

The Committee of European Securities Regulators CESR

CC: FEE

**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 (CESR/05-428)**

The Finnish Institute of Authorized Public Accountants - KHT-yhdistys – Föreningen CGR r.y. appreciates having the opportunity to comment on your consultation paper on the European Commission's request to CESR for technical advice on a possible amendment to Regulation (EC) 809/2004 (the "Prospectus Regulation") regarding the historical financial information.

We believe that the best way to address the question of complex financial histories is to amend item 20.1 of Annex I to the Prospectus Regulation to make it clear that the requirement for a financial history extends to the significant businesses that an issuer will control as a company either quoted on a regulated market or with shares held by the public. This should then be accompanied by CESR Recommendations that would provide illustrations as to how this would apply to certain circumstances. These illustrations would not be exhaustive but would assist issuers, their advisers and regulators in ensuring that sufficient historical financial information is presented in a prospectus to enable investors to make an informed investment decision.

We would be pleased to discuss with you any of the points raised in this letter.

**Responses to specific questions**

*27. Q: Do you agree with this approach? Please give your reasons.*

We agree with the overall proposition that a prospectus should present the financial history not only of an issuer but also the significant businesses acquired during that period.

*32. Q: Do you consider that the scope of the requirements for issuers that have a complex financial history should apply in relation to public offer or admission to trading on a regulated market of any equity security to which the Shares Registration Document applies or should it be restricted only to a prospectus published in relation to a public offer or admission to trading on a regulated market of shares? Please give your reasons.*

We agree with the proposal that any requirements addressing complex financial histories should be focussed at those securities covered by Annex I to the Prospectus Regulation.

35. Q: Do you consider that, in relation to additional requirements for issuers with a complex financial history, there is no need to distinguish between different types of issuers? Please give your reasons.

We agree with you, the same requirements should apply to all types of issuers irrespective of size.

40. Q: Do you believe that the cases described below should be considered as a comprehensive list? If not, please provide examples of any other cases you would consider convenient to address and of the additional requirements you would consider appropriate to require in those examples.

We do not agree that the cases described are a “comprehensive list”. However, we do agree that the cases provide “illustrations” as to how any proposed amendment to the Prospectus Regulation should be applied to those particular circumstances. As noted in our covering letter, an approach of using the cases as illustrations of an overarching requirement should provide issuers, their advisers and securities regulators with a suitably flexible model that provides investors with an appropriate level of historical financial information.

45. Q: Do you agree with the proposed approach? Please give your reasons.

We agree that “it is necessary to require the issuer to provide in the prospectus historical financial information for the significant businesses or subsidiaries for each year during the required periods”. We do not believe it would serve the interest of investors to withhold information concerning businesses three-year track record solely because previous owners chose to create a newly incorporated company.

51. Q: Which of the three options proposed do you prefer? Please give your reasons.

We prefer option 3 with appropriate remedies necessary to conform any GAAP other than that used by the issuer.

52. Q: If option 2 or option 3 is preferred, how would you request the issuer to conform the information given to the issuers’ accounting standards?

- a. Restatement
- b. Reconciliation
- c. Narrative description of the differences?

Please give your reasons and provide input on the costs that each of the options would imply for issuers.

Firstly, whilst acknowledging that this would be the least expensive solution available to issuers, we do not believe that a narrative description of differences can ever provide the information necessary to make an informed investment decision.

We support that the issuer have the flexibility to choose whether to apply re-statement or reconciliation. The distinction between these two may vary depend-

ing on the structure and/or size of the transaction in question; e.g. whether a shell company acquires a business, or whether acquisition of a group of unrelated companies involve companies of various size.

Absent any other requirement in respect of conforming a subsidiary's financial history, it will be necessary to reconcile the subsidiary's financial statements as inputs to the pro forma financial information required by Annex I item 20.2. A reconciliation approach would have relatively additional impact only in giving information for three years rather than just the latest year. Clearly, full restatement onto the issuer's GAAP provides certainly investors with the best information. However, we feel that this approach can be burdensome, time-consuming and expensive and therefore the decision whether to restate or reconcile should rest with the issuer.

*57. Q: Which of the three options proposed do you prefer? Please give your reasons.*

*If you support option 1, please provide input on the costs this option would mean, specifically if a cash flow statement or a statement showing changes in equity would have to be produced only for the purposes of the prospectus.*

We support option 1 as that is the information, and the costs incurred, that would be required if the acquired company was itself the issuer.

*61. Q: Do you agree with this approach? Please give your reasons.*

We do not believe that it is necessary to extend the Annex I item 20.4.1 disclosure requirement to acquired subsidiaries. Indeed, with the need to include auditors' reports under Annex II item 20.1, we do not see any merit of item 20.4.1 requirement at all.

*63. Q: Do you agree that there should be auditor's involvement concerning this additional information given in the case of reconciliation or narrative description? Please give your reasons.*

Yes, we agree that there should be at least some auditor's involvement in the disclosure of conforming information.

However, we do not believe that an auditor can ever provide any assurance at all against a narrative description of differences.

*64. Q: What kind of assurance should the auditor provide in relation to the restatement, reconciliation or narrative description:*

- a. a full scope audit*
- b. a review scope*
- c. a report, as in item 7a) of the pro forma annex, stating that in their opinion the financial information has been properly compiled on the basis stated?*

As noted in our response to question 63 above, we do not believe an auditor can provide assurance against a narrative description of differences.

We believe that a restatement should always be accompanied by a full scope audit, as that would have been expected of the issuer itself.

We also believe that a reconciliation should be subject to a separate “properly compiled” opinion as is required on pro forma financial information. This is due that a reconciliation cannot by itself show a true and fair view.

*68. Q: Do you agree with this approach? Please give your reasons and provide input on the costs that each year of drawing up of historical financial information would imply for issuers.*

We agree that issuers should be required to present “historical financial information” for the businesses underpinning the investment being made by the public. Whether it is for example a division of an existing business that is listed or where a group of companies under common control, but not previously a stand alone consolidated group, is a significant part of an issuer’s business, should be clearly presented a historical track record. This has already often been market practice.

We believe that it is important that a framework for preparing “carve out” financial histories is published in order that investors can be expected to have some confidence as to the quality of such information. We do not believe that disclosure in a basis of preparation should be an excuse for allowing assumptions to be used when preparing a “carve out” financial history that could have a material impact on an investor’s decision as to whether to invest.

The cost of preparing “carve out” historical track is part of the cost of raising capital.

*70. Q: Which of the above options proposed do you prefer? Please give your reasons and provide input on the costs that each of the options would imply for issuers.*

We do not believe that a review opinion provides investors with the necessary assurance over the core historical financial information on which investors base their investment decision. We believe investors should be provided with positive assurance as to the historical financial information presented in a prospectus. This is the standard that would have applied had the information been presented in an issuer’s own financial statements.

We would note that existing European practice as regards auditors reporting on “carve out” financial statements does not include review reporting but does include both of the other options put forward by CESR, “true and fair” and “properly compiled”. However, we would encourage CESR to make clear what it believes a “properly compiled” opinion means.

*77. Q: Which of the alternatives proposed do you prefer? Please give your reasons.*

We believe that option 2 is the only practicable way of dealing with significant acquisitions.

We believe that option 1 is the right solution for dealing with significant disposals; that is they should be dealt with by way of disclosure as “discontinued operations”.

*78. Q: Would you propose any other option to deal with these situations? Please give your reasons and provide input on the costs that each of the options would imply for issuers.*

No. However, we would note that there may be circumstances where the impact of the disposal of a subsidiary is so significant that it would be more appropriate to present “carve out” financial information as described in case 2.

*81. Q: Do you agree with this approach? Please give your answers.*

We do agree that the principles outlined in the three cases should be applied through to the date of any prospectus and, accordingly, should address acquisitions and disposals that have been completed since the issuer’s latest balance sheet date or are committed to be acquired by the issuer at the date of the prospectus.

*83. Q: Do you agree with this approach? Please give your reasons.*

We do agree that issuers should be required to present historical financial information for those accounting periods necessary to present at least 36 calendar months back from the latest balance sheet date.

Helsinki 15 September 2005

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