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CESR Statement

Assessment on the Equivalence of Prospectuses from non-EEA Jurisdictions (Article 20.1 Prospectus Directive)

Several market participants from third countries have approached CESR Members with a view to having their prospectuses, which have been drawn up in accordance with their national legislation, approved pursuant to Article 20 of the Prospectus Directive.

Article 20.1(PD)¹ defines the conditions under which an authority may decide to approve a prospectus drawn up in accordance with standards other than the EU Regulation n°809/2004. The approval of a prospectus is defined by the PD as “the positive act at the outcome of the scrutiny of the completeness of the prospectus by the home Member State’s competent authority including the consistency of the information given and its comprehensibility”. (Article 2.1(q) PD).

This infers that the home Competent Authority is still required to scrutinise the said prospectus for completeness prior to approving it, even where the information requirements of the prospectus are considered to be equivalent to the EU requirements.

As of today, no Member State has taken any blanket or unconditional decision with respect to the equivalence of the standards of a third country, and the EU Commission has not yet adopted any implementing measures in accordance with Article 20.3 of the PD. The European Commission has nevertheless expressed its desire for CESR Members to agree on a common procedure for determining equivalence in accordance with Article 20.

CESR has therefore decided to work on a common assessment of the prospectus requirements of certain third country vis-à-vis the EU requirements. In particular, CESR has agreed, initially, to assess the requirements of Israel and the United States and will make further statements on these in due course.

¹ Article 20: “1. The competent authority of the home Member State of issuers having their registered office in a third country may approve a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with the legislation of a third country, provided that :

- a) the prospectus has been drawn up in accordance with international standards set by international securities commission organisations, including the IOSCO disclosure standards ;
- b) the information requirements, including information of a financial nature, are equivalent to the requirements under this Directive.

2. In the case of an offer to the public or admission to trading on a regulated market of securities, issued by an issuer incorporated in a third country, in a Member State other than the home Member State, the requirements set out in Articles 17, 18 and 19 shall apply. (...)”