

Direction

COMMITTEE OF EUROPEAN SECURITIES
REGULATORS

Attn. : Monsieur Fabrice DEMARIGNY

Secrétaire général

11-13, avenue de Friedland

F-75008 PARIS

Notre référence

16409 HGD/AWE

Votre référence

Date

19 September 2005

Page

1/1

Subject: **Comments from the Luxembourg Stock Exchange on CESR
Consultation paper
Ref: CESR/05/-428 on possible amendment to Regulation (EC) 809/2004
related to complex financial histories.**

Dear Mr Demarigny,

We are pleased to provide our comments on CESR's consultation document on possible modified implementing measures of the Prospectus Directive related to complex financial histories.

Question 1 (paragraph 27):

We agree with this approach subject to the comments made below in our answers to the other questions. We also share the view that a level 3 approach without any modifications of the European Commission Regulation 809/2004 would not be in line with Community legislation.

Question 2 (paragraph 32):

We also agree on the proposed scope. We do not think an extension of the proposed requirement to non-equities would provide any help for the assessment of the value of such securities.

Question 3 (paragraph 35):

We support an approach where SME's, as defined in Directive 2003/71/EC, would not be subject to the proposed new requirements. Imposing such requirements to such entities would not meet the proportionality principle to be applied when adopting legislation.

Paragraphs 36, 37, 38:

We support the idea that the modified level 2 measures might give specific power to the competent authority to ask for additional information in case of complex financial histories. We also agree that these new requirements should not be too detailed and based on principles. However, the scope should be clearly defined and issuers should be protected of excessive demands from competent authorities. This flexibility given to competent authorities should be balanced by the recognition at level 2 that an accepted practice in a Member State or in the US is deemed to be acceptable at Community level. We think that it is important to avoid any explicit or implicit retroactive effects coming from the modified legislation. Moreover, the entry into force of such new requirements should be delayed for a reasonable period of time (one year) after the adoption of the Regulation in order to avoid market disruption.

Question 4 (paragraph 40):

Yes, it should be a comprehensive list. The scope of application should be clearly defined and limitative for legal certainty. Moreover, it is a text of direct application that cannot be clarified at national level.

Question 5 (paragraph 45):

We may agree with the proposed approach subject to some clarifications. We would support an explicit sentence that a competent authority is not entitled to add requirements of combination nor of consolidation of the significant businesses or subsidiaries mentioned in paragraphs 42 and 43. In paragraph 44, it should be added that the 25% figure is of indicative nature and not normative because it is mentioned in a recital.

Question 6 (paragraph 51):

We support option 1 because it avoids entering in the dangerous area of ‘creative accounting’ with combined or restated financial information that have never existed and will never exist.

Question 7 (paragraph 52):

Not applicable.

Question 8 (paragraph 57):

We favor option 3 because it is less burdensome.

Question 9 (paragraph 61):

We do not agree with the above proposals. It is likely that in some situations, it won't be possible for legal reasons to provide an audit report. Audits can be performed only according to a precise scope defined by standards and/or national legislation. Complex financial histories are precisely exceptions that might not be covered by some national legislation at Member States level. There should be a possibility to derogate from the requirement of an audit report if there is a conflict of law.

Question 10 (paragraph 63):

Not applicable. See above our answer to question 6. However, we would support the report option if options 2 or 3 on accounting standards are to be retained at the end.

Question 11 (paragraph 68):

Yes, we agree with this approach upon a clarification on the accounting standards to be presented.

Question 12 (paragraph 70):

We prefer option c) because such type of report is more likely to avoid conflict of law (see our answer to question 9).

Question 13 (paragraph 77):

We prefer option 1 because it is in line with the already adopted EC Regulation 809/2004.

Question 14 (paragraph 78):

No.

Question 15 (paragraph 81):

Yes

Question 16 (paragraph 83):

No, we think investors are buying the future and not the past when purchasing securities.
Two calendar years would be sufficient.

Yours sincerely,

Société de la Bourse de Luxembourg
Société Anonyme

Axel FORSTER
Membre du Comité de direction

Hubert GRIGNON DUMOULIN
Conseiller de direction