

19 May 2006

ICAEW REP 31/06

Dr Alexander Schaub
Director General
DG Internal Market
European Commission
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Dear Dr Schaub

Re: Amendment of Commission Regulation (EC) 809 / 2004: Complex Financial Histories - Working document ESC/16/2006 of DG Internal Market for discussion and consultation purposes (the Working Document)

Introduction

I have pleasure in submitting the comments of the Institute of Chartered Accountants in England & Wales ("the ICAEW") to the Working Document issued by DG Internal Market of the European Commission.

The ICAEW is the largest professional accountancy body in Europe, with over 128,000 members. In preparing this response, we have taken account of the views of our members working in business and in corporate finance roles.

We welcome the flexibility offered by the Working Document in not providing a comprehensive list of cases that should be treated as issuers with a complex financial history but providing a broad definition which will allow competent authorities to deal with issuers potentially having complex financial histories on a case-by-case basis. We are therefore broadly in agreement with the proposals contained within the Working Document.

Specific comments

We would like to comment on specific matters as follows:

1. We note that in section 2 the draft new paragraph 4, the definition refers to an issuer having a complex financial history 'if, as a result of any acquisition or disposal undertaken by the issuer, the entire business undertaking of the issuer at the time that the prospectus is drawn up is not covered by or represented in the historical financial information which the issuer is required to provide'. We have a number of observations:

- As a general matter a disposal undertaken by an issuer would have no impact on the accounting by the issuer for the business undertaking at the time that the prospectus is drawn up. It is therefore difficult to envisage that the conditions of paragraph 4 would be



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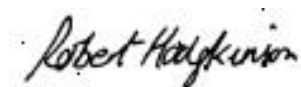
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met in the case of a disposal. It is however true to say that there may be rare cases where an issuer has disposed of all or substantially all of its historical business, such that presentation of the historical trading record may obscure the true nature of the issuer by focusing on information which is no longer relevant to an understanding of the issuer. It may be appropriate therefore to provide for the possibility that in the case of a disposal, the regulator may permit alternative disclosure to that required under item 20.1 of Annex I. It would be necessary, for this purpose to amend the definition in paragraph 4 to remove the words 'or disposal' and add at the end to the sentence 'or if as a result of any disposal the historical financial information which the issuer is required to provide under item 20.1 of Annex I covers a business undertaking of the issuer substantially unrelated to that of the issuer at the time that the prospectus is drawn up'.

- We note that the drafting refers to situations where the 'entire' business undertaking of the issuer is not covered. Effectively this will be the case where any acquisition has been made in the course of the three year period (however immaterial). Whilst it is recognised that the consequence, under proposed paragraph 3, is the inclusion of 'such supplementary financial information as is necessary to ensure that the prospectus complies with the requirements of Article 5(1) of Directive 2003/71/EC' and that hence it is possible that a regulator could conclude that no additional information will be required by the regulator, we consider that the draft should provide an indication to regulators that complex financial histories should only be considered to exist where a material element of the business undertaking of the issuer at the time the prospectus is drawn up is not covered or represented in the historical financial information. This might be achieved by replacing 'the entire' in paragraph 4 with 'a material element of the'; alternatively in paragraph 3 the words 'if any' might be inserted after 'such supplementary financial information'.
2. In section 3, it would be useful if it could be clarified, in relation to the period for which an issuer has been in operation, if shorter than 36 months, that the 'entire period' means a period commencing on the date on which the issuer began operation and ending on a date not more than 9 months prior to the date of the prospectus.

Please contact me should you wish to discuss any of the points raised in this response or if you would like further information on this submission.

Yours sincerely



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