Luxembourg, le 18 juillet 2005

À toutes les personnes et entreprises surveillées par la CSSF ainsi qu'à toutes les personnes désirant effectuer une offre au public de valeurs mobilières au Luxembourg ou sollicitant l'admission à la négociation sur un marché réglementé de valeurs mobilières au Luxembourg, notamment dans le cadre de la Partie II et du chapitre 1 de la Partie III de la loi relative aux prospectus pour valeurs mobilières

CIRCULAIRE CSSF 05/ 195

Concerne: **Entrée en vigueur de la loi relative aux prospectus pour valeurs mobilières**

Mesdames, Messieurs

Nous avons l'honneur de porter à votre attention l'adoption de la loi du 10 juillet 2005 relative aux prospectus pour valeurs mobilières et portant modification de plusieurs lois dont la loi modifiée du 23 décembre 1998 concernant la surveillance des marchés d'actifs financiers (Mémorial A - N° 98 du 12 juillet 2005).

La loi relative aux prospectus pour valeurs mobilières (la **Loi Prospectus**) établit un nouveau cadre pour l'établissement, l'approbation et la diffusion des prospectus à publier en cas d'offre au public ou de demande d'admission de valeurs mobilières à la négociation sur un marché réglementé. En bref, la Loi Prospectus innove sur quatre points majeurs qui seront explicités ci-dessous : d'abord en instaurant trois régimes différents pour l'approbation des prospectus, ensuite en donnant de nouvelles compétences et missions à la CSSF, mais aussi en modifiant les modalités de la publication des prospectus et enfin en établissant une définition légale de l' « offre au public ».

Finalement, nous annexons aussi à la présente circulaire copie des recommandations du Comité des régulateurs des marchés de valeurs mobilières (CESR) pour la mise en oeuvre harmonisée de la réglementation européenne sur le prospectus « *CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses n° 809/2004* ».

1. Le contexte européen : la Directive Prospectus

Le mécanisme luxembourgeois de l'approbation des prospectus pour valeurs mobilières est profondément remanié par la transposition au Luxembourg de la directive 2003/71/CE du Parlement européen et du Conseil du 4 novembre 2003 concernant le prospectus à publier en cas d'offre au public de valeurs mobilières ou en vue de l'admission de valeurs mobilières à la négociation, et modifiant la directive 2001/34/CE (la **Directive Prospectus**). L'objectif poursuivi par la Directive Prospectus est de permettre aux sociétés de lever, plus aisément et à moindre coût, des capitaux dans toute l'Union européenne, sur la base de l'aval unique donné par l'autorité de l'Etat membre d'origine, ainsi que de renforcer la protection offerte aux investisseurs en assurant que tous les prospectus, où qu'ils soient émis et approuvés dans l'Union européenne, leur fournissent l'information claire et complète dont ils ont besoin pour prendre leur décision d'investissement. La Directive Prospectus tend à améliorer le mécanisme instauré par la Directive 89/298/CEE dont le système de reconnaissance mutuelle du prospectus restait partiel et complexe. Selon l'ancien système, l'autorité du pays d'accueil, en cas de reconnaissance du prospectus, avait la possibilité d'exiger des informations complémentaires concernant le marché domestique (y compris une traduction dans les langues du pays d'accueil).

Ainsi, la Directive Prospectus et le Règlement (CE) 809/2004 de la Commission du 29 avril 2004 mettant en œuvre la directive 2003/71/CE du Parlement européen et du Conseil en ce qui concerne les informations contenues dans les prospectus, la structure des prospectus, l'inclusion d'informations par référence, la publication des prospectus et la diffusion des communications à caractère promotionnel (le **Règlement Prospectus**) ont pour objet l'harmonisation dans l'Union européenne des exigences relatives à l'établissement, à l'approbation et à la diffusion du prospectus à publier en cas d'offre au public de valeurs mobilières et/ou en vue de l'admission de ces valeurs mobilières à la négociation sur un marché réglementé situé ou opérant sur le territoire d'un Etat membre. Aucun prospectus ne peut être publié avant son « approbation » par l'autorité compétente de l'Etat membre d'origine, qui est définie comme « l'acte positif à l'issue de l'examen par l'autorité compétente de l'Etat membre d'origine visant à déterminer si le prospectus est complet, si les informations qu'il contient sont cohérentes et s'il est compréhensible. » L'autorité compétente notifie, selon le cas, à l'émetteur, à l'offreur ou à la personne qui sollicite l'admission à la négociation des valeurs mobilières sur un marché réglementé sa décision concernant l'approbation du prospectus, dans les dix jours ouvrables qui suivent la présentation du projet de prospectus (vingt jours ouvrables si l'offre au public porte sur des valeurs mobilières émises par un émetteur dont aucune valeur mobilière n'a encore été admise à la négociation sur un marché réglementé et qui n'a pas encore offert de valeurs mobilières au public).

En février 2005, le CESR a en outre publié des recommandations pour la mise en oeuvre harmonisée de la réglementation européenne sur les prospectus (Réf. CESR/05-054b). L'objectif principal de ces recommandations n'est pas d'imposer des obligations supplémentaires aux émetteurs, mais d'éviter des interprétations divergentes des textes européens selon les Etats membres et de faciliter la compréhension de certaines de ces règles.

2. La Loi Prospectus établit trois régimes d'approbation de prospectus

La Loi Prospectus a notamment pour but la transposition de la Directive Prospectus en droit luxembourgeois qui est complétée par l'entrée en vigueur, le 1er juillet 2005, du Règlement Prospectus, ce dernier étant d'application directe au Luxembourg. La Loi Prospectus distingue trois régimes de prospectus différents :

i. un premier régime (Partie II de la Loi Prospectus) concernant les offres au public de valeurs mobilières et les admissions de valeurs mobilières à la négociation sur un marché réglementé faisant l'objet d'une harmonisation communautaire et transposant les règles de la Directive Prospectus ;

ii. un deuxième régime (Partie III de la Loi Prospectus) déterminant les règles luxembourgeoises applicables aux offres au public ainsi qu'aux admissions à la négociation sur un marché réglementé de valeurs mobilières et d'autres titres assimilables qui sont hors du champ d'application de la Directive Prospectus et prévoyant un régime de prospectus simplifié ; et

iii. un troisième régime (Partie IV de la Loi Prospectus) établissant un régime spécifiquement luxembourgeois applicable en cas d'admission de valeurs mobilières à la négociation sur un marché ne figurant pas sur la liste des marchés réglementés publiée par la Commission européenne.

Les changements institutionnels les plus importants apportés par l'adoption de la Loi Prospectus sont les nouvelles compétences directes de la CSSF dans le domaine de l'approbation des prospectus en ce qui concerne la Partie II et le chapitre 1 de la Partie III de la Loi Prospectus.

3. Les nouvelles compétences et missions de la CSSF

L'article 3 de la loi du 23 décembre 1998 relative à la surveillance des marchés d'actifs financiers, telle qu'elle a été modifiée, prévoyait dans son ancien libellé que la CSSF était seulement compétente pour viser les prospectus d'offre publique non suivie d'une cotation alors que la Bourse de Luxembourg était compétente pour viser les prospectus relatifs aux valeurs mobilières faisant l'objet d'une cotation ou d'une offre publique suivie d'une cotation. En pratique, même si les prospectus relatifs aux offres publiques de valeurs mobilières non suivies de cotation étaient visés par la CSSF, la lecture et le contrôle du document d'offre étaient également effectués par les services de la Bourse de Luxembourg sur base d'une délégation de l'instruction par la CSSF.

Bien que la Directive Prospectus permette en principe aux Etats membres de continuer à déléguer certaines tâches liées au contrôle des prospectus à d'autres entités jusqu'en 2011, la Loi Prospectus ne prévoit pas cette possibilité de délégation et la CSSF est seule responsable pour l'approbation des prospectus relatifs aux offres au public et aux admissions à un marché réglementé de valeurs mobilières tombant dans le champ d'application de la Directive Prospectus et pour l'approbation de prospectus simplifiés relatifs aux offres au public de valeurs mobilières qui sont hors du champ d'application de la Directive Prospectus. Ainsi, la Loi Prospectus désigne la CSSF comme autorité compétente pour veiller à l'application des dispositions de sa Partie II

(dès lors que le Luxembourg est l'Etat membre d'origine) et pour les offres au public visées au chapitre 1 de la Partie III de la Loi Prospectus (c'est-à-dire les offres au public de valeurs mobilières non couvertes par la Partie II). La Bourse de Luxembourg est toujours l'entité compétente devant approuver les prospectus soumis aux dispositions du chapitre 2 de la Partie III (c'est-à-dire l'admission de valeurs mobilières non couvertes par la Partie II à la négociation sur le marché réglementé luxembourgeois). Les prospectus simplifiés soumis à la Partie III ne bénéficieront pas du passeport européen et les règles d'application quant à leur contenu seront moins strictes que les dispositions du Règlement Prospectus. Pour les admissions de valeurs mobilières sur un marché ne figurant pas sur la liste des marchés réglementés publiée par la Commission européenne (Partie IV de la loi), l'opérateur de ce marché, en l'occurrence la Bourse de Luxembourg, est compétent pour l'approbation des prospectus relatifs à ce type d'admission.

Ce changement de fonctionnement des institutions luxembourgeoises, suite auquel la Bourse de Luxembourg abandonnera certaines compétences en la matière, n'empêchera pas son intervention dans le processus d'approbation par la CSSF. Les modalités de cette intervention sont fixées par contrat. Il est ainsi notamment prévu que les dossiers devront être simultanément soumis à la CSSF et à la Bourse de Luxembourg. La Bourse de Luxembourg commencera immédiatement à revoir en détail les dossiers en assurant le contact avec les émetteurs, respectivement les personnes soumettant le projet de prospectus pour approbation. Ainsi, après avoir revu et commenté les prospectus soumis, la Bourse de Luxembourg transmettra son avis à la CSSF. Sur base de cet avis ensemble avec les documents soumis, la CSSF procédera à un contrôle avant d'approuver le prospectus le cas échéant. Les spécifications techniques en matière de communication à la CSSF des deux catégories de prospectus devant être approuvés par elle seront déterminées par voie d'une circulaire qui sera prochainement publiée et qui prévoira que le dépôt des prospectus à approuver par la CSSF se fait principalement via la plateforme de communication *e-file* ou, au cas où le déposant ne dispose pas encore de la connexion *e-file* nécessaire, via e-mail à l'adresse prospectus@e-file.lu

Dans le contexte de la transposition de la Directive Prospectus, il est précisé que la Loi Prospectus introduit une définition de l'Etat membre d'origine qui détermine l'autorité compétente pour un émetteur ou pour une émission spécifique de titres. Suivant cette définition, l'autorité compétente est déterminée en tenant compte de plusieurs critères dont notamment le siège de l'émetteur, le lieu de l'offre au public ou celui de l'admission à un marché réglementé. Pour certaines catégories d'émissions, la Loi Prospectus ouvre un choix aux émetteurs tandis que pour d'autres, l'Etat membre d'origine se voit fixé dès le départ. A ce sujet, il faut constater que les explications et exemples relatifs à la notion d'Etat membre d'origine contenus dans les commentaires de l'article en question ne reflètent que certaines des interprétations possibles de cette notion alors que le texte de la Directive Prospectus et de la Loi Prospectus en permet d'autres. Tant que toutes les conséquences des différentes interprétations possibles ne sont pas connues, la CSSF n'émettra pas de circulaires, pour pouvoir agir avec la flexibilité nécessaire.

En ce qui concerne les programmes d'émissions, il est important de souligner d'ores et déjà que les « conditions finales » ne seront pas approuvées par la CSSF, mais uniquement déposées auprès d'elle. Il s'ensuit qu'un prospectus de base à approuver

par la CSSF ne peut pas constituer un document totalement vidé de substance. L'article 5(4) de la Directive Prospectus (faisant référence à son article 8(1) (a)) indique que les « conditions finales» seront déposées auprès de l'autorité compétente de l'Etat membre d'origine. Dans le cas où les titres en question seront offerts au public ou que leur admission à la négociation à un marché réglementé sera sollicitée dans un autre Etat membre, l'autorité compétente de l'Etat membre d'accueil devra aussi en recevoir une copie. L'obligation de communication des « conditions finales » pourra être effectuée par l'autorité de l'Etat membre d'origine ou assumée directement par l'émetteur, l'offreur ou la personne qui sollicite l'admission.

Les compétences (article 22 pour la Partie II et article 43 pour la Partie III) plus étendues de la CSSF font en sorte que les émetteurs, les offreurs et les personnes qui sollicitent l'admission à la négociation à un marché réglementé tombent désormais sous l'autorité directe de la CSSF, dans les cas où le Luxembourg est Etat membre d'origine au sens de la Loi Prospectus. La CSSF acquiert ainsi des compétences générales et directes en relation avec les informations que les émetteurs doivent publier, que ce soit dans le prospectus ou par voie de supplément au prospectus. En outre, la CSSF peut notamment suspendre une offre au public ou une admission à la négociation sur un marché réglementé pendant dix jours ouvrables, interdire une offre au public, suspendre à tout moment la négociation sur un marché réglementé, enjoindre à l'émetteur, à l'offreur ou à la personne qui sollicite l'admission à la négociation sur un marché réglementé de cesser toute pratique contraire à la Loi Prospectus. Un pouvoir particulièrement important dans le contexte des marchés financiers est la possibilité pour la CSSF de rendre public le fait que l'émetteur, l'offreur ou la personne qui sollicite l'admission à la négociation sur un marché réglementé ne se conforme pas aux obligations qui lui incombent. Par ailleurs, la Loi Prospectus prévoit que la CSSF peut prononcer des sanctions administratives.

4. La publication des prospectus

La Loi Prospectus ne reprend pas l'option de la Directive Prospectus d'exiger la publication d'une notice précisant comment le prospectus a été mis à la disposition du public et où celui-ci peut se le procurer. Toutes les possibilités de publication ouvertes par la Directive Prospectus (journaux, brochures imprimées, site internet) ont été reprises dans la Loi Prospectus. Par ailleurs, les prospectus sont publiés par la CSSF au moins durant une période de douze mois sur le site web de la Bourse de Luxembourg. En effet, en vertu de l'article 16, paragraphe 4 et de l'article 38, paragraphe 4 de la Loi Prospectus, la CSSF a délégué la publication des prospectus à la Bourse de Luxembourg qui les publiera sur son site web à l'adresse http://www.bourse.lu**.** Il s'ensuit que l'obligation de publication résidant dans le chef de l'émetteur conformément aux articles 16 et 38, paragraphes 1-3 de la Loi Prospectus est ainsi remplie au Luxembourg. Néanmoins, ceci n'empêche pas l'émetteur d'avoir en outre recours à d'autres moyens de publication. Dans ces conditions, les investisseurs disposeront d'un accès effectif et en principe gratuit aux informations, en temps réel. Par ailleurs, chaque investisseur qui en fait la demande aura la possibilité de recevoir sous format papier un exemplaire gratuit du prospectus. Cette demande est à adresser à l'émetteur, à l'offreur, à la personne qui a demandé l'admission des valeurs mobilières à la négociation sur un marché réglementé ou encore aux intermédiaires financiers étant intervenus dans le placement ou la négociation des titres en question.

5. La nouvelle définition d' « offre au public »

La Directive Prospectus fixe aussi, au niveau européen, une définition harmonisée de la notion d'offre au public que le Luxembourg a intégralement reprise dans la Loi Prospectus. Ceci introduit donc pour la première fois au Luxembourg une définition de la notion d' « offre au public ». En effet, le Luxembourg a dans le passé toujours eu une approche pragmatique envers cette notion, basée sur une prise en considération de certains critères comme la méthode de sollicitation du public, ce qui permettait de classifier une grande partie des placements comme des placements privés.

La Loi Prospectus introduit maintenant une définition assez large qui s'applique, en principe, également au placement de valeurs mobilières par les intermédiaires financiers. Selon la Loi Prospectus, une « offre au public de valeurs mobilières » est une « communication adressée sous quelque forme et par quelque moyen que ce soit à des personnes et présentant une information suffisante sur les conditions de l'offre et sur les titres à offrir, de manière à mettre un investisseur en mesure de décider d'acheter ou de souscrire ces valeurs mobilières. » Il est expressément précisé que cette définition s'applique également au placement de valeurs mobilières par des intermédiaires financiers, ce qui a des conséquences importantes sur certaines pratiques de placement en cours au Luxembourg. Effectivement, le placement de valeurs mobilières par des intermédiaires financiers pour le compte d'un émetteur ou leur propre compte est susceptible de constituer une offre au public s'il répond aux caractéristiques de la nouvelle définition. La nouvelle définition aura donc des répercussions non négligeables en ce qui concerne les placements traditionnels jusqu'alors considérés comme privés. On peut cependant souligner que le placement dans un portefeuille de titres par des établissements de crédit luxembourgeois pour des clients dans le cadre d'une gestion discrétionnaire n'est pas susceptible de constituer une « offre au public » au sens de la Loi Prospectus. Par ailleurs, une offre qui s'adresse exclusivement à des investisseurs dits qualifiés tels que définis à la Loi Prospectus est une offre qui ne nécessite pas la publication d'un prospectus.

Le commentaire des articles de la Loi Prospectus précise aussi, à juste titre, que « la simple communication d'informations sur un titre ou un émetteur sans qu'il y ait des titres proposés à l'achat ou à la souscription ne saurait être assimilée à une offre au public. Il est nécessaire que la communication d'informations soit faite en rapport avec une offre de titres. » Par ailleurs, une admission à la négociation sur un marché n'équivaut pas à une offre au public, même si cela emporte les mêmes conséquences quant à l'établissement et la publication d'un prospectus.

Pour l'application de la définition de l'offre au public et des conséquences qui en découlent, il faut d'abord que les instruments en question soient couverts par le champ d'application de la Partie II et du chapitre I de la Partie III de la Loi Prospectus. Ensuite, l'article 5 (voir aussi l'article 30 pour la Partie III) de la Loi Prospectus détermine une appréciation des obligations en relation avec les « offres (au public) » de valeurs mobilières en trois étapes :

- D'abord, il est souligné qu'aucune offre au public de valeurs mobilières sur le territoire du Luxembourg n'est autorisée sans publication préalable d'un

prospectus et que quiconque se propose de procéder à une telle offre au public de valeurs mobilières doit en aviser la CSSF à l'avance.

- Dans un deuxième paragraphe, l'article 5 dispose que l'obligation de publier un prospectus, et par conséquent l'obligation d'aviser la CSSF, n'est pas applicable à certaines catégories d'offres. Ces catégories sont les suivantes :

  a. une offre de valeurs mobilières adressée uniquement aux investisseurs qualifiés; et/ou
  b. une offre de valeurs mobilières adressée à moins de 100 personnes physiques ou morales, autres que des investisseurs qualifiés, par Etat membre; et/ou
  c. une offre de valeurs mobilières adressée à des investisseurs qui acquièrent ces valeurs pour un prix total d'au moins 50.000 euros par investisseur et par offre distincte; et/ou
  d. une offre de valeurs mobilières dont la valeur nominale unitaire s'élève au moins à 50.000 euros; et/ou
  e. une offre de valeurs mobilières dont le montant total est inférieur à 100.000 euros. Cette limite est calculée sur une période de douze mois.

- En troisième lieu, en vertu du paragraphe 3 de l'article 5, il est précisé que l'obligation de publier un prospectus ne s'applique pas aux offres au public portant sur certaines catégories de valeurs mobilières : notamment, sous certaines conditions, par exemple les valeurs mobilières offertes dans le cadre d'une offre publique d'acquisition par voie d'offre publique d'échange (auquel cas il faut qu'un document équivalent approuvé par la CSSF soit disponible) et celles offertes, attribuées ou devant être attribuées aux administrateurs ou aux salariés anciens ou existants par leur employeur dont les valeurs mobilières sont déjà admises à la négociation sur un marché réglementé ou par une société liée (auquel cas il faut qu'un document d'information, qui n'a pas besoin d'être approuvé par la CSSF, soit disponible).

Ainsi, par exemple, pour une offre de valeurs mobilières à des salariés, il convient de vérifier selon les étapes énoncées s'il s'agit éventuellement d'une offre qui bénéficie de l'exemption de publier un prospectus en application du paragraphe 2 de l'article 5 et ensuite (en cas d'une réponse négative à cette question) si cette offre aux salariés remplit les conditions susceptibles d'engendrer la dérogation à l'obligation d'établir ou de publier un prospectus selon l'article 5. 3. e).

6. Prochaines mesures d'application

Le nouveau dispositif réglementaire en matière d'établissement, d'approbation et de diffusion des prospectus doit encore être complété et certaines lignes de conduite pratiques y relatives doivent encore être fixées. Ainsi, les textes suivants seront notamment adoptés et publiés dans un avenir proche :

- une circulaire CSSF concernant les spécifications techniques en matière de communications à la CSSF, dans le cadre de la loi relative aux prospectus pour valeurs mobilières, de documents en vue de l'approbation ou du dépôt et des

avis pour des offres au public et des admissions à la négociation sur un marché réglementé ;

- une circulaire CSSF concernant les informations requises pour l'établissement d'un prospectus simplifié sous la Partie III en vertu de l'article 32. paragraphe 2 disposant que les informations détaillées à fournir sont déterminées par la CSSF ;

- un règlement grand-ducal ayant pour objet de compléter la grille des taxes forfaitaires prélevées par la CSSF pour l'approbation des prospectus et modifiant le règlement grand-ducal du 10 novembre 2003 relatif aux taxes à percevoir par la Commission de surveillance du secteur financier tel que modifié par le règlement grand-ducal du 14 juillet 2004 ; et

- un règlement grand-ducal relatif au registre des personnes physiques et des PME considérées comme investisseurs qualifiés, tel que prévu à l'article 1 paragraphe 2 de la loi relative aux prospectus pour valeurs mobilières.

Une nouvelle version du règlement d'ordre intérieur de la Bourse de Luxembourg, tel que modifié, reprenant notamment les détails concernant le nouveau marché de la Bourse de Luxembourg ne figurant pas sur la liste des marchés réglementés publiée par la Commission européenne et les exigences quant au contenu du prospectus à publier en cas d'admission à ce marché, a par ailleurs été approuvée et a été publiée au Mémorial A - N° 99 du 12 juillet 2005.

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Simone DELCOURT	Arthur PHILIPPE	Jean-Nicolas SCHAUS
Directeur	Directeur	Directeur général

Annexe

THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR/05-054b

CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses n° 809/2004

February 2005

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I INTRODUCTION

Introductory remarks

Materiality clause

1. CESR acknowledges that the materiality principle already in force under Article 5.1 of the Directive and Regulation will also apply to its recommendations. Therefore, when information is not material in the context of the securities or the issuer, CESR does not expect issuers to mention it.

Recommendations adapted to the different types of securities

2. When producing the recommendations, CESR has taken into consideration the overarching principle of article 5 and 7 of the Directive whereby the information included in a prospectus has to be given according to the particular nature of the issuer and of the securities offered to the public or admitted to trading. CESR has, therefore, set the scope to clarify to what types of securities each recommendation should apply, bearing in mind that investors need a different level of disclosure depending on the securities offered or admitted to trading.

Duplication of information should be avoided

3. Where information to which a recommendation refers is already disclosed elsewhere in the prospectus, issuers may refer to where that information can be found instead of duplicating it, provided this does not harm the readability of the prospectus. In any case, CESR expects issuers to present the information in an easily analysable and comprehensible form.

Building block approach

4. CESR points out that the building block approach that was followed in the Prospectus Regulation is, when applicable, to be followed also in relation to the recommendations. Therefore, if recommendations have been provided for some of the disclosure requirements included in the different "blocks" combined by the issuer in order to draft its prospectus, the issuer is expected to follow all the recommendations.

Objective of the recommendations

5. One of CESR's objectives when producing the advice for the European Commission (EC) was to focus the information requirements of the level 2 legislative measures on the information that is relevant to the investor, in line with the Lamfalussy Process. Another objective was to avoid any kind of ambiguity that could lead to different interpretations of the rules and, therefore, hamper the functioning of the Single Market. In order to facilitate the understanding of certain disclosure requirements, CESR provides recommendations that will facilitate the consistent implementation of the future Regulation, without imposing further obligations on issuers. This view was shared by many respondents to CESR's consultations.

6. The second interim report monitoring the Lamfalussy Process issued in December 2003 by the Inter-Institutional Monitoring Group also shares this approach and specifically encourages CESR and the national regulatory authorities to intensify and speed up its work at level 3.

7. When producing a prospectus, issuers and their advisers may have doubts about the extent of the information to be supplied under a certain item in the schedule. The purpose of these recommendations would be to help issuers and their advisers to make such judgements and to assist consistency across Europe in the way in which these schedules are implemented. Subject to the provisions of the level 1 Prospectus Directive, which are transposed by Members States, and the provisions of the level 2 Commission's Regulation on prospectuses, which are directly applicable, CESR's members will recommend that issuers prepare their prospectuses according to the recommendations unless they turn out to be unsuitable to a particular case.

8. The recommendations will facilitate not only that the implementation of the rules is consistent across the EU but also, by way of the prior public consultation process that has been followed, that the views from market participants and end-users will be fully considered.

Status of the recommendations

9. The outcome of CESR's work is reflected in common recommendations which do not constitute European Union legislation and will not require national legislative action. CESR Members will introduce these recommendations in their day-to-day regulatory practices on a voluntary basis. The way in which these recommendations will be applied will be reviewed regularly by CESR. CESR recommendations for the consistent implementation of the Commission's Regulation on Prospectuses will not prejudice, in any case, the role of the Commission as guardian of the Treaties.

Background

10. The Prospectus Directive was published in the Official Journal of the European Union on 31 December 2003. Member States have to transpose the directive in the domestic laws or regulations no later than 1 July 2005.

11. The Commission Regulation 809/2004 implementing the Prospectus Directive was published on 30 April 2004. The Regulation shall apply from 1 July 2005.

12. The Regulation is based on the advice that CESR submitted at the request of the EC, following a previous consultation with industry and users of the legislation. CESR provided its advice on July, September and December 2003.

13. To that effect CESR set up an Expert Group on Prospectus, that was responsible for developing the advice to the EC. CESR decided that this group would continue the level three work which is the subject of this paper. The group is chaired by Pr. Fernando Teixeira dos Santos, Chairman of the Portuguese Comissao do Mercado de Valores Mobiliários and supported from the CESR Secretariat by Javier Ruiz. The Expert group set up two working sub-groups coordinated by Adetutu Odutola of the UK Financial Services Authority and by Cristina Dias from the Portuguese Commission. Raquel Garcia from the Spanish Comisión Nacional del Mercado de Valores co-ordinates the two drafting groups.

14. An important part of this work relates to disclosure of financial information where specific technical expertise in the field of financial reporting and auditing is needed. This has therefore been carried out jointly by the Prospectus Group and CESR-Fin. CESR-Fin is a

permanent group on financial reporting and is chaired by John Tiner, Chief Executive of the UK FSA. Michel Colinet is the secretary of CESR-Fin.

15. 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 Prospectus Group has met twice with the CWG and its members have provided written contributions to the drafting sub-groups that were taken into account when this paper was prepared. The members of the CWG are the following:

- **Ms Carmen Barrenechea Fernández,** Intermoney Titulización, SGFT and member of the European Securitisation Forum Executive Committee.
- **Mr François Bavoillot,** Arcelor.
- **Ms Deborah ter Beek,** ABN Amro Rothschild.
- **Ms Catherine Denis-Dendauw,** the High Council of the Economic professions and the Commission for Accounting Standards and of the sub-Commission IAS/IFRS.
- **Mr Kevin Desmond,** Price Waterhouse Coopers.
- **Mr Axel Forster,** Luxembourg Stock Exchange.
- **Mr Wolfgang Gerhardt,** Sal. Oppenheim jr. & Cie. KgaA, Frankfurt am Main.
- **Mr Alain Gouverneyre,** Ernst & Young France.
- **Mr Svante Johansson,** Stockholm University and Linklaters, Stockholm office.
- **Mr Spyros Lorentziadis,** Ernst & Young Southeast Europe.
- **Ms Eva Maria Sattlegger,** Raiffeisenzentralbank.
- **Mr Nunzio Visciano,** Italian Stock Exchange.

16. On 4 March 2004, CESR published a Call For Evidence (Ref: CESR/04-057) inviting all interested parties to submit views by 15 April 2004 on the issues which CESR should consider when producing the recommendations. CESR received around 12 submissions and these can be viewed on the CESR's website.

17. On June 2004 CESR published a consultation paper on its proposed recommendations for the consistent implementation of the Commission's Regulation on prospectuses inviting interested parties to submit comments until 18 October. CESR received around 48 submissions and these can be viewed on the CESR's website.

18. To facilitate the consultation process, CESR held an open hearing on 7 September 2004 at the CESR premises.

References

19. Papers already published by CESR which are relevant to this paper are:

- *CESR's Advice (July submission) on level 2 implementing measures for the prospectus directive (CESR/03-208)*

- *CESR's Advice (September submission) on level 2 implementing measures for the prospectus directive (CESR/03-300)*

- *CESR's Advice (December submission) on level 2 implementing measures for the prospectus directive (CESR/03-399)*

- *The role of CESR at "level 3" under the Lamfalussy process (CESR/04-104b)*

II FINANCIAL INFORMATION ISSUES

1. SELECTED FINANCIAL INFORMATION

Item 3 of Annex I (RD for shares), item 3 of Annex IV (RD debt and derivative securities with a denomination of less than EUR 50 000) and item 3 of Annex X (RD for depositary receipts issued over shares).

3. Selected financial information
3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarise the financial condition of the issuer. **3.2.** If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.

A. Introduction

20. The primary purpose of including selected historical financial information in a prospectus is to summarize key information coming out of the historical financial information of the issuer, for each financial year covered by the historical financial information and any further interim financial period.

B. Selected Financial Figures Recommended

21. The selection of figures must be based on relevance criteria on a case by case basis, and so it is a question of judgement to assess which selected information must be highlighted for a particular issuer in the specific circumstances when the prospectus is presented, such as the sphere of economic activity of the issuer, its industrial sector, the major captions of its financial statements, the type of securities being offered or issued, etc.

22. These key figures must be extracted directly on a straight-forward basis from the historical and interim financial information included in the prospectus. If the historical financial information included in the document is restated, the selected financial data must be taken out from the restated historical financial information.

23. On a voluntary basis every issuer is free to highlight other additional financial figures. These additional financial figures might be calculated from, or elaborated based on, the figures directly extracted from the historical and interim financial information. It is also possible to extract additional financial figures from parts of the prospectus other than the historical and interim financial information. The actual historical and interim financial information should be given greater prominence than those additional figures.

24. When the information is derived because the issuer decides to include additional financial figures which entail some kind of calculation from, or elaboration based on, the figures directly contained in the historical and interim financial information, then the following principles could be usefully taken into consideration when additional financial figures are being selected. Additional financial figures should be: **Understandable**, i.e. they should contain clear descriptions and, where needed, definitions about the sources of the data and

method of calculation in order not to be too complex for investors to understand; **Relevant**, i.e. they should be supported by a thorough analysis of the specific issuer's business environment and should fairly highlight the key issuer's financial aspects about the financial condition (and performance); **Reconcilable**, i.e. they should be capable of justification by being reconciled with the historical and interim financial information data included in the prospectus, where the basis of these figures are expected to be taken out from.

25. Examples of selected financial data that the issuer may choose to present:

    a) net sales or operating revenues;

    b) profit (loss) from operations;

    c) profit (loss) from continuing operations;

    d) profit or loss for the period and allocation attributable to minority interests, and to equity holders of the parent;

    e) basic and diluted earnings per share amounts for profit or loss attributable to ordinary equity holders and, if presented, profit or loss from continuing operations attributable to those equity holders;

    f) total assets;

    g) total non-current assets;

    h) total non-current assets held for sale;

    i) total equity attributable to equity holders of the parent;

    j) minority interest; and

    k) dividends declared per share.

26. If in accordance with Annex I, paragraph 20.1, the last two years audited historical financial information are presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements and as a result all financial periods are not fully comparable, the issuer could consider following one of the ways recommended for the presentation of historical information.

2. OPERATING AND FINANCIAL REVIEW

Item 9 of Annex I (RD for shares) and item 9 of Annex X (RD for depositary receipts issued over shares).

9. Operating and financial review

Financial Condition To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.
Operating Results Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.
Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.

27. The OFR should assist the investor's assessment of the past performance of the issuer by setting out a fair analysis of the development and performance of the issuer's business and of its financial condition, together with a description of the principal risks and uncertainties that it faces. This analysis should be a balanced and comprehensive one consistent with the size and complexity of the business, in order to provide investors with a historical review of the issuer's performance and financial condition 'through the eyes of management'. The OFR should focus on those issues which the issuer considers to be significant in the circumstances of their business as a whole.

28. To the extent necessary for an understanding of the company's development, performance or condition, the analysis may include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business (key value drivers), including information relating to environmental and employee matters.

29. Performance should be discussed in the context of the long-term objectives of the business.

30. The analysis should cover any special factors that have affected performance in the period under review; this includes influences whose effect cannot be quantified, as well as any specific non-recurring items reported in the financial statements.

31. The OFR should provide information about the different components of earnings and cash flow and the extent to which they are recurring elements, thereby enabling investors to make a better prediction about the sustainability of earnings and cash flow in the future. The OFR should also discuss any returns to shareholders including distributions and share repurchases.

32. The issuer and its advisers, when compiling the OFR, should bear in mind the following overarching principles:

Audience: The OFR should focus on matters that are relevant to investors and should not assume a detailed prior knowledge of the business, nor of the significant features of its operation environment. Thus, issuers should not assume that all investors are qualified investors.

Time-frame: The OFR should discuss the performance of the periods for which historical financial information is required in the prospectus, identifying those trends and factors relevant to the investor's assessment of the past performance of the issuer's business and the achievement of its long-term objectives.

Reliability: The OFR should be neutral, free from bias, dealing even-handedly with both good and bad aspects. Where a significant matter is not discussed in the OFR for instance because it is discussed elsewhere in the prospectus, the issuer should ensure that investors are not misled by the omission by providing cross-references.

Comparability: Although the approach adopted in the presentation of the OFR by the issuer may be different from that of other issuers, the disclosure should be sufficient for the investor to be able to compare the information with similar information about the issuer for the period under review. Comparability will be enhanced if the measures disclosed are accepted and widely used either within the industry sector or more generally.

3. CAPITAL RESOURCES

Item 10 of Annex I (RD for shares) and item 10 of Annex X (RD for depositary receipts issued over shares).

10.1	Information concerning the issuer's capital resources (both short and long term);
10.2	An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;
10.3	Information on the borrowing requirements and funding structure of the issuer;
10.4	Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10.5	Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items 5.2.3. and 8.1.

33. Under this disclosure requirement, the issuer should discuss capital resources and liquidity. Information on relevant ratios, such as interest cover and debt/equity ratios, where appropriate, should be provided as well as information on the existing long term capital resources and funding structure.

34. Cash inflows and outflows during the latest financial period and any subsequent interim period as well as material changes thereafter should be described, including a brief discussion of any material unused sources of liquidity. The discussion should cover an analysis of the sources and amounts of the issuer's cash flows, including the nature and extent of any material legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations. Such constraints would include exchange controls and taxation consequences of transfers.

35. The discussion also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes. As far as this information is substantially described in the financial statements of the issuer, there is no need to repeat the information as long as there is a cross-reference to the information.

36. The issuer's existing liquidity, as well as the issuer's anticipated sources of funds needed to fulfil commitments, should be discussed, including a commentary on the level of borrowings, the seasonality of borrowing requirements (indicated by the peak level of borrowings during that period) and the maturity profile of both borrowings and undrawn committed borrowing facilities.

37. Where the issuer has entered into covenants with lenders which could have material effect of restricting the use of credit facilities, and relevant negotiations with the lenders on the operation of these covenants are taking place, this fact should be discussed. Where a breach of covenant has occurred or is expected to occur, the prospectus should give information on how the issuer intends to remedy the situation. Where the information on capital resources (e.g. breach of covenants) overlaps with the information provided in the working capital statement (Item 3.1, Annex III), there is no need to repeat the information but the issuers may cross refer to the working capital statement.

4. PROFIT FORECASTS OR ESTIMATES

Item 13 of Annex I (RD for shares), Item 9 of Annex IV (Debt and Derivatives RD with a denomination of less than EUR 50 000), Item 8 of Annex IX (Debt and Derivatives RD with a denomination of at least EUR 50 000), Item 13 of Annex X (RD for depositary receipts issued over shares) and Item 8 of Annex XI (Banks RD).

Paragraph 42 is not relevant for Annex IX and XI insofar as it relates to the requirement for an accountant or auditors' report that is not included in those schedules

13. Profit forecasts or estimates

If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:

13.1 A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.
There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.

13.2 A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

13.3 The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

13.4 If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.

38. As opposed to profit forecasts, estimates are not expected to be that assumption-sensitive. Hence, assumptions are to a great extent superseded by estimates in that context because estimates refer to economic transactions that have already occurred.

39. As stated in Article 2.11 of the Regulation, "Profit estimate" means a "profit forecast for a financial period which has expired and for which results have not yet been published". It would therefore be expected that in most cases, the statutory financial information published after estimates would confirm data previously published as estimate. This constitutes an important difference from profit forecast, as forecasts are by there very nature uncertain.

40. The inclusion of a profit forecast or estimate in a prospectus is the responsibility of the issuer and persons responsible for the prospectus and due care and diligence must be taken to ensure that profit forecasts or estimates are not misleading to investors.

41. In addition, the following principles should be taken into consideration when profit forecasts or estimates are being compiled. Profit forecasts or estimates should be:

- **Understandable**, i.e Profit forecasts or estimates should contain disclosure that is not too complex or extensive for investors to understand;
- **Reliable**, i.e. Profit forecasts should be supported by a thorough analysis of the issuer's business and should represent factual and not hypothetical strategies, plans and risk analysis;
- **Comparable**, i.e. Profit forecasts or estimates should be capable of justification by comparison with outcomes in the form of historical financial information;
- **Relevant**, i.e. Profit forecasts or estimates must have an ability to influence economic decisions of investors and provided on a timely basis so as to influence such decisions and assist in confirming or correcting past evaluations or assessments.

42. Where an issuer provides a profit forecast or estimate in a registration document, if the related schedules so requires, it must be reported upon by independent accountants or auditors in the registration document (as described in item 13.2 of Annex I of the Regulation). Where the issuer does not produce a single prospectus, upon the issuance of the securities note and summary at a later time, the issuer should either:

- confirm the profit forecasts or estimates; or
- state that the profit forecasts or estimates are no longer valid or correct; or
- make appropriate alteration of profit forecasts or estimates. In this case, they must be reported upon as described in item 13.2 of Annex I of the Regulation.

43. If an issuer has made a statement other than in a previous prospectus that would constitute a profit forecast or estimate if made in a prospectus, for instance, in a regulatory

announcement, and that statement is still outstanding at the time of publication of the prospectus, the issuer should consider whether the forecasts or estimates are still material and valid and choose whether or not to include them in the prospectus.

44. CESR considers that there is a presumption that an outstanding forecast made other than in a previous prospectus will be material in the case of share issues (especially in the context of an IPO). This is not necessarily the presumption in case of non-equity securities.

45. Where there is an outstanding profit forecast or estimate in relation to a material undertaking which the issuer has acquired, the issuer should consider whether it is appropriate to make a statement as to whether or not the profit forecast or estimate is still valid or correct.

46. The issuer should also evaluate the effects of the acquisition and the profit forecast made by that undertaking on its own financial position and report on it as it would have done if the profit forecast or estimate had been made by the issuer.

47. The forecast or estimate should normally be of profit before tax (disclosing separately any non-recurrent items and tax charges if they are expected to be abnormally high or low). If the forecast or estimate is not of profit before tax, the reasons for presenting another figure from the profit and loss account must be disclosed and clearly explained.

48. Furthermore, the tax effect should be clearly explained. When the results are published relating to a period covered by a forecast or estimate, the published financial statements must disclose the relevant figure so as to enable the forecast and actual results to be directly compared.

49. CESR recognises that often, in practice, there is a fine line between what constitutes a profit forecast and what constitutes trend information as detailed in item 12 of Annex I of the Regulation. A general discussion about the future or prospects of the issuer under trend information will not normally constitute a profit forecast or estimate as defined in Articles 2.10 and 2.11 of the Regulation ("any form of words which expressly or by implication indicates a figure or minimum or maximum figure for the likely level of profits or losses for the current financial period and/or subsequent periods or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word 'profit' or 'loss' is not used"). Whether or not a statement constitutes profit forecasts or estimates is a question of fact and will depend upon the circumstances of the particular issuer.

50. This is a non-exhaustive list of factors that an issuer is expected to take into consideration when preparing forecasts:

- past results, market analysis, strategic evolutions, market share, and position of the issuer
- financial position and possible changes therein
- description of the impact of an acquisition or disposal, change in strategy or any major change in environmental matters and technology
- changes in legal and tax environment
- commitments toward third parties

5. HISTORICAL FINANCIAL INFORMATION

Item 20.1 of Annex I (RD for shares) and item 20.1 of Annex X (RD for depository receipts issued over shares).

20.1 Historical Financial Information

Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable, to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:
(a) balance sheet;
(b) income statement;
(c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;
(d) cash flow statement;
(e) accounting policies and explanatory notes

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

Introduction: Restatements pursuant to paragraph 2 of item 20.1

51. This text provides recommendations on the application in several circumstances of the second paragraph of item 20.1 of Annex I, in particular in the situations where this provision will lead to the restatement of the previously published historical financial information.

52. The second paragraph of item 20.1 was mainly introduced considering the specific situation of new applicants offering securities to the market for the first time, and seeking listing of these securities on an EU regulated market. Indeed, new applicants will often (but

not always) have to change their set of accounting standards[1] after their admission to trading. In many cases, this will lead them to adopt IAS/IFRS as basis for their consolidated accounts, instead of the local GAAP they used until when they prepare and file the initial listing prospectus[2].

53. In this case, it is important that the historic financial information presented to investors within a prospectus is comparable both within the track record being presented and also with the way it will be presented on an ongoing basis (once listed). As explained below, restatement to IAS/IFRS of previously published financial information (initially prepared under local GAAP) will ensure a higher level of transparency and comparability.

54. The second paragraph of the item 20.1 of Annex I also applies to situations where the set of accounting standards used in the next published financial statements is identical to the set of accounting standards used in the last published financial statements. Recommendations are also provided on how issuers should have regard, for the presentation of historical financial information, to the accounting standards or policies that, within the set of standards, will be adopted by the issuer whether voluntary or imposed by the EU or national regulation.

55. The following example will illustrate some of the possible different situations. Consider an issuer preparing a prospectus for a public offering and admission to trading of these securities on a regulated market in 2010. The issuer must statutorily present its financial statements e.g. in March, every year. Balance sheet date is 31 December.

a. **Situation a: the set of accounting standards will change (in the next published financial statements)**. Point A below.

   The issuer is a new applicant and used national GAAP as basis for its statutory consolidated financial statements in 2007, 2008 and 2009. Pursuant to the EU Regulation 1606/2002, the issuer will have to apply IAS/IFRS as from 1st January 2010 (and present comparatives under IAS/IFRS as at 31 December 2009). If the IPO takes place after March 2010, the *next published financial statements* will be the 2010 ones, i.e. IAS/IFRS financial statements as at 31 December 2010 which will actually be published in March 2011.

   A similar situation is that of issuers which voluntarily decide at the time of the IPO to adopt IAS/IFRS for the preparation of the financial statements as at 31 December 2009, although historical financial information was always presented under local before.

b. **Situation b: the set of standards does not change (in the next published financial statements).** Point B below.

[1] A set of accounting standards refers to a consistent and complete body of accounting rules issued by one standard setter, such as the national standards and GAAP or the IAS/IFRS. Compliance with a set of standards usually needs full compliance with all the requirements of each applicable standards and interpretations.

2 In compliance with article 4 of the EU Regulation 1606/2002 of 19 July 2002 on the application of international accounting standards, companies whose securities are traded on a regulated market have to apply the endorsed IAS/IFRS for the preparation and presentation of their consolidated financial statements. For the other companies, application of IAS/IFRS depends on the choice of the relevant Member States which can require or allow application of these standards. Its is expected that in the longer term, most European companies seeking an initial listing will adopt IAS/IFRS as basis for their statutory consolidated accounts before being listed as this will facilitate the application to listing. However, it is necessary to envisage the situation where issuers apply national accounting standards before becoming listed.

i. The issuer already used IAS/IFRS as basis for its consolidated accounts (this is the case if the issuer is already listed or if the issuer is a new applicant but used to apply IAS/IFRS before the offering, in accordance with its national reporting framework).
ii. The issuer is a new applicant and used national GAAP as basis for its statutory consolidated financial statements in 2006, 2007 and 2008. As the IPO takes place before March 2010, the *next published financial statements* will be the 2009 ones, i.e. national GAAP financial statements.

A. Issuers applying a different set of standards in the last and in the next published financial statements

Presentation of historical annual financial information

56. In this case, the issuer is required to completely restate the financial information covering the last two financial years (in the example 2009 and 2008). The restatement applies to all parts and aspects of the financial statements. The restated financial information must be audited or reported on.

57. The issuer is not required to restate the first year (in the example 2007) but inclusion of the first year in the prospectus remains mandatory pursuant to the paragraph 1 of item 20.1 (for share registration documents). Where the issuer decides not to restate this first year, it may adopt a presentation format for the three years of financial information that allows comparability and continuity over time.

58. This approach is to use the middle period (2008) as a bridge from the first year (2007) and the third year (2009), by presenting the middle period under the two sets of accounting standards.

59. Indicative format when the information is displayed on the face of the financial statements

Items of Financial Statements	Year 2009 Under IFRS	Year 2008 Under IFRS (restated)	Year 2008 Under previous GAAP (as previously published)	Year 2007 Under previous GAAP (as published)

60. For the presentation of the financial information as prepared under previous GAAP, issuers can choose to present them on the face of the financial statements using the "bridge approach" described above when the "old" and "new" formats of accounts are sufficiently comparable or, if it is not the case, to present these financial statements prepared under previous GAAP on separate pages.

61. The bridge approach may also be used when historical financial information covers 2 years and the restatement is required only for the most recent year. It is then applicable e.g. to debt and derivative securities issuers pursuant to item 13.1 of Annex IV and pursuant to item 11.1 of Annex IX and for asset backed securities issuers pursuant to item 8.2 of Annex VII.

When is the issuer considered as first time adopter of IFRS?

62. In the circumstances described above, an additional question is to know when the issuer has to be considered as first time adopter of IFRS for the purpose of application of IFRS 1 First-time Adoption of International Financial Reporting Standards. In other words, referring to example given above, is the issuer considered as first time adopter for 2009 financial statements (as restated to IAS/IFRS following the restatement rule of paragraph 2 of item 20.1) or for 2010 financial statement (application of EU Regulation 1606/2002)?

63. Paragraph 3 of IFRS 1 indicates that "An entity's first IFRS financial statements are the first annual financial statements in which the entity adopts IFRSs, by an explicit and unreserved statement in those financial statements of compliance with IFRSs". The paragraph 4 of the Standard adds that IFRS 1 does not apply when an entity "stops presenting financial statements under national requirements, having previously presented them as well as another set of financial statements that contained an explicit and unreserved statement of compliance with IFRSs".

64. It follows from the above that when the share issuer has to present audited financial statements restated under IAS/IFRS for the last two years in its prospectus, the issuer should apply IFRS 1 for the financial statements covering the last year presented. Referring to the example, the share issuer could apply IFRS 1 in the 2009 financial statements (as restated under IFRS) and this implies that the 2008 financial statements will be restated into IAS/IFRS as comparatives[3].

Which IFRS to apply?

65. Basically, the requirement is to apply all IAS/IFRS as endorsed for application in the EU (pursuant to EC Regulation No 1606/2002) effective at the balance sheet date of the "next published financial statements".

66. In some cases, it may be difficult to know with sufficient certainty which standards or policies will be applicable in the "next published financial statement". For example if the public offer is realised in 2010, so far the next published financial statement (2010) are not included in the prospectus. Then, when the prospectus is prepared and filed, the issuer may not be aware of all possible future new or amended standards which will be in force for the 2010 financial statements. In some other (rare) cases, the retrospective application of the future new or amended standards may not be permitted.

67. Restatement of the historical financial information will usually not be possible in such situations. In these situations, in addition to IAS 8 requirements (see below), the issuer will, in accordance with item 20.1 of prospectus regulation have regard to these future new or amended accounting standards and policies applicable to the 2010 financial statements by providing additional disclosure, where the information is available and is expected to have a material impact on the results and financial position of the issuer.

B. Issuers applying the same set of standards in the last and in the next published financial statements (this being national GAAP or IAS/IFRS)

3 This is not applicable to issuers such as debt issuers and issuers of derivative securities, who are not required to present two years under IAS/IFRS in prospectus, but only the most recent year. In these cases, the IFRS financial statement included in the prospectus cannot be considered as first time adoption accounts.

68. In this case, the issuer should basically follow the requirements of the applicable set of accounting standards relating to changes in accounting policies and/or the transitional requirements in new standards. Such requirements provide for the solutions aimed at ensuring the historical comparability between all financial periods presented (i.e. retrospective application and restatement and/or provision of additional disclosures).

69. As far as IAS/IFRS are concerned, this aspect is covered by IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors and by specific transitional provisions in any IAS/IFRS.

70. IAS 8 basic principle is that a change in accounting policy resulting from the initial application of a Standard or an Interpretation must be accounted for in accordance with the specific transitional provisions, if any, in that Standard or Interpretation. When an entity changes an accounting policy upon initial application of a Standard or an Interpretation that does not include specific transitional provisions or changes an accounting policy voluntarily, it shall apply the change retrospectively (IAS 8, paragraph 49 and following).

71. The Standard uses the 'impracticability' criterion for exemption from changing comparative information when changes in accounting policies are applied retrospectively. The Standard includes a definition of 'impracticable' and recommendations on its interpretation. IAS 8 also provides that when an entity has not applied a new Standard or Interpretation that has been issued but is not yet effective, the entity shall give additional defined disclosure.

72. It results from these requirements that the accounting standards and policies applicable to the next published financial statement will, in accordance with the accounting standards (IAS or local GAAP), normally be taken into account for the preparation of the financial statements themselves. Therefore, no restatement for the prospectus purposes is necessary. In theses cases, the set of accounting standards will advise the issuer how to deal with future new or amended accounting standards and policies applicable to the 2010 financial statements.

73. In addition, the issuer will, in accordance with item 20.1 of prospectus regulation have regard to future new or amended accounting standards and policies applicable to the next published financial statements by providing additional disclosure in the prospectus, where the information is available and is expected to have a material impact on the results and financial position of the issuer and where the financial statements do not already include such information (e.g. in application of IAS 8, as explained above).

74. When a prospectus for admission to trading of securities contains historical financial information prepared on the basis of national GAAP only, issuers might consider giving additional IAS/IFRS based financial information (in a condensed form or not), so as to provide investors with information comparable on an ongoing basis (once admitted to trading).

C. Audit of the annual financial information

75. The first paragraph of item 20.1 of Annex I requires issuers to provide audited historical information covering the latest 3 financial years, and the audit report in respect of each year.

76. In accordance with the 4th and 7th accounting EU Directives, the companies must have their annual and consolidated accounts audited by one or more persons authorized to audit accounts under the laws of the Member States[4]. The same directives require that the annual and consolidated accounts give a true and fair view (article 2.3 of the 4th Directive and article 16.3 of the 7th Directive).

77. These provisions apply to the statutory annual and consolidated accounts of all companies and to the statutory audit of these accounts.

78. When historical information has been restated and an audit report is produced for the purposes of the prospectus, the audit report shall be provided on any restated accounts presented in the prospectus. The audit report will be presented in accordance with applicable national law of Member States on audit reports. If the issuer uses the "bridge approach" presenting the middle period under the two sets of accounting standards, the audit report need only cover the restated financial statements. The statutory audit report would be for the earliest period when the bridge approach is adopted.

79. The last paragraph of item 20.1 above mentioned provides that "The historical annual financial information must be independently audited or reported on as to whether or not, for the purpose of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard".

80. There are cases where the issuers, in accordance with Prospectus Regulation, do not need to provide comparative information under IFRSs (e.g. debt and derivative securities issuers pursuant to item 13.1 of Annex IV and pursuant to item 11.1 of Annex IX and asset backed securities issuers pursuant to item 8.2 of Annex VII). CESR is of the opinion that the one year IFRS financial statement included in the prospectus cannot be considered as first time adoption accounts. Whilst CESR would expect such information to be presented, as far as possible on a basis consistent with the comparative information in the first time adoption accounts, CESR believes there must be some flexibility in the application of IFRS 1 to such financial information produced for the purposes of the prospectus. CESR notes that this financial information does not constitute general purpose financial statements under the IFRS framework and that special purpose financial reports are outside its scope.

81. The lack of comparative information, in connection with reporting for the purposes of the prospectus where comparative information is not required, should not in itself, result in a lack of a true and fair view.

82. As regards the audit of restated historical information which does not include comparative information, auditors will be expected to duly follow the relevant applicable auditing standards and to report accordingly. In this regard, CESR understands that the restated historical financial information in question is not the primary financial statements of the entity and, consequently, should be considered additional financial information drawn up for the sole purpose of the prospectus. The auditor should report on this information through a special purpose audit report, including an opinion on the "true and fair view" as required by the Prospectus Regulation.

D. Content of historical annual financial information

83. When the issuer applies IAS/IFRS to present historical annual financial information in a registration document, that information should include all those components of the

4 Article 51 of the Fourth Council Directive (78/660/EEC) of 25 July 1978 (annual accounts) and article 37 of the Seventh Council Directive 83/349/EEC of 13 June 1983 (consolidated accounts).

complete set of financial statements as defined in IAS 1 and that information should cover the latest 3 financial years.

84. Where the historical annual financial information has been restated in order to comply with the requirements of the second paragraph of the item 20.1, these restated financial statements may be presented as a substitute to the statutory financial statements.

85. The fourth paragraph of the item 20.1 of Annex 1[5] of Prospectus Regulation requires that the issuer applying national accounting standards must include at least the following historical annual financial information in a registration document which is in line with the requirements of IAS 1:

(a) balance sheet

(b) income statement

(c) statement showing the changes in equity

(d) cash flow statement

(e) accounting policies and explanatory notes

86. If the national accounting standards of a Member State do not include regulation on how to prepare the above mentioned statements, especially regarding the statements (c) and (d), additional statements will be prepared in accordance with the applicable set of accounting standards. When applicable accounting standards do not include specific guidance for the preparation of such statements, the IAS/IFRS principles should usefully be followed to extent possible.

6. PRO FORMA FINANCIAL INFORMATION

Annex II (Pro forma building block).

Annex II Pro forma financial information building block

The pro forma information must include a description of the transaction, the businesses or entities involved and the period to which it refers, and must clearly state the following:

a) the purpose to which it has been prepared;

b) the fact that it has been prepared for illustrative purposes only;

c) the fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results.

5 Item 13.1 of Annex IV (RD for debt and derivative securities with a denomination per unit of less than EUR 50 000) and item 11.1 of Annex XI (RD for banks): the statement showing the changes in equity is not required.

Item 8.2 of Annex VII (RD for asset backed securities) and item 11.1 of Annex IX (RD for debt and derivative securities with a denomination per unit of at least EUR 50 000: the statement showing the changes in equity and the cash flow statement are not required.

In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes, depending on the circumstances may be included.
Pro forma financial information must normally be presented in columnar format, composed of: a) the historical unadjusted information; b) the pro forma adjustments; and c) the resulting pro forma financial information in the final column. The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included in the prospectus
The pro forma information must be prepared in a manner consistent with the accounting policies adopted by the issuer in its last or next financial statements and shall identify the following: a) the basis upon which it is prepared; b) the source of each item of information and adjustment.
Pro forma information may only be published in respect of a) the current financial period; b) the most recently completed financial period; and/or c) the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document.
Pro forma adjustments related to the pro forma financial information must be: clearly shown and explained; directly attributable to the transaction; factually supportable. In addition, in respect of a pro forma profit and loss or cash flow statement, they must be clearly identified as to those expected to have a continuing impact on the issuer and those which are not.
The report prepared by the independent accountants or auditors must state that in their opinion: the pro forma financial information has been properly compiled on the basis stated; that basis is consistent with the accounting policies of the issuer.

Clarification of certain terms used in the annex

87. 'Factually supportable': the nature of the facts supporting an adjustment will vary according to the circumstances. Nevertheless, facts are expected to be capable of some reasonable degree of objective determination. Support might typically be provided by published accounts, management accounts, other financial information and valuations contained in the document, purchase and sale agreements and other agreements to the transaction covered by the prospectus. For instance, in relation to management accounts, the interim figures for an undertaking being acquired may be derived from the consolidation schedules underlying that undertaking's interim statements.

88. 'Directly attributable to transactions': Pro forma information should only reflect matters that are an integral part of the transactions which are described in the prospectus. In particular, pro forma financial information should not include adjustments which are dependent on actions to be taken once the current transactions have been completed, even where such actions are central to the issuer's purpose in entering into the transactions.

89. The accounting treatment applied to adjustments should be presented and prepared in a form consistent with the policy the issuer would adopt in its last or next published financial statements. For instance, the issuer should not include deferred or contingent consideration in its pro forma if such consideration is not directly attributable to the transaction at hand but to a future event and may result in unduly inflating the net assets figures.

90. For these purposes, 'Significant gross change' is described in recital 9 of the Regulation.

91. Thus, in order to assess whether the variation to an issuer's business as a result of a transaction is more than 25%, the size of the transaction should be assessed relative to the size of the issuer by using appropriate indicators of size prior to the relevant transaction. A transaction will constitute a significant gross change where at least one of the indicators of size is more than 25%.

92. A non-exhaustive list of indicators of size is provided below:

- Total assets
- Revenue
- Profit *or* loss

93. Other indicators of size can be applied by the issuer especially where the stated indicators of size produce an anomalous result or are inappropriate to the specific industry of the issuer, in these cases the issuers should address these anomalies by agreement of the competent authority.

94. The appropriate indicators of size should refer to figures from the issuer's last or next published annual financial statements.

7. FINANCIAL DATA NOT EXTRACTED FROM THE ISSUER'S AUDITED FINANCIAL STATEMENTS.

Item 20.43 of Annex I (RD for shares), Item 13.3.3 of Annex IV (Debt and Derivatives RD with a denomination of less than EUR 50 000), Item 11.3.3 of Annex IX (Debt and Derivatives RD with a denomination of at least EUR 50 000), Item 20.3.3 of Annex X (RD for depositary receipts issued over shares), Item 11.3.3 of Annex XI (Banks RD).

Where financial data in the registration document is not extracted from the issuer's audited financial statement state the source of the data and state that the data is unaudited.

95. Financial data not extracted from the issuer's audited financial statements will typically include any information, statistics, ratios or other data which purports to represent the performance of the issuer's business activities and which cannot be sourced or derived from the issuer's audited financial statements.

96. Where the financial data in a prospectus is not extracted from the issuer's audited financial statements, the data should be clearly identified in the prospectus as such together with the definitions of the terminology used and the basis of preparation adopted. In addition, a clear indication should be given as to which figures relate to historical, forecast, estimated or pro forma information, as appropriate with reference made to where the basis of presentation can be found.

97. The actual audited historical financial information should be given greater prominence than any financial data not extracted from the issuer's audited financial statements.

8. INTERIM FINANCIAL INFORMATION

Item 20.6. of Annex I (RD for shares), item 13.5. of Annex IV (RD debt and derivative securities with a denomination of less than EUR 50 000) and item 20.5 of Annex X (RD for depositary receipts issued over shares)

Interim and other financial information
20.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.
20.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year.
The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.

A. Introduction

98. The prospectus shall present all the up-to-date financial information that has been already published by the issuer. To that end, if the issuer has published any interim financial information of the current financial year, it shall include such information in the prospectus.

99. When the prospectus is dated more than nine months after the end of the last audited financial year, it must provide an update - in a condensed format - of the historical annual financial information included in this prospectus. The objective is to provide investors with information on the recent developments in the financial position and performance of the issuer. This means that the prospectus must include financial information covering the first six month of the financial year, even if the issuer has not previously published any interim financial information.

100. The Interim financial statements required under the provisions of item 20.5 have the same meaning as Interim financial information required under 20.6.2.

B. Content of Interim Financial Information for the application of item 20.6.2

B.1. Issuers already admitted to trading on a regulated market

101. Issuers admitted to trading on a regulated market shall include in the prospectus the condensed set of financial statement included in the half-yearly financial report covering the first six months of the financial year in accordance with the Transparency Directive as transposed in their home member state.

102. For issuers admitted to trading on a regulated market and benefiting from transitional provisions of the Transparency Directive it is recommended that they provide the minimum information as set for issuers not admitted to trading on a regulated market. This means that these issuers will have to provide the minimum information set out in paragraph 105.

B.2. Issuers not admitted to trading on a regulated market.

103. The interim financial information should be presented according to the same set of standards as the one used to prepare historical financial information referred to under item 20.1, except for accounting policy changes made after the date of the most recent annual financial statements, provided under point 20.1, that are to be reflected in the next annual financial statements.

104. For issuers not admitted to trading on a regulated market, the interim financial information covering the first six months of the current financial year should at least include:

i. a condensed balance sheet;
ii. a condensed income statement;
iii. selected explanatory notes.

105. For issuers seeking admission to trading on a regulated market, publishing consolidated accounts and not benefiting from transitional provisions of the Transparency Directive[6] or for issuers not admitted to trading on a regulated market already using IAS/IFRS as basis for the preparation and presentation of their consolidated financial statements, the interim financial information should, in addition, include a condensed cash flow statement and a condensed statement of changes in equity.

106. The interim financial information must include comparative statements for the same period in the prior financial year in the following terms:

(a) Balance sheet as of the end of the first six months of the current financial year and comparative balance sheet as of the end of the immediately preceding financial year;

(b) Income statement cumulatively for the first six months of the current financial year with a comparative income statement for the comparable period of the immediately preceding financial year;

(c) Statement showing changes in equity cumulatively for the six months of the current financial year, with a comparative statement for the comparable period of

6 Once admitted to trading on a regulated market, these issuers will be required to apply the IAS/IFRS pursuant to the EU Regulation 1606/2002 (see above). They will also have to apply IAS 34 in their future interim reporting. However, if these issuers benefit from transitional provisions of the Transparency Directive once they will be admitted to trading on a regulated market they will only have to provide minimum information as set out in the preceding paragraph 105.

the immediately preceding financial year (when the statement is required – see above);

(d) Cash flow statement cumulatively for the six months of the current financial year, with a comparative statement for the comparable period of the immediately preceding financial year (when the statement is required – see above).

9. WORKING CAPITAL STATEMENTS

Item 3.1. of Annex III (SN for shares),

3.1 Working Capital Statements
Statement by the issuer that, in its opinion, the working capital is sufficient for the issuers present requirements or, if not, how it proposes to provide the additional working capital needed.

A. Definitions

"Working capital"

107. Working capital should be considered as an issuer's ability to access cash and other available liquid resources in order to meet its liabilities as they fall due.

"Present requirements"

108. A prospectus may be valid for up to 12 months and therefore present requirements should be considered to be a minimum of 12 months from the date of the prospectus. A twelve month period is also consistent with the period that directors will be familiar with assessing when considering the applicability of going concern in annual financial statements.

B. Introduction

109. The working capital statement either provides forward looking comfort by the issuer that in its opinion, it has sufficient cash flow for a period of at least 12 months, taking into account a wide range of variables and sensitivities or information on how this is to be achieved

110. Where the issuer is aware of working capital difficulties beyond the 12 month present requirement' guideline, the issuers will need to consider whether supplementary disclosure in the prospectus is appropriate.

111. When giving a working capital statement issuers should ensure that the statement or explanation is understandable i.e. the working capital statement should be clear and unambiguous leaving no doubt in the investors mind as to whether, in the Issuers opinion, there is, or is not, sufficient working capital.

112. For an issuer which has subsidiary undertakings the investor is in substance, investing in the business of the whole group and this is the basis on which information in the prospectus is presented e.g. financial information in the prospectus will be presented on a

consolidated basis. When considering the working capital statement an investor should expect comfort that the business of the issuer (which may be operated through subsidiaries) will have sufficient working capital for its present requirements. Therefore where an issuer has subsidiary undertakings the working capital statement should relate to the issuer's group i.e. cover all subsidiary undertakings. When considering working capital on a group basis the issuer will need to consider, amongst other things, the nature of group banking arrangements and any restrictions on transfer of funds between subsidiaries e.g. where overseas subsidiaries are involved.

C. "Clean" working capital statements

113. The requirement of the regulation is to make a statement that there is sufficient working capital for present requirements i.e. a "clean" working capital statement or explain how additional working capital will be provided.

114. There may be a desire by issuers to disclose assumptions and include potential caveats to the clean statement required by the regulation. The addition of such disclosures will detract from the value of the statement. Detailed disclosure of assumptions that the issuer has made in reaching its opinion, will put the onus on investors to reach their own conclusion regarding adequacy of working capital and are therefore not normally acceptable.

115. In making a clean statement there should therefore be no reference to:

- "Will have" or "may have" sufficient working capital, rather than "is sufficient", "will have" or "may have" could for example indicate an unidentified future time or event such as debt facilities yet to be agreed, within the next 12 months.
- Assumptions, sensitivities, risk factors, or caveats. All working capital statements should be made on the basis of reasonable assumptions - disclosure of these only serves to qualify and confuse the statement for shareholders and investors.

D. "Qualified" working capital statements

116. If an issuer is unable to make a clean statement as required by the regulation then it must be the issuers opinion that it does not have sufficient working capital i.e. the decision for issuers is binary. It is not acceptable for the issuer to state that they are unable to confirm.

117. In such cases where the wording of the regulation cannot be tracked, in order to ensure that there can be no confusion for investors, the issuer should firstly make a clear statement that "…it does not have sufficient working capital for its present requirements….".

118. Following the statement that the issuer does not have sufficient working capital there are a number of matters that should be disclosed in order to ensure that investors are fully informed as regards what the issuers actual working capital position is:

119. *Relative timing*: Disclosure of the timing of the working capital issue is needed to understand the urgency of any working capital problem. Disclosure must address the question "when does the issuer expect to run out of working capital?", as this could for example be immediately or in say six months time.

120. *Shortfall*: The approximate quantum of any working capital shortfall should be disclosed, i.e. disclosure must address the question "how much additional funding does the issuer need?".

121. *Action plan*: Disclosure must address the question of how the issuer plans to rectify the current shortfall in working capital. Disclosure should include details of specific proposed actions which could include for example:

a) refinancing;
b) the renegotiation of or new credit terms/facilities;
c) decrease in discretionary capital expenditure;
d) revised strategy or acquisition program;
e) or asset sales.

122. It is important that the issuer explains how confident or otherwise they are that these actions will be successful and the timing of the proposed actions.

123. *Implications*: Where relevant, the implications of any of the proposed actions being unsuccessful should be disclosed. For example whether an issuer is likely to enter into administration or receivership and if so, when.

E. Principles for preparing working capital statements.

124. Issuers should ensure that there is very little risk that the basis of such a statement is subsequently called into question. The procedures adopted by issuers in making a statement are expected to be very similar to those adopted by issuers in concluding that the annual accounts should be drawn up on a going concern basis.

125. When giving a working capital statement issuers are expected to have undertaken appropriate procedures to support the statement that is being made. Such procedures would normally include:

- preparation of unpublished supporting prospective financial information in the form of internally consistent cash flow, profit and loss and balance sheet information;
- business analysis covering both the cash flows of the business and the terms and conditions and commercial considerations associated with banking and other financing relationships;
- consideration of the strategy and plans of the business and the related implementation risks together with checks against external evidence and opinion
- assessment of whether there is sufficient margin or headroom to cover reasonable worst case scenario (sensitivity analysis).

126. Where there is insufficient headroom between required and available funding to cover reasonable alternative scenarios it will not be possible for issuers to make a clean working capital statement. In these circumstances if the issuer is to give a clean statement he will need to reconsider their business plans or to arrange additional financing.

10. CAPITALISATION AND INDEBTEDNESS

Item 3.2 of Annex III (SN for shares)

3.2 Capitalisation and Indebtedness

A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.

127. As much as possible, issuers would be expected to provide the information provided in the form below. Indebtedness should be computed on the basis of the consolidated accounts in the case of groups.

1. Disclosure of capitalization and Indebtedness may be presented, as of a date no earlier than 90 days prior to the date of approval of the prospectus, according to the following format:

Total Current debt……..
- Guaranteed[7]…….
- Secured[8]……
- Unguaranteed/ Unsecured …….

Total Non-Current debt (excluding current portion of long –term debt)……
- Guaranteed[7]……..
- Secured[8]……
- Unguaranteed/ Unsecured……..

Shareholder's equity:
a.……Share capital…….
b…...Legal Reserve……..
c…….Other Reserves…….

Total ……

The information provided in the capitalisation statement should be derived from the last published financial information of the issuer. If any of the information is more than 90 days and there has been a material change since the last published financial information, the issuer should provide additional information to update those figures. If any of the information is more than 90 days old, but there has not been no material change since the last published financial information, the issuer should include a statement to that effect.

Legal Reserve and Other Reserves do not include the "Profit and Loss Reserve". Therefore, CESR does not expect issuers to calculate a profit and loss account for the purpose of the capitalization statement.

* * *

2. Issuers should be provide disclosure of Net indebtedness in the short term and in the medium-long term:

A. Cash……
B. Cash equivalent (Detail)……
C. Trading securities ……
D. Liquidity (A) + (B)+(C)……

E. Current Financial Receivable……

7 Description of the types of guarantees
8 Description of the assets secured

F. Current Bank debt……
G. Current portion of non current debt……
H. Other current financial debt……
I. Current Financial Debt (F)+(G)+(H)

J. Net Current Financial Indebtedness (I)-(E)-(D)……

K. Non current Bank loans……
L. Bonds Issued……
M. Other non current loans……..

N. Non current Financial Indebtedness (K)+(L)+(M)…….

O. Net Financial Indebtedness (J)+(N)……

* * *

Disclosure of indirect and contingent indebtedness shall also be provided in a separate paragraph. Issuers should indicate the amounts and analyse the nature of Indirect Indebtedness and contingent indebtedness.

III. NON FINANCIAL INFORMATION ITEMS

1. SPECIALIST ISSUERS

Article 23.1
Notwithstanding Articles 3 second paragraph and 22.1 second subparagraph, where the issuer's activities fall under one of the categories included in Annex XIX, the competent authority of the home Member State, taking into consideration the specific nature of the activities involved, may ask for adapted information, in addition to the information items included in the schedules and building blocks set out in Articles 4 to 20, including, where appropriate, a valuation or other expert's report on the assets of the issuer, in order to comply with the obligation referred to in Article 5.1 of Directive 2003/71/EC. The competent authority shall forthwith inform the Commission thereof.

Recital 22
For some categories of issuers the competent authority should be entitled to require adapted information going beyond the information items included in the schedules and building blocks because of the particular nature of the activities carried out by those issuers. A precise and restrictive list of issuers for which adapted information may be required is necessary. The adapted information requirements for each category of issuers included in this list should be appropriate and proportionate to the type of business involved. The Committee of European Securities Regulators could actively try to reach convergence on these information requirements within the Community. Inclusion of new categories in the list should be restricted to those cases where this can be duly justified.

1a PROPERTY COMPANIES

128. Considering the specific features of property companies and Article 23 of the Regulation, CESR proposes that property companies, when preparing a prospectus for a public offer or admission to trading of shares, debt securities with a denomination of less than EUR 50.000 secured by the properties (including convertible debt securities) and depository receipts issued over shares with a denomination of less than EUR 50.000, include a valuation report. Only a condensed report needs to be included in the prospectus.

129. Property companies are those issuers whose principal activity is holding of properties, both directly and indirectly and development of properties for letting and retention as an investment, the purchase or development of properties for retention as investment. For the purpose of this definition, property means freehold, heritable or leasehold property or any equivalent.

130. This valuation report must:

(i) be prepared by an independent expert;
(ii) give the date or dates of inspection of the property;
(iii) provide all the relevant details in respect of material properties necessary for the purposes of the valuation;
(iv) be dated and state the effective date of valuation for each property, which must not be more than 1 year prior to the date of publication of the prospectus provided

that the issuer affirms in the prospectus that no material changes have occurred since the date of valuation;

(v) include a summary showing separately the number of freehold and leasehold properties together with the aggregate of their valuations (negative values must be shown separately and not aggregated with the other valuations; separate totals should be given for properties valued on different bases);

(vi) include an explanation of the differences of the valuation figure and the equivalent figure included in the issuer's latest published individual annual accounts or consolidated accounts, if applicable.

1b MINERAL COMPANIES

131. Considering the specific features of mineral companies and Article 23 of the Regulation, CESR proposes the following recommendations:

Mineral companies are those whose principal activity is or is planned to be the extraction of mineral resources .

For the purposes of this recommendation, the following definitions apply:

- "extraction" includes mining, production, quarrying or similar activities and the reworking of mine tailings or waste dumps;
- "mineral resources" include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels, including coal.

Issuers that are involved only in exploration of mineral resources and are not undertaking or propose to undertake their extraction on a commercial scale (i.e. as a business activity) would not be classed as mineral companies.

132. All prospectuses (including prospectuses drawn up by companies that have been trading as a mineral company for more than 3 years) should set out:

a. The details of the reserves
b. The expected period of working of those reserves
c. an indication of the periods and main terms of any licences or concessions and the economic conditions for working those licences or concessions;
d. indications of the progress of actual working; and
e. an explanation of any exceptional factors that have influenced (a) to (d) above.

133. However in addition, an issuer that has not been a mineral company for at least the three preceding years is expected to include the following information:

(a) Where the issuer does not hold controlling interests in a majority (by value) of the properties, fields, mines, companies or other assets in which it has invested, state whether or not it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.

b) Financial matters:

(i) an estimate of the funding requirements of the company for at least two years following publication of the prospectus;

(ii) particulars of estimated cash flow for either the two years following publication of the prospectus or, if greater, the period until the end of the first full financial year in which extraction of mineral resources is expected to be conducted on a commercial scale; such particulars must include details of the relevant mineral resources to be extracted, the expected prices and grade structures of the saleable resources, mineral concentrates or products, the expected extraction costs of the various extraction stages and the evidence and assumptions on which this information is based; and

(iii) confirmation by an independent accountant or auditor that it is satisfied that the estimated cashflow has been stated by the issuer after due care and enquiry.

c) Expert's report:

A report from a suitably qualified and experienced independent expert. The content of the expert report, including the appropriate definitions, should be agreed with the competent authority.

1c SCIENTIFIC RESEARCH BASED COMPANIES

134. Considering the specific features of scientific research based companies and Article 23 of the Regulation, CESR proposes that issuers of shares whose principal activities are involvement in laboratory research and development of chemical or biological products or processes, including pharmaceutical companies and those involved in the areas of diagnostics and agriculture and are start up companies, are expected to disclose in their prospectuses:

(i) details of the issuer's operations in laboratory research and development, to the extent material to investors, including details of patents granted and in relation to its products the successful completion of, or the successful progression of significant testing of the effectiveness of the products. If there are no relevant details, a negative statement should be provided. Where applicable, this information shall be provided in the line item of research and development, patents and licenses;

(ii) details of the relevant collective expertise and experience of the key technical staff;

(iii) information on whether the issuer has engaged in collaborative research and development agreements with organizations of high standing and repute within the industry, to the extent material to investors. In the absence of such agreements, explanation on how such absence could affect the standing or quality of its research efforts.

(iv) a comprehensive description of each product the development of which may have a material effect on the future prospects of the issuer.

Issuers covered by this Recommendation are also expected to include the information required for start up companies.

1d START-UP COMPANIES

135. Considering the specific features of start up issuers and Article 23 of the Regulation, CESR proposes that start-up issuers of shares are expected to provide information in their prospectuses as follows.

136. To this end, a start up issuer is a company that has been operating in its current sphere of economic activity for less than three years. The normal case that would fall under this definition is a company that has less than 3 years of existence. Nevertheless, even if the issuer was incorporated more than three years ago, the proposed Recommendations would be applicable if the company changed completely its business less than three years ago, meaning that in fact, the company's business is totally new. Companies formed for the purposes of acting as holding companies for existing businesses are not considered start-up companies. Special purpose vehicles, as defined in article 2.4 of the Regulation, are not considered start-up companies in fact because they are formed for the purpose of the issuance of securities, not to conduct a business.

137. Strategic objectives:

- A discussion of the issuer's business plan with a discussion of the issuer's strategic objectives shall be provided together with the key assumptions upon which such plan is based, in particular with respect to the development of new sales and the introduction of new products and/or services during the next two financial years, and a sensitivity analysis of the business plan to variations in the major assumptions. Issuers are not obliged to include a business plan with figures.

- If the business plan includes profit forecasts, the report referred to in item 13.2 of Annex I to the Regulation should be provided.

138. The prospectus shall refer to information such as:

a. the extent to which the issuer's business is dependent upon any key individuals' identifying the individuals concerned, if material;

b. current and expected market competitors;

c. dependence on a limited number of customers or suppliers;

d. mention of the assets necessary for production not owned by the issuer.

139. A valuation report prepared by an independent expert on the services/products of the issuer could be included in the prospectus. This report is not mandatory, the issuer is free to include it.

1e SHIPPING COMPANIES

140. Considering the specific features of shipping companies and Article 23 of the Regulation, CESR proposes that shipping companies, when preparing a prospectus for a public offer or admission to trading of shares, debt securities with a denomination of less than EUR 50.000 secured by the vessels (including convertible debt securities) and depository receipts issued over shares with a denomination of less than EUR 50.000, include in their prospectus the information referred above.

141. For this purpose, shipping companies are those issuers that, as principal activities, operate in ocean-going shipping and manage, lease or own cargo and/or passengers vessels either directly or indirectly.

142. The prospectus should refer to:

a) the name of any ship management company or group (if other than the issuer) which manages the vessels, if any, together with an indication of the terms and duration of its appointment, the basis of its remuneration and any arrangements relating to the termination of its appointment;

b) all relevant information regarding each material vessel which is managed, leased or owned either directly or indirectly by the issuer, including the type, place of the registration of the vessel, shipping owning company, financing terms, capacity and other relevant details;

c) if the issuer has contracts to build new vessels or improve existing vessel(s), detailed information regarding each material vessel (detailed description of the cost and financing of the vessel – refund, guarantees, letters of commitment -, charter type, dimension, capacity and other relevant details) shall be provided in the appropriate line item of the registration document, such as principal future investments or material contracts.

143. In the prospectus issuers are expected to include a condensed valuation report.

144. This valuation report must:

a) be prepared by an experienced independent expert;

b) give the date or dates of inspection of the vessels and by whom it was prepared ;

c) provide all the relevant details (valuation method) in respect of material vessels necessary for the purposes of the valuation;

d) detail separately any vessels whose acquisition is to be financed through the security issue;

e) be dated and state the effective date of valuation for each material vessel, which must not be more than 1 year prior to the date of publication of the document provided that the issuer affirms that no material changes has occurred since the date of valuation;

f) include an explanation of the differences of the valuation figure and the equivalent figure included in the issuer's latest published individual annual account or consolidated accounts, if applicable.

145. The condensed valuation report is not required if the issuer does not intend to finance one or more new vessels, where there has been no revaluation of any of the vessels for the purpose of the issue, and it is prominently stated that the valuations quoted are as at the date of the initial purchase or charter of the vessel(s).

2. CLARIFICATION OF ITEMS

2a – PROPERTY, PLANTS AND EQUIPMENT

Item 8.1 Annex I (Shares RD) and item 8.1 Annex X (Depository Receipts issued over shares RD).

Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.

146. In the description to be included in the line item of property, plants and equipment, issuers are normally expected to refer to:

a) a description of the size and uses of the property, productive capacity and extent of utilization of the issuer's facilities;

b) indication of how the assets are held (for example, by property or leased), the products produced and the location.

2b – COMPENSATION

Item 15.1 of Annex I (Shares RD) and Item 15.1 of Annex X (depositary receipts issued over shares RD)

In relation to the last full financial year for those persons referred to in points (a) and (d) [members of the administrative, management and supervisory bodies, partners with unlimited liability, founders (if the issuer has been established for fewer that five years and any senior manager which is relevant to assess the issuer expertise] of the first subparagraph of item 14.1: The amount of remuneration paid (including any contingent or deferred compensation) and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. This information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and not otherwise publicly disclosed by the issuer.

147. Issuers are expected to mention in the line item of compensation:

148. If any portion of the compensation was paid:

- pursuant to a bonus or profit sharing plan, a brief description of the plan and the basis upon which such person participate in the plan is expected to be provided (plan should be understood broadly to include any type of arrangement for compensation, even if the terms of the plan are not contained in a formal document);

- in the form of stock options, the title amount of securities covered by the options, the exercise price, the consideration for which the options were or will be created (if any), the period during which options can be exercised and the date in which they expire is expected to be provided;

- if any other benefits in kind were granted such as medical healthcare or disposal of transportation. In case of such non-cash benefits, the total estimated value should be mentioned.

2c – RELATED PARTIES TRANSACTIONS

Item 19 of Annex I (Shares RD).

Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable. If such standards do not apply to the issuer the following information must be disclosed: The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. The amount or the percentage to which related party transactions form part of the turnover of the issuer.

149. CESR recommends that issuers that are not subject to IAS/IFRS are expected to follow the IAS/IFRS definitions of related parties. Using this definition does not imply that companies not subject to IAS/IFRS are required to follow IAS 24.

2d – ACQUISITION RIGHTS AND UNDERTAKINGS TO INCREASE CAPITAL

Item 21.1.5 of Annex I (RD for shares) and item 21.1.5 of Annex X (RD for depository receipts issued over shares).

Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.

150. Where there is authorized but unissued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible bonds or other outstanding equity-linked securities, or subscription right granted, issuers are normally expected to indicate:

a) the amount of all outstanding securities giving access to share capital and of such authorized capital or capital increase and, where appropriate, the duration of the authorization;

b) the categories of persons having preferential subscription rights for such additional portions of capital; and

c) the terms, arrangements and procedures for the share issue corresponding to such portions.

2e – OPTION AGREEMENTS

Item 21.1.6 of Annex I (RD for shares) and item 21.1.6 of Annex X (RD for depository receipts issued over shares).

Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.

151. Where the capital of any member of the group (such as companies included in the consolidated accounts of the issuer) is under option or agreed conditionally or unconditionally to be put under option issuers are normally expected to refer to:

a) title and amount of securities covered by the options;

b) the exercise price

c) the consideration for which the option was or will be created; and

d) the period during which options can be exercised and the date in which they expire.

152. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving names. It would also suffice to provide a range of the exercise prices, exercise periods and expiry dates.

2f – HISTORY OF SHARE CAPITAL

Item 21.1.7 of Annex I (RD for shares) and item 21.1.7 of Annex X (RD for depository receipts issued over shares).

A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.

153. In the line item referring to history of share capital, issuers are normally expected to include the following information for the period covered by the historical financial information:

a) identification of the events during such period which have changed the amount of the issued share capital and/or the number and classes of shares of which it is composed, together with a description of changes in voting rights attached to the various classes of shares during that time;
b) information on the price and material details such as tranches of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or instalment payments).

154. The reason for any reduction of the amount of capital and the ratio of capital reductions is also expected to be given.

2g – DESCRIPTION OF THE RIGHTS ATTACHING TO SHARES OF THE ISSUER

Item 21.2.3 of Annex I (RD for shares) and item 21.2.3 of Annex X (RD for depository receipts issued over shares).

A description of the rights, preferences and restrictions attaching to each class of the existing shares.

155. In order to adequately explain the rights attached to each class of the issuer's shares, CESR would expect issuers to bear in mind among others:

a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favour this entitlement operates;
b) voting rights;
c) rights to share in the issuer's profit;
d) rights to share in any surplus in the event of liquidation;
e) redemption provisions;
f) reserves or sinking fund provisions;
g) liability to further capital calls by the issuer; and
h) any provision discriminating against or favouring any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares.

2h – STATEMENTS BY EXPERTS

Item 23.1 of Annex I (RD for shares, item 10.3 of Annex III (Shares SN), item 16.1 of Annex IV (Debt and Derivative securities RD), item 7.3 of Annex V (Debt securities SN), item 9.1 of Annex VII (Asset Backed securities RD), item 13.1 of Annex IX (Debt and Derivative securities RD), item 23.1 of Annex X (RD for depository receipts issued over shares), item 13.1 of Annex XI (Banks RD), item 7.3 of Annex XII (Derivative securities SN), item 7.3 of Annex XIII (Debt securities with a denomination of at least EUR 50.000 SN), item 7 of Annex XVI (securities issued by Member States, third country issuers and their regional and local authorities RD) and item 6 of Annex XVII (securities issued by Public International Bodies and for debt securities guaranteed by a Member State of the OECD RD).

Where a statement or report attributed to a person as an expert is included in the Registration Document / 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 the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document / Securities Note.

156. In order to ensure a consistent interpretation of the provisions of level 2, CESR proposes to clarify, as follows, the meaning of "material interest":

157. When analysing whether an expert, who has produced a report included in the prospectus, has a material interest in the issuer, issuers are normally expected to consider the following circumstances related to the expert, among others:

- ownership of securities issued by the issuer or by any company belonging to the same group or options to acquire or subscribe for securities of the issuer;

- former employment of the issuer or any form of compensation from the issuer;

- membership of any of the issuer's bodies;

- any connections to the financial intermediaries involved in the offering or listing of the securities of the issuer.

158. If one or more of these examples are fulfilled, the issuer has to consider if this will result in a material interest, taking into account the type of securities being offered.

159. The issuer should also clarify that these (or other circumstances) have been taken into account in order to fully describe the material interest (if any) of the expert, to the best of the issuer's knowledge.

2i – INFORMATION ON HOLDINGS

Item 25.1 of Annex I (RD for shares) and item 25.1 of Annex X (RD for depository receipts issued over shares).

Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.

160. In the line item of information on holdings, issuers are normally expected to provide the following information:

a) Name and registered office of the undertaking;
b) Field of activity;
c) Proportion of capital and voting power (if different) held;
d) Issued capital;
e) Reserves;
f) Profit or loss arising out of ordinary activities, after tax, for the last financial year;
g) Value at which the issuer obliged to publish the registration documents shows shares held in its accounts;
h) Amount still to be paid up on shares held;
i) Amount of dividends received in the course of the last financial year in respect of shares held;
j) Amount of the debts owed to and by the issuer with regard to the undertaking.

161. The information is required, in any event, for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 10% of the capital and reserves of the issuer or the participating interest generates at least 10% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 10% of the consolidated net assets or the participating interest generates at least 10% of the consolidated net profit or loss of the group.

162. The information listed may not be necessary provided that the issuer proves that its holdings are of a purely provisional nature and line items (e) to (f) may be omitted where the undertaking in which a participating interest is held does not publish its annual accounts.

163. Inclusion of points (d) to (j) may not be necessary if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or if the value attributable to the interest under the equity mode is disclosed in the annual accounts, provided that the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential of the assessment of the security in question.

164. Information provided under points (g) and (j) may be omitted if such omission does not mislead investors.

165. In relation to holdings in which the issuer holds at least 10% of the capital, the name, registered office and proportion of capital held must be disclosed unless such omission will likely misled investors in making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or its group and of the rights attaching to the securities.

2j - INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE ISSUE/OFFER

Item 3.3 of Annex III (Shares SN), Item 3.1 of Annex V (Debt securities with a denomination of less than EUR 50 000 SN), Item 31.2.1 of Annex X (Depository Receipts issued over shares) and Item 3.1 of Annex XII (Derivative securities SN).

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.

166. To explain the nature of the interests, CESR recommends that when preparing the disclosure on interests issuers are expected to bear in mind:

- among those persons involved in the offer, those who may have a material interest in the issuer or linked to the offer, such as advisors, financial intermediaries and experts (even if no statement produced by those persons is included in the prospectus);

- in relation to the nature of the interests, issuers may consider whether those persons hold their equity securities or equity securities of their subsidiaries, or have a direct or indirect economic interest that depends on the success of the offer/ issue, or have any understanding or arrangement with major shareholders of the issuer.

2k – CLARIFICATION OF TERMINOLOGY USED IN THE COLLECTIVE INVESTMENT UNDERTAKINGS OF THE CLOSED-END TYPE SCHEDULE

Item 1.1 of Annex XV (Collective investment undertaking of the closed-end type RD)

A detailed description of the investment objective and policy which the collective investment undertaking will pursue and a description of how that investment objectives and policy may be varied including any circumstances in which such variation requires the approval of investors. A description of any techniques and instruments that may be used in the management of the collective investment undertaking.

167. A description of the investment objectives including financial objectives (for example, capital growth or income) and investment policy is expected to provide a description of the investment strategy of the collective investment undertaking and the methodology to be employed in pursuing that strategy, including whether the Investment Manager intends to pursue an active or passive strategy. It should indicate the types of instruments in which the collective investment undertaking will invest, including where material as regards the investment portfolio:

- the geographical areas of investment,
- industry sectors,
- market capitalisation;
- credit ratings/investment grades
- whether or not admitted to trading on a regulated market

Item 2.10 of Annex XV (Collective investment undertaking of the closed-end type RD)

Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognized published index. A description of the composition of the index must be provided.

168. A broadly based, recognised and published index is expected to:

- be adequately diversified and representative of the market it refers to;
- be calculated with sufficient frequency to ensure appropriate and timely pricing and information on the constituents of the index;
- be published widely to ensure its dissemination to the relevant user/investor base;
- be compiled and calculated by a party independent of the collective investment undertaking and be available for purposes other than the calculation of the return of the collective investment undertaking

Items 3.1 and 3.2 of Annex XV (Collective investment undertaking of the closed-end type RD)

The actual or estimated maximum amount of all material fees payable directly or indirectly by the collective investment undertaking for any services under arrangements entered into on or prior to the date of the registration document and a description of how these fees are calculated.

A description of any fee payable directly or indirectly by the collective investment undertaking which cannot be quantified under item 3.1 and which is or may be material.

169. When referring to fees, collective investment undertakings are expected to consider, as well as fees paid to service providers, the following:

- Subscription fees (both guaranteed to the collective investment undertaking or negotiable);
- Redemption fees (both guaranteed to the collective investment undertaking or negotiable);
- Distribution fees
- Placement fees
- Variable management fees (e.g. performance fees);
- Fees associated with changes in the composition of the portfolio

Item 4.1 of Annex XV (Collective investment undertaking of the closed-end type RD)

In respect of any Investment Manager such information as is required to be disclosed under items 5.1.1 to 5.1.4 and, if material, under item 5.1.5 of Annex I together with a description of its regulatory status and experience.

170. A description of the Investment Manager's regulatory status is expected to include the name of the regulatory authority by which the Investment Manager is regulated, or if unregulated, a negative statement.

171. A description of the Investment Manager's experience is expected to include an indication of the amount of funds the Investment Manager has under third party discretionary management, the relevance of its experience to the investment objective of the collective investment undertaking, and if material to the assessment of the Investment Manager, the experience of the specific personnel who will be involved in the investment management of the collective investment undertaking.

Item 8.2 of Annex XV(Collective investment undertaking of the closed-end type RD)

A comprehensive and meaningful analysis of the collective investment undertaking's portfolio (if un-audited, clearly marked as such).

172. A comprehensive and meaningful analysis under 8.2 should include, where material to the assessment of the investment portfolio:

- an analysis by broad industrial or commercial sector and geographic area, as applicable; and/or
- an analysis between equity shares, convertible securities, fixed income securities, types or categories of derivative products, currencies and other investments, distinguishing between securities which are listed and unlisted and traded on or off regulated market in the case of derivatives; and/or
- an analysis by currency type stating the market value of each section of the portfolio so analyzed.

3. RECOMMENDATIONS ON ISSUES NOT RELATED TO THE SCHEDULES

RECOMMENDATIONS FOR DOCUMENTS CONTAINING INFORMATION ON THE NUMBER AND NATURE OF THE SECURITIES AND THE REASONS FOR AND DETAILS OF THE OFFER, MENTIONED IN ART. 4 OF THE PROSPECTUS DIRECTIVE

173. CESR would expect the document referred to in articles 4.1.d and 4.2.e and 4.1.e and 4.2.f to include:

a) the identification of the issuer and a indication of where additional information on the issuer can be found;

b) an explanation of the reasons of the offer or admission to trading together with an indication of the specific provision of the Directive under which the exemption applies;

c) details of the offer (key terms and conditions of the offer or admission to trading, which is likely to include information on the addressees of the offer, time frame of the offer, minimum and maximum amount of orders, information on where details of the price can be found, if not yet determined), including the nature of the offer (offer to issue or to sale securities), conditions upon which the securities will be issued or admitted to trading, price of the securities, if any.

174. In relation to the number and nature of the securities involved in the offer or admission to trading, CESR would expect this to include a summarised description of the rights attaching to the securities.

175. CESR considers important to point out that this document is not a prospectus; therefore information referred to in these recommendations should be abbreviated and does not need to be approved or filed with the competent authority.

176. CESR also considers that this document should be made available to its addresses but not necessarily published.