



**Frequently asked questions regarding Prospectuses:
Common positions agreed by CESR Members
(Ninth update of CESR's Q&A on Prospectuses)**

Profit forecast or estimates

August 2009

Q) The registration document annex for debt and derivative securities with a denomination per unit of at least EUR50,000 (Annex IX) provides in item 8 for disclosure when an issuer chooses to include a profit forecast or estimate, yet item 8.2 only appears to relate to forecasts. This item states that any profit forecast must be accompanied by a statement confirming the forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the issuer. Annexes I, IV, X and XI read the same save for the statement being in the form of a report prepared by independent accountants or auditors, confirming that the forecast or estimate have 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. Is the lack of a reference to "estimate" in Annex IX item 8.2 a deliberate omission?

A) *No, this is not a deliberate omission. CESR can see no reason why the provisions in Annex IX item 8.2 should not apply to estimates in the same way as other Annexes, and it is our view that Annex IX item 8.2 should be read in the same way as the other Annexes as far as forecasts and estimates are concerned. This view does not affect the present requirements for an accountants or auditors report. Forecasts and estimates are defined in Article 2 of the Directive.*

Valuations and statements prepared by an expert

August 2009

Q) The registration document annexes (e.g. in Annex I, Item 24 (b)), requires that the registration document states that it is possible to inspect "all reports, letters and other documents, historical financial information, valuations and statements prepared by an expert at the issuer's request" which are either referred to or included in the registration document. Is it the intention that this paragraph should only require documents prepared by an expert to be displayed and the reference to 'prepared by an expert at the issuer's request' refer to the whole sentence from "all reports, letters...", or does the reference to being "prepared by an expert" specifically only apply to "valuations and statements"?

A) *It is CESR's view that the reference to experts applies to 'valuations and statements' only, rather than to any other report, letter, other document or historical financial information included or referred to in the registration document. The reports, letters and other documents referred to are expected to be put on display whether or not they are prepared by an expert and whether or not they were prepared at the issuer's request, provided they are referred to in the prospectus.*

**Material contracts***August 2009*

Q) Is there a requirement (in Annex I, Item 24 and similar annexes) to display all material contracts?

A) There is no specific requirement in the Prospectus Regulation annexes (e.g. in Annex I, item 22) to display material contracts. This requirement which was in the 2001/34 Directive was dispensed in 2005 following the negotiations of the Prospectus Regulation, when some Member States and market participants argued that there might be confidentiality and competition issues. The only requirement (for example, in Annex I, item 22) is for a summary of the material contracts to be included in the prospectus. CESR would expect the summary to contain all the key information that an investor would reasonably expect to see. Issuers should be aware of the general duty of disclosure under Article 5.1 of the Directive when summarising the information in material contracts.

Supplement to prospectuses: right of withdrawal*August 2009*

Q1) Is the right of withdrawal applicable in cases where a public offer of shares has been completed and the shares have been issued but not yet admitted to trading and a supplement is published in accordance with Article 16.1?

A1) Article 16.2 provides that "investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right (...) to withdraw their acceptance". This implies that the purchase must not be completed yet at the time the supplement is published. Withdrawal is no more possible when the securities have been issued and delivered/allotted to investors.

Q2) Is the right of withdrawal applicable in case of publication of a supplement to a prospectus relating only to the admission to trading of existing securities? (this is the case when securities have been issued under the exceptions specified in article 3.2 of the Directive and a prospectus is needed for the admission of those securities to trading on a regulated market).

A2) Article 16.2 is not applicable in cases where the securities have already been issued. It is only applicable in cases where the investors have agreed to purchase or subscribe for securities based on the approved prospectus and the securities have not already been issued at the time the supplement is published.

Definition of public offer*August 2009*

Q) Is the simple indication of secondary market prices to be considered an offer to the public?

For example: An issuer's securities are admitted to trading on a regulated market X in member state A. The issuer regularly publishes secondary market prices of its securities on market X on its website. In compliance with the requirements of Art. 4.2 h) (i) to (vii) Directive the issuer applies for the admission of its securities on another regulated market Y in member state B without publishing a prospectus. After the completion of the issuer's dual listing secondary market prices of the issuer's securities on both markets are in the public domain, e.g. by way of publication on the relevant stock exchanges'



websites. Is the issuer allowed to also publish all secondary market prices, i.e. regulated market X and regulated market Y prices, on its website besides information about its business and security identification numbers without publishing a prospectus?

A) In general, the simple indication of secondary market prices should not be considered an offer to the public if there are no further circumstances which might altogether amount to an offer to the public. In the case described above, the issuer should be allowed to repeat on its own website secondary market prices of its securities trading on regulated markets that are published by the relevant stock exchanges along with securities identification numbers and factual information about its business. Such publication does not necessarily lead to a public offer. Rather, the very specific elements of each situation should be analysed on a case by case basis.