



21 August 2007

European Commission
DG Markt

Attn.: Pierre Delsaux – Head of Unit F.2
Jitka Hrudova – Unit F.3
Florence Francois Poncet – Unit F.2
Ruth Walters – Unit G.3

Dear Sir and Madams

Draft Commission regulation establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities

The International Capital Market Association (**ICMA**) and the Securities Industry and Financial Markets Association (**SIFMA**) are pleased to comment on the draft Commission regulation establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities (the **Draft Regulation**).

ICMA is the self-regulatory organisation and trade association representing investment banks and securities firms issuing and trading in the international capital markets worldwide. ICMA's members are located in some 50 countries across the globe, including all the world's main financial centres, and currently number over 400 firms.

SIFMA (the result of a merger between the Bond Market Association and the Securities Industry Association) brings together the shared interests of more than 650 securities firms, banks and asset managers. Its mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public confidence in the markets. SIFMA represent its members locally and globally. It has offices in London, New York, Washington DC, and its sister Association, the Asia Securities Industry and Financial Markets Association (ASIFMA), is based in Hong Kong.

Our comments are based on extensive consultations with our member firms and their advisors. We attach them as **Annex** to this letter and would be pleased to discuss them with you at your convenience.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ondrej Petr'.

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ANNEX

Background

Accounting equivalence is an issue which is of key importance not only to third country issuers, but also to EU-based investors and investment firms who bring third country issues to the EU markets. Uncertainty about how and when it will be resolved has caused considerable disruptions in the markets and has been a key reason for third country issuers increasingly issuing their securities in EU markets outside the scope of the Prospectus and Transparency Directives, i.e., without a public offer and without admission to a regulated market.

We support the focus of the Commission and CESR on resolving the matter and in principle endorse the objective and approach of the Draft Regulation. We note that a number of important improvements have been made since the initial suggestions in the CESR call for evidence in April 2007. We also urge a speedy adoption of the final regulation, not only because of its importance but also because of the "sunset clause" in the Prospectus Directive which will prevent the Commission from issuing any implementing measures as of 31 December 2007.

Without prejudice to our general endorsement of the Draft Regulation, we believe there are aspects of it which deserve further consideration. The purpose of this letter is to expand on these aspects and suggest possible solutions.

Comments on the Draft Regulation

Definition of equivalence (Article 2)

In our response to the CESR consultation we expressed reservations about the proposed "outcome-based" approach to defining equivalence. Different accounting standards are likely to lead to financial statements containing different figures and/or the presentation of these figures in a different way. It may therefore be unrealistic to expect such differences not to impact investor behaviour. A pure "outcome-based" definition of equivalence may therefore result in "equivalent" meaning "the same". This would be inconsistent with the common understanding of the term and the purpose of the equivalence provisions in the Prospectus and Transparency Directives. On this basis, we cautioned CESR against a pure "outcome-based" approach and instead recommended a more purpose-based definition referenced to the quality of financial reports.

We are pleased that the operative provisions and recitals of the Draft Regulation go some way towards addressing our concerns. We also understand that it is not the intention of the Commission or CESR to interpret "equivalent" as "the same". The reference to investors having to be likely to make "the same decisions", however, remains a cause for concern and a potential source of misunderstandings in the future.

We would suggest that, at the very least, the definition of equivalence is clarified so that equivalent third country GAAP not only "enable investors to make a similar assessment" but, using the same terminology, such assessment results in the investors being likely to make "similar" (as opposed to "the same") decisions.

Reciprocity by third countries (Article 2)

In our response to CESR, we suggested that where a third country allows the use of IFRS, this suggests that the two sets of standards are equivalent. From this perspective, the formulation in the second paragraph of Article 2 is unobjectionable. There is risk, however, that it will be interpreted in a negative sense as well, leading the Commission to conclude that where a third country does not allow the use of IFRS, the third country GAAP cannot be equivalent to IFRS. The current formulation also does not take account of the fact that the third country may focus on IFRS, rather than EU-adopted IFRS (the

current thinking of the US SEC being a good example). More generally, reciprocity is conceptually and legally unrelated to the question whether third country GAAP is (or should be) equivalent to IFRS.

We understand why the Commission wishes to encourage third countries to allow EU issuers to use EU-adopted IFRS in their markets and would support any such initiatives. For the above reasons, however, we are concerned that the current formulation in the second paragraph of Article 2 could complicate the declaration of a third country GAAP as equivalent and suggest that it be deleted and that the Commission pursues this objective separately.

Private applications for equivalence determination (**Article 3**)

We agree that the process for determining equivalence should generally be initiated and substantiated by public bodies who should be best placed to compare the third country GAAP with IFRS and assess any differences. In our response to the CESR consultation, however, we raised the possibility of third country issuers seeking equivalence of their GAAP but the relevant third country public bodies not being in a position to initiate or substantiate an equivalence application (e.g. because they are prevented from doing so by legal or resource constraints).

We therefore suggested that the equivalence mechanism allow a third country issuer to initiate or substantiate an application directly. Such a “direct stakeholder” approach would be, in our view, consistent with approach to equivalence taken in other closely related contexts (e.g. the determination of the equivalence of third country major shareholding notifications and periodic financial reporting regimes envisaged by the Transparency Directive).

We understand that Article 3 of the Draft Regulation would allow such issuers to make their case to the Commission or a Member State competent authority and rely on their right of initiative. Although this to some degree addresses our concerns, we would still suggest that the possibility of a direct application be considered further.

We note, in this context, that Recital 3 of the Draft Regulation suggests that a third country issuer may make the application directly which is, however, not reflected in Article 3.