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PRESS RELEASE

CESR consults on a possible amendment to the requirements in Commission regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus

CESR publishes today a consultation paper which sets out recommendations for a possible amendment of the Commission's Regulation on Prospectus (Ref. CESR/05-428) regarding historical financial information which must be included in a prospectus. The decision to amend the Regulation in this area, follows market participants' requests to CESR for clarification as to how this will be implemented on a day-to-day basis and follow up work by CESR itself to ensure supervisory convergence in implementation. The initial findings of CESR's work and discussion with the European Commission indicated that it might be appropriate to tackle potential differences in implementation by amending the Regulation itself. The European Commission has therefore issued CESR with a mandate to set out its advice as to how this may best be done. The deadline set by the European Commission for the submission of CESR's advice is 31 October 2005. The consultation paper issued today follows a call for evidence launched by CESR on 3 June 2005. The submissions received can be viewed on CESR's website (www.cesr.org).

Background:

The Prospectus Regulation which came into effect on 1 July 2005, contains requirements relating to historical financial information. For example, Annex I to the Regulation, which contains a schedule of disclosure requirements in relation to shares. This requires the inclusion in a prospectus of "audited historical information covering the last three financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year" (Item 20.1). Similar requirements are set out in other Annexes adapted to the different types of securities.

The primary purpose of including financial information in a prospectus is to enable investors to understand the financial position of the issuer. The historical financial information should therefore provide a record of the issuers' business, as operated and accounted for by the issuer during the period for which historical financial information is required at the date of the prospectus.

Normally, the historical financial information of the issuer reflects the business of the issuer as a whole throughout the required period, including significant acquisitions or disposals. However, there are certain circumstances that arise, mainly in relation to public offers or admission to trading of shares, in which 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 (these types of issuers are therefore considered to have a "complex financial history").

Market participants, especially representatives of the accountancy profession, encouraged CESR to provide recommendations in order to provide clarity and convergence as to what is required when issuers have a complex financial history.

With a view to determining whether there was a consensus between its members on the need, in case of an issuer with a "complex financial history", for a prospectus to contain financial information which goes beyond that directly relating to the issuer, CESR undertook a fact finding exercise. Examples of issuers with a "complex financial history" covered by that exercise were cases where:

- 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 (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;
- the issuer has changed its accounting reference date during the three year period.

From the work that CESR carried out, it emerged that some CESR members required in their current practices historical financial information not only of the legal entity which issues or proposes to issue securities (which would be the issuer for the purpose of the Regulation), but also in relation to the companies or businesses the issuer has acquired during the period for which historical financial information is required on the issuer.

The European Commission noted that there is some uncertainty about the extent to which the provisions of the Prospectus Regulation relating to historical financial information will enable competent authorities to continue with their current practice. Therefore, the European Commission has considered it desirable to eliminate this uncertainty and, for that purpose, has published on 2 June 2005 a mandate to CESR for technical advice.

The preparation of CESR's advice on this mandate will be undertaken by the CESR Expert Group on Prospectuses, which is chaired by Professor Fernando Teixeira dos Santos, Chairman of the Portuguese Securities Market Commission (CMVM). A member of CESR Secretariat, Javier Ruiz del Pozo, assists the Chairman and acts as rapporteur of the Expert Group. CESR-Fin, the CESR permanent group on financial reporting chaired by John Tiner, Chief Executive of the UK FSA and supported by Michel Colinet of the CESR Secretariat, will assist the Prospectus Group in the preparation of the advice.

Timetable

A timetable for CESR's work in this area is attached in the note to editors.

Responses to the consultation should be submitted online by 15 September 2005 through CESR's website (www.cesr-eu.org) under the section 'Consultations'. A hearing will also take place at CESR's premises on 6 September 2005. To book a place for the hearing please use CESR's website.



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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Indicative timetable for CESR's advice on Complex Financial Histories

