

December 21st 2004

Position paper in response to CESR's public consultation on the approach to assessing equivalence between certain Third Country GAAP and IAS/IFRS

Introduction

The American Chamber of Commerce to the European Union (AmCham EU) broadly supports the Committee of European Securities Regulators (CESR) stated objectives and the approach which it intends to adopt in examining the equivalence of certain third country Generally Accepted Accounting Principles (GAAP) and International Accounting Standards/International Financial Reporting Standards (IAS/IFRS) (as accepted by the EU) as described in its concept paper (Ref: CESR/04-509) of October 2004. AmCham EU welcomes the opportunity to provide industry feedback on certain aspects of the proposals and hopes that CESR will continue to ensure suitable transparency and consultation with industry and investors in further stages of the equivalence process.

1. Legal uncertainty and unpredictability

Notwithstanding the transitional period which entitles third country issuers to apply third country GAAP until January 1st 2007, AmCham EU is concerned that there remains legal uncertainty on the position thereafter. This can be expected to have an unfavourable impact on issuance by entities that use third country GAAP.

We therefore request CESR to proceed with appropriate diligence and to be responsive to the needs of issuers and investors which require certainty in advance of that deadline.

2. Equivalence

AmCham EU supports CESR's approach in defining equivalence, as set out in the current consultation paper (CESR/04-509): equivalence should focus on the overall results of the third country GAAP. Investors should benefit from the same protection as that provided by IAS/IFRS, leading to a similarly informed investment decision irrespective of which standard is used.

We stress, in particular, that equivalence should not require a finding that third country GAAP and IAS/IFRS are identical on a line-by-line basis.

We believe that this approach is consistent with the stated aims of the Prospectus and Transparency Obligations Directives and of the Financial Services Action Plan with respect to protecting investors whilst enhancing their choice in a competitive European capital market. It will also minimise potential disruption to global capital markets, of

December 21st 2004
Equivalence

which the EU market is a vital and integral part, pending the completion of the IFRS convergence process.

However, AmCham EU is concerned that, notwithstanding any finding of technical equivalence, political considerations may complicate the process and alter the outcome of the exercise. In this regard, AmCham EU endorses the statement made by Mr. McCreevy at the CESR Conference on December 6th 2004, in which he expressed hope that the Commission would come to sensible technical judgments and emphasized that the Commission's approach would be technical and not political.

As part of CESR's global assessment, AmCham EU would urge CESR to consult with the investment community at each step in order to gauge the market's opinion.

3. Materiality Threshold to enable a finding of Non-Equivalence

AmCham EU supports CESR's statement that only significant material differences should be taken into consideration in assessing equivalence.

In particular, we support CESR's distinction between non-equivalence based on a real economic difference (and therefore significant in influencing an investor's decision) and one based purely on a difference in terminology (which therefore should not impact on any finding of equivalence), as described in paragraph 45 of CESR's consultation paper.

4. Periodic Reassessment on finding of Equivalence

CESR's position on what happens once an initial determination on equivalence has been made is unclear. AmCham EU accepts that evolving circumstances and, in particular, evolution in accounting standards need to be taken into account such that an initial determination on equivalence cannot be taken as a permanent determination. However, reviews of the equivalency assessment should take place at appropriate and pre-defined intervals, without jeopardising market continuity and undermining issuer certainty.

5. Remedies

AmCham EU believes that, in pursuing similar objectives, high quality internationally recognised standards such as US GAAP should be deemed equivalent to IAS/IFRS as accepted by the EU for the purposes of implementing the Prospectus and Transparency Obligations Directives.

Today, investors in EU markets have considerable experience and knowledge of third country GAAP. Limiting the choice of these investors would have an adverse impact on investment returns and the competitiveness of European markets.

December 21st 2004
Equivalence

We therefore strongly support CESR's stated flexible approach in acknowledging that a range of options may be available if any third country GAAP falls short of full equivalence.

However, AmCham EU is concerned by the uncertainty created by paragraph 64 of CESR's consultation paper. According to this paragraph, issuers will be responsible for applying "appropriate" remedies where GAAP differences not specifically listed in CESR's technical advice are identified. AmCham EU is concerned that, in the absence of explicit guidance from CESR or the relevant competent authorities, such self-assessment by issuers may expose them to liability in circumstances where the benchmark for compliance is unclear.

6. Enforcement

In the event of a finding of non-equivalence, the position on enforcement is unclear. In particular, it is not clear who would undertake enforcement action to ensure that any remedies are complied with.

Further consideration will need to be given to this area.

* * *

The American Chamber of Commerce to the European Union (AmCham EU) is the voice of companies of American parentage committed to Europe towards the institutions and governments of the European Union. It aims to ensure an optimum business and investment climate in Europe. AmCham EU facilitates the resolution of EU – US issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Total US investment in Europe amounts to \$850 billion, and currently supports over 3.5 million jobs.

* * *