



HISTORICAL FINANCIAL INFORMATION WHICH MUST BE INCLUDED IN A PROSPECTUS – ABI RESPONSE TO CESR CONSULTATION

Introduction

- 1.1 This is the response of the Association of British Insurers to CESR's consultation paper on 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, published in June 2005.
- 1.2 The Association of British Insurers represents the largest single group of institutional investors in the United Kingdom. Their funds under management are equivalent to some €1.7 trillion, a large proportion of which is invested in the equity and debt securities of EU companies and others raising capital through the EU's capital markets. We are pleased that CESR is carefully examining the important matter of what historic financial information is required in prospectuses where issuers have a complex financial history and we would be happy to assist CESR further if this would be helpful.

General Comments

- 2.1 Our members wish to see quality of information driving efficient markets that are in the interests of investors and issuers. When companies are raising capital, confidence and accountability are of particular importance. Financial information requirements in prospectuses, whether at first admission or through subsequent issues, must be specified accordingly.
- 2.2 Investors, in making decisions to subscribe for new capital and analysing financial information, are concerned with "substance" rather than "form". This is of special relevance in the context of companies raising fresh capital because of the risk that companies will exploit misalignment of disclosure requirements.
- 2.3 It is right that CESR, in considering what it is appropriate to require, should carefully weigh the costs and benefits involved. Materiality is also an important consideration for both issuer and for potential investors. We would emphasise, though, our belief that the balance weighs firmly on the side of high standards of disclosure.

- 2.4 It is important that genuine harmonisation of requirements is achieved in order that investors can have confidence in the offerings of securities across the EU. We do not believe that this objective would conflict with providing a significant degree of discretion to national competent authorities operating within a framework of principles. In practice, because capital markets develop and evolve, it is desirable that national regulators have the ability to respond appropriately and promptly to these developments. Liaison between competent authorities would then help to maintain the necessary consistency of interpretation and harmonisation of standards.

Specific Comments

- Q27 We agree that the Commission is right to identify a number of specific cases of “complex financial history” that require special attention beyond the requirements already set in the Regulation.
- Q32 It is important that requirements regarding disclosure of historical financial information should apply to all issuance of equity securities, including rights to subscribe or of conversion into equity shares of the company and not just to the issue of shares. We recognise that different requirements will be appropriate in the case of issuance of debt securities though we should emphasise the importance of high standards of disclosure of financial information applying also in the debt markets.
- Q35 We believe that similar requirements are appropriate for all issuers. We do not feel size of company would be a criterion that justifies differential treatment. Small companies are likely to be less complex but this does not mean that they should not be subject to the same disclosure requirements as larger companies if there is complexity in their financial history.
- Q40 We believe the cases identified represent a useful illustrative list of likely circumstances in which additional reporting requirements are appropriate, but it should not be regarded as a comprehensive list.
- Q45 It is clear, in the case of a new holding company being placed over an existing company and business, that historic disclosure requirements should relate to that entity and its business. To conclude otherwise would be to disregard substance in favour of form and provide an obvious mechanism for avoidance of the intent of the regulations on disclosure of financial information.
- Q51-61 We believe the accounting treatment should, as far as possible, achieve full consistency with the accounting framework of the issuer of the prospectus. We have little confidence in the value

of a narrative description of differences between the accounting treatment of the parent and the subsidiary undertaking. The prospectus should present in readily utilisable form the information on a consistent basis.

- Q63 -64 Yes, there should be auditor involvement concerning the provision of additional information in relation to restatement, reconciliation or narrative description. Ideally a full scope audit should be required. Requiring auditors to state their opinion that the financial information has been properly compiled on the basis stated would be inadequate.
- Q68 Yes. The economic relationship between the companies concerned is of key relevance rather than the legal position. Users of the prospectus should, however, be properly informed if there are relevant factors relating to the legal position which would be relevant to forming an investment judgment.
- Q70 We believe a full scope audit should be required.
- Q77 We believe that where the acquisition or disposal made during the 3-year historical record is significant and material, the additional information as under Option 2 should be required. This is an aspect where some degree of flexibility is desirable and, where matters are in doubt, some judgment by the competent authority would be appropriate. An acquisition or disposal that exceeds a 25% threshold is certainly significant and material and the balance of costs and benefits points very clearly to full restatement of the three-year historic information.
- Q81 Yes. Where there is a firm commitment or an agreement to acquire or dispose of a significant entity or business, similar requirements should apply. Prospectus users will wish to make investment decisions based on the likelihood of the transaction being completed. The fact that formal completion has not yet occurred is of limited relevance in this respect.
- Q83 Yes. Companies that have chosen to change their accounting reference date should not be permitted to circumvent the intention of the regulations. The full 3-year requirement should still apply in these cases.

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