

Siemens AG, 80312 Munich

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Date September 14, 2005

**Response to 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,
Ref: CESR/05-428**

Dear Mr. Demarigny,

Siemens Aktiengesellschaft appreciates the opportunity to comment on 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 a stock corporation organized in the Federal Republic of Germany and employed an average of 419,200 people in approximately 190 countries worldwide during fiscal 2004. We have a balanced business portfolio in information and communications, automation and control, power, transportation, medical, lighting and financing and real estate.

Proposed requirements in addition to regulation

As CESR notes, issuers with a complex financial history, *i.e.* with a significant gross change of more than 25% in their assets or another size indicator, are already required by Annex I, Art. 20.2 in conjunction with Annex II, to provide pro forma financial information for the last accounting period. In addition, Art. 5(1) of the Directive 2003/71 EC includes the general requirement that an issuer needs to include in a prospectus all information which, according to the particular nature of the issuer and the relevant securities, is necessary to enable investors to make an informed assessment of the issuer. It is our opinion that these requirements already provide sufficient disclosure and offer the necessary flexibility to address various types of transactions leading to complex financial histories. It appears to be difficult and impracticable to limit the various possibilities leading to complex financial histories to certain cases for which detailed information is then required. In contrast, we would suggest that a general guidance is provided and that the developing market practice is observed. In the past, we have experienced an increasing globalization of the capital markets and it is one of the major goals of the EU to achieve capital market harmonization. Accordingly, CESR should not only take the various EU market standards into consideration. We believe it is rather important that CESR also observes the standards of respected capital

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markets, e.g. the United States of America. If disclosure requirements are perceived as being too stringent, Europe's capital markets could find themselves at a competitive disadvantage as issuers might prefer to raise capital outside the EU. In addition, an overregulated framework could have a negative impact on industry-wide consolidation processes and thus hamper a competitive development in the EU.

Different approach in relation to different kinds of securities

Should CESR decide to propose new requirements, we would support the approach considered by CESR, to restrict the additional requirements to transactions described in Article 4(2) of the Regulation. As noted by CESR, this suggestion is based on the analysis of current market practices and the Regulation. In our opinion, this approach also reflects the fact that equity offerings are subject to a higher risk and thus a lower materiality level. Accordingly, CESR should not broaden the applicability of the pro forma requirements to additional securities, i.e. debt securities.

Case 3: Significant acquisition or disposal (representing more than 25% of the group) during the 3 year historical record or subsequent to the last audited consolidated financial information

CESR proposes two disclosure options for issuers with significant acquisitions or dispositions. The Option 1 refers to Annex II of the Regulation and would therefore not include any additional disclosure requirements. However, Option 2 proposes that the issuer should provide pre-consolidation or pre-acquisition information on the businesses or subsidiaries if the business has not been consolidated for at least two years. Providing separate historical financial information for acquired businesses for three years seems unduly burdensome for issuers and should be avoided. In addition, the proposed disclosure requirements would go beyond IFRS requirements and those of Regulation S-X for companies listed in the United States, as well as IDW Rechnungslegungshinweis: Erstellung von Pro-Forma-Angaben (IDW RH HFA 1.004). Furthermore, the language of the Consultation Paper, while not entirely clear, suggests that CESR would also require historical financial information on businesses to be disposed of, which is so far not required and would, in our opinion, be of little additional value to investors. Accordingly, we would recommend that CESR follows the proposed Option 1.

When the target has a different accounting standard from the issuer's, CESR proposed three alternatives on how to conform the target accounting standards to the issuer. Within these three alternatives the options considered are restatement, reconciliation or narrative description of the accounting differences. A restatement is generally used for e.g. changes in accounting principles, changes in accounting entity and for corrections of errors in prior periods. Accordingly, restatement would be an inappropriate accounting measure for such purposes and should be avoided. Should CESR decide to recommend Option 2 above, notwithstanding our comments, it seems unduly burdensome for issuers to prepare additional reconciliations. Rather, we would suggest that a reference to the lack of comparability together with an explanation might be sufficient.

CESR proposes three options for minimum content of the pro forma information. Option 1 would require a full set of financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, cash flow statement, accounting policies and explanatory notes. The purpose of pro forma information is to provide a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period reported on or at the date reported and is for illustrative purposes only. Accordingly, to provide balance sheet and income statement information together with explanatory notes (Option 2) seems to be sufficient. To require a full set of financial statements seems to be extremely costly, unduly burdensome for issuers and of little benefit to the investor. In Option 3, CESR proposes that, if explanatory notes are already required for the pro forma information, which will also be inserted in the prospectus, the financial information would include at least balance sheet, income statement and accounting policies. With respect to Option 3, we would like to point out that the notes to the financial statements usually already include a summary of significant accounting policies. To include such a description with the pro forma section appears to be repetitive. Accordingly, we suggest that CESR follows Option 2.

CESR proposes to expand the disclosure requirements for acquisitions and dispositions where there is a firm commitment or an agreement to acquire or dispose a significant business. We strongly disagree with this proposed requirement. In case relevant antitrust authorities are involved in these acquisitions, these antitrust authorities impose a restriction on the flow of information between the issuer and the target. Hence, it appears to be extremely challenging for the issuer to obtain the required information from the target prior to closing of the transaction. For example, the issuer will be in no position to gain sufficient detailed accounting information of the target necessary to prepare a reconciliation of the financial statements or pro forma financials.

Please contact Dr. Ralf P. Thomas, Corporate Vice President and Controller, at +49 (89) 636-33490 or Dr. Peter Moritz, Corporate Vice President and Treasurer, at +49 (89) 636-32472 if you wish to discuss any of the issues raised in this letter.

Sincerely,

/s/ Dr. Ralf P. Thomas

/s/ Dr. Peter Moritz