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Draft

COMMISSION REGULATION

of [...]

amending Regulation (EC) No 809/2004 as regards the accounting standards in accordance to which historical information contained in Prospectuses is drawn up

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC¹, and in particular Article 7(1) 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 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) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements³ requires that the historical financial information provided by third country issuers in prospectuses for offer of securities to the public or the admission of securities to trading on a regulated market be prepared in accordance with IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002 or with the national accounting standards of a third country equivalent to such international standards. If financial information was not drawn up in accordance with such standards it must be presented in the prospectus in the form of restated financial statements.
- (3) However, Regulation (EC) No 809/2004 contains transitional provisions which exempt third country issuers from the obligation to restate historical financial information which was not drawn up in accordance with either IFRS or accounting standards of a third country equivalent to IFRS in certain limited cases. Under those transitional provisions, the obligation to restate financial information does not apply to

¹ OJ L 345, 31.12.2003, p. 64.

² OJ L 243, 11.9.2002, p. 1.

³ OJ L 149, 30.4.2004, p. 1; corrected version in OJ L 215, 16.6.2004, p. 3.

any prospectus filed before 1 January 2007 by a third country issuer which has either prepared its historical financial information in accordance with internationally accepted standards, or which has prepared its financial information in accordance with the national accounting standards of a third country (other than internationally accepted standards) and has securities admitted to trading on a regulated market before that date. In the latter case, if the historical financial information does not give a true and fair view of the assets and liabilities, financial position and profit and loss of the issuer, that information must also be supplemented by such more detailed or additional information as is necessary to ensure that a true and fair view is given.

- (4) In respect of prospectuses filed from 1 January 2007, those transitional exemptions will no longer apply, and historical financial information which is not presented in accordance with either IFRS or equivalent third country standards will have to be restated. Regulation (EC) No 809/2004 provides that for this purpose the equivalence of accounting standards of a third country should be established pursuant to a mechanism to be set up by the Commission.
- (5) The Committee of European Securities Regulators (CESR), established by Commission Decision 2001/527/EC⁴, in its advice which was delivered in June 2005, considered that although the Generally Accepted Accounting Principles ("GAAP") of the United States, Japan and Canada, each taken as a whole, are equivalent to international accounting standards adopted pursuant to Article 3 of Regulation (EC) No 1606/2002, additional disclosures and in some instance supplementary financial statements remain necessary to address certain differences with IFRS.
- (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 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) 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.

⁴ OJ L 191, 13.7.2001, p. 43.

- (8) Accordingly, it is appropriate to extend the transitional provisions provided for in Article 35 of Regulation (EC) No 809/2004 to exempt third country issuers from an obligation to restate historical financial information which was drawn up in accordance with the accounting standards of the United States, Japan or Canada for a further two year period while that assessment and that dialogue are being carried out. .
- (9) In all other cases where historical financial information is 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 those standards are not equivalent to IFRS, a transitional exemption should no longer be available after 1 January 2007 and the obligation to restate that historical financial information should apply. Financial information should be treated as equivalent to IFRS for this purpose if, in accordance with paragraph 14 of IAS 1, it contains an explicit and unreserved statement that it complies with those standards. Regulation (EC) No 809/2004 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Article 35 of Regulation (EC) No 809/2004 is amended as follows:

- (1) Paragraph 5 is replaced by the following:

"5. Without prejudice to the expiry of the exemptions provided for in paragraphs 3 and 4, third country issuers which have prepared the historical financial information in accordance with the national accounting standards of the United States of America, Japan or Canada may include that information in a prospectus filed between 1 January 2007 and 31 December 2008 without being subject to an obligation to restate that information.

From 1 January 2009, third country issuers covered by the first subparagraph shall present their historical financial information in a prospectus in accordance with a decision as to the equivalence of the Generally Accepted Accounting Principles of Canada, Japan or the United States of America taken by the Commission in accordance with the procedure referred to in Article 24(2) of Directive 2003/71/EC."

- (2) The following paragraph 5a is inserted:

5a. From 1 January 2007, third country issuers that are not covered by paragraph 5 of this Article shall be subject to the obligation to restate historical financial information that is not prepared in accordance with international accounting standards adopted pursuant to Article 3 of Regulation (EC) No 1606/2002.

For the purposes of this Regulation, 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 financial information drawn up in accordance with those third country standards contain an explicit and unreserved statement that they comply with International Financial Reporting Standards.

Article 2

This Regulation shall enter into force on the [twentieth ...] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission