

CESR's technical advice on possible amendment to Regulation (EC) 809/2004
regarding the historical financial information, which must be included in a
prospectus

Consultation Paper
Ref CESR/05-428

Reply of Euronext

Euronext appreciates the possibility to comment on CESR's technical advice in relation to the Prospectus Regulation. We welcome and agree with the proposal to bring additional requirements in the case of issuers that have complex financial history.

Nevertheless, we ask CESR, when setting such requirements, to consider the high level of constraints issuers already face or will face in the future in terms of reporting and disclosure (e.g. IAS/IFRS, Prospectus Directive requirements, Corporate Governance, Transparency Directive requirements etc).

We are therefore of the opinion that CESR should encourage Member States to assess the costs/benefits of every additional requirement, in order not to refrain issuers from accessing important funds providers and not to dissuade issuers from making public offers or asking for admission to trading on regulated markets.

I. Scope of the additional requirements

Euronext agrees with CESR's approach that issuers with a complex financial history should only be requested to comply with additional requirements in relation to shares or assimilated financial instruments where the Shares Registration Document applies according to art.4 of the Regulation.

We therefore support the proposal to apply the additional requirements only to prospectuses published in relation to public offers or admission to trading on a regulated market of shares and other securities that can be converted into shares as proposed in CESR's advice.

Euronext also considers that it is not necessary to distinguish between different types of issuers in terms of additional requirements relating to historical financial information. Having part of the Regulation only applicable to certain groups of issuers would be confusing. While we recognize that specific issuers may have to be treated in a specific way in relation to some items of the Prospectus, we consider that historical financial information are so important for investors that a distinction between issuers in that respect is not appropriate.

II. Flexibility

Euronext agrees with CESR's consideration that its members should retain flexibility when dealing with information to be provided by issuers with a complex financial history. They

should also only impose requirements that are absolutely necessary for the appropriate information of investors. It is particularly true, with respect to issuers with complex financial history making an IPOs and using both IAS/IFRS and national accounting standards. In that case, such issuers (and especially if they are SMEs) should only be required to submit additional information for the accounting period on which IAS/IFRS are required and based on such accounting standards.

We are however of the opinion that the flexibility in judging how to deal with the complex financial history should not lead to different approaches in each and every Member States. The European Commission and CESR should ensure that Member States have consistent approaches throughout Europe.

III. Additional requirements

Case 1: Newly incorporated holding company inserted over established businesses

With respect to the accounting standards to be used, Euronext favors option 2, i.e. requiring the financial information of the subsidiary or significant business to be prepared according to IAS/IFRS or equivalent standards and, when those accounting standards are different from that used by the issuer, requiring issuers to conform in some way (restatement, reconciliation or narrative description of the differences) for the required periods the financial information of the significant subsidiaries to the accounting standards of the issuer.

We indeed consider that this proposal, for issuers incorporating subsidiaries, provides sufficient flexibility for non-EU issuers and will therefore prevent any delisting/non-listing from them.

When considering the minimum content of the financial information, we support the second option, i.e. requiring significant businesses or subsidiaries to include balance sheet, income statement and accounting policies as well as explanatory notes.

We are of the opinion that this option provides for sufficient information: requiring explanatory notes is necessary to understand balance sheets and income statements.

With regard to the auditing standards, Euronext favors the proposal that requires auditors' involvement and supports a full scope audit in relation to the level of assurance that the auditor should provide since this is required for all prospectuses related to shares and assimilated financial instruments.

Case 2: when the issuer is seeking admission to trading or making an offer consists of companies that were under common control or ownership but never formed a legal group

While agreeing with CESR's approach on the level of information required in this particular case, we consider that a full scope audit is necessary.

Case 3: significant acquisition or disposal by the issuer during the three year historical record or subsequent to the last audited consolidated financial information on the issuer

In relation to this situation, Euronext supports the first option, i.e. no additional information if the significant acquisition or disposal is already fully (i.e. for the entire twelve months period) reflected at least in the historical financial information of the last period. Moreover, if this is not the case, no additional information needs to be provided by the issuer either as Annex II of the Regulation 809/2004 on pro forma information would apply.

As already explained before in case 1, we consider that this proposal, while providing with sufficient information, prevents from establishing too strict extra-requirements, which would dissuade issuers from making public offers or asking for admission to trading on a regulated market.

Case 4: the issuer changed its accounting reference date during the three year period

Euronext supports CESR's approach to require historical financial information to be presented for at least three calendar years.