necessary to enable investors to make an informed assessment" (Article 5 of the prospectus directive) and disclosure could be required on one of those grounds. CESR also is of the opinion that the rating result should be accompanied by an explanation of it, and not only a reference to the home page of the rating agency, if this has previously been published by the rating provider.

295. On the last consultation process some respondents commented that the need to produce a supplement if the change in the rating was considered as a significant new factor in the meaning of article 16 of the prospectus directive might be too difficult to comply with, specially in the case of offering programmes, as issuers would have to publish a supplement each time their rating or the rating of their securities is modified. Concerning this argument CESR has analysed the following situations:

- Rating assigned to the securities. This rating will never be included in the base prospectus as it does not refer to a specific issue of securities. Therefore it would be disclosed in the "final terms".
- Rating assigned to the issuer. This rating will be included in the base prospectus if already assigned by then. Any changes in the rating might, if it is a significant new factor in the meaning of article 16 of the Directive, lead to a supplement that should be filed before the closing of the offer or the admission to trading of the next offer or admission of securities done under the offering program.

296. Considering the arguments exposed, CESR believes this requirement is not burdensome and should be kept as it is material information for investors. In addition, CESR considers that changes in the ratings assigned to an issuer are not going to be that frequent and consequently no practical problems should arise.

Blanket Clause (§§ 122-123 ACP)

297. In certain cases, some line items set out in one of the three SN schedules might be inapplicable for a specific issue. A different matter is the case where disclosure requirements are applicable but might be inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates. This concern has been dealt with under Article 8 (3) of the Directive of the European Parliament and of the Council on the Prospectus.

298. This exception does not encompass those cases in which the issuer cannot provide the required information simply due to the nature of the particular issue. For instance, the SN Debt Schedule requires a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued. In some jurisdictions no such resolutions, authorisations and approvals may be foreseen by the respective applicable law. In such a case no information has to be disclosed in order to comply with the line item.

299. With the introduction of a blanket clause CESR acknowledged that the three main schedules might in certain circumstances contain disclosure requirements which are not applicable to the

specific issue in question. CESR considered it to be more appropriate to have only three main SN schedules and thereby running the risk that some disclosure requirements may not fit to any offer of securities than to develop a separate schedule for any single product.

300. In order to give guidance for the regulators and preventing the issuers from adding lots of negative statements for non-applicable line items, CESR discussed the introduction of a blanket clause for the SN schedules as follows: "If certain information required in the line items or equivalent information is not applicable to the issuer or to the securities to which the prospectus relates this information can be omitted."

301. A significant number of market participants generally welcomed the introduction of the blanket clause. However, some concern was raised that CESR cannot override Article 8 (3) of the Directive. It seems that some market participants misunderstood the background of the blanket clause. They understood the blanket clause to be a definition and specification of Article 8 (3).

302. Another concern was that a harmonized application has to be obtained. Some market participants asked for an extension of the scope so that the blanket clause also applies to the registration document. A number of market participants pleaded for a more flexible approach by extending the scope of the blanket clause on information of minor importance. If certain line items are actually not applicable to an issue they should simply not apply and no information in this concern should be requested from an issuer.

303. CESR acknowledged the suggestion to extend the scope to information of minor materiality. Due to the purpose of harmonization, CESR could not follow this proposal. CESR already reflected the general perception from market participants that the schedules would be too detailed by shortening them. Therefore there is also no need to grant the issuer a further ease by such an extended blanket clause.

304. Following the assessment of this consultation, CESR has set out its revised views on the blanket clause in paragraphs 217-220 of the June consultation paper (CESR/03-162) which for ease of understanding, are reproduced in the following paragraphs:

305. *"There are only a limited number of main schedules applicable for all types of offers or admission to trading. Therefore some disclosure requirements may be inapplicable in some specific cases. These are cases in which the issuer cannot provide the required information.*

306. *For instance, in the case of an offer of equity securities without right of pre-emption for the existing shareholders, the requirements concerning pre-emption rights are not applicable.*

307. *As a general principle, if certain information required in the schedules or equivalent information is not applicable to the issuer, to the offer or to the securities to which the prospectus relates, this information can be omitted. In other words, the issuer must only provide the required information, "if any".*

308. *A different matter is the case where disclosure requirements are applicable but might be inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates. This concern has been dealt with under Article 8 (3) of the future Prospectus Directive: "Without prejudice to the adequate information of investors, where, exceptionally, certain information required in implementing measures referred to in Article 7 (1) to be included in a prospectus are inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, the requirement shall not apply".*

Working Capital (§ 125-126 ACP)

309. In creating the separate disclosure requirements for RDs and SNs, it was sometimes necessary to allocate different parts of IOSCO disclosure requirements between the RD and the SN. One example of such a possible allocation split was IOSCO disclosure V.B.1.a., second sentence, which deals with working capital statements ("Include a statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements, or, if not, how it proposes to provide the additional working capital needed.").

310. Most of the respondents who answered this question considered that this disclosure is more appropriate to the RD Equity.

311. The common argument put forward is a "logical" one as it is merely said that this information on the issuer should be included in the RD Equity. It is also said that inserting this statement in the SN Equity is of no importance for the investor and could be misleading if there has been no material changes in the working capital since the issuer's annual report. Some respondents considered that this disclosure is more appropriate to the SN. This is due to the fact that:

- capital statements may be subject to quick and sudden changes,
- it is a dynamic statement with a finite life,
- the item is pertinent to the issuer's position at the date when a prospectus is used,
- information should be timely and relate to the position of the company at the time of the issue.

312. One respondent suggested that this item should be in the RD Equity or SN Equity at the choice of the issuer. Another respondent supported that it would be more appropriate to require the company to give a statement only in the case it regards its working capital is not being sufficient for the company's present requirements. Another one, considering the time and expense necessary to produce a working capital statement, suggested that a statement which is less than 12 months old may be relied upon, provided that there has been no material change to the statement during the period and a statement to that effect is contained in the SN Equity.

313. As a conclusion, CESR proposes that the statement about working capital is included in the SN Equity for it relates to the position of the company at the time of the issue. The statement about working capital forms part of the discussion concerning liquidity and capital resources that is currently part of the RD. The question has been raised if it should not be more appropriate to make these disclosures part of the SN rather than the RD so that the wider discussion is more closely linked to the working capital statement. CESR is of the opinion of the major part of the respondents who prefers to keep the other disclosures regarding liquidity and capital resources in the RD.

SN EQUITY SCHEDULE (§ 260-261 CP and § 132 ACP)

314. CESR has proposed the adoption of three main schedules (SN Equity, SN Debt and SN Derivatives) and has requested views on the items that were considered unnecessary and those that were missing and should be added to the schedules. In general, as already referred to in relation to the questions on the building block approach and on the format of the schedules (§ 249 and 250 of the CP), a significant number of respondents, on the one hand, considered the level of detail in the schedules too extensive and prescriptive, and, on the other hand, called attention to overlaps between the SN and the RD.

315. CESR recognises that excessive detail may jeopardize the clearness of the schedules. Nevertheless, CESR is also of the opinion that the items in the schedules do need to contain a sufficient level of detail to ensure harmonization of the prospectus drawn up for cross border offers and admissions to trading.

316. CESR has, therefore, carefully reviewed the SN Equity Schedule and, where possible and appropriate, has removed any excessively detailed items. CESR has tried to achieve this goal by adopting more general and straightforward wordings, by deleting lists of examples, by deleting repeated items and items with unclear meaning, and by merging items with similar content.

317. Besides the amendments that arise from proposals made during the consultation, it is worth noting that some items of the SN Equity Schedule have been changed due to other reasons. In fact,

the wording of certain items has been aligned with the text of the prospectus directive (e.g. the disclosure requirements related to the persons liable for the prospectus), and certain items have been amended following the outcome of other questions discussed in the CP (e.g. the disclosure requirement related to advisers -§ 252 of the CP). The paragraphs below will examine the amendments made in relation to specific items that have been criticised by a significant number of respondents.

SN Equity Securities Schedule (Annex K CP)

318. To deal with concerns expressed by some respondents, who considered it to be unnecessary and of difficult compliance, the item related to capitalization and indebtedness has been amended, extending the deadline requirement (from 60 to 90 days) and removing the need for a negative statement. In the responses to the last consultation process in April, some respondents considered this item to be drafted in a confusing way. CESR has slightly changed the wording in an attempt to make it more clear. There have also been some suggestions to extend the deadline. CESR has considered these proposals but has decided not to make any change, taking into consideration the fact that the deadline was already extended from 60 to 90 days and that the deadline is a reasonable one to meet the need of updated information without creating a heavy burden on issuers.

319. A vast number of respondents expressed the view that the section on reasons of the offer and use of proceeds was too detailed and too wide. The wording of this section has been restated in more general terms without putting at risk the importance of the information to be provided.

320. The schedule presented for consultation in October comprised two items related to interest of experts: interests of experts in the issue/offer and conflicts of interests. These items have been criticised by some respondents mainly because they seem too broad and because no guidance has been provided on the concept of conflict of interest in the scope of an offer and/or admission to trading. Taken in consideration the overlap between the two, these two items have been merged and the new wording makes it clearer that only interests material to the issue are required to be disclosed. The April consultation process has raised the same concerns relating to the vagueness of the wording and the lack of guidance. CESR has once more analysed the subject in detail and has decided not to make any change in the proposed advice. The diversity of situations that have to be envisaged under this item, implies that any further clarification at level 2 would lead to a too detailed and possibly inflexible requirement.

321. Some respondents pointed out that the section on pre-allotment disclosure and over-allotment and greenshoe was too detailed and some respondents proposed to delete certain items included in

this section. The disclosure requirements proposed in this section follow the proposals made in an earlier CESR document (Stabilisation and Allotment – A European Supervisory Approach, April 2002, CESR/02-020b) that CESR believes should be taken in consideration in the present work.

322. Two examples of disclosure requirements that have been amended to avoid excessive detail, as mentioned above, are the items related to underwriting and pricing. In both situations, the adoption of a paragraph with a more general wording makes it possible to delete a few other paragraphs and to prune unnecessary repetitions.

323. The disclosure requirement related to price history has been considered as too detailed by some respondents, unduly burdensome and unnecessary as it comprises information which is publicly available. CESR has debated this issue at length and it has been decided to remove this item from the schedule.

324. A vast number of respondents considered the section on expenses of the issue/offer too detailed, irrelevant for investors, and not material for the assessment of the issuer or of the securities, and proposed the information required to be limited to the net proceeds of the offer and to an estimated of the expenses. CESR recognises that the detailed of this item was excessive and therefore has confined the disclosure to net proceeds and total expenses.

325. However, as the underwriting commissions are deemed to be relevant information in general, the April proposal made clearer that when describing the main features of such agreement the commissions paid should be disclosed. A large number of respondents commented on the item relating to underwriting and placement agreements in the April consultation process. They were concerned more specifically by the requirement to disclose the individual commissions because of the implications this requirement would have on the competitive position of the entities involved in the issue. CESR has taken on board these comments and has, as suggested by the respondents, amended the wording to require only the overall amounts of the underwriting commissions and of the placing commissions.

326. A vast number of respondents expressed their concerns in relation to the disclosure requirement of taxes. The general view was that only information on withholding taxes should be provided because it directly affects the amount paid out to investors, but that regarding further tax issues, a recommendation to investors to seek individual tax advice should be sufficient, as otherwise an offer or admission to trading of securities in a multitude of EU countries would lead to a voluminous tax section in the prospectus and would create substantial practical problems for the issuer. CESR fully endorses this view and wishes to clarify that requiring a full disclosure of the tax regime in each country was never its proposal. CESR believes that the drafting of the last sentence

of the requirement ("Information on taxes to be paid by the investors in connection with the offer") has caused the confusion. With this last sentence CESR wished to deal with those specific taxes that have to be paid by the investors because of the fact of subscribing to the offer. In some countries the subscription of securities in primary market and the physical delivery of these securities has taxes attached to be paid by the investors and CESR considers, that since these taxes, as the withholding tax, directly affect the amount paid out to investors, they should be disclosed in the prospectus. In order to make clearer that only those specific taxes must be disclosed, CESR proposes to delete the above mentioned sentence from item 4.11 and to introduce this requirement in item 5.3.1. by adding the words "and taxes" in the last sentence.

327. A proposal to require a full reprint of the complete terms and conditions of the issue was put forward in the consultation process in the belief that it would have an added value to the investors. CESR has rejected this suggestion as it considers that issuers must anyway include the terms and conditions of the securities in the prospectus. How such information is presented in the prospectus is left at the choice of the issuer.

328. Some respondents considered that item 5.3.4 under Pricing, regarding those situation "where there is or could be a material disparity between the public offer price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past three years" should be deleted because it has no relevance for deciding on the appropriateness of the public offer price. CESR does not follow this view as it believes that such information is relevant for the assessment of the proposed price. However, CESR has further considered that the time period of three years initially required and has restricted the requirement to a period of one year

329. Under the section of Selling securities holders concerns were expressed regarding the disclosure of the address of selling shareholders who are natural persons because it may be a breach of privacy laws in certain countries and can actually endanger the personal security of private individuals. In order to avoid this potential problem CESR has clarified the wording that refers now to the business address

330. Insofar as proposals of items to be included in the SN Equity Schedule, CESR has carefully considered the proposals received. However, CESR believes that in certain cases the item suggested is already included in the schedule (this applies for a proposal to include information on allotment and stabilisation), in other cases the proposed requirement is already provided for at level 1 (circumstances in which the investor is allowed to withdraw its application), and in other cases the disclosure does not relate directly to the issues specified in Article 5(1) of the Directive (this is the

case of information regarding characteristics of the clearing systems of trades that will only be disclosed if material to the offer/admission).

Additional Information in the SN Equity Schedule (Annex 7 ACP)

331. CESR came to the conclusion that rather that drafting specific building blocks for shares in general, or for specific classes of shares, it would be more adequate to add to the SN Equity Schedule (Annex K of the CP) a few items of information, in particular with regard to the description of rights attached to the securities, broad enough to cover any class of shares.

332. Most respondents were supportive of the approach proposed. Some respondents agreed with the proposal, provided that the blanket clause is adopted (see § 120–123 of the ACP). Considering the wide support, CESR added to the SN Equity Schedule proposed in April those items of information. However, the wording of these items was slightly changed either to avoid duplications with the chapeau of the main item either to ensure its clarity.

SN DEBT SCHEDULE (§§ 260-261 CP and § 136 ACP)

333. CESR refers to the general comments made for the SN Equity Schedule. For the same reason, CESR has carefully reviewed the SN Debt Schedule and, where possible and appropriate, has removed any excessively detailed items. CESR has tried to achieve this goal by adopting more general and straightforward wordings, by deleting lists of examples, by deleting repeated items and items with unclear meaning, and by merging items with similar content.

334. Some items of the SN Debt Schedule have been changed due to other reasons (i.e. to align with the text of the prospectus directive or to adapt to the outcome of other questions included in the CP or the ACP).

335. The paragraphs below will examine the amendments made in relation to specific items that have been criticised by a significant number of respondents.

SN Debt Schedule (Annex L CP)

336. Some items initially proposed in the SN Debt Schedule like Selling securities holders, Capitalization and indebtedness or specific line items under Terms and conditions of the offer or Plan of distribution, have been deleted to deal with the concerns expressed by most respondents of an excessive level of detail and taking into consideration the fact the in most cases these disclosure requirements are only relevant for equity securities.

337. A suggestion to include the item on capitalization and indebtedness in the Debt SN was received in the last consultation process. Nevertheless, CESR has decided not to include this section taking into consideration that most of the responses received in the previous consultation process considered this requirement not relevant for Debt.

338. The schedule presented for consultation comprised two items related to interest of experts: interests of experts in the issue/offer and conflicts of interests. Concerning these items the same approach as in the SN Equity has been followed for the reasons mentioned above.

339. Two examples of disclosure requirements that have been amended to avoid excessive detail, as mentioned above, are the items related to interest rate and underwriting. In both situation, the adoption of a paragraph with a more general wording makes it possible to delete a few other paragraphs and to prune unnecessary repetitions.

340. Concerning the section on expenses of the issue/offer CESR has followed for the Debt schedule the same solution as the one taken in the SN Equity schedule.

341. One respondent in the April consultation process commented on the requirement to disclose the nominal interest rate and provisions relating to interest payable (item 4.7 of Annex E CESR/03-208) and pointed out that it would not be practicable to set out all the standard terms and conditions for fixing LIBOR, PIBOR and the multitude of other rate types. This would be a particular issue in the case of an offering programme where it would be necessary to disclose the fullest possible range which would come to hundreds of pages. A suggestion was made that a reference to the appropriate data source should be sufficient. CESR considers there is no need for a full disclosure of all the standards and conditions for fixing the interest payable (for example LIBOR). A general description of the underlying on which the interest rate is based and of the method to relate the two as well as a description of any market disruption, adjustment rules and the name of the calculation agent as set out in this line item is sufficient.

342. A few comments made in the April consultation process pointed out the fact that some requirements in the schedule might not be applicable to offers or admissions to trading of debt securities since they are more adapted to offers or admissions to trading of equity securities. Although this might be the case in some cases CESR believes it's better to keep the requirements as they stand, bearing in mind that in those cases where they are not applicable, the issuer will not have to disclose any information

343. Insofar as proposals of items to be included in the SN Debt Schedule, most respondents considered that the schedule contained already all the relevant information for investors. However,

following the responses given to § 259 of the CP (see above), CESR has included an additional requirement related to the rating.

Additional Information in the SN Debt Schedule (Annex 8 ACP)

344. CESR came to the conclusion that rather that drafting specific building blocks for debt securities with a derivative component it would be more adequate to add under the item Interest rate of the SN Debt Schedule (Annex L of the CP) a few items of information regard to the underlying, in order to deal with these products.

345. Considering the wide support expressed by the respondents, CESR added those items of information to the SN Debt Schedule proposed in April. However, the wording of these items was slightly changed to ensure its clarity.

ADDITIONAL SN BUILDING BLOCK FOR ASSET BACKED SECURITIES (§§ 143-144 ACP)

346. In relation to the additional SN building block for Asset Backed Securities (Annex 10 of ACP), CESR raised a question in the Addendum as to whether these disclosure requirements were appropriate. Only 12 responses were received on this question. However, those who did respond provided detailed comments, including drafting suggestions, on the proposed disclosure requirements. When amending the text of the disclosure requirements, CESR has given due consideration to all comments and drafting suggestions made by respondents.

347. Several respondents raised comments on the definition of asset backed securities. CESR is of the view that given the specialized nature of asset backed securities it is necessary to give a definition. CESR has sought to simplify/clarify the definition initially contained in the building block. The amended definition indicated in the text of the Technical Advice of April (CESR/03-066b) has been included in the final schedule (Annex H of CESR/03-208) without further amendments.

348. CESR has made amendments throughout the building block to reflect comments made by respondents that ABS typically do not represent an ownership interest, as well as comments that that term 'securitised assets' should be used consistently throughout the building block.

349. Several respondents made comments on disclosure B.2.2 of Annex 10 of the Addendum concerning information on obligors. In order to address these comments, CESR has amended the disclosure so that in the case of a small number of easily identifiable obligors, a description of each must be given, whereas in all other cases (i.e. where a large number of obligors is involved), only the general characteristics of the obligors must be provided. CESR is of the view that a description

of the economic environment, as well as global statistical data referred to the securitised assets, is relevant information and should continue to be included.

350. Several respondents made comments on disclosure B.2.11, concerning information where the assets comprise obligations of 5 or fewer obligors, or where an obligor accounts for 20% or more of the assets or a material portion of the assets. Comments arose on the percentage limit level, as well as the term 'material portion' being too broad. However, CESR has not proposed an amendment as it is of the view that it is necessary to include an objective criterion while at the same time allowing for flexibility in certain cases.

351. One respondent stated that the information should be limited to that which is publicly available. It is important to note that the information required is that so far as the issuer is aware or able to ascertain from information published by the obligor. Several comments arose on who would be responsible for this information. CESR considers that the responsibility disclosures set out in Section 1 of the SN Debt Schedule, adequately addresses the concerns raised.

352. CESR has amended disclosure B.2.11 to require more detailed information on each obligor, i.e. it should be the same as that required for an issuer under the RD Wholesale Debt, rather that that under the RD ABS building block, as was previously suggested. In response to a concern that details of principal terms of any relationship between an issuer, guarantor and obligor, would be extremely burdensome to comply with when many obligors exist, CESR has constrained this disclosure to relationships that are material to the issue.

353. Several comments arose on disclosure where more than 5% of the assets comprise equity securities that are not admitted to trading on a regulated market, stating that the requirement was too extensive. In response to the concerns expressed, CESR considers it appropriate to increase the threshold to 10%.

354. A number of comments also arose on the disclosure requirement where a material portion of the assets are backed by real property. CESR considers it appropriate to require a valuation report in such circumstances.

355. Several respondents raised comments on the Investment Considerations section of this building block. In order to address concerns expressed, CESR has restricted the disclosure requirement concerning securities backed by existing assets to situations involving further issues, and has also moved this disclosure requirement to the B section. As suggested by respondents, average life and method of calculation for the securities for different prepayment rates is speculative and not usually provided by issuers. Therefore, CESR proposes to delete this disclosure. The ratings agency

disclosure is duplicative of that contained in the SN Debt Schedule and, therefore, CESR proposes that it be deleted.

356. In relation to the 'Structure and Cash Flow' section, and in response to a comment received, CESR has adapted the disclosure concerning the structure of the transaction (D.1.1) to allow for a structure diagram, if necessary. Two respondents stated that a financial service table should not be required when explaining how the cash flow from the assets will meet the issuer's obligations (D.1.4(a)). Having considered this issue further, CESR considers that it remains a valuable disclosure and, therefore, should be retained.

357. In response to several comments received on the level of detail of the disclosure concerning the originator or creator of the assets backing the issue (B.1.5), CESR considers that this disclosure should continue to be required for originators of assets backing the issue, but has deleted the reference to 'creator'.

358. In addition to the discussion of the comments made to the Addendum to the consultation paper, in the following paragraphs the main remarks made to the April proposals are examined.

359. Only a small number of responses were received in relation to the Asset Backed Securities Securities Note Building Block disclosure requirements. When amending the text of the disclosure requirements, CESR has given due consideration to all comments and drafting suggestions made by respondents.

360. Several of the respondents sought clarifications as to the meaning of certain terms used in the ABS SN Building Block. CESR has not made any amendments to the disclosure requirements in such cases, as guidance in relation to Level 2 disclosure requirements should be provided at a later stage.

361. Several respondents raised comments in relation to disclosures 1.2 and 2.2.11 (Annex H of document CESR/03-066b), concerning disclosure of information about an obligor from information published by that obligor. The respondents raised the point that issuers should also be able to publish information 'contained in publicly available sources', i.e. from third party sources. CESR has considered this proposal, and continues to be of the view that the information disclosed should be limited to that published by an obligor.

362. In relation to disclosure 2.2.2(a), a comment was raised that this requirement could lead to the disclosure of commercially sensitive information. Whereas CESR recognises that the omission of commercially sensitive information is covered under Article 8(2) of the Prospectus Directive, it has amended this disclosure requirement slightly to address the concern expressed.

363. Several respondents raised comments regarding disclosure requirement 2.2.16 on assets backed by real property. Comments provided suggested that the requirement to provide a valuation report was unduly burdensome on issuers and this disclosure should not apply where there are 5 or more properties. CESR is of the view that valuation reports should be provided, except in the circumstances as provided for in the disclosure requirement. In addition, CESR believes that objective criteria should not be inserted to determine whether or not this disclosure is required

ADDITIONAL BUILDING BLOCK FOR GUARANTEES (§§ 149-150-151 ACP)

364. There was overwhelming support for the proposal, with a great number of those in favour of this Building Block making no additional comment in answer to the question. In view of the strong support CESR will adopt the proposal for a Guarantees Building Block.

365. There were very few calls for amendments to the Building Block. Most respondents combined their answers to questions 150 and 151, and only a small number suggested any amendments. There was also little consensus over the amendments that might be necessary for this Building Block.

366. However, CESR has assessed each of the suggested amendments given in response to the Addendum to the Consultation Paper and re-evaluated the building block in light of the comments. CESR's response to the suggested amendments is set out below.

Nature of the Guarantee

367. It was suggested that the obligation in paragraph 1 was too wide and would catch guarantees covering obligations that had no material impact on the security being issued. The new wording suggested would have narrowed the scope of the building block too far, but CESR acknowledged the validity of the comment and amended the paragraph by amending the first sentence so that it reads "A description of any arrangement intended to ensure that any obligation material to the issue will be duly serviced …".

368. Some respondents wanted the scope of the obligation narrowed so that the building block only caught arrangements that gave security holders a right to demand a payment from the issuer or a financial backing of the issuer in another form. Some wanted it restricted to arrangements that gave the security holder a direct right of action against the guarantor. CESR decided to reject these suggestions. In the case of the first suggestion, the point of most guarantees is that you can also demand payment from the guarantor so to accept this amendment would make the building block

redundant. In the case of the second suggestion, CESR intentionally sought to catch arrangements beyond the scope of a traditional guarantee as their presence or absence would affect an investment decision and they would no obligation to disclose them otherwise. There were also some minor drafting amendments suggested.

369. Only minor drafting amendments were suggested for the scope of the guarantee.

Declaration of Responsibility

370. There were suggestions for amendments to these paragraphs, but on reflection CESR decided that these obligations were adequately covered in the main SN Schedules to which this block would be added, so these two paragraphs could be deleted.

Information to be disclosed about the guarantor

371. An amendment to the paragraph was suggested so that the disclosure would operate to require the guarantor to disclose information about itself as if it were the issuer of the security. This would mean that the guarantor could disclose at the most appropriate level so, for example, a bank acting as guarantor could take advantage of the reduced RD disclosure requirements for banks. CESR decided to adopt this suggestion as it was equitable and gave greater flexibility.

372. Some respondents suggested that information on the guarantor might be incorporated by reference. This would only be possible where the Competent Authority has approved the documents to be incorporated so the suggestion dove-tails with another suggestion, that information on the guarantor be adapted where it is listed. This proposal is sensible, as it does not reduce the level of disclosure, it merely simplifies the drafting of the prospectus. However, the Directive itself permits this so no amendment to the Guarantees Building Block is needed.

Documents on display

373. There were some calls to delete this requirement, for the same reasons given in relation to the equivalent requirement placed in the main SN Schedules. In principle we decided that while there would be no general obligation to disclose documents in the main Schedules, this requirement would be assessed on a case by case basis. In this instance it was decided that the guarantee was such a fundamental document its display was justified.

374. Conversely, there were also calls to require the disclosure of the text of the guarantee in its entirety. This obligation would result in the verbatim reproduction of very lengthy documents in

the prospectus which would be a burden on issuers without giving any benefit to investors as the material terms and conditions would be disclosed under paragraph 2 of the building block and the guarantee itself would be displayed.

Other Matters

375. Some respondents also suggested that the building block should permit reduced disclosures on the issuer where the guarantor is making full disclosures. This would run counter to current practice and, where the security holder has an option of proceeding against the issuer, the information is valuable. Accordingly CESR decided to reject this proposal.

376. Apart from the comments received to the December consultation, additional remarks have been raised in response to the revised April proposals (CESR/03-066b). The main topics are discussed in the following paragraphs.

377. CESR received only four more submissions on the Guarantees Building Block. These submissions largely repeated matters raised in response to the original consultation and one of them endorsed CESR's proposal.

378. One submission repeated the call for significantly reduced disclosure for the issuer where full disclosure was being made by the guarantor. This matter was raised in the original consultation, fully discussed by CESR and its views set out in the feedback. CESR did look at the matter again, but determined that it was given no reason to change its original view, so the suggestion was again rejected.

379. Reduced disclosures were called for in another submission where it was sought to expand the principle that disclosure on the guarantor should be determined by the nature of the guarantor to multi-guarantor situations by applying the lower disclosure level to all guarantors. So, if one out of four guarantors is a bank, all guarantors should benefit from the reduced disclosure requirements for banks. The principle was further expanded to suggest that where a guarantor is a bank the issuer need only make the disclosures required of a bank, irrespective of the nature of the issuer. The principle CESR set out in the consultation feedback was that a guarantor making disclosures should not be penalised into making greater disclosures as a guarantor than it would have to make as an issuer. Investors are not harmed by this because it has been determined that certain issuers can make reduced disclosures because equivalent protection is provided by, for example, the regulatory regime imposed on banks. It would be a misapplication of the principle to say that other entities can benefit from a guarantor or co-guarantor bank's reduced disclosure requirement as those other entities would not be subject to the bank's regulatory regime.

380. Finally, there was a submission supporting the reprinting of the entire text of a guarantee in the prospectus, except where it is too complex, in which case the requirement should be waived. The reprinting of the text of the guarantee had already been raised in response to the December 2002 Consultation Paper and fully discussed by CESR. At the time CESR acknowledged the importance of the document and decided that investors should be given an opportunity to see the text. CESR considered that the most practical way of achieving this was the disclosure of material terms and conditions in the prospectus with the guarantee itself being placed on display for investors. Having considered the new suggestion, CESR has decided not to change its view as the decision to waive the requirement for reprinting the guarantee on the grounds of complexity would be subjective and impossible to apply consistently across the EU. The proposal was therefore rejected.

381. Accordingly, no further amendment to Guarantees Building Block was made, to April's proposals.

PART TWO – INCORPORATION BY REFERENCE

Comments made to the October consultation paper (CESR/02-185b)

382. References on the paragraphs below are made to the relevant paragraphs of the Incorporation by Reference section of document CESR/02-185b.

General comments

383. Of the responses received to the consultation paper around thirty did not comment on the part regarding incorporation by reference and among those that did a certain number of them commented on the provisions contained in the text of the Directive. Most of them referred to the requirements incorporation by reference as too restrictive. In particular, the main object of consideration has been the circumstance that only information contained in documents that have been previously approved or filed with the competent authority may be incorporated. This provision, it has been noted by certain respondents, seems to be particularly problematic with respect to third country issuers, whose possibility to take advantage of the provision on incorporation by reference might be reduced. Consequently the proposed level 2 implementing measures that touched this particular aspect of incorporation by reference have been equally criticised.

384. Several respondents have also commented on the role of the competent authority when authorizing incorporation by reference in the approval of the prospectus process. In particular some respondents have suggested that the competent authorities should be given a certain level of flexibility. Taking in consideration the present text of the Directive when a document has the required characteristics its incorporation should be allowed. Nevertheless, in order to avoid, as indicated by several respondents, that the prospectus ends up becoming a one page document simply containing references to other documents, CESR has advised that the issuer, when drafting the prospectus, should duly consider whether the comprehensibility of the prospectus is endangered.

Documents that can be incorporated by reference (paragraphs 270-282)

385. With specific reference to the characteristics of the documents that can be incorporated by reference, CESR had advised to assure at level 2 that the documents should be drawn up in the same language as the prospectus or the documents composing it into which the information is incorporated by reference and that they should have been previously filed with the competent authority. More comments on this issue were raised during the open hearing on 27th of May

2003. It was argued that the above mentioned requirement is an unnecessary restriction. As an example, it was said that issuers that have produced a prospectus drawn up in English for the eurobond market would be banned from incorporating by reference interim reports produced in their own language. After assessing the issue again CESR still considers that the documents incorporated by reference are part of the prospectus and should follow the same rules in relation to language. Otherwise a prospectus made out by parts written in different languages would confuse investors.

386. Anyway almost all respondents to the October consultation paper seemed to agree on the first requirement on the basis that the documents incorporated by reference are part of the prospectus and should therefore be treated similarly.

387. The second requirement on which, as mentioned above, several comments have been received, has instead been deleted from CESR's proposed advice because it is inserted in the present text of the Directive.

388. CESR had also proposed the introduction at level 2 of an illustrative list of documents that might be incorporated by reference and asked whether such a list was acceptable. Most respondents felt the list was acceptable even though some of them suggested to amend the wording. Nevertheless several other respondents noted that probably the list might not be necessary as the requirements the documents should have are already indicated in the Directive.

389. CESR is of the opinion that the list is useful even if it is for illustrative purposes and has therefore kept it in its advice amending the wording of several documents in consideration of the respondents' suggestions.

390. As far as "press releases" are concerned, some respondents questioned whether their incorporation by reference should be allowed. In particular several have noted that the term "press releases" needs clarification as to whether these should be interpreted as referred to all forms of press releases or should be confined to regulatory announcements. In order to restrict these to those that are published according to the existing Directives, as required by the Directive the suggested wording has been introduced. In order to avoid other similar misunderstandings it has been made more clear that the documents indicated in the list may only be incorporated by reference if they have the requirements provided for by the law and the implementing measures.

391. Accepting other respondents' suggestions, "circulars to security holders" have been added to the list.

392. A certain number of respondents suggested to remove from the list the annual and interim financial statements or the audit report because such documents contain extremely relevant information that should be inserted in the prospectus and not only incorporated by reference. CESR has kept these documents in the list because the information incorporated by reference is in the prospectus and therefore the incorporation of such documents does not mean that the said information is not contained in the prospectus.

393. Other amendments have been introduced after having considered the answers to CESR's question in paragraph 282 of the October CP on the need for further technical advice. In particular many respondents have indicated the need to clarify whether partial incorporation of a document could be allowed. CESR is of the opinion that this practice should be allowed because it might prove useful especially when historical information is incorporated and in order not to overburden investors with an excessive amount of unnecessary information. CESR therefore included in its April proposals the clarification that the issuer may incorporate information in a prospectus by making reference only to certain parts of a document, provided that this is not misleading and the issuer states that the non incorporated parts are not relevant for the investor. More comments were received in response to such proposals. It was argued that it might be the case that the non incorporated parts are covered elsewhere in the prospectus itself, so there is no need for such a statement in relation to these. CESR agrees with the comment and has amended paragraph 100 of its July Advice accordingly.

394. As suggested by other respondents CESR has also clarified that if the document incorporated by reference contains information which has undergone material changes, the prospectus should clearly state such a circumstance including the updated information.

395. One respondent has expressed the opinion that incorporation by reference should not be allowed in the supplements but on the other side suggested to use the press releases as supplements. CESR is of the opinion that incorporation by reference may prove useful also in occasion of the publication of supplements that are always a part of the prospectus.

Documents that can be incorporated by reference for annual updating of the registration document (paragraph 283)

396. The approach followed in the Consultation Paper according to which the second point of the provisional request on incorporation by reference was no longer consistent with the amended text of the Directive has been confirmed by the Additional Provisional Request that has clearly stated that the request was revoked since the obligation to update the registration document on an annual basis had been removed. No technical advice is therefore given on this particular issue.

Additional Technical Advice (paragraphs 284-290)

397. On the basis that the information incorporated by reference is part of the prospectus, CESR also proposed in the consultation paper that the documents incorporated by reference should be made available with the same modalities as the prospectus. Having this provision been included in the text of the Directive, CESR has deleted it from its technical advice.

398. Coherently with the advice given for the request concerning the availability of the prospectus, CESR had proposed in the consultation paper to limit the possible links of a prospectus made available in electronic form only to the documents incorporated by reference with easy and immediate technical modalities. Various respondents have shown their agreement to the said advice.

PART THREE – AVAILABILITY OF PROSPECTUS

General Comments

399. Besides the specific comments made in relation to the matters particularly dealt with in the first draft of technical advice and mentioned below, comments have been received with regard to an additional point that, in the perspective of some respondents, should be covered by the CESR technical advice.

400. This point concerns the timing of the availability of the prospectus to investors and, in particular, the meaning of the "reasonable time in advance" referred to in Article 14(1) of the prospectus Directive.

401. In view of the terms of the Provisional Request in this area, CESR consider that any advice on this point would not remain in the parameters of such Provisional Request.

402. References on the paragraphs below are made to the relevant paragraphs of the document CESR/02-185b

Availability in an electronic form (paragraphs 302 – 307)

403. CESR had proposed as level 2 advice that when a prospectus has been put available through an electronic form some additional safety measures are required, such as accessibility, restricted links, document protection and ability to easily download and print the prospectus. CESR also advised for the need to include a disclaimer, limiting the offer to its target markets.

404. Besides the formulation of such proposed measures, CESR requested views on the need of additional implementing measures at Level 2 defining what can be considered "easy access" and what specific file formats could be accepted.

405. A significant number of the respondents were of the opinion that no further implementing measures were necessary. Others considered that CESR should develop additional advice on the "easy access" concept and the specific file formats.

406. Bearing in mind that any advice given in what concerns this specific details could rapidly become out of date as a result of technological changes, CESR is of the opinion that Level 2 advice, in what concerns availability in an electronic form, is complete and, therefore, it has merely been changed to accommodate the amendments made to the Directive, in particular in what refers to article 14 (2) (c) and (d).

Availability via the press (paragraphs 308 – 314)

407. Within this section, CESR proposed an approach at level 2 which set out the requirements with regard to the scope, the minimum circulation, and the nature of the newspapers used when the issuer, the offeror or the person asking for admission to trading chooses to publish the prospectus by this mean.

408. A significant number of respondents found this requirements, and in particular the one concerning circulation, too restrictive and too formalistic and, in certain countries, leading to the preclusion of the insertion of the prospectus in currently used newspaper and to the limitation of the designated newspapers to "tabloids" or sports newspapers.

409. A few respondents made comments to decisions taken at level 1, considering that the press should not be used, or at least should be rethought, as a means of availability of the prospectus, and suggesting that the duty to deliver a paper copy, if requested, should also apply in this case.

410. CESR accepted the comments made insofar as the minimum circulation requirement is concerned. As the establishing of a threshold is not considered appropriate for the reasons already set out in the Consultation Paper, CESR has, therefore, proposed in its April revised advice to adopt a subjective requirement and to leave its assessment to the competent authorities. This requirement was further assessed by CESR after reviewing the results of the consultation to the April proposals and now paragraph 142 of document CESR/03-208 dealing with this matter has been redrafted. The change means that the assessment by the Competent Authority in relation to the circulation of the newspaper is only necessary when the newspaper does not fulfil the two remaining

requirements, that is, to have national or supra- regional scope and to be a general or financial newspaper.

Additional Technical Advice

Notice stating where the prospectus is available (paragraphs 316 – 328)

411. As additional technical advice in relation to the mandate, CESR proposed, as a enhancement to the regime on the availability of the prospectus, the maintenance of the duty to publish a notice stating that a prospectus has been published and where it is available, as foreseen in the existing Directives, and put forward proposals with regard to its minimum content and the arrangements for its disclosure.

412. The prospectus directive includes a specific provision for such notice (article 14 (3)) and the Additional Provisional Mandate requests CESR to provide technical advice on implementing measures relating to the content and method of publication of this notice. As a result, CESR's advice on this subject will not any longer be termed as "additional advice".

413. Most respondents were supportive of the proposal to address the minimum content of the notice at level 2. Some respondents considered that this matter should be the competence of the issuer or that there is no need to determine the minimum content of the notice. A few respondents considered the content, as proposed, too detailed.

414. CESR has carefully considered these last comments and, in particular, whether any of the items that are included in the content of the notice should be removed. However, on balance, CESR is in favour of retaining all the items, which it considers not to be burdensome to the issuer, the offeror or the person asking for admission to trading. Therefore, the advice has been merely aligned to the wording amendments made in the Directive.

415. With regard to the means of publication of the notice, CESR has proposed that this means should depend on, and be different from, the means of publication of the prospectus. In addition, CESR sought views on whether, besides the publication of a specific notice, the list available at the web-site of the competent authority should mention where the prospectus is available and, in the case of an affirmative answer, whether this indication in the web-site of the competent authority should be considered as an alternative to the publication of a formal notice.

416. There was a very high degree of agreement amongst respondents in favour of the indication, in the list of prospectus posted on the website of the competent authority, of the place where each prospectus is available.

417. On the other hand, not all of the respondents who agreed with this indication consider it as an alternative to the publication of a formal notice. In fact, some respondents pointed out that the publication of the notice should still be required for effective dissemination of the information.

418. Finally, with regard to the particular arrangements for the publication of the prospectus, some respondents pointed out the convenience of the possibility to publish the notice in the official gazette of the regulated market.

419. CESR recognises the usefulness of the indication, in the list of prospectuses posted on the website of the competent authority, where the prospectus is available. However, CESR considers that this indication cannot be seen as an alternative to the publication of the notice since it would lead to a restriction of the right that is now conferred to the home Member States by the Directive.

420. CESR has decided, therefore, to supplement its advice by stating that the list available at the website of the competent authority should indicate where the prospectus is available, but without proposing that such indication is an alternative to the publication of the notice.

421. In addition, CESR accepts that, indeed, the gazette of the regulated market should be an alternative mean of publication of the notice when it relates to an admission prospectus of securities already admitted to trading in that regulated market. CESR has, consequently, added a new paragraph to its advice to state such alternative.

Publication in the form of a brochure (paragraphs 329 – 331)

422. CESR had suggested that when a prospectus is published in the form of a brochure (or in printed form, as it is now referred in Article 14 (2) b) of the Directive) and it is composed of more that one document, each one of them should clearly mention that it does not constitute the complete prospectus.

423. As Article 14 (5) of the Directive already mentions that each document shall indicate where the other constituent documents of the full prospectus may be obtained, CESR advice on this matter becomes redundant.

424. CESR also asked if there were any other issues that should be mentioned regarding the publication in the form of a brochure.

425. Most respondents were of the opinion that no other issues were important enough to be dealt with at level 2 advice. One respondent suggested the settlement of a minimum edition amount in case of offers of high value addressed to unidentified investors. The range of different factors

involved, which may also depend from country to country, leads to an extreme difficulty in establishing thresholds. In CESR's opinion, this obstacle makes such sort of decision impossible to be taken at level 2 advice.

Delivery of a paper copy (paragraphs 332 – 335)

426. In this section, CESR proposed in the first draft of its advice that the duty to deliver a paper copy free of charge when the prospectus is available in an electronic form should be: a) performed as soon as possible allowing a prompt consultation, b) limited to one copy to each investor, c) free of any mail costs.

427. CESR requested views on whether mail or delivery costs should be born by the issuer.

428. Most respondents agree that the issuer should not ask the investor the payment of delivery or mail costs. Some respondents pointed out that the delivery or mail costs should not have to be born by issuers while one has suggested that this expense could be, in some way, shared with the financial intermediaries. Others respondents have suggested that the onus to pay mail costs should only apply when the prospectus is to be sent to addresses within the jurisdictions in which the offer is made or the admission to trading is being sought.

429. CESR has also asked if Level 2 legislation should deal with other issues in what concerns the deliver of a paper copy. Most respondents have replied that no other questions were missing. Few respondents have said that other issues could be dealt although no single proposition has been made. CESR has received one comment that stresses that all provisions concerning the publication of the prospectus should be the remit of the competent authority and not mentioned at Level 2.

430. Considering the outcome of the consultation, CESR has acknowledged that, exception made to the requisite for the paper copy of the prospectus to be made available in due time, the proposed implementing measures related to the deliver of a paper copy were too detailed and, above all, not truly necessary considering the principles already provided for in the Directive. CESR has decided, therefore, not to make proposals of implementing measures regarding the quantity of paper copies that each investor is entitled to receive and the eventual payment of mail or delivery costs.

431. Finally, bearing in mind that Article 14 (6) of the Directive states that the paper copy of the prospectus can be delivered by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities, CESR has changed its advice on the speediness of that delivery to make this circumstance clearer.

432. Respondents to the April proposals argued that the obligation to deliver a paper copy to investors on request should not apply to any documents that might have been incorporated by reference to the prospectus, as such requirement would undermine the whole notion of incorporation by reference. This is also CESR's view and proposes to clarify the wording of the advice. Issuers will not have to automatically deliver on paper documents incorporated by reference when an investor asks for a paper copy of the prospectus. Only when the request specifically asks for delivery on paper of the documents incorporated by reference the issuer will have to add them and send them to the investor alongside with the "core" prospectus.

Other comments made to the April proposals (CESR/03-066b)

433. Apart from comments linked to the issues discussed above, the responses to the April revised advice gave raise to new issues **in relation to both incorporation by reference and availability of prospectuses**. The main topics issued are discussed below.

434. Some respondents raised the point that the documents incorporated by reference could be previously or simultaneously published. An issuer could publish its prospectus and interim financial report on the same date and incorporate such interim report by reference into the prospectus. CESR acknowledges that the agreement between the Parliament and the Council at second reading solves this issue and has accordingly amended its advice so to permit incorporation by reference of documents simultaneously published.

435. Paragraphs 93 and 99 of the April proposal stated that if the prospectus is being made available in electronic form, the documents incorporated by reference may be linked to the prospectus with easy and immediate technical modalities. It was pointed out during the open hearing that said paragraphs could be construed as requiring issuers to supply investors with the necessary software to view these documents, which was considered too burdensome. CESR has analysed this issue and has decided to clarify the wording in paragraph 121 of the Advice to the European Commission (CESR/03-208) so to make clear that there is no requirement to provide any software and that the general principle stated in such paragraph, last sentence (the prospectus can be easily downloaded and printed) is sufficient to address the issue of electronic availability for investors.

436. Several respondents highlighted that the audit report cannot be incorporated as a standalone item as it cannot circulate without the underlying financial statements to which it refers. CESR has taken this argument on board and has amended paragraph 107 to reflect this issue.

437. Last sentence of paragraph 106 of the April proposal (CESR/03-066b) read, "each document shall indicate where the other constituent documents of the full prospectus may be obtained".

Some responses made the point that it might be impossible for documents incorporated by reference to include a reference to where the documents that compose the prospectus may be obtained, as by definition the documents incorporated by reference have been previously published. CESR has consequently decided to amend the advice so it is sufficient to include in the prospectus a list of each constituent's documents and the places where they can be obtained.

438. Some respondents argued that it is impossible to ensure that documents in electronic format cannot be modified as required by paragraph 111 of the April proposal, since even costly security measures will not be able to guarantee complete security. CESR certainly agree with that view but does not deem necessary to amend the current wording, that should be construed as requiring that issuers put their best efforts to ensure the safety of the electronic documents.

439. On the issue of disclaimers in prospectus published in electronic form, it was argued that a disclaimer is not the appropriate means to ensure that ineligible investors do not subscribe and that CESR should provide guidance in order to harmonize warning statements within the EU so as issuers can identify which countries are included in the scope of the offering. CESR still considers that disclaimers are useful to clarify what investors an issuer is targeting. An amendment has been introduced in paragraph 123 of its Advice to the European Commission (CESR/03-208) in order to make clear what would be the aim of the disclaimer.

ANNEX TO THE FEEDBACK STATEMENT

(Respondents to the Consultation Papers)

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

European Association of Public Banks (EAPB)

European Savings Bank Group (ESBG), [Annex I], [Annex L], [Annex M]

International Primary Market Association (IPMA)

Austrian Federal Economic Chamber (Bank and Insurance Division)

Association of Foreign Banks in Germany (VAB)

Association of German Mortgage Banks (VDH)

Association of German Public Sector Banks (VÖB)

Belgian Bankers Association

Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)

Danish Bankers Association (joint with Danish Security Dealers Association)

Deutscher Sparkassen-und Giroverband e.V.

Finnish Bankers Association

Hellenic Bank Association

Italian Banking Association (ABI)

Spanish Banking Association (AEB)

Swedish Bankers Association (endorse Swedish Securities Dealers Association response)

Zentraler Kreditausschuss (ZKA)

ABN AMRO

Banco Sabadell

Barclays

Commerzbank, [Annex I], [Annex K], [Annex L], [Annex M]

Deutsche Bank

IntesaBci

Landesbank Hessen-Thüringen (Helaba)

Morgan Stanley & Co. International Limited

Morgan Stanley Bank AG

Société Générale

UBS Warburg

INVESTMENT SERVICES

Association of Members of the Athens Stock Exchange

Danish Security Dealers Association (joint with Danish Bankers Association)

London Investment Banking Association (LIBA)

Swedish Securities Dealers Association (SSDA) (endorsed by Swedish Bankers Association)

INSURANCE, PENSIONS, ASSET MANAGERS

European Asset Management Association (EAMA)

Association of British Insurers (ABI)

Amanda Capital plc

ISSUERS

Association Française des Entreprises Privées (AFEP – AGREF)

Bundesverband der Deutschen Industrie e.V. (BDI) (joint with Deutsches Aktieninstitut e.V.)

Confederation of British Industry (CBI)

Deutsches Aktieninstitut e.V. (joint with Bundesverband der Deutschen Industrie e.V. (BDI))

Dutch Association of Issuing Companies (VEUO)

Institute of Chartered Secretaries and Administrators (ICSA)

Mouvement des Enterprises de France (MEDEF)

Quoted Companies Alliance (QCA)

Birka Line Abp

CRH plc (endorse Irish Stock Exchange response)

IBI Corporate Finance Limited (endorse Irish Stock Exchange response)

Jerónimo Martins

NCB Corporate Finance (endorse Irish Stock Exchange response)

Statoil (endorse Sigurd Heiberg's response)

REGULATED MARKETS AND EXCHANGES

Federation of European Securities Exchanges (FESE)

AIAF – Mercado de renta fija

Austrian Stock Exchange

Boerse-Stuttgart/EUWAX, [Annex A], [Annex I], [Annex M]

Borsa Italiana

Bourse de Luxembourg (endorse Comité Marché des Valeurs Mobilières response)

Euronext

Irish Stock Exchange (endorsed by CRH plc, Goodbody Solicitors, IBI Corporate Finance & William Fry), [Annex A], [Annex K]

London Stock Exchange

Stockholmbörsen

GOVERNMENT, REGULATORY AND ENFORCEMENT

Austrian National Bank

Capital Markets Board of Turkey

Comité Marché des Valeurs Mobilières (consultative committee of CSSF)

Norwegian Personal Data Inspectorate (Datatilsynet)

Polish Securities and Exchange Commission

Swedish Ministry of Finance

United Nations Economic Commission for Europe (UNECE) - Ad Hoc Group of Experts on the Harmonization of Energy Reserves/Resources Terminology, Committee on Sustainable Energy (endorse Sigurd Heiberg's response)

LEGAL AND ACCOUNTANCY PROFESSION

European Federation of Accountants (FEE)

Auditing Practices Board of the UK and Ireland

Finnish Institute of Authorised Public Accountants (KHT)

Institute of Chartered Accountants of England and Wales (ICAEW)

Swedish Bar Association

A & L Goodbody (endorse Irish Stock Exchange response)

BDO Stoy Hayward

Despacho Albiñana y Suárez de Lezo, S.L.

Freshfields Bruckhaus Deringer, [Annex A], [Annex I], [Annex M]

Jones, Day, Reavis & Pogue

McCann FitzGerald (endorse Irish Stock Exchange response)

PriceWaterhouseCoopers

Uría & Menendez

William Fry (endorse Irish Stock Exchange response)

INVESTOR REPRESENTATIVES

Dutch Shareholders Association (VEB)

Swedish Shareholders Association (Aktiespararna)

CREDIT RATING AGENCIES

Moody's Investors Service

INDIVIDUALS

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

Paul Goldschmit

Sigurd Heiberg (endorsed by United Nations Economic Commission for Europe (UNECE) - Ad Hoc Group of Experts on the Harmonization of Energy Reserves/Resources Terminology, Committee on Sustainable Energy and Statoil)

Victor Pisante (member of the Consultative Working Group)

Stefano Vincenzi (member of the Consultative Working Group)

OTHER

Commission of Stock Exchange Experts (BSK)

Claros Consulting

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

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

European Association of Public Banks (EAPB)

European Savings Bank Group (ESBG)

International Primary Market Association (IPMA)

Association of Danish Mortgage Banks / Realkreditrådet

Association of German Banks (BdB) (NB includes comments to first consultation paper)

Association of German Mortgage Banks (VDH)

Association of German Public Sector Banks (VÖB)

Belgian Bankers' Association (ABB-BVB)

Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)

Danish Bankers Association (joint with Danish Security Dealers Association)

Finnish Bankers' Association (FBA)

German Savings Banks and Giro Association / Deutscher Sparkassen- und Giroverband e.V. - DSGV

Hellenic Bank Association

Italian Banking Association (ABI)

Swedish Bankers Association (Joint with Swedish Securities Dealers Association)

Zentraler Kreditausschuss (ZKA)

Banca Intesa

Banco Sabadell

Bankinter SA

Bank of New York, [Reference Doc 1], [Reference Doc 2], [Reference Doc 3].

Citibank AG

Commerzbank, [Annex 2], [Annex 4], [Annex 10]

Deutsche Bank AG

Morgan Stanley & Co. International Limited

INVESTMENT SERVICES

Danish Security Dealers Association (joint with Danish Bankers' Association)

London Investment Banking Association (LIBA)

Swedish Securities Dealers Association – SSDA (joint with Swedish Bankers' Association)

INSURANCE, PENSIONS, ASSET MANAGERS

Ahorro y Titulización, S.G.F.T. S.A

ISSUERS

American Financial Services Association (AFSA) (NB includes comments to first consultation paper)

Association Française des Entreprises Privées (AFEP – AGREF)

Assonime

Austrian Federal Economic Chamber (Bank and Insurance Division)

Bundesverband der Deutschen Industrie e.V. – BDI (joint with Deutsches Aktieninstitut e.V.)

Central Chamber of Commerce of Finland

Confederation of British Industry (CBI)

Deutsches Aktieninstitut e.V. (joint with Bundesverband der Deutschen Industrie e.V. - BDI)

Mouvement des Enterprises de France (MEDEF)

Union of Listed Companies Athens Stock Exchange

Forum Inmobiliario Cisneros, S.A.

REGULATED MARKETS AND EXCHANGES

Boerse-Stuttgart/EUWAX, [Annex 1-12]

Borsa Italiana

Euronext

Irish Stock Exchange

London Stock Exchange

Stockholmbörsen

GOVERNMENT, REGULATORY AND ENFORCEMENT

Austrian National Bank

Banca d'Italia

Banco de Portugal

Capital Markets Board of Turkey

Hungarian Financial Supervisory Authority (NB includes comments to first consultation paper)

Polish Securities and Exchange Commission

LEGAL AND ACCOUNTANCY PROFESSION

European Federation of Accountants (FEE)

Institute of Chartered Accountants of England and Wales (ICAEW)

Finnish Institute of Authorised Public Accountants (endorse FEE response)

Allen & Overy

Cleary, Gottlieb, Stein & Hamilton

Despacho Albiñana y Suárez de Lezo, S.L.

Jones, Day, Reavis & Pogue

PriceWaterhouseCoopers

Shepherd & Wedderburn

Uría & Menendez

INDIVIDUALS

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

Victor Pisante (member of the Consultative Working Group)

Stefano Vincenzi (member of the Consultative Working Group)

OTHER

Danish Shipowners' Association

ETHIBEL asbl (and signatories)

European Securitisation Forum (ESF), [Annex 4], [Annex L] (NB includes comments to first consultation paper)

Friends of the Earth (FOE) (NB includes comments on first consultation paper)

Traidcraft (NB includes comments on first consultation paper)

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

BANKING

International Primary Market Association (IPMA)

European Savings Banks Group (ESBG)

Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)

Zentraler Kreditausschuss (ZKA)

ABN AMRO

Banca Intesa

INVESTMENT SERVICES

Shepherd & Wedderburn

ISSUERS

European Securitisation Forum

Association Française des Entreprises Privées (AFEP)

Deutsches Aktieninstitut e.V. (DAI)

Mouvement des Entreprises de France (MEDEF)

Deutsche Bank AG

REGULATED MARKETS AND EXCHANGES

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

Euronext

GOVERNMENT, REGULATORY AND ENFORCEMENT

Banca d'Italia

Federal Ministry of Justice of Germany

LEGAL and ACCOUNTANCY PROFESSION

Fédération des Experts Comptables Européennes (FEE)

Finnish Institute of Authorised Public Accountants (supports FEE)

Institute of Chartered Accountants in England and Wales

Law Society of England and Wales

Albiñana & Suarez de Lezo

Clifford Chance

PriceWaterhouseCoopers

Uria & Menéndez

INDIVIDUALS

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

GENERAL COMMENTS ON THE PROSPECTUS DIRECTIVE

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

American Financial Services Association (AFSA)

Farm Credit Canada