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PRESS RELEASE

CESR's publishes its final advice of a possible amendment to the Prospectus Regulation regarding the treatment of complex financial information

The Prospectus Regulation came into effect on 1 July 2005 and contains requirements relating to how issuer's historical financial information should be presented in a prospectus. Shortly after the legislation's implementation, it became clear that more detail in the level two implementing measures might be helpful if the treatment of issuers having a complex financial history was to be handled in a consistent manner across Europe. CESR was therefore asked by the European Commission to provide some advice by 31 October 2005, on how this might be altered, and therefore CESR's final advice published today is issued for the Commission's consideration. This final advice follows a call for evidence CESR launched on 3 June 2005, followed by a consultation launched on 6 July. The submissions received can be viewed on CESR's website (www.cesr-eu.org).

The prospectus must include historical financial information on the issuer. This is intended to provide the investor with a full picture of the financial position of an issuer, informing them on the issuers business as a whole, which may include significant acquisitions or disposals, throughout the period required by the Regulation (usually the last 3 years). However, there are certain circumstances that arise, mainly in relation to public offers or admission to trading of shares, where the historical financial information required by the issuer to be included in the prospectus might not sufficiently reflect the issuer's whole business throughout the required period (these types of issuers are therefore considered to have a "complex financial history"). For example, such circumstances can arise when: the issuer has a newly incorporated holding company inserted over an established business; the issuer seeking admission to trading or making an offer consists of companies that were under common control or ownership but which never formed a legal group; the issuer has made a significant acquisition (representing more than 25% of the group) during the three year historical record or subsequent to the last audited consolidated financial information on the issuer, including specific reference to cases where the acquired target has different accounting policies; the issuer has disposed of a significant part of its business since the last audited accounts; or, the issuer has changed its accounting reference date during the three year period.

CESR's advice

The main themes of the advice are highlighted below:

- **CESR proposes that the amendment to the Regulation should be more in the form of guidelines:** In line with responses to the consultation, CESR advice proposes that the amendment to the Regulation should not consist of a detailed set of requirements, given that the specific characteristics of complex financial histories do not, by their very nature, follow a standard pattern. As such, the regulatory approach should allow competent authorities to continue with their current flexibility when assessing these situations.

Concerning the actual requirements that would be imposed on issuers with a complex financial histories, CESR's advice proposes a limited amendment to the Regulation that would enable competent authorities to require these issuers to provide in their prospectus, historical financial information for the significant businesses or subsidiaries, taking into account some principles set out in the advice. This principle based approach was strongly encouraged by respondents to the consultation paper.

This principle based approach might best be complimented by level 3 guidance from CESR which is more flexible in nature than a legislative solution but should still promote convergence of the practices of its

members and ensure adequate legal certainty for cross border activities in the single market. CESR will therefore assess what level 3 work is needed in respect of the requirements relating to complex financial histories.

- **CESR clarifies in its advice the interaction between the requirements of Annex II of the Regulation on Pro forma information and the historical financial information:** In its advice, CESR also clarifies the interaction between the requirements of Annex II of the Regulation on Pro forma information and the historical financial information to which this CESR's advice refers. As such, taking the example of an issuer that has a newly incorporated holding company inserted over an established business, CESR's advice explains that requirements related to complex financial histories are intended to provide historical financial information on the established business. Information is required to be provided for the last 3 years (or, a shorter period dependent on the time the established businesses have been in operation), subject to the principles in the advice. On the other hand, the purpose of the Pro forma information as required in Annex II is to describe how the transaction (the acquisition of the established subsidiary) might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on, or, at the date reported. The Pro forma information is provided for one year only, and is illustrative and a hypothetical situation since the established subsidiary was not acquired at the commencement of the period being reported on.
- **Defining the concept of complex financial histories:** As regards the concept of complex financial histories, CESR's advice does not include a definitive list of cases of issuers with a complex financial history. In general, the advice considers that such cases would be those where the issuer has not prepared its historical financial information as a single business during the whole of the period for which the historical financial information is required under the Regulation.
- **CESR proposes that the Regulation (EC) 809/2004 should be amended to include an additional provision to deal with situations of issuers having a complex financial history:** Following the consultation, CESR proposes that the Regulation (EC) 809/2004 should be amended to include an additional provision to deal with situations of issuers having a complex financial history. These additional requirements should only be requested in those cases where the Shares Registration Document applies and there should be no distinction between different types of issuers.

The preparation of CESR's advice on this mandate has been undertaken by the CESR Expert Group on Prospectuses, which has been chaired by Professor Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Market Commission (CMVM). A member of CESR Secretariat, Javier Ruiz del Pozo, assisted the Chairman and acted as rapporteur of the Expert Group.



Notes for Editors:

1. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the member states.
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.

Each Member State of the European Union has one member on the Committee. The members are nominated by the Members States, and are the Heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

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