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Draft

COMMISSION DECISION

of [...]

on the use by third country issuers of securities of information prepared under internationally accepted accounting standards

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/24/EC¹, and in particular the second subparagraph of Article 23(4) thereof,

Whereas:

- (1) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards² requires companies, including banks and insurance companies, whose securities are admitted to trading on a Community regulated market to prepare their consolidated accounts in accordance with international accounting standards now commonly referred to as International Financial Reporting Standards ("IFRS") from 2005 onwards.
- (2) Article 4 of Directive 2004/109/EC provides that where an issuer is required to prepare consolidated accounts, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with IFRS. Likewise, Article 5 of Directive 2004/109/EC on half-yearly financial reports provides that the condensed set of financial statements of issuers required to prepare consolidated accounts shall be prepared in accordance with IFRS.
- (3) However, Article 23(1) of Directive 2004/109/EC provides that the competent authority of the home Member State may exempt a third country issuer from certain requirements of the Directive, including the requirements of Article 4 and 5 on annual and half-yearly financial statements, provided that the law of the third country lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

¹ OJ L 390, 31.12.2004, p. 38.

² OJ L 243, 11.9.2002, p. 1.

- (4) The Committee of European Securities Regulators established by Commission Decision 2001/527/EC³ in its advice delivered in June 2005, considered that the Generally Accepted Accounting Principles ("GAAP") of the United States, Japan and Canada, each taken as a whole, are equivalent to IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002, though remedies remain necessary to address certain differences with IFRS.
- (5) Community companies whose securities are admitted to trading on a regulated market and which must prepare consolidated financial statements will publish financial statements in accordance with IFRS for the first time in 2006. Investor protection and market stability require that IFRS, which are principle-based, be applied consistently in practice throughout the Community. To this end, and to assess conclusively the equivalence between IFRS and third country accounting standards, the implementation and concrete implications of IFRS by Community issuers should be carefully analysed. This analysis should not be limited to one financial year but should be based on reporting trends extending over several financial years.
- (6) In January 2005, the Accounting Standards Board of Japan (ASBJ) and the International Accounting Standards Board (IASB) announced their agreement to launch a joint project to reduce differences between IFRS and Japanese Generally Accepted Accounting Principles (GAAP) and launched a joint work programme in March 2005 towards the convergence of Japanese GAAP with IFRS. In January 2006, the Accounting Standards Board of Canada publicly stated its objective to move to a single set of globally accepted high-quality standards for public companies and concluded that this objective is best accomplished by converging Canadian accounting standards with IFRS within five years. In February 2006, the American Financial Accounting Standards Board and the IASB published a memorandum of understanding which outlines a work programme for convergence between American GAAP and IFRS with a view to lifting reconciliation requirements in 2009 at the latest.
- (7) Accordingly, it is appropriate to allow third country issuers to continue drawing up their financial statements in accordance with the GAAP of the United States, Japan or Canada for a further two-year period while that assessment and that dialogue are being carried out. In all other cases where financial statements are drawn up in accordance with the accounting standards of any third country other than the GAAP of the United States of America, Canada and Japan and is not equivalent to IFRS, a transitional exemption should no longer be available after 1 January 2007 and the obligation to restate such financial statements should apply. Financial statements should be treated as equivalent to IFRS for this purpose if, in accordance with paragraph 14 of IAS 1, they contain an explicit and unreserved statement that they comply with those standards.
- (8) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

³ OJ L 191, 13.7.2001, p. 43.

HAS ADOPTED THIS DECISION:

Article 1

An issuer whose registered office is in a third country and which uses the Generally Accepted Accounting Principles of the United States of America, Japan or Canada, shall be allowed to continue using such Generally Accepted Accounting Principles until 31 December 2008.

Article 2

From 1 January 2007, third country issuers that are not covered by Article 1 shall be subject to the obligation to restate financial statements that are not prepared in accordance with international accounting standards adopted pursuant to Article 3 of Regulation (EC) No 1606/2002.

For this purpose, third country accounting standards shall be treated as equivalent to international accounting standards adopted pursuant to Article 3 of Regulation (EC) No 1606/2002 if the notes to the financial statements drawn up in accordance with those third country standards contain an explicit and unreserved statement that they comply with International Financial Reporting Standards.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission