



THE COMMITTEE OF EUROPEAN SECURITIES  
REGULATORS

Ref: CESR/03-399

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

**December 2003**



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## **I PRELIMINARY REMARKS BY FERNANDO TEIXEIRA DOS SANTOS**

1. According to the provisional mandates, formalised on 1 October 2003, given to CESR on March 2002 and January 2003, CESR presents here its final advice on those issues for which a deadline of 31 December 2003 had been fixed.
2. The efforts of all parties involved in this work have been exemplary. In particular, CESR Members who participated in the deliberations of the Expert Group have shown great commitment in forging consensus. Similarly, the contribution at each stage of the consultation process of market participants and other interested parties has been valuable in reaching common solutions.
3. I believe this work represents a finalized high quality outcome in response to the mandate received. Despite the fact that some regulatory differences may still persist in the various jurisdictions, CESR has sought in its advice to assemble all indispensable elements for an efficient European regulatory framework on the areas covered, and to achieve harmonization.
4. Some of the issues covered by this advice have an impact on the advice provided on July (CESR/03-208) and on September (CESR/03-300), notably those referred to historical financial information.

## **II INTRODUCTION**

5. On October 1, 2002, CESR initiated a consultation process on its proposed advice to the European Commission regarding technical implementing measures for the directive on the “Prospectus to be published when securities are offered to the public or admitted to trading” (“Prospectus Directive”). Following a number of stages the third and last part of the advice is now in its final form. The introductory section explains the process which CESR has followed in arriving at its final advice. More details about the consultation CESR undertook on preparation of this advice can be found in the feedback statement CESR/03-400.
6. Three different deadlines for CESR’s Technical Advice to the EU Commission have been set: 31 July 2003, 30 September 2003 and 31 December 2003. This paper addresses the last submission to the EU Commission.
7. The final advice on the historical financial information that EU and non-EU issuers have to include in prospectuses is delivered at this stage. Therefore, the items on historical financial information included in the schedules submitted to the EU Commission in CESR’s July and September advice have to be replaced with the new definitive requirements included in this technical advice.
8. This final advice also includes the disclosure requirements for the registration document on collective investment undertakings of the closed-end type (CEIF). These will be used by the CEIFs that fall under the scope set out in the preamble of the said schedule, if legally possible under community legislation.



9. In general, CESR understands the Lamfalussy system as a dynamic process. The proposals included in this document should not be seen as the final say on each area for a number of years. Some of the disclosure requirements might need adaptations in the future according to developments in the financial markets. CESR will have to assess in the future when it might be appropriate to alert the European Commission on the need to consider adapting the Level 2 implementing measures of the prospectus directive.



## Background

10. On 27 March 2002, the European Commission (EC) published its provisional request for CESR to provide technical advice on possible implementing measures on the Prospectus Directive. On 7 February 2003, the European Commission published an additional provisional mandate.
11. CESR published a Call for Evidence on 27 March 2002, (Ref: CESR 02-048) inviting all interested parties to submit views by 17 May 2002 on what CESR should consider in its advice to the Commission. CESR received around five submissions that can be viewed on the CESR's website.
12. On 7 February 2003, CESR published a Second Call for Evidence (Ref: CESR 03-038) inviting all interested parties to submit views by 31 March 2003. Twenty responses were received. These can be viewed on the CESR's website and came both from European and national federations representing issuers and financial services providers, as well as regulated markets, individual issuers and regulatory agencies.
13. CESR's Expert Group on Prospectuses, chaired by Pr. Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Commission and supported by Javier Ruiz of the CESR Secretariat, has been responsible for the drafting of the consultation paper and the development of the technical advice after the consultation.
14. In addition, under the terms of CESR's Public Statement of Consultation Practices (Ref: CESR/01-007c), a Consultative Working Group (the "CWG") has been established to advise the Expert Group. The members of the Group are the following: Ann Fitzgerald, Wolfgang Gerhardt, Daniel Hurstel, Pierre Lebeau, Lars Milberg, Victor Pisante, Regis Ramseyer, Kaarina Stahlberg, Torkild Varran, Stefano Vincenzi, Jaap Winter. The Expert Group has met the CWG four times and several members of CWG have sent written contributions.
15. As part of the process for producing the technical advice required by 31 December 2003, CESR published a consultation paper on July 2003 (Ref: CESR/03-210b). CESR has also taken into account responses to the consultation paper published in June 2003 (CESR/03-162) in relation to collective investment undertakings of the closed-end type. Although these disclosure requirements were initially intended for inclusion in the September submission to the European Commission, CESR decided that it was appropriate to allow additional time to explore in further detail the consultation responses received specially in relation to funds that invest in real property. The proposal is included as an annex to this document.
16. Following publication of the July consultation paper, CESR gave market participants and other interested parties a deadline of 30 October 2003. To facilitate the consultation process, CESR held an open meeting on 9 October 2003 in Paris at the CESR premises. Around 40 people attended the meeting.
17. CESR received over 60 responses to the consultation document. Those that are public can be viewed on CESR's website.

## References



18. The mandate asks that CESR should have regard to a number of principles and a working approach agreed between DG Internal Market of the EC and the European Securities Committee in developing its advice. These are as follows:

- CESR should take account of the principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- CESR should take full account of the key objectives of the prospectus directive: the need to encourage and build an efficient, cost-effective and competitive pan-European capital market on the one hand, and to provide the necessary levels of investor protection on the other.
- CESR should not seek to produce a legal text.
- CESR should take full account of developments in the Council and Parliament.

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

- *A European Passport for Issuers – A report for the European Commission – January 2001 (Ref. FESCO/00-138b)*
- *A European Passport for Issuers: an additional submission to the European Commission – August 2001 – (Ref. FESCO/01-045)*
- *Stabilisation and Allotment, a European Supervisory Approach – April 2002 (Ref. CESR/02-020b)*
- *CESR's Advice (July submission) on level 2 implementing measures for the prospectus directive (CESR/03-208)*
- *CESR's Advice (September submission) on level 2 implementing measures for the prospectus directive (CESR/03-300)*



### **III MINIMUM INFORMATION**

#### **III.1 FINANCIAL INFORMATION REQUIREMENTS IN A PROSPECTUS**

20. Through the Accounting Regulation<sup>1</sup>, IAS can be considered as the European benchmark for financial reporting for companies preparing consolidated accounts that are admitted to trading on a regulated market.
21. CESR noted in its previous advice to the commission that if an issuer has to apply IAS in its consolidated accounts after its admission to trading, it would seem sensible that its consolidated financial statements (included in its prospectus) for the previous year or two years be restated or reconciled to IAS. This would ensure a high level of transparency and comparability of the company's financial reporting.
22. In considering this issue CESR has concluded that 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. This rationale should apply in the case of any change in the accounting standards or policies adopted by the issuer whether voluntary or imposed by EU or national regulation.
23. In considering a requirement for comparability, CESR has looked at a number of options for an admission to trading on a regulated market or a public offering prospectus. The option of not requiring any restatement or reconciliation neither for shares nor for debt securities was supported by one CESR member. However, CESR's advice, as described below, takes into consideration the balance to be drawn between imposing costs on issuers and providing financial information that investors can easily compare with the financial information that an issuer will prepare in the future.
24. CESR members, by an almost unanimous view, consider that the best balance is achieved by requiring issuers using a registration document in which 3 years of historical financial information is required to include two years of audited historical financial information prepared and presented in accordance with the accounting standards which will be adopted in the issuer's next published annual financial statements having regard to the accounting standards and policies and legislation applicable to such annual financial statements. It is important to make clear that these accounts would be restated for the purposes of the prospectus and that restated accounts are not the official financial statements.
25. Requiring the inclusion of two years comparable information rather than three, will reduce the costs of restatement for the issuer but will still provide investors with some comparability.
26. CESR notes that a "four column approach" has been adopted in some Member States where there are two, rather than three years of comparable financial information in a prospectus. Such an approach, that CESR proposes to follow, is outlined below.

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<sup>1</sup> Regulation 1606/2002 on the application of international accounting standards



27. Under the four column approach an issuer that presents consolidated financial statements with 2009 accounts published seeking admission to trading on a regulated market in 2010 would present the historical financial information included in a prospectus in the following way: IAS for 2009 and 2008 and would also present 2008 and 2007 under local accounting standards. The issuer would be obliged under the first time application rules to produce 2009 IAS comparatives for the 2010 numbers so this option would create additional work in respect of the 2008 IAS numbers only.
28. For issuers using a registration document in which 2 years of historical financial information is required, after considering consultation responses, CESR members have reconsidered their position and now, by an almost unanimous view, believe that it would be appropriate to require that only one year of audited historical financial information is prepared and presented in accordance with the accounting standards which will be adopted in the issuer's next published annual financial statements. The restated accounts are not the official financial statements of the issuer.
29. There is also the issue of the transition from Member State accounting standards following the introduction of the IAS regulation. The technical advice contained in Annex A is designed to deal with the ongoing situation rather than address this transition as well. To do otherwise would result in extremely complicated provisions. However, CESR does recognise the seriousness of the transitional issue and the potential costs imposed by the move to IAS. CESR therefore considers that the most appropriate way to deal with this transition is to have a transitional provision. **In CESR's opinion, the legal text produced by the Commission should therefore make it clear that issuers should not be under an obligation to produce IAS numbers in the prospectus for any period earlier than 1st January 2004. In the case of national provision set in accordance with Article 9 of Regulation 1606/2002 (IAS Regulation) the obligation to produce IAS numbers should not be earlier than 1st January 2006.**

### Auditing Standards

30. CESR acknowledges that currently the EU has not fully developed a comprehensive set of rules at community level on how audits should be conducted and on the audit infrastructure needed to safeguard audit quality. Therefore, historic audited financial information in prospectuses may be subject to differing levels of audit scrutiny. This could hamper the proper functioning of the single market. The European Commission has recently released its priorities on this area of audit of company accounts. One of them is requiring International Standards on Auditing (ISAs) for all EU statutory audits. To this effect, the Commission will work to prepare the implementation of ISAs from 2005. CESR fully shares this objective and awaits the outcome of the EC's work.
31. In order to deal with the accounting standard issue CESR, has introduced the last paragraph under the historical financial information item. In the consultation paper published in July CESR required the financial information to be independently audited in accordance with auditing standards applicable in a Member State or an equivalent standard. After consultation, CESR has now included the possibility to have the historical financial information reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view. This option has





been introduced in order to deal only with those cases in which, due to a future change in the accounting principles, the issuer has to include in the prospectus 1 or 2 years of accounts prepared and presented in accordance with the accounting standards which will be adopted in the issuer's next published annual financial statements.

#### **Wholesale issues**

32. CESR is of the opinion that there are some circumstances where the nature of the securities being offered and of the investors being addressed may mean that it is appropriate to set different accounting and auditing requirements in order to balance cost for issuers and an adequate level of protection for investors. Different accounting and audit standards have therefore been included for wholesale non-equity issuers and the issuers of high denomination asset backed securities or depository receipts. CESR notes that since EU issuers are subject, because of community legislation, to certain accounting standards (IAS Regulation or Member's State accounting standards) and auditing standards (auditing standards applicable in a Member State) only non-EU issuers will be able to benefit from this different regime for wholesale issues.

#### **Non EU issuers**

33. Where the historical financial information of a non-EU issuer has been prepared under equivalent accounting standards and reported on under equivalent auditing standards there should be no additional disclosure requirements as the standards are equivalent.
34. Where the historical financial information of a non-EU issuer has been prepared under non equivalent accounting standards the issuer should prepare said financial information to IAS Regulation, or to a non Member's State accounting standards equivalent to IAS Regulation.
35. Where the historical financial information of a non-EU issuer has not been independently audited in accordance with the auditing standards of a Member State or an equivalent standard, the issuer should present the financial information audited in accordance with one of those standards for the purposes of the prospectus.

#### **Interpretation of the notion of equivalence of accounting standards for retail securities issued by non EU issuers as used in the historical financial section of the registration document**

36. The historical financial information that non EU issuers have to include in a prospectus has to be produced in accordance with Regulation (EC) 1606/2002 on the application of international accounting standards ("IAS Regulation") or according to a non Member State's national accounting standards ("local GAAP") equivalent to IAS Regulation .
37. CESR considers that this issue requires an harmonised approach across the EU. To avoid disruption of the market CESR proposes the transitional measures set out below. In addition CESR recommends that the Commission establishes in due



course and in consistence with the future Transparency Directive, a procedure to evaluate the equivalence of non-EU-GAAPs.

#### **Transitional arrangements**

**38.A) Issuers that do not have securities already admitted to trading on a regulated market prior to the publication of Directive 2003/71/EC in the Official Journal of the European Community.**

**a) US GAAP:**

- Transitional provisions of IAS Regulation (Article 9) grant a special regime for EU companies whose securities are admitted to public trading in a non-member State and which, for that purpose, have been using internationally accepted standards since a financial year that started prior to the publication of the Regulation in the Official Journal of the European Communities. The European Commission has understood these “internationally accepted standards” as being only US GAAP (on page 30 of the Proposal for the Transparency Directive of 26.3.2003, explanatory memorandum, comment on Article 26, Transitional provisions, first paragraph).
- CESR considers that said transitional measures should apply as well to non EU issuers in the context of prospectus requirements.
- IAS Regulation would be required for each financial year starting on or after January 2007.
- US GAAP will have to go to the procedure of assessment of equivalence in view of the deadline of 2007.

**b) Other GAAP:** These issuers will have to include in the prospectus financial information according to IAS Regulation or local GAAP equivalent to IAS Regulation (therefore no transitional arrangements apply).

**39.B) Issuers that have securities already admitted to trading on a regulated market prior to the publication of Directive 2003/71/EC in the Official Journal of the European Community.**

- The financial statements included in prospectuses drawn up by these issuers will have to be prepared according to the same accounting principles imposed by Directive 2001/34 or any new community legislation that could repeal said Directive and establish a new reporting regime for issuers having securities admitted to trading on a regulated market.
- Any transitional arrangements that legislation referred to in the previous indent might establish will apply to any prospectus drawn up according to Directive 2003/71/EC irrespective of any options that Member States could have under the former legislation.



- During the transitional period, the additional requirements that according to Directive 2001/34 (Article 67.3 for shares and Article 80.3 for debt securities) national regulations might impose could be different. Where such additional requirements differ from one member state to another, coordination at CESR's level will be necessary with the aim of achieving proper harmonization.

## LEVEL TWO ADVICE

### Transitional arrangements

1. Issuers that do not have securities already admitted to trading on a regulated market prior to the publication of Directive 2003/71/EC in the Official Journal of the European Community may include in prospectuses financial statements prepared according to US accounting standards. Notwithstanding, such financial statements will have to be prepared according to Regulation (EC) 1606/2002 on the application of international accounting standards for each financial year starting on or after January 2007.

2. Issuers that have securities already admitted to trading on a regulated market prior to the publication of Directive 2003/71/EC in the Official Journal of the European Community will include in prospectuses financial statements prepared according to the accounting principles permitted by Directive 2001/34 or any new community legislation that could repeal said Directive and establish a new reporting regime for issuers having securities admitted to trading on a regulated market. Any transitional arrangements that legislation referred to in the previous sentence might establish will apply to any prospectus drawn up according to Directive 2003/71/EC irrespective of any options that Member States could have under the former legislation.

## III.2 MEMBER STATES, NON-EU STATES AND THEIR REGIONAL OR LOCAL AUTHORITIES

### Extract from the European Commission's mandate

Particular schedules should be envisaged for the option granted to sovereign issuers and to municipalities in case they choose to draft a prospectus; CESR should provide its technical advice by 31 December at the latest.

40. CESR recognises that whilst EU Member States and their regional or local authorities are outside the scope of the Prospectus Directive<sup>2</sup>, they can choose to produce a prospectus in order to benefit from a single passport for raising capital in the EU<sup>3</sup>. Non-EU sovereign issuers and their regional or local authorities are not outside the

<sup>2</sup> Article 1 – Paragraph 2 (b)

<sup>3</sup> Preamble to the Prospectus Directive – Paragraph (11)



scope of the Prospectus Directive and are obliged to produce a prospectus if they wish to make a public offer of securities in the EU or wish their securities to be admitted to trading on a regulated market. As such, CESR proposes that the annex for Member States and their regional or local authorities can apply to both EU and non-EU member states alike.

41. The registration document for Member States and their regional or local authorities presented a dilemma for CESR. On one hand, it could be said that information need not be disclosed for Member States other than administrative information such as the name and address of the issuer. This is due to the fact that ample information is already publicly available on such issuers and the probability of default by a Member State is smaller than for other types of issuers.
42. On the other hand, it could be argued that whilst the probability of insolvency is remote, investors nevertheless require some information about Member States and their regional or local authorities. This is evident from a cursory survey of some of the prospectuses that have been issued in the past by such issuers in the EU. The list below represents some of the information that issuers have included in prospectuses in the past.
43. CESR would gravitate towards the latter option, partly on the basis that issuers already provide some information, but it is anticipated that such information would be expected to be brief and not extensive. CESR also considered that a general discussion about the issuer's economy and political system is essential for investors to make an informed decision as to whether or not to purchase the securities in the light of recent highly publicised default by some sovereign issuers. Furthermore, information in respect of some Member States and their regional or local authorities may not be readily accessible by all investors.
44. During consultation, many respondents considered that the information in the annex was too detailed for Sovereigns. CESR has decided to leave the annex as drafted (with the exception of minor amendments) due to the need to strike a balance between detail and insufficient information since this annex will apply to a wide range of sovereigns both EU and non-EU.
45. Annex B would therefore only apply strictly to Member states, Non-EU States and their regional or local authorities. This would be the case where they were issuing the securities themselves or acting as guarantor.
46. The list of information that CESR would expect in the Sovereigns Annex includes the following:
  - a. Name and contact address of the Issuer
  - b. Responsibility statement
  - c. Risk Factors
  - d. The economy – a general discourse including public finance and public debt including a summary of the debt and debt payment record, Budgetary issues, Gross Domestic Product.
  - e. Political system
  - f. Legal and arbitration proceedings
  - g. Trend Information
  - h. Statement by experts
  - i. Documents on display



47. The specific disclosure requirements for Member states, Non-EU States and their regional or local authorities registration document are set in Annex B.

### **III.3 PUBLIC INTERNATIONAL BODIES**

48. An allied issue is to whom annex B should apply, bearing in mind that the Directive requires that account should be taken of the public nature of the issuer.<sup>4</sup> The Directive also lists some of the entities that may fall broadly under this category and are outside the scope of the directive and this list includes public international bodies.
49. CESR's initial opinion was that public international bodies are more akin to corporates in their structure and the appropriate annex for these bodies should be the retail or wholesale debt annex as appropriate. However, following an overwhelming response on this issue during consultation, CESR has reconsidered its position.
50. A further annex, Annex C has therefore been drafted for public international bodies since it is considered that although they are similar to corporates in their structure, their risk profiles are more similar to sovereigns. CESR has devised an illustrative list<sup>5</sup> of Public International Bodies to which this annex would apply and they are broadly those that were created by international treaty between sovereign states and are already active in the international capital markets. Further, CESR envisages that such bodies would carry a high credit rating provided by one of the main providers of credit rating and their securities are either irrevocably and unconditionally guaranteed by their members or their borrowing ceilings are set in accordance to the subscribed capital of the members.

### **III.4 COLLECTIVE INVESTMENT UNDERTAKINGS OF THE CLOSED-END TYPE (CEIF).**

51. The disclosure requirements set out in Annex D do not prejudice the provisions of the UCITS Directive (85/611/EEC, as amended by the Directives 2001/107/EC and 2001/108/EC) or the Prospectus Directive. CESR invites the Commission to conduct further legal analysis on how other directives might interact in this area.
52. CESR considered it was essential to define the type of CEIF for which the disclosure requirements are intended, through the use of a preamble. CESR wishes to emphasise that this preamble does not seek to define CEIF, since this is clearly a

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<sup>4</sup> Article 7 – Paragraphs 2 (f)

<sup>5</sup> African Development Bank, Asian Development Bank, Council of Europe Development Bank, Eurofima, European Bank for Reconstruction and Development, European Investment Bank, Inter-American Development Bank, International Bank for Reconstruction and Development, International Finance Corporation, Nordic Investment Bank, World Bank, International Monetary Fund



matter for interpretation at Level 1. Any CEIF within this Level 1 definition which falls outside of the scope of the preamble should apply the equity/debt RD/SN disclosure requirements, as appropriate.

53. The preamble seeks to distinguish between a passive CEIF (i.e. at the purest level those which invest in transferable securities without taking legal or management control over the issuer of those securities) and other CEIF. The rationale for this is, in the main, to distinguish these entities from holding companies/consortiums, structures which could meet the Level 1 definition of CEIF, but for which CESR believes the general equity RD/SN requirements are more appropriate. During CESR discussions, it was pointed out that certain Member States allow CEIF to take such control in certain specific circumstances. It was further considered that not to apply these disclosure requirements to these particular CEIF would be inappropriate, therefore the preamble (at a)) has been amended to bring this type of CEIF within its scope. In all other instances, these disclosure requirements will only apply to CEIF which invest on a passive basis.
54. CESR further considered it necessary to define certain terms solely for the purpose of clarifying the scope of the application of the related disclosure requirements. CESR wishes to emphasise that these terms or definitions should not be construed as more generic definitions which may conflict with Community legislation or other EU regulatory regimes.
55. CESR had extensive discussions on the risks associated with certain types of CEIF and considered whether to have specific risk disclosures. On balance, it was felt that the general obligation to disclose of risks provided for in the equity RD, which also applies to CEIF, would suffice. To attempt to prescribe risks particular to this type of investment type would not be appropriate.





#### IV. DISSEMINATION OF ADVERTISING

##### Extract from the mandate

DG Internal Market requests CESR to provide by 31 December 2003 at the latest:

- (1) factual information regarding advertisement practices and relevant legislation in the Member States;
- (2) technical advice on possible draft implementing rules concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading, in particular before the prospectus has been made available to the public or before the opening of the subscription.

56. This matter is dealt with in article 15 of the prospectus directive. This provision imposes that any type of advertisements relating either to an offer to the public of securities or to an admission to trading on a regulated market, where an obligation to draw up a prospectus exist, shall:

- State that a prospectus has been or will be published and indicate where investors are or will be able to obtain it;
- Be clearly recognisable as such and that the information contained in it shall not be inaccurate, misleading or inconsistent with the information contained in the prospectus, or with the information required to be in the prospectus, if the prospectus is published afterwards.

57. The competent authority of the Home Member State shall have the power to exercise control over the compliance of advertising activity in relation to a public offer of securities or an admission to trading on a regulated market with the principles described above.

58. Finally, the Directive also states that if no prospectus is required, any material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors (including information disclosed in the context of meetings relating to offers of securities) shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. If a prospectus is required to be published, then such information shall be included in the prospectus or in a supplement to the prospectus.

59. Accordingly, the prospectus directive goes well beyond the current directive 2001/34 which only deals in its Article 101 with the prior communication to the competent authorities of the means of publication.

60. Article 15 also includes a level two provision envisaging implementing measures concerning, however, only the dissemination of advertisements with the aim of taking account of technical developments on financial markets and to ensure uniform application of the directive.

61. CESR is aware that national regulations on this area differ hugely within the European Union. This lack of harmonization is obviously reflected in the very different roles that CESR members play as regards advertisements in relation to an offer to the public of securities or an admission to trading to a regulated market.



62. While some securities regulators in the EU play an active role in the scrutiny of advertisements, others do not have such competence or only in relation to limited aspects of the advertising campaign. Even when the advertisements are disseminated by the underwriters or by the selling syndicate, there is no assurance of an harmonized approach, as the applicable rules of conduct might be very different in each jurisdiction.
63. These different approaches have proved effective on the different Member States, as they are adapted to the particular circumstances of each jurisdiction. Now they will be tested by the creation of a European single market for securities.
64. In order to comply with the Commission's mandate and especially having in mind the current absence of harmonization, CESR deems necessary to have first a common understanding of what the directive means by advertisements.
65. CESR does not intend to add anything to the definition of advertisements that can be found in a common dictionary. But CESR considers that its advice on advertisements must be restricted to communications having the following features:
- Advertisements relate to an offer to the public of securities or to an admission to trading on a regulated market. Accordingly, advertisements that consist of merely general promotion of the issuer, which do not promote a specific public offer or an admission to trading, are outside the scope of this advice.
  - The aim of advertisements is to promote the potential subscription or acquisition of securities.
  - Advertisements are disseminated to the public by interested parties: issuer, offeror or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of securities.
  - Advertisements are not considered as a prospectus. Formal notices are also outside the scope of this advice, because they give raise to less investor protection concerns as law sets out their contents.
66. Article 15 of the Directive states that the competent authority of the home Member State shall have the power to exercise control over the advertising activity, but does not say anything about how to exercise the said control and the effective use of that power to exercise control is left to national discretion. As it was referred by respondents in the consultation, it is important to ensure that any breach of advertisement rules applicable in the relevant Member State can be supervised effectively. Therefore, Member States must ensure effective compliance of advertising rules concerning public offers and admission to trading on a regulated market. Proper co-ordination between competent authorities should be achieved in cross-border offerings or cross-border admission to trading.
67. CESR considers that advertising campaigns perform an important role in the market and cannot be made apart or dissociated from the effort to sell or to subscribe securities, relating either to an offer to the public of securities or to an admission to trading on a regulated market.





68. Having said this, CESR considers the vitality of the European market fundamental and in this context seek views on the prohibition on the dissemination of any advertisements (blackout periods), before the prospectus has been made available, as long as the remaining rules are respected. On this topic, given the fact that there is no investor protection concern, CESR is of the opinion that no blackout periods to the dissemination of advertising should be imposed, before or after a prospectus has been made available.
69. While CESR has consulted on the possible imposition of blackout periods, CESR did not presented any question in relation to the possible or accepted means of dissemination of advertising. In fact, as advertising can use a variety of forms of communication, CESR is of the opinion that all means of dissemination of advertising are accepted.

## Level 2 Advice

70. Advertisements covered by the present advice have the following features:

- Advertisements relate to an offer to the public of securities or to an admission to trading on a regulated market. Accordingly, advertisements that consist of merely general promotion of the issuer, which do not promote a specific public offer or an admission to trading, are outside the scope of this advice.
- The aim of advertisements is to promote the potential subscription or acquisition of securities.
- Advertisements are disseminated to the public by interested parties: issuer, offeror or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of securities.
- Advertisements are not considered as a prospectus. Formal notices are also outside the scope of this advice, because they give raise to less investor protection concerns as law sets out their contents.

71. No blackout periods (prohibition on the dissemination of any advertisements) should be imposed before or after a prospectus has been made available.

72. All means of dissemination are accepted.

73. Member States must ensure effective compliance of advertising rules concerning public offers and admission to trading on a regulated market. Proper co-ordination between competent authorities should be achieved in cross-border offerings or cross-border admission to trading.