



**Analysis of Responses to  
FEE Discussion Paper on the  
Auditor's Involvement with the  
New EU Prospectus Directive**

**October 2005**



## **FEE**

The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe. FEE's membership consists of 44 professional institutes of accountants from 32 countries. FEE member bodies represent more than 500,000 accountants in Europe.

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### **Purpose of this Comment Paper**

FEE published a discussion paper in November 2004, 'Auditor's Involvement with the New EU Prospectus Directive', with a view to providing audit standard-setters with a framework within which national standards might be developed. This was to address the new requirements on auditors from the new EU prospectus. The discussion paper aimed to highlight areas that should be addressed. It was also written to enable standard-setters to use it as their own document for guidance. FEE hopes that this discussion paper acts as a stimulant and contributes to the debate.

The responses to the questions raised in the discussion paper are presented in this analysis with the aim of extracting recommendations on each of the questions and to identify any new issues requiring further debate. The conclusions have been developed based on the comments received and on further reflections within FEE since the publication of the discussion paper. The summary of the responses is condensed and should be read in connection with the individual responses quoted in the paper. The comments received are quoted directly, but not in full. The full set of FEE comments can be obtained from the FEE Secretariat. In case there were no specific responses, the commentator has not been mentioned for a certain question.

In alphabetical order, comments were submitted by<sup>1</sup>:

Chamber of Hungarian Auditors (MKVK)  
 CESR-Fin<sup>2</sup>  
 Compagnie Nationale des Commissaires aux Comptes (CNCC)  
 Hellenic Capital Market Commission  
 Institut der Wirtschaftsprüfer (IDW)  
 Institute for the Accountancy Profession in Sweden (FAR)  
 Institute of Chartered Accountants in England and Wales (ICAEW)  
 Instituto de Censores Jurados de Cuentas de España (ICJCE)  
 Lithuanian Chamber of Auditors (LCA)  
 Polish Securities and Exchange Commission  
 PricewaterhouseCoopers Europe (PwC Europe)  
 Royal Dutch Institute of Registered Accountants (Royal NIVRA)

<sup>1</sup> Only comment letters addressing the substance of the discussion paper have been included in the analysis.

<sup>2</sup> CESR-Fin is a permanent operational group with the role of co-ordinating the work of CESR Members in the area of endorsement and enforcement of financial reporting standards in Europe.

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## EXECUTIVE SUMMARY

This FEE paper sets out the views of a number of respondents, including some national auditing standard-setters and CESR-Fin<sup>3</sup>, on the issues and questions raised in the Discussion Paper on the ‘Auditors’ Involvement with the New EU Prospectus Directive’ published in November 2004. It provides recommendations based on these comments and further reflections.

All respondents welcomed the FEE Discussion Paper as a useful framework within which auditing standard-setters may develop national standards to address the new requirements on auditors from the EU Prospectus Directive.

### *Key proposals:*

- There is wide support for the FEE position to include the audit report only together with the related previously audited financial statement although the Regulation expects the audit report to be reproduced independently. A new audit opinion on either the full financial statements or a specific opinion on the additional information should be produced where additional information or adjustments to the (statutory) financial statements are necessary.
- FEE stresses the need to address the auditor’s responsibility and liability for the prospectus in the absence of a systematic approach to deal with auditor’s liability for prospectuses throughout Europe. Most respondents suggested that the home state liability regime of the auditor should prevail when the prospectus is issued in different EU Member States.
- Prospective financial information and pro forma financial information should always be prepared on the basis of a recognised reporting framework. A framework for preparation of the required information put in place at international level would improve harmonisation across Europe and clarify the meaning of ‘properly compiled’.
- Auditors should not provide any assurance on profit forecasts or estimates: they should refrain from reporting whether the assumptions are complete and provide a reasonable basis for the profit forecast or estimate. The auditor’s report should include cautionary language that the actual outcome will differ from the forecasts.
- There is agreement that interim financial information should be reviewed according to ISRE 2400, Engagements to Review Financial Statements, and ISRE 2410, ‘Review of Interim Financial Information Performed by the Independent Auditor of the Entity’.
- The Regulation requires the publication of an independent auditor’s report on pro forma financial information. It should be considered as a reasonable assurance engagement, given the form of opinion provided by the Regulation. The procedures outlined in the Discussion Paper could serve as an appropriate benchmark to provide a ‘properly compiled’ opinion.

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<sup>3</sup> CESR refers to the different questions raised in FEE’s discussion paper, even if, their intention is not as such to respond to the FEE’s public consultation but to summarise their current views.

FEE calls on:

- The **European Commission and national authorities** to address the auditor's responsibility and liability for prospectuses (Q2 & Q3);
- The **IASB** to:
  - (a) Define and develop suitable criteria for profit forecast/estimate reporting (Q19); and
  - (b) Provide an appropriate framework for the preparation of pro forma financial information (Q23);
- **IAASB** to:
  - (a) Develop a specific standard on assurance engagements in relation to reporting on other than historical financial information in prospectuses to complement ISAE 3000 (Q12); and
  - (b) Commence a project to revise ISAE 3400 on the examination of prospective financial information (Q18).

FEE hopes that this analysis and the suggested recommendations will, by highlighting the areas still of concern and those where there is a common agreement, contribute to the debate and the development of guidance to assist in the implementation of a single European passport.

## GENERAL COMMENTS

### *Summary of General Comments<sup>4</sup>*

CESR-Fin<sup>5</sup>, CNCC, PwC Europe and ICAEW specifically mention their support of the FEE initiative. The discussion paper contains useful material to assist auditing standard-setters in issuing guidance on the consequences for the auditor of the new EU Prospectus Directive. PwC Europe indicates that the key issue, as the work progresses, will be to find resources to develop further some of the models and approaches discussed in the paper. It would be ideal to have common solutions internationally as there is an overwhelming need for convergence in Europe between the types of reports that are issued under the Prospectus Directive. This is hindered by the patchwork of liability regimes and market conventions. Users will not expect the level of work performed by auditors in different countries to differ.

Royal NIVRA does not see why other information, such as non-financial information required by the Regulatory Authorities, is not part of the scope of this discussion paper. CESR-Fin and the Polish Securities and Exchange Commission support FEE's efforts to safeguard the quality of information that will be made available to investors and other market participants.

### *Detailed General Comments*

#### **CESR-Fin**

CESR places a great emphasis on the proper and consistent implementation and application of the new Prospectus Directive and Regulation and for those reasons commends FEE's initiative to analyse and raise important questions on the professional aspects of the audit of financial information required by the European prospectus legislation. The assurance given by the auditor of financial information included in prospectuses is, in CESR's opinion, a key element for building and maintaining the confidence of investors. CESR supports the efforts of the accountancy profession to maintain high-level quality requirements for the conduct of the audits in general and even more so when securities are offered to the public.

For ease of communication, CESR refers hereafter to the different questions raised in FEE's discussion paper, even if, their intention is not as such to respond to the FEE's public consultation but to summarise their current views.

#### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

As a general comment, the CNCC first wishes to express its full support to the FEE initiative and to congratulate the Federation for the quality and usefulness of the work done on this Discussion Paper.

It constitutes a major reference to help national standard setters in the EU Member States build a common platform on which to elaborate their own national standards and will therefore contribute in

<sup>4</sup> The responses have been summarised by the European Capital Markets Reporting Project Group. Individual respondents may have emphasised other aspects than in the summary.

<sup>5</sup> CESR refers to the different questions raised in FEE's discussion paper, even if, their intention is not as such to respond to the FEE's public consultation but to summarise their current views.

this extent to the construction of the harmonized single market for financial services which the Prospectus Directive, the Regulation and the CESR recommendations seek to achieve.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

The Institute considers that the discussion paper provides useful material to assist auditing standard setters to issue guidance on the consequences for the auditor of the new EU Prospectus Directive. We also welcome the fact that this discussion paper is issued in line with the development of CESR Level 3 guidance and clarifies some of the areas raised within it.

### **Polish Securities and Exchange Commission**

The aim for creation of the single market for financial services in Europe and the role of the Prospectus Directive is significant. The Prospectus Directive requires involvement of the auditor to give assurance on historical and prospective information; lack of clarity regarding the auditor's engagements can impede this process.

Current practice about the auditor's involvement with a prospectus in Member States varies and we stress the need for the FEE initiative to safeguard the quality of information that will be made available to investors and other market participants.

### **PricewaterhouseCoopers Europe (PwC Europe)**

PricewaterhouseCoopers has supported the goal of creating the framework to underpin a truly pan-European capital market, of which the Prospectus Directive (PD) forms a key part. An important consequence of the proposals is the need for common standards for the detailed presentation of financial information, as well as common standards for auditors in providing reports on such information.

With the global reach of capital markets, it would be ideal if there were common solutions internationally to the types of issues discussed in the paper. However, currently, no standards have been issued by IFAC and its International Auditing and Assurance Standards Board (IAASB) in areas such as reporting on prospectuses, carve-outs, and pro forma financial information. In the absence of global standards, there is an overwhelming need for convergence in Europe in the types of reports that are issued under the PD. However, the achievement even of that more modest goal is hindered by the patchwork of liability regimes and market conventions that underpin reporting practice in each European Member State, as noted in the paper. This is further complicated by the fact that different national standard setters will need to put relevant and comparable guidance in place on a timely basis.

Of particular concern, as mentioned in the paper, is that national approaches to the level of work required to support a particular type of report may differ from country to country - influenced by liability and other national circumstances. For example, in current practice, the work an auditor would perform in order to report on a profit forecast differs as between France and the United Kingdom. In the UK the auditor would address the assumptions, whereas a French auditor would not do so. This will give rise to difficulties given that prospectuses prepared under the PD are 'portable' across borders - users will not expect that the level of work performed by auditors in different countries may differ and are unlikely to appreciate the impact of such differences. It will be difficult to reconcile these differences while liability regimes remain different.



We therefore strongly support this initiative by FEE - to encourage debate around these genuinely difficult issues as a basis for developing practical reporting guidance for use in relation to the PD. A key issue, as the work progresses, will be the need to find the resources to develop further some of the models and approaches discussed in the paper. Without significant commitment and collaboration, there is a risk that divergent practices will continue.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

- The discussion paper is limited in scope to only financial information. It is not clear why other information, like (non-financial) information required by the regulatory authorities, is not included. This is also relevant for the auditor's report - that the prospectus meets the requirements of the law and that the financial information is true and fair.
- Only two kinds of assurances are distinguished, reasonable and limited assurance, in para 5.2. It seems that these are the only two options where an audit on prospectuses is performed. There is doubt over whether this is a correct conclusion.

## 1. OVERVIEW OF THE AUDITOR'S INVOLVEMENT

### 1.1 The Liability Issue

#### Question 1

**Should the prospectus include an audit report without the financial statements? Should the financial statements be included even where they are no longer relevant due to adjustments being necessary, or are there alternative approaches?**

*Position – FEE Discussion Paper*

*A particular difficulty arises from the requirement for previously published audit reports to be reproduced in a prospectus. This conflicts with prevailing EU Company Law<sup>6</sup>, which prohibits audit reports from being published without the financial statements to which the report applies. This conflict needs to be addressed, as CESR expects the audit report to be reproduced independently of the financial statements to which it relates.*

*FEE's view is that it is not acceptable to allow the inclusion of the audit reports without previously audited financial statements. In cases where these financial statements are sufficient to comply with the requirements for historical financial information, both the statements and the audit report should be included in the prospectus. In cases where additional information or adjustments to the financial statements are necessary, the adjusted information should be the subject of an auditor's report. In the latter case, the audit reports on the previous non-adjusted financial statements do not serve any purpose.*

#### Detailed Responses

##### **Chamber of Hungarian Auditors (MKVK)**

We believe that the prospectus should include the audit report with the financial statements as at the date when it was finalized (i.e. this is a reproduction of the financial information publicly available). If that information is no longer relevant the audit report issued on the prospectus (and the prospectus itself) should outline the reason (i.e. change in policy, mergers, de-mergers) and provide additional information.

##### **CESR-Fin**

Under the 4th Directive it is not possible to produce an audit report without attaching thereto the associated financial statements (Art. 48). Under the Prospectus Regulation (PR) Article 28.1 it is possible to incorporate financial statements, auditor's report and other documents by reference. It depends on the national transposition of Art. 11 of the Prospectus Directive which documents can be included by reference under Annex 28.1 of the PR. It is for issuers to make sure that they comply with the system of their home member state and the requirements of the 4th Directive.

<sup>6</sup> Article 49 of the Fourth Directive and Article 38 of the Seventh Directive.

If the issuer decides that the financial statements are no longer relevant as they need to be adjusted, then we would expect to see the adjusted financial statements included in the prospectus with an explanation of the reasons for the adjustments and an audit report on the revised numbers.

When financial statements are included only by reference and an audit report thereon is included in the prospectus, the audit report is recommended to be accompanied by a note to make it clear that the related financial statements are included by reference and where they can be easily found.

### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC is of the opinion that the prospectus should not include an audit report without including the financial statements on which it reports. If financial statements are restated within the context of item 20.1 annex 1 of the Regulation, the CNCC considers that there is no need to include in the prospectus the historical non-restated financial statements.

Overall, the CNCC considers that, when there are no restatements of the historical financial information needed, i.e. when the historical financial information included in the prospectus is simply the statutory accounts of the issuer reproduced as such, the mere inclusion of the statutory audit report in the prospectus respond to the requirement of the Regulation.

### **Hellenic Capital Market Commission**

The prospectus should not be permitted to include an audit report without the financial statements. The audit report should accompany the financial statements in all cases. This is provided by article 49 of the 4th European Company Law Directive, requiring that statutory audit reports cannot be reproduced independently of the financial statements.

Financial statements that do not serve any purpose should not be included. According to para. 20.1 of Annex I of the Commission Regulation prospectus, ‘The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.’

### **Institut der Wirtschaftsprüfer (IDW)**

We agree that when previously published auditor’s reports are reproduced in a prospectus it would be entirely appropriate to state that an report cannot be published without the financial statements to which it applies. However, since the Regulation provides for a specific presentation of Financial Information, e.g., in Appendix I 20.1. or for incorporation by reference neither CESR nor the relevant national standard setters will be able to override it.

The Standard Setters could recommend the following solution: When an auditor’s report is presented without the previously audited financial statements steps must be taken to ensure that a prefix is added to the auditor’s report which unequivocally identifies the financial statements to which the report relates, and informs the reader as to where copies of the full text of these financial statements may be obtained.

The above should also apply to those cases where additional information or adjustments to the financial statements are necessary. We also consider that steps must be taken to ensure that such additional information or adjustments are clearly identified and the adjusted information should be the subject of an auditor's report.

#### **Institute for the Accountancy Profession in Sweden (FAR)**

FAR is of the opinion that it is necessary that the financial statements to which the audit report relates are also included. The date of the audit report should be explicitly stated and it should also be explicitly stated that the audit report and the financial statements are extracted from the annual report, since the audit report for a Swedish company covers information provided in the statutory administration report.

#### **Institute of Chartered Accountants in England and Wales (ICAEW)**

An audit report should not be reproduced out of the context in which it is initially issued. In terms of the inclusion of audit reports in the prospectus, the issuer should ultimately bear the sole responsibility for a decision to include an audit report in a prospectus and would need to assess whether reproduction of the audit report without the audited financial statements would be misleading. The practice is currently supported by respective company law in many EU jurisdictions.

Where adjustments are made to historical financial statements, and the original financial statements are 'no longer relevant', only the adjusted financial statements should be required for inclusion in the prospectus. In such a situation, depending on the nature of the changes, the prospectus may need to include a note explaining the changes to the historical financial information (e. g. adjustments resultant from changes in accounting policy at a subsequent date) or an audit opinion on the revised financial statements.

#### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

An audit report should not be included without the related financial statements. In the event that the Second Company Law Directive might be partially overridden by the Regulation as regards this issue, we should then focus on the adequate measures to take in order to avoid misleading users, that is, how to best warn them of this absence and clearly communicate where the set of financial statements to which the auditors report makes reference is available for consultation.

#### **Lithuanian Chamber of Auditors (LCA)**

In our opinion, the inclusion of the audit reports without the previously audited financial statements is not an acceptable solution. So we agree with FEE's position.

#### **Polish Securities and Exchange Commission**

In our opinion, if previous published statutory financial statements do not fulfil requirements of Regulation 809/2004 ("Regulation") they should not be included in prospectus.

In our opinion, in the case, when historical financial information in prospectus (required by Regulation) is different from previous published statutory financial statement, because additional information or adjustments were necessary, the auditor should provide properly a new opinion on the full financial statements – when a new component of statement was added or report – when new disclosures (for example related-party transaction, segmental reporting or resulted from change of accounting policy) were necessary.

In our opinion, such approach is compliant with the last paragraph of item 20.1 of Annex I of Regulation, which states that the historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

In the revised text of the Recommendation referred to Regulation (Level 3) it is stated that “in this context, the words “reported on...” indicate that restated financial information must be examined by the auditor following the equivalent professional requirements as for statutory audit of the statutory financial statements”. This approach, in our opinion, would provide for an equivalent (not different) level of assurance in case of reported financial information and audited financial statements.

In our opinion, auditor should report all components of financial statements. We believe that the opinion of an auditor on a true and fair view should be required to additional statements for example statement of changes in equity, cash flow statement, (in situations where this component is not required under national accounting legislation).

We are aware that the above solution is not ideal because it brings additional burdens for issuers, but it will allow avoiding problems of including in the prospectus two different sets of financial statements for the same period (statutory financial statements and historical financial information).

### **PricewaterhouseCoopers Europe (PwC Europe)**

Our strong preference is that audit reports in prospectuses should be accompanied by the relevant financial statements. An audit report should always be read in the context of the financial information to which it relates.

Where information for prior periods is no longer comparable with the latest period, this should be explained in the prospectus. Some national GAAP conventions do not permit the financial statements to be reproduced except in their original form. But in other circumstances, adjustments may be made to financial statements originally published when they are included in the prospectus. Therefore, the issuer should consider in each case whether it is appropriate to present adjusted financial statements in the prospectus. If adjusted financial statements are presented, the reasons, nature and, where relevant, the financial impact of the adjustment should be explained in the notes to the revised financial statements.

If an adjustment arises because of an error and the financial statements are revised and reissued, the report on the revised financial statements should include an emphasis of matter paragraph. If the financial statements are adjusted only to reflect updated accounting policies or for presentational purposes, the auditor would use judgement as to whether an emphasis of matter paragraph referring to the disclosure of the presentational changes would be required in the auditor’s report on the current period.

### **Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Re-issuance of an auditor's report without the financial statements appears to be meaningless. We believe that financial statements are re-issued by incorporation in a prospectus, either by inclusion or by reference triggering re-issuance of the accompanying auditors' report:

- a) At the original date requiring subsequent events review procedures by the auditors; or
- b) At the new date requiring in fact re-audit of the financial statements.

#### **Summary of Responses<sup>7</sup>**

There is broad support to include the audited financial statements in the prospectus together with the related audit report. ICAEW does not favour the reproduction of an audit report out of the context in which it is initially issued. It is the issuer's responsibility to assess whether its inclusion without the audited financial statements would be misleading. IDW highlights the difficulty for the national standard-setters to override the requirements of the Regulation. IDW and CESR-Fin suggest that a prefix or a note accompanying the audit report identifying the financial statements to which the audit report relates is added to the audit report and informs the reader as to where a copy may be obtained when an auditor's report is presented without the previously published financial statements. This could also apply where additional information or adjustments are necessary, states IDW. Royal NIVRA specifies that incorporation would be either by inclusion or by reference triggering re-issuance of the accompanying audit report at the original dated requiring subsequent events review or at the new date requiring re-audit of financial statements. The Polish Securities Exchange Commission believes that if previously published statutory financial statements do not fulfil requirements of the Regulation, they should not be included in the prospectus.

Where adjustments are made to historical financial statements and the original financial statements are no longer relevant, only the adjusted version should be included in the prospectus. Depending on the nature of the change, an explicative note or an audit opinion on the revised financial statements should be included in the prospectus. PwC Europe specifies that if financial statements are adjusted only to reflect updated accounting policies or for presentational purposes, the auditor would use judgement as to whether an emphasis of matter paragraph would be required.

#### *Recommendation*

*An audit report should not be included without the related previously audited financial statements. Where these financial statements are sufficient to comply with the requirements for historical financial information, both the statements and the audit report should be included in the prospectus. Where adjustments to the financial statements are necessary, the adjusted information should be the subject of an auditor's report. The audit reports on the previous non-adjusted financial statements do not serve any purpose in the latter case.*

<sup>7</sup> The responses have been summarised by the European Capital Markets Reporting Project Group. Individual respondents may have emphasised other aspects than in the summary.

**Questions 2 and 3***Position – FEE Discussion Paper*

*The development of consistent pan-EU guidance for auditors is clearly difficult. In those Member States where no prospectus liability applies to audit reports, auditors would not wish to be required to carry out additional procedures, as such procedures might expose the auditor to inadvertent liability. On the contrary, where prospectus liability does exist, the auditor would ordinarily expect to perform appropriate additional procedures in order to mitigate the resultant risk. This may lead to a differentiated approach being applied.*

*Such a differentiated approach may not be sustainable if the pan-EU nature of a prospectus results in an issuer and its auditor being exposed to the most onerous prospectus liability regime, irrespective of the regime operating in an issuer's Member State. In this event auditors may be advised to carry out the procedures necessary to defend themselves in the most onerous environment.*

*As long as there is no pan-European regime that clarifies the auditor's responsibility and liability, national law or practice prevail and determine the amount of work that the auditor has to carry out before his previously issued reports are included in a prospectus.*

**Q.2 Is there a need for a pan-European liability regime for those involved in a prospectus (issuers and auditors)?****Detailed Responses****CESR-Fin**

The liability regime has many different facets and is an extensive issue affecting all those involved in the preparation and adoption of the prospectus (issuers, advisers, regulators, auditors, etc). We consider the liability regime is a very important and multifaceted issue that should be treated in accordance with its importance. The liability regime is currently left to national discretion and it is therefore an issue for the member states to deal with in liaison with the EC.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

With respect to the second and third questions, the CNCC considers that the improvement of the single market for financial services which comes from the single passport for example, certainly creates a need for a pan-European liability regime.

**Hellenic Capital Market Commission**

We strongly recommend a pan-European Liability regime since many issues are cross-border offers. There must be a common civil liability regime between EU countries for this to happen.

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### **Institut der Wirtschaftsprüfer (IDW)**

A pan-European regime clarifying the responsibility and liability of the auditor is not currently being contemplated at EU Level in either political or legal discussions. Such a regime would be extremely difficult to contrive given the diverse background of the various national jurisdictions and their divergent legal and procedural regulations.

By the way, the wording of the question is a little bit misleading. Auditors are not “involved” in a prospectus as issuers are.

### **Institute for the Accountancy Profession in Sweden (FAR)**

FAR is of the opinion that there is a need for a complete overview of liability regulations. This overview must lead to a reasonable level of responsibility and liability for both issuers and auditors. However, in the meantime there is a need for the audit profession to have standards that take into account the most onerous liability regime within the EU.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes. The purpose of the Prospectus Directive is to harmonise practice relating to prospectuses and it would be beneficial for issuers, reporting accountants and other parties involved with a prospectus to be subject to the same liability regime in all jurisdictions.

Furthermore, without a pan-European liability regime, smaller audit firms may struggle to identify and comply with the most onerous legal environment and exit from undertaking cross-border assignments.

Due to the complex nature of liability issues, the ICAEW recommends that an appropriate professional organisation, possibly FEE, should ascertain issues arising, as different liability regimes currently exist in EU jurisdictions.

In relation to this issue, we presume that it is still possible for the prospectus to make clear that the securities may be offered only in one or more specific jurisdictions (i. e. not all jurisdictions in the EU) and, as a result, the auditors would only need to understand the legal position in those jurisdictions.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

The implementation of a common EU liability regime would prove beneficial to all parties involved, and it appears essential to accomplish a single European Prospectus scenario, valid across all Member States.

### **Lithuanian Chamber of Auditors (LCA)**

We agree that a pan-European liability regime for those involved with a prospectus (both issuers and auditors) would be the preferred solution that conforms to a pan-European prospectus.



### **Polish Securities and Exchange Commission**

We believe that liability indicated in Prospectus Directive and the role of auditors determined in Regulation 809/2004, after settlement uniform interpretation (CESR Recommendation – Level 3) will constitute pan-European liability regime (in the basic scope).

### **PricewaterhouseCoopers Europe (PwC Europe)**

There should be a fair and proportionate distribution of responsibility – and ability to limit liability to reasonable levels – among the various parties in the financial reporting process (issuers, auditors and other advisers). This does not mean that a uniform regime throughout the EU is needed (or attainable) – but all Member State regimes should be founded on the principles of proportionality and fairness. We would welcome any steps by the European Commission or others to promote fair liability regimes.

### **Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Yes, we identify such a need.

#### **Summary of Responses**

The responses express a need for a pan-European liability regime but CESR-Fin, which agrees with the importance of the issue, only mentions that it is currently an issue for the Member States to deal with in liaison with the EC. ICAEW recommended that an organisation, such as FEE, ascertain issues arising from the different liability regimes. It presumes the possibility for the prospectus to make clear that the securities may be offered in one or more specific jurisdictions. This would allow the auditor to consider the legal position in those jurisdictions. FAR mentions the need for the profession to have standards that consider the most onerous liability regime. PwC Europe believes that there should be a fair and proportionate distribution of responsibility – and ability to limit liability to reasonable levels – among the various parties (issuers, auditors and other advisers). It also believes that all Member State regimes should be founded on the principles of proportionality and fairness. The Commission or others are welcome to promote fair liability regimes. IDW did not take position but highlighted that a pan-European regime is not being considered at EU level and it would be extremely difficult to contrive.

#### *Recommendation*

*We call on the European Commission to address the auditor's responsibility and liability for the prospectus in the "single passport" regime, in the absence of a systematic approach to deal with auditor's liability for prospectuses throughout Europe. The auditor risks exposure to the different liability systems in each of the EU Member States. We urge the Commission to issue a study on the various liability regimes in the Member States in relation to prospectuses and to issue clear guidance.*

**Q.3 Where prospectus liability differs between countries and restricted circulation of a prospectus is not possible, how should the auditor assess the risks of his work being challenged in other jurisdictions?**

**Detailed Responses**

**Chamber of Hungarian Auditors (MKVK)**

The audit report should outline under which national laws the audit responsibility is guided and may restrict the (full) usage of the audit report in other jurisdictions.

**CESR-Fin**

Under the PR there seems to exist no legal basis for an auditor to restrict circulation of the prospectus. An underlying principle in the EU-single passport system is that approval of a prospectus in one member state will automatically result in a passport in another member state. Hence, an auditor cannot restrict the use of his audit reports. CESR understands that in practice, when accepting and planning his audit engagement, an auditor will usually enquire from his client whether there are plans to use his work in connection with an issue of securities, and consider whether this would affect the nature, extent and timing of audit procedures.

Fundamentally, we believe that “an audit is an audit” and we expect it currently to be conducted in compliance with auditing standards applicable in a Member State and, once endorsed and implemented in the EU, in accordance with ISAs or equivalent national standards.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC is conscious of the difficulty of harmonising elements of civil law in Europe and considers that a first very important step in ensuring that the auditors (and indeed the issuers) are not exposed to undue risk through the single passport system is to make sure that their reporting on the prospectus in the various Member States is as harmonised as possible. On that regard, the Commission should, with respect to its role in the level 4 of the Lamfalussy process, check that Member States have taken into full consideration, when implementing the Directive and the Regulation, their stated objective of harmonising the requirements for the prospectus to ensure the proper functioning of the single passport.

**Hellenic Capital Market Commission**

The auditors when performing their audit, should take due care and comply with International Standards on Auditing or an equivalent standard of the limited or agreed countries where the prospectus will be circulated.

**Institut der Wirtschaftsprüfer (IDW)**

We agree that any auditor should take into account the legal environment of any jurisdiction in which the results of his or her work are likely to be of significance in performing that work. However, the issue that must be addressed here is the extent of the risk to which the auditor is, in reality, exposed when providing services on the basis of his or her national regulations. In addressing this issue specific

and complex regulations covering international legal process and international law of conflicts will have to be considered in detail.

#### **Institute for the Accountancy Profession in Sweden (FAR)**

With the new EU-prospectus the auditor would need to be prepared for the audit opinion being included in a prospectus used in a different jurisdiction. However, the inclusion of an auditor opinion in a prospectus should require consent from the auditor signing the opinion.

#### **Institute of Chartered Accountants in England and Wales (ICAEW)**

See response to the Q 2.

#### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

As long as there is no common liability and auditing scope regime in place, auditors should not have to take into account legal environments in other jurisdictions. The home state regime should prevail.

Also, each country's liability regime must be accepted in parallel with its corresponding audit regime in force. The additional procedures required to comply with the most onerous audit regime should not be the auditors' responsibility. Instead, EU's ISAs adoption project, aiming at harmonising such regimes, must be speeded up.

#### **Lithuanian Chamber of Auditors (LCA)**

If prospectus liability differs between countries and a restricted circulation of a prospectus is not possible, the auditor should assess the risks of his work being challenged in other jurisdictions than his own and perform the necessary procedures to be able to accept that risk.

#### **Polish Securities and Exchange Commission**

In our opinion, in view of Prospectus Directive and Regulation 809/2004 requirements differ between countries should be deleted through process of appropriate adjustments in Member States' national regulations.

#### **PricewaterhouseCoopers Europe (PwC Europe)**

As noted in our covering letter, we believe this is a critically important issue – the lack of a pan-European approach to liability is an impediment to the adoption of common approaches to reporting, supported by common audit procedures. We do not believe it is acceptable or realistic to expect the auditor to have to assess his or her liability position in each of the EU Member States where a prospectus containing the auditor's report is marketed. We believe this issue should be debated as a matter of priority by the Commission, CESR, national authorities and the profession.

### Summary of Responses

There is agreement that the auditor's work should take into account the legal environment in other jurisdictions where the prospectus is used. Under the Regulation there is no legal basis for an auditor to restrict the circulation of a prospectus. The Chamber of Hungarian Auditors proposes to outline in the audit report under which national laws the audit responsibility is engaged. CNCC believes that, to avoid the auditors to be exposed to undue risk through the single passport system, one should make sure that their reporting on the prospectus in various Member States is as harmonised as possible. The Hellenic Capital Market Commission recommends complying with ISA or equivalent standard of the countries where the prospectus will be circulated. FAR would require the consent of the auditor for the inclusion of its audit opinion. IDW also addressed the issue of the risk to which the auditor is exposed when providing services on the basis of his national regulations whereby regulations covering international legal process and international law of conflicts will have to be considered. PwC Europe and ICJCE do not believe it is acceptable or realistic to expect the auditor to have to assess his or her liability position in each of the EU Member States where a prospectus is marketed. This debate should be a matter of priority of the Commission, CESR-Fin, national authorities and the profession. According to CNCC, the Commission should, with respect to Level 4 of the Lamfalussy process, check that Member States have taken into full consideration, when implementing the Directive and the Regulation their objective of full harmonisation, i.e. a single passport. In their response, CESR-Fin expects the audit to be conducted in compliance with auditing standards applicable in a Member State and in accordance with ISAs.

#### *Recommendation*

*Most respondents believe that the home state liability regime of the auditor should prevail when the prospectus is issued in different EU Member States. We call on the Commission and national authorities to work with the profession in addressing this important issue.*

## 1.2 Consent

Opinions differ as to whether the Prospectus Directive and the related Regulation require consent in certain situations. Although CESR-Fin explicitly states that, in their opinion, the Regulation where it requires consent does not cover auditors, some national regulators and authorities have imposed the auditor to consent in specific situations. The question is raised in the context where consent is required, and is not relevant in those situations where consent does not apply.

### **Question 4**

**If the Regulation is understood to require an auditor to consent to a previously published report, what do you think such a consent would imply?**

*Position – FEE Discussion Paper*

*The issue of consent is complex. The complexity arises from the varying practices across EU Member States.*

*Giving his consent to include his auditor's report would raise the question of which procedures the auditor has to perform. This would depend on what consent means – whether:*

- a) *It is merely a representation of a historical document,*
- b) *The report is still accurate as at the date originally issued, or*
- c) *The opinion is updated to the date of the prospectus.*

*Consent would, in general, enable the auditor to control his risk, as the auditor would:*

- *Know that a report is available in a prospectus;*
- *Carry out appropriate procedures to ensure that the reproduction of the report is appropriate; and*
- *Manage the risk of the client's change in status appropriately (for example from unlisted to listed entity).*

*Given the varying practice described above, there is a great risk that an auditor's responsibility for a report included in a prospectus will be judged against the market expectations where a public offer is made. It is therefore essential that the auditor knows where an offering is being made. However, as there are no regulatory hurdles to overcome, it may prove difficult to impose or enforce constraints from an offering being made in any one environment.*

### **Detailed Responses**

#### **Chamber of Hungarian Auditors (MKVK)**

This should be a representation of the historical document.

#### **CESR-Fin**

PR's Annex 1, paragraph 23.1, which deals with consent, refers to the use of the work of experts, but apparently this does not include auditors. As noted above, we believe that once a report has been released to the public, it appears impossible to restrict its use.

Notwithstanding whether consent is possible or not, we believe that there is a change in surrounding circumstances when such report is subsequently associated with new financial information. Therefore, it is always necessary to consider the requirements of ISA 720, Other Information in Documents Containing Audited Financial Statements, or equivalent national standards, and to decide whether to perform additional work.

We would imagine three different scenarios: (1) where the audited historical financial information relates to past years and is already available as a public document and the issuer has not asked for any further audit work to be performed before its inclusion in the prospectus; (2) where there are the current year financial statements that have recently been –or are in the process of being - audited; and (3) where there is new/amended financial information included in a prospectus and the auditor has undertaken certain assurance work on it.

With (1), we would presume ISA 720 or equivalent national standards need not apply, and therefore no further audit procedures would be necessary. With (2) and (3), we would presume that ISA 720 or equivalent national standards would apply and therefore the current auditor or independent accountant should undertake the audit procedures as laid out in ISA 720 or equivalent national standards.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC shares the view developed in the FEE discussion paper; i.e. the auditor would have regard to ISA 720 (which requires that he should read the other information [contained in the prospectus] to identify material inconsistencies with the audited financial statements) before consenting to the inclusion of his reports in the prospectus. This requirement to read the other information to comply with ISA 720 applies irrespective of whether or not a consent is given.

The CNCC agrees with the FEE discussion paper that this obligation however does not introduce a responsibility for the prospectus as a whole, as the Regulation is specific as to which parts of the information included in the prospectus the auditor should provide report on.

The CNCC considers that the consent given by the auditor to the issuer should remain private.

**Hellenic Capital Market Commission**

On the basis that the Regulation requires a true and fair view, (see answer 1), and that the information provided in the prospectus may differ from the original historical information, this should be stated in the prospectus. The actual financial statements and auditor's report approved from the shareholders meeting, for example, could differ from the restated financial statements and auditor's report provided in the prospectus.

**Institut der Wirtschaftsprüfer (IDW)**

If the Regulation is understood to require an auditor to consent to a previously published report, the consent could only mean to be merely a representation of a historical document.

**Institute for the Accountancy Profession in Sweden (FAR)**

If the auditor consents to a previously published report being included, such consent would imply that the report is still accurate as of the date originally issued.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

We believe that clarification of the question of whether consent is required is essential. We support the position that if the law requires inclusion of the audit opinion it is not appropriate for the law also to require the auditor to give consent. However we respond below on the basis of the assumption contained in the question.

It is implicit in the consent mechanism that there could be circumstances when the consenting party might withhold consent. Such circumstances would include those where the historical document was not accurately reproduced, but other factors might also lead to the consenting party withholding that consent. Hence we consider that the consent should be considered to imply more than option (a). On the other hand, unless additional procedures are undertaken, it is unreasonable for an issuer to consider or assert that the consenting party has updated the work for a new purpose, implied in option (c).

Consent should thus reasonably be taken, in the absence of other factors, to be an acceptance by the consenter, i.e. the statutory auditor in the context of the reproduction of the audit report, that the issuer has made no assertions about the work which are inconsistent with the consenter's view of the status of the work, and that the consenter is not aware of factors which mean that it is no longer appropriate

to present the work as being suitable for its original purpose. We would consider this to be a slightly different position from option (b).

An issue remains for the consenting party to consider whether any assertion is made that the report serves a purpose beyond that which it originally served.

#### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

A pan-European understanding as to what consent implies would be welcome. In the meantime, any interpretation of “consent” should be developed within the boundaries of the home state regime. Regarding this point, the Spanish Securities Regulator by-laws require disclosure of the audit opinion only for the latest financial year (together with the financial statements it refers to), as long as the audit opinions for the two previous financial years are not either qualified or adverse and this fact is properly stated. Such disclosure is not subject to auditors’ authorisation of any kind.

#### **Lithuanian Chamber of Auditors (LCA)**

We think that the that inclusion of a previously issued audit report require consideration as to whether the report still is appropriate as at that earlier date based on currently available knowledge and the auditor in all cases, even when no consent is required, should carry out the procedures.

We agree that the auditor should give his consent for inclusion of his report and this would give the auditor more control over the situation.

#### **Polish Securities and Exchange Commission**

A consent would imply all matters determined in all of three options determined in point 4.3.

#### **PricewaterhouseCoopers Europe (PwC Europe)**

As the paper identifies, these issues are dealt with in very different ways in different countries. In the absence of a common approach to consent across the Member States, there is a risk that, because prospectuses will be used by investors throughout Europe, the auditor will de facto be held to the highest standard applicable in any country, even though the practice in the home Member State is different.

#### **Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Since consent is given at the date of the Prospectus we believe that consent means that the report is still accurate as at the date originally issued but based on the facts known at the date of the prospectus.

### Summary of Responses

The opinions differ. The ICAEW position is that if the law requires the inclusion of the audit opinion, it is not appropriate to also require the auditor to give consent. However, consent should imply more than option (a) ‘a representation of a historical document’. To update the opinion to the date of the prospectus (option (c)), additional procedures need to be undertaken. Consent should thus reasonably be taken, in absence of other factors, to the acceptance by the consenter that the issuer has made no assertions about the work which are inconsistent with the consenter’s view of the status of the work and that the consenter is not aware of factors that would make the work no longer appropriate to suit its original purpose.

According to IDW and the Chamber of Hungarian Auditors, the consent would only mean ‘to be merely a representation of a historical document’ (option (a)). According to FAR, the Lithuanian Chamber of Auditors and the Royal NIVRA, the consent would imply that the report is still ‘accurate as of the date originally issued’ (option (b)). The Polish Securities and Exchange Commission consider that consent would imply all matters indicated in the three options.

In the absence of a common approach to consent across the Member States, PwC Europe is concerned by the risk that auditor be de facto held to the highest standard applicable in any country. ICJCE is in favour for the interpretation to be developed within the boundaries of the home state regime.

As per CESR-Fin, the Regulation that deals with consent, refers to the use of the work of experts, this does not include auditors.

#### *Recommendation*

*Where the national authorities or regulators require the auditor to consent, it appears that there is no common understanding as to what consent implies. It is important to move to a harmonised understanding of the meaning of consent aiming at transparency for the market and clarification of the responsibility of the auditor. In absence of a harmonised pan-European meaning of consent, any interpretation and use of ‘consent’ should be embedded in the home state liability regime of the auditor.*

### **Questions 5 and 6**

#### *Position – FEE Discussion Paper*

*To the extent that the auditor is expected to carry out procedures to ensure that the reproduction of his report is appropriate, FEE considers that the auditor would have regard to ISA720 “Other information in documents containing audited financial statements”. FEE believes that these procedures set out in ISA720 should be taken into account when a report on the financial statements is issued. In particular, ISA720 requires that “The auditor should read the other information to identify material inconsistencies with the audited financial statements” (paragraph 2). This obligation however does not introduce a responsibility for the auditor for the prospectus as a whole, as the Regulation is specific as to which parts of the information included the auditor should provide assurance on.*



**Q.5 When giving consent to the inclusion of a report in a prospectus should the auditor be expected to carry out specific procedures? If so, which procedures?**

**Detailed Responses**

**Chamber of Hungarian Auditors (MKVK)**

Procedures should be limited, to examining whether the audit report was appropriate as at the date of its issue. If yes, the audit report should be reproduced together with the underlying financial statements. If no, the audit report should be withdrawn and a new report issued, outlining the reasons for the re-issuance.

**CESR-Fin**

We agree with FEE's suggestion that, normally, the auditor should carry out additional procedures on the rest of the prospectus as laid out in ISA 720 or equivalent national standards. This does not imply that we concur with the concept of "consent" as indicated above.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

See answer to Q 4.

**Hellenic Capital Market Commission**

The auditors should apply best practices when performing their audit and comply with International Standards of Auditing or an equivalent standard. The audit report must be inspected by a competent partner.

**Institut der Wirtschaftsprüfer (IDW)**

Giving consent to the inclusion of a report in a prospectus the auditor should only be expected to carry out procedures to make sure that the financial statements and the corresponding auditor's reports to be published in a prospectus are identical with the respective historical documents.

**Institute for the Accountancy Profession in Sweden (FAR)**

The auditor needs to perform the work necessary to make sure the answer under 4 is correct.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes. We refer again to the premise contained in our response to Q4. Assuming that the statutory auditor is required to give consent, he/she should carry out procedures to ensure the report is still appropriate as at the date originally issued. Standard procedure would be for the auditor to read the relevant document and consider whether he/she is aware of anything that suggests that the form and context in which the report is reproduced is potentially misleading.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Since there is no common understanding on the meaning of consent and the specific procedures to be carried out by the auditor depend on the understanding of consent, the resulting obligations for auditors should be embedded in the home state liability regime of the auditor.

In any case, we consider it prudent to update the subsequent events review from the latest audit opinion to the prospectus date of issuance. Such procedure will be the most suitable way to obtain assurance that the audit report is still appropriate as at the date originally issued.

### **Lithuanian Chamber of Auditors (LCA)**

The auditor should consider carrying out subsequent events procedures such as those outlined in ISA 560 “Subsequent events”.

### **Polish Securities and Exchange Commission**

By giving consent to the inclusion of a report in a prospectus, auditors should carry out specific procedures for ensuring that report included in prospectus is appropriate.

### **Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

We believe that the auditors need to perform subsequent events review procedures up to the date of the prospectus to be able to provide consent at the date of the prospectus. The auditors should be required to check whether the prospectus contains information that is inconsistent with the financial statements (marginal check).

### **Summary of Responses**

In all responses, the auditor is expected to carry out the appropriate specific procedures depending on what the consent would imply (option a, b, c of Q4). ICJCE, Royal NIVRA and the Lithuanian Chamber of Auditors (LCA) more specifically suggest to perform subsequent events review using ISA 560 ‘Subsequent events’. The CNCC and CESR-Fin would rather recommend to refer to procedures set out in ISA 720, but this does not mean that CESR-Fin concurs with the concept of ‘consent’ as indicated above. The Hellenic Capital Market Commission and LCA also refer to ISA.

#### *Recommendation*

*Some national authorities and regulators require the auditor to consent in certain circumstances. The specific procedures to be carried out by the auditor depend on the understanding of consent. FEE continues to believe that the procedures set out in ISA 720 should be taken into account when a report on the financial statements is issued. However, any interpretation and use of ‘consent’ and the resulting obligations for auditors should be embedded in the home state liability regime of the auditor.*

**Q.6 Would the auditor have to carry out procedures in all cases, even where no consent is required?**

**Detailed Responses**

**Chamber of Hungarian Auditors (MKVK)**

If no consent is required it should be stated in the prospectus and the auditor should not be assumed to carry out additional procedures.

**CESR-Fin**

The concept of consent in PR's Annex 1, paragraph 23.1 refers to the use of the work of experts, but apparently this does not include auditors. As noted above, we believe that once a report has been released to the public, it appears impossible to restrict its use. Therefore, the question of consent is not the issue, but rather the application of ISA 720 or equivalent national standards.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

See answer to Q4.

**Hellenic Capital Market Commission**

See answers to Qs4 and 5.

**Institut der Wirtschaftsprüfer (IDW)**

The answer to this question will depend on the obligations that an auditor has in respect of an auditor's report that he has previously issued. Currently there does not appear to be any general mandatory requirement for an examination to be carried out by the auditor beyond the date of the auditor's report.

**Institute for the Accountancy Profession in Sweden (FAR)**

The requirement implies that the auditor is always informed in good time of a prospectus being prepared. If the auditor is not part of the prospectus this does not always have to be the case. FAR believes that auditors should always carry out these procedures. In order to enable the auditor to do this FAR is of the opinion that the auditor's consent should always be required.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

If an issuer is not required to obtain consent, we foresee practical difficulties in any guidance to the effect that the auditor would have to carry out procedures in all cases. In the first place, the issuer would be under no obligation to inform the statutory auditor of the use of the audit report. Secondly, it is not clear what mechanism the statutory auditor would have to influence the drafting and issuance of the document in the event that the procedures generated a cause for concern.

In relation to this issue, we recommend that pan-European guidance be issued to clarify the additional liability on the statutory auditor where the historical audit report is reproduced in the prospectus and no consent is obtained or required to be obtained. If this is not feasible, auditors may need to obtain legal advice as to the risks arising and how to manage those risks.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Widely speaking, consent regulation currently falls under each Member State prospectus auditing and liability regime. We refer to our responses to Qs 4 and 5.

**Lithuanian Chamber of Auditors (LCA)**

See answer to Q5.

**Polish Securities and Exchange Commission**

We agree that procedures indicated in point 6.3 (set out in Position – FEE Discussion Paper under Q15 below) could be helpful for auditors.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

In our view auditors should always be required to provide consent for inclusion of their auditors report in a prospectus.

**Summary of Responses**

FAR and the Lithuanian Chamber of Auditors believe that auditors should also carry out these procedures, which implies that the auditor should always be informed that a prospectus is being prepared. The Chamber of Hungarian Auditors is of the opinion that the auditor should not carry out additional procedures. For IDW, it will depend on the obligations an auditor has on an audit report previously issued. ICAEW foresees practical difficulties in any guidance or procedures if an issuer is not required to obtain consent, since the issuer would be under no obligation to inform the auditor of the use of the audit report. It is not clear what mechanism the statutory auditor would have to influence the drafting and issuance of the document. ICAEW calls for pan-European guidance to clarify the additional liability on the statutory auditor where his historical audit report is reproduced in the prospectus and no consent is obtained.

As indicated above, CESR-Fin points out that ISA 720 or equivalent national standard should be used, regardless of the consent issue.

*Recommendation*

*Since the auditor cannot be expected to carry out procedures if he is not aware of his audit report being used, the consent issue may create serious uncertainty for both the auditor and the market participants in those countries where consent is required.*

## 2. IAASB STANDARDS

### 2.1 Types of Assurance Engagement

#### Questions 7 and 8

*Position – FEE Discussion Paper*

*The wording in the opinion paragraph of the report clearly shows that criteria are needed for the auditor to judge the compliance. If the issuer reports the required information in accordance with such criteria or with the framework for the preparation of such information, the auditor will be able to report on compliance with that criteria or framework. The paper shows that such a framework for the preparation of the required information is not in place at an international or European level for all of the information.*

**Q.7 The issuer has to compile the relevant information in accordance with a recognised framework for the relevant subject matter or explain the basis of preparation. Should such a framework be followed, or would only the explanation of the basis of preparation be adequate? Please explain the reasons for your preference.**

#### Detailed Responses

##### **Chamber of Hungarian Auditors (MKVK)**

The explanation of the basis of preparation should be adequate. Differences in several jurisdictions, depending on size, tradition and habits make difficult to develop a framework on the short run.

##### **CESR-Fin**

Where there is a recognised framework available for the relevant subject matter (e.g. IFRS for historical information), then that should be used. In other areas (e.g. profit forecasts) there is not always, currently, any recognised framework for the relevant subject matters. The principles provided by CESR, in its Recommendations for the Consistent Implementation of the European Commission's Regulation on Prospectuses no. 809/2004 (paras 43-49) combined with the requirements in the PR, provide a basis for such a recognised framework.

Therefore, in addition to these comments, we would welcome the development of a framework for the relevant subject matter (e.g. preparation of profit forecasts or pro forma financial information) as soon as possible.

##### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

Prospective financial information and proforma financial information are not prepared, at present, on the basis of a recognised framework. The CNCC would favour having a recognised framework for those two types of information, at least in the context of the prospectus.

The CNCC considers that it would improve harmonisation across Europe as the information would be prepared and presented on the basis of a common framework. It would also help having a better understanding across Europe of what is meant by “properly compiled” which would in that case mean

“prepared in accordance with the framework” and, consequently, would help reducing the liability risk mentioned above in Qs2 and 3.

### **Hellenic Capital Market Commission**

The issuer is responsible for preparing all relevant information in accordance with the Commission Regulation prospectus. For each of these relevant subject matters the Regulation provides enough details and so can be considered as the Regulation framework.

### **Institut der Wirtschaftsprüfer (IDW)**

If a recognised framework for the relevant subject matter exists it should be followed to have a common basis for all preparer.

If no such framework exists the issuer should explain the basis of preparation in the notes.

### **Institute for the Accountancy Profession in Sweden (FAR)**

Information on relevant GAAP, together with an explanation of the basis of preparation should be adequate. For pro forma financial information and forecasts/estimates the basis of preparation should be sufficiently detailed in the prospectus for the auditor to provide an opinion. However, FAR believes that the harmonisation of information in a prospectus would benefit from a framework for the preparation of pro forma financial information and forecasts/estimates. FAR also believes a framework would be of value for the preparers of prospectuses and for the auditor.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

As long as this is available to users and made explicit in the document, either a framework or another basis of preparation could be used. If and when a recognised framework for the relevant subject matter has become established, this could be used as the basis of preparation, facilitating the transparency surrounding prospectuses on a pan-European/international basis.

We think it is unrealistic to assume a suitable framework could be developed between now and 1 July 2005. Currently available standards (e.g. IFRS), national GAAP and practice guidance (e.g. the ICAEW’s “Prospective Financial Information: Guidance for UK directors”) could meanwhile provide an adequate and useful basis for issuers.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

The key point is that the framework should qualify as recognised. Not only should the issuer explain the basis of preparation but such basis should also meet certain minimum requirements. In some cases, such a basis of compilation has been described by the Regulation in considerable detail - i.e. FEE states in its discussion paper that ‘While there is currently no accepted international framework for preparing pro forma financial information, the rules in Annex II to the Regulation are quite detailed and provide the backbone of a framework’ (p. 36, under caption 9.1). In other cases, it is CESR that has assumed the said role. For instance, principles for preparing prospective financial information and working capital statements are respectively disclosed under sections II.4.41 and II.9.E of its Level 3 advice. However, where such clarification has not been provided the term ‘recognised’ should be granted to those existing frameworks backed by some reputed voice in the matter, such as the IASB. Recognition is acquired through practical use/acceptance, which means that it may not be improvised

by developing a new framework overnight. In this respect, we greatly appreciate FEE's work in identifying existing frameworks applicable to non-historical financial information.

#### **Lithuanian Chamber of Auditors (LCA)**

We think that a recognised framework for the preparation of the information is necessary for the auditor to enable him to report. If such a framework does not exist, the issuer should include the basis of preparation in the notes to such information in the report, and the auditor should report whether or not the information is prepared in accordance with this basis of preparation.

#### **Polish Securities and Exchange Commission**

The issuer should state the preparing basis of presented information (for example for historical financial information Regulation will constitute this basis). He should determine the appropriate framework included in suitable regulations, e.g. national regulations, ISA or other equivalent GAAP.

#### **PricewaterhouseCoopers Europe (PwC Europe)**

Either framework could be used, depending on the circumstances.

Where financial statements are intended to show a true and fair view or fair presentation, the framework should be a recognised comprehensive basis of accounting (IFRS or national GAAP).

In other cases, the opinion can refer to the basis of preparation as being the framework, provided there is a valid and compelling reason for preparing accounts on such a basis (for example, to give a pro forma presentation). This would not be a 'fair' presentation and the opinion would state only 'prepared (or compiled) on the basis described in Note X'. The basis of preparation note would need to include a full description of all of the accounting policies, including fundamental concepts such as historical cost and going concern.

#### **Summary of Responses**

Available standards, framework, GAAP and/or another basis of preparation could be used as long as it is available to users and explicit in the document. However, a recognised framework for the relevant subject matter, such as for the preparation of pro forma financial information and forecasts/estimates would be of value, and CESR-Fin would welcome such a development as soon as possible. PwC Europe adds that where financial statements are intended to show a true and fair view or fair presentation, the framework should be a recognised comprehensive basis of accounting (IFRS or national GAAP). The basis for preparation would need to include a full description of all of the accounting policies, including fundamental concepts such as historical cost and going concern. ICJCE highlighted that a basis of compilation has been described by the Regulation in some detail. ICJCE and CESR-Fin mention that the rules in Annex II to the Regulation and in the CESR Recommendations for the Consistent Implementation of the EC Regulation on Prospectuses (Level 3 guidance) provide a basis for such a recognised framework. ICJCE also stressed the importance of the term 'recognised' as recognition is acquired through practical use/acceptance.

#### *Recommendation*

*There should be a framework which needs to be clearly described in the accounting policies. Depending on the subject matter, there may be a need to develop such framework (further).*

**Q.8 Who do you think should prepare such frameworks?****Detailed Responses****Chamber of Hungarian Auditors (MKVK)**

Preferably an independent body, similarly to IASB.

**CESR-Fin**

The auditor's procedures for performance are a matter for national and international auditing standard setters.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

Whoever prepares such a framework, the CNCC considers that, as for historical financial information prepared under IFRS, the solution should not be national.

**Hellenic Capital Market Commission**

See answer to Q7.

**Institut der Wirtschaftsprüfer (IDW)**

Frameworks should be developed by standard setters. In Germany, practice has clearly demonstrated that the profession of accountants and auditors and in particular the IDW can provide a significant contribution.

**Institute for the Accountancy Profession in Sweden (FAR)**

Any framework in this matter should be prepared by an organization whose guidelines will comprehend all EU-states, e.g. CESR. Guidance from CESR will ensure a harmonised framework within the EU. Since CESR's Level 3 guidance is not yet completed it is at present unclear if these will provide a framework regarding pro forma financial information and forecasts/estimates.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

Ideally such frameworks should be prepared by an appropriate international body such as the IASB for adoption by the audit standard setter/audit profession. Guidance developed by national professional bodies such as the ICAEW may also be acceptable where it has gone through due process including public consultations (e.g. the ICAEW's guidance on prospective financial information, particularly where no international framework has yet been devised).

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

We support a single pan-European approach of this issue (in line with the Prospectus Directive objectives) which means that stand-alone initiatives led by local standard-setters should not be encouraged. These would only become appropriate by default. See our answer to Q7.



### **Lithuanian Chamber of Auditors (LCA)**

Recommendations for such a framework should give and organizations responsible for audit profession and the accounting standard setters, issuers should prepare and approve them.

### **Polish Securities and Exchange Commission**

Taking into account that framework would relate mainly to EU requirements; such a framework should be prepared by an EU body with the co-operation of national setters and a competent authority.

### **PricewaterhouseCoopers Europe (PwC Europe)**

Generally, as noted in our covering letter, it will be preferable for international, rather than national, approaches to reporting to be developed. Ideally, the IAASB and IASB/IFRIC should participate in the development of international solutions to reporting on such matters as carve-out presentations and pro forma information.

#### **Summary of Responses**

CESR-Fin, IDW and LCA believe that standard-setters should develop such frameworks. Others, including CNCC, ICJCE, PwC Europe, ICAEW and the Chamber of Hungarian Auditors, believe that it should be an international body such as IASB. FAR and the Polish Securities and Exchange Commission would be in favour of an EU organisation. FAR suggests, for instance, CESR-Fin where its guidelines could provide a harmonised framework. It is yet to be agreed whether CESR's level 3 guidance will provide a sufficient framework for preparing pro forma and profit forecasts information.

#### *Recommendation*

*Ideally such frameworks should be prepared by an appropriate international body such as the IASB. In the absence of an international framework for certain of the subject matters, national standards or guidance can be used.*

### **Question 9, 10, 11, 12 and 13**

#### *Position – FEE Discussion Paper*

*Although there is no need for the auditor to make oral presentations on his written report or the results of his work, this may happen in practice. In such cases, particular care is taken and the auditor may prepare minutes or a list of key points.*

*In engagements involving a prospectus, a partner with appropriate experience should be involved in the conduct of the work. Where the auditor is the issuer's statutory auditor, he should consider whether, a partner with experience in prospectuses or listing procedures should be engaged or consulted, even though the auditor will have a thorough knowledge of the entity. For example, an experienced partner may serve as a second or concurring partner.*

*The auditor obtains, where practicable, written confirmation of certain matters from the issuing entity's directors. Such confirmation usually encompasses representations made by the directors to the auditor in the course of the auditor's work. This may be achieved by the directors' confirmation that they have read a final draft of the report and that to the best of their knowledge and belief:*

- *They have made available to the auditor all significant information relevant to his engagement in respect of the prospectus of which he has knowledge; and*
- *The (financial) information included in the prospectus is factually accurate, no material facts have been omitted and the prospectus is not otherwise misleading.*

*Such a procedure helps to clarify that the auditor is not responsible for the prospectus as a whole.*

*The date of the report is the date on which the auditor signs the report. This is usually the date on which the issuer's directors authorise the issuance of the prospectus. After the date of his report, the auditor has no obligation to perform procedures or make enquiries regarding the prospectus. However, the auditor has an obligation to act if issues impacting the prospectus come to his knowledge after the date of the prospectus and before the date of the issue.*

*Where the auditor is to give consent to the inclusion of his report in a prospectus or reference to his name, he should first consider the report in the form and the context in which it appears or is referred to in the document as a whole. ISA 560 includes the following guidance in this respect (paragraph 19):*

***Offering of Securities to the Public***

***19. In cases involving the offering of securities to the public, the auditor should consider any legal and related requirements applicable to the auditor in all jurisdictions in which the securities are being offered. For example, the auditor may be required to carry out additional audit procedures to the date of the final offering document. These procedures would ordinarily include carrying out the audit procedures referred to in paragraphs 4 and 5 up to a date at or near the effective date of the final offering document and reading the offering document to assess whether the other information in the offering document is consistent with the financial information with which the auditor is associated. When the auditor believes information in the prospectus is inconsistent with their report or misleading, he should withhold his consent (where such a consent is required) until he is satisfied that his concerns are unwarranted or until the prospectus is appropriately amended. The auditor may need to seek legal advice in this situation.***

**Q. 9 How can the auditor be aware of all the jurisdictions in which securities are offered, given that the Prospectus Directive allows the possible use within the whole of the EU?**

**Detailed Responses**

**Chamber of Hungarian Auditors (MKVK)**

The usage should be limited to one specific jurisdiction. If used in other jurisdictions within the EU, it should be clearly stated in the prospectus/audit report that “only the requirements of one specific jurisdiction is met and rules in other jurisdiction might be different.”

**CESR-Fin**

We expect that a continuous dialogue will normally be established between the issuer and the auditor so that the latter will be aware of elements relevant for the conduct of the audit.

**Hellenic Capital Market Commission**

The auditor should be aware of all the jurisdictions in which securities are offered through well defined “terms of audit engagement”.

**Institut der Wirtschaftsprüfer (IDW)**

The law in different countries will have to be amended to be in accordance with the Prospective Directive and the Regulation so that a common playing field will emerge.

It will be not possible for the auditor to be aware of possible remaining particularities in the different jurisdictions. In practice, this problem might not be of such importance because most of the securities will be offered only in main market places.

**Institute for the Accountancy Profession in Sweden (FAR)**

The auditor cannot beforehand be aware of all jurisdictions where the prospectus might be used and the audit procedures need to account for this. The auditor’s consent should be needed to include an auditor’s opinion in a prospectus (see answer to Q4). The engagement letter between the issuer and the auditor should define for what jurisdictions the consent to include an auditor’s opinion is given.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

The auditor cannot be expected to know all the jurisdictions in which securities are offered. As discussed in our response to Q2, there is a multitude of implications arising as a result of enabling the use of a prospectus in various jurisdictions. Although the responsibility may ultimately reside with the issuer, we point to the legal liability issues surrounding the reporting accountant that requires further analysis and advice from a legal point of view.

As raised in our response to Q2, we presume that it will remain possible for the prospectus to make clear that the securities may only be offered in one or more specific jurisdictions to limit liability considerations.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

In our view, restricting the use of a prospectus to the home state or the state where the offering is first undertaken conflicts with the Prospectus Directive, which aspires to implement a single-passport regime for any securities issuance. Additionally, we cannot ascertain how an auditor could ensure that he has this awareness. An express reference to this guarantee may be made in the engagement letter as a means of reinforcing the said condition, in spite of which the limitation on the circulation of the prospectus still risks of being circumvented if participating underwriters do not subscribe it in proof of their commitment.

## Royal Dutch Institute of Registered Accountants (Royal NIVRA)

Consent provided by an auditor to include an auditor's report may be restricted to use of the prospectus in specified jurisdictions. If the issuer wants to make use of the prospectus in additional jurisdictions additional consent is to be provided by the auditors.

### Summary of Responses

FAR, ICJCE and ICAEW believe that the auditor cannot be expected to know all the jurisdictions in which securities are offered. ICAEW presumes together with Royal NIVRA that it will remain possible for the prospectus to make clear that the securities may only be offered in one or more specific jurisdictions. Royal NIVRA suggests to restrict the auditor's consent on its report to specified jurisdictions, additional consent would be needed if the prospectus to be used in additional jurisdictions. IDW believes that the law in different countries will have to be amended to be in accordance with the Prospective Directive and the Regulation. CESR-Fin expects that a continuous dialogue between the issuer and the auditor allows the latter to be aware of relevant elements.

#### *Recommendation*

*Auditors cannot be expected to know all jurisdictions in which securities are offered. In the absence of advice to the contrary, auditors may be advised that they need to take account of all 25 Member States liability regimes of the auditor when reporting. CESR-Fin is called upon to undertake a survey in order to summarise the different liability regimes for both issuers and auditors since the consequences for pan-European offerings need to be known.*

## **Q.10 Should the auditor perform the general procedures with regard to the information in the prospectus to be reported on?**

### Detailed Responses

#### **Chamber of Hungarian Auditors (MKVK)**

Generally yes.

#### **CESR-Fin**

Different elements of financial information in a prospectus require different levels of assurance. Normally, historical financial information, prepared in accordance with Annex1, paragraph 20.1, would be audited or reported on the basis of whether they give a true and fair view. However, the area of 'complex financial histories' has been carved out of this requirement, and is subject to a separate CESR mandate.

Any profit forecasts (para. 13 of Annex 1) or pro-forma financial information (para. 20.2 of Annex 1) would be examined on the basis of whether they are properly compiled (reflecting the different criteria to be used).

The auditor's procedures for performance of the engagement are more a matter for national and international auditing standard setters. However, the general procedures put forward in the FEE discussion paper seem reasonable to describe the work of the auditor in relation to the information that

needs to be reported on. CESR believes that it would be useful to develop the framework further for preparing different types of financial information and also to carry out further analysis on the nature and extent of the work expected from an auditor in connection with information included in prospectuses.

**Hellenic Capital Market Commission**

Yes, the auditor should perform the general procedures outlined above with regard to the information in the prospectus to be reported on.

**Institut der Wirtschaftsprüfer (IDW)**

It would certainly be desirable for the auditor to have an adequate framework upon which to base his or her procedures. In order to develop a common framework for Europe, it would be necessary to analyse the Regulation to determine which obligations this document places upon an auditor. It would be wrong to gear this to the current legal regulations in the individual Member States as these are determined on the basis of their respective prospectus law.

**Institute for the Accountancy Profession in Sweden (FAR)**

Yes.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

The reporting accountant should perform general procedures based on practice outlined in paragraphs two to six of section 5.3 in the discussion paper, having regard to the relevant requirements set by international and national standard setters (e.g. SIRs, ISAs, ISAEs or any other local standards).

ISA 560 with its reference to ‘audit procedures’ would not ordinarily be relevant in the case, for example, of a report on pro forma financial information.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

We basically agree on the range of international audit standards discussed throughout FEE’s paper as the best solution available.

**Lithuanian Chamber of Auditors (LCA)**

We agree with the opinion that the general procedures performed by the auditor with regard to the information in the prospectus to be reported on should be the same irrespective of the jurisdiction/location of the auditor. Auditor should consider any legal and related requirements applicable to the auditor in all jurisdictions in which the securities are being offered.

**Polish Securities and Exchange Commission**

In our opinion, general procedures determined in point 5.3 should be performed by auditor with regard to the information in the prospectus.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Yes.

**Summary of Responses**

There is an agreement on the general procedures outlined. However, ICAEW would not refer to ISA 560 in the case for example of a report on pro forma information. IDW adds that in order to develop a common framework for Europe, it would be necessary to analyse the Regulation to determine which obligations this document places on an auditor; the current legal situation in the Member States cannot create this basis as it is not yet adapted to the Directive. CESR-Fin believes that it would be useful to develop the framework further for preparing different types of financial information and to further carry out the nature and extent of the work expected from an auditor.

*Recommendation*

*There is general agreement on the general procedures the auditor is to perform with regard to the information in the prospectus to be reported on as set out in the discussion paper.*

**Q.11 Should these procedures be changed because of the particular legal situation in your jurisdiction?****Detailed Responses****Chamber of Hungarian Auditors (MKVK)**

No. Generally it covers the requirements in Hungary.

**CESR-Fin**

If this question refers to the auditor liability situation in different member states, then we would note that the level of audit work on financial statements should be dictated by the level of assurance that is required on the financial statements, not by the audit liability regime. In other words, audit procedures should not be dependant on the liability regime. Therefore, one would expect that all prospectuses issued in the EU after the PD's implementation would be subject to consistent audit procedures. However, there could be other specific requirements in a jurisdiction, or certain unusual circumstances, that might affect the necessity or feasibility of certain audit procedures.

**Hellenic Capital Market Commission**

No, as this depends on the "terms of audit engagement" and the audit standards applied. This procedure is also connected with the underwriter's agreement, which may request a due diligence.

**Institut der Wirtschaftsprüfer (IDW)**

An analysis of the auditor's responsibilities pursuant to the Regulation would be necessary to answer this question. According to German law relating to prospectuses to date, the auditor does not have any special responsibilities in connection with the inclusion of an auditor's report in a prospectus.

Therefore there is no necessity for consent. It therefore follows that there are no special responsibilities relating to the audit; ISA 560 is not relevant in this context in Germany.

**Institute for the Accountancy Profession in Sweden (FAR)**

No.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes.

As discussed in our response to Q2, due to the lack of a harmonised liability regime reporting accountants may also need to consider possible liability implications arising from the prospectus being made available in a country where a more onerous liability environment exists.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

See our comments in reply to Q3. We fully agree with ICAEW's response to this question.

**Lithuanian Chamber of Auditors (LCA)**

See answer to Q10.

**Polish Securities and Exchange Commission**

Taking legal situation in our jurisdiction into account it seems that these procedures should not be changed.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

No. Under current generally accepted auditing standards in the Netherlands (Dutch GAAS) the auditors would perform subsequent review procedures and perform a marginal check on other information in the prospectus.

**Summary of Responses**

According to CESR-Fin, FAR, the Hellenic Capital Market Commission, LCA and the Chamber of Hungarian Auditors, these procedures should not be changed. IDW mentioned that the analysis of the auditor's responsibility resulting from the Regulation would be necessary to respond to this question. For instance, ISA 560 is not relevant in Germany, as the auditor does not have any responsibility in connection with the inclusion of his report in a prospectus. ICAEW and ICJCE believe that these procedures should consider that the reporting auditor might be confronted with a more onerous liability regime as discussed in Q2. CESR-Fin observes that the level of audit work on financial statements should be dictated by the level of assurance that is required on the financial statements, not by the audit liability regime.

*Recommendation*

*The procedures for engagements with respect to prospectuses as outlined in the discussion paper are applicable in most of the EU Member States, even though the Prospectus Directive and the Regulation do not require additional procedures to be performed by the auditor. The level of audit work on financial statements is determined by the level of assurance to be provided.*

**Q.12 Could the general principles as mentioned in ISAE 3000 form an appropriate benchmark for the general procedures that the auditor has to perform on each engagement, other than historical financial information where the auditor is involved with a prospectus?**

**Detailed Responses****Chamber of Hungarian Auditors (MKVK)**

Yes.

**CESR-Fin**

In the perspective of the planned adoption of ISAs in the EU, for the audit of historical accounting information, it seems appropriate to use ISAE 3000 as a benchmark for general audit procedures associated with other assurance engagements.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC is of the opinion that ISAE 3000 could form an appropriate benchmark for a common platform for the general procedures that the auditor has to perform on each engagement, other than historical information where the auditor is involved with a prospectus.

However, because it is set at a very high level, ISAE 3000 will not be sufficient. It will not preclude the need for national standard setters to develop their own specific detailed standard on these topics (prospective financial information and pro-forma financial information), since, as mentioned above, the absence of a recognised framework for the preparation and presentation of these information will let a certain degree of national specifics remain and will leave some room for interpretation as to what is meant by “properly compiled”.

**Hellenic Capital Market Commission**

Yes, the general principles mentioned in ISAE 3000 could form an appropriate benchmark.

**Institut der Wirtschaftsprüfer (IDW)**

We agree that the general principles as mentioned in ISAE 3000 form an appropriate benchmark for the general procedures that the auditor has to perform.

**Institute for the Accountancy Profession in Sweden (FAR)**

Yes.



**Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes. We would also recommend the development of a specific and practical standard on prospectuses to complement ISAE 3000. ISEA 3000 sets out key steps but does not provide sufficiently specific details as a benchmark of work procedures for reporting on prospectuses.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

We agree that the general principles as mentioned in ISAE 3000 form an appropriate benchmark for the general procedures that the auditor has to perform on each engagement, other than historical financial information when the auditor is involved with a prospectus.

**Lithuanian Chamber of Auditors (LCA)**

We agree that the general principles as mentioned in ISAE 3000 form an appropriate benchmark for the general procedures the auditor has to perform on each engagement where the auditor is involved with a prospectus. Also in addition to the general procedures, auditors should follow procedures that are specific for the issues related to the prospectus. Of course, the auditor should follow the guidance in ISA 560 *Subsequent Events* and carry out such procedures as detailed in this ISA, irrespective of whether a formal consent is needed or not.

**Polish Securities and Exchange Commission**

We think that general principles as mentioned in ISAE 3000 could form appropriate benchmark for the general procedures that the auditor has to perform on each engagement, other than historical financial information where the auditor is involved with a prospectus.

**PricewaterhouseCoopers Europe (PwC Europe)**

Yes. ISAE 3000 provides an appropriate general framework for use where more specific standards do not exist. We note that ISAE 3000 states that it is intended for general application to assurance engagements other than audits or reviews of historical financial information covered by ISAs or ISREs.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Dutch GAAS follows ISA.

**Summary of Responses**

All respondents agree that the general principles as mentioned in ISAE 3000 form an appropriate benchmark for the general procedures for an engagement with respect to a prospectus other than historical financial information. ICAEW and CNCC in addition recommend the development of a specific and practical standard on prospectuses to complement ISAE 3000 as ISAE 3000 does not provide sufficiently specific details for assurance engagements on a prospectus.

*Recommendation*

*We call on IAASB to consider the development of a specific standard on assurance engagements in relation to reporting on other than historical financial information in prospectuses to complement ISAE 3000. In the absence of an international initiative, we call on national standard-setters to develop additional guidance to ISAE 3000 in relation to an assurance engagement for reporting on other than historical information in a prospectus.*

**Q.13 Could the specific procedures developed in the discussion paper form an appropriate benchmark for the additional procedures to be performed by the auditor?**

**Detailed Responses**

**Chamber of Hungarian Auditors (MKVK)**

Yes.

**CESR-Fin**

The PR deals with the auditor's opinion to be delivered on different parts of a Prospectus. It does not prescribe particular audit procedures. As far as ISA 560, or equivalent national standards, are applicable in member states, FEE's proposals seem reasonable as an initial basis.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC has not identified, in the specific procedures developed in the FEE discussion Paper, elements that would not be allowed in the French environment.

**Hellenic Capital Market Commission**

Yes, the specific procedures mentioned could form an appropriate benchmark.

**Institut der Wirtschaftsprüfer (IDW)**

The Prospectus Directive and the Regulation do not require the additional procedures to be performed by the auditor.

If such additional procedures are required in a jurisdiction this appears not to be in line with the Prospective Directive and the Regulation; the legislation in that jurisdiction, therefore, would have to be amended accordingly.

**Institute for the Accountancy Profession in Sweden (FAR)**

Yes.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

This could be used as one of the sources in developing standards by an international standard setter, preferably the IAASB, in the absence of such a project by a national standard setter.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

This could be used as one of the sources in developing standards by an international standard setter, preferably the IAASB. However, we cannot support the view that IAASB should only come on stage in the absence of a similar project led by the local standard setter, as contained in ICAEW's reaction.

**Polish Securities and Exchange Commission**

We agree that these procedures could form appropriate benchmark for the additional procedures to be performed by the auditor.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Yes. Under current generally accepted auditing standards in the Netherlands (Dutch GAAS) the auditors would perform subsequent review procedures and perform a marginal check on other information in the prospectus.

**Summary of Responses**

Most Respondents agree that the specific procedures developed in the discussion paper could form an appropriate benchmark for the additional procedures to be performed by the auditor. ICAEW mentions that the discussion paper could be used as one of the sources in developing standards by an international standard-setter, in the absence of such a project by a national standard-setter. IDW observes that the Prospectus Directive and the Regulation do not require additional procedures to be performed by the auditor.

*Recommendation*

*The specific procedures developed in the discussion paper form an appropriate benchmark for the additional procedures to be performed by the auditor, even though the Prospectus Directive and Regulation do not specifically require additional procedures to be performed by the auditor. Further discussion may be needed in which the legal aspects have to be considered.*

### 3. HISTORICAL FINANCIAL INFORMATION

#### 3.1 *Historical Financial Information – Previously Published Statutory Financial Statement Information for the Latest Three Years is Included*

##### **Question 14**

**Which of the three options (a) multiple dating, (b) a new opinion, or (c) a specific opinion on the additional information do you believe should be followed on additional disclosures in order to meet the Regulation’s requirements and why?**

*Position – FEE Discussion Paper*

*As the issuer has presented new information, such as a cash flow statement, related-party transaction disclosures or segmental reporting, the regulatory expectation is that it has been “audited” or reported on as to whether it shows a true and fair view.*

*One option would be to consider a multiple-dating approach to reporting by the auditor, with the additional disclosure being reported on the date on which it is first published, i.e., the date in the prospectus being a date later than that on which the audit report on the financial statements was issued. However, ISAs do not address multiple dating.*

*Alternatively, it will be necessary for the auditor to provide a new opinion on the full financial statements, including the new information. This would mean that the audit report on the previously published information is re-dated as of the date of the prospectus.*

*A third option that reflects current practice in a number of Member States would be to include the additional disclosure(s) in a separate part of the prospectus outside the (financial information extracted directly from the) issuer’s statutory financial statements. The additional information would then be reported on separately by the issuer’s auditors. However, the opinion could not be termed “true and fair”, as International Financial Reporting Standards do not contemplate that “true and fair”, or “presents fairly”, could apply to a financial statement component<sup>8</sup> in isolation. The opinion can therefore only be in terms of “properly prepared in accordance with relevant accounting principles”. It remains to be seen whether competent authorities would be prepared to accept such a solution.*

##### **Detailed Responses**

##### **Chamber of Hungarian Auditors (MKVK)**

A specific opinion should be followed. The additional disclosures audited/reviewed should be separated under a separate heading, and the audit report should be referenced to that heading.

<sup>8</sup> The IAASB is currently discussing ISA 800 (revised), *The Auditor’s Report on Historical Financial Information Other Than a Complete Set of General Purpose Financial Statements*.

## **CESR-Fin**

This is a complex issue where existing practices and views in EU member states seem to vary widely.

We agree with the proposal laid out by FEE that either a new opinion on the full financial statements including the new/amended information, or a specific opinion on the additional information in a separate part of the prospectus outside the issuer's financial statements, would both be workable solutions.

It should be noted that, regarding the form of the auditor's opinion, CESR has been provided by the European Commission with a position which clearly states that all historical financial information included in a prospectus should be audited or reported on as to their "true and fair view". The Commission has confirmed that this also covers additional information where applicable (e.g. cash flow statement not included in local GAAP financial statements), consistent with the objective of the Directive to promote investor protection through the provision of full and objective information.

## **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

As a general answer to that specific question, the CNCC favors, when the historical financial information included in the prospectus is not composed of the "statutory" historical financial statements but of restated financial statements, the issuance by the auditor of a new opinion on the restated financial statements.

## **Hellenic Capital Market Commission**

It seems to us that option (c) does not meet the 'true and fair view'. On the other hand option (a) multiple-dating, is not addressed by the ISAs.

Regarding option (b), a new opinion is preferable for the following reasons: As the auditor has to provide an opinion on the full financial statements (including the new information) and the prospectus provisions also require (where applicable) restated historical financial information to be audited or reported on, the restated historical financial information must be audited or reported on as to whether or not for the purpose of the prospectus it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

## **Institut der Wirtschaftsprüfer (IDW)**

We consider the third option most appropriate. It is not evident from the Regulation that an issuer is obligated to re-prepare financial statements (with a lengthened period of examination for adjusting post balance sheet events) in the event that only a statement of changes in equity, and a cash flow statement are missing. Such a requirement would be contrary to the system in the Regulation, which is essentially based on historical financial statements as prepared and published being included in a prospectus. It would be left purely to chance whether an issuer would be required to publish old or newly prepared historical financial statements. In Germany, by the way, this would contradict to the legal system of the statutory audit.

In our opinion it would be sufficient in the context of the Regulation, if the issuer were required only to prepare the missing financial information and the auditor to audit whether they have been properly prepared on the basis of the audited financial statements in accordance with relevant accounting principles. CESR appears to favour this option.

The other options exceed the prospect presentation requirements of the Regulation. If the issuer were obligated to prepare new financial statements the period of examination for adjusting post balance sheet events would be lengthened and an entirely new audit would be necessary. For Germany this would mean that the restated financial statements would no longer be statutory financial statements.

#### **Institute for the Accountancy Profession in Sweden (FAR)**

It is FAR's view that a new opinion on the full financial statements, including new information, i.e. option b), should be followed in order to meet the Regulation's requirements of providing an opinion of whether the historical financial information gives a true and fair view.

#### **Institute of Chartered Accountants in England and Wales (ICAEW)**

Option (b). The option conveys the most straightforward message from the reporting accountant to the users on the information contained in the prospectus. Companies that are already listed will from 2005 already be publishing this information. Unlisted companies may not have this information prepared or audited but should view the cost of preparation and audit as a necessary cost of listing. Furthermore, a set of complete financial statements enables the reporting accountant to express an opinion in terms of "true and fair": a concept familiar to the users.

The downside of this approach is the costs involved in re-performing the audit, although the necessary amount of work is likely to be less than the original audit.

#### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

National standard setters plan to develop the option granted to Member States, by way of Directive 2003/51/EC, to include other statements in the annual accounts in addition to the elements referred to in the Fourth and Seventh Council Directives. With the aim of achieving convergence with IAS/IFRS, such reform is intended to enter into force in the medium term.

Spanish audit standards allow for a multiple-dating approach in the case of any relevant event that comes to the auditor's knowledge between the date of fieldwork completion up to the sign-off date. However, on the account of ISAs scenario we do not consider this option to be the appropriate solution and would prefer that option b) was enacted.

Even though new statements have to be drawn up, the underlying source data is common to previous financial statements. The accompanying new audit report should properly quote the fact that a previous opinion on the annual accounts has been issued for statutory purposes, as well as it should identify the newly added components of the underlying financial statements.

**Lithuanian Chamber of Auditors (LCA)**

We believe that a specific opinion on the additional information should be followed as to the reporting on additional disclosures in order to meet the requirements. To include the additional disclosure(s) in a separate part of the prospectus outside the issuer's statutory financial statements is the best choice.

**Polish Securities and Exchange Commission**

A new opinion (b) should be required in situations when additional statements (for example statement of changes in equity, cash flow statement) are not required under national accounting legislation, but are required by Regulation. This new opinion would refer to full financial statements.

In situations where new disclosures in relation with requirements for statutory statements (for example related-party transaction, segmental reporting or resulted from change of accounting policy) are necessary, auditors would be able to prepare report on accordance of statements for previous periods with prospectus disclosure requirements.

**PricewaterhouseCoopers Europe (PwC Europe)**

Option (b) is preferred. In general we do not favour multiple dating or dual dating in relation to different components of the financial statements. Option (b) is appropriate where the company is willing or required to present a new set of financial statements, reflecting all subsequent (adjusting) events. Owing to the interdependency of the elements of financial statements (under IFRS, the different elements of a complete set of financial statements are set out in IAS 1) – for example cash flow starts with adjusted profit for the period – it is not appropriate in such cases to audit the financial statements on a 'piecemeal' basis. The auditor should consider the financial statements as a whole and issue a single report on the whole set of financial statements approved by management.

However, in some circumstances option (c) may be appropriate, for example for issuers presenting their already published national GAAP statutory accounts in a prospectus, but where those accounts omit some elements required by the Regulation. In these cases it is permissible under the Regulation for the issuer to prepare the additional elements and for the auditor to report as suggested in Appendix G. (An example might be where, under national GAAP, the company does not have to prepare a cash flow statement for statutory filing purposes. This would not be feasible in the case of IFRS accounts, since a full set of IFRS statements including a cash flow statement would have had to be prepared.)

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

We believe that statutory financial statements under Dutch GAAP should cover information needs for prospectus purposes - i.e. there would not be an issue of having financial information in the prospectus, in addition to the statutory financial statements, audited.

### Summary of Responses

There are two schools of thought. The responses show that the option (b) *a new opinion* and in some circumstances option (c) *a specific opinion on additional information* are the preferred options.

Option (b) is preferred since it meets the requirements of providing an opinion as to whether Historical Financial Information gives a true and fair view. It is not appropriate to audit financial statements on a ‘piecemeal’ basis, their elements are interdependent (IAS1). ICJCE adds that the new report should properly quote the fact that a previous opinion on the annual accounts has been issued, as well as it should identify the newly added components. However, option (c) may be appropriate for PwC Europe and the Polish Securities and Exchange Commission when additional statements are not required under national accounting legislation but by the Regulation. IDW, LCA and the Chamber of Hungarian Auditors prefer option (c). IDW considers that re-preparing financial statements in the event of for instance a cash flow statement is missing would not be in line with the Regulation that is essentially based on historical financial statements. It would be sufficient to prepare the missing financial information and the auditor to audit whether they have been properly prepared.

CESR-Fin agrees with the proposal laid out by FEE. It adds that Historical Financial Information should be reported on as to their ‘true and fair view’.

#### *Recommendation*

*A new opinion on the full financial statements including the new information or a specific opinion on the additional information outside the issuer’s financial statements would be workable solutions. The specific opinion on additional information can only be in terms of ‘properly prepared in accordance with relevant accounting principles’.*

### **Question 15**

**Could the procedures outlined in the discussion paper serve as an appropriate benchmark for the procedures that the auditor has to perform?**

#### *Position – FEE Discussion Paper*

*Where an auditor is required to consent to the inclusion of a previously published audit report, FEE believes that auditors should undertake certain minimum procedures to assess whether they have become aware of any information that would have affected the opinion expressed at the time it was originally signed, had the auditors been aware of it at that time. Suggestions as to the procedures are set out below. These procedures, based on those in the UK APB’s SIR200, are consistent with those set out in ISA 560 “Subsequent events”, which makes specific reference to the inclusion of an audit report in a prospectus. In essence, the effect of the consent is to refresh or re-date the audit report as of the date of the prospectus.*

- *A partner who is not, or was not, the audit engagement partner when the reports were issued should be involved in the conduct of the work;*
- *Obtain written representations from the persons responsible for preparing the financial statements that they are not aware of any matter affecting the financial statements that might have a bearing on the validity of the audit report;*



- *Understand the circumstances in which the audit report requires consent for inclusion in a prospectus;*
- *Read the completion notes prepared for the purposes of the audit in order to reconsider the basis for the opinion;*
- *Read the audit committee report, where available;*
- *Undertake a subsequent events review;*
- *Consider updating audit procedures in connection with the going-concern assumption where the prospectus is being issued in connection with an offer of securities that materially changes the issuer's financial position;*
- *Discuss matters arising with a quality review partner;*
- *Where the auditors are not the auditors in the most recent period for which the financial statements were prepared, obtain written representations from the successor auditors that they are not aware of any matters that affect the financial statements; and*
- *Obtain documentation of the work performed and conclusions reached.*

*Where no consent is required, it is argued that the auditor has no responsibility to make any assessment of the impact of any post-balance sheet events. In some Member States it is even possible for the audit report to be reproduced without the knowledge or involvement of the auditor in the prospectus.*

*However, it is difficult to acknowledge that the auditor does not have some proximity to the prospectus, given that it would be normal for the auditor to be requested to provide some support to the due diligence process in connection with the disclosures in a prospectus. In such cases, we believe that the auditor should consider the extent to which it is appropriate to carry out the procedures outlined above.*

### **Detailed Responses**

#### **Chamber of Hungarian Auditors (MKVK)**

Generally, yes.

#### **CESR-Fin**

These procedures are based on ISA 560, Subsequent events, or equivalent national standards, and the need to “refresh” the audit report. They seem reasonable. However, some members have questioned the rationale for FEE’s proposed requirement to involve a partner who is not the audit engagement partner in this work, besides the normal use of expert partners in support of the team and the involvement of quality control partners.

#### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

See responses to Qs16 and 17 below.

#### **Hellenic Capital Market Commission**

Yes, the procedures outlined above could serve as an appropriate benchmark for procedures that the auditor has to perform. Additional information could amongst others include the adoption of new accounting policies, corporate governance rules.

### **Institut der Wirtschaftsprüfer (IDW)**

We do not agree that the procedures outlined could serve as an appropriate benchmark for the procedures that the auditor has to perform.

The answer corresponds to our answers to Qs4 and 5.

As the Regulation provides for reproduction respectively incorporation of the historical financial statements including the previously published auditor's report, it appears reasonable to assume that the historical financial statements and the previously published auditor's report are to be presented as originally drawn up and issued. Subsequent knowledge would only be relevant if the auditor had an obligation to take account of events after the date of the issuance of the report and, for instance, to report these in a consent letter or alternatively were in the position to refuse to issue a consent letter. But no such obligation appears to exist under the Prospectus Directive or the Regulation.

So if such obligation appears to exist in some jurisdictions, the legislation of these jurisdictions would have to be amended to be in accordance with the Prospectus Directive and the Regulation.

### **Institute for the Accountancy Profession in Sweden (FAR)**

FAR is of the opinion that the procedures outlined in ISA 560 should be followed when an auditor report is reproduced in a prospectus.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

Please see our comments on Qs 5 and 6. We could envisage that the benchmark approach might be less detailed than is outlined above, although the list provides useful examples covering matters that a statutory auditor might also wish to consider. As in the answer to Q13, this could be used as a source in developing standards by an international standard setter or by a national standard setter.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Generally yes.

### **Lithuanian Chamber of Auditors (LCA)**

The auditor would be better served by being required to consent to the inclusion of a previously published audit report and the impact of consenting to the inclusion of a previously published audit report is to effectively re-date the report as of the date of the prospectus. So auditors should undertake certain minimum procedures in order to assess whether they have become aware of any information that would have affected the opinion expressed at the time it was originally signed had the auditors been aware of it at that time. And we agree that the procedures outlined in the discussion paper are those that should be followed by auditors.

### **Polish Securities and Exchange Commission**

In our opinion, in situation presented in point 6.3 determined procedures could serve as an appropriate benchmark for the procedures that the auditor has to perform.

### **Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Where an auditor is required to consent to the inclusion of a previously published audit report, we believe there are two options as regards to the date of the audit report:

1. Dated at the original date requiring subsequent events review procedures by the auditors ('refresh'); or
2. Dated at a new date e.g. the date of the prospectus requiring re-audit of the financial statements ('re-date').

#### **Summary of Responses**

The overall opinion is that the procedures outlined in the discussion paper could serve as a benchmark. ICAEW would envisage less detailed procedures although the list provides useful examples. The list could be used as a source in developing standards by international or national standard-setters. CESR-Fin also agrees but some members question the rationale behind involving a partner who is not the audit engagement partner in this work.

IDW does not agree since, under the Regulation, historical financial statements and the previously published auditor's report are to be presented as originally drawn up and issued. The Prospectus Directive and Regulation do not oblige the auditor to report on subsequent events.

#### *Recommendation*

*The Prospectus Directive and Regulation include no specific requirements for the auditor to report on subsequent events. If such requirements would be considered necessary the procedures outlined in the discussion paper could serve as an appropriate benchmark for the procedures the auditor has to perform.*

### **3.2 Historical Financial Information – Restated Historical Financial Information because of a Change in GAAP**

#### **Questions 16 and 17**

*Position – FEE Discussion Paper*

*Issues that require consideration include:*

- *Understanding the extent, in giving an opinion on the restated accounts for the purposes of the prospectus, to which an auditor can rely on audit work performed on the underlying statutory financial statements and whether the answer depends on whether the statutory financial statement audit was performed by the same audit firm or another.*

*In carrying out the work necessary to provide any new opinion on the underlying financial statements where an audit has already been performed, the auditor should consider the procedures as stated on pages 23 and 24 of the discussion paper.*

*To determine whether an auditor can rely on the work of an auditor, it is necessary to consider the relevant International Standards on Auditing as well as current practices. In some jurisdictions, such as the US, an auditor is not allowed to take into account the work carried out by a predecessor. At the other end of the spectrum, the UK's SIR200 specifically requires an auditor who is not the auditor to rely on the work of another audit firm. Indeed, the SIR200 model is designed to ensure that the independent, or reporting, accountant obtains sufficient evidence irrespective of whether the same firm was the auditor.*

**Q.16 Is it permissible for the auditor, when reporting for the purposes of a prospectus, to take into account audit work performed in connection with the underlying statutory financial statements?**

**Detailed Responses**

**Chamber of Hungarian Auditors (MKVK)**

Yes.

**CESR-Fin**

Yes. It is not only permissible but also necessary and justified from a cost/benefit approach.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

If the “statutory” historical financial statements are included in the prospectus the auditor would have to consent to the inclusion of his “statutory” reports on the historical financial information, on the basis of his cumulative knowledge of the issuer and his reading of the entire prospectus.

If it is not the “statutory” historical financial statements, but restated financial statements which are included in the prospectus, the auditor would obviously take into account the work he has performed in connection with the underlying statutory financial statements to issue a new opinion on the restated financial statements.

**Hellenic Capital Market Commission**

It depends on the engagement letter signed with the auditor reporting for the prospectus purposes. When using work performed by another audit, the auditor should be satisfied that such work is adequate for the purposes of the audit, bearing in mind his total liability as an auditor.

In general, it should be auditor’s decision to rely upon other auditor’s work performed for statutory financial statements (and the basis on which they were compiled), since the prospectus auditor will bear the liability.

**Institut der Wirtschaftsprüfer (IDW)**

The question to what extent an auditor may rely on the work of another auditor who carried out an audit of a previous year, is to be answered on the background of the respective national or international auditing standards. It is not possible to simply transfer the rules of SIR 200.

**Institute for the Accountancy Profession in Sweden (FAR)**

Yes.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes, subject to procedures similar to those in the current UK SIR 200.

We would like to draw your attention as to the following points in relation to other aspects of 6.4:

- First sub-bullet of the third bullet on page 24 states that there needs to be a statement that the contents of the prospectus are the responsibility of those responsible for the prospectus. It is unclear why this is necessary.
- The seventh bullet on page 24 states that auditors should deal in their report with the resolution of qualified audit reports provided by auditors on underlying statutory financial statements. It will be a matter for the issuer to decide whether to include information on such matters.
- We also assume that the final bullet on page 24 is included in error. It is not envisaged that auditors are responsible for presenting the financial information.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

We align with NIVRA's thought: Yes, we believe there is no essential difference between an audit of financial statements for statutory purposes and for prospectus purposes. Accordingly, if financial statements have been audited for statutory purposes, there is no need for a re-audit for prospectus purposes.

**Lithuanian Chamber of Auditors (LCA)**

We do not agree that an engagement to provide an opinion as to whether historical financial information shows a true and fair view for the purposes of a prospectus is an audit. And our answer would not change if the auditor reporting for the purpose of the prospectus were not the same as that who audited the underlying statutory financial statements. We think the auditor should acknowledge the re-use of evidence gained in reporting on underlying statutory financial statements.

**Polish Securities and Exchange Commission**

If auditor has access to the previous auditor working paper files, he should take into account work performed in connection with underlying statutory financial statements. Of course he should perform additional procedures for obtaining the auditor's own judgement (for example on account of lapse of time, when audit of statutory statement took place and additional requirements for financial statements required in prospectus).

It is permissible, when the auditor reporting for the purpose of prospectus is from the same firm that the auditor reported on statutory financial statements.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Yes. We believe there is no principal difference in audit of financial statements for statutory purposes and for prospectus purposes. Accordingly, if financial statements have been audited for statutory purposes, there is no need for a re-audit for prospectus purposes.

**Summary of Responses**

The respondents are of the opinion that the auditor is allowed to take into account the work performed for the statutory audit and perform procedures similar to UK SIR 200.

IDW is of the opinion that the question is to be answered on the background of the respective national or international auditing standards.

*Recommendation*

*It should be permitted for the auditor to take into account audit work performed in connection with the underlying statutory financial statements.*

**Q.17 Would your answer to Question 16 change if the auditor reporting for the purpose of the prospectus were not from the same firm that audited the underlying statutory financial statements?**

**Detailed Responses****Chamber of Hungarian Auditors (MKVK)**

Yes. There should be a comment drawing attention to the fact that auditors changed.

**CESR-Fin**

No. He should then make it clear that a different auditor audited the original financial statements and describe the scope of his own work.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

In France, it is the statutory auditor of the issuer who will perform the work and report for the purpose of the prospectus. Therefore Q17 is not applicable in the French context.

**Hellenic Capital Market Commission**

Our answer to Q16 remains the same, but interpretation is needed due to the fact that the Prospectus Regulation in para.2.1 Annex I requires inclusion of the names of the issuer's auditors for the period covered by the historical information (irrespective of the auditor whether statutory or new auditor) - however the heading of the same para 2 refers to statutory auditors.

**Institut der Wirtschaftsprüfer (IDW)**

The answer to Q16 would not change if the auditor reporting for the purpose of the prospectus were not from the same firm that audited the underlying statutory financial statements.

**Institute for the Accountancy Profession in Sweden (FAR)**

No, in accordance with Swedish GAAS an auditor succeeding another auditor should contact his/her predecessor. Swedish law on audit require that an auditor provide a newly appointed auditor with information on company matters if requested.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

No. Again in the UK the current SIR200 provides the standard and guidance on the use of work of other auditors.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

International Standards on Auditing dealing with the use of work of other auditors explain under which circumstances and to what extent access to prior audits' working papers cannot be denied. As we have stated in our answer to Q16, we do not support the view that reporting for the purposes of the prospectus should be considered as a different audit. Anyhow, as far as the issue at stake is concerned we notice many points in common and favour a similar treatment.

**Lithuanian Chamber of Auditors (LCA)**

See answer to Q16.

**Polish Securities and Exchange Commission**

In situations where the auditor of the statutory financial statements is from another firm, the auditor reporting for the purpose of prospectus should provide the new opinion or report states about accordance of statements for previous periods with prospectus requirements.

**Summary of Responses**

Almost all agree that the answer to Q16 would not change. The Chamber of Hungarian Auditors informed that a comment should draw the attention of the users to the fact that the auditors changed.

*Recommendation*

*It should be permitted for the auditor to take into account audit work performed in connection with the underlying financial statements, also even if the auditor reporting on the purpose of the prospectus is not from the same firm that audited the underlying statutory financial statements.*

## 4. PROSPECTIVE FINANCIAL INFORMATION

### 4.1 IAASB Standards

#### Questions 18 and 19

*Position – FEE Discussion Paper*

*The purpose of the ISAE 3400 is to establish standards and provide guidance on engagements to examine, and report on prospective financial information, including examination procedures for best-estimate and hypothetical assumptions. This ISAE states that “it does not apply to the examination of prospective financial information expressed in general or narrative terms, though many of the procedures outlined in this standard may be suitable for such an examination”. The requirements in the Regulation are directed at general or narrative profit forecast statements.*

*FEE believes that the level of work required for auditors to express an opinion on whether profit forecasts or estimates are properly compiled should be independent of whether such profit forecasts or estimates are presented in any form of narrative words or in the form of a full profit and loss statement.*

*The scope of ISAE 3400 is wider than the reporting requirements contained in the Regulation. According to the Regulation, the auditor should report on whether the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. There is no requirement for the auditor to provide a statement of negative assurance as to whether the assumptions provide a reasonable basis for the profit forecast or estimate.*

*ISAE 3000 should be used in the absence of an ISAE dealing specifically with auditor’s reports on profit forecasts or estimates to be included in a prospectus. However, ISAE 3000 requires the suitable criteria on which to provide assurance.*

#### **Q.18 Do you agree with the conclusion that the scope of ISAE 3400 should be disregarded?**

##### **Detailed Responses**

##### **CESR-Fin**

The PR states that the auditors must express their opinion that the information is ‘properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.’ (A.13.2, Annex 1).

The auditor shall give his/her opinion on whether the information is ‘properly compiled’, rather than ‘true and fair’. This could indicate that, overall, the level of work needed for this reasonable assurance engagement is less than that for a ‘true and fair audit’. What is meant by properly compiled is covered in response to Q. 20 below.



There are particular problems on undertaking the assurance work on prospective financial information (e.g. given its uncertainty). Therefore the nature of the assurance work on prospective financial information would be of a more limited nature. Here, some of the guidance in ISAE 3400 may be of assistance. The nature of this assurance work on prospective financial information should be made clear in the assurance report, in a paragraph covering the ‘scope of the assurance work’.

There is an urgent need to develop guidance on the assurance procedures and reporting issues for profit forecasts in a European context. This could be undertaken at a European level, building on work already done by several national standard setters. Some use could also be made of the work done in this area by the former IAPC.

#### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC agrees that the scope of ISAE 3400 is wider than the reporting requirements contained in the Regulation and that ISAE 3400 should therefore be disregarded for the purpose of reporting in the prospectus on the proper compilation of the prospective financial information.

#### **Hellenic Capital Market Commission**

The scope of ISAE 3400 should not be disregarded, but should form the basis on which amendments should be made to meet the requirements contained in the Prospectus Regulation.

#### **Institut der Wirtschaftsprüfer (IDW)**

We agree with the conclusion since the Regulation determines the scope of audit and the scope of ISAE 3400 is wider than the reporting requirements contained in the Regulation.

#### **Institute for the Accountancy Profession in Sweden (FAR)**

FAR agrees that the scope of ISAE 3400 should be disregarded. The auditor should refrain from providing assurance that the assumptions provide a reasonable basis for the profit forecast/estimate.

#### **Institute of Chartered Accountants in England and Wales (ICAEW)**

The scope of the work related to prospective financial information in the UK today is different from what is envisaged by ISAE3400. The standard has little relevance in practice and we understand that it is hardly used in other EU jurisdictions.

In general, international standards are issued to assist the accountancy profession to provide consistent quality in the services they provide and set a floor of expectation for the users. In the case of ISAE3400, however, this does not appear to be the case.

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**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Auditors should not provide assurance and should not report on whether the assumptions provide a reasonable basis for the profit forecast/estimate. However, such attitude requires advising users to distinguish the level of assurance provided for the purpose of prospective financial information from the assurance delivered when reporting on historical financial information. In other words, estimates are often based on the assumption that trends showed in past performance will persist in the future and consequently, extrapolation techniques are applied. Presuming that this proves to be the appropriate approach, actual data are still liable to deviate substantially from estimates, and this should be clearly stated.

We are conscious of the difficulties inherent to persuading users of this difference.

**Lithuanian Chamber of Auditors (LCA)**

We fully agree that the scope of ISAE 3400 is such that it should be disregarded in so far as it requires auditors to report on the reasonableness of assumptions. This standard provides a sufficiently sensible basis for developing guidance for auditors reporting on profit forecasts.

**Polish Securities and Exchange Commission**

We think that the negative form of expression of the auditor's conclusion, indicated in point 7.2, should be required in the report on the forecast or estimate. In our opinion, such an approach is appropriate because of the need for assurance that the forecast or estimate has been properly compiled.

**PricewaterhouseCoopers Europe (PwC Europe)**

We do not agree that ISAE 3400 should be entirely disregarded – it is the only international-level standard that provides specific guidance in this area. However, we believe that ISAE 3400 is in urgent need of revision by the IAASB to reflect current reporting practice. In particular, we agree that it is not appropriate to report publicly on whether the assumptions provide a reasonable basis for the profit forecast, and hence would not use the negative assurance opinion on assumptions contained in ISAE 3400. Reporting should be limited, as suggested in the paper, to whether the report has been properly compiled on the basis stated and whether the forecast is consistent with the accounting policies of the issuer.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

Yes. Negative assurance on profit forecasts in a prospectus may be considered misleading if reported to potential investors. This would also depend on the nature of the business of the issuer. It is obvious that projections of a real estate investment company with a stable rental base are surrounded with less uncertainty than for a technology start-up company with limited track-record in an emerging market. Furthermore, negative assurance on profit forecasts would put too much responsibility and liability with the auditors given their limited role.

**Summary of Responses**

There is overall agreement among the commentators that the scope of ISAE 3400 on the examination of prospective financial information is not appropriate. The auditor should refrain from providing negative assurance that the assumptions provide a reasonable basis for the profit forecast/estimate. ICJCE additionally would require informing users of the specific level of assurance provided for the purpose of prospective financial information. CESR-Fin agrees with the ICJCE proposition, it proposes to include in the 'scope of the assurance work', the nature of the assurance work. It also considers that some guidance in ISAE 3400 may be used and that the need to develop guidance on the assurance procedures and reporting issues for profit forecast in a European context is urgent. This could be done by building on existing work at national level. Royal NIVRA said that negative assurance might be misleading depending on the nature of issuer's business and its level of uncertainty. It will also increase the auditors' liability. ICAEW added that this standard has little relevance in practice and is hardly used in the EU jurisdictions. PwC Europe would not entirely disregard ISAE 3400 as it is the only international-level standard that provides specific guidance in this area. However, it believes that this standard should urgently be revised to reflect current reporting practice. IDW states that the Regulation determines the scope of audit.

The Hellenic Capital Market Commission thinks that it should form the basis on which amendments should be made to meet the Regulation requirements.

*Recommendation*

*Auditors should not provide any assurance and should not report on whether the assumptions provide a reasonable basis for the profit forecast/estimate. IAASB is called upon to commence a project to revise ISAE 3400.*

**Q.19 To what extent do you believe that there are suitable criteria on which to provide assurance on profit forecasts?****Detailed Responses****Chamber of Hungarian Auditors (MKVK)**

Yes.

**CESR-Fin**

CESR provides some criteria in its recommendations issued in February 2005, Recommendations for the Consistent Implementation of the European Commission's Regulation on Prospectuses N°. 809/2004 in paragraphs 41-50 and there are also criteria in Annex I, paragraph 13 of the PR. With the criteria laid out in Annex I, paragraph 13 of the PR, they should be appropriate.

However, until the IAASB develops authoritative literature in this area, it would be very helpful to review them altogether to ensure they are sufficient in a European context, as soon as possible. This could be undertaken at European level, building on work already done by national standard setters.

### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The issue of the suitable criteria is linked to the issue of the possible development of a framework for preparing prospective financial information. A framework is a set of suitable criteria arranged in a comprehensive and coherent frame. If we say that it is possible to develop a recognised framework to prepare prospective financial, the criteria on which to report will be in that framework.

CESR in its recommendations has made a first attempt to define what should be the criteria of “good” prospective financial information for the purpose of the prospectus. This could certainly serve as a basis and be further developed to lead to a more comprehensive framework for prospective financial information.

### **Hellenic Capital Market Commission**

To a great extent there are suitable criteria to provide assurance on profit forecasts if ISAE 3400 or any other ISA’s are applicable, provided that the requirements contained in the Prospectus Regulation are met.

### **Institut der Wirtschaftsprüfer (IDW)**

The Regulation specifies the scope of the audit. As a result – independent from ISAE 3000 – we therefore believe that detailed guidance should be prepared by the appropriate auditing standard setters so as to clarify and determine the responsibilities of the auditor, the work they would be expected to perform and the form of the auditor’s report.

### **Institute for the Accountancy Profession in Sweden (FAR)**

The prospectus should include information on the principle assumptions upon which the issuer has based its profit forecast. Together with information on relevant GAAP this will form suitable criteria on which to provide assurance that the presentation of the forecast is consistent with the historical financial information. See also answer to Q7.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

Under the IAASB Assurance Framework, “suitable criteria” do not have to be established but need to be “available” to users to “understand” how the information has been evaluated or measured. In order to do so the criteria need to exhibit the specified characteristics: relevance, completeness, reliability, neutrality and understandability.

Currently there are no internationally recognised criteria for the review of a profit forecast. In practice however there are established procedures in many jurisdictions. In some jurisdictions such criteria may exist or are under development. Provided that such criteria exhibit the required characteristics, these should be considered as “suitable”.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

To a great extent there are suitable criteria to provide assurance on profit forecasts if ISAE 3400 or any other ISAs are applicable, provided that the requirements contained in the Prospectus Regulation are met, that is, attesting compliance.

In July 2002 the Committee of Wise Men, commissioned by the Spanish Ministry of Finance to outline the accounting reform that should be undertaken in our jurisdiction, published, as part of its White Paper proposals, a set of ten recommendations to standardise prospective information dissemination and content. This pack of measures could assist auditors to better understand Regulation requirements, and consequently, ease their reporting on compliance. The said information was submitted to FEE during the research phase of this project.

#### **Lithuanian Chamber of Auditors (LCA)**

We agree that ISAE 3000 provides a sensible basis for developing guidance for auditors reporting on profit forecasts.

#### **Polish Securities and Exchange Commission**

In our opinion criteria deal with assumptions about factors that the members of management or supervisory bodies can influence and factors deal with change of accounting policy are more appropriate criteria on which auditor may to provide assurance on profit forecasts than external criteria – independent from person mentioned above (for example economic and legal factory). Therefore presentation of precise, clean and comprehensive assumptions is necessary.

#### **Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

We believe suitable criteria to provide assurance ('properly compiled') on profit forecasts would comprise:

1. Consistent accounting policies
2. Reasonable assumptions:
  - i. Parameters consistent with understanding of business (external and internal drivers)
  - ii. Due care by management (external and internal evidence for parameters)

Mathematical accuracy of model.

#### **Summary of Responses**

Royal NIVRA, Polish Securities and Exchange Commission and FAR are of the opinion that suitable criteria comprise consistent accounting principles, reasonable assumptions and mathematical accuracy of model. ICAEW refers to the characteristics 'suitable criteria' need to meet according to the IAASB Assurance Framework: relevance, completeness, reliability, neutrality and understandability. ICJCE believes that, in some extent, there are suitable criteria if ISAE 3400 or other ISAs are applicable. They also suggest to refer to the set of ten recommendations in the White Paper proposals by the Committee of Wise Men. IDW believes that detailed guidance should be prepared by the appropriate auditing standard setters. CNCC refers to the CESR's attempt in its recommendations to define criteria and encourages further development to lead to a more comprehensive framework. Indeed, CESR-Fin confirms that its recommendations and the Regulation lay out criteria.

#### *Recommendation*

*We call for action to be taken by IASB to define and develop suitable criteria in the context of profit forecast/estimate.*

## 4.2 Prospective Financial Information – Reporting Principles

### Question 20

**What do you understand when an auditor reports that a profit forecast is properly compiled?**

*Position – FEE Discussion Paper*

*The form of opinion required by the Regulation has two components: proper compilation and consistent accounting policies.*

*In understanding what is intended by “proper compilation”, it is important to understand the current practice. This shows that there are different interpretations.*

*One interpretation would limit the auditor’s role to checking that the forecast has been compiled on the basis stated. This assumes that there is no expectation that the auditor has any obligation to assess the assumptions on which the forecast has been compiled.*

*Another view is that the auditor is expected to at least consider whether the assumptions are complete and that they are not, to the best of the auditor’s knowledge and belief, unreasonable.*

*It could even be argued that the auditors should assess whether the assumptions are reasonable and that effectively the forecast is achievable, although that is not currently accepted as a public reporting model, nor is that required by the Regulation.*

*The challenge of designing a reporting model for auditors engaged to report on profit forecasts is managing expectations as to the proper description of the auditor’s responsibilities. This may be particularly difficult, given the diversity of expectation in those markets where profit forecast reporting is currently required, and the absence of experience in those markets where reporting is not currently required.*

*As for consistency of accounting policies, while the Regulation requires that “the profit forecast must be prepared on a basis comparable with the historical financial information”, the basis of preparation must be expected to take account of the policies that a company knows it will be applying when preparing the financial statements for the period to which the profit forecast relates. If there is any uncertainty as to the policies likely to be required for a future period, it should be acceptable for an issuer to state an assumption, making it clear which policies have been applied and identifying any areas where policy change may have an impact.*

*Assessing the consistency of policies should therefore be, FEE believes, a reasonably straightforward exercise to design reporting engagement procedures.*

### Detailed Responses

#### **Chamber of Hungarian Auditors (MKVK)**

Only that it is mathematically accurate.

**CESR-Fin**

The positive form of opinion required by PR addresses two assertions: proper compilation and consistent application of accounting policies.

We would understand proper compilation to mean:

- The assumptions used in the profit forecast are consistent both within the profit forecast and with the entity's strategies, plans and risk analysis;
- The explanations provided in relation to the profit forecast are sufficient for investor's understanding;
- The profit forecast is arithmetically correct.

Consistent application of accounting policies means that the prospective financial information has been prepared using accounting policies that are identical to those that were used in the historical financial information of the issuer (e.g. revenue recognition, accounting for R&D costs, etc.).

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC understands from the expression “properly compiled”, that the profit forecast has been prepared by the issuer, through a thorough process of preparation, on the basis of the assumptions disclosed with the profit forecast and that the significant assumptions used have been properly described.

The CNCC therefore understands the “proper compilation” type of assurance as being an assurance on the quality of the process for preparing profit forecast. It does not imply, in any case, from the auditor, any assessment of the reasonableness of the assumptions.

**Hellenic Capital Market Commission**

The Prospectus Regulation requires ‘...the forecast or estimate has been properly compiled on the basis stated...’. This is understood as the forecast information is properly prepared on the basis of the assumptions.

**Institut der Wirtschaftsprüfer (IDW)**

In our view a profit forecast has been properly compiled on the basis stated when it is properly derived from the assumptions described in the notes and considering the accounting principles or reference thereon communicated in the notes. Consequently, this does neither comprise an assessment whether the assumptions are complete or reasonable nor whether the forecast is effectively achievable.

**Institute for the Accountancy Profession in Sweden (FAR)**

The auditor has examined that the profit forecast is properly prepared from the assumptions stated by re-computing and reviewing internal consistency.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

We consider the term to relate to compilation on the basis stated. We do not consider it to be the function of the reporting accountant to assess the reasonableness or suitability of assumptions or to endorse the directors' view of their forecast.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Please see our answer to Q18.

**Lithuanian Chamber of Auditors (LCA)**

We agree that the auditor's responsibility when reporting as to whether a profit forecast is properly compiled extends beyond simply ensuring that the forecast is properly calculated from the stated assumptions.

We agree that the auditor should not express a direct opinion on the assumptions or the achievability of a profit forecast.

We agree that the auditor should take account of the totality of the disclosures required to be made with a profit forecast in considering whether the forecast is properly compiled.

We think that the auditor's report should be silent on auditor's involvement with the assumptions.

**Polish Securities and Exchange Commission**

In our opinion, 'proper compilation' of profit forecast in auditor's report means that auditor checked that a forecast has been compiled on the basis stated by issuer, that assumptions are complete and that they are not, to the best of auditor's knowledge and belief, unreasonable.

**PricewaterhouseCoopers Europe (PwC Europe)**

We suggest that a review of the examination procedures in paragraphs 17-25 of ISAE 3400 be undertaken to determine which procedures relate to proper compilation – this would include for example: obtaining an understanding of how management has compiled the figures; assessing the adequacy and reliability of the underlying data; clerical checks such as re-computation and reviewing internal consistency; considering the inter-relationship of different components of the forecast figures; obtaining management representations.

Our view is that auditors should not report publicly on the reasonableness of the assumptions used to compile the forecast.

**Royal Dutch Institute of Registered Accountants (Royal NIVRA)**

See answer to Q 19.



**Summary of Responses**

There is a diversity of views as to what is meant by properly compiled in the context of profit forecast reporting.

At one end of the spectrum is the view expressed by the Chamber of Hungarian Auditors that properly compiled means only that the forecast is mathematically accurate.

At the other extreme, the Polish Securities and Exchanges Commission considers that proper compilation means that the forecast has been compiled on the basis stated by the issuer and assumptions are complete and they are not to the best of the auditor's knowledge and belief, unreasonable. This view is effectively supported by Royal NIVRA.

Remaining commentators, CNCC, ICJCE, PwC Europe, IDW, Hellenic Capital Market Commission, FAR, ICAEW and LCA, agree that properly compiled goes beyond simple mathematical accuracy but that the auditor's report does not comprise an assessment whether the assumptions are complete or reasonable nor whether the forecast is effectively achievable.

CESR-Fin would understand that properly compiled means: the assumptions used in the profit forecast are consistent both within the profit forecast and with the entity's strategies, plans and risk analysis; the explanations provided in relation to the profit forecast are sufficient for investor's understanding; and the profit forecast is arithmetically correct.

Reconciling these positions in reaching a common agreement is one of the most important challenges for European capital market reporting.

*Recommendation*

*'Properly compiled' goes beyond mathematical accuracy. The auditor's report, should not comprise an assessment whether the assumptions are complete or reasonable, but should include cautionary language that actual outcome will differ from forecasts.*

## 5. INTERIM FINANCIAL INFORMATION

### 5.1 “Other” Interim Financial Information

#### Question 21

**The Prospectus Directive and Regulation do not define a “review for the purposes of requiring disclosure in a prospectus”. Should “review” be defined as in ISRE 2400?**

*Position – FEE Discussion Paper*

*As stated in the Regulation, if the interim financial information is reviewed or audited, the audit or review report must be included in the prospectus. If unaudited, this fact must be stated. For a review the ISRE 2400 (previously ISA 910), Engagements to Review Financial Statements provides the auditor with the necessary guidance and support. There are no specific issues around the prospectus.*

*In Addition to the ISRE 2400, the IAASB has drafted a proposal “Review of Interim Financial Information Performed by the Auditor of the Entity”. In future this document may become more definite (Please note that this standard 2410 was published in July 2005).*

#### Detailed Responses

##### **Chamber of Hungarian Auditors (MKVK)**

Generally yes.

##### **CESR-Fin**

We do not object to FEE’s proposals. The IAASB has just published its ISRE 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity*, which will also deal with the situation where the current auditor of the entity undertakes the review of the interim accounts.

We also draw your attention to the final advice that CESR has delivered to the European Commission on 30 June 2005, the context of the mandate received from the Commission under the Transparency Directive (ref CESR/05-407 – this document is available on CESR’s website). Pursuant to this mandate, CESR was requested to give clarifications on the meaning of “auditors’ review of interim information”. The advice (, paragraphs 435 to 447) provides the results of a review of existing practices which can be considered for an EU framework. The conclusion of the advice on this point was the following one:

- *There is a great deal of convergence towards the way in which reviews are conducted. For the most part a limited review is conducted on a voluntary basis, the form of conclusions is a negative assurance and the level of assurance is moderate, which is less than a full scope audit. CESR believes that these elements could be considered as useful reference for clarifying the nature of an auditor’s review of half-yearly report.*
- *The large majority of Member States use the standard issued by IFAC or an adaptation of it at national level. However, it is not for CESR to determine whether or not this standard is adequate for the purposes of investor protection.*

### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The CNCC considers that a “review for the purpose of the prospectus” should not differ from the “reviews” defined by the international standards of the IAASB, whether in ISRE 2400 for the moment or in the future ISRE 2410 on the “review of interim financial information”. Any attempt to define “review” otherwise might just bring confusion.

### **Hellenic Capital Market Commission**

Yes, ISRE 2400 is an acceptable standard on a review report for the purposes of requiring disclosure in a prospectus.

### **Institut der Wirtschaftsprüfer (IDW)**

We agree that a “review” should be defined as in ISRE 2400 and equivalent national GAAS.

### **Institute for the Accountancy Profession in Sweden (FAR)**

FAR agrees that a review should be defined in accordance with ISRE 2400.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

In principle, yes. The task of developing specific procedures suitable to give a review opinion (a limited assurance opinion) may be left to the international or national standard setters. Whichever the case we assume that reference to ISRE 2400 (or incoming ISRE on interim financial information) would be desirable.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Adding to most respondents’ agreement on ISRE 2400 “Engagements to Review Financial Statements”’s key role we draw your attention to CESR’s survey conclusion as regards the use of general auditing standards at national levels when conducting a review of the half-yearly report (Revised Technical Advice on Possible Implementation Measures of the Transparency Directive, para 534. Ref. 05/267):

“The large majority of Member States use the standards issued by IFAC (say ISRE 2400) or an adaptation of it at national level. However, it is not for CESR to determine whether or not this standard is adequate for the purposes of investor protection”.

### **Lithuanian Chamber of Auditors (LCA)**

We agree that a “review” should be defined for the purposes of requiring disclosure in a prospectus as one being consistent with that carried out under ISRE 2400 or equivalent national GAAS.

We think that the auditor should not provide public assurance, whether an audit or review, comprises at a minimum condensed financial statements as would, for example, be required by IAS 34.

### **Polish Securities and Exchange Commission**

In our opinion, ‘review’ used in Regulation 809/2004 has broader scope than defined as in ISRE 2400 (described in FEE document). It is shown in point 20.6.1 and 12.6.2 in Annex I of Regulation 809/2004. According to these requirements, Regulation provides for review of other interim financial information (than full interim financial statement and condensed interim financial statements).

### **PricewaterhouseCoopers Europe (PwC Europe)**

Yes, we agree that this should for the time being be defined as in ISRE 2400. However, as noted in the paper, the IAASB is shortly expected to approve a new standard ‘*Review of Interim Financial Information Performed by the Auditor of the Entity*’. The new standard will provide more appropriate guidance for this purpose.

Section 8.4 defines all interim information that is less than condensed financial statements as ‘other interim financial information’ and notes that a sponsor or bank can state specific requirements regarding such information. It is suggested that the auditor could not give public assurance but could, on a private basis, give comfort based on agreed-upon procedures. Our view is that agreed-upon procedures engagements comprise the auditor and the entity agreeing on a specific set of procedures to be performed, as a result of which the auditor provides only a report on factual findings. No opinion is provided. Therefore, under such an engagement, the auditor does not give assurance or ‘comfort’ that any transactions or balances are fairly presented.

#### **Summary of Responses**

There is a common agreement that review should be defined as in ISRE 2400. CESR-Fin does not object but highlights the usefulness of the ISRE 2410 and draws attention to their advice (paras 435 to 447) delivered in the context of the Transparency Directive where the review of the existing practices could be considered. Only the Polish Securities and Exchange Commission is of the opinion that ‘review’ used in the Regulation 809/2004 has broader scope than defined in ISRE 2400 as per para 20.6.1 and 12.6.2 in Annex I.

#### *Recommendation*

*The review of interim financial information and interim financial statements should be defined as in ISRE 2400 and also refer to the newly published ISRE 2410 “Review of Interim Financial Information Performed by the Independent Auditor of the Entity”.*

## 6. PRO FORMA FINANCIAL INFORMATION

### 6.1 Performance of the Engagement

#### Questions 22 and 23

*Position – FEE Discussion Paper*

*The European Prospectus Directive (2003/71/EC) provides for minimum information on the presentation of pro forma financial information in prospectuses. The detailed requirements regarding pro forma financial information are set out in the Regulation.*

*The Regulation (Annex I item 20.2) also requires the disclosure of an independent report made by an auditor or independent accountant on the pro forma financial information.*

*The major issue for auditors is the kind of assurance the auditor should provide. The difficulty for auditors is that the pro forma financial information has to be qualified as specifically non-GAAP financial information. In the light of user expectations and due to the risk of misunderstanding the auditor's involvement, the minimum requirements of the Regulation must be measured against the International Engagement Standards issued by IAASB.*

*Against the background of the International Framework for Assurance engagements Annex II item 7, FEE believes that the report is as “Assurance Engagements other than Audits or Reviews of Historical Financial Information”.*

*The key question is whether the report can constitute “reasonable assurance” or whether it can only be of “limited assurance”.*

*However, the form of opinion is quite explicitly provided by the Regulation. In addition, there is no scope limitation in relation to the subject matter, as this is also described by the Regulation. Combined with the existence of anticipated guidance, FEE believes that there will be a sufficiently robust framework to conclude that the report can be a reasonable assurance engagement.*

**Q.22 Should the report on pro forma financial information required by the Regulation be considered as a reasonable assurance engagement?**

#### Detailed Responses

##### **Chamber of Hungarian Auditors (MKVK)**

Maybe not. Defining a ‘reasonable assurance engagement’ makes it difficult for the user distinguishing the several role of the auditor and the issuer.

##### **CESR-Fin**

Annex II of the PR provides some criteria about how to prepare pro forma information. CESR concurs with the technical analysis developed by the FEE and supports the efforts to obtain a confirmation from the EU Commission that the report on pro forma financial information, as required by the PR, could be considered as a reasonable assurance engagement.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

With respect to the reporting on proforma financial information, the CNCC agrees with the FEE discussion paper that, given the form of opinion explicitly given by the regulation, the engagement is a reasonable assurance engagement. It is however, as in the case of the prospective financial information, an assurance provided on the quality of the process for preparing the proforma information, not on the proforma information itself.

**Hellenic Capital Market Commission**

Yes, the report on pro forma financial information should be considered as a reasonable assurance engagement.

**Institut der Wirtschaftsprüfer (IDW)**

We agree, since it is required by the Regulation to provide positive assurance.

**Institute for the Accountancy Profession in Sweden (FAR)**

No. The procedures to be carried out in order to provide assurance regarding the consistency of accounting policies used by the entities involved, could be inadequate to provide reasonable assurance. Should the entities' accounting policies differ, the procedures will not constitute enough evidence for the auditor to provide reasonable assurance that the basis on which the pro forma financial information has been compiled is consistent with the accounting policies of the issuer. FAR is therefore of the opinion that any work on pro forma financial information should be to provide a limited assurance.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

We believe this question is best answered by international or national standard setters. Whatever the conclusion, we consider that reference to ISAE 3000 and the Assurance Framework would be desirable.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

We align with ICAEW's reaction in that it transfers the responsibility to answer this question to international auditing standard setters, especially IAASB, on account of their more suitable competencies. In spite of this, we also share FEE's view that qualifies the existing framework as robust and on this basis justifies the feasibility of providing reasonable assurance on pro forma financial information.

**Lithuanian Chamber of Auditors (LCA)**

We agree that the report on pro forma financial information required by the Regulation should be considered as a reasonable assurance engagement.

**Polish Securities and Exchange Commission**

Taking pro forma financial information required by Regulation 809/2004 into consideration, in our opinion the report on this matter should be considered as a reasonable assurance engagement.

**PricewaterhouseCoopers Europe (PwC Europe)**

Yes, since it is required by the Regulation to provide positive assurance.

**Summary of Responses**

Most of the respondents consider that the report required by the Regulation should provide reasonable assurance including CESR-Fin. Even though ICJCE and ICAEW believe this question is best answered by international or national standard-setters and considers reference to ISAE 3000 and the Assurance Framework desirable.

FAR is of the opinion that only limited assurance can be provided. It considers that the procedures to be carried out to provide reasonable assurance would not constitute enough evidence in case of differing entities' accounting policies.

*Recommendation*

*The report on pro forma financial information should be considered as a reasonable assurance engagement.*

**Q.23 Does the Regulation, as supported by CESR's Level 3 guidance, provide a sufficient basis against which auditors can report, as required by the Regulation?****Detailed Responses****CESR-Fin**

It seems reasonable.

**Compagnie Nationale des Commissaires aux Comptes (CNCC)**

Although the development of a comprehensive recognised framework for proforma financial information would be, as mentioned above, supported by the CNCC, its actual need might be less crucial than in the case of the prospective financial information. Indeed the basis given in the regulation as supported by CESR's recommendations is quite detailed and should allow the issuers around Europe to prepare their proforma financial information on quite a comparable basis and the auditor's to report thereon.

**Hellenic Capital Market Commission**

Yes, the Regulation provides a sufficient basis against which auditors can report on.

**Institut der Wirtschaftsprüfer (IDW)**

We agree.

### **Institute for the Accountancy Profession in Sweden (FAR)**

The Regulation requires the preparers to provide information on the basis upon which the pro forma information has been prepared and require that pro forma adjustments are clearly shown and explained. Given that the preparers provide information in accordance with the Regulation, this should provide a sufficient basis against which auditors can report. However, FAR believes that the harmonization of information in a prospectus would benefit from a framework for the preparation of pro forma financial information. FAR also believes that a framework would be of value for the preparers of prospectuses and for the auditor. Any framework regarding this should be prepared by an organization whose guidelines will comprehend all EU-states, e.g. CESR.

### **Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes, but subject to a detailed review by the national standard setter.

### **Instituto de Censores Jurados de Cuentas de España (ICJCE)**

CESR covers the topic of pro forma financial information under section 6 (para 87-94) of its Level 3 guidance and basically focuses its advice on two points:

1. Further development of the term “significant gross change” triggering the obligation to prepare pro forma financial information as stated in recital 9 to the Regulation.
2. Clarification of some of the attributes that pro forma adjustments should show, as stated in Annex II of the Regulation, particularly “factually supportable” and “directly attributable to the transaction”.

CESR’s contribution is helpful but the details of this reporting framework must still be worked out at a pan-European level. Provided that IAASB is not likely to get involved beyond the scope of GAAP financial information, may we suggest that FEE take up again the early drafts of this project where the issue of compilation of pro forma financial information was analysed in depth and some illustrative examples were provided. The output might then become the source material for an agreement among EU standard setters. According to FEE’s discussion paper, Frankfurt’s stock exchange authority appears to be the outstanding European “standard setter” in this field so far.

### **Lithuanian Chamber of Auditors (LCA)**

We are of opinion that the Regulation provides a sufficient basis against which auditors can report and the outlined procedures provide an appropriate basis.

### **Polish Securities and Exchange Commission**

Yes.

### **Summary of Responses**

All respondents agree that the Regulation provides a sufficient basis against which auditors can report. ICAEW specifies the need for a detailed review by the national standard setter. However, FAR and ICJCE believe that the harmonisation of information in a prospectus would benefit from a framework for the preparation of pro forma financial information prepared by an organisation whose guidelines will comprehend all EU states (e.g. CESR).



*Recommendation*

*In absence of a separate international framework, the Regulation and CESR Level 3 guidance give a sufficient basis against which auditors can report.*

**Question 24**

**Could the procedures outlined in the discussion paper serve as an appropriate benchmark for the procedures that the auditor has to perform to provide a “properly compiled” opinion?**

*Position – FEE Discussion Paper*

*In considering whether the pro forma financial has been properly compiled, the auditor should ascertain whether:*

- *The auditor is able to become familiar with the business activities and accounting policies applied by the entities whose data are contained in the pro forma information. The auditor would obtain such an understanding by having audited or reviewed all the material historical financial statements. When an entity’s financial statements have been audited or reviewed by other auditors, the auditor has to decide in the specific case how to obtain the knowledge necessary for the review of pro forma information;*
- *The pro forma financial information has been compiled in the manner prescribed by Annex II of EU Regulation 2004-809;*
- *The pro forma financial information has been presented as required by Annex II of EU Regulation 2004-809;*
- *The assumptions underlying the pro forma information appropriately reflect the material effects of the transaction on the financial statements;*
- *The pro forma adjustments have been derived properly on the basis of these assumptions;*
- *The pro forma adjustments have been accurately reflected in the pro forma balance sheet and the pro forma income statement; and*
- *The pro forma adjustments have been presented clearly and comprehensively in the pro forma notes.*

*Complexity arises where financial information of an acquired undertaking, or an undertaking to be acquired, has been prepared on a different accounting basis. In these circumstances, it will be necessary for the management of the preparer of the pro forma financial information to make adjustments that conform with the policies. CESR may provide some guidance as to how this particular issue is to be addressed.*

*In carrying out the engagement, the following procedures should be followed:*

- *Obtain an understanding of the transactions underlying the pro forma information by, for instance, reading the relevant contracts and enquiring of management;*
- *Obtain an understanding of the entities/parts of entities involved;*
- *Obtain an understanding of the accounting policies used by the entities involved;*
- *Inquire of management as to the adjustments made about the effects of the transactions on the financial statements;*

- *Assess whether the pro forma adjustments cover the significant effects of the transactions on the financial statements;*
- *Consider whether the party responsible for the pro forma financial information has appropriate support for the pro forma adjustments. This may include, for example, agreements for the purchase of entities or mergers of entities, valuation reports or financing documents;*
- *Assess whether the pro forma adjustments are consistent and logical;*
- *Check the computation of pro forma adjustments and the application of the pro forma adjustments to the unadjusted financial information;*
- *Assess whether the transactions and the pro forma adjustments, the underlying assumptions and the material uncertainties associated with these assumptions have been described appropriately in the pro forma notes;*
- *Obtain a management representation letter, to include in particular the following:*
  - *Management’s responsibility for the underlying assumptions and the computation of the pro forma financial information.*
  - *A statement that the assumptions underlying the pro forma information appropriately reflect the material effects of the transactions on the financial statements, that the pro forma adjustments have been derived properly on the basis of these assumptions, and that the pro forma adjustments have been accurately reflected in the pro forma balance sheet and the pro forma income statement.*
  - *A statement that all relevant transactions and the material effects of such transactions on the financial statements have been discussed appropriately in the pro forma notes.*

### **Detailed Responses**

#### **CESR-Fin**

The discussion paper sets out examples of reasonable procedures about how to derive a ‘properly compiled’ opinion for pro forma information.

#### **Compagnie Nationale des Commissaires aux Comptes (CNCC)**

The opinion on the “proper compilation” of the proforma financial information does not include any restatement of the opinions provided on any of the underlying financial information. On that basis the CNCC considers the procedures outlined in the FEE discussion paper as an appropriate benchmark.

#### **Hellenic Capital Market Commission**

Yes, the procedures outlined could serve as an appropriate benchmark for a “properly compiled” opinion.

#### **Institut der Wirtschaftsprüfer (IDW)**

We would like to question, if the procedures described under work performed are sufficient as a basis for the opinion. Unfortunately we have doubts that this is the case. Particularly we doubt that discussions with management can be a basis for reasonable assurance.

**Institute for the Accountancy Profession in Sweden (FAR)**

FAR believe the procedures outlined in the discussion paper can serve as an appropriate benchmark for providing a “properly compiled” opinion.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes, but subject to a detailed review by the national standard setter.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

Yes.

**Lithuanian Chamber of Auditors (LCA)**

We are of opinion that the Regulation provides a sufficient basis against which auditors can report and the outlined procedures provide an appropriate basis.

**Polish Securities and Exchange Commission**

Yes.

**PricewaterhouseCoopers Europe (PwC Europe)**

Yes. In the absence of any international standard that specifically addresses pro forma information, assurance could be provided in accordance with ISAE 3000. This standard requires the auditor to specify the criteria by which the subject matter is evaluated – this could be the procedures set out in CESR implementation guidance. The listed procedures in the FEE discussion paper provide a good basis on which to develop such criteria.

**Summary of Responses**

All respondents agree that the procedures outlined in the discussion paper could serve as an appropriate benchmark except for IDW. IDW wonders whether the procedures described under work performed are sufficient as a basis for the opinion, particularly the discussions with management. ICAEW would subject the procedures to a detailed review by the national standard setter. PwC Europe specifies that, in the absence of international standard addressing pro forma information, assurance could be provided under ISAE 3000 as it requires to specify the criteria by which the subject matter is evaluated.

*Recommendation*

*The procedures outlined in the discussion paper could serve as a basis for the procedures that the auditor has to perform to provide a “properly compiled” opinion.*

**Question 25**

**Do you agree that the auditor’s opinion that pro forma financial information is properly compiled does not include any restatement of the opinions provided on any of the underlying financial information?**

*Position – FEE Discussion Paper*

*In providing the opinion as required by the Regulation, there should be no expectation that the auditor is refreshing or re-addressing any opinions provided on any of the financial information that may comprise part of the pro forma financial information. It is merely necessary for the auditor to assess whether the information meets the criteria for inclusion in the pro forma.*

**Detailed Responses****CESR-Fin**

Yes – it should merely cover the adjustments made to compile the pro forma information, and does not imply that a new audit of the underlying data has been performed.

**Hellenic Capital Market Commission**

It is necessary for the auditor to assess whether the financial information meets the criteria for inclusion in the pro forma and not to assess on the underlying financial information.

If for any reason the underlying financial information contain material effects on the pro forma financial information which are not taken into consideration, this has to be evaluated as annex II of the Regulation requires the following:

*“Pro forma financial information must normally be presented in columnar format, composed of:*

- a) the historical unadjusted information*
- b) the pro forma adjustments; and*
- c) the resulting pro forma financial information in the final column.*

*The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included in the prospectus”.*

**Institut der Wirtschaftsprüfer (IDW)**

We agree that the report on pro forma financial information as required by the Regulation solely covers that this information is properly compiled on the basis stated and does not include any opinion on the underlying financial information, including but not limited to any restatement of the opinions provided on the underlying financial information if any.

**Institute for the Accountancy Profession in Sweden (FAR)**

Yes, the auditor’s opinion that the pro forma financial information is properly compiled should not include any restatement of the opinions provided on any of the underlying financial information.

**Institute of Chartered Accountants in England and Wales (ICAEW)**

Yes. The two are separate exercises, with the respective information compiled under different criteria.

**Instituto de Censores Jurados de Cuentas de España (ICJCE)**

We agree that the report on pro forma financial information as required by the Regulation only covers the fact that this information is properly compiled on the basis stated and does not include any opinion on the underlying financial information. Since the Regulation requires the historical unadjusted information to be presented as part of the pro forma financial information, any necessary restatement of this source data should be performed at this stage (and it might have led to a new report on historical financial information being produced, but this is a separate exercise).

**Lithuanian Chamber of Auditors (LCA)**

We think that the auditor's opinion on pro forma financial information should be seen as independent of other opinions.

**Polish Securities and Exchange Commission**

Yes.

**PricewaterhouseCoopers Europe (PwC Europe)**

Yes. The assurance given does not extend to 'refreshing' the original audit opinions on the base financial information.

**Summary of Responses**

All respondents agree that the assurance given does not extend to 'refreshing' the original audit opinions. ICAEW and ICJCE specify that the two are separate exercises with respective information compiled under different criteria.

*Recommendation*

*The auditor's opinion that pro forma is properly compiled should not include any restatement of the opinions provided on any of the underlying financial information.*

## ADDITIONAL COMMENTS

### Institute of Chartered Accountants in England and Wales (ICAEW)

#### *Independence*

The discussion paper is correct to highlight the various terms used in the Prospectus Regulation to describe the role of accountants. We believe that it would be helpful if in commenting on independence, FEE could indicate that an ‘independent accountant’ would not necessarily need to satisfy all of the independence requirements of a statutory auditor.

The role of a statutory auditor differs from that, for example, of an accountant reporting on a profit forecast or pro forma statement included in a prospectus, in that the nature of the reporting requirements are different and that the role of a reporting accountant is not anticipated to be a recurring engagement.

This has an impact on questions such as the period for which independence would be required and on the impact of such matters as non-audit services. If the full range of independence requirements applicable to a statutory auditor were deemed necessary, this is effectively likely to exclude from consideration any accountant other than the statutory auditor and hence remove the element of flexibility that FEE identifies as the reason for the reference to independent accountants.

### PricewaterhouseCoopers Europe (PwC Europe)

#### *Reporting for the purposes of a prospectus (Section 6.4)*

There are several references in the paper to the requirement in the Prospectus Regulation that the historical financial information must be audited or reported on as to ‘whether or not, for the purposes of the registration document, it gives a true and fair view....’

Where financial statements are prepared in accordance with IFRS, they should contain an explicit and unreserved statement of compliance with IFRS in the basis of preparation note (IAS 1.14). We emphasise that neither the basis of preparation note in the financial statements nor the audit report should refer to ‘compliance with IFRS for the purposes of the registration statement’, since this may be perceived as a departure from normal application of IFRS. The same applies to financial statements prepared in accordance with national GAAP. The suggested opinion wording in Appendix D is appropriate.

#### *Previous restatements (Section 6.5)*

It would be helpful if the discussion paper highlighted the fact that the term ‘restatement’ may have different meaning in different jurisdictions. In some countries it implies restatement of an error (which may result in accounts having to be revised and reissued with a new audit report). In other countries, it may be taken to include also lesser restatement for comparative purposes, for example because of a change in accounting policies.

Our view is that in the prospectus it is generally the restated information (however defined) that is of use to the investor, and the reissued or restated information should be presented, including appropriate note disclosure describing the reasons for and financial effect of the restatement.

If the financial statements were revised and reissued as a result of the correction of an error, the audit report on the restated information should include an emphasis of matter paragraph to draw attention to the fact that the financial statements are revised and reissued, together with the reason why.

*Carve out accounts (Section 6.7)*

The paper discusses the situation of a carve-out and suggests that the auditor should be able to report ‘on whether that information shows a true and fair view for the purposes of the prospectus.’ Our view is that, provided there is a reporting entity and the financial records of the entity are capable of being audited, a set of carve-out statements can show a true and fair view in accordance with a specified accounting framework (for example IFRS.) However, as noted above, they should not be described as showing a ‘true and fair view in accordance with IFRS for the purposes of the registration statement.’

*Interim Financial information (Section 8)*

Most interim financial information takes the form of condensed financial statements prepared in accordance with IAS 34. Although the issue is not discussed in the paper, our view is that condensed financial information does not contain all of the elements of a full set of financial statements necessary to give a true and fair view. Auditors’ reports on such condensed information should therefore not refer to fair presentation, but should conclude on whether the information is presented in accordance with IAS 34.