Response to

CESR'S Consultation Paper:

"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)

CESR is invited by the European Commission to provide technical advice on a possible amendment to Regulation (EC) 809/2004 in order to ensure that the Regulation requires, or enables competent authorities to require, the inclusion in a prospectus of all historical financial information which is necessary, in a case where the issuer has a "complex financial history", to enable an investor to make an informed assessment of the financial condition and prospects of the issuer.

CESR is taking into consideration the following cases:

- the issuer is 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 during the 3 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;
- the issuer has changed its accounting reference date during the 3 year period.

Being thankful for the opportunity to comment on such issue, we report below the responses to the questions raised in the Consultation Paper.

Q27

We generally agree with CESR's approach, for which the proposed requirements will be in addition to the requirements already set in the Regulation, (specifically, item 20.1 of Annex I and Annex II, should this be applicable). But we would recommend also a 'case by case' valuation, which may allow the application of a flexible approach in particular cases, when, for example, the issuer is a holding company with no assets that acquires companies with established businesses or when a issuer acquires a company whose perimeter is much larger than its own.

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Q32

We think that the same approach should be followed in relation to IPOs of shares and first placements of bonds by unlisted companies. In such cases, issuers with a complex financial history should be required to supply respectively 3 and 2 years of “aggregated/reconstructed” historical financial information related to all the relevant business/entities included in the perimeter of the group.

Q35

We think that no distinction for small and medium-size enterprises should be made. As already CESR points out, the Regulation, when requesting financial information on the issuer, does not provide for different requirements based on the size or nature of the business of the issuer.

Q40

CESR’s proposed list of cases is exhaustive.

Q45

We think that the issuer should provide the historical financial information for the significant businesses or subsidiaries in an “aggregated” form[1].

The “aggregate” income statement and balance sheet should be prepared by summing the different income statement and balance sheet items of the significant entities, cancelling any intra-group items but without making the pro-forma adjustments.

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[1] As we already pointed out in our response to CESR’s Call for Evidence (ref: CESR/05-384), we think that for shares, the 3 year (T-1, T-2, T-3) historical financial information that should be supplied by an issuer with a complex financial history could be the following:

- as of T-1: pro-forma financial statements;
- as of T-2 and T-3: income statement and balance sheet reflecting the performance of the business/entities included in the perimeter existing at the time of the application for admission.
  Specifically we would suggest:
  - in the case of acquisitions, an income statement and balance sheet aggregating the financial statements of the issuer (even if a newly established holding company) and those of the companies acquired (“aggregate”[1]);
  - in the case of mergers, an income statement and balance sheet aggregating the financial statements of the issuer (even if a newly established holding company) and those of the merged companies (“aggregate”);
  - in the case of newly established issuers that derive from spin-offs and/or the contribution of existing business units and/or assets and liabilities, an income statement and balance sheet of the business unit and/or the assets and liabilities subject to the spin-off and/or the contribution (“reconstruction”);
  - in the case of spin-offs and/or the contribution of business units and/or assets and liabilities to previously existing companies, an income statement and balance sheet aggregating the financial statements of the previously existing companies and the income statement and balance sheet of the business unit and/or the assets and liabilities subject to the spin-off and/or the contribution (“aggregate”).

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With regard to the term "significant", the 25% threshold should be calculated as the sum of the indicator of size (chosen among total assets, revenues, profits or losses…) referred to every single entity divided by the value of the same indicator taken from the pro-forma financial statements. The issuer should then aggregate every entity that separately exceeds the 25% threshold and make a 'case by case' valuation on whether including the remaining ones[2].

Q51 - 52

As we suggest that the financial information should be presented in an "aggregated" form, we would consequently prefer either option 2 or option 3 and the restatement of the financial information of the significant entities.

However, we would ask for a clarification about the differences between option 2 and option 3, because it seems to us that they both lead to the same 'result'.

Q57

Consistently with our approach which proposes the "aggregated" form, we would prefer option 1, but excluding letter c).

Q61 - 63 - 64

We agree with CESR's approach regarding the involvement of auditors. Specifically, we think that all the entities included in the "aggregate" should have 3 years of audited financial information and, should it be applicable, the same years of restated audited financial information. In that way, issuers that changed their perimeter and issuers that did not will be treated equally.

Q68

Yes, we agree.

Q70

We would prefer a full audit.

[2] Examples:

- total assets of entity A / pro-forma total assets = 30% and total assets of entity B / pro-forma total asset =30% ⇨ the issuer aggregates A+B
- A=30% B=15% ⇨ the issuer aggregates A+B
- A=30% B=2% C=15% ⇨ the issuer aggregates A+C
- A= 10% B=10% C=10% ⇨ the issuer aggregates A+B+C

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Q77

With regard to the concept of “significant”, we would apply the same method described in our response to Q45.

Moreover, we are against option 1, as it seems to clash with the principles on which all the proposed amendments are based.

We would therefore prefer option 2 and we would require, consistently with our proposed approach, 3 years of audited “aggregated” financial information.

Q81

We agree with CESR’s approach and we think that the requirements for acquisitions/disposals already completed should be applied to acquisitions/disposals for which there is a letter of intent.

Q83

We agree.

We hope that You will find our comments useful and we remain at disposal for explanations and details, looking forward to further cooperate

Milan, 15th September 2005