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Attention:
M. F Demarigny
Secretary General &
M. J. Ruiz Del Pozo
Senior Officer / Prospectus Directive

**RESPONSE TO CESR'S CALL FOR EVIDENCE FOR ISSUING A
TECHNICAL ADVISE ON A POSSIBLE AMENDMENT TO REGULATION
(EC) 809/2004 REGARDING THE HISTORICAL FINANCIAL
INFORMATION TO BE INCLUDED IN A PROSPECTUS (CESR /05-428)**

Dear Sirs,

Thank you for the opportunity to comment on the above issue and our apologies for the delay. Providing complete and accurate historical financial information to investors across the EU-market is extremely important for strengthening confidence to the capital raising process in the European securities markets. On the other hand, the need to enhance transparency should not entail the imposition of extremely complex, cumbersome procedures discouraging business restructuring and/or impeding extra-territorial expansion of European companies' business.

To this respect, would like to stress out the following points:

- a) Due to the existence of Art. 3 of the Regulation (EC) 809/2004 and to the overall "maximum harmonization" doctrine applicable thereto, there is, indeed, a need for amending the Regulation. The Regulation's amendment should not end up in providing a tight and/or extremely detailed regime. On the other hand, national discretion should not preclude possible co-ordination under Level III, a CESR initiative, which may appear necessary for ensuring efficient and at the same time fully harmonized regulatory treatment of the issue.
- b) With regard to the scope of application of the relevant amendment, we believe that this should be limited to shares and to convertible bonds. Equity securities are defined under the Prospectus Directive, so as to exclude most types of convertible bonds, notably those converted at the investor's initiative. We believe that convertible bondholders must have information equivalent to that

of potential shareholders and therefore we propose the definition of the amendment's scope, so as to include these securities.

- c) The information to be included in the Prospectus for companies involved in the issuer's "complex financial history" should not be limited to mere financial information. A brief description of all companies involved as well as a clear reference to the quantitative and qualitative impact of the said group's restructuring is extremely important for appropriately informing investor while at the same it does not entail any additional particular cost for the issuer.
- d) Pro-forma financial statements should be extended to covering no more or less than two financial years with the exception of case 4 (changing accounting reference date). We acknowledge the trade-off existing in presenting financial situation with pro-forma statements: on one hand pro-forma facilitates the investor to read complicated financial history by "transferring" individual company's data to the level of the actual group. On the other hand, however, the remoter in the past the pro-forma statement refers to, the grater the possible deviation from the actual financial reality.
- e) With regard to the issue of presentation of each company's financial statements, we believe that Option 2 is preferable. The Regulation has already made a choice of how third country issuers' financial information is to be presented in a form reliable and understandable by the European investor. Additionally, "translation" of the financial information in a "common" language, notably the issuer's one, is essential for allowing the investor to compare the information provided and, to some, extent verify the pro-forma statements.
- f) Connected to the above is the issue of achieving integrity of financial information. If Option 2 is selected, whereby individual financial statements of the entities or businesses involved are presented in a recognized format, then the reconciliation method would suffice and a restatement of the statements will not be required. This also saves costs for the issuer, given that restatement would normally a full scope audit of the outcome for ensuring reliability. We believe that the combination of Option 2 with the use of reconciliation method and the production of a report by the auditor verifying reconciliation is the golden mean between ensuring investor protection and strengthening confidence in the capital market on one hand and non-discouraging capital raising for cross-border business development by European issuers on the other hand.

An Annex of detailed answers to questions raised in the consultation paper is attached hereto.

We would like to thank you again for offering us the opportunity to comment on the said issue and we remain at your disposal for any further clarification.

Best Regards

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ANNEX

Q.27 We are in agreement with the Commission's view that an amendment of the Regulation is needed for the proper historical financial information regime to be able to form part of the Prospectus. Furthermore, we are in agreement with the complementary character of the amendment proposed: indeed, the issuers will have to first comply with existing requirements under item 20.1 of the Annex I and then adhere to the "complex financial history" regime.

Q.32 For reasons of equality of information available to shareholders and to holders of securities, which can be converted to shares, we are of the opinion, for reasons explained above, that the said amendment should apply to equity, as defined by the Directive, but also to all securities convertible to shares irrespective of whether the conversion is effected at the issuer's or at the investor's option.

Q.35 Small and medium sized issuers present the same or even higher investment risk compared to larger issuers. On the other hand, it is a necessity for all issuers that the measures proposed are proportional to the purpose pursued (ensuring transparency) without being excessively cumbersome or costly. Hence, the Regulation does not distinguish in any other case different types of issuers, taking into consideration that the need for appropriate information to the investor remains the same irrespective of the size of the issuer.

Q.40 We believe that the list provided for by CESR is to be seen as a comprehensive list.

Q.45 We agree with the views expressed in paras 43 and 44 of the Consultation Paper for a period of two years instead of three for reasons explained above.

Q.51 We favor the selection of Option 2 for reasons explained above.

Q.52 Provided Option 2 has been selected, we favor the reconciliation process for reasons explained above.

Q.57 Provided Option 2 has been selected, we favor Options 2 or 3.

Q.61 We completely agree with approach expressed in paras 58-60. We acknowledge the view expressed also by other consultees during the first consultation that non-audited financial statements of the entities or businesses involved represent a risk, which should be fully explained in the Prospectus.

Q.63 – 64 There should be an auditor's involvement in the additional information given in case of reconciliation. We believe that provided Option 2 in Q 52 is selected, then the auditor's involvement should be of a kind of a report, verifying both the proper application of the reconciliation process and its outcome.

Q.68 We agree with the approach with limitation of the two-year instead of the three - year period for reasons explained above. In fact there is no alternative, given that historical data on the given business exists for those previous years and are incorporated in the overall business' financial statements. The lacking element is the

individual presentation, which is absolutely necessary for determining the financial situation of the entity finally presented as the issuer.

Q.70 We are, for reasons of proportionality, in favor of the auditor's involvement by producing a report, whereby he or she will verify that financial information has been properly compiled on the basis stated.

Q.77 For reasons of equality of treatment, we are in favor of Option 2.

Q.81 In principle this is a good suggestion. One could argue in this respect that there are serious risks, as to what means "firm commitment" or "agreement". What will happen, if then the restructuring does not take place? How will the issuer incorporate and present at its Prospectus future developments that have not yet taken place? On the other hand, how will the investor decide today on a reality that will definitely shortly change and this change is already known as a fact by the issuer but its impact remains hidden for the investors? We should not allow the entrepreneurial risk inherent to the restructuring to be finally undertaken by the –uninformed- investor, thereby offering to the issuer to motive to present a situation that he knows that will rapidly change in the near future. By making this information a Prospectus' mandatory content, the Prospectus' filing will not considered as completed unless this information is furnished, notably unless the actual financial situation of the issuer has been finalized.

Q.82 We agree with CESR's proposal.