

Remarks to the Consultation Paper regarding a possible amendment to Regulation 809/2004

We welcome the opportunity to comment on CESR's Consultation Paper regarding a possible amendment to Regulation 809/2004 and would like to forward the following comments:

General Considerations:

Basic principle for additional information:

When considering the different options suggested in here, it should be kept in mind, that such requirement for additional financials are an exemption from the basic idea that only information of the issuer are required. Being an exemption any such obligation to provide additional information shall be limited to the extend absolutely necessary for a transparent view on the issuer. Additional costs for issuers with a complex financial history shall not explode simply because of their financial history.

In times of banks operating across Europe – a development which is accompanied by EU enlargement – issuers with a complex financial history seem to be the rule rather than the exception. This has to be carried in mind when requiring additional information.

Questions:

Q 27: In general, we agree with this approach, but would like to draw the attention to the fact that this seems so be already regulated by item 20.2 of Annex 1.

Q 32: From our point of view, the scope of requirements for issuers with a complex financial history should apply in relation to public offerings or admission to trading on a regulated market of any equity security, as it is regulated by article 4 of the regulation. This is required for conformity with several IFRSs, which distinguish only between equity and liability, not between shares and other equity instruments. IFRS accounts are to be published by all issuers of equity securities which are traded on a European stock exchange, therefore it would cause new irritations for users of the prospectus, if this distinction between IFRS equity and equity within the prospectus directive, only meaning shares, would be established.

Q 35: In Article 2 (1) (f) of the Prospectus Directive, small and medium-sized companies are defined. But In the case of a public offering of equities, the investor-protection objectives are absolutely the same as for other issuers of equity, thus there should not be any difference between information to be published for issuers with a complex financial history. However different types of issuers might require a different understanding of the term “significant”. Notwithstanding this, one should be cautious in suggesting different alternatives.

Q 40: The three described cases should be considered as a comprehensive list.

Q 45: In principle we agree with the approach.

Q 51: In the preparation of historical financial information, we would prefer option 3, because in this case

- the audited annual accounts of the subsidiaries can be used, which can shorten the time of publishing the information and reduces the costs of the offering,
- while the comparability of information with IFRSs is somehow achieved in some way.

Q 52: The conformity of information with IFRSs should be given at least with a narrative description of the differences, if a reconciliation takes too much time. Our opinion is that in most cases, the timeliness of information is of greater importance for existing shareholders than its accuracy, as long as the information is not misleading at all. And potential new investors know that the information about these significant businesses/subsidiaries is only "in conformity with IFRSs", but not based on them.

Q 57: We would prefer Option 3 because this would allow the use of the audited financial statements in most cases.

Q 61: A full audit of the information is too strict: As already mentioned in our answer to Q 52, timeliness is of great importance for existing shareholders. We believe a review process exercised by an independent auditor to be sufficient for this purpose because potential investors are aware of the uncertainty associated with pro-forma figures and with historical financial information which is based on different GAAPs and only brought into conformity with IFRS.

Q 63: As mentioned in Q 61, a review by an auditor stating that the information is stated in accordance with GAAPs and circumstances laid down in the prospectus and is not misleading, should be sufficient.

Q 68: We agree with this approach because the use of internal or management figures under these circumstances fulfils the need for timeliness as well as keeping costs down, in order to assist the restructuring process in the European economy.

Q 70: Option b). As mentioned in our answer to Q 61, we would think a review scope to be adequate.

Q 77: We would prefer option 1 because under IFRSs comparative figures already had to be published for the previous financial year of the company acquired/disposed of. Thus from our point of view, there is no need for additional information on a fiction, meaning a group, that has never existed in this structure.

Q 78: Therefore we see no need for a further option.

P79: Investors might require information of planned acquisitions as described herein. However such information shall not conflict with possible state of the art confidentiality requirements. Hence this obligation shall not be too broad.

Q 81: The information published in the prospectus should be in line with IFRSs as far as possible. If a disposal is not finished, IFRS 5 gives clear guidance as to how this is to be shown in the accounts; if an acquisition is not finished, other IFRS give clear guidance, too. Thus we do not think that a pro-forma information on planned, but not yet finished acquisitions/disposals – including estimates of the effects – is necessary.

Q 83: If only the accounting reference date has changed, it should be sufficient to show the period during which the change took place as an audited interim report. The remaining information should be the same as laid down in the Directive.

Best regards

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