

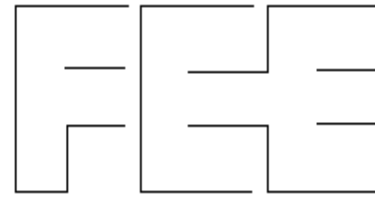
Date

Le Président

26 September 2005

Fédération
des Experts
Comptables
Européens
AISBL

Av. d'Auderghem 22-28
1040 Bruxelles
Tél. 32 (0) 2 285 40 85
Fax: 32 (0) 2 231 11 12
E-mail: secretariat@fee.be



Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 avenue de Friedland
F-75008 PARIS

E-mail: secretariat@cesr-eu.org

Dear Mr. Demarigny,

Re: Consultation paper - CESR's technical advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus

We are pleased to respond to this consultation paper on a possible amendment to the Prospectus Regulation to address the question of complex financial histories. We have commented throughout the process leading to the publication of the Prospectus Regulation and CESR's recommendations, and on consistent implementation.

We believe that the best way to address the question of complex financial histories is to amend item 20.1 of Annex I to the Prospectus Regulation to make it clear that the requirement for a financial history extends to the significant businesses that an issuer will control as a company either quoted on a regulated market or with shares held by the public. Such a requirement should then be illustrated by way of examples as in the cases set out in the consultation paper. These illustrations would not be exhaustive but would assist issuers, their advisers and regulators in ensuring that sufficient historical financial information is presented in a prospectus to enable investors to make an informed investment decision.

In addressing the implications of the complex financial history issue, we suggest that CESR should consider international practice in this area. In particular, we encourage CESR, when developing its final advice to the European Commission, to ensure that its proposed solution is not in conflict with, for example, the rules of the United States' Securities and Exchanges Commission.

We have responded to the specific questions posed in the consultation paper in the appendix to this letter.

We would be pleased to discuss in more detail any of the issues raised in this letter.

Yours sincerely,

David Devlin
President

Responses to specific questions

27. Q: *Do you agree with this approach? Please give your reasons.*

We agree with the proposition that a prospectus should present the financial history not only of an issuer but also the significant businesses it has acquired in the three year historical track record period or since its last balance sheet date or agreed to acquire up to the date the securities, for which the prospectus is being published, are issued.

32. Q: *Do you consider that the scope of the requirements for issuers that have a complex financial history should apply in relation to public offer or admission to trading on a regulated market of any equity security to which the Shares Registration Document applies or should it be restricted only to a prospectus published in relation to a public offer or admission to trading on a regulated market of shares? Please give your reasons.*

We do not comment on this question.

35. Q: *Do you consider that, in relation to additional requirements for issuers with a complex financial history, there is no need to distinguish between different types of issuers? Please give your reasons.*

We agree that any additional requirements for issuers with a complex financial history should apply to all types of issuers irrespective of size.

40. Q: *Do you believe that the cases described below should be considered as a comprehensive list? If not, please provide examples of any other cases you would consider convenient to address and of the additional requirements you would consider appropriate to require in those examples.*

We do not believe that the cases described constitute a “comprehensive” list as in practice a different set of circumstances not included in any such list may be encountered.

In our view, a selection of example cases would be helpful in illustrating the most commonly encountered circumstances and to illustrate the practical application of the general principles for the presentation of complex financial histories in prospectuses. However, a list of cases cannot be a substitute for the necessary development of stated general principles.

45. Q: *Do you agree with the proposed approach? Please give your reasons.*

We agree that it is necessary to present the historical financial record of a business or company acquired by a newly incorporated holding company. This is because we believe it would be inappropriate for investors to be deprived of information concerning the three years track record of a business solely because the previous owner chose to superimpose a newly incorporated company.

51. Q: *Which of the three options proposed do you prefer? Please give your reasons.*

On balance, we believe that, in making an investment decision, investors are best served by being able to consider historical financial information prepared on the basis of GAAP consistent with that which the issuer is, or would have been, required to use. Accordingly, we believe that where a subsidiary's GAAP, before its acquisition and consolidation by the issuer, is different from that of the issuer some form of conforming information is necessary. The principle of requiring restatement of all financial statements to conform to the issuer's accounting standards, to ensure the optimal comparability of financial reporting, seems in the best interest of investors.

We note that under IFRS the concept of “reverse acquisition” accounting may be applied to circumstances where a new holding company is introduced above an existing company or group. Where a reverse acquisition accounting solution is available this would address the historical financial information requirements in a prospectus.

We note that there are arguments for each of the options proposed and that some are more appropriate than others based on the purpose of the prospectus; (for example a prospectus for an initial listing of equity securities may require a higher standard of disclosure than a further issue of securities by an already listed company).

52. Q: *If option 2 or option 3 is preferred, how would you request the issuer to conform the information given to the issuers' accounting standards?*

- a. *Restatement*
- b. *Reconciliation*
- c. *Narrative description of the differences?*

Please give your reasons and provide input on the costs that each of the options would imply for issuers.

We do not believe that a narrative description of differences between different GAAPs used in a prospectus can provide the necessary linkage between amounts disclosed.

We believe that issuer flexibility is the answer to whether restatement or reconciliation should be required, with restatements being required for acquisitions which will represent a substantial part of the acquirer's business. Thus, where a newly incorporated company is making a single acquisition, which will represent 100% of the issuer's business, full restatement into the issuer's GAAP is essential. However, where a newly incorporated company is making two acquisitions simultaneously and one is much smaller than the other, say in the ratio 75: 25 of the issuer's total business, then full restatement would be appropriate for the larger but reconciliation might be acceptable for the smaller. We suggest that this point should be dealt with in any "Level 3" recommendations on implementation of any amendment to the Prospectus Regulation.

If an acquired subsidiary uses US, Canadian or Japanese GAAP, the method used to conform the information to the issuers' accounting standards could alternatively apply the remedies advocated in CESR's final advice on equivalence.

We are not able to comment on the relative costs of options 1 and 2 as this will largely depend on the individual circumstances. Both restatement and reconciliation may be costly.

57. Q: *Which of the three options proposed do you prefer? Please give your reasons.*

If you support option 1, please provide input on the costs this option would mean, specifically if a cash flow statement or a statement showing changes in equity would have to be produced only for the purposes of the prospectus.

In our opinion, both options 1 and 2 are appropriate. We consider option 3 less suitable, as, generally, financial statements can only be understood in conjunction with all the required accompanying notes.

We believe that the question of cost should be considered relative to that which would have been incurred had the company or group been itself the issuer of the securities. The introduction of a new holding company should not be a way to avoid providing investors with the historical financial information they would have otherwise received and increasing the cost of preparing such information.

61. Q: *Do you agree with this approach? Please give your reasons.*

We do not believe that it is necessary to extend the item 20.4.1 of annex I disclosure requirement to acquired subsidiaries. This is because, with the need to include auditor's reports under item 20.1, we do not see any great benefit in the 20.4.1 requirement.

63. Q: *Do you agree that there should be auditor's involvement concerning this additional information given in the case of reconciliation or narrative description? Please give your reasons.*

Yes, we agree that there should be auditor's involvement concerning this additional information given in the case of reconciliation or narrative description. We note that an auditor cannot be involved in preparing any financial information.

Any involvement of the auditor would require clear identification of the accounting framework and the audit or review to be performed. Both the accounting framework to be audited or reviewed by the auditor and the audit or review procedures should be established by the authoritative national or international standard setters.

64. Q: *What kind of assurance should the auditor provide in relation to the restatement, reconciliation or narrative description:*

- a a full scope audit*
- b a review scope*
- c a report, as in item 7a) of the pro forma annex, stating that in their opinion the financial information has been properly compiled on the basis stated?*

It will be necessary to differentiate the following elements in considering the possible form of opinion expressed by the auditor on the various forms of "conformity":

1. In restating the financial statements from national accounting standards to IFRS or other accounting standards, either IFRS or the other accounting standards provide a basis for determining what the resultant financial statements should contain. The auditor can then either audit or review the restated financial statements and issue an opinion, as appropriate, under ISA (Revised) 700 "The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements", ISA 701 (Exposure Draft) "The Independent Auditor's Report on Other Historical Financial Information" and ISRE 2400 "Engagements to Review Financial Statements".
2. If the reconciliation is however not prepared with a recognised set of accounting standards as a basis for example in case of a carve-out, it cannot be audited or reviewed as there is no basis for the audit or the review. In these circumstances no audit or review opinion can be expressed. If a suitable framework were to be established, it would be possible to express either an audit or a review opinion which could either cover preparation in accordance with the framework ("...prepared in accordance with...") or a basis of preparation set out by the issuer itself ("properly compiled on the basis stated...").
3. In respect of narrative descriptions of the differences, there is also no basis for an audit or review, so no audit or review opinion can be expressed.

68. Q: *Do you agree with this approach? Please give your reasons and provide input on the costs that each year of drawing up of historical financial information would imply for issuers.*

We believe that, wherever practicable, an issuer should be required to present the historical track record for the businesses in which investment is invited. To do otherwise would deprive investors of information critical to their investment decision.

Preparation of carve-out financial statements (sometimes referred to as combined financial statements) could also possibly be used to solve CESR's example case. A prerequisite for the preparation of such financial information is, however, that the component concerned has continuously had separate financial records for its accounting. In individual cases the preparation of carve-out financial statements may be appropriate, however, in our opinion, this should not be made a general requirement.

We are not convinced by the deliberations in respect of the inclusion of internal or management accounts in a prospectus. Such accounts (internal or management accounts) are often not prepared in accordance with the standards applicable to external accounting and would therefore not be suitable as information for investors.

The information will also not be suitable even were the basis for the information to be publicised, since investors cannot normally assess the precise content of internal or management accounts, when they are not prepared with an underlying basis of proper GAAP. Therefore, it is particularly important that there will be a requirement that the financial information to be included in a prospectus be prepared in accordance with national or international accounting standards (i.e. recognised GAAP). Any relaxation of this principle would be severely detrimental to the quality and comparability of this financial information.

70. Q: *Which of the above options proposed do you prefer? Please give your reasons and provide input on the costs that each of the options would imply for issuers.*

We note that current international practice and opinion varies as to whether carve out financial information can be said to show a true and fair view. In those jurisdictions where it is accepted that carve out financial statements, whether under IFRS or an EU member state's GAAP, can show a true and fair view it would be usual for the auditors, or independent accountants, to provide an opinion to that effect. In other jurisdictions, the auditors' opinion is limited to whether financial information is properly prepared on the basis stated.

77. Q: *Which of the alternatives proposed do you prefer? Please give your reasons.*

We accept the proposition in option 2 that the effects of a significant acquisition or disposal should be reflected in the consolidated financial statements for the whole of the last two financial years. Where that is not the case additional information would be needed to serve investor needs. This needs however to be reconciled with the three year requirement in case 1.

78. Q: *Would you propose any other option to deal with these situations? Please give your reasons and provide input on the costs that each of the options would imply for issuers.*

No; other than as noted in response to question 77 above.

81. Q: *Do you agree with this approach? Please give your answers.*

We agree that the principles outlined in the three cases should be applied to acquisitions or disposals which have been completed since the issuer's last balance sheet date or which have been irrevocably committed to by the issuer at the date the prospectus is published.

83. Q: *Do you agree with this approach? Please give your reasons.*

We agree that the historical financial record should cover at least 36 calendar months through to the issuer's latest balance sheet date. To do otherwise could lead to investors having insufficient financial history on which to make an informed investment decision.