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Draft

COMMISSION DECISION

of [...]

on the use by third country issuers of securities of information prepared under internationally accepted accounting standards

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/24/EC¹, and in particular the second subparagraph of Article 23(4) 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 governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State to prepare their consolidated accounts in accordance with adopted international accounting standards now commonly referred to as International Financial Reporting Standards ("IFRS") for each financial year starting on or after 1 January 2005.
- (2) Article 4 of Directive 2004/109/EC requires that where an issuer is required to prepare consolidated accounts, the audited financial statements should comprise such consolidated accounts prepared in accordance with IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002. Likewise, Article 5 of Directive 2004/109/EC on half-yearly financial reports requires that the condensed set of financial statements of issuers required to prepare consolidated accounts should be prepared in accordance with these standards. These requirements apply to all issuers whose securities are admitted to trading on a regulated market EU, regardless of whether their registered office is situated in the Community or in a third country.
- (3) However, Article 23(1) of Directive 2004/109/EC permits the competent authority of the home Member State to exempt a third country issuer from certain requirements of

¹ OJ L 390, 31.12.2004, p. 38.

² OJ L 243, 11.9.2002, p. 1.

the Directive, including the requirements of Articles 4 and 5 on annual and half-yearly financial reports, provided that the law of the third country lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent. In addition, Article 23(2) of Directive 2004/109/EC provides a transitional exemption for issuers whose registered office is in a third country. Such issuers are exempt from the requirement to prepare their financial statements in accordance with Article 4 or 5 of that Directive prior to the financial year starting on or after 1 January 2007, provided that those financial statements are prepared in accordance with internationally accepted standards as referred to in Article 9 of Regulation (EC) No 1606/2002.

- (4) Since the adoption of Regulation (EC) No 1606/2002 many countries have adopted IFRS directly into their national accounting standards. This clearly demonstrates that one of the aims of this Regulation - namely to encourage the increasing convergence of accounting standards so that IFRS are accepted internationally and are truly global standards - is being fulfilled. Accordingly, it is appropriate that third country issuers should be exempt from the obligation to prepare annual financial statements or half-yearly financial statements in accordance with IFRS, as required by Articles 4 and 5 of Directive 2004/109/EC, if those statements are prepared in accordance with the national accounting standards of a third country and if, in accordance with IAS 1 (Presentation of Financial Statements), they contain an explicit and unreserved statement that they comply with those standards.
- (5) In its advice delivered in June 2005, the Committee of European Securities Regulators (CESR), established by Commission Decision 2001/527/EC³, considered that the Generally Accepted Accounting Principles ("GAAP") of Canada, Japan and the United States, each taken as a whole, are equivalent to IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002, subject to remedies, such as additional disclosures and in some instances supplementary financial statements.
- (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 IASB and the US Financial Accounting Standards Board published a memorandum of understanding which outlines a work programme for convergence between IFRS and US GAAP with a view to fulfilling one of the US Securities and Exchange Commission's (SEC) conditions that need to be met before it will lift the reconciliation requirement for foreign issuers using IFRS that are registered with the SEC, by 2009 at the latest.
- (7) The progress of the convergence process will be closely examined before any decision on equivalence is taken. This process, therefore, needs to be closely monitored and

³ OJ L 191, 13.7.2001, p. 43.

assessed on an on-going basis to ensure the changes made remove the need for the additional disclosures and supplementary financial statements identified by CESR in its advice. This assessment should form part of a progress report during the two-year transitional period.

- (8) In light of the efforts of the accounting standard setters in Canada, Japan and the United States to converge with IFRS, it is appropriate, for a two year transitional period while the convergence process continues and the progress report is completed, to allow third country issuers to continue to prepare their annual financial statements and half-yearly financial statements in accordance with the accounting standards of Canada, Japan or the United States
- (9) During that two-year period, the Commission will closely monitor the progress in the convergence between IFRS and the GAAPs of Canada, Japan and the United States in order to ensure that it is in a position to take a decision on equivalence by the end of 2008, and will inform the European Securities Committee accordingly. The report which **Article 1 of Commission Regulation (EC) [...]** requires the Commission to present to the European Securities Committee [and to the European Parliament] on the progress in convergence and towards the elimination of any reconciliation requirements that apply to Community issuers under the rules of a third country, will be relevant in the context of this Decision. In addition the Commission will actively monitor ongoing progress in the work by the relevant third country authorities to eliminate any requirement for Community issuers accessing the financial markets of a third country to reconcile financial statements prepared using IFRS.
- (10) Whilst many countries have adopted IFRS directly into their national GAAP, other countries are converging national GAAP to IFRS over a period of time. In the light of this, it is appropriate, for a two-year transitional period, also to allow third country issuers to continue preparing their annual and half-yearly financial statements in accordance with a GAAP that is converging with IFRS, provided that the national authority responsible has made a public commitment to this effect and established a work programme. In order to ensure that the exemption is available only in cases where these conditions are satisfied, the third country issuer should be required to provide evidence to the competent authority demonstrating that the national authority has made a public statement and established a work programme.
- (11) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee.

HAS ADOPTED THIS DECISION:

Article 1

For financial years beginning on or after 1 January 2007, an issuer whose registered office is in a third country shall prepare its annual consolidated financial statements and half-yearly

consolidated financial statements in accordance with international accounting standards adopted pursuant to Article 3 of Regulation (EC) No 1606/2002, as required by Article 4 and Article 5 of Directive 2004/109/EC.

Article 2

By derogation to Article 1, an issuer whose registered office is in a third country shall be exempted from the obligation under Article 4 and Article 5 of Directive 2004/109/EC to prepare its annual consolidated financial statements and half-yearly consolidated financial statements in accordance with international accounting standards adopted pursuant to Article 3 of Regulation (EC) No 1606/2002 prior to financial years starting on or after 1 January 2009 where one of the following conditions is met:

- (a) the notes to the financial statements contain an explicit and unreserved statement that they comply with International Financial Reporting Standards in accordance with IAS 1 Presentation of Financial Statements;
- (b) the financial statements are prepared in accordance with the Generally Accepted Accounting Principles of either Canada, Japan or the United States of America;
- (c) the financial statements are prepared in accordance with the Generally Accepted Accounting Principles of a third country other than Canada, Japan or the United States of America, and the following conditions are satisfied:
 - (i) the third country authority responsible for the national accounting standards in question has made a public commitment to converge those standards with International Financial Reporting Standards;
 - (ii) that authority has established a work programme which demonstrates the intention to progress towards convergence before 31 December 2008; and
 - (iii) the issuer provides evidence to the competent authority demonstrating that the conditions in (i) and (ii) are satisfied.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission