



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR/03-300

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

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I PRELIMINARY REMARKS BY FERNANDO TEIXEIRA DOS SANTOS

1. According to the provisional mandates given to CESR on March 2002 and January 2003, CESR presents here its final advice on those issues for which a deadline of 30 September 2003 had been fixed.
2. The efforts of all parties involved in this work have been exemplary. In particular, CESR Members who participated in the deliberations of the Expert Group have shown great commitment in forging consensus. Similarly, the contribution at each stage of the consultation process of market participants and other interested parties has been valuable in reaching common solutions.
3. I believe this work represents a finalized high quality outcome in response to the mandate received. Despite the fact that some regulatory differences may still persist in the various jurisdictions, CESR has sought in its advice to assemble all indispensable elements for an efficient European regulatory framework on the areas covered, and to achieve harmonization.
4. Some of the issues covered by this advice have an impact on the advice provided on July (CESR/03-208).

II INTRODUCTION

5. On October 1, 2002, CESR initiated a consultation process on its proposed advice to the European Commission regarding technical implementing measures for the directive on the “Prospectus to be published when securities are offered to the public or admitted to trading” (“Prospectus Directive”). Following a number of stages the second part of the advice is now in its final form. The introductory section explains the process which CESR has followed in arriving at its final second advice. More details about the consultation CESR undertook on preparation of this advice can be found in the feedback statement CESR/03-301.
6. Three different deadlines for CESR’s Technical Advice to the EU Commission have been set: 31 July 2003, 30 September 2003 and December 2003. This paper only addresses the second one but some of the areas covered here are linked to the pending submission that is still subject to consultation. Therefore, an adaptation of some of the items included in this paper could be necessary after completion of the next steps.
7. For example, the historical financial information that EU and non-EU issuers have to include in prospectuses form part of Consultation Paper CESR/03-210. CESR is to submit its final advice to the Commission on this item by 31 December, 2003.
8. In general, CESR understands the Lamfalussy system as a dynamic process. The proposals included in this document should not be seen as the final say on each area for a number of years. Some of the disclosure requirements might need adaptations in the future according to developments in the financial markets. CESR will have to assess in the future when it might be appropriate to alert the European Commission on the need to consider adapting the Level 2 implementing measures of the prospectus directive. Disclosure requirements for issuers of specific types or sectors might be one of the cases where such a future assessment could be necessary.



Background

9. On 27 March 2002, the European Commission (EC) published its provisional request for CESR to provide technical advice on possible implementing measures on the Prospectus Directive. On 7 February 2003, the European Commission published an additional provisional mandate.
10. CESR published a Call for Evidence on 27 March 2002, (Ref: CESR 02-048) inviting all interested parties to submit views by 17 May 2002 on what CESR should consider in its advice to the Commission. CESR received around five submissions that can be viewed on the CESR's website.
11. 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 can be viewed on the CESR's website and came both from European and national federations representing issuers and financial services providers, as well as regulated markets, individual issuers and regulatory agencies.
12. CESR's Expert Group on Prospectuses, chaired by Pr. Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Commission and supported by Javier Ruiz of the CESR Secretariat, has been responsible for the drafting of the consultation paper and the development of the technical advice after the consultation.
13. 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 Stahlberg, Torkild Varran, Stefano Vincenzi, Jaap Winter. The Expert Group has met the CWG four times and several members of CWG have sent written contributions.
14. As part of the process for producing the technical advice required by 30 September 2003, CESR published a consultation paper on June 2003 (Ref: CESR/03-162).
15. Following publication of the consultation paper, CESR gave market participants and other interested parties a deadline of 12 August 2003. To facilitate the consultation process, CESR held an open meeting on 9 July 2003 in Paris at the CESR premises. Over 40 people attended the meeting.
16. CESR received over 40 responses to the consultation document. Those that are public can be viewed on CESR's website.

References

17. The mandate asks that CESR should have regard to a number of principles and a working approach agreed between DG Internal Market of the EC and the European Securities Committee in developing its advice. These are as follows:
 - CESR should take account of the principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
 - CESR should take full account of the key objectives of the prospectus directive: the need to encourage and build an efficient, cost-effective and competitive pan-European capital



market on the one hand, and to provide the necessary levels of investor protection on the other.

- CESR should not seek to produce a legal text.
- CESR should take full account of developments in the Council and Parliament.

18. Papers already published by CESR which are relevant to this mandate are:

- *A European Passport for Issuers – A report for the European Commission – January 2001 (Ref. FESCO/00-138b)*
- *A European Passport for Issuers: an additional submission to the European Commission – August 2001 – (Ref. FESCO/01-045)*
- *Stabilisation and Allotment, a European Supervisory Approach – April 2002 (Ref. CESR/02-020b)*
- *CESR's Advice (July submission) on level 2 implementing measures for the prospectus directive (CESR/03-208)*



III MINIMUM INFORMATION

Extract from the mandate

DG Internal Market requests CESR to provide technical advice on the different models of prospectuses following the latest drafting of Article 7 (1) – which were not covered or insufficiently detailed in the initial request.

CESR technical advice related to schedules for securities aimed at wholesale markets, for derivative securities and for securities issued by SMEs and credit institutions, should be completed.

Technical advice is required to CESR for following issues:

- (1) Schedules adapted to the particular nature of derivative securities such as covered warrants, certificates or reverse convertibles should be defined; CESR should provide its technical advice by 30 September at the latest.
- (2) Specific schedules or explicit reference in the schedules to certain types of issuers in particular SMEs; CESR should provide its technical advice by 31 July at the latest.
- (3) Specific schedules or explicit reference in the schedules to certain types of entities authorised or regulated to operate in the financial markets, for example, credit institutions; CESR should provide its technical advice by 31 July at the latest.
- (4) Schedules adapted to securities aimed at wholesale markets should also be examined; CESR should provide its technical advice by 31 July at the latest.
- (5) The content of the prospectus to be used for offering programs (Article 7 par. 1 point c) has to be defined. Offering programs are supposed to cover frequent issuances of debt securities by an issuer or subsidiaries of an issuer, for example in the Eurobond market under the denomination “Euro medium term notes” or for derivative securities. Warrants in any form are covered by the definition of offering program (Art. 2 par. 1 point k); CESR should provide its technical advice by 30 September at the latest.

III.1 DERIVATIVE AND DEBT SECURITIES

EXPLANATORY TEXT – DERIVATIVE SECURITIES - REGISTRATION DOCUMENT

19. CESR considers that a separate registration document for derivatives is not required and therefore no new schedule has been developed.
20. The registration document requirements should be divided between equity and non-equity securities with the exception of bank issuers who could use the banks registration document for all non-equity securities.
21. In order to reflect this new approach some of the schedules delivered on CESR’s July advice to the European Commission (ref. CESR/03-208) need to be renamed so as to clarify that they apply to all non-equity securities including debt and derivatives securities. Consequently, Annex D is now named as retail non-equity registration document and Annex I as wholesale



non-equity registration document. The disclosure requirements included in both annexes remain unchanged.

22. This means that in relation to an issue of derivative securities the issuer, in order to meet its disclosure obligations, will use one of the following schedules:

- Retail non-equity registration document (annex D CESR/03-208)
- Wholesale non-equity registration document (annex I CESR/03-208)
- Banks registration (annex K CESR/03-208)

23. CESR considers that a definition of derivatives is not required and that all securities that do not otherwise fall within a specific building block regime will be classifiable as derivative securities.

24. CESR considers it important to point out that the only purpose of this classification of securities is for differentiating between the different types of disclosure requirements applicable to an issuer of securities drawing up a prospectus for the purposes of the Directive.

25. CESR considers important to make clear that there are derivatives securities for which the non-equity registration documents (retail, wholesale or banks) will not apply. The equity RD will be the one applicable for those derivatives securities that have the following characteristics:

Derivative securities which are:

- (i) at the issuer's or at the investor's discretion or by predetermination
- (ii) to be converted or exchanged into or give in any other way the possibility to acquire
- (iii) shares or other transferable securities equivalent to shares.

Provided that those shares or transferable securities equivalent to shares:

- (i) can be physically delivered; and
- (ii) are issued by the issuer of the derivative security; and
- (iii) are not physically admitted to trading on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the derivative securities.

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

EXPLANATORY TEXT – WHOLESALE DERIVATIVE SECURITIES - REGISTRATION DOCUMENT

26. CESR considers that the differentiation between wholesale and retail disclosure requirements as set out in the Directive should also apply to derivative securities.

27. Annex D of CESR/03-208 sets out the disclosure obligations for issuers of retail derivatives. These disclosure obligations would be regarded as the “high water” mark for disclosure requirements for derivatives issuers. Annex I of CESR/03-208, CESR sets out the proposed disclosure requirements for wholesale derivatives aimed as wholesale investors.



28. As the differentiation of retail and wholesale securities as set out in Article 7.2 (b) of the Prospectus Directive makes reference to “a denomination per unit” for the purposes of those derivative securities that have no such denomination CESR defines a wholesale derivative security as **any security that can only be acquired on issue for at least EURO 50,000 per security**.
29. A differentiated disclosure regime for securities aimed at “wholesale investors” has been successfully operated in a number of Member States across the EU, without giving raise to significant complaints about a lack of information contained in the prospectus. CESR’s approach in relation to a differentiated set of disclosure obligations has been to try and identify those disclosure obligations which require information that will be of little value to “wholesale investors” when making their investment decision.

EXPLANATORY TEXT – DERIVATIVE SECURITIES ISSUED BY BANKS REGISTRATION DOCUMENT

30. CESR proposes that the specialist building block for banks in Annex K of CESR/03-208 submitted to the Commission in July should be used for banks issuing derivative securities. CESR considers it important to point out for the purposes of clarity that an SPV issuer of derivatives that is guaranteed by a bank can not use this Annex. **Banks for the purposes of such a building block would include not only “credit institutions” as defined by the Prospectus Directive, but also regulated firms such as investment banks that have substantial experience of issuing securities.**
31. CESR has taken the view that non-EU banks which are subject to 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.

EXPLANATORY TEXT ~ DERIVATIVE SECURITIES – SECURITIES NOTE

32. The disclosure requirements for the derivatives securities note schedule are set out in Annex A to this paper. CESR has consulted upon the derivatives securities note in the Consultation Paper issued in October 2002, in the Addendum to the paper issued in December 2002 and in the Consultation Paper issued in June 2003. Details about the former two consultations can be found in the feedback statement CESR/03-301.
33. The derivative SN takes the responses of all three consultations into account. Further adaptations were necessary due to the amendments made in the equity and the debt SN ensuring therefore, that identical disclosure requirements in the schedules are worded consistently, for example, the requirement to disclose the persons responsible for the information given in the prospectus (line item 1.1) and the disclosure requirement on information sourced from a third party (line item 7.4) in the derivatives SN schedule).
34. CESR has considered the comments received during the consultation and has concluded that besides the pure mathematical formula more explanation is needed in the case of derivative products and has decided to include the following in the Derivative SN schedule (see line item 4.1.2 of Annex A):



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

The same requirement has been introduced in the Debt Securities SN schedule in case the security has a derivative component in the interest payment (see line item 4.7).

CESR recognises that there are a variety of ways that can be used to meet this disclosure requirement and that non misleading examples may be used by issuers on a voluntary basis. However, there may be occasions where examples would be the most effective way to explain the nature of the securities to investors.

35. While CESR developed the derivatives SN schedule with regard to a typical derivative security, such as a covered warrant, the schedule nevertheless applies to all securities which are neither covered by the equity SN schedule nor by the debt SN schedule or by any other specific disclosure regime. CESR deems the derivatives SN schedule as the most appropriate schedule to be used for such an “everything else box” as a starting point, because its disclosure requirements are drafted in the most high level way. For example, disclosure requirement 4.1.1: “A description of the type and the class of the securities being offered and/or admitted to trading” or requirement 4.1.7: “A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights” should be able to apply to newly invented features of the security not known today. Of course, further market development might cause the need to further develop the corresponding disclosure rules. For more information on this topic and how to combine the schedules please refer to section of the Road Map in this paper.
36. In the context of defining for which categories of products the derivatives SN schedule is applicable CESR has paid particular attention to products with a derivative component in the interest payment (structured bonds). CESR believes that these instruments – from an investor’s point of view – require generally the disclosure rules developed for debt instruments plus additional information on the respective underlying. Therefore, as already set out under paragraphs 60 and 61 of CESR’s Advice to the European Commission issued in July 2003 (CESR/03-208), the debt SN schedule is the appropriate schedule to describe such products.

EXPLANATORY TEXT DEBT SECURITIES NOTE

37. Due to the recent consultation issued in June 2003 CESR reconsidered some aspects relating to the debt securities note schedule.
38. One aspect is related to the adaptation of the debt SN schedule for structured bonds. As explained above, after consultation on this topic, CESR has amended the debt SN schedule slightly to take the specific character of these instruments into account: in line item 3.2 further information on the expenses of the issue and on the use of proceeds has to be given only when different from making profit and/or hedging certain risks. In this context line item 7 and line item 3.2 were merged so that the total expenses of the issue/offer do not have to be disclosed where the purpose of the issue is limited to make profit and/or to hedge certain risks as this might be the case for the majority of structured bonds. In Annex B of this paper the new SN debt has been included. In this annex changes with respect to the schedule published in July (annex E of CESR/03-208) have been marked, so that the differences can be easily identifiable.



39. Another aspect relates to the implementation of a wholesale regime for the debt SN schedule. Explanations on this topic can be found in the section on the wholesale debt SN.
40. The third aspect relates to the definition for which securities the debt SN schedule should be applicable: In its advice to the European Commission issued in July 2003 CESR intended to apply the debt SN schedules to the following instruments: “The security which is aimed at both retail and wholesale investors and where the issuer has an obligation arising on issue to pay the investor 100% of the investor’s capital “the capital return element”, in addition to which there may also be an interest payment.” On further consideration CESR decided to amend the applicability slightly in order to capture issues above par under the debt SN schedule.
41. Therefore, for the purpose of the use of the schedules proposed by CESR, debt security has been defined as “any security where the issuer has an obligation arising on issue to repay the investor 100% of the nominal value, in addition to which there may also be an interest payment”.

III.2 BASE PROSPECTUSES

THE PARTICULAR FORMAT OF BASE PROSPECTUS AND SUPPLEMENT

a) General remarks

42. In view of the particular characteristics of base prospectuses and the method in which securities are offered under such prospectuses CESR thought it was necessary to consider how certain Articles of the Directive apply to such prospectuses.
43. Article 5 (4) of the Directive: format of a base prospectus. The wording “supplement” refers to the supplement pursuant to Article 16 and is not to be mistaken for a reference to the final terms.
44. Article 7 (2) (c) and (d): content of disclosure rules on offering programmes. CESR has discussed Art.7 (2) (d), although the Commission’s request explicitly envisages Art.7 (2) (c) only. CESR considers that the issues as described in Art.7(2)(d) should also be taken into account when establishing its technical advice on offering programmes as the above mentioned issues are usually issued in the form of such a programme.

Level 2 Advice

45. **CESR considers that Article 16 (Supplement to the prospectus) applies to each separate issue of securities issued under the base prospectus. Therefore, if an event envisaged under Article 16(1) occurs between the time that the base prospectus has been approved and the final closing of the offer of each issue of securities under the prospectus or, as the case may be, the time that trading on a regulated market of those securities begins, the issuer must file a supplement in accordance with Article 16 (1) prior to the final closing of the offer or the admission of those securities to trading. If none of the facts stated in article 16 (1) take place before the final closing of the offer or the admission of those securities to trading, there is no need to publish a supplement.**



b) Division between final terms and base prospectus

46. CESR discussed the content of the base prospectus and came to the conclusion, after assessment of the result of the consultation process (consultation paper CESR/02-286 and the June consultation), that only the format of the base prospectus differs from a single issue prospectus whereas the disclosure requirements of the base prospectus and the final terms will together be the same as the disclosure requirements included in a single issue prospectus.
47. Therefore CESR focused its discussion on determining which line items in the schedules can be announced in the final terms only and which ones always have to be contained in the base prospectus.
48. CESR considered this complex issue, taking into account the responses to the Addendum and the June consultation and bearing in mind that the purpose of base prospectuses is to give the market maximum flexibility.

Level 2 Advice

49. **CESR advises that an abstract generic rule should be used to determine which line items are to be classifiable as final terms and which line items have to go into the base prospectus. This generic rule is:**

The base prospectus shall:

- a) **contain all information required by the applicable schedules and building blocks except for that which can - due to the issue's nature - only be determined at the time of the individual issue and is not known when the base prospectus is filed (so called 'final terms'); and**
- b) **set out in an easily identifiable manner which kind of information will be included as final terms. This requirement may be satisfied in a number of different ways, for example if the base prospectus contains blanks for any information to be inserted in the final terms or if the base prospectus contains a list of the missing information.**

For additional information concerning the programme structure see below.

50. CESR believes that this generic rule will accommodate current market practice whereby the issuer provides as much information as possible in the base prospectus leaving final issue specific terms to be provided as close to issue date as possible in order to facilitate quick access to the market. Maintaining this practice will also ensure that the necessary flexibility for innovation in the development of financial products in the future will continue.

c) Base prospectus as single document or tripartite prospectus

51. In the light of final discussions at level 1, CESR considers that the wording of the Directive does not explicitly allow for the use of the shelf registration system when a base prospectus is created. Nevertheless, the issuer will be able to incorporate by reference the information contained in a previously filed and approved registration document.



Level 2 Advice

52. On that basis CESR advises that the issuer has a choice between the following methods of creating a base prospectus:
- a) file one document as a base prospectus excluding final terms, or
 - b) file a registration document for a particular product group at one point in time and then at a later date file a base prospectus made up of:
 - information contained in the previously filed and approved registration document which is incorporated by reference; and
 - the information which would otherwise be contained in the securities note less the final terms
53. However it is important to note that in the case of an offering programme the base prospectus previously filed shall be valid for a period of up to 12 months. In the case of non-equity securities referred to in article 5.4(b) a base prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.
54. Furthermore the information given in the base prospectus shall be supplemented if necessary in accordance with Article 16 with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market.

d) Summary

Level 2 Advice

55. CESR considers that a summary has to be drawn up for the base prospectus pursuant to Article 5 (2) and (4).
56. In relation to the summary and its applicability to base prospectuses, an issue arises: summaries and multiple products in the same base prospectus.

Summaries and multiple products in the same base prospectus

57. Following the conclusion as discussed below that a base prospectus may cover more than one product, CESR considered whether or not it was necessary for an issuer of such a base prospectus to include a separate summary for each product included in the base prospectus.

Level 2 Advice

58. CESR advises not to require a separate summary per product as a general rule. However, if a multitude of products is comprised in one base prospectus, the information on different products contained in the base prospectus and likewise in the summary must not be mixed up but has to be clearly segregated.
59. The competent authority has the power to control that the summary is set up in an easily analysable and comprehensible form and in accordance with Art. 5 (2).



Further guidelines can be developed at level 3, if necessary.

60. The Recital 19 of the Directive provides that the summary should normally not exceed 2.500 words. CESR envisages that the case of a multi-product base prospectus could be regarded as being not “normal” in that sense and that the limit of 2.500 words can be exceeded in such cases. However, it is not logical to multiply the figure of 2.500 words by the number of products as some information will always be identical and applies to all sorts of products in the base prospectus. Besides, the more extensive the summary gets the less readable it will be. Therefore, the size of the summary is determined by its clarity and comprehensibility. In cases with a high number of different products it will therefore be necessary to draw up several summaries for different groups of products.

e) Final terms

61. In relation to the final terms, there are 2 issues that arise: form and publication of final terms, including the notice.

Form of the final terms

62. In the second call for evidence the respondents raised the question of the form in which the final terms have to be presented to the competent authority. In relation to this area CESR considered particularly whether issuers should be allowed to produce a document that replicates some information already provided in the base prospectus.

Level 2 Advice

63. CESR advises that the final terms can be presented in one of the following ways:

- a) in the form of a term sheet containing only the final terms; or
- b) by inclusion of the final terms into the base prospectus; or
- c) in the form of a document which replicates some information of the approved base prospectus which is normally required by the applicable securities note schedule provided that the information is not misleading. If additional information is so replicated a clear and eye-catching disclaimer has to be inserted that the full information on the issuer and on the offer is only available in the base prospectus and where it can be obtained. Furthermore, the final terms have to be emphasized so that they can be easily identified.

Publication of the base prospectus and final terms including the notice

64. In relation to the publication of the base prospectus although it is clear that Article 14 applies to the base prospectus, a question arises as to whether or not it also applies to the final terms.

65. After consultation on this issue CESR considers that, although the mere wording of the Directive might indicate that Art. 14 is not explicitly applicable to the final terms, the rationale behind Art 14 requires that the final terms have to be provided to investors in a way envisaged by Art. 14. Investors have the same interest in the publication of the final terms as they have in the base prospectus. Furthermore, the publication methods provided by Art. 14 should be extensive enough to satisfy the needs of the market. Finally, issuers of base prospectuses should not be privileged as compared to editors of single-issues-prospectuses.



Level 2 Advice

66. CESR advises that the publication method for final terms does not have to be exactly the same as the one used for the base prospectus as long as the publication method used is one of the publication methods indicated in Art. 14.
67. Under Article 14(3) each Member State has the discretion to require publication of a notice stating how the prospectus has been made available and where the public can obtain it.
68. In relation to this, CESR discussed whether or not there is a need to add to the advice in relation to the content of a notice for base prospectus. On review of the requirements of the content of the notice as set out on the July advice, CESR considers that it may not be possible to publish some of those line items as they are not available at the time the notice of the base prospectus is published as they relate to items that can only be included in the final terms.

Level 2 Advice

69. CESR considers that it is necessary to make it clear that Member States may require that an additional notice in relation to the final terms may also be required to be published.

THE CONTENT OF THE PROSPECTUS TO BE USED FOR OFFERING PROGRAMMES (ART. 7 PAR.1 LETTER C)

a) Additional information concerning the programme structure

Level 2 Advice

70. In addition to the disclosure requirements as set out in the applicable registration document, or securities note, or other building blocks, and after consultation CESR considers that the following additional disclosure requirements should apply to base prospectuses:
- Information regarding how the final terms will be published, in the event that the issuer is not able to determine the method of publication when the base prospectus is filed, the issuer has to set out how the public will be informed about which method will be used for the publication of the final terms.
 - Indication of which kind of information will be included as final terms. This requirement may be satisfied in a number of different ways, for example if the base prospectus contains blanks for any information to be inserted in the final terms or if the base prospectus contains a list of the missing information.
 - Include a general description of the programme.

b) Types of securities that can be issued under the same base prospectus

71. In determining which types of securities can be issued off the same base prospectus, CESR took into consideration Article 2(1) (k) which defines an offering programme as: “a plan which would permit the issuance of non-equity securities, including warrants in any form, having a



similar type and/or class, in a continuous or repeated manner during a specified issuing period”. Furthermore, recital 12a provides that the term “having a similar type and/or class” in this context should be understood as not only covering identical securities but also securities that belong in general terms to one category. These securities may include different products, such as debt securities, certificates and warrants, or the same product under the same programme, and may have different features notably in terms of seniority, types of underlying, basis on which to determine the redemption amount or coupon payment.

Level 2 Advice

72. On the basis of this definition CESR advises to have the following types of base prospectuses:

- **Asset backed securities base prospectus;**
- **Base prospectus for warrants to which the building block on underlying for equity securities is applicable;**
- **Base prospectus for non-equity securities as defined under Art. 5(4)(b) of the Directive; and**
- **Base prospectus for all other non-equity securities including warrants in any form but other than those mentioned in the second indent above.**

However, CESR points out that in case of a multi-product base prospectus the specific and product related information given on different instruments must not be mixed up but has to be clearly segregated.

c) Number of issuers per base prospectus

73. Respondents to the 2nd call for evidence raised a question as to whether or not there would be a restriction on the number of issuers and/or guarantors that can issue securities under a base prospectus. On consideration of this issue, CESR concluded that with regard to the disclosure requirements no such restrictions would apply, thus maintaining current market practice, as long as full information on every potential issuer and guarantor is given. However, CESR acknowledges that a complex problem might arise as to which will be the competent authority in case of a multi-issuer programme with issuers from different home Member States and where the kind of securities to be issued will give no right to choose the home competent authority. The same question might arise in cases of multi-products programmes offered by a single issuer. As these issues are not covered by either of the mandates CESR has decided not give advice on this subject at this stage. Further guidance can eventually be given.

MORTGAGE BONDS ISSUES

74. In view of concerns raised in the 2nd call for evidence regarding mortgage bonds, CESR has decided to provide for a separate base prospectus for non-equity securities as set out in Art. 5(4) (b). After consultation CESR considers that no further advice on this matter at this stage is required.



III.3 WHOLESALE DEBT SN

75. The disclosure requirements for the Wholesale Debt Securities Note are set out in annex C to this paper. This applies to debt securities aimed at the wholesale markets.
76. As previously explained in the introduction to the Retail Debt SN, CESR has amended the definition of debt securities to encompass some of the points raised during consultation. Therefore, this schedule is aimed at debt securities, as defined in paragraph 41 of this advice that are issued with a nominal value of at least € 50.000.
77. CESR has considered the case of securities with a denomination in a foreign currency. Concerning these securities, CESR is of the opinion that the wholesale regime should be applicable to them provided that the value of such denomination per security, once converted into euros, is at least equal to € 50.000.
78. The scope of this schedule is limited to admissions of these securities to trading on a regulated market, in so far these securities are exempted from the obligation to publish a prospectus in the case of an offer to the public. This schedule is based on the Retail Debt SN with the exclusion of the information which is not relevant for wholesale investors considering their experience and knowledge of the securities markets. Besides the provisions in section 4.8. of Annex C, no additional disclosure requirement was introduced to deal with instruments such structured bonds in so far CESR considers that wholesale investors are able to ascertain from the information contained in the annex the special features of these instruments.
79. CESR has considered the comments received during consultation and has made some changes to its initial proposal as released in Annex F of the consultation paper CESR/03-162, such as adding information from the terms and conditions of an issue that were missing (total amount of securities being admitted to trading).
80. Further changes were necessary due to the amendments made in other schedules in order to ensure that identical disclosure requirements in the schedules are worded the same way. This is the case of the requirement to disclose the persons responsible for the information given in the prospectus (line item 1.1) and the disclosure requirement on information sourced from a third party (line item 7.4).

III.4 BUILDING BLOCK ON UNDERLYING FOR EQUITY SECURITIES

81. After consultation in the Addendum issued in December 2002 and in the Consultation Paper issued in June 2003, CESR has developed a Building block on Underlying for Equity Securities as set out in Annex D. This building block applies to securities that have the following characteristics:

Securities which are:

- (i) at the issuer's or at the investor's discretion or by predetermination
- (ii) to be converted or exchanged into or give in any other way the possibility to acquire
- (iii) shares or other transferable securities equivalent to shares.



Provided that those shares or transferable securities equivalent to shares:

- (i) can be physically delivered; and
- (ii) are issued by the issuer of the security or by an entity belonging to the group of said issuer; and
- (iii) are not physically admitted to trading on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the securities.

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

82. These securities require further information about the underlying security than that one required by either the debt or derivatives securities notes. The disclosure of this additional information will be achieved by either adding the disclosure requirement of this building block to those of another securities note, or by replacing part of another securities note with the disclosure requirements of this building block. The basic securities note used and the method of its combination with this building block will depend on the main characteristics of the security being issued. For example:

a) in the case of convertible or exchangeable bonds - then this building block is added to the debt securities note; and

b) in the case of warrants or reverse convertible bonds - section 4.2.2 of the derivatives securities note is replaced with this building block.

83. For cases which are in the scope of the Building block on Underlying for Equity Securities and where the issuer of the underlying shares is an entity belonging to the same group, CESR is of the opinion that the information which must be provided on this issuer is the one required by the Equity RD. This requirement is set out in line item 2 of the Building block.

IV. FORMAT OF THE PROSPECTUS

Extract from the mandate

DG Internal Market requests CESR to provide technical advice on the format of the prospectus or base prospectus and its possible supplements by 30 September 2003. The present additional request should be partly covered by work already realised on the basis of the initial provisional mandate as far as the format of the prospectus composed by three separate documents is concerned. More particularly CESR is invited to:

- (1) Complete its work with respect to the format of prospectus as a single document, including the summary as part of the prospectus.
- (2) Specifically consider the particular format of base prospectus and supplement.
- (3) To grant particular attention to offering programs and mortgage bond issues.



The format of the prospectus

84. Article 5 (3), of the Directive states that “the offerer or person asking for the admission to trading on a regulated market may draw up the prospectus as a single or separate documents”.
85. The prospectus drawn up as separate documents shall divide the required information into three different documents: the summary, the securities note and the registration document.
86. On July 2003, CESR has delivered to the European Commission his first technical advice (CESR/03-208). Said document, as well as this one, present disclosure requirements in the form of schedules and additional building blocks referring to the registration document and the securities note. In each schedule, the information is divided into chapters, each one referring to a different kind of information, and the line items are numbered. This gives rise to the question of whether the order of the disclosure requirements in the different schedules and building blocks should be followed by issuers when drafting their prospectus.

Level 2 Advice

87. **For a prospectus made of separate documents, CESR’s view is that the securities note and the registration document should start with the risk factors, and should contain a clear and detailed table of content. For the other elements, the issuer should be free in the presentation of the required information.**
88. CESR has also considered the question of how a single document prospectus should be prepared. The Directive requires that a single document prospectus must include a summary. However, the information that would otherwise be included in the securities note and the registration document must also be included in the single document prospectus. This gives rise to the question of whether the SN and RD information should be kept separate from each other even in a single document prospectus.

Level 2 Advice

89. **In line with the recommendations made for a prospectus made of separate documents, CESR’s view is that a single document prospectus should start with the summary followed by the risk factors, and that it should contain a clear and detailed table of content. For the other elements, the issuer should be free in the presentation of the required information.**
90. Anyway, in cases where the order of the items does not coincide with that contained in the applicable legislation, CESR is of the opinion that the Competent Authority can ask the issuer to provide a cross reference list for the purpose of checking the prospectus in application of Article 21 (3) (b).of the Directive. Such list would identify the pages where each item, as set out in the applicable legislation, can be found in the prospectus.
91. Finally, even if the prospectus is drawn up as a single document, the summary may circulate separately.



The summary

a) Cases in which a summary is required

92. Article 5 (2), of the Directive states that the prospectus shall include a summary. A summary is needed whether the prospectus is composed of separate documents or not.

93. However, according to article 5 (2), the requirement to produce a summary does not apply “where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50.000 (...) except when requested by a Member State as provided for in Article 19(4)”. This is the only exception provided for by the Directive.

b) Cases in which the summary has to be supplemented

94. Article 16 (1), of the Directive provides that when a supplement to the prospectus must be published “the summary and any translation thereof shall also be supplemented, if necessary to take into account the new information included in the supplement”. Accordingly, issuers should consider if it is necessary to take the new information into account for the purpose of the summary, either when it has an impact on information already included in the original summary, or when it concerns the essential characteristics and risks associated with the issuer, any guarantor or the securities.

95. Concerning the way to supplement the summary, if necessary, CESR proposed two different approaches in its consultation paper CESR/03-162:

- The first one consisted of integrating the new information in the original summary, in order to have an up-to-date summary prior to the closure of the offer or admission to trading on a regulated market. This means that a new complete summary will be approved together with the supplement to the prospectus. This approach takes into account the fact that the summary might be the only document published in investors' language according to Art. 19 of the draft Directive.
- The second one consisted in producing, together with the supplement to the prospectus, a supplement to the summary, which is limited to the new information. In this case, investors would have to read the original summary together with the supplement to the summary in order to have a full picture.

Level 2 Advice

96. Having in mind the results from the consultation CESR considers that the best approach to supplement the summary in order to meet the investors' needs may vary. As a consequence, the issuer should decide on a case-by-case basis whether to integrate the new information in the original summary, or to produce a supplement to the summary, in accordance with the regulator. When the new information is integrated in the original summary, the issuer must ensure that investors can easily identify the changes, for example by way of a footnote.

c) Content of the summary



97. CESR has decided that there is no need to have implementing measures for the content of the summary as the level 1 provisions are sufficiently developed.

V. ROAD MAP

Introduction

98. The present section has been drafted taking into account the documents published by CESR up to now, namely the first documents of advice on Level 2 implementing measures for the prospectus directive (CESR/03-208) as well as the present September advice. CESR has yet to submit to the Commission its December advice. Since this is a work in progress that future CESR advice could have an impact on the present road map that would have to be changed accordingly.

99. One of the purposes of this section is to explain to issuers the “building block approach” developed by CESR for the prospectus schedules. This “building block approach” means that the issuers must combine several “blocks” in order to draft their prospectus. The combination will depend on the type of issuer and security concerned. This system has been favoured because of the flexibility it offers, especially in the perspective of the creation of new products in the future. It has to be noticed that the definitions of different types of security given in this roadmap are without prejudice to the legal definitions that might exist at national level, notably for taxation purpose. The blocks have been developed following the subdivision provided for by Article 5(3), of the Directive between the securities note (SN), which contains the information concerning the securities offered or to be admitted to trading on a regulated market, and the registration document (RD), which contains the information related to the issuer.

100. Besides the explanation of the system, this section contains also new elements that are part of the September technical advice to the Commission. These are contained in the following sections:

- Ranking between the various main RD schedules;
- Complex or new financial instruments;
- Blanket clause;
- How to combine the schedules and the building blocks (including the table in Annex E).

Securities Note: main schedules and additional building blocks

101. For the SN there are four main schedules encompassing the following main types of security: equity securities, debt securities and derivative securities. These schedules are: the Equity SN schedule, the Retail Debt SN schedule, the Wholesale Debt SN schedule and the Derivative SN schedule.

102. The **Equity SN schedule** is applicable to “shares and other securities equivalent to shares”. Therefore, this schedule is applicable to any class of shares¹ since it considers information regarding a description of the right attached to the securities and the procedure for the exercise of any rights attached to the securities. For example, the reference to “redemption provisions”

¹ Ordinary shares, non-voting shares, preference shares, redeemable shares, income shares, deferred shares, priority shares, etc...



is included because in certain jurisdictions it is legally possible to issue redeemable shares, i.e. shares that may be redeemed either on initiative of the issuer or on initiative of the holder.

103. The **Wholesale and Retail Debt SN schedules** are applicable to “bonds and other forms of securitized debt”². For the purpose of the use of the schedules proposed by CESR, debt security has been defined as “any security where the issuer has an obligation arising on issue to repay the investor 100% of the nominal value, in addition to which there may also be an interest payment”. This scope comprises structured bonds, i.e. debt securities where the investors will be reimbursed 100% of the nominal value at the maturity date and which incorporate elements of derivative securities, in particular concerning the return investors might receive. Therefore certain disclosure requirements from the derivative SN have been introduced in the debt SN (retail and wholesale), such as those relating to the underlying.
104. The distinction between wholesale and retail debt securities has been made following Art. 7 (2) (b) of the Directive. Accordingly, the Wholesale Debt SN disclosure requirements are set for admission to a regulated market of “debt securities with denomination per unit of at least EUR 50.000”.
105. The **Derivatives SN schedule** is an “everything else box”. The scope of this schedule is determined by reference to the other two broad categories of securities. Hence, all securities different from equity and debt securities for which there is no specific disclosure regime, would be considered to be derivatives.
106. Additional SN building blocks have also been developed. They must be combined with one of the four main schedules. These building blocks, that address specific types of security or peculiar rights or obligations concerning specific securities, are the following: the SN building block for Guarantees, the SN building block for Asset Backed Securities and the SN building block concerning the Underlying for Equity Securities.
107. The **additional SN building block for Guarantees** is applicable to any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, Keepwell Agreement, Mono-line Insurance policy or other equivalent commitment and requires information on the guarantee and the guarantor. This building block may be added to any of the proposed RD and SN schedules.
108. The **additional SN building block for Asset Backed Securities** applies to securities of a type which either represent an interest in assets (including any rights designed to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable hereunder); or are secured by assets and the securities by their terms provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets. This additional SN building block for Asset Backed Securities has to be combined with one of the main schedules, and will normally be used together with either the wholesale or the retail debt SN schedule.
109. The **additional Building Block concerning the Underlying for Equity Securities** applies to securities that have the following characteristics:

Securities which are:

² Ordinary bonds, income bonds, capitalization bonds, zero coupon bonds, perpetual bonds, structured bonds, etc...



- (i) at the issuer's or at the investor's discretion or by predetermination
- (ii) to be converted or exchanged into or give in any other way the possibility to acquire
- (iii) shares or other transferable securities equivalent to shares.

Provided that those shares or transferable securities equivalent to shares:

- (i) can be physically delivered; and
- (ii) are issued by the issuer of the security or by an entity belonging to the group of said issuer; and
- (iii) are not physically admitted to trading on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the securities.

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

The information concerning the underlying share will be provided for by adding this building block to the Debt SN schedule or by replacing item 4.2.2. of the Derivative SN schedule by this building block, depending on the characteristics of the securities being issued.

Registration Document: main schedules and additional building blocks

110. For the RD, there are five main schedules which encompass the main types of securities or which are specific to some types of investor or issuer. These main schedules are the Equity RD schedule, the Retail Non-Equity RD schedule, the Wholesale Non-Equity RD schedule, the RD schedule for Asset Backed Securities, the RD schedule for Banks issuing non-equity securities.

111. The scope of the **Equity RD schedule** is not the same as the one stated for the Equity SN Schedule. In addition to “shares and other securities equivalent to shares”, it also applies to securities that have the following characteristics:

Securities which are:

- (i) at the issuer's or at the investor's discretion or by predetermination
- (ii) to be converted or exchanged into or give in any other way the possibility to acquire
- (iii) shares or other transferable securities equivalent to shares.

Provided that those shares or transferable securities equivalent to shares:

- (i) can be physically delivered; and
- (ii) are issued by the issuer of the security; and
- (iii) are not physically admitted to trading on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the securities.

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



112. **Wholesale Non-Equity RD schedule** applies to those securities that do not fall under the scope of the Equity RD schedule and that have a denomination per unit of at least EUR 50.000. The Wholesale Non-Equity RD also applies to those derivative securities that have no denomination when these derivative securities “can only be acquired on issue for at least EUR 50.000 per transferable security”.

This RD is also applicable to securities with a denomination in a foreign currency provided that the value of such denomination per security, once converted into euros, is at least equal to € 50.000.

113. The **Retail Non-Equity RD** schedule will be used for those securities that do not fall under the scope of the Equity RD or the Wholesale Non-Equity schedules.

114. The **Asset Backed Securities RD** schedule shall apply to the issuers of asset backed securities. An issuer of asset backed securities is only required to comply with these disclosure requirements for the purpose of its Registration Document.

115. The **Banks Non-Equity RD schedule** can be used by banks issuing any type of non-equity securities (with the exception of asset backed securities issued by SPVs). Banks, for the purposes of the use of this schedules would include not only “credit institutions” as defined by the Prospectus Directive, but also regulated firms such as investment banks that have substantial experience of issuing securities. It should be noted that an SPV whose obligations in respect of retail non-equity securities are guaranteed by a bank would be required to provide the information set out in the Retail Non-Equity schedule.

116. In addition to these main RD schedules, CESR has prepared a building block on **Pro Forma Financial Information** that will be combined with the Equity RD schedule in those cases when pro forma financial information is required to illustrate the impact of a significant gross change in the size of the issuer, due to a particular transaction (with the exception of those few situations where merger accounting is required).

Single schedule for depositary receipts issued over shares

117. Concerning the disclosure requirement relating to depositary receipts issued over shares, there is a single schedule which is not divided between SN and RD: the Depositary Receipt prospectus schedule. However, issuers of depositary receipts will have the option of producing a prospectus in three parts (summary, SN and RD), with an RD limited to the information on the depository.

Ranking between the various main RD schedules

118. As a general principle, the most comprehensive RD schedule can always be used to issue securities for which a less comprehensive RD schedule is provided for. This principle is intended to limit the costs to issuers and increase the flexibility in the building block system. For example, an issuer who has already prepared an Equity RD will not be required to prepare a new RD to issue debt or derivative securities, as long as the Equity RD is valid. In the same way, an issuer who has already prepared a Retail Non-Equity RD will not be required to prepare a new RD to issue wholesale debt securities or to issue wholesale derivative securities, as long as the Retail Non-Equity RD is valid. On the other hand, if an issuer who has issued retail debt securities with the Retail Non-Equity RD wants to launch an offer of equity securities, it will have to prepare a new RD that satisfies all the disclosure requirements of the



Equity RD schedule or to update the information of its RD in its Equity SN in order to meet the disclosure requirements of the Equity RD schedule.

119. Regarding the use of the Banks Non-Equity RD schedule CESR points out that these entities have the choice of using their specific schedule or the general Retail or Wholesale Non-Equity RD schedules when issuing debt or derivative securities. This would mean that a bank seeking to issue wholesale debt or derivative securities could produce either a Banks Non-Equity RD or a Wholesale Non-Equity RD. Additionally, banks issuing retail debt or retail derivative securities would have the option to choose between the Banks Non-Equity RD and or the Retail Non-Equity RD.

Complex or new financial instruments

120. 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.
121. 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 Prospectus Directive. Such prospectus should benefit from the European passport.
122. If the new type of security becomes a mainstream product, further harmonization would be necessary. CESR 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.

Blanket Clause

123. 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.
124. 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.
125. 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”.
126. 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 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 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 information equivalent to the required information. If there is no such information, the requirement shall not apply”.

How to combine the schedules and the building blocks

127. In drafting a prospectus, issuers will have to combine the main schedules and the additional building blocks.
128. In a number of cases, this combination will be obvious. For example, for an issue of shares by a corporate issuer the Equity SN schedule will have to be combined with the Equity RD schedule. Another obvious example: for an issue of debt securities, with a guarantee, the Retail Debt SN schedule will have to be combined with the building block for Guarantees and the Retail Non-Equity RD schedule, the Equity RD, or the RD schedule for banks if the issuer is credit institution.
129. For asset backed securities, the issuer will combine the Wholesale or Retail Debt SN schedule, following the case, the additional SN block for Asset Backed Securities and the RD schedule for Asset Backed Securities.
130. In some other cases, the combination might be less straightforward. In order to clarify which are the schedules that should be used when drawing up a prospectus, a general view for different types of security is given in the table attached to this document (Annex E). This table does not cover all existing securities, but reflects the combinations for the most common types of securities in order to show how the system works.

VI. ANNUAL INFORMATION

Extract from the mandate

DG Internal Market requests CESR to provide technical advice by 30 September 2003 at the latest on possible implementing measures relating exclusively to the method of publication of the document that contains or makes reference to all disclosure requirements published over the past 12 months with respect to information that would be required to be published under Community and national laws and rules dealing with the regulation of securities, issuers of securities and securities markets and more specifically, pursuant to Company Law Directives, Directive 2001/34/EC and Regulation (E) No. 1606/2002 on the application of International Accounting Standards.

Introduction

131. This matter is dealt with in article 10 of the Prospectus Directive.



132. This provision imposes that issuers whose securities are admitted to trading on a regulated market shall at least annually provide a document that contains or refers to all information published or made available to the public over the preceding 12 months in one or more Member States and in third countries in compliance with their obligations under Community and national laws and rules dealing with the regulations of securities, issuers of securities, and securities markets. According to this text, issuers shall refer at least to the information required pursuant to Company Law Directives, Directive 2001/34/EC and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of International Accounting Standards.
133. In addition, the provision also states that the document shall be filed with the competent authority of the home Member State after the publication of the financial statements.
134. Finally, the Directive imposes that where the document refers to information available elsewhere, it shall be stated where the information can be obtained.
135. This duty is not imposed on issuers of non-equity securities whose denomination per unit amounts to at least EUR 50.000.
136. It should be pointed out that this document aims exclusively at compiling and disclosing, once a year, in a single document, references to all disclosures made by an issuer irrespective of the law or the markets under which those disclosures were made. This list of disclosures will facilitate investors' awareness about the nature and location of such disclosures.
137. In giving its technical advice, CESR is aware that the Directive restricts level 2 measures to only the method of publication of the disclosure requirements and will not involve new disclosure requirements.
138. This document can be disclosed through a variety of ways. It should be noted that Article 14 of the Directive deems a prospectus published when it is made available through insertion in one or more papers circulated throughout, in a printed form or by insertion, in an electronic form, on the issuer's website or on the website of the Competent Authority. This task could be delegated, namely to the regulated markets, according to article 21 of the Prospectus Directive. Additionally, Member States are allowed to request that the prospectus made available through insertion in a newspaper or in a brochure is also made available electronically and may require publication of a notice informing the public where the prospectus is available and where it can be obtained.
139. Two possible approaches could be followed in this matter: CESR could, in the lines of the Directive, provide as technical advice an indication that this document should be disclosed using the same methods allowed for the prospectus, at issuer's choice. On the other hand, CESR could alternatively choose to select some of those means of publication, e.g. the issuer's website or the website of the Competent Authority.
140. Bearing in mind the relevance and purpose of this document and the views expressed by some respondents on the Call for Evidence on the Second Provisional Mandate provided by the Commission, CESR considers that issuers should be allowed to choose, among those means referred to in Article 14 of the Directive, the method of publication they consider adequate. In selecting the method of publication, issuers shall consider the objective of the document and that it should permit investors a fast and cost-efficient access to that information.
141. CESR considers that it is also included in its mandate to provide technical advice on the timings for publication of the document. The Directive only mentions that the document must



be filed after the publication of the financial statements. CESR considers adequate to suggest, as a level 2 advice, that a deadline of fifteen business days after publication of the financial statements should be indicated as a deadline to file this document and to disclose it to the public.

142. CESR also considers important to mention that as in this document there will be a reference to all the information published or made available to the public in the preceding 12 months it is possible that part of the information indicated thereto can, at that moment, be out of date. In this case the issuer should include a disclaimer calling the attention to that effect.

Level 2 Advice

143. **The document referred to in Article 10 of the Directive of the European Parliament and of the Council on prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC should be made available, at the issuer's choice, through one of the means allowed in Article 14 of that Directive. This choice would have in consideration the objective of the document and that it should permit investors a fast and cost-efficient access to that information.**

144. **This document shall be filed with the competent authority of the Home Member State and made available at the latest fifteen business days after the publication of the annual financial information in the Home Member State.**

145. **This document should include a disclaimer referring that some information can be out-of-date, if such is the case.**



ANNEX A
DERIVATIVE SECURITIES SN

1.	PERSONS RESPONSIBLE
1.1.	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer’s administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the part of the prospectus for which they are responsible is in accordance with the facts and contains no omission likely to affect its import.
2.	RISK FACTORS
	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed “risk factors”. This should include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor’s liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect.
3.	KEY INFORMATION
3.1.	<u>Interest of natural and legal persons involved in the issue/offer</u> A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.
3.2.	<u>Reasons for the offer and use of proceeds</u> when different from making profit and/or hedging certain risks. If reasons for the offer and use of proceeds are disclosed provide the total net proceeds and an estimate of the total expenses of the issue/offer.
4.	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING
4.1	<u>Information concerning the securities</u>
4.1.1	A description of the type and the class of the securities being offered and/or admitted to trading.
4.1.2	A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities can only be acquired on issue for at least EURO 50,000 per security.



**ANNEX A
DERIVATIVE SECURITIES SN**

4.1.3	Legislation under which the securities have been created.
4.1.4	An indication whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
4.1.5	Currency of the securities issue.
4.1.6	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.
4.1.7	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.
4.1.8	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
4.1.9	The issue date of the securities.
4.1.10	A description of any restrictions on the free transferability of the securities.
4.1.11	- The expiration or maturity date of the derivative securities - The exercise date or final reference date
4.1.12	A description of the settlement procedure of the derivative securities.
4.1.13	A description of how any return on derivative securities takes place, the payment or delivery date, and the way it is calculated.
4.1.14	In respect of the country of origin and the country(ies) where the offer is being made or admission to trading is being sought: <ul style="list-style-type: none"> - Information on taxes on the income from the securities withheld at source, - Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
4.2	<u>Information concerning the underlying</u>
4.2.1	The exercise price or the final reference price of the underlying.

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4.2.2	<p><u>Information required in respect of the underlying</u>, a statement setting out the type of the underlying and details of where information on the underlying can be obtained</p> <ul style="list-style-type: none"> – an indication where information about the past and the further performance of the underlying and its volatility can be obtained – where the underlying is a security <ul style="list-style-type: none"> • the name of the issuer of the security • the ISIN (International Security Identification Number) or other such security identification code – where the underlying is an index <ul style="list-style-type: none"> • the name of the index and a description of the index if it is composed by the issuer – where the underlying is an interest rate <ul style="list-style-type: none"> • a description of the interest rate – others where the underlying does not fall within the categories specified above the securities note must contain equivalent information. – where the underlying is a basket of underlyings <ul style="list-style-type: none"> • disclosure of the relevant weightings of each underlying in the basket
4.2.3	A description of any market disruption or settlement disruption events that affect the underlying
4.2.4	Adjustment rules with relation to events concerning the underlying
5.	TERMS AND CONDITIONS OF THE OFFER
5.1	<u>Conditions, offer statistics, expected timetable and action required to apply for the offer</u>
5.1.1	Conditions to which the offer is subject.
5.1.2	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.
5.1.3	The time period, including any possible amendments, during which the offer will be open and description of the application process.
5.1.4	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).
5.1.5	Method and time limits for paying up the securities and for delivery of the securities.



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5.1.6	A full description of the manner and date in which results of the offer are to be made public.
5.2	<u>Plan of distribution and allotment</u>
5.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
5.2.2	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
5.3.	<u>Pricing</u>
	Indication of the expected price at which the securities will be offered or the method of determining the price and the process for its disclosure. Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.
5.4.	<u>Placing and Underwriting</u>
5.4.1	Details of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offerer, of the placers in the various countries where the offer takes place.
5.4.2	Name and address of any paying agents and depository agents in each country.
5.4.3	Entities agreeing to underwrite the issue on a firm commitment basis, and entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Where not all of the issue is underwritten, a statement of the portion not covered.
5.4.4	When the underwriting agreement has been or will be reached.
5.4.5	Name and address of a calculation agent
6.	ADMISSION TO TRADING AND DEALING ARRANGEMENTS
6.1.	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. If known, the earliest dates on which the securities will be admitted to trading should be given.
6.2.	All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
6.3.	Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.

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7.	ADDITIONAL INFORMATION
7.1.	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest, if any, in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.
7.4.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer must identify the source(s) of the information.
7.5.	The issuer shall indicate in the prospectus whether or not it intends to provide post-issuance information. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported and where such information can be obtained.



ANNEX B
DEBT SECURITIES SN
(changes marked over Annex E CESR/03-208)

1.	PERSONS RESPONSIBLE
1.1	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, to the best of their knowledge, the information contained in the part of the prospectus for which they are responsible is in accordance with the facts and contains no omission likely to affect its import.
2.	RISK FACTORS
2.1	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".
3.	KEY INFORMATION
3.1	<u>Interest of natural and legal persons involved in the issue/offer</u> A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest.
3.2	<u>Reasons for the offer and use of proceeds</u> <u>When different from making profit and/or hedging certain risks</u> reasons for the offer and, where applicable, <u>the estimated total expenses of the issue/offer</u> and the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.
4.	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING
4.1	A description of the type and the class of the securities being offered and/or admitted to trading.
4.2	Legislation under which the securities have been created.
4.3	An indication of whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
4.4	Currency of the securities issue.



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4.5	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer
4.6	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.
4.7	<p>The nominal interest rate and provisions relating to interest payable.</p> <ul style="list-style-type: none"> - The date from which interest becomes payable and the due dates for interest. - The time limit on the validity of claims to interest and repayment of principal <p>Where the rate is not fixed, description of the underlying on which it is based and of the method used to relate the two <u>and an indication where information about the past and the further performance of the underlying and its volatility can be obtained.</u></p> <ul style="list-style-type: none"> - A description of any market disruption or settlement disruption events that affect the underlying - Adjustment rules with relation to events concerning the underlying - Name of the calculation agent <p><u>If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EURO 50,000.</u></p>
4.8	Maturity date and arrangements for the amortization of the loan, including the repayment procedures. Where advance amortization is contemplated, on the initiative of the issuer or of the holder, it must be described, stipulating amortization terms and conditions
4.9	An indication of yield. The method whereby that yield is calculated shall be described in summary form
4.10	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation
4.11	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
4.12	In the case of new issues, the expected issue date of the securities.
4.13	A description of any restrictions on the free transferability of the securities.
4.14	<p>In respect of the country of origin and the country(ies) where the offer being made or admission to trading is being sought:</p> <ul style="list-style-type: none"> - Information on taxes on the income from the securities withheld at source, - Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
5	TERMS AND CONDITIONS OF THE OFFER
5.1	<u>Offer statistics, expected timetable and action required to apply for the offer</u>



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5.1.1	Conditions to which the offer is subject.
5.1.2	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.
5.1.3	The time period, including any possible amendments, during which the offer will be open and description of the application process.
5.1.4	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.
5.1.5	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).
5.1.6	Method and time limits for paying up the securities and for delivery of the securities.
5.1.7	A full description of the manner and date in which results of the offer are to be made public.
5.1.8	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
5.2	<u>Plan of distribution and Allotment</u>
5.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
5.2.2	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
5.3	<u>Pricing</u>
5.3.1	An indication of the expected price at which the securities will be offered or the method of determining the price and the process for its disclosure. Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.
5.4	<u>Placing and Underwriting</u>
5.4.1	Details of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.
5.4.2	Name and address of any paying agents and depository agents in each country.
5.4.3	Details of the entities agreeing to underwrite the issue on a firm commitment basis, and details of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.
5.4.4	When the underwriting agreement has been or will be reached.



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DEBT SECURITIES SN
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6	ADMISSION TO TRADING AND DEALING ARRANGEMENTS
6.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. If known, the earliest dates on which the securities will be admitted to trading should be given.
6.2	All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
6.3	Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.
7	ADDITIONAL INFORMATION
7.1	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.
7.2	An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.
7.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.
7.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer must identify the source(s) of the information.
7.5	Credit ratings assigned to an issuer or its debt securities at the request or with the co-operation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.



**ANNEX C
WHOLESALE DEBT SN**

1	PERSONS RESPONSIBLE
1.1	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In case of natural persons including members of the issuer’s administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, to the best of their knowledge, the information contained in the part of the prospectus for which they are responsible is in accordance with the facts and contains no omission likely to affect its import.
2	RISK FACTORS
	Prominent disclosure of risk factors that are material to the securities admitted to trading in order to assess the market risk associated with these securities in a section headed “Risk Factors”.
3	KEY INFORMATION
	<u>Interest of natural and legal persons involved in the issue</u> A description of any interest, including conflicting ones, that is material to the issue, detailing the persons involved and the nature of the interest.
4	INFORMATION CONCERNING THE SECURITIES TO BE ADMITTED TO TRADING
4.1	Total amount of securities being admitted to trading.
4.2	A description of the type and the class of the securities being admitted to trading.
4.3	Legislation under which the securities have been created.



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4.4	An indication of whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
4.5	Currency of the securities issue.
4.6	Ranking of the securities being admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer
4.7	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.
4.8	<p>The nominal interest rate and provisions relating to interest payable.</p> <ul style="list-style-type: none"> - The date from which interest becomes payable and the due dates for interest. - The time limit on the validity of claims to interest and repayment of principal <p>Where the rate is not fixed, description of the underlying on which it is based and of the method used to relate the two.</p> <ul style="list-style-type: none"> - A description of any market disruption or settlement disruption events that affect the underlying - Adjustment rules with relation to events concerning the underlying - Name of the calculation agent
4.9	Maturity date and arrangements for the amortization of the loan, including the repayment procedures. Where advance amortization is contemplated, on the initiative of the issuer or of the holder, it must be described, stipulating amortization terms and conditions.
4.10	An indication of yield.
4.11	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where investors may have access to the contracts relating to these forms of representation.
4.12	A statement of the resolutions, authorisations and approvals by virtue of which the securities have been created and/or issued.
4.13	The issue date of the securities.
4.14	A description of any restrictions on the free transferability of the securities.



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WHOLESALE DEBT SN**

5	ADMISSION TO TRADING AND DEALING ARRANGEMENTS
5.1	Indication of the market where the securities will be traded and for which prospectus has been published. If known, the earliest dates on which the securities will be admitted to trading should be given.
5.2	Name and address of any paying agents and depository agents in each country.
6	EXPENSE OF THE ADMISSION TO TRADING
	An estimate of the total expenses related to the admission to trading.
7	ADDITIONAL INFORMATION
7.1	If advisors are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted
7.2	An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.
7.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.
7.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer must identify the source(s) of the information.
7.5	Credit ratings assigned to an issuer or its debt securities at the request or with the co-operation of the issuer in the rating process.



ANNEX D
BUILDING BLOCK ON UNDERLYING
FOR EQUITY SECURITIES

1. Description of the underlying share

- 1.1. Describe the type and the class of the shares
- 1.2. Legislation under which the shares have been or will be created
- 1.3. Indication whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records
- 1.4. Indication of the currency of the shares issue
- 1.5. A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights

Dividend rights:

- Fixed date(s) on which the entitlement arises,
- Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,
- Dividend restrictions and procedures for non resident holders,
- Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.
- Voting rights.
- Pre-emption rights in offers for subscription of securities of the same class.
- Right to share in the issuer's profits.
- Rights to share in any surplus in the event of liquidation.
- Redemption provisions
- Conversion provisions

- 1.6. In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued and indication of the issue date
- 1.7. Where and when the shares will be or have been admitted to trading
- 1.8. Description of any restrictions on the free transferability of the shares
- 1.9. Indication of the existence of any mandatory takeover bids/or squeeze-out and sell-out rules in relation to the shares
- 1.10. Indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof are to be stated
- 1.11. Impact on the issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders



ANNEX D
BUILDING BLOCK ON UNDERLYING
FOR EQUITY SECURITIES

2. When the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the one required by the Equity RD.