

GUIDELINES TO THE AUDITOR IN PROSPECTUS
AND OTHER RELATED ENGAGEMENTS

Guidelines to the auditor in prospectus and other related engagements

2009-3

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INFORMATIECENTRUM
VOOR HET
BEDRIJFSREVISORAAT



CENTRE D'INFORMATION
DU REVISORAT
D'ENTREPRISES



Maklu
Antwerpen/Apeldoorn

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De teksten van dit boek zijn bijgewerkt tot 1 mei 2009.

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Les textes de cet ouvrage sont à jour au 1^{er} mai 2009.

ICCI (ed.)

Guidelines to the auditor in prospectus and other related engagements

Antwerpen-Apeldoorn

Maklu

2009

152 pag. – 24 x 16 cm

ISBN 978-90-466-0276-8

D/2009/1997/35

NUR 826

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Maklu-Uitgevers

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Woord vooraf

Het prospectus, een belangrijk document wanneer financiële instrumenten aan het publiek worden aangeboden of tot de handel op een gereguleerde markt worden toegelaten, dient een overzicht te geven van alle financiële en andere informatie aan de hand waarvan de investeerder zich een oordeel kan vormen over de vennootschap die dergelijke financiële instrumenten uitgeeft, evenals over deze laatste en in voorkomend geval kan beslissen om hierin te investeren.

Het prospectus dient niet enkel volledig te zijn maar ook en vooral nauwkeurig en niet bedrieglijk. Opgesteld onder de verantwoordelijkheid van de uitgevende instelling, dient deze laatste er dus over te waken dat de in het prospectus opgenomen informatie nauwkeurig is en zal zij zich in dit kader laten bijstaan door deskundigen.

Als apotheose van het prospectus zijn de voor de toekomstige investeerder zeer relevante financiële gegevens van fundamenteel belang, aangezien zij zowel de historiek van de vennootschap als de voor de komende maanden verwachte prognoses en ramingen weergeven. De auditors zullen hierbij een zeer belangrijke rol spelen. Zij zullen immers dienen te waken over het stelsel inzake financiële verslaggeving, evenals over de geschiktheid van de grondslagen voor financiële verslaggeving gebruikt in het kader van de financiële gegevens.

Hoewel de auditor niet rechtstreeks aansprakelijk is voor het prospectus, noch voor zijn inhoud, raadt onderhavige leidraad hem over het algemeen aan in te schatten of de opgenomen gegevens niet strijdig zijn met deze waarvan hij kennis heeft in het kader van de uitvoering van zijn controle- en nazichtopdrachten. Immers, ondanks zijn beperkte aansprakelijkheid brengt de aard van de opdrachten die hij in het kader van de opstelling van een prospectus uitvoert, meer bepaald een verhoogd reputatierisico met zich mee.

De private Stichting “Informatiecentrum voor het Bedrijfsrevisoraat” (ICCI) geeft aldus een zeer praktische leidraad uit over de rol van de bedrijfsrevisor in het kader van het opstellen van een prospectus. Wij zijn ervan overtuigd dat dit boek, dat de verdienste heeft volledig, uitvoerig en duidelijk te zijn, beantwoordt aan de gerechtvaardigde verwachtingen van de auditors met betrekking tot de inhoud en de reikwijdte van hun controle in het kader van het opstellen van een prospectus.

Wij kunnen de publicatie van onderhavige leidraad die volkomen bijdraagt tot het ophelderen van het proces van openbaar beroep op het spaarwezen, alleen maar toejuichen.

Anne Sophie PIJCKE
Director Legal and Regulations
Euronext Brussels

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Chief Executive Officer
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Avant-propos

Document fondamental lorsque des instruments financiers sont offerts au public ou admis à la négociation sur un marché réglementé, le prospectus a pour vocation de condenser toute l'information, financière et autre, qui permet à l'investisseur de se forger une opinion sur la société émettrice de tels instruments financiers et sur ceux-ci, et le met ainsi en mesure de décider, le cas échéant, d'y investir.

Le prospectus se doit non seulement d'être complet mais aussi et surtout d'être exact et non trompeur. Rédigé sous la responsabilité de l'émetteur, ce dernier veille donc à ce que les informations qui y sont contenues soient exactes et se fera assister, pour ce faire, d'experts.

Point d'orgue du prospectus, les données financières sont essentielles puisqu'elles reflètent à la fois l'historique de la société mais aussi les prévisions et les estimations attendues pour les mois qui suivent, données combien pertinentes pour le futur investisseur. Le rôle des auditeurs sera crucial en la matière. Il leur faudra veiller au référentiel comptable et au caractère pertinent des méthodes comptables utilisées dans le cadre des données financières.

D'une façon générale, bien que l'auditeur ne soit pas directement responsable du prospectus ni de son contenu, le présent guide lui recommande d'évaluer si les données qui y figurent ne sont pas contradictoires avec celles dont il a connaissance dans le cadre de l'exécution de ses missions de contrôle et d'examen. En effet, malgré une responsabilité limitée dans son chef, la nature même de ses missions dans le cadre de la rédaction d'un prospectus entraîne un risque élevé, notamment de réputation.

La Fondation privée « Centre d'Information du Révisorat d'Entreprises » (ICCI) signe ainsi un guide très pratique sur le rôle du réviseur d'entreprises dans le cadre de la rédaction d'un prospectus. Nous sommes convaincus que cet ouvrage qui a le mérite d'être complet, exhaustif et clair, répond aux attentes légitimes des auditeurs quant au contenu et à l'étendue de leur contrôle dans le cadre de l'élaboration d'un prospectus.

Nous ne pouvons que saluer la sortie du présent guide qui participe pleinement à la démystification du processus d'appel public à l'épargne.

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SLEUTELWOORDEN

Adviseur van de uitgevende instelling	Hij verstrekt juridisch advies aan de uitgevende instelling in het kader van het uitgeven van het prospectus en bereidt de vennootschap ook voor op andere wijzigingen in het deugdelijk bestuur en in de statuten.
Adviseur van de <i>underwriters</i>	Hij verstrekt juridisch advies aan de <i>underwriters</i> en speelt een rol in het kader van de vereiste werkzaamheden die de <i>underwriters</i> moeten respecteren.
Auditor (bedrijfsrevisor)	De commissaris van de uitgevende instelling moet overeenkomstig de Verordening een zeker aantal verslagen uitbrengen en zal in vele gevallen de enige betrokken auditor zijn. In sommige gevallen kan het echter gebeuren (in het kader van meer ingewikkelde transacties) dat meerdere auditors verwickeld zijn onder meer in geval van pro forma financiële informatie over de bedrijfscombinaties en andere complexe financiële historische transacties.
CBFA	Commissie voor het Bank-, Financie- en Assurantiewezen
CEER	Comité van Europese effectenregelgevers (CESR)
EC	Europese Commissie
EU	Europese Unie
FEE	<i>Fédération des Experts Comptables Européens</i>
IAASB	<i>International Auditing and Assurance Standards Board</i>
IBR	Instituut van de Bedrijfsrevisoren
IFAC	<i>International Federation of Accountants</i>
ISA	<i>International Standards on Auditing</i>
ISAE	<i>International Standards on Assurance Engagement</i>
ISRE	<i>International Standards on Review Engagement</i>
Prospectusrichtlijn	Richtlijn 2003/71/EG betreffende het prospectus dat gepubliceerd moet worden wanneer effecten aan het publiek worden aangeboden of tot de handel worden toegelaten, wat de aan de Commissie verleende uitvoeringsbevoegdheden betreft, <i>PB. L. 76, 19 maart 2003, p. 37-38.</i>

**Toezichthoudende
Instanties**

In elk land is er een instantie die voorafgaand aan de uitgifte het prospectus dient goed te keuren. In vele gevallen zullen zij de omvang en de kwantiteit van de informatie, met inbegrip van de financiële informatie, die in het prospectus dient te worden opgenomen, bepalen. De Verordening voorziet dat de regelgever van het land van herkomst van de uitgevende instelling een prospectus dient goed te keuren ter uitgifte in eender welk land van de EU (de zogenaamde EU *passporting*). In België speelt de CBFA deze belangrijke rol van bescherming van de investeerders. Indien de vennootschap wenst om te worden genoteerd, mag de marktoperator bijkomende vereisten opleggen die ook in het prospectus dienen te worden opgenomen teneinde op de gereguleerde markt te worden toegelaten

Uitgevende instelling

Rechtspersoon die effecten heeft uitgegeven, effecten uitgeeft of zich voorneemt effecten te zullen uitgeven of wenst toegelaten te worden tot de onderhandeling op een gereguleerde markt, dient een prospectus uit te geven.

Underwriters

Het zijn tussenpersonen tussen de uitgever en de openbare beleggers. Deze staan de vennootschap bij om kapitaal of middelen te vinden. Zij spelen een hoofdrol waarbij zij in wisselwerking staan met de markt en alle andere deelnemers in het proces, met inbegrip van de toezichthoudende instanties.

Verordening (de)

Verordening nr. 809/2004 tot uitvoering van Richtlijn 2003/71/EG van het Europees Parlement en de Raad wat een aantal elementen betreffende het prospectus en advertenties betreft, *PB. L.* 340, 30 april 2004, p. 1-137.

TERMES CLES

Auditeur (réviseur d'entreprises)

Le commissaire de l'émetteur doit, conformément au Règlement, émettre certains rapports et sera, dans de nombreux cas, le seul auditeur concerné. Toutefois, dans certaines conditions (dans le cadre de transaction plus complexe) il se peut que plusieurs auditeurs soient impliqués, notamment dans le cas d'informations financières pro forma relatives à des regroupements d'entreprises et d'autres transactions financières historiques complexes.

Autorités de régulation

Dans chaque pays il y a une autorité qui, préalablement à l'émission, doit approuver le prospectus. Dans de nombreux cas ils détermineront l'étendue et la nature spécifique des informations, y compris des informations financières, devant être incluses dans le prospectus. Le Règlement prévoit que le régulateur du pays d'origine de l'émetteur doit approuver un prospectus en vue de l'émission dans n'importe quel pays de l'UE (appelé le *passporting* au sein de l'UE). En Belgique, ce rôle important de protection des investisseurs est joué par la CBFA. Lorsque la société souhaite être cotée, l'opérateur de marché peut imposer des obligations complémentaires qui devraient également être incluses dans le prospectus afin d'être admis sur un marché réglementé.

CBFA

Commission bancaire, financière et des assurances

CE

Commission européenne

CERVM

Comité européen des régulateurs des marchés de valeurs mobilières (CESR)

Conseiller de l'émetteur

Il fournit des conseils juridiques à l'émetteur dans le cadre de l'émission du prospectus et prépare également la société à d'autres modifications concernant la bonne gouvernance et les statuts.

Conseiller des souscripteurs

Il fournit des conseils juridiques aux souscripteurs et joue un rôle dans le cadre des diligences requises à respecter par les souscripteurs.

Directive prospectus (DP)

Directive 2003/71/CE concernant le prospectus à publier en cas d'offre au public de valeurs mobilières ou en vue de l'admission de valeurs mobilières à la négociation, en ce qui concerne les compétences d'exécution conférées à la Commission, *J.O.U.E.*, L. 76, du 19 mars 2003, p. 37-38.

Emetteur	Personne morale qui a émis, émet ou se propose d'émettre des valeurs mobilières ou souhaite être admise à la négociation sur un marché réglementé, doit émettre un prospectus.
FEE	Fédération des Experts Comptables Européens
IAASB	<i>International Auditing and Assurance Standards Board</i>
IFAC	<i>International Federation of Accountants</i>
IRE	Institut des Réviseurs d'Entreprises
ISA	<i>International Standards on Auditing</i>
ISAE	<i>International Standards on Assurance Engagement</i>
ISRE	<i>International Standards on Review Engagement</i>
Règlement (le)	Règlement n° 809/2004 mettant en œuvre la directive 2003/71/CE du Parlement européen et du Conseil en ce qui concerne certains éléments afférents au prospectus et aux communications à caractère promotionnel, <i>J.O.U.E.</i> , L. 340, du 30 avril 2004, p. 1-137.
Souscripteurs	Ce sont des intermédiaires entre l'émetteur et les investisseurs publics. Ils assistent la société à trouver des capitaux ou fonds. Ils jouent un rôle capital d'interaction entre le marché et tous les autres participants, y compris les autorités de régulation.
UE	Union européenne

KEY TERMS

Auditors (registered auditor)	The statutory auditor of the issuer will have to write a number of reports as required by the Regulation and will in many cases be the only auditor involved in the process. However, it can occur (in more complex transactions) that multiple auditors are involved, notably when dealing with pro forma financial information on business combinations and other complex financial history transactions.
CBFA	Banking, Finance and Insurance Commission
CESR	Committee of European Securities Regulators
EC	European Commission
EU	European Union
FEE	<i>Fédération des Experts Comptables Européens</i>
IAASB	International Auditing and Assurance Standards Board
IFAC	International Federation of Accountants
IRE/IBR	Institute of Registered Auditors (<i>Institut des Réviseurs d'Entreprises / Instituut van de Bedrijfsrevisoren</i>)
ISA	International Standards on Auditing
ISAE	International Standards on Assurance Engagement
ISRE	International Standards on Review Engagement
Issuer	The legal entity that has issued, issues or proposes to issue securities or wants its shares to be admitted to trading in a regulated market is required to issue a prospectus.
Issuer's Counsel	He will provide the Issuer with legal advice on the prospectus process and will also prepare the Company for any other changes in corporate governance and changes in bylaws
Prospectus Directive (PD)	Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as regards the implementing powers conferred on the Commission, <i>O.J.</i> , L. 76, 19 March 2003, p. 37-38.
Regulation (the)	Regulation No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements, <i>O.J.</i> , L. 340, 30 April 2004, p. 1-137.

Regulatory Authorities

In each country, there is an authority that needs to approve the prospectus prior to issuance. In many instances they will determine the amount and depth of the information, including financial information, to be included in the prospectus. The Regulation foresees that the regulator of the issuer's home country should approve a prospectus for issuance in any EU country (the so-called EU passporting). In Belgium, the CBFA plays this important role of protecting the investor community. If the Company seeks to be listed, the market operator may impose additional requirements that would also need to be addressed in the prospectus in order to be admitted to the regulated market.

Underwriters

They are intermediary between an issuer and the investing public. They will assist the company attract capital or funds. They play a key role interacting with the market and all other participants in the process, including the Regulatory Authorities.

Underwriters' Counsel

He provides the underwriters with legal advice and play a role in the due diligence process that the underwriters have to perform.

EXECUTIVE SUMMARY (NL)

1.1. INLEIDING

Overeenkomstig Richtlijn 2003/71/EG ⁽¹⁾ (hierna de “Prospectusrichtlijn”) en Verordening EG 809/2004 ⁽²⁾ van de Commissie (hierna de “Verordening”) is een nieuw stelsel voor prospectussen van kracht geworden in België. De Prospectusrichtlijn werd omgezet in het Belgische recht via de wet van 16 juni 2006 ⁽³⁾ (hierna de “Wet”).

Onderhavige leidraad bespreekt de rol van de bedrijfsrevisor ten aanzien van diverse delen van het prospectus. De Wet, de Prospectusrichtlijn en de Verordening handelen over de in een prospectus te verstrekken informatie en leggen voor bepaalde informatie rapporteringsverplichtingen op aan de bedrijfsrevisor.

Deze leidraad heeft ook rekening gehouden met diverse andere documenten die aanbevelingen of advies geven over de toepassing van de Verordening of over de tussenkomst van de bedrijfsrevisor in het kader van het publiceren van het prospectus overeenkomstig het Reglement. Deze andere documenten worden gepubliceerd door het Comité van Europese effectenregelgevers (CEER) ⁽⁴⁾ en door de *Fédération des Experts Comptables Européens* (FEE) ⁽⁵⁾.

1.2. BETROKKEN ACTOREN

De Prospectusrichtlijn vereist dat een prospectus wordt opgesteld telkens wanneer effecten (bv. aandelen, obligaties) aan het publiek worden aangeboden of wanneer effecten tot de handel op een geregelende Europese Unie (EU)-markt moeten

⁽¹⁾ Richtlijn 2003/71/EG betreffende het prospectus dat gepubliceerd moet worden wanneer effecten aan het publiek worden aangeboden of tot de handel worden toegelaten, wat de aan de Commissie verleende uitvoeringsbevoegdheden betreft, *PB. L.* 76, 19 maart 2003, p. 37-38.

⁽²⁾ Verordening nr. 809/2004 tot uitvoering van Richtlijn 2003/71/EG van het Europees Parlement en de Raad wat een aantal elementen betreffende het prospectus en advertenties betreft, *PB. L.* 340, 30 april 2004, p. 1-137.

⁽³⁾ Wet van 16 juni 2006 op de openbare aanbidding van beleggingsinstrumenten en de toelating van beleggingsinstrumenten tot de verhandeling op een geregelende markt, *B.S.* 21 juni 2006.

⁽⁴⁾ *CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectus n° 809/2004*, februari 2005; *CESR's advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in prospectus*, oktober 2005; *CESR's technical advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus*, juni 2005, <http://www.cesr-eu.org>

⁽⁵⁾ *Discussion Paper on the Auditor's involvement with the new EU Prospectus Directive*, november 2004; *Discussion Paper Comfort letters issued in relation to Financial Information in a Prospectus*, april 2005; *Analysis of responses to the Discussion Paper on the Auditor's involvement with the new EU Prospectus Directive*, oktober 2005; *Analysis of responses to the Discussion Paper Comfort letters issued in relation to Financial Information in a Prospectus*, mei 2006, <http://www.fee.be>

worden toegelaten. Bij de uitgifte van een prospectus zijn over het algemeen talrijke verschillende actoren betrokken die elk hun rol hebben. Hierna volgt een samenvatting van de hoofdactoren en hun specifieke taken:

- de uitgevende instelling – een rechtspersoon die effecten heeft uitgegeven, effecten uitgeeft of zich voorneemt effecten te zullen uitgeven of wenst toegelaten te worden tot de onderhandeling op een gereguleerde markt, dient een prospectus uit te geven;
- de Toezichthoudende Instanties – in elk land is er een instantie die voorafgaand aan de uitgifte het prospectus dient goed te keuren. In vele gevallen zullen zij de omvang en de aard van de informatie, met inbegrip van de financiële informatie, die in het prospectus dient te worden opgenomen, bepalen. De Verordening voorziet dat de regelgever van het land van herkomst van de uitgevende instelling een prospectus dient goed te keuren ter uitgifte in eender welk land van de EU (de zogenaamde *EU passporting*). In België speelt de Commissie voor het Bank-, Financie- en Assurantiewezen (CBFA) deze belangrijke rol van bescherming van de investeerders. Indien de vennootschap wenst om te worden genoteerd, mag de marktoperator bijkomende vereisten opleggen die ook in het prospectus dienen te worden opgenomen teneinde op de gereguleerde markt te worden toegelaten;
- de *underwriters* – Het zijn tussenpersonen tussen de uitgever en de openbare beleggers. Deze staan de vennootschap bij om kapitaal of middelen te vinden. Zij spelen een hoofdrol waarbij zij in wisselwerking staan met de markt en alle andere deelnemers in het proces, met inbegrip van de toezichthoudende instanties;
- de adviseur van de *underwriters* – hij verstrekt juridisch advies aan de *underwriters* en speelt een rol in het kader van de vereiste werkzaamheden die de *underwriters* moeten respecteren;
- de adviseur van de uitgevende instelling – hij verstrekt juridisch advies aan de uitgevende instelling in het kader van het uitgeven van het prospectus en bereidt de vennootschap ook voor op andere wijzigingen in het deugdelijk bestuur en in de statuten;
- de auditor (bedrijfsrevisor) – de commissaris van de uitgevende instelling moet overeenkomstig de Verordening een zeker aantal verslagen uitbrengen en zal in vele gevallen de enige betrokken auditor zijn. In sommige gevallen kan het echter gebeuren (in het kader van meer ingewikkelde transacties) dat meerdere auditors verwickeld zijn onder meer in geval van pro forma financiële informatie over de bedrijfscombinaties en andere complexe financiële historische transacties.

1.3. PROSPECTUSVEREISTEN EN DE TUSSENKOMST VAN DE AUDITOR

Artikel 26, § 1 van de Wet verwijst naar de Verordening voor meer gedetailleerde vereiste werkzaamheden met betrekking tot de inhoud van een prospectus.

De Bijlagen bij de Verordening bevatten de verschillende schema's en bouwstenen en een aantal onder hen verlenen advies over de tussenkomst van de auditor.

De aard en omvang van de te verstrekken informatie hangt af van de aard van de transactie. De vereiste werkzaamheden verschillen naargelang de uitgevende instelling (1) aandelen

⁽⁶⁾, (2) obligaties en derivaten ⁽⁷⁾, (3) garanties ⁽⁸⁾, (4) door activa gedekte waardepapieren ⁽⁹⁾ of (5) certificaten van aandelen ⁽¹⁰⁾ uitgeeft.

Over het algemeen dient een prospectus vier verschillende soorten financiële informatie te bevatten:

- (1) historische financiële informatie;
- (2) pro forma financiële informatie (in zekere omstandigheden);
- (3) winstprognoses en winstramingen (in zekere omstandigheden); en
- (4) tussentijdse financiële informatie (in zekere omstandigheden).

Voor (1), (2) en (3) dienen verslagen uitgebracht door een auditor in een prospectus te worden opgenomen.

In de praktijk zal de auditor ook een *comfort letter* ⁽¹¹⁾ moeten verstrekken aan de *underwriters* en de uitgevende instelling. Een dergelijke *comfort letter* kan over het algemeen slechts worden verstrekt door de commissaris aangezien het een natuurlijke uitbreiding is van zijn rol en verkregen kennis in de hoedanigheid van de auditor van de entiteiten.

Bij het bepalen van de taken en verantwoordelijkheden van auditors op het vlak van de presentatie van (historische) financiële informatie in het prospectus, is het duidelijk dat er een aantal fundamentele verschillen zijn tussen de huidige praktijk en de verwachtingen ten overstaan van deze taken en verantwoordelijkheden binnen de EU.

In het kader van de taken en verantwoordelijkheden wordt er verwezen naar het regime inzake de beperking van de aansprakelijkheid (*liability cap regime*). Met betrekking tot het principe van de aansprakelijkheidsbeperking van de auditor waarvoor huidige leidraad niet bedoeld is om het toepassingsgebied in België aan te snijden, wordt verwezen naar de omzendbrieven die het Instituut van de Bedrijfsrevisoren heeft uitgegeven – Omzendbrieven D.015/06 van 13 juli 2006 en D.016/06 van 20 december 2006 betreffende de beperking en de verzekering van de burgerrechtelijke beroepsaansprakelijkheid (gecoördineerde versie) – en nog zal uitvoeren ⁽¹²⁾.

Niettegenstaande de eventuele beperking van de aansprakelijkheid, wordt de aandacht gevestigd op het feit dat de aard van de opdrachten waar een auditor dient te rapporteren in de context van een vennootschap of instelling die een prospectus uitgeeft, inherent een verhoogd technisch en reputatierisico met zich meebrengt.

⁽⁶⁾ Bijlagen I, III en XIV van de Verordening.

⁽⁷⁾ Bijlagen IV, V, IX, XII, XIII, XV, XVI en XVII van de Verordening.

⁽⁸⁾ Bijlage VI van de Verordening.

⁽⁹⁾ Bijlagen VII en VIII van de Verordening.

⁽¹⁰⁾ Bijlage X van de Verordening.

⁽¹¹⁾ Cf. *infra*, Hoofdstuk 5, punt 5.3.6.

⁽¹²⁾ IBR, *Jaarverslag*, 2006, p. 379-385.

Hoewel de auditor niet rechtstreeks verantwoordelijk is voor het prospectus als geheel, noch voor de informatie die daarin vervat ligt, zou onderhavige leidraad de auditor vragen in te schatten of de informatie in het prospectus in strijd is met de kennis die hij heeft verkregen in het kader van de uitvoering van zijn controles en beperkte nazichten (*reviews*). Het is derhalve belangrijk dat de gebruikers van deze leidraad zorgvuldig de in dit document ingenomen standpunten analyseren en gepaste beroepsbeoordeling aan de dag leggen ten opzichte van de diverse bij het prospectus betrokken partijen.

1.4. PUBLIEKE RAPPORTERINGOPDRACHTEN ZOALS VOORGESCHREVEN DOOR DE WET

De verslaggeving van de auditor over historische, tussentijdse en pro forma financiële informatie, evenals over winstprognoses en winstramingen wordt omschreven als publieke rapporteringopdracht. Zoals reeds vermeld zal de auditor in vele gevallen ook worden verzocht om ook rechtstreeks te rapporteren aan specifieke belanghebbende partijen. Dergelijke opdrachten worden private rapporteringopdrachten genoemd (*cf. infra*, punt 1.5.).

1.4.1. Historisch financiële informatie

De Verordening ⁽¹³⁾ vereist dat gecontroleerde historische financiële informatie over de laatste drie boekjaren en de controleverklaring voor elk jaar in het prospectus worden opgenomen.

De gecontroleerde historische financiële informatie over de laatste twee jaar moet worden opgesteld en gepresenteerd in een vorm die aansluit bij die welke voor de gepubliceerde volgende jaarrekening van de uitgevende instelling zal worden gebruikt, met inachtneming van de standaarden voor jaarrekeningen, de grondslagen voor financiële verslaggeving en de op jaarrekeningen toepasselijke wetgeving.

De historische jaarlijkse financiële informatie moet onderworpen zijn aan een onafhankelijke controle en moet in een verslag voor de doeleinden van het registratiedocument worden aangemerkt als gevende een getrouw beeld, gebaseerd op controlewerkzaamheden uitgevoerd overeenkomstig de in een lidstaat toepasselijke controlestandaarden of gelijkwaardige standaarden.

De tussenkomst van auditors in dergelijke situaties vloeit hoofdzakelijk voort uit het feit dat de controleverklaringen betreffende de historische informatie worden opgenomen, alsmede uit het niveau van de werkzaamheden vereist over de *reporting* bij nieuwe informatie.

⁽¹³⁾ Voor aandelen, zie Bijlage I, paragraaf 20.1; voor obligaties en derivaten, Bijlage IV, paragraaf 13 en Bijlage IX, paragraaf 11; voor door activa gedekte waardepapieren Bijlage VII, paragraaf 8; voor certificaten van aandelen, Bijlage X, paragraaf 20, voor het registratiedocument voor banken, Bijlage XI, paragraaf 11.

De Verordening vereist dat de meest recente historische financiële informatie niet ouder zou zijn dan:

- (a) meer dan 18 maanden vóór de datum van het registratiedocument, indien de uitgevende instelling er de gecontroleerde tussentijdse financiële overzichten insluit;
- (b) meer dan 15 maanden vóór de datum van het registratiedocument, indien de uitgevende instelling er de niet-gecontroleerde tussentijdse financiële overzichten insluit.

Bijgevolg, afhankelijk van de effectieve datum van het prospectus, kan van de auditor worden vereist om een controleverklaring uit te brengen over tussentijdse financiële overzichten, met inbegrip van vergelijkende financiële informatie voor dezelfde periode.

In het geval de volledige set van de geauditeerde financiële overzichten van de uitgevende instelling niet overeenstemt met de standaarden van opstelling en voorgeschreven presentatie en de toepasselijke voorschriften en derhalve dient te worden aangepast zodat historische financiële informatie die overeenstemt met de toepasselijke voorschriften kan worden gepresenteerd, zal een nieuwe controleverklaring waarschijnlijk dienen te worden verstrekt. Wanneer bijvoorbeeld de entiteit notering wenst, dient de jaarrekening over de laatste twee jaar te worden opgesteld en gepresenteerd in een vorm die aansluit bij die welke voor de volgende gepubliceerde volledige set van financiële overzichten die door de uitgevende instelling zal worden gebruikt, met inachtneming van de standaarden voor jaarrekeningen, de grondslagen voor financiële verslaggeving en de op de jaarrekening toepasselijke wetgeving.

Bovendien wordt een nieuwe controleverklaring gebruikt wanneer de uitgevende instelling een complexe financiële geschiedenis heeft en er geen onderliggende gecontroleerde jaarrekening is. Of nog wanneer de uitgevende instelling en/of de auditor tot de conclusie komen dat de reeds bestaande financiële informatie geen getrouw beeld geeft voor de doeleinden van het prospectus.

Wanneer er een auditor werd aangesteld om een controleverklaring op te stellen dient de auditor voldoende en geschikte controle-informatie te verkrijgen die voldoet aan de relevante standaarden om aldus een oordeel tot uitdrukking te brengen over het al dan niet getrouw zijn van het beeld van de financiële informatie voor de doeleinden van het prospectus.

Een opdracht om een controleverklaring op te stellen is een publieke rapporteringopdracht. De beschrijving van een publieke rapporteringopdracht omvat drie algemene begrippen met de volgende betekenissen in de context van een opdracht om te rapporteren over historische financiële informatie:

- (a) met betrekking tot historische financiële informatie is het betrokken voorwerp van onderzoek (*subject matter*) de financiële positie en de performantie van de entiteit voor de periode waarover verslag wordt uitgebracht;

- (b) de toepasbare criteria (*suitable criteria*) zijn de toepasselijke vereiste werkzaamheden van het van toepassing zijnde stelsel inzake financiële verslaggeving en de Verordening; en
- (c) met betrekking tot historische financiële informatie is de uitkomst de in het prospectus opgenomen historische financiële informatie die het gevolg is van het feit dat het management de toepasbare criteria toepast op het betrokken onderwerp. De auditor brengt (in de controleverklaring) een oordeel tot uitdrukking of de historische financiële informatie, voor de doeleinden van het prospectus, een getrouw beeld geeft overeenkomstig het van toepassing zijnde stelsel inzake financiële verslaggeving.

6

De Verordening voorziet bepaalde vereisten met betrekking tot de presentatie van historische financiële informatie in een prospectus. De Verordening vereist dat historische financiële informatie, hetzij wordt onderworpen aan een controle, hetzij “in een verslag voor de doeleinden van het prospectus wordt aangemerkt als gevend een getrouw beeld, op basis van controlewerkzaamheden uitgevoerd overeenkomstig de in een lidstaat toepasselijke controlestandaarden of een gelijkwaardige standaard”.

De auditor dient:

- (a) inzicht in de doelstelling van het prospectus te verkrijgen;
- (b) het van toepassing zijnde stelsel inzake financiële verslaggeving na te gaan overeenkomstig de toepasselijke regelgeving; en
- (c) de geschiktheid van de grondslagen voor financiële verslaggeving in het kader van een dergelijk stelsel inzake financiële verslaggeving te evalueren,

teneinde te bepalen of de voorgestelde historische financiële informatie opgesteld door de uitgevende instelling een getrouw beeld kan geven voor de doeleinden van het prospectus.

Voor historische financiële informatie gepresenteerd in een prospectus bepaalt de Verordening over het algemeen het van toepassing zijnde stelsel inzake financiële verslaggeving. De Verordening vereist dat de gecontroleerde historische financiële informatie over de laatste twee boekjaren wordt gepresenteerd in een vorm die aansluit bij die welke voor de volgende gepubliceerde jaarrekening van de uitgevende instelling zal worden gebruikt, met inachtneming van de standaarden voor jaarrekeningen, de grondslagen voor financiële verslaggeving en de op jaarrekeningen toepasselijke wetgeving.

De auditor dient zich ervan te vergewissen dat het management van de uitgevende instelling een grondig nazicht heeft uitgevoerd van de grondslagen voor financiële verslaggeving gebruikt bij het opstellen van de historische financiële informatie waarbij deze grondslagen als geschikt voor het bedrijf worden beschouwd in functie van de transactie die het voorwerp uitmaakt van het prospectus. De auditor dient ook na te

gaan of de grondslagen consistent zijn met het van toepassing zijnde stelsel inzake verslaggeving.

Wanneer de toepasselijke controlestandaarden werden gewijzigd tijdens de periode waarop de historische financiële informatie betrekking heeft of wanneer het vanuit praktisch oogpunt niet haalbaar is voor de auditor om werkzaamheden uit te voeren die voldoen aan de standaardvereisten, moet hij rekening houden met de gevolgen hiervan voor zijn werkzaamheden gericht op het verkrijgen van een aangepaste mate van zekerheid, rekening houdend met zijn risico-inschatting. De auditor kan beslissen dat het niet nodig is om bepaalde paragrafen in de standaarden toe te passen op de volledige periode van drie jaar waarop de controleverklaring betrekking heeft omdat:

- (a) het voldoende is om deze toe te passen met betrekking tot enkel de meest recente periode omdat voldoende en geschikte controle-informatie met betrekking tot eerdere periodes kan worden verkregen op basis van de meest recente periode; of
- (b) de controlestandaarden die destijds van toepassing waren voldeden aan dezelfde doelstellingen als de vereisten van de huidige standaarden.

De werkzaamheden van de auditor dienen te omvatten:

- (a) het onderzoeken van van materieel belang zijnde wijzigingen aan de beweringen (*assertions*) opgenomen in eerder gepubliceerde verklaringen betreffende de historische financiële informatie aangebracht bij het opstellen van de historische financiële informatie voor het prospectus en rekening houdend met elementen waarop de verantwoordelijke partij zich heeft gebaseerd om zich ervan te vergewissen dat de aanpassingen noodzakelijk zijn en dat zij correct werden bepaald;
- (b) het evalueren of alle noodzakelijke aanpassingen aan eerder gepubliceerde historische financiële overzichten werden aangebracht; en
- (c) ingeval de informatie is gebaseerd op eerder gepubliceerde financiële overzichten, het vergelijken van de historische financiële informatie met deze financiële overzichten en het beoordelen of de informatie hieruit correct werd afgeleid.

1.4.2. Pro Forma Informatie

De Verordening vereist ⁽¹⁴⁾ dat, in geval van een brutowijziging van betekenis met betrekking tot de activiteiten en de financiële positie van de uitgevende instelling, een beschrijving wordt gegeven van de wijze waarop de transactie het vermogen en de winst van de uitgevende instelling had kunnen beïnvloeden, indien deze transactie gesloten was geweest aan het begin van de verslagperiode of op de verslagdatum.

Aan deze vereiste wordt normaliter voldaan door pro forma financiële informatie op te nemen. De toezichthoudende instanties zullen bepalen wanneer pro forma financiële

⁽¹⁴⁾ Voor aandelen, zie Bijlage I, paragraaf 20.2.

informatie zal worden vereist, evenals de periodes waarop deze betrekking dient te hebben. De auditor wordt derhalve aangemoedigd om proactief contact te leggen met de toezichhoudende instanties teneinde vanaf het begin duidelijkheid te verkrijgen over het opnemen van pro forma financiële informatie.

Deze pro forma financiële informatie moet worden gepresenteerd overeenkomstig Bijlage II van de Verordening en moet de daarin beschreven gegevens omvatten.

De pro forma financiële informatie moet vergezeld gaan van een door de auditor opgesteld verslag.

8 In het door de auditor opgestelde verslag moet worden vermeld dat, naar zijn oordeel:

- de pro forma financiële informatie naar behoren is opgesteld op basis van de vermelde grondslagen;
- deze grondslagen in overeenstemming zijn met de door de uitgevende instelling gehanteerde grondslagen voor financiële verslaggeving.

1.4.3. Winstprognoses en -ramingen

Indien een uitgevende instelling een winstprognose of een winstraming wenst op te nemen, schrijft de Verordening ⁽¹⁵⁾ voor dat het registratiedocument een verklaring met de belangrijkste hypothesen die aan de prognose of raming van de uitgevende instelling ten grondslag liggen, moet bevatten.

De winstprognose of -raming moet worden opgesteld op een basis die vergelijkbaar is met die van de historische financiële informatie.

Er moet een duidelijk onderscheid worden gemaakt (in deze verklaring) tussen, enerzijds, hypothesen betreffende factoren die de leden van de bestuurs-, leidinggevende of toezichhoudende organen kunnen beïnvloeden en, anderzijds, hypothesen betreffende factoren waarop de leden van de bestuurs-, leidinggevende of toezichhoudende organen totaal geen invloed kunnen uitoefenen; de hypothesen moeten voorts gemakkelijk te begrijpen zijn door beleggers, zij moeten specifiek en precies zijn en zij mogen niet (uitsluitend) betrekking hebben op de algemene nauwkeurigheid van de ramingen die aan de prognose ten grondslag liggen. Dit is een voorwaarde voor de auditor om zijn controleverklaring te mogen uitbrengen. Het is aangewezen dat de auditor op een proactieve wijze overleg pleegt met de betrokken partijen teneinde de voorwaarden te verduidelijken.

Er moet een door de auditor opgesteld verslag worden opgenomen waarin wordt verklaard dat de winstprognose of -raming naar behoren is opgesteld op basis van de vermelde grondslagen en dat de boekhoudkundige grondslag voor het opstellen van de winstprognose of -raming in overeenstemming is met de grondslagen voor financiële verslaggeving van de uitgevende instelling.

⁽¹⁵⁾ Voor aandelen, zie Bijlage I, paragraaf 13; voor obligaties en derivaten, Bijlage IV, paragraaf 9 en Bijlage IX, paragraaf 8; voor certificaten van aandelen, Bijlage X, paragraaf 13; voor het registratiedocument voor banken, Bijlage XI, paragraaf 8.

1.4.4. Tussentijdse financiële informatie

Indien de uitgevende instelling na de datum van haar laatst gecontroleerde jaarrekeningen driemaandelijks of halfjaarlijkse financiële informatie heeft gepubliceerd, moet deze in het registratiedocument worden opgenomen. Indien de driemaandelijks of halfjaarlijkse financiële informatie aan een controle of beoordeling (*review*) is onderworpen, moet ook het verslag over deze controle of beoordeling (*review*) worden opgenomen. Indien dit niet het geval is, moet het prospectus daarvan melding maken.

Indien het registratiedocument dateert van meer dan negen maanden na het einde van het laatste gecontroleerde boekjaar, moet het tussentijdse financiële informatie bevatten die betrekking heeft op ten minste de eerste zes maanden van het boekjaar. Indien de tussentijdse financiële informatie niet gecontroleerd werd, dient dit in het prospectus te worden vermeld.

De tussentijdse financiële informatie moet vergelijkende overzichten voor dezelfde periode van het voorafgaande boekjaar omvatten, met dien verstande dat aan de vereiste dat vergelijkende balansgegevens moeten worden verstrekt, is voldaan wanneer de eindbalans van dat jaar wordt verstrekt.

De Verordening verwijst naar tussentijdse financiële informatie en tussentijdse financiële overzichten zoals in België werd bepaald in het koninklijk besluit van 14 november 2007 betreffende de verplichting van emittenten van financiële instrumenten die zijn toegelaten tot de verhandeling op een gereguleerde markt ⁽¹⁶⁾. Met betrekking tot internationale transacties (bv. aanbiedingen in de VS overeenkomstig Regel 144A) kunnen echter andere praktijken en verordeningen van toepassing zijn.

1.5. PRIVATE RAPPORTERINGOPDRACHTEN

Een private rapporteringopdracht wordt omschreven als “een opdracht in verband met een prospectus waarbij een auditor geen conclusie formuleert die in een prospectus wordt gepubliceerd”. Private rapporteringopdrachten zullen in het algemeen met zich meebrengen dat de auditor een privé-rapport opstelt voor één of meerdere uitgevende instellingen, *underwriters* of regelgevers op individuele of gezamenlijke wijze.

1.6. TOEPASSELIJKE NATIONALE NORMEN EN AANBEVELINGEN

1.6.1. Het aanvaarden en voortzetten van de opdracht

Wanneer de auditor zijn opdracht met betrekking tot het prospectus uitvoert, zal hij de bestaande aanbevelingen in verband met de aanvaarding en het voortzetten van de opdrachten, met name de “Aanvaarding van een opdracht door een bedrijfsrevisor” van het IBR, naleven.

⁽¹⁶⁾ B.S. 3 december 2007.

1.6.2. Het aanvaarden van de voorwaarden van de opdracht

De voorwaarden van de opdracht zullen in een opdrachtbrief worden beschreven die de reikwijdte, de respectievelijke aansprakelijkheden van de partijen, de vergoeding en andere voorwaarden vastlegt. Met betrekking tot de beperking van de aansprakelijkheid, wordt verwezen naar de wet van 22 juli 1953, zoals gecoördineerd door het koninklijk besluit van 30 april 2007 ⁽¹⁷⁾.

1.6.3. Het plannen en uitvoeren van de opdracht

Wanneer de auditor een opdracht met betrekking tot het prospectus uitvoert, zal hij de bestaande normen in verband met het plannen en het uitvoeren van de controleopdrachten, met name paragraaf 2.1. van de “Algemene controlenormen” van het IBR en de relevante aanbevelingen van de IBR-aanbeveling “Controleprogramma”, naleven.

1.6.4. Werkdocumenten

Wanneer de auditor zijn opdracht met betrekking tot het prospectus uitvoert, zal hij de wettelijke vereisten en de “Algemene controlenormen” van het IBR omtrent de werkdocumenten en de aanbevelingen van de IBR-aanbeveling “Werkdocumenten”, naleven.

1.6.5. Deontologische aspecten

Wanneer de auditor zijn opdracht met betrekking tot het prospectus uitvoert, zal hij de deontologische en onafhankelijkheidsaspecten die door de nationale wetgeving en de IBR-normen worden voorzien, naleven.

1.6.6. Bevestigingsbrief

Wanneer de auditor een opdracht met betrekking tot het prospectus uitvoert, zal hij nagaan hoe de “Bevestigingen van de leiding” van het IBR, op zijn specifieke controleopdracht moet worden toegepast.

1.6.7. Reporting

Wanneer de auditor zijn opdracht met betrekking tot het prospectus uitvoert, zal de auditor nagaan of de principes van de “Algemene controlenormen” van het IBR inzake de *reporting* en de wijziging van zijn oordeel, van toepassing zijn op de specifieke opdracht.

Verder zal de auditor nagaan of de principes van de “Algemene controlenormen” van het IBR met betrekking tot de gebeurtenissen tussen de datum van het auditorsverslag en de einddatum van de verrichting van toepassing zijn.

⁽¹⁷⁾ Wet van 22 juli 1953 houdende oprichting van een Instituut van de Bedrijfsrevisoren en organisatie van het publiek toezicht op het beroep van bedrijfsrevisor, *B.S.* 24 mei 2007, in het bijzonder artikel 17.

EXECUTIVE SUMMARY (FR)

1.1. INTRODUCTION

Conformément à la Directive 2003/71/CE ⁽¹⁾ (ci-après la « Directive Prospectus ») et au Règlement CE 809/2004 ⁽²⁾ de la Commission (ci-après le « Règlement »), un nouveau régime concernant les prospectus est entré en vigueur en Belgique. La Directive Prospectus a été transposée en droit belge moyennant la loi du 16 juin 2006 ⁽³⁾ (ci-après la « Loi »).

Le présent guide analyse le rôle du réviseur d'entreprises à l'égard des différentes parties au prospectus. La Loi, la Directive Prospectus et le Règlement traitent des informations à fournir dans un prospectus et imposent au réviseur d'entreprises l'obligation de publier certaines informations.

Ce guide a également tenu compte de divers autres documents qui donnent des recommandations ou conseils sur l'application du Règlement ou sur l'intervention du réviseur d'entreprises dans le cadre de l'émission d'un prospectus conformément au Règlement. Les autres documents sont publiés par le Comité européen des régulateurs des marchés de valeurs mobilières (CERVM) ⁽⁴⁾ et par la Fédération des Experts Comptables Européens (FEE) ⁽⁵⁾.

⁽¹⁾ Directive 2003/71/CE concernant le prospectus à publier en cas d'offre au public de valeurs mobilières ou en vue de l'admission de valeurs mobilières à la négociation, en ce qui concerne les compétences d'exécution conférées à la Commission, *J.O.U.E.*, L. 76, du 19 mars 2003, p. 37-38.

⁽²⁾ Règlement n° 809/2004 mettant en œuvre la directive 2003/71/CE du Parlement européen et du Conseil en ce qui concerne certains éléments afférents au prospectus et aux communications à caractère promotionnel, *J.O.U.E.*, L. 340, du 30 avril 2004, p. 1-137.

⁽³⁾ Loi du 16 juin 2006 relative aux offres publiques d'instruments de placement et aux admissions d'instruments de placement à la négociation sur des marchés réglementés, *M.B.*, 21 juin 2006.

⁽⁴⁾ *CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectus n° 809/2004*, février 2005; *CESR's advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in prospectus*, octobre 2005; *CESR's technical advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus*, juin 2005, <http://www.cesr-eu.org>

⁽⁵⁾ *Discussion Paper on the Auditor's involvement with the new EU Prospectus Directive*, novembre 2004; *Discussion Paper Comfort letters issued in relation to Financial Information in a Prospectus*, avril 2005; *Analysis of responses to the Discussion Paper on the Auditor's involvement with the new EU Prospectus Directive*, octobre 2005; *Analysis of responses to the Discussion Paper Comfort letters issued in relation to Financial Information in a Prospectus*, mai 2006, <http://www.fee.be>

1.2. LES ACTEURS CONCERNES

La Directive Prospectus requiert l'établissement d'un prospectus lorsque des valeurs mobilières (p. ex. actions, obligations) sont offertes au public ou doivent être admises à la négociation sur un marché réglementé de l'Union européenne (UE). En général, l'émission d'un prospectus implique un grand nombre d'acteurs différents ayant chacun leur rôle. Ci-après suit un résumé des principaux acteurs et de leurs tâches spécifiques:

- l'émetteur – une personne morale qui a émis, émet ou se propose d'émettre des valeurs mobilières ou souhaite être admise à la négociation sur un marché réglementé, doit émettre un prospectus ;
- les Autorités de régulation – dans chaque pays il y a une autorité qui, préalablement à l'émission, doit approuver le prospectus. Dans de nombreux cas ils détermineront l'étendue et la nature spécifique des informations, y compris des informations financières, devant être incluses dans le prospectus. Le Règlement prévoit que le régulateur du pays d'origine de l'émetteur doit approuver un prospectus en vue de l'émission dans n'importe quel pays de l'UE (appelé le *passporting* au sein de l'UE). En Belgique, ce rôle important de protection des investisseurs est joué par la Commission bancaire, financière et des assurances (CBFA). Lorsque la société souhaite être cotée, l'opérateur de marché peut imposer des obligations complémentaires qui devraient également être incluses dans le prospectus afin d'être admis sur un marché réglementé ;
- les souscripteurs – ce sont des intermédiaires entre l'émetteur et les investisseurs publics. Ils assistent la société à trouver des capitaux ou fonds. Ils jouent un rôle capital d'interaction entre le marché et tous les autres participants, y compris les autorités de régulation ;
- le conseiller des souscripteurs – il fournit des conseils juridiques aux souscripteurs et joue un rôle dans le cadre des diligences requises à respecter par les souscripteurs ;
- le conseiller de l'émetteur – il fournit des conseils juridiques à l'émetteur dans le cadre de l'émission du prospectus et prépare également la société à d'autres modifications concernant la bonne gouvernance et les statuts ;
- l'auditeur (réviseur d'entreprises) – le commissaire de l'émetteur doit, conformément au Règlement, émettre certains rapports et sera, dans de nombreux cas, le seul auditeur concerné. Toutefois, dans certaines conditions (dans le cadre de transaction plus complexe) il se peut que plusieurs auditeurs soient impliqués, notamment dans le cas d'informations financières pro forma relatives à des regroupements d'entreprises et d'autres transactions financières historiques complexes.

1.3. LES DILIGENCES REQUISES DANS LE PROSPECTUS ET L'INTERVENTION DE L'AUDITEUR

L'article 26, § 1^{er} de la Loi renvoie au Règlement en ce qui concerne des obligations plus détaillées relatives au contenu d'un prospectus.

Les Annexes au Règlement contiennent les différents schémas et modules et certains d'entre eux donnent des conseils sur l'intervention de l'auditeur.

La nature et l'étendue des informations à fournir dépendent de la nature de la transaction. Les exigences requises diffèrent selon que l'émetteur émet des (1) actions ⁽⁶⁾, (2) titres d'emprunt et instruments dérivés ⁽⁷⁾, (3) garanties ⁽⁸⁾, (4) titres adossés à des actifs ⁽⁹⁾ ou (5) certificats représentatifs d'actions ⁽¹⁰⁾.

En général, un prospectus doit contenir quatre différents types d'informations financières :

- (1) informations financières historiques ;
- (2) informations financières pro forma (dans certaines circonstances) ;
- (3) prévisions et estimations du bénéfice (dans certaines circonstances) ; et
- (4) informations financières intermédiaires (dans certaines circonstances).

Pour (1), (2) et (3) des rapports émis par un auditeur doivent être inclus dans un prospectus.

Dans la pratique, l'auditeur devra également fournir une lettre d'engagement (*comfort letter*) ⁽¹¹⁾ aux souscripteurs, ainsi qu'à l'émetteur. Une telle lettre d'engagement ne peut, en général, être fournie que par le commissaire étant donné qu'il s'agit d'une extension naturelle de son rôle et de ses connaissances acquises en sa qualité d'auditeur de l'entité.

Quant à la détermination des tâches et responsabilités des auditeurs en matière de présentation d'informations financières (historiques) dans le prospectus, il est clair qu'il existe certaines différences fondamentales entre la pratique actuelle et les attentes à l'égard de ces tâches et responsabilités au sein de l'UE.

Dans le cadre des tâches et responsabilités, il est fait référence au principe de limitation de la responsabilité (*liability cap regime*). En ce qui concerne ce principe de limitation de la responsabilité de l'auditeur pour lequel le présent guide n'a pas pour objectif d'aborder le champ d'application en Belgique, il est fait référence aux circulaires émises par l'Institut des Réviseurs d'Entreprises – Circulaires D.015/06 du 13 juillet 2006 et D.016/06 du 20 décembre 2006 concernant la limitation et l'assurance de la responsabilité civile professionnelle (révision coordonnée) et celles qui seront émises ultérieurement ⁽¹²⁾.

En dépit d'une éventuelle limitation de la responsabilité, l'attention est attirée sur le fait que la nature des missions dans le cadre desquelles l'auditeur doit faire rapport dans le contexte d'une société émettant un prospectus, implique en soi un risque technique et de réputation élevé.

⁽⁶⁾ Annexes I, III et XIV du Règlement.

⁽⁷⁾ Annexes IV, V, IX, XII, XIII, XV, XVI et XVII du Règlement.

⁽⁸⁾ Annexe VI du Règlement.

⁽⁹⁾ Annexes VII et VIII du Règlement.

⁽¹⁰⁾ Annexe X du Règlement.

⁽¹¹⁾ Cf. *infra*, Chapitre 5, point 5.3.6.

⁽¹²⁾ IRE, *Rapp. annuel*, 2006, p. 379-385.

Bien que l'auditeur n'est pas directement responsable de l'ensemble du prospectus, ni des informations qui y sont incluses, le présent guide recommande à l'auditeur d'évaluer si les informations contenues dans le prospectus sont en contradiction avec les connaissances qu'il a obtenues dans le cadre de l'exécution de ses contrôles et examens limités (*reviews*). Il est dès lors important que les utilisateurs de ce guide analysent soigneusement les points de vue adoptés dans ce document et fassent preuve de jugement professionnel à l'égard des diverses parties impliquées dans le processus du prospectus.

1.4. MISSIONS DE REPORTING PUBLIC TELLES QUE PRESCRITES PAR LA LOI

Le rapport établi par l'auditeur sur des informations financières historiques, intermédiaires et pro forma, ainsi que sur des prévisions et estimations du bénéfice relève d'une mission de *reporting* public. Comme susmentionné *supra*, l'auditeur devra dans de nombreux cas ne faire aussi directement rapport à des parties intéressées spécifiques. De telles missions sont appelées missions de *reporting* privé (*cf. infra*, point 1.5.).

1.4.1. Informations financières historiques

Le Règlement ⁽¹³⁾ requiert que les informations financières historiques vérifiées pour les trois derniers exercices et le rapport d'audit établi à chaque exercice soient inclus dans le prospectus.

Les informations financières historiques vérifiées pour les deux derniers exercices doivent être établies et présentées sous une forme compatible avec celle qui sera adoptée dans les prochains états financiers annuels que publiera l'émetteur, compte tenu des normes, des méthodes et de la législation comptables applicables auxdits états financiers annuels.

Les informations financières historiques annuelles doivent faire l'objet d'une vérification indépendante et d'une mention indiquant si, aux fins du document d'enregistrement, elles donnent une image fidèle, sur la base des travaux d'audit réalisés conformément aux normes d'audit applicables dans un Etat membre ou à une norme équivalente.

L'intervention des auditeurs dans de telles situations est la conséquence du fait que les rapports d'audit sur les informations historiques sont reproduits, et du niveau des procédures requises pour le *reporting* sur toutes nouvelles informations.

Le Règlement requiert que les informations financières historiques les plus récentes ne doit pas remonter à :

- (a) plus de 18 mois avant la date du document d'enregistrement, si l'émetteur inclut, dans celui-ci, des états financiers intermédiaires qui ont été vérifiés ;

⁽¹³⁾ Pour les actions, *cf.* Annexe I, paragraphe 20.1 ; pour les titres d'emprunt et instruments dérivés, Annexe IV, paragraphe 13 et Annexe IX, paragraphe 11 ; pour les titres adossés à des actifs, Annexe VII, paragraphe 8 ; pour les certificats représentatifs d'actions, Annexe X, paragraphe 20, pour le document d'enregistrement propre aux banques, Annexe XI, paragraphe 11.

- (b) plus de 15 mois avant la date du document d'enregistrement, si l'émetteur inclut, dans celui-ci, des états financiers intermédiaires qui n'ont pas été vérifiés.

Dès lors, en fonction de la date effective du prospectus, il peut être requis de l'auditeur d'émettre un rapport d'audit sur des états financiers intermédiaires, y compris les informations financières comparatives couvrant la même période.

Lorsque le jeu complet d'états financiers audités de l'émetteur ne correspond pas aux normes de préparation et de présentation prescrites par les règles applicables et devra dès lors être adapté afin que des informations financières historiques correspondant aux règles applicables puissent y être présentées, un nouveau rapport d'audit devra probablement être fourni. Par exemple, lorsque l'entité souhaite obtenir une cotation, les états financiers couvrant les deux derniers exercices doivent être établis et présentés sous une forme compatible avec celle qui sera adoptée dans le prochain jeu complet d'états financiers que publiera l'émetteur, compte tenu des normes, des méthodes et de la législation comptables applicables auxdits états financiers.

En outre, un nouveau rapport d'audit est utilisé lorsque l'émetteur a un historique financier complexe et qu'il n'existe pas d'états financiers audités représentant sa situation actuelle sous-jacents. Ou encore lorsque l'émetteur et/ou auditeur concluent que les informations financières préexistantes ne donnent pas une image fidèle aux fins du prospectus.

Lorsqu'un auditeur a été désigné pour établir un rapport d'audit, il doit recueillir des éléments probants suffisants et appropriés et donc respecter les normes applicables, afin d'exprimer une opinion sur l'image fidèle des informations financières aux fins du prospectus.

Une mission qui consiste à établir un rapport d'audit est une mission de *reporting* public. La description d'une mission de *reporting* public contient trois notions générales ayant les significations suivantes dans le contexte d'une mission qui consiste à faire rapport sur des informations financières historiques :

- (a) en ce qui concerne les informations financières historiques, le sujet considéré (*subject matter*) est la situation financière et les performances de l'entité pour la période couverte ;
- (b) les critères appropriés (*suitable criteria*) sont les exigences du référentiel comptable applicable et du Règlement ; et
- (c) en ce qui concerne les informations financières historiques, le résultat est constitué des informations financières historiques incluses dans le prospectus qui résultent du fait que la direction applique les critères appropriés au sujet considéré. L'auditeur exprime une opinion (dans le rapport d'audit) selon laquelle les informations financières historiques donnent, aux fins du prospectus, une image fidèle conformément au référentiel comptable applicable.

Le Règlement prévoit certaines obligations concernant la présentation des informations financières historiques dans un prospectus. Le Règlement requiert que les informations financières historiques fassent l'objet d'un audit ou « d'une mention indiquant si, aux fins du prospectus, elles donnent une image fidèle, sur base de travaux d'audit exécutés conformément aux normes d'audit applicables dans un Etat membre ou à une norme équivalente ».

Le réviseur d'entreprises doit :

- (a) acquérir la connaissance de l'objectif du prospectus ;
- (b) vérifier le référentiel comptable applicable conformément aux réglementations applicables ; et
- (c) examiner le caractère pertinent des méthodes comptables dans le cadre d'un tel référentiel comptable,

afin de déterminer si les informations financières historiques proposées, telles qu'établies par l'émetteur, peuvent donner une image fidèle aux fins du prospectus.

En général, le Règlement prévoit le référentiel comptable applicable aux informations financières historiques présentées dans un prospectus. Le Règlement requiert que les informations financières historiques audités pour les deux derniers exercices soient présentées sous une forme compatible avec celle qui sera adoptée dans les prochains états financiers annuels que publiera l'émetteur, compte tenu des normes, des méthodes et de la législation comptables applicables auxdits états financiers annuels.

Lorsqu'il détermine le caractère approprié des méthodes comptables en fonction de la transaction faisant l'objet du prospectus, l'auditeur doit s'assurer que la direction de l'émetteur a réalisé un examen approfondi des méthodes comptables ayant été appliquées pour l'établissement des informations financières historiques. L'auditeur doit également vérifier si les méthodes sont compatibles avec le référentiel comptable applicable.

Lorsque les normes d'audit applicables ont été modifiées durant la période couverte par les informations financières historiques ou lorsque l'auditeur se trouve dans l'impossibilité de mettre en œuvre des procédures prévues par les normes applicables, il doit tenir compte des conséquences pour ses procédures dans le cadre de l'obtention d'un certain degré d'assurance, compte tenu de son évaluation des risques. L'auditeur peut conclure qu'il n'est pas nécessaire d'appliquer certains paragraphes des normes à l'ensemble de la période de trois ans couverte par le rapport d'audit étant donné :

- (a) qu'il suffit de les appliquer uniquement à la période la plus récente en raison du fait que des éléments probants suffisants et appropriés afférents à des périodes antérieures peuvent être obtenus sur la base de la période la plus récente ; ou
- (b) que les normes d'audit qui étaient applicables contiennent les mêmes objectifs que les obligations des normes actuelles.

L'auditeur doit mettre en œuvre les procédures suivantes :

- (a) examiner les ajustements significatifs dans les assertions figurant dans les informations financières historiques déjà publiées, émises lors de la préparation des informations financières historiques pour le prospectus et compte tenu des éléments sur lesquels la partie responsable s'est fondée pour s'assurer que les ajustements sont nécessaires et qu'ils ont été définis correctement ;
- (b) évaluer si tous les ajustements nécessaires aux états financiers historiques déjà publiés ont été apportés ; et
- (c) pour les informations basées sur des états financiers déjà publiés, comparer les informations financières historiques à ces états financiers et évaluer si les informations en sont tirées correctement.

1.4.2. Informations financières pro forma

Le Règlement requiert ⁽¹⁴⁾, en cas de modification significative des activités et de la situation financière de l'émetteur, une description de la manière dont la transaction pourrait avoir influé sur l'actif, le passif et le résultat de l'émetteur, selon qu'elle aurait eu lieu au début de la période couverte ou à la date indiquée.

Cette obligation sera normalement remplie par l'inclusion d'informations financières pro forma. Les autorités de régulation détermineront les cas qui requièrent des informations financières pro forma, ainsi que les périodes à couvrir. Dès lors, l'auditeur est encouragé à se concerter de façon proactive avec les autorités de régulation afin d'obtenir, dès le début, des précisions sur l'inclusion d'informations financières pro forma.

Les informations financières pro forma doivent être présentées conformément à l'Annexe II du Règlement et inclure toutes les données qui y sont visées.

Elles doivent être assorties d'un rapport élaboré par l'auditeur.

Le rapport produit par l'auditeur doit attester que, de son avis :

- les informations financières pro forma ont été adéquatement établies, sur la base indiquée ;
- cette base est conforme aux méthodes comptables appliquées par l'émetteur.

⁽¹⁴⁾ Pour les actions, cf. Annexe I, paragraphe 20.2.

1.4.3. Prévisions et estimations du bénéfice

Si un émetteur choisit d'inclure une prévision ou une estimation du bénéfice dans le document d'enregistrement, le Règlement requiert ⁽¹⁵⁾ que celui-ci contienne une déclaration énonçant les principales hypothèses sur lesquelles l'émetteur a fondé sa prévision ou son estimation.

La prévision ou l'estimation du bénéfice doit être élaborée sur une base comparable aux informations financières historiques.

Il convient d'opérer (dans cette déclaration) une distinction nette entre, d'une part, les hypothèses relatives à des facteurs que peuvent influencer les membres des organes d'administration, de direction ou de surveillance et, d'autre part, les hypothèses relatives à des facteurs échappant totalement à leur influence. Ces hypothèses doivent, en outre, être aisément compréhensibles par les investisseurs, être spécifiques et ne pas (seulement) avoir trait à l'exactitude générale des estimations sous-tendant la prévision. C'est une condition pour que l'auditeur puisse émettre son rapport d'audit. Il est recommandé que l'auditeur se concertent de manière proactive avec les parties pertinentes afin de préciser ces conditions.

Un rapport élaboré par l'auditeur doit être inclus, stipulant que la prévision ou l'estimation du bénéfice a été adéquatement établie sur la base indiquée et que la base comptable utilisée aux fins de cette prévision ou estimation est conforme aux méthodes comptables appliquées par l'émetteur.

1.4.4. Informations financières intermédiaires

Si l'émetteur a publié des informations financières trimestrielles ou semestrielles depuis la date de ses derniers états financiers audités, celles-ci doivent être incluses dans le document d'enregistrement. Si ces informations financières trimestrielles ou semestrielles ont été examinées ou vérifiées, le rapport d'examen ou d'audit doit également être inclus. Si tel n'est pas le cas, le prospectus doit le préciser.

S'il a été établi plus de neuf mois après la fin du dernier exercice audité, le document d'enregistrement doit contenir des informations financières intermédiaires couvrant au moins les six premiers mois du nouvel exercice. Si les informations financières intermédiaires n'ont pas été vérifiées, cela doit être précisé dans le prospectus.

Les informations financières intermédiaires doivent être assorties d'états financiers comparatifs couvrant la même période que l'exercice précédent ; la présentation des bilans de clôture suffit toutefois à remplir l'exigence d'informations bilancielles comparables.

⁽¹⁵⁾ Pour les actions, cf. Annexe I, paragraphe 13 ; pour les titres d'emprunt et instruments dérivés, Annexe IV, paragraphe 9 et Annexe IX, paragraphe 8 ; pour les certificats représentatifs d'actions, Annexe X, paragraphe 13 ; pour le document d'enregistrement propre aux banques, Annexe XI, paragraphe 8.

Le Règlement renvoie aux informations financières intermédiaires, ainsi qu'aux états financiers intermédiaires, tels que définis en Belgique dans l'arrêté royal du 14 novembre 2007 relatif aux obligations des émetteurs d'instruments financiers admis à la négociation sur un marché réglementé⁽¹⁶⁾. En ce qui concerne les transactions internationales (p. ex. offres aux Etats-Unis conformément à la Règle 144A), d'autres pratiques et règlements peuvent toutefois être d'application.

1.5. MISSIONS DE REPORTING PRIVE

Une mission de *reporting* privé est définie comme « une mission étant en relation avec un prospectus dans le cadre de laquelle un auditeur ne formule pas de conclusion qui est publiée dans un prospectus ». Des missions de *reporting* privé impliquent en général que l'auditeur émette un rapport privé destiné à un ou plusieurs émetteurs, souscripteurs ou régulateurs, de manière individuelle ou combinée.

1.6. NORMES ET RECOMMANDATIONS NATIONALES APPLICABLES

1.6.1. Acceptation et continuation de la mission

Lorsque l'auditeur exécute sa mission sur le prospectus, il doit respecter les recommandations existantes relatives à l'acceptation et la continuation de la mission, c'est-à-dire, la recommandation de l'IRE : « Acceptation d'une mission par un réviseur d'entreprises ».

1.6.2. Acceptation des termes de la mission

Les termes de la mission doivent être décrits dans une lettre de mission qui définit le champ d'application, les responsabilités respectives des parties, les honoraires et autres conditions. Concernant la limitation de la responsabilité, il est fait référence à la loi du 22 juillet 1953, telle que coordonnée le 30 avril 2007⁽¹⁷⁾.

1.6.3. Planification et exécution de la mission

Lorsque l'auditeur exécute sa mission sur le prospectus, il doit respecter les normes relatives à la planification et à l'exécution de la mission, et en particulier le paragraphe 2.1. des « Normes générales de révision » de l'IRE et les recommandations pertinentes de la recommandation de l'IRE : « Programme de contrôle ».

⁽¹⁶⁾ M.B., 3 décembre 2007.

⁽¹⁷⁾ Loi du 22 juillet 1953 créant un Institut des Réviseurs d'Entreprises et organisant la supervision publique de la profession de réviseur d'entreprises, M.B., 24 mai 2007, en particulier article 17.

1.6.4. Documentation

Lorsque l'auditeur exécute sa mission sur le prospectus, il doit respecter les obligations légales et les « Normes générales de révision » de l'IRE relatives à la documentation ainsi que les recommandations de la recommandation de l'IRE : « Les documents de travail ».

1.6.5. Exigences éthiques

Lorsque l'auditeur exécute sa mission sur le prospectus, il doit respecter les exigences éthiques et d'indépendance prévues par les réglementations nationales et les normes de l'IRE.

1.6.6. Lettre d'affirmation

Lorsque l'auditeur exécute sa mission sur le prospectus, il doit considérer comment la norme de l'IRE « Déclarations de la direction » doit être appliquée à la mission spécifique.

1.6.7. Rapport

Lorsque l'auditeur exécute sa mission sur le prospectus, il doit considérer si les principes des « Normes générales de révision » de l'IRE relatives au rapport et à la modification de l'opinion, sont applicables à la mission spécifique.

En outre, l'auditeur doit considérer si les principes des « Normes générales de révision » de l'IRE relatives aux événements entre la date du rapport de l'auditeur et la date de la fin de l'opération s'appliquent.

CHAPTER 1

INTRODUCTION TO THE GUIDANCE ON THE AUDITORS' INVOLVEMENT IN THE CONTEXT OF A PROSPECTUS ISSUED UNDER THE EU COMMISSION REGULATION

1.1. INTRODUCTION

1. Following the Directive 2003/71/EC ⁽¹⁾ (hereinafter the “Prospectus Directive”) and the Commission Regulation 809/2004 ⁽²⁾ (hereinafter the “Regulation”), a new regime for prospectuses has become effective in Belgium. The Prospectus Directive has been implemented into the Belgian law under the law of 16 June 2006 ⁽³⁾ (hereinafter the “Law”).

This guidance discusses the role of the auditor in conjunction with various parts of the prospectus. The Law, the Prospectus Directive and the Regulation deal with the information required in a prospectus and place, for some of these, obligations on the auditor to report on them.

This guidance has also taken into account various other documents that give recommendations or advice on the application of the Regulation or on the auditor’s involvement in conjunction with the issuance of a prospectus under the Regulation. Such other documents were published by the Committee of European Securities Regulators (CESR) ⁽⁴⁾ and by the *Fédération des Experts Comptables Européens* (FEE) ⁽⁵⁾.

1.2. PLAYERS INVOLVED

2. The Prospectus Directive requires a prospectus to be prepared wherever securities (e.g. shares, bonds) are offered to the public, or where securities are to be admitted to trading in an European Union (EU)-regulated market. The delivery of a prospectus

⁽¹⁾ Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as regards the implementing powers conferred on the Commission, *O.J.*, L. 76, 19 March 2003, p. 37-38.

⁽²⁾ Regulation No. 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements, *O.J.*, L. 340, 30 April 2004, p. 1-137

⁽³⁾ Law of 16 June 2006 : *Loi relative aux offres publiques d’instruments de placement et aux admissions d’instrument de placement à la négociation sur des marchés réglementés*, *Belgian Official Journal*, 21 June 2006.

⁽⁴⁾ CESR’s recommendations for the consistent implementation of the European Commission’s Regulation on Prospectus No 809/2004, February 2005; CESR’s advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in prospectus, October 2005; CESR’s technical advice to the European Commission on a possible amendment to Regulation (EC) 809/2004 regarding the historical financial information which must be included in a prospectus, June 2005, <http://www.cesr-eu.org>

⁽⁵⁾ Discussion Paper on the Auditor’s involvement with the new EU Prospectus Directive, November 2004; Discussion Paper Comfort letters issued in relation to Financial Information in a Prospectus, April 2005; Analysis of responses to the Discussion Paper on the Auditor’s involvement with the new EU Prospectus Directive, October 2005; Analysis of responses to the Discussion Paper Comfort letters issued in relation to Financial Information in a Prospectus, May 2006, <http://www.fee.be>

generally involves many different players that each have their roles. The following summarizes the key players and their typical tasks:

- The Issuer – the legal entity that has issued, issues or proposes to issue securities or wants its shares to be admitted to trading in a regulated market is required to issue a prospectus;
- The Regulatory Authorities – in each country, there is an authority that needs to approve the prospectus prior to issuance. In many instances they will determine the amount and depth of the information, including financial information, to be included in the prospectus. The Regulation foresees that the regulator of the issuer’s home country should approve a prospectus for issuance in any EU country (the so-called EU passporting). In Belgium, the Banking, Finance and Insurance Commission (CBFA) plays this important role of protecting the investor community. If the Company seeks to be listed, the market operator may impose additional requirements that would also need to be addressed in the prospectus in order to be admitted to the regulated market;
- The Underwriters – they are intermediary between an issuer and the investing public. They will assist the company attract capital or funds. They play a key role interacting with the market and all other participants in the process, including the Regulatory Authorities.
- The Underwriters’ Counsel – he provides the underwriters with legal advice and play a role in the due diligence process the underwriters have to perform;
- The Issuer’s Counsel – he provides the Issuer with legal advice on the prospectus process and will also prepare the Company for any other changes in corporate governance and changes in bylaws;
- The auditors (registered auditor) – the statutory auditor of the issuer will have to write a number of reports as required by the Regulation and will in many cases be the only auditor involved in the process. However, it can occur (in more complex transactions) that multiple auditors are involved, notably when dealing with pro forma financial information on business combinations and other complex financial history transactions.

1.3. PROSPECTUS REQUIREMENTS AND THE AUDITOR’S INVOLVEMENT

3. Article 26, § 1, of the Law is referring to the Regulation for further detailed requirements regarding the content of a prospectus.

The Annexes to the Regulation include the different schedules and building blocks, and some of them provide guidance on the involvement of the auditor.

4. The nature and extend of the information to be provided depends on the nature of the transaction. The requirements are different whether the issuer is issuing (1) shares ⁽⁶⁾,

⁽⁶⁾ Annexes I, III and XIV of the Regulation

(2) debt and derivatives securities ⁽⁷⁾, (3) guarantees ⁽⁸⁾, (4) asset backed securities ⁽⁹⁾ or (5) depository receipts ⁽¹⁰⁾.

In general, four different types of financial information are typically required in a prospectus:

- (1) Historical financial information;
- (2) Pro forma financial information (in certain circumstances);
- (3) Profit forecasts and estimates (in certain circumstances); and
- (4) Interim financial information (in certain circumstances).

For (1), (2) and (3) reports issued by an auditor have to be included in a prospectus.

5. In practice, the auditor will typically also be requested to issue a comfort letter ⁽¹¹⁾ to the underwriters and the issuer. Such a comfort letter will generally only be provided by the statutory auditor as a natural extension of his role and acquired knowledge as auditor.

In determining the roles and responsibilities of auditors in the presentation of (historical) financial information in prospectuses, it is clear that there are a number of fundamental differences between current practice and expectations as regards these roles and responsibilities across the EU.

Talking about roles and responsibilities brings us directly to the liability cap regime. With respect to the auditor's cap on liability for which this document is not intended to provide full guidance in Belgium reference is made to the circulars that were issued by the Institute of Registered Auditors – Circulars D.015/06 and D.016/06 ⁽¹²⁾ and to those that may be issued in the future.

6. Notwithstanding the cap on liability, attention is drawn to the fact that the nature of engagements where an auditor is asked to report in the context of a company issuing a prospectus inherently involves an increased technical and reputational risk.

While the auditor has no direct responsibility for the prospectus as a whole and the information included in it, this guidance recommends the auditor to assess whether the information in the prospectus conflicts with the knowledge he has obtained performing his audits and reviews. It is therefore important that the users of this guidance carefully analyse the positions taken in this document and apply professional judgment when dealing with the multiple parties involved in a prospectus process.

⁽⁷⁾ Annexes IV, V, IX, XII, XIII, XV, XVI and XVII of the Regulation.

⁽⁸⁾ Annex VI of the Regulation.

⁽⁹⁾ Annex VII and VIII of the Regulation.

⁽¹⁰⁾ Annex X of the Regulation.

⁽¹¹⁾ Cf. *infra*, Chapter 5, point 5.3.6.

⁽¹²⁾ Cf. IBR-IRE, *Annual Report*, 2006, p. 379-385 (only available in Dutch and French).

1.4. PUBLIC REPORTING ENGAGEMENTS REQUIRED BY LAW

7. The auditors reporting on historical, interim and pro forma financial information, as well as on profit forecasts and estimates are all public reporting engagements. As already indicated, in many instances, the auditor will also be requested to report to specific interested parties only. Such engagements are referred to as private reporting engagements (*cf. infra*, point 1.5., n° 24).

1.4.1. Historical Financial Information

8. The Regulation ⁽¹³⁾ requires audited historical financial information covering the latest three financial years and the audit report in respect of each year to be included in the prospectus.

The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

The historical annual financial information must be independently audited and reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, based on audit work performed in accordance with auditing standards applicable in a Member State or an equivalent standard.

The principal implication for auditors in these situations arises from the consequences of the historical audit report being reproduced, and from the level of work required to report any new information.

The Regulation requires that the most recent historical financial information should not be older than one of the following:

- (a) 18 months from the date of the Registration document if the issuer includes audited interim financial statements in the registration document;
- (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.

Consequently, depending on the effective date of the prospectus, the auditor may be required to issue an audit report on interim period financial statements, including comparative financial information for the same period.

9. Where the issuer's audited complete set of general purpose financial statements do not meet the standards of preparation and presentation prescribed in the applicable rules

⁽¹³⁾ For the shares, Annex 1, paragraph 20.1; for debt and derivatives securities, Annex IV, paragraph 13 and Annex IX, paragraph 11; for asset backed securities Annex VII, paragraph 8; for depository receipts, Annex X, paragraph 20, for the Banks Registration Document, Annex XI, paragraph 11.

and needs, therefore, to be adjusted in order that historical financial information which complies with the applicable rules can be presented, a new auditor report is likely to be provided. For example, where the entity is seeking a listing, the financial statements for the last two years are required to be prepared and presented in a form consistent with that which will be adopted in the issuer's next published complete set of general purpose financial statements, having regard to accounting standards and policies and legislation applicable to such financial statements.

10. In addition, a new auditor report is issued where the issuer has a complex financial history and there are no underlying financial statements representative to the actual situation that have been audited. Or when the issuer and/or the auditor conclude that the pre-existing financial information does not give a true and fair view for the purposes of the prospectus.

11. When the auditor is engaged to prepare an auditor report, the auditor should obtain sufficient appropriate evidence, and therefore comply to the relevant Standards, to express an opinion as to whether the financial information presents a true and fair view, for the purpose of the prospectus.

12. An engagement to prepare an auditor report is a public reporting engagement. The description of a public reporting engagement includes three generic terms having the following meanings in the context of an engagement to report on historical financial information:

- (a) With respect to historical financial information the subject matter is the entity's financial position and performance for the periods being reported on;
- (b) The suitable criteria that are applicable are the requirements of the applicable financial reporting framework and of the Regulation; and
- (c) With respect to historical financial information the outcome is the historical financial information that is included in the prospectus and which has resulted from management applying the suitable criteria to the subject matter. The auditor expresses an opinion (in the "auditor's report") as to whether the historical financial information gives, for the purposes of the prospectus, a true and fair view in accordance with the applicable reporting framework.

13. The Regulation sets out certain requirements relating to the presentation of historical financial information in a prospectus. The Regulation requires that historical financial information is either audited or "reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard".

14. The auditor should:

- (a) Obtain an understanding of the purpose of the prospectus;

- (b) Ascertain which financial reporting framework is required to be used by the applicable regulations; and
- (c) Review the appropriateness of the accounting policies within such financial reporting framework,

in order to determine whether the proposed historical financial information prepared by the issuer is capable of giving a true and fair view, for the purposes of the prospectus.

15. Where historical financial information is presented in a prospectus the Regulation generally determines the applicable financial reporting framework. The Regulation requires the last two years audited historical financial information to be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to the accounting standards, policies and legislation applicable to such annual financial statements.

16. The auditor should satisfy himself that the management of the issuer have performed a thorough review of the accounting policies used in preparing the historical financial information in determining the accounting policies appropriate for the business following the transaction that is the subject of the prospectus. The auditor should also consider whether the policies are consistent with the applicable reporting framework.

17. Where applicable auditing standards have changed during the period covered by the historical financial information, or it is not practicable for the auditor to undertake procedures of the applicable standards, the auditor should consider the implications for his assurance procedures, having regard to his risk assessment. The auditor may be able to conclude that it is unnecessary to apply certain paragraphs in the standards throughout the three year period covered by the auditor report because:

- (a) It is sufficient to apply them with respect to the latest period only, because sufficient appropriate evidence relating to earlier periods can be obtained from the latest period; or
- (b) The auditing standards that were applicable at the time met the same objectives as the requirements of the current standards.

18. The auditor's procedures should include:

- (a) Examining material adjustments from previously published historical financial statements made during the course of preparing the historical financial information and considering the responsible party's basis for satisfying itself that the adjustments are necessary and whether they have been correctly determined;
- (b) Evaluating whether all necessary adjustments to previously published historical financial statements have been made; and

- (c) Where the information is based on previously published financial statements, comparing the historical financial information to those financial statements and assessing whether the information has been accurately extracted there from.

1.4.2. Pro Forma Financial Information

19. The Regulation requires ⁽¹⁴⁾, in the case of a significant gross change to the business and financial position of the issuer, a description of how these transactions might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.

20. This requirement will normally be satisfied by the inclusion of pro forma financial information. The regulatory authorities will determine in which instance pro forma financial information will be required as well as the periods to be covered. Therefore the auditor is encouraged to proactively liaise with the regulatory authorities in order to obtain clarity on the inclusion of pro forma financial information, early in the process.

This pro forma financial information is to be presented as set out in Annex II of the Regulation and must include the information indicated therein.

Pro forma financial information must be accompanied by a report prepared by the auditor.

The report prepared by the auditor must state that in his opinion:

- The pro forma financial information has been properly compiled on the basis stated;
- That basis is consistent with the accounting policies of the issuer.

1.4.3. Profits forecasts and estimates

21. If an issuer chooses to include a profit forecast or a profit estimate, the Regulation requires ⁽¹⁵⁾ that the registration document must contain a statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.

The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be

⁽¹⁴⁾ For the shares, Annex I, paragraph 20.2.

⁽¹⁵⁾ For the shares, Annex 1, paragraph 13; for debt and derivatives securities, Annex IV, paragraph 9 and Annex IX, paragraph 8; for depository receipts, Annex X, paragraph 13; for the Banks Registration Document, Annex XI, paragraph 8.

readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast. This is a condition imposed by the relevant audit and assurance standards for the auditor to be in a position to issue his report. It is recommended for the auditor to proactively liaise with all relevant parties as to these conditions.

A report is prepared by the auditor stating that the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used is consistent with the accounting policies of the issuer.

1.4.4. Interim Financial Information

22. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is un-audited or has not been reviewed, the prospectus should state that fact.

If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, covering at least the first six months of the financial year. If the interim financial information is un-audited this should be stated in the prospectus.

The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet.

23. The Regulation refers to interim financial information and interim financial statements, such information defined in Belgium in the Royal Decree of 14 November 2007 for issuers of securities on a regulated market ⁽¹⁶⁾ to be checked. However, in international transactions (e.g. offerings going into the US under Rule 144A) other practices and regulations may apply.

1.5. PRIVATE REPORTING ENGAGEMENTS

24. A private reporting engagement is defined as “an engagement in connection with a prospectus, in which an auditor does not express a conclusion that is published in a prospectus”. Private reporting engagements are likely to involve the auditor reporting privately to an issuer, the underwriter or the regulator, individually or in combination.

⁽¹⁶⁾ *Belgian Official Journal*, 3 December 2007.

1.6. APPLICABLE NATIONAL STANDARDS AND RECOMMENDATIONS

1.6.1. Engagement acceptance and continuance

25. When the auditor performs a prospectus engagement, he should respect the existing guidance related to engagement acceptance and continuance, that is to say, the IBR-IRE Recommendation “*Acceptation d’une mission par un réviseur d’entreprises*”.

1.6.2. Agreeing the terms of the engagement

26. The terms of the engagement should be described in an engagement letter defining scope, respective responsibilities, fees and other terms and conditions. Regarding the cap on liability, reference is made to the law of 22 July 1953, as coordinated on 30 April 2007 ⁽¹⁷⁾.

1.6.3. Planning and performing the engagement

27. When the auditor performs a prospectus engagement, he should respect the existing standards related to planning and performing the engagement, in particular the paragraph 2.1. of the IBR-IRE “*Normes générales de révision*” and the relevant recommendations of the IBR-IRE recommendation “*Programme de contrôle*”.

1.6.4. Documentation

28. When the auditor performs a prospectus engagement, he should respect the legal requirements and the IBR-IRE “*Normes générales de révision*” concerning the documentation and also the recommendations of the IBR-IRE recommendation “*Les documents de travail*”.

1.6.5. Ethical requirements

29. When the auditor performs a prospectus engagement, he should respect the ethical and independence requirements provided by the national regulation and IBR-IRE standards.

1.6.6. Representation letter

30. When the auditor performs a prospectus engagement, he should consider whether the IBR-IRE standard “*Déclarations de la direction*” applies.

⁽¹⁷⁾ Law of 22 July 1953 regarding the establishment of an Institute of Registered Auditors and the organisation of the public oversight on the auditing profession (free translation), *Belgian Official Journal*, 24 May 2007, in particular article 17.

1.6.7. Reporting

31. When performing a prospectus engagement, the auditor should consider whether the principles of the IBR-IRE “*Normes générales de révision*” that are applicable to reporting and modified opinion, should be applied to his specific engagement.

32. Furthermore, the auditor should consider whether the principles of the IBR-IRE “*Normes générales de révision*” related to events occurring between the date of the auditor report and the completion date of the transaction apply.

CHAPTER 2

GUIDANCE APPLICABLE TO REPORTING ON PRO FORMA FINANCIAL INFORMATION

2.1. INTRODUCTION

33. An engagement to report publicly on the proper compilation of pro forma financial information is a public reporting engagement required by the Regulation. The description of a public reporting engagement includes three generic terms having the following meanings in the context of an engagement to report on the proper compilation of pro forma financial information:

- (a) With respect to pro forma financial information the “subject matter” is the impact that the transaction, that may trigger the requirement to present pro forma financial information, would have had on the earnings of the issuer (assuming that the transaction had been undertaken at the commencement of the financial period used for the illustration) or on the assets and liabilities of the issuer (assuming that the transaction had been undertaken at the end of the financial period used for the illustration);
- (b) “Suitable relevant criteria” to be used by directors (the issuer) in the preparation of the pro forma financial information are provided by the requirements of the Regulation and the guidance issued by CESR ⁽¹⁸⁾ (CESR Recommendations). In forming its opinion as to whether the pro forma financial information has been properly compiled, the auditor considers whether certain of those criteria (“auditor relevant criteria”) have been properly applied. The auditor relevant criteria are set out in Appendix 5.1. of these guidelines; and
- (c) With respect to pro forma financial information the “outcome” ⁽¹⁹⁾ is the pro forma financial information and related disclosures that are included in the prospectus and on which the auditor expresses an opinion as to whether that information is properly compiled on the basis stated and whether such basis is consistent with the accounting policies of the issuer.

2.2. THE NATURE OF PRO FORMA FINANCIAL INFORMATION

34. For the purpose of this guidance “pro forma financial information” is defined to include financial information such as a balance sheet and income statement that demonstrate the impact of a transaction on previously published financial information together with the explanatory notes thereto. Under item 1 of Annex II of the Regulation, the pro forma financial information must be accompanied by introductory text describing the transaction, the businesses or entities involved, the period to which it refers and the purpose and limitations of the pro forma financial information presented.

⁽¹⁸⁾ CESR issued “CESR’s Recommendations for the Consistent Implementation of the European Commission’s Regulation on Prospectuses No. 809/2004” in February 2005.

⁽¹⁹⁾ The “outcome” is sometimes described as “subject matter information”.

35. CESR has issued recommendations with respect to pro forma financial information ⁽²⁰⁾.

2.3. COMPILATION PROCESS

36. The compilation of pro forma financial information is the gathering, classification and summarization of relevant financial information. The process followed by the preparer would be expected to include the following:

- (a) The accurate extraction of information from sources permitted under the Regulation;
- (b) The making of adjustments to the source information that is arithmetically correct, appropriate and complete for the purpose of which the pro forma financial information is presented;
- (c) Arithmetic computation of the pro forma financial information;
- (d) Consideration of accounting policies;
- (e) Appropriate disclosure to enable the intended users to understand the pro forma financial information; and
- (f) Appropriate consideration of the pro forma financial information and approval by the directors of the entity.

2.4. LEGAL AND REGULATORY REQUIREMENTS

37. The Regulation requires any pro forma financial information included in a prospectus to be reported on by auditors and specifies the form of opinion to be given. The regulatory authority (CBFA) may require any pro forma financial information included in an applicable prospectus to be reported on in the same way. When dealing with a cross border listing or foreign exchange regulator, other requirements over and above the Regulation may apply.

38. Appendix 5.1. to these guidelines set out those provisions of the Regulation and the CESR recommendations, relating to the implementation of the Regulation, that provide the suitable criteria for the issuer presenting pro forma financial information. Those provisions that constitute relevant criteria for an auditor expressing an opinion on whether the pro forma financial information has been properly compiled, are set out in Appendix 5.1. of these guidelines.

⁽²⁰⁾ CESR's Recommendations for the Consistent Implementation of the European Commission's Regulation on Prospectus No. 809/2004, February 2005, p. 20-22.

39. The auditor should obtain an understanding of the key factors affecting the subject matter sufficient to identify and assess the risk of the pro forma financial information not being properly compiled and sufficient to design and perform evidence gathering procedures including:

- (a) The nature of the transaction being undertaken by the issuer;
- (b) The entity's business; and
- (c) The procedures adopted, or planned to be adopted, by the directors for the preparation of the pro forma financial information.

40. The auditor gains an understanding of the transaction, in respect of which the pro forma financial information is being prepared, by discussion with the directors or management of the issuer and by reading relevant supporting documentation.

41. The auditor uses professional judgment to determine the extent of the understanding required of the entity's business. While the level of understanding is a matter of professional judgment, it is generally believed that any auditor would need to have the level of understanding defined in International Standard on Review Engagements "Review of Interim Financial Information Performed by the Independent Auditor of the Entity" (ISRE 2410), which includes an understanding of the entity, its environment and its internal controls. Knowledge of such entity would be required for any entity on which information is included in the pro forma financial information. Other situations where the auditor may need additional knowledge are described further in this document.

42. Other matters for consideration by the auditor include the availability of evidence to provide factual support for the proposed adjustments and the accounting policies that will form the basis of the adjustments made in order to compile the pro forma financial information.

43. The auditor should consider materiality and public reporting engagement risk in planning his work in determining the effect of his findings on the report to be issued.

2.5. MATERIALITY

44. Matters are material if their omission or misstatement could, individually or collectively, influence the economic decisions of the intended users of the pro forma financial information. Materiality depends on the size and nature of the omission or misstatement judged in light of the circumstances. The size or nature of the matter, or a combination of both, could be the determining factor.

45. A misstatement in the context of the compilation of pro forma financial information includes, for example:

- Use of an inappropriate source for unadjusted financial information.

- Incorrect extraction of unadjusted financial information from an appropriate source.
- In relation to adjustments, the misapplication of accounting policies or failure to use the accounting policies adopted in the last, or to be adopted in the next, financial statements.
- Failure to make an adjustment required by the Regulation.
- Making an adjustment that does not comply with the Regulation.
- A mathematical or clerical mistake.
- Inadequate, or incorrect, disclosures.

46. Evaluating whether an omission or misstatement could influence economic decisions of the intended users of the pro forma financial information, and so be material, requires consideration of the characteristics of those intended users. The intended users are assumed to:

- (a) Have a reasonable knowledge of business, economic activities, accounting and a willingness to study the pro forma financial information with reasonable diligence; and
- (b) Make reasonable economic decisions on the basis of the pro forma financial information.

The determination of materiality, therefore, takes into account how intended users with such characteristics could reasonably be expected to be influenced in making economic decisions.

2.6. ENGAGEMENT RISK

47. “Engagement risk” is the risk that the auditor expresses an inappropriate opinion in case the pro forma financial information has not been properly compiled on the basis stated or when that basis is not consistent with the accounting policies of the issuer ⁽²¹⁾.

48. The auditor should obtain sufficient appropriate evidence that the pro forma financial information is free from material error in its compilation by:

- (a) Checking that the unadjusted financial information of the issuer has been accurately extracted from a source that is both appropriate and in accordance with the relevant regulation;
- (b) Obtaining evidence that the directors have applied the criteria set out in Appendix 5.1. of this guidance and, therefore, that the adjustments are appropriate and complete for the purpose for which the pro forma financial information is presented; and

⁽²¹⁾ The Prospectus Directive requires a positive and unmodified opinion – for this reason there is no risk that the auditor will inappropriately modify its opinion.

(c) Checking that the calculations within the pro forma financial information are arithmetically correct.

49. Item 5 of Annex II of the Regulation permits pro forma financial information to be published only in respect of:

- (a) The current financial period;
- (b) The most recently completed financial period; and
- (c) The most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same prospectus.

2.7. UNADJUSTED FINANCIAL INFORMATION OF THE ISSUER

50. The auditor considers whether the period in respect of which the pro forma financial information is proposed to be published is permitted under the Regulation. The auditor also considers whether the source of the unadjusted financial information for the issuer is appropriate and whether the source of the unadjusted financial information is clearly stated.

51. The auditor is not required to perform specific procedures on the unadjusted financial information of the issuer other than as described in paragraph 63. However, if the auditor has reason to believe that the unadjusted financial information is, or may be, unreliable, or if a report thereon has identified any uncertainties or disagreements, the auditor considers the effect on the risk that the pro forma financial information be misstated.

52. The auditor checks the extraction performed of the unadjusted financial information from the source concerned.

2.8. ADJUSTMENTS

53. Item 6 of Annex II to the Regulation requires pro forma adjustments to be:

- (a) Clearly shown and explained;
- (b) Directly attributable to the transaction; and
- (c) Factually supportable.

54. In addition, in respect of a pro forma profit and loss, they must be clearly identified as to those adjustments which are expected to have a continuing impact on the issuer and those which are not.

55. More detailed guidance for directors concerning the implementation of these requirements is provided by the CESR recommendations ⁽²²⁾.

56. The auditor considers the way in which the directors have fulfilled their responsibilities. With its understanding of the transaction and the entity's business as background the auditor discusses with the directors the steps the directors have taken to identify relevant adjustments and whether such adjustments are permitted to be made.

57. If, as a result of these enquiries, the auditor becomes aware of a significant adjustment which, in its opinion, ought to be made for the purposes of the pro forma financial information, he discusses the position with the directors of the issuer and, if necessary, the issuer's advisers. If the auditor is not able to agree with the directors and the issuer's advisers as to how the matter is to be resolved, he considers the consequences for its report.

58. The auditor considers the adjustments to assess whether they are "directly attributable" to the transaction whose impact is being illustrated by the pro forma financial information, that is, they are an integral part of the transaction concerned.

If a potential adjustment is not directly attributable to the transaction or transactions described in the prospectus, it cannot be made (although it may be appropriate to disclose by way of note to the pro forma financial information the nature of a prohibited potential adjustment and the effect it would have had if it had been permissible to include it). Thus although directly attributable is a matter of professional judgment, due care should be applied to avoid inclusion of adjustments that reflect operational reorganisations which occur from time to time in any operating business and that are not directly linked to the transaction.

Indeed, directly attributable adjustments should be applied only to those events or decisions for which the link to the occurrence of the event or decision and the transaction is objectively clear and would otherwise not have occurred (i.e. integral part).

59. In assessing whether adjustments are directly attributable to the transaction, the auditor considers whether the adjustments relate to future events and/or decisions. This is because adjustments that are related to the transaction being illustrated but which are dependent on actions to be taken once the transaction has been completed, cannot be said to be "directly attributable".

60. The auditor considers whether the adjustments have been clearly shown and explained and, in respect of for instance a pro forma profit and loss, whether they have been clearly identified as to those which are expected to have a continuing impact on the issuer (that is, relate to events or circumstances that are expected to recur) and to those which are not.

⁽²²⁾ CESR's Recommendations for the Consistent Implementation of the European Commission's Regulation on Prospectus No. 809/2004, February 2005, p. 21.

61. The auditor obtains appropriate evidence that the directors of the issuer have factual support for each adjustment. Sources of such evidence would include published financial statements, other financial information or valuations disclosed elsewhere in the prospectus, purchase and sale agreements and other agreements relating to the transaction.

2.9. OMITTED ADJUSTMENTS

62. In view of the specific restrictions on the nature of the adjustments permitted to be made under item 6 of Annex II of the Regulation, the directors may not be permitted to make all the adjustments that they would otherwise wish to. For example, an adjustment which is directly attributable but which is not factually supportable could not be included in pro forma financial information.

63. If any adjustments are excluded because of the requirement in item 6 of Annex II of the Regulation for adjustments to be factually supportable, the auditor considers the effect on the pro forma financial information and in particular whether the exclusion renders the pro forma financial information misleading.

In such circumstances, the auditor may consider that disclosure in the notes to the pro forma financial information of the fact that such an adjustment has not been made is sufficient in the context of the overall purpose of the pro forma financial information.

64. However, if the auditor, based on the procedures outlined in this guidance, has knowledge of an omitted adjustment that is so fundamental as to render the pro forma statement misleading in the context of the prospectus, he discusses the matter with the directors and, if necessary, the issuer's advisers. In the case that acceptable changes to the disclosures are not made, the auditor should consider whether he is able to issue its report.

2.10. CHECKING THE CALCULATIONS

65. The auditor ascertains whether the adjustments made in the pro forma financial information are included under the appropriate financial statement caption as well as the arithmetical accuracy of the calculations within the pro forma financial information itself.

2.11. CONSISTENT ACCOUNTING POLICIES

66. The auditor should evaluate whether the adjustments made to the unadjusted financial information are consistent with the accounting policies adopted in the last, or to be adopted in the next, financial statements of the entity presenting the pro forma financial information.

67. It is the responsibility of the directors (the issuer) to ensure that in accordance with item 4 of Annex II of the Regulation the pro forma financial information is prepared in a manner consistent with either the accounting policies adopted in the last, or to be adopted in the next, financial statements of the issuer.

68. Where the auditor is not the statutory auditor of the issuer or has not otherwise reported on the financial information relating to the subject of the transaction, he evaluates the steps taken to ensure that the pro forma financial information has been prepared in a manner consistent with the accounting policies of the issuer. It is generally understood that assessing the consistency of the accounting policies requires an understanding of the entity as defined in ISRE 2410 and in audited historical financial statements framework. However, in circumstances where an entity has prepared its accounting records in an accounting framework that is different from the issuer, assessing consistency of the accounting policies would most likely require performing procedures that are substantially the same as those performed in an audit.

2.12. PRESENTATION OF PRO FORMA FINANCIAL INFORMATION

69. The auditor should consider whether he has become aware of anything to cause him to believe that the pro forma financial information is presented in a way that is not understandable or misleading in the context in which it is provided.

If, based on the procedures described in this guidance, the auditor is aware of such matters he should discuss them with the parties responsible for the pro forma financial information and with those persons to whom his report is to be addressed, and consider whether he is able to issue its report.

70. The auditor reads the pro forma financial information to assess whether:

- (a) As required by item 1 of Annex II of the Regulation, the pro forma financial information includes a description of the transaction, the businesses or entities involved and the period to which it refers and clearly states the purpose for which it has been prepared, that it has been prepared for illustrative purposes only and that, because of its nature, it addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results;
- (b) In accordance with the normal form of presentation under item 3 of Annex II of the Regulation, the pro forma financial information is 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; and
- (c) Disclosures, in the notes to the pro forma financial information, concerning omitted adjustments are satisfactory (*cf. supra*, par. 62-64).

2.13. RESPONSIBILITIES

71. In all reports on pro forma financial information in prospectuses the auditor should explain the extent of his responsibility in respect of the pro forma financial information by including in his report:

- (a) A statement that the auditor's responsibility is to form an opinion (as required by the Regulation requirements) on the proper compilation of the pro forma financial information and to report its opinion to the addressees of the report; and
- (b) A statement that the pro forma financial information is the responsibility of the directors (referring to relevant caption of the prospectus document).

72. The auditor's responsibility in relation to the opinion required by the Prospectus Directive is limited to the provision of the report and the opinion expressed.

2.14. BASIS OF PREPARATION OF THE PRO FORMA FINANCIAL INFORMATION

73. The auditor should include a basis of preparation section in his report, referring to the disclosures that explain the basis of preparation of the pro forma financial information.

74. The basis of preparation section of the report will make clear whether the accounting policies applied in the preparation of the pro forma financial information, are those adopted by the entity in preparing the last published financial statements or those that it has formally decided to adopt in the next published financial statements.

2.15. WORDING OF OPINION

75. The report on the pro forma financial information should contain the wording of opinion that complies with applicable regulatory requirements.

76. In forming his opinion the auditor takes account of those events which he becomes aware of occurring up to the date on which he signs the report, that affect the opinion expressed in the report.

77. In providing the opinion required by the Regulation, the auditor is not providing any assurance in relation to any source of financial information on which the pro forma financial information is based beyond that opinion. In particular, the auditor is not refreshing or updating any opinion that he may have given in any other capacity on that source financial information.

78. The prospectus in which the independent auditor report is included may be made available in other countries, such as the United States of America, which have their

own standards for accountants when reporting on pro forma financial information. In such circumstances, the auditor should either consider to include a reference to the fact that a report issued in accordance with this guidance should not be relied upon as if it had been issued in accordance with the standards applicable in that other country. Alternatively, the auditor should consider removing the opinion of the circular if and when local practices or requirements, in those foreign countries in which the prospectus is also distributed, would not require the inclusion of an auditor opinion on such pro forma financial information. In the latter case, two versions of the prospectus would be distributed with appropriate measures to ensure that in each version, it is clearly stated for which individual market solely the report applies; potential investors either obtain prospectus appropriate for their market or obtain a copy that clearly identifies the market for which it is intended to be used. An example of such a reference is included in the example report set out in Appendix 5.1. of these guidelines.

2.16. MODIFIED OPINIONS

79. In the event that the auditor concludes he is unable to report in the manner prescribed, he considers, with the parties to whom he is to report, whether the pro forma financial information can be amended to alleviate his concerns or whether the pro forma financial information should be omitted from the prospectus and the requirement for information to be given on the effect of the transaction satisfied in some other way.

80. As the Regulation requires a positive and unmodified opinion, the auditor should generally not express an opinion when the directors have not applied the criteria set out in Appendix 5.1. of this guidance and, in the auditor's judgment the effect of not doing so is, or may be, material. In other situations, where the auditor has not been able to perform sufficient procedures as outlined in his guidance, the auditor should consider a scope limitation to reflect that fact. The auditor would need to assess if, with the scope limitation, sufficient procedures have been performed to express an opinion with scope limitation.

An example of a report on pro forma financial information expressing a positive and unmodified opinion, pursuant to the Regulation, is set out in Appendix 5.1. of these guidelines.

2.17. CONSENT

81. Reference is made to section 4.2.

2.18. EVENTS OCCURRING BETWEEN THE DATE OF THE INDEPENDENT AUDITOR REPORT AND THE COMPLETION DATE OF THE TRANSACTION

82. If, as a result of discussions with those responsible for the prospectus concerning an event that occurred prior to the completion date of the transaction, the auditor is either uncertain about or disagrees with the course of action proposed, he may consider it necessary to take legal advice with respect to his responsibilities in the particular circumstances.

After the date of his report, the auditor has no obligation to perform additional procedures regarding the pro forma financial information included in the prospectus.

CHAPTER 3

GUIDANCE FOR AUDITORS TO REPORT ON PROFIT FORECASTS AND ESTIMATES IN THE CONTEXT OF THE REGULATION

3.1. INTRODUCTION

83. This guidance applies to all types of profit forecasts allowed under the Regulation. This Regulation allows issuers the choice of whether to include profit forecasts or estimates in a prospectus that is prepared under the requirements of the Regulation. However, in case they are included, issuers have to adhere to several requirements, including the inclusion in the prospectus of a report issued by the auditor.

84. This guidance includes explanatory and other material, including appendices, in the context of which the basic principles and essential procedures are to be understood and applied. It is necessary to consider the whole text of the guidance to understand and apply the basic principles and essential procedures.

3.2. OBJECTIVE

85. In order to provide an opinion on the proper compilation of a profit forecast or estimate, the auditor should carry out the procedures required to become satisfied that the profit forecast or estimate is:

- Reliable;
- Understandable; and
- Comparable.

86. The concepts of reliability, understandability and comparability will be elaborated on in these guidelines. The objective of these guidelines is to provide guidance on the procedures to be performed by the auditor, based upon applicable guidance taken from the International Standards on Assurance Engagements, ISAE 3000 “Assurance Engagements Other Than Audits or Reviews of Historical Financial Information” and ISAE 3400 “The Examination of Prospective Financial Information”.

3.3. REFERENCES TO THE REGULATION

87. The Regulation allows issuers the choice of whether to include profit forecasts or estimates. However, where they are included, issuers have to adhere to the following requirements, including a report by the auditor (Annex I, item 13 of the Regulation):

“13.1 A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate”.

88. The statement setting out the principal assumptions should be made by the issuer and there must be a clear distinction between assumptions about factors that the members of the administrative, management or supervisory bodies can influence, and assumptions about factors that are exclusively outside the influence of the members of the administrative, management or supervisory bodies. The assumptions must be readily

understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.

“13.2 A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors 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”.

89. The Regulation requires auditors to report on profit forecasts and estimates stated in a prospectus. As such, it is important that guidance is provided to auditors regarding the reporting requirements. Such guidance should be based as much as possible on existing international standards and should make it clear what level of assurance should be provided and what the nature and extent of the auditor’s procedures should be.

“13.3 The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

13.4 If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case”.

90. For the auditor to be in a position to report on profit forecasts or estimates, the issuer should have used a recognised framework for preparing profit forecasts or estimates. The basic principles for such a framework have been put forward by CESR ⁽²³⁾. Such a framework is necessary to clarify the respective responsibilities of the issuer and the auditor.

3.4. DEFINITIONS

91. Article 2 (10) of the Regulation defines the term profit forecast as follows:

“Profit forecast means a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used.” (emphasis added)

92. Article 2 (11) of the Regulation defines the term profit estimate as follows:

“Profit estimate means a profit forecast for a financial period which has expired and for which results have not yet been published.”

⁽²³⁾ CESR’s Recommendations for the Consistent Implementation of the European Commission’s Regulation on Prospectus No. 809/2004, February 2005, p. 11-13.

3.5. REQUIREMENTS

93. Following the recommendations made by CESR ⁽²⁴⁾, the following principles should be taken into consideration when profit forecasts or estimates are being compiled. Profit forecasts or estimates should be:

- Understandable, i.e. Profit forecasts or estimates should contain disclosure that is not too complex or extensive for investors to understand;
- Reliable, i.e. Profit forecasts should be supported by a thorough analysis of the issuer’s business and should represent factual and not hypothetical strategies, plans and risk analysis;
- Comparable, i.e. Profit forecasts or estimates should be capable of justification by comparison with outcomes in the form of historical financial information;
- Relevant, i.e. Profit forecasts or estimates must have an ability to influence economic decisions of investors and provided on a timely basis so as to influence such decisions and assist in confirming or correcting past evaluations or assessments.

94. All of the above elements should be considered by the issuer in preparing and presenting profit forecasts and estimates.

95. The following IAASB standards are of particular interest for the auditor report on profit forecasts or estimates in prospectuses:

- ISAE 3400, “The Examination of Prospective Financial Information” (previously ISA 810);
- ISAE 3000, “Assurance Engagements Other Than Audits or Reviews of Historical Financial Information”.

96. The auditor, upon reporting on profit forecasts and estimates, should cover the aspects of understandability, reliability and comparability. More specifically, as outlined in paragraph 26 of ISAE 3400, the auditor should consider whether:

- (a) The presentation of prospective financial information is informative and not misleading;
- (b) The accounting policies are clearly disclosed in the notes to the prospective financial information;
- (c) The assumptions are adequately disclosed in the notes to the prospective financial information. It needs to be clear whether assumptions represent management’s best-estimates or are hypothetical and, when assumptions are made in areas that are material and are subject to a high degree of uncertainty, this uncertainty and the resulting sensitivity of results needs to be adequately disclosed;
- (d) The date as of which the prospective financial information was prepared is disclosed. Management needs to confirm that the assumptions are appropriate as of this date,

⁽²⁴⁾ *Ibid.*, p. 12.

even though the underlying information may have been accumulated over a period of time;

- (e) The basis of establishing points in a range is clearly indicated and the range is not selected in a biased or misleading manner when results shown in the prospective financial information are expressed in terms of a range; and
- (f) Any change in accounting policy since the most recent historical financial statements is disclosed, along with the reason for the change and its effect on the prospective financial information.

3.5.1. Detailed guidance based on ISAE 3400

97. The purpose of 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”*.

98. The requirements in the Regulation are also directed at general or narrative profit forecast statements. 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.

99. There is a clear conflict between the standard and the requirement of the Regulation.

100. Properly compiled goes beyond simple mathematical accuracy but the auditor report does not comprise an assessment whether the assumptions are complete or reasonable nor whether the forecast is effectively achievable. 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.

101. The compilation of a profit forecast is the gathering, classification and summarisation of relevant financial information. The process followed by the preparer, and to be assessed by the auditor, should include:

- Appropriate analysis of the business (what is appropriate will depend on a number of factors including the complexity and predictability of the business and the length of the period being forecast and accordingly the content, degree of detail and presentation of such analyses may vary significantly);
- Identification of material uncertainties;
- Selection of appropriate assumptions;
- Where relevant, identification of and reference to, appropriate third party information (e.g. market research reports);

- Arithmetic computation of the profit forecast;
- Appropriate sensitivity analysis;
- Appropriate disclosures to enable the intended users to understand the profit forecast; and
- Appropriate consideration of the profit forecast and approval of it by the directors of the entity.

A. Engagement consideration prior to start of fieldwork

102. Prior to engaging himself to perform detailed procedures and to issue a report, the auditor should understand the context in which the profit forecast or estimate is provided and proper arrangements should be formalized in an engagement letter with the client. Such engagement letter should, at a minimum, include the following:

Engagement letter clauses:

- The prospectus will contain a profit [forecast] [estimate] for the company for the period [ending] [ended] [date] (the prospective financial information “PFI”) prepared and presented in accordance with EU Regulation No. 809-2004. We will prepare a report on the profit [forecast] [estimate] expressing our opinion on the profit [forecast] [estimate] to be included in the prospectus.
- We will ask the Directors to make certain representations to us regarding the PFI. If the PFI is intended only to be a hypothetical illustration, or the Directors are unable to make such representations to us, we will not wish to be associated with the PFI and accordingly, will be unable to report publicly on it.
- The preparation and presentation of the PFI will be the responsibility solely of the Directors. This responsibility included the identification and disclosure of the assumptions underlying the PFI. The Directors are also responsible for ensuring that the PFI is prepared and presented in accordance with EU Regulation No. 809-2004. We will require the Directors to formally adopt the PFI before we report on it.
- It is our responsibility to form an opinion as to whether the profit [forecast] [estimate] has been properly compiled on the basis stated and whether such basis is consistent with the accounting policies normally adopted by the Company. If the results of our work are satisfactory, and having regard to the requirements of EU Regulation No. 809-2004, we shall prepare a report on the profit [forecast] [estimate] for inclusion in the prospectus. An illustration of the form of our report is attached.
- Our work will be undertaken in accordance with standards issued by the IBR-IRE. As the purpose of our engagement is restricted as described above and since the PFI and the assumptions on which it is based relate to the future and may be affected by unforeseen events, we will not provide any opinion as to how closely the actual result achieved will correspond to the profit [forecast] [estimate]. Accordingly, we neither confirm nor otherwise accept responsibility for the ultimate accuracy and achievability of the PFI.
- We will discuss the assumptions with the persons responsible for preparing the PFI together with the evidence they have to support the assumptions, but we will not seek to independently verify or audit those assumptions. We are not responsible for identifying the assumptions.

- In the event that anything comes to our attention to indicate that any of the assumptions adopted by the Directors which, in our opinion, are necessary for a proper understanding of the PFI have not been disclosed or if any material assumption made by the Directors appears to us to be unrealistic we will inform the Directors so that steps can be taken to resolve the matter. However, we are required to comment in our report if an assumption is published which appears to us to be unrealistic or an assumption is omitted which appears to us to be important to an understanding of the PFI.

103. Based on ISAE 3400, paragraphs 17-25, the auditor should perform the following procedures in order to cover the reporting objectives contemplated by the Regulation.

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B. Determining the nature, timing and extent of examination procedures

104. In determining the nature, timing and extent of his procedures, the auditor's considerations should include:

- The likelihood of material misstatement;
- The knowledge obtained during any previous engagements;
- The management's competence regarding the preparation of prospective financial information;
- The extent to which the prospective financial information is affected by management's judgment; and
- The adequacy and reliability of the underlying data.

C. Assessing the source and reliability of supporting evidence

105. The auditor should assess the source and reliability of the evidence supporting management's best-estimate assumptions. Sufficient appropriate evidence supporting such assumptions would be obtained from internal and external sources including consideration of the assumptions in the light of historical information and an evaluation of whether they are based on plans that are within the entity's capacity.

D. Considering implications of hypothetical assumptions

106. The auditor should consider whether, when hypothetical assumptions are used, all significant implications of such assumptions have been taken into consideration. For example, if sales are assumed to grow beyond the entity's current plant capacity, the prospective financial information will need to include the necessary investment in the additional plant capacity or the costs of alternative means of meeting the anticipated sales, such as subcontracting production.

107. Although evidence supporting hypothetical assumptions need not be obtained, the auditor would need to be satisfied that they are consistent with the purpose of the prospective financial information and that there is no reason to believe they are clearly unrealistic.

E. Assess preparation of forecast or estimate from management's assumptions

108. The auditor will need to be satisfied that the forecast or estimate is properly prepared from management's assumptions by, for example, making clerical checks such as recalculation and reviewing internal consistency, that is, the actions management intends to take are compatible with each other and there are no inconsistencies in the determination of the amounts that are based on common variables such as interest rates.

F. Consider the interrelationship of several components in the financial statements

109. It is important that the auditor considers the interrelationship of different components in the financial statements.

G. Consider historical information as part of the period covered by the estimate

110. As an estimate relates to a period that has already elapsed, the auditor should consider the extent to which procedures need to be applied to any historical information that is already available for that period. Procedures will vary depending on the circumstances and depending on the level of historical information that is already available.

H. Obtain management's representation

111. The auditor should obtain written representations from management regarding the completeness of significant management assumptions and management's acceptance of its responsibility for the forecast or estimate to be included in a prospectus.

I. Assessing presentation and disclosure

112. When assessing the presentation and disclosure supporting the forecast or estimate to be included in a prospectus the auditor will need to consider whether:

- The presentation is informative and not misleading (neutral);
- The accounting policies are clearly disclosed;
- The assumptions are adequately disclosed. It needs to be clear whether assumptions represent management's best-estimates or are hypothetical and, when assumptions are made in areas that are material and are subject to a high degree of uncertainty, this uncertainty and the resulting sensitivity of results needs to be adequately disclosed.

J. Considering reliability, understandability and comparability in forming an overall conclusion

113. In order to provide an opinion on the proper compilation of a profit forecast or estimate, the auditor carries out the procedures required to satisfy himself that the profit forecast or estimate is:

- Reliable;
- Understandable; and
- Comparable.

3.5.2. Reliability

114. To be reliable a profit forecast or estimate will possess the following attributes:

- It can be depended upon by the intended users as a faithful representation of what it either purports to represent or could reasonably be expected to represent;
- It is neutral because it is free from deliberate or systematic bias intended to influence a decision or judgment to achieve a predetermined result; and
- It is free from material error.

3.5.3. Understandability

115. To be understandable a profit forecast or estimate contains the information necessary for intended users to appreciate the degree of uncertainty attaching to the information and how that uncertainty might impact it. This requires the disclosure of assumptions and other matters relevant to the basis of preparation which are of importance in assisting the intended users' understanding of the profit forecast or estimate. The omission of important information may prevent a profit forecast or estimate from being understandable. On the other hand, if the disclosure is too complex or too extensive the understandability may be also impaired.

3.5.4. Comparability

116. The usefulness of a profit forecast or estimate is derived partly from its comparability, namely the expectation that it will be possible to compare it to the actual results and that it can be compared to equivalent information for other reporting periods. For this to be the case, profit forecasts or estimates need to be prepared and presented on a basis comparable with the actual financial information for that period and will involve the application of the accounting policies used by the entity in preparing its historical financial information.

117. The Regulation defines a profit forecast or estimate as including *any form of words* that expressly states or by implication indicates a figure, or a minimum or maximum figure, for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used. This type of profit forecast or estimate is not explicitly within the scope of ISAE 3400. In cases of such forecasts or estimates being made, the auditor should assess to what extent proper procedures can be performed before accepting to be associated with such a forecast or estimate through the issuance of his report. In such cases, the auditor should also consider the guidance put forward in ISAE 3000, which provides the general principles that auditors should apply to assurance

engagements other than audits or reviews of historical financial information where no specific ISAE is developed.

118. ISAE 3000 “Assurance Engagements Other Than Audits or Reviews of Historical Financial Information” should be used in the absence of an ISAE dealing specifically with auditor reports on profit forecasts or estimates to be included in a prospectus. However, ISAE 3000 requires the suitable criteria on which to provide assurance.

119. As the Regulation does not impose any reporting obligation on the auditor with regard to the assumptions underlying the prospective information, the auditor report should be silent in that respect.

3.6. APPLICATION AND OTHER EXPLANATORY MATERIAL: EXAMPLE OF A REPORT

3.6.1. Auditor’s assurance report on profit forecast/estimate

120. We report on the profit forecast/estimate set out on pages [x] of the prospectus of ABC Company.

3.6.2. Management’s responsibility

121. It is management’s responsibility to prepare the profit forecast/estimate, together with the material assumptions upon which it is based, in accordance with the requirements of EU Regulation No. 2004-809.

3.6.3. Auditor’s responsibility

122. It is our responsibility to provide the opinion required by Annex I, item 13.3 of EU Regulation No. 2004-809. We are not required nor do we express an opinion on the possibility of achievement of result or on the assumptions underlying the profit forecast.

We do not accept any responsibility for any financial information previously reported on and used in the compilation of the profit forecast/estimate beyond that owed to those to whom any reports on that financial information were addressed by us at the date[s] of their issue.

3.6.4. Work performed

123. We performed our work in accordance with the requirements of the EU Regulation No. 809/2004. Our work included an evaluation of the procedures undertaken by management in compiling the profit forecast/estimate and the consistency of the profit forecast/estimate with the accounting policies normally adopted by ABC Company. We planned and performed our work so as to obtain all the information and explanations we considered necessary in order to provide us with reasonable assurance that the

profit forecast/estimate has been properly compiled on the basis stated. Since the profit forecast/estimate and the assumptions on which it is based relate to the future and may therefore be affected by unforeseen events, we can express no opinion as to whether the actual results reported will correspond to those shown in the profit forecast/estimate and differences may be material.

3.6.5. Opinion

124. In our opinion:

- (a) The profit forecast/estimate has been properly compiled on the basis stated; and
- (b) That basis of accounting is consistent with the accounting policies of ABC Company.

3.6.6. Modified opinion

125. The auditor should not express an unmodified opinion when the Directors have not applied the criteria in Appendix 5.2. of this guidance and in the auditor’s judgment the effect of not doing so is, or may be, material.

The Regulation usually requires a positive and unmodified opinion. Consequently, in the event that the auditor concludes that he is unable to report in the manner prescribed ,it invites those responsible for the profit forecast to consider whether the profit forecast can be amended to alleviate his concerns or whether the profit forecast should be omitted from the prospectus.

CHAPTER 4

ADDITIONAL ENGAGEMENTS

4.1. COMFORT LETTER

4.1.1. Introduction

A. Preliminary remarks

126. These guidelines set forth the profession's guidelines according to which auditors notwithstanding their independent professional responsibility – should issue comfort letters. These guidelines also illustrate to the general public the function and limitations of such comfort letters.

127. Auditors are requested to issue a comfort letter in connection with transactions in which the issuer, through [the issuance of] a flotation prospectus, uses the capital market, for the licensing or placement of shares, debentures, bonds or other listed securities (hereinafter referred to as “capital market transactions”). Comfort letter for the purposes of these guidelines is a letter in which the auditor summarizes the results of agreed-upon procedures performed on specific financial information that is presented in an offering circular. The letter is ordinarily addressed to the issuer and the banks assisting this entity with the issue (hereinafter referred to as the underwriters) (*Cf. supra*, par. 2 and 142).

128. Comfort letters evolved in the Anglo-American capital markets. For the US jurisdiction, the American Institute of Certified Public Accountants (AICPA) has issued Statement on Auditing Standards No. 72 “*Letters for Underwriters and Certain Other Requesting Parties*”, supplemented by Statements on Auditing Standards Nos. 76 and 86 (condensed in AICPA, Codification of Statements on Auditing Standards, AuS 634) as a mandatory auditing standard. Notwithstanding these guidelines, it may be important for the Belgian profession to observe the provisions of above standards where capital market transactions involve a placement in the United States, (e.g. for an SEC registration or a private placement in accordance with Rule 144A of the United States Securities Act of 1933). When, in an individual case, a comfort letter is issued in accordance with these guidelines or the US Standard (Statement on Auditing Standards Nos. 72, 76 and 86) the jurisdiction of application should be defined.

129. These guidelines have been based on Statement on Auditing Standards No. 72 “*Letters for Underwriters and Certain Other Requesting Parties*”, supplemented by Statements on Auditing Standards Nos. 76 and 86 as well as on IDW Auditing Standard (IDW AuS 910), Standard for the Issuance of Comfort Letter from the *Institut der Wirtschaftsprüfer in Deutschland*.

130. These guidelines include explanatory and other material, including Appendices (5.3.), in the context of which basic principles and essential procedures are to be understood and applied. It is necessary to consider the whole text of these guidelines to understand and apply the basic principles and essential procedures.

131. The procedures for issuing comfort letters do not constitute a prospectus evaluation.

B. Objective

132. The auditor assists in indirectly fulfilling the duties of the parties responsible for the offering circular without assuming responsibility for the offering circular or any part thereof nor becoming the responsible party in respect of the offering circular. The objective of these guidelines is to:

- Provide auditors with a framework which helps them conduct engagements to provide comfort letters in a manner that is consistent and compliant with current auditing standards;
- Provide auditors with example reports, engagement and representation letters to assist them in assuming the appropriate level of responsibility;
- Provide the other players involved in the transaction with a clear understanding of the roles and responsibilities of the auditor when delivering a comfort letter engagement which allows for shaping their expectations;
- Serve as a basis to develop future standards with respect to comfort letter engagements.

C. Contractual agreements

133. There is no legal requirement within the regulation to issue a comfort letter. The issuance of comfort letters therefore is a matter of contractual agreements between parties.

4.1.2. Contents and elements of Comfort Letters*A. Function of the Comfort Letter*

134. In preparation for capital market transactions, prospectuses (e.g. listing documents, offering circulars) are prepared – frequently due to legal requirements – to present financial statements (annual, consolidated and interim financial statements) or parts thereof and other financial information about the issuer for the information of potential buyers of securities.

135. The financial statements and other financial information presented in the offering circular are prepared and compiled by the issuer. The issuer is therefore responsible for these financial statements and other financial information.

136. Under the relevant Belgian regulations, those who have assumed responsibility for the offering circular or have caused the publication of the offering circular respectively are accountable for it. They are liable according to article 60 of the law of 16 June 2006 to the buyers of the securities for the completeness and accuracy of the information in the offering circular. The parties responsible for the offering circular are typically the issuer as well as the underwriters. The parties responsible for the offering circular must decide what measures they deem necessary to ensure the completeness and accuracy of the offering circular information in the specific case.

137. Requesting a comfort letter has become common practices and serves – among other measures – as proof that the parties responsible for the offering circular have exercised due diligence in preparing the offering circular with respect to the comments made in the comfort letter (comparable to the due diligence defense established in the USA).

138. In this regard, the auditor assists in indirectly fulfilling the duties of the parties responsible for the offering circular without assuming responsibility for the offering circular or any part thereof nor becoming the responsible party in respect of the offering circular. Therefore, only the underwriters can determine what procedures are sufficient for their purposes.

B. Scope and performance of the engagement

139. There are no legal requirements governing the issuance of comfort letters in Belgium. This is a field of the auditor's work which is not regulated by law and whose contents will depend on the terms of the engagement. An engagement is ordinarily established between the auditor, the issuer and the underwriter.

140. In arranging the engagement the auditor considers the following aspects, in particular:

- A description of the scope of performance, agreeing on certain procedures (including issuance, date and contents of the comfort letter);
- The purpose of the comfort letter;
- A reference to the common understanding of the issuer and auditor on responsibility for the offering circular;
- The auditor's release from the duty of confidentiality towards the underwriters and any advisors involved in the preparation of the capital market transaction;
- A reference that the comfort letter makes no representations regarding the sufficiency or appropriateness of the agreed-upon services for the purposes of the requesting party or other parties responsible for the offering circular (*cf. supra*, par. 136);
- A reference that the engagement to issue a comfort letter does not entail the obligation to assess the completeness and accuracy of the offering circular or to assess whether the offering circular complies with the relevant legal requirements (*cf. infra*, par. 147);
- Arrangement of duties to cooperate on the part of the issuer and any other parties (subsidiaries), especially the duty to issue a representation letter (*cf. infra*, par. 147)
- Agreement on customary terms of engagement and any supplementary special conditions.

If further work is agreed upon after the completion of an engagement, the auditor should reach a separate written agreement on such work.

141. Any discussion of procedures should be accompanied by a clear statement that the auditor cannot furnish assurance regarding the sufficiency of the procedures for the

underwriters' purposes. The following guidelines should be adhered to in the letters to underwriters:

- Statements or implications that the auditor is performing such procedures as he considers necessary are not appropriate;
- The auditor should not make a general statement in a comfort letter that, as a result of performing the specified procedures, nothing else came to his attention that would be of interest to the underwriter;
- The auditor should not make any statement relating to material changes without first quantifying the word “material”.

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ADDITIONAL ENGAGEMENTS

The auditor should meet with the client and the underwriter to discuss and reach an understanding on the procedures to be performed in connection with a comfort letter. The auditor should not meet privately with the underwriter without the client being present. The working papers should include a memorandum of the discussion with the client and the underwriter regarding the procedures that the auditor is to perform.

The procedures that the auditor is to perform should be set out clearly in the comfort letter – both final and draft forms – so that there will be no misunderstanding about the basis on which he is making his comments. However, if the auditor is requested to provide negative assurance on interim financial information, the procedures involved in a limited review in accordance with the standards of the IBR-IRE, should not be specified in the comfort letter.

The auditor should not provide negative assurance with respect to his audit report or any financial statements or financial-statement schedules that have been audited by him or by other accountants (including information presented in footnotes to audited statements).

142. In accordance with the engagement, the auditor addresses the comfort letter to both the issuer and the underwriters. Since the legal relationship between the auditor and the underwriters is determined by the engagement entered into by the auditor and the issuer, the nature and scope of the services are also governed by the engagement.

143. The auditor's liability towards the issuer is determined by the terms of the underlying engagement; the special provisions for statutory audits of financial statements (art. 140 of the Belgian Company Code) do not apply to the additional procedures performed in connection with the issue of a comfort letter.

Because the underwriters as well as the issuer use the results of the agreed-upon procedures, the former are also covered by the protection conferred by the agreement. In consideration of this fact, different levels of liability towards the various parties may be stipulated.

144. In order to define appropriate terms for the engagement and assess the risks involved, the auditor informs himself of the key terms of the capital market transaction. This includes the following information in particular:

- Transaction schedule (including dates of comfort letters);
- Placement volume;
- Transaction structure (place, listing segment, type of placement).

145. When accepting an engagement, the auditor clarifies when a comfort letter is to be furnished. In this context, it is important to note that in the certain capital markets preliminary and final offering circulars are published; a comfort letter may also need to be issued on the date preliminary offering circulars are published. This should be considered when accepting and planning the engagement. (*cf. infra*, par. 281-284, concerning “Bring Down Comfort Letters”). The auditor should carefully consider whether, and, as the case may be, how far further oral or written statements should be made in addition to the issuance of a comfort letter.

146. Before accepting an engagement, the auditor should, in accordance with general professional standards, carefully consider whether he possesses the special knowledge and experience necessary to perform the engagement. This specifically includes sufficient knowledge of the entity that is the subject of the comfort letter. For this reason, only the auditor of the most recent annual or consolidated financial statements (referred to below as “statutory auditor”) is ordinarily capable of issuing a comfort letter; with regard to group matters (*cf. infra*, par. 266). If an auditor who is not the statutory auditor of the issuer’s financial statements is requested to provide a comfort letter, that auditor should obtain knowledge similar to that of the statutory auditor.

147. The comments in a comfort letter refer solely to the specified financial information about the issuer. Furthermore, the engagement to issue a comfort letter, including the careful reading of the offering circular, does not entail the obligation to assess the completeness and accuracy of the offering circular or to assess whether the offering circular complies with the relevant legal requirements; this should be emphasized in the engagement letter.

148. In addition, the engagement to issue a comfort letter does not include translation of prospectuses into other languages. If an auditor is requested to provide a translation, the auditor carefully considers whether the special knowledge and experience required for such a separate engagement are available. When accepting such an engagement, it should be ensured that any responsibility is limited to the quality of the translation and that no further guarantee of the accuracy of the offering circular contents is given.

149. The auditor relies upon the cooperation of the requesting party in order to perform the engagement with due care. The requesting party’s duties to cooperate include providing draft offering circulars in due time, which is particularly important if a comparison of financial information has been requested (*cf. infra*, par. 244).

150. As a precondition for performance of the engagement, the issuer (and its subsidiaries, if applicable) should agree to provide the auditor with all the necessary information and reviewable documents in good time. As a further condition, the auditor agrees with the issuer that the issuer (and its subsidiaries, if applicable) provide a customary representation

letter confirming the accuracy and completeness of the information and documents provided (*cf. infra*, par. 285-290).

151. In addition to the address, date, reference line and introductory paragraphs, a comfort letter should contain the following information:

- Assertion of the auditor's independence;
- Purpose;
- Date on which procedures were completed (cutoff date);
- Reference to the auditing standard on the basis of which the comfort letter is issued;
- Applicable law;
- Place of jurisdiction.

152. Depending on the engagement concerned, the comfort letter may also contain the following information and comments, in particular, relating to the procedures which were carried out:

- Dates on which auditor reports or review reports on the financial statements included in the offering circular were issued;
- Performance of a review of interim financial statements;
- Reading of monthly financial information;
- Inquiries of officials responsible for finance and accounting as to changes in specific items in the balance sheet or income statement;
- Procedures with respect to pro forma financial information;
- Procedures with respect to cash flow statements;
- Comparison of amounts shown in the offering circular with amounts in the issuer's accounting documents.

C. Appropriate procedures

153. The procedures that the auditor may perform in connection with comfort letters are limited to matters to which his professional expertise as independent auditor is relevant.

The auditor should only comment in a comfort letter on information that has been obtained from accounting records that are subject to his client's internal control as it relates to the preparation of financial information. Additionally, he should obtain knowledge of such internal control.

154. The auditor may perform procedures and comment *only* on the following types of information:

- Euro amounts or percentages derived from euro amounts obtained from accounting records that are subject to controls over financial reporting;
- Information derived directly from such accounting records by analysis or computation;

- Quantitative information obtained from the accounting records if such information is subject to the same internal control as the euro amounts.

155. Generally, the auditor expresses the results of performing the procedures in terms of agreement between items compared.

For example, “we compared the euro amounts shown as [*describe*] with euro amounts shown in the related [*describe*] and found them to be in agreement.”

156. The auditor should not simply compare specified items appearing in a registration statement with worksheets, analyses, and schedules that have been prepared by employees in his client’s accounting department. Rather, he should also compare the specified items appearing in the worksheets, analyses, and schedules with the appropriate accounting records.

D. Inappropriate procedures

157. The procedures that the auditor performs relative to, and the comments made in, comfort letters, should not address subjective matters.

Terms of uncertain meaning (e.g. “general review”, “limited review”, “reconcile”, “check”, “test”, “agreed” or “recomputed”) are not ordinarily used in describing his work unless the procedures comprehended by these terms are described in the comfort letter. Unless a comfort letter contains a precise definition of “material” (e.g. “plus or minus 5%” or “an increase or decrease in excess of € 1,000”), he ordinarily does not comment on the material agreement or material arithmetic accuracy of amounts.

Because of the lack of definition in an accounting sense as to what constitutes an “adverse change”, he ordinarily does not provide assurance concerning the absence of an “adverse change.”

158. The auditor should not comment in comfort letters on matters simply because he is capable of reading, counting, measuring, or performing other functions that might be applicable. Thus, he ordinarily does not comment in comfort letters on ownership of stock (including beneficial ownership), square footage of facilities or rented space, number and classification by number of employees (except as related to a given payroll periods and specifically named payroll records), or backlog information.

E. Addressees

159. Comfort letters should not be addressed or given to any parties other than the registrant and named underwriter, broker-dealer, financial intermediary, buyer, or seller. The title of the non-registrant addressee should be included in the address. Comfort letters should not be addressed solely to the registrant or to its board of directors.

F. Date and reference line

160. The comfort letter is dated as of the date issued.

161. A distinction is made between the date of the comfort letter and the date on which procedures are completed. This date, referred to as the “cutoff date” (*cf. infra*, par. 256-258) is ordinarily one to three working days before the date of the comfort letter.

The comfort letter should state that the inquiries and other procedures described in the letter did not cover the period from the cutoff date to the date of the letter.

162. The reference line should include a brief description of the capital market transaction concerned.

G. Introductory paragraphs

163. The introductory paragraphs ordinarily specify the financial statements included in the offering circular on which the auditor has issued an auditor’s report. The paragraphs should also state according to which accounting standards (Belgian GAAP, IAS/IFRS or US GAAP) the issuer’s financial statements were prepared and according to which auditing standards (Standards of the IBR-IRE, ISA or US GAAS) the respective financial statements have been audited. It may be convenient to introduce abbreviations or short names for the issuer and the financial statements in the introductory paragraphs. The auditor only mentions the fact that the financial statements have been prepared and audited. Material statements about the information contained in these financial statements and the findings of the audit are not made in the introductory paragraphs.

164. When the offering circular does not refer to the audit or review of financial statements, such financial statements are not mentioned in the introduction (for the review of interim financial statements, *cf. infra*, par. 204-212).

165. Except in extraordinary circumstances, the following wording is recommended for the introductory paragraph:

“Ladies and Gentlemen:

We have audited, in accordance with Belgian generally accepted auditing standards (“Standards of IBR-IRE”), the financial statements of the [Company] (the “Company”) as of and for the years ended December 31, [year 01], December 31, [year 02] and December 31, [year 03], each consisting of balance sheet, statement of income and notes (together the “Belgian GAAP Financial Statements”), and the respective annual report of the Board of Directors, which the Company had prepared on the basis of the Belgian generally accepted accounting principles (“Belgian GAAP”).

We have furthermore audited, in accordance with International Standards on Auditing (ISA), the consolidated financial statements of the Company-as of and for the years ended December 31, [year 01], December 31, [year 02] and December 31,

[year 03], each consisting of balance sheet, statement of income, shareholders' equity and cash flows and notes (the "IFRS Consolidated Financial Statements"), which the Company had prepared in conformity with International Financial Reporting Principles ("IFRS") as adopted in the EU.

The Belgian GAAP Financial Statements and the IFRS Consolidated Financial Statements are included, together with our respective auditor reports thereon, in the Dutch/French and the English-language [preliminary] Offering Circular each dated, date year 04] (together the "Offering Circular"), each relating to the offering of up to [number] shares of the Company and the admission of the share capital of the Company to the [market segment] of [stock exchange].

In connection with the Offering Circular: ...".

H. Effect of qualified auditors' opinions or explanatory paragraphs

166. If any of the auditors' reports departs from a standard report (e.g., includes an explanatory paragraph, including an emphasis of a matter paragraph), he should refer to that fact in the introductory paragraph of the comfort letter and discuss the subject matter of the explanatory paragraph.

I. Assertion of independence

167. It is customary for a comfort letter to confirm the professional independence of the auditor. The following wording is recommended:

"We are auditors (Bedrijfsrevisoren-Réviseurs d'entreprises) within the meaning of the Belgian Law Regulating the Profession of Bedrijfsrevisoren" (25).

168. The term "auditor" (*Bedrijfsrevisor-Réviseur d'entreprises*) is used in preference to "statutory auditor" (*Commissaris/Commissaire*) because issuance of a comfort letter is not part of the audit of annual/consolidated financial statements, nor does it require an appointment as statutory auditor for the current fiscal year.

J. Reference to audits

169. In the comfort letter the auditor states the dates of the auditor reports and/or review reports on the financial statements listed in the introductory paragraphs.

170. The auditor shall not repeat or quote the full auditor report or parts thereof as this could be construed as a re-issuance of the auditor report. Given the extended period for events providing further evidence of conditions at period end, a re-issuance of the auditor report would require the resumption of the audit of financial statements that had been concluded when the original auditor report was issued.

⁽²⁵⁾ Law of 22 July 1953 regarding the establishment of an Institute of Registered Auditors and the organisation of the public oversight on the auditing profession (free translation), *Belgian Official Journal*, 24 May 2007, p. 38-39.

171. Except in extraordinary circumstances, the following wording is recommended:

“On [date 1] [date 2] [date 3] we issued unqualified auditor reports in accordance with Standards of IBR-IRE, on the Belgian GAAP Financial Statements and the management reports as of and for the years ended December 31, [year 01], December 31, [year 02] and December 31, [year 03].

On [date 1] [date 2] [date 3] we issued unqualified auditor reports in accordance with ISA’s, on the IFRS Consolidated Financial Statements as of and for the years ended December 31, [year 01], December 31, [year 02] and December 31, [year 03].”.

172. The statutory auditor may be requested to perform procedures without resuming the audit in accordance with paragraphs 176-178 of these guidelines in order to identify events that provide further evidence of the conditions at period-end occurring after the date of the auditor report. Such procedures are not part of the audit of financial statements that has already been completed and are not subject to the liability regulations applicable to audits of financial statements.

173. It is advisable to supplement the text in paragraph 171 above with an explicit note that the auditor has not audited any more recent financial statements of the issuer for a fiscal year and that the purpose (and therefore the scope) of the audit for the last fiscal year was to enable the auditor to issue an auditor report on the annual or consolidated financial statements for that fiscal year but not on the financial statements for any interim period within that year or any subsequent period. Furthermore, the auditor emphasizes that no opinions are expressed on financial statements or financial statement items as of any date or for any period subsequent to the end of the most recent fiscal year. Such a disclaimer can be included even though procedures have been conducted to identify events relevant to the auditor report occurring after the date of the report or when a review of (interim) financial statements or pro forma financial information has been performed because such procedures do not constitute an audit of financial statements as defined by pronouncements of professional bodies.

For this section the following wording is recommended:

“We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, [year 03]. Although we have conducted an audit for the year ended December 31, [year 03] the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the respective financial statements as of December 31, [year 03] and for the year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on financial statements or other financial information including but not limited to the assets and liabilities, financial position, results of operations or cash flows, of the Company as of any date or for any period subsequent to December 31, [year 03].”.

K. Reference to other reports

174. The introductory paragraph of a comfort letter may refer to (but not repeat) reports that the auditor has previously issued on the following:

- Condensed financial statements that were derived from audited statements;
- Selected financial data;
- Interim financial information;
- Pro forma financial information;
- Financial forecasts;
- Management’s discussion and analysis.

175. If reports listed in paragraph 165 are mentioned in the comfort letter and are not included (incorporated by reference) in the registration statement, such reports may be attached to the comfort letter. The reference to such reports in the comfort letter should not imply in any way that the auditor is reporting as of the date of the comfort letter or that he is assuming responsibility for the sufficiency of the procedures for the underwriter’s purposes.

L. Procedures after the date of the auditor report

176. Apart from mentioning the fact that the auditor report has been issued (*cf. supra*, par. 169) the auditor does not comment further on the auditor report in the comfort letter. The auditor is under no obligation to comment on the auditor report again. Although this is very uncommon, when a auditor has audited the issuer’s most recent annual/consolidated financial statements (statutory auditor) he may be requested to perform procedures for the period after the date of the auditor report and make comments to this effect.

177. If requested to do so, the statutory auditor may:

- a) Perform the procedures set forth in paragraphs 183-189 of these guidelines and give negative assurance thereon; or
- b) Perform specified procedures and report on the factual findings without giving negative assurance (*cf. infra*, par. 190-193).

178. The statutory auditor does not have any responsibility to perform further procedures or make any inquiries regarding the annual/consolidated financial statements and management report after the date of the auditor report. Therefore the audit of the financial statements does not include Identifying events that have come to light between the date of the auditor report and a given date; if this is to be done, a separate engagement is required. The engagement letter should define the examination period. The procedures to be performed to identify events relevant to the auditor report are governed by these guidelines.

M. Examination of events after the date of the auditor report

179. The purpose of procedures concerning events occurring after the date of the auditor report is to obtain information as to whether during the period between the auditor report and a given date (usually the cutoff date) (*examination period*) any facts became known to the entity which, if brought to the auditor's attention as of the date of the auditor reports, would have caused the auditor to refrain from issuing the respective auditor reports in form and content as issued (*events relevant to the auditor report*).

180. In determining whether an event is relevant to the auditor report, a distinction is made between:

- Events that must be presented in the current year's accounting because they are of conditions that arose subsequent to period end; and
- Events that subsequently provide further evidence of conditions that existed at period end. This includes further evidence concerning the validity of the going concern assumption e.g.

181. Only the latter events (that provide further evidence of conditions that existed at period end) are relevant to the auditor report for the purposes of these guidelines. Regardless of whether their effects are positive or negative, only such events provide further evidence of management's expectations and assessments at the date of the auditor report. Notwithstanding any other reporting obligations, events occurring after period end that are indicative of conditions that arose subsequent to period end are not relevant to the auditor report because such events will only have an effect on subsequent financial statements.

182. In addition, only events which have come to the auditor's attention after the date of the auditor report are relevant to the auditor report for the purposes of this *Auditing Standard*. The statutory auditor should consider events that were known before the date of the auditor report in his audit of the financial statements. In accordance with *Auditing Standards* the statutory auditor must perform audit procedures until the date of the auditor report to obtain sufficient appropriate audit evidence to identify events occurring between period end and the date of the auditor report which have a significant effect on the accounting and the management report for the fiscal year.

N. Procedures for identifying events relevant to the auditor report

183. Necessarily, the nature, scope and purpose of procedures for identifying events relevant to the auditor report do not constitute an audit of financial statements in accordance with the pertinent auditing principles or a review in accordance with the applicable standards. The procedures relate only to the financial statements concerned because the potential retroactive effect of current evidence can only be relevant in this respect. The management report, however, contains a forecast section that addresses future developments and is, by nature, subject to constant change. The scope of the work defined in paragraphs 179-182 is therefore more limited than an audit or review of the financial statements.

184. To identify events relevant to the auditor report, the auditor should make inquiries of management and, ordinarily, other persons – including persons who are not involved in the accounting, if appropriate – as to events after period end. Inquiries should cover significant events in the examination period which could give rise to changes in management’s expectations and assessments as compared with the date of the auditor report. Such inquiries refer to the following:

- Current status of matters that were accounted for in the annual/consolidated financial statements on the basis of provisional data or estimates;
- Status of transactions settled by the given date (usually the cutoff date) which were still pending on the date of the auditor report;
- Restructuring activities or liquidations that have occurred or are planned;
- Sales of operating units or significant assets that have occurred or are planned;
- Expropriation, loss or depreciation of significant assets;
- Loss of anticipated orders or major customers, product recalls;
- Drop in the prices of the entity’s products;
- Changes in availability and purchase terms of significant materials, services and technologies;
- Any accounting adjustments in the current books and records have been made or are contemplated;
- Irregularities that have come to light (including fraudulent financial reporting and embezzlement);
- Changes in legislation that have a fundamental effect on the entity’s economic situation.

185. In addition to the inquiries described above, the following procedures for identifying events relevant to the auditor report should ordinarily be performed:

- Reading of minutes of meetings of the Company’s boards and shareholders held in the examination period;
- Reading of current interim financial statements and reports (e.g. monthly or quarterly reports) and comparison with the most recent annual/consolidated financial statements and the corresponding prior-year interim financial statements to identify any unusual items and discrepancies;
- Reading of the management board’s reports to a supervisory board or audit committee;
- Extending new inquiries to the entity’s lawyers or legal department concerning pending and imminent litigation.

186. The statutory auditor compares the knowledge, obtained as a result of the foregoing procedures with the knowledge gained in the audit of the financial statements to identify any events relevant to the auditor report.

187. The foregoing procedures are generally required to identify any events relevant to the auditor report, but ordinarily they are also sufficient. If, due to the special circumstances of the case, the procedures are not sufficient to obtain the necessary assurance for an opinion, the statutory auditor shall report this in the comfort letter.

188. On conclusion of his procedures the statutory auditor requests a representation letter from management concerning the events relevant to the auditor report that were communicated and the documents provided by way of evidence (*cf.* Appendix 5.3.).

189. With respect to consolidated financial statements, the statutory auditor shall endeavor to ensure that the issuer notifies the statutory auditors of the subsidiaries of the examination period and arranges for them to perform similar procedures for the subsidiaries. The comments in paragraph 266 apply as appropriate.

4.1.3. Reports on procedures

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A. Negative assurance

190. The statutory auditor may summarize the findings of procedures by providing negative assurance.

191. If the statutory auditor has not obtained any knowledge of events relevant to the auditor report occurring during the examination period, this finding may be summarized as follows:

“For purposes of this letter and as requested, we have conducted, for the period from [date of the auditor reports of the Belgian GAAP Financial Statements and the IFRS Consolidated Financial Statements each as of and for the year ended December 31, [year 03]] to May XXX, [year 04] (“Cutoff Date”) (this period is hereafter referred to as the “Examination Period”), the procedures specified by the guidelines of the IBR-IRE on comfort letters with respect to the Belgian GAAP Financial Statements and the IFRS Consolidated Financial Statements each as of and for the year ended December 31, [year 03] (hereafter the “Financial Statements [year 03]”). The purpose of these procedures is to obtain information as to whether during the examination period any facts became known to the Company, which, if brought to our attention as of the date of the auditor reports, would have caused us, regarding the Financial Statements [year 03] to refrain from issuing our respective auditor reports in form and content as issued.

Necessarily, the purpose and scope of these procedures neither constitute an audit conducted in accordance with the Standards of IBR-IRE nor a review conducted in accordance with Standards of IBR-IRE. Thus, as a result of these procedures we neither issue an auditor report nor a review report within the meaning of Standards of IBR-IRE; hence the statement included in the following sub-paragraph does not represent a re-issuance of the auditor reports issued on the Financial Statements [year 03]. Also, the aforementioned procedures would not necessarily reveal matters of significance with respect to the comments in the following sub-paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

However, nothing came to our attention as a result of these procedures conducted for the examination period that, if brought to our attention as of the date of the

respective auditor reports, would have caused us, regarding the Financial Statements [year 03] to refrain from issuing our respective auditor reports in form and content as issued.”.

192. The statutory auditor should describe any events relevant to the auditor report that he has identified for the examination period.

193. In this case, the following text is recommended instead of the last paragraph of paragraph 191:

“On the basis of our foregoing procedures we have obtained information that during the examination period facts became known to the Company, which, if brought to our attention as of the date of the auditor reports, would have caused us, regarding the Financial Statements [year 03] to refrain from issuing our respective auditor reports in form and content as issued,

1. ...
2. ...
3. ... ”.

B. Report on factual findings

194. If the statutory auditor has been requested to report on the findings of the defined procedures without giving negative assurance as defined in paragraphs 195-200, the following text is recommended:

*“For purposes of this letter and as requested, we have conducted, for the period from [date of the auditor reports of the Financial Statements [year 03]] to [date year 04] (“**Cutoff Date**”) (this period is hereafter referred to as the “**Examination Period**”), the following procedures recommended by the IBR-IRE in Guidelines for the Issuance of Comfort Letters :*

1. ...
2. ...
3. ...

Necessarily, the purpose and scope of these procedures neither constitute an audit conducted in accordance with the Standards of IBR-IRE nor a review conducted in accordance with the standards of the Institute. Thus, as a result of these procedures we neither issue an auditor report nor a review report within the meaning of the standards of the Institute; hence the statement included in the following sub-paragraph does not represent a re-issuance of the auditor reports issued on the Financial Statements [year 03].

Also, the aforementioned procedures would not necessarily reveal matters of significance with respect to the comments in the following sub-paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing

procedures for your purposes. We report on the results of the foregoing procedures as follows:

1. ...
2. ...
3. ...

C. Procedures for the subsequent period

195. The auditor is ordinarily requested to comment in the comfort letter on the period from the balance sheet date of the most recent audited annual/consolidated financial statements to the cutoff date (subsequent period). Such comments may refer to either an entity or a group of companies.

196. Procedures for the subsequent period are primarily determined by the circumstances of the engagement, especially by the efficiency of the issuer's accounting function. However, as a reminder it is only the underwriters that will determine what procedures are sufficient for their purposes. The auditor's written and oral communications should never imply that he determined any of the underwriter's procedures.

197. In addition to the reading of the minutes of the issuer's board and shareholder meetings, the following procedures may generally be required by the underwriters for the subsequent period:

- Review of (interim) financial statements in accordance with the pertinent auditing standards International Standards on Review Engagements (ISRE) 2400 "Engagements to Review Financial Statements";
- Reading of the monthly financial information for periods after the balance sheet date of the most recent audited or reviewed (interim) financial statements and inquiries of the persons responsible for the issuer's accounting about the monthly financial information;
- Inquiries of the persons responsible for the issuer's accounting as to changes in specific financial statement items.

The auditor should reach an early agreement with the issuer on the procedures to be performed for the subsequent period.

198. Terms of uncertain meaning and ambiguous comments on the issuer's financial position or economic situation should be avoided in the presentation of the results of the procedures. To avoid misunderstanding, the comfort letter states that the procedures performed for the subsequent period do not, even in their entirety, constitute an audit of financial statements and that the auditor assumes no responsibility for the sufficiency of the procedures for the purposes of the addressees of the comfort letter.

199. Depending on tie procedures performed and the degree of assurance obtained, the results are presented either by repeating the factual findings or by giving negative assurance.

200. In both cases the auditor is expected to have knowledge of the issuer's internal control over accounting and be capable of assessing its adequacy and effectiveness. When the auditor has not audited the most recent annual financial statements, the auditor issuing the comfort letter should obtain the required knowledge of the entity's internal control over accounting.

D. Reading of minutes of meetings

201. The auditor will ordinarily be asked to read the minutes of all meetings of the issuer's boards and shareholders held in the subsequent period. If the boards or shareholders have installed committees, the auditor may also be requested to read the minutes of committee meetings. This should be mentioned in the comfort letter :

“For purposes of this letter we have read the minutes of meetings of the shareholders, board of directors [including its committees and management committee (if applicable) of the Company [and of certain specified subsidiaries] between January 1, [year 04] and the Cutoff Date, officials of the Company having advised us that the minutes of all such meetings were presented to us.”.

202. In addition to the minutes of the issuer's board and shareholder meetings, the auditor may be requested to read the minutes of board and shareholder meetings of (significant) subsidiaries; this should be mentioned in the comfort letter.

203. When board and shareholder meetings were held in the subsequent period for which no minutes are available, this fact should be mentioned in the comfort letter and inquiries should be made of the issuer's management as to the main matters discussed at those meetings. If drafts of minutes are available for such meetings, the auditor may read these too. The fact that the minutes were drafts should be mentioned in the comfort letter, stating the dates of the meetings if necessary.

E. Review of interim financial statements

204. When the issuer has prepared interim financial statements in the subsequent period, the underwriter will commonly require the auditor to have these reviewed. The auditor may provide negative assurance on unaudited interim financial information only if he performed a limited review pursuant to the IBR-IRE standards and recommendations (or ISRE 2400), (*cf. supra*, par. 197). Which interim financial statements are to be reviewed depends on the engagement.

205. The substantive requirements for the interim financial statements (elements/comparative figures/recognition and valuation rules) are determined by the accounting principles applied.

206. The procedures for a review are limited to a critical appraisal of the interim financial statements based on a reasonableness test. The auditor shall plan and perform the review to obtain, following critical appraisal, a certain level of assurance that the

interim financial statements have been prepared in all material respects in conformity with the underlying accounting principles.

207. The negative assurance obtained in a review should be included in the comfort letter if no separate report on the review has been issued. If the comfort letters contains negative assurance, it should explicitly state that the review of the interim financial statements and the reading of minutes of board and shareholder meetings do not, even in their entirety, constitute an audit of financial statements in accordance with Standards of IBR-IRE and do not necessarily reveal material departures from the identified accounting principles.

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208. The following text should be used when the review has not resulted in any qualifications:

“X.1 With respect to the six months periods ended June 30, [year 03] and [year 04] we have performed a limited review specified by the IBR-IRE on the unaudited interim consolidated financial statements of the Company, consisting of condensed balance sheet, income statement, statement of changes in equity and cash flow statement and selective notes for the six months periods ended June 30, [year 03] and [year 04] prepared by the Company in accordance with IAS 34 “Interim Financial Reporting” as adopted by the EU and included in the Offering Circulars (the “Unaudited Interim Consolidated Financial Statements”).

The procedures described in this paragraph do not constitute an audit conducted in accordance with Standards of IBR-IRE. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

X.2. However, nothing came to our attention as a result of the foregoing procedures that caused us to believe that the Unaudited Interim Consolidated Financial Statements have not been prepared in all material respects in conformity with IAS 34 “Interim Financial Reporting”.

209. Since negative assurance on the compliance of the interim financial statements with the underlying accounting principles implies compliance with individual accounting principles (such as the consistent application of accounting and valuation methods), individual accounting principles should only be discussed if departures from those principles have been identified.

210. If matters have come to the auditor’s attention as a result of which parts of the interim financial statements have not been prepared in all material respects in conformity with the underlying accounting principles, these matters should be described in the comfort letter. Unless impracticable, the effects of these matters on the interim financial statements should be quantified. The negative assurance provided by the auditor should be qualified.

211. When the effects of the matter are so material and pervasive to the interim financial statements that the auditor concludes that a qualification is not sufficient to disclose the misleading or incomplete nature of the interim financial statements, he should mention this fact and state that the financial statements do not conform to the underlying accounting principles.

212. The following text should be used when the review was performed according to SAS 100 and has not resulted in any qualifications:

“X.1. With respect to the six months periods ended June 30, [year 03] and [year 04] we have performed the procedures specified by the American Institute of Certified Public Accountants (AICPA) for a review of financial information as described in Statement on Auditing Standards No. 100, on the unaudited interim consolidated financial statements of the Company, consisting of balance sheet, statement of income, shareholders’ equity and cash flows and notes for the six months periods ended June 30, [year 03] and [year 04] prepared by the Company on the basis of IFRS and included in the Offering Circulars (the “Unaudited IFRS Interim Consolidated Financial Statements”).

The procedures described in this paragraph do not constitute an audit conducted in accordance with Standards of IBR-IRE nor PCAOB GAAS. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

X.2. However, nothing came to our attention as a result of the foregoing procedures that caused us to believe that significant changes to the Unaudited IFRS Interim Consolidated Financial Statements would be required in order to comply with IFRS.”.

F. Procedures for the change period

213. The period between the most recent audited or reviewed financial statements and the cutoff date is referred to as the “change period”. If the most recent audited or reviewed financial statements are the most recent annual/consolidated financial statements, the subsequent period is the change period.

214. Comfort letters commonly include comments relating to changes or decreases in certain financial-statement items during the “change period”. Typically, such comments relate to increases in long-term debt and changes or decreases in capital stock, net current assets, stockholders’ equity, net sales, or total and per share amounts of income before extraordinary items and net income. Other items that may be discussed include decreases in gross profit ratio, increases in specified expenses or charges, decreases in or the ratio of current assets to current liabilities, and increases in accounts receivable, inventories, or current borrowings.

215. The underwriting agreement should specify the dates as of which the data are to be compared. For balance sheet items, the comparison is normally between a cutoff date and the date of the latest balance sheet included (incorporated by reference) in the registration statement. For income statement items, the comparison could be between the amounts for the change period and (1) the corresponding period of the previous year, (2) a period of corresponding length immediately preceding the change period, (3) a proportionate part of the preceding fiscal year, or (4) any other period of corresponding length chosen by the underwriter. If a registration statement includes a capitalization table or selected financial data as of or for a period subsequent to the date of the latest balance sheet presented therein, the change period for the relevant items may appropriately begin with the date of that information. Whatever the period, the comfort letter (both draft and final forms) should clearly identify the date and the period used in the comparison so that there is no misunderstanding about the matters being compared and so the underwriters can determine whether the comparison period is suitable for their purposes.

216. The comparisons that the auditor makes relate to the entire period, not to portions of the period. Therefore, a decrease in one part of the period could be offset by an increase in another part of the period, in which case the comfort letter would *not* include a comment on a change. In some cases, underwriters request that the change period begin with the date of the latest audited financial statements and that our letter refers to changes since that date rather than the later date for which unaudited financial information is included in the registration statement. The use of the earlier date may defeat the underwriters' purpose because changes occurring between the earlier (audited) beginning date and the later (unaudited) beginning date might offset changes subsequent to the later beginning date. The auditor needs to explain the foregoing to the underwriters and, if the underwriters prefer the use of the longer period, his letter may refer to changes since the date of the latest audited financial statements.

217. The auditor's procedures are generally limited to reading any available monthly financial information and making inquiries of the persons responsible for the Company's accounting as to the preparation of the monthly financial information and changes in specific financial statement items as of the cutoff date but it are the underwriters that will determine the procedures to be performed. The limited scope of the procedures, which, even in their entirety, do not comprise any examination or review procedures, should be mentioned in the comfort letter.

218. The auditor should not provide comfort relating to subsequent changes if his client responds that (1) they are unable to determine whether there are any changes during the period or (2) they know of no such change because no financial information is available for such period.

219. The auditor's comments relating to changes in specified financial-statement items are limited to changes, increases, or decreases not disclosed in the registration statement. Therefore, if a change has come to his attention and the exact amount of such change is disclosed in the registration statement, the comfort letter comment needs to include the following phrase, "... *except for changes, increases, or decreases that the registration statement discloses have occurred or may occur.*" Further comment in the comfort letter

on the change, increase, or decrease would then be unnecessary. The above phrase need not be included in the letter if no changes or decreases in the specified financial-statement items are disclosed in the registration statement.

220. If, in the course of his work on subsequent changes, he learns of matters that he believes are material and adverse but that are not set forth in the registration statement (even though such matters may not be required to be set forth in the letter for underwriters, because their requested procedures did not include such matters), he need to advise the client to discuss these matters with the underwriters so that a determination may be made as to whether disclosure is required in the registration statement.

G. The 135-day rule

221. Negative assurance can only be given with regard to changes in financial statement items during the change period when the auditor has obtained reasonable assurance, concerning the relevant items. Given the limited procedures relating to changes in financial statement items during the change period, this is no longer possible if the change period is 135 days or longer; after 134 days no negative assurance may be given for that period. The 135-day period has been withheld from guidance in other frameworks (e.g. Institut der Wirtschaftsprüfer).

The 135-day period is calculated on the basis of a 30-day month. (Example 1: the balance sheet date of the most recent audited financial statements is December 31, 2007 – negative assurance can only be given until May 14, 2008. Example 2: the balance sheet date of the most recent reviewed interim financial statements is March 31, 2008 – negative assurance can only be given until August 14, 2008.)

222. If no negative assurance on specific items can be given under the 135-day rule, the auditor may perform defined procedures and report on the results of each procedure without providing negative assurance in accordance with the principles for reporting on factual findings (for the form of such reports *cf. supra*, par. 194 and Appendix 5.3.).

H. Reading of monthly Financial Information

223. If the issuer prepares sufficient monthly financial information (principally consisting at least of a condensed balance sheet and condensed income statement) the auditor will generally be required to read it. The issuer's officers should be asked whether the monthly financial information is stated on a basis substantially consistent with that of the most recent financial statements.

224. Underwriters will generally require that the comfort letter reports on changes in specific items in that monthly financial information as compared with the information in the most recent audited or reviewed financial statements or with the corresponding period of the prior year.

225. In a comfort letter in English that refers to Belgian financial statements the Belgian language names of the financial statement items should be added in parentheses and, to

avoid misunderstanding, they should be repeated throughout the text (e.g. subscribed capital).

226. The following form is recommended in the comfort letter:

“X.1. With respect to the period from July 1, [year 04] to August 31, [year 04], we have:

a. read the unaudited monthly consolidated financial information of the Company, each consisting of [balance sheet, statement of income, for July and August of both [year 03] and [year 04] furnished to us by the Company (the “Unaudited Monthly Consolidated Financial Information”), officials of the Company having advised us that no such consolidated financial information as of any date or for any period subsequent to August 31, [year 04] was available;

b. inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited monthly Consolidated Financial Information is stated on a basis substantially consistent with that of the IFRS Consolidated Financial Statements.

The procedures described in this paragraph do neither constitute an audit nor a review conducted in accordance with Standards of IBR-IRE. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

X.2. However, nothing came to our attention as a result of the foregoing procedures that caused us to believe that:

a. at August 31, [year 04], there was any change in the subscribed capital of the Company, any increase in the long-term debt or any decreases in net current assets or shareholders’ equity of the consolidated companies as compared with amounts shown in the Unaudited IFRS Interim Consolidated Financial Statements as of June 30, [year 04], or

b. for the period from July 1, [year 04] to August 31, [year 04], there were any decreases as compared to the corresponding period in the preceding year, in consolidated net sales, in the total or per-share amounts of consolidated income before extraordinary items or of consolidated net income.”.

227. When the issuer does not prepare monthly financial information that meets the above requirements, inquiries can only be made about specific financial statement items, as described in the next paragraph.

I. Inquiring of management about changes in specific financial statement items

228. With respect to the period between the most recent monthly financial information (or the most recent audited or reviewed financial statements) and the cutoff date, apart from reading minutes of meetings (*cf. supra* par. 201-203) the only other possible procedure is making inquiries of persons responsible for the issuer's accounting as to changes in specific financial statement items. Inquiries only refer to financial statement items that can be determined in the issuer's accounting as of the cutoff date. Paragraph 255 of these guidelines, applies as appropriate.

229. Depending on the capacity of the issuer's accounting function to provide interim financial information, inquiries may focus on the following changes in particular: changes in stated capital, increase in long-term debt, decreases in shareholders' equity, sales or net income for the period.

230. Balance sheet data as of the cutoff date are usually compared with the amounts stated in the most recent audited or reviewed balance sheet.

Income statement items are compared with figures for the corresponding period of the prior year.

231. The auditor must comment on such inquiries. The following wording is recommended for the comfort letter:

"X.1. As mentioned in paragraph X, officials of the Company have advised us that no consolidated financial information as of any date or for any period subsequent to August 31, [year 04] was prepared. Accordingly, the procedures carried out by us with respect to changes in financial statement items after August 31, [year 04] necessarily have been even more limited than those with respect to the periods referred to in paragraph X. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters whether and who have confirmed that :

a. at Cutoff Date, there was no change in the stated capital of the Company, no increase in the long-term debt or no decreases in net current assets or in shareholders' equity of the consolidated companies as compared with amounts shown in the Unaudited IFRS Interim Consolidated Financial Statements as of June 30, [year 04], or

b. for the period from July 1, [year 04] to the Cutoff Date, there were no decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of consolidated income before extraordinary items or of consolidated net income."

232. When changes in financial statement items have occurred, comments may be limited to any changes that are not disclosed in the offering circulars. The following sentence may be used:

“[...] except all instances of changes, increases or decreases that the Offering Circulars disclose.”

233. Phrases such as “adverse changes”, “changes in financial position” or “changes in the issuer’s financial situation” should be avoided because their meaning is not sufficiently clear.

234. Likewise, the letter should not comment on the materiality of a change because the materiality principles and limits applicable in connection with capital market transactions may differ from those defined in the pertinent professional standards.

235. When there are more than 134 days between the most recent audited or reviewed financial statements and the cutoff date (*cf. supra*, par. 256) the comfort letter only repeats the information provided. See Appendix 5.3 to these guidelines for recommended wording.

J. Agreed-upon procedures

236. When agreed-upon procedures are performed the auditor may only report the factual findings. If the agreed-upon procedures include inquiring of the issuer’s officials, the auditor repeats the information provided in the comfort letter (*cf. Appendix 5.3*). When the auditor knows – without having to perform appropriate procedures – that the information provided is inaccurate, he should comment on this in the comfort letter.

237. The comfort letter makes no representations regarding the sufficiency or appropriateness of the agreed-upon services for the purposes of the requesting party or other parties responsible for the offering circular.

The auditor should reach early agreement with the issuer on the procedures to be performed.

K. Pro Forma Financial Information on which no separate report is issued

238. The above guidance on agreed upon procedures should equally apply to circumstances where the underwriters requested the auditor to report on pro forma data other than pro forma financial information on which the auditor has reported in accordance with the requirements of the Regulation.

L. Cash flow statement

239. Financial statements prepared on a consolidated basis in accordance with US GAAP or IAS/IFRS include a cash flow statement. By contrast, in accordance with Belgian GAAP, a cash flow statement is not mandatory for the consolidated financial statements.

240. When a cash flow statement is included in the audited financial statements – either as a (voluntary) disclosure in the notes or as part of the management report – it is not reviewed separately for the purposes of the comfort letter. The comfort letter does not comment specifically on the cash flow statement as the auditor should not provide negative assurance with respect to his audit report or any financial statements or financial-statement schedules that have been audited by him or by other accountants (including information presented in footnotes to audited statements).

241. If the entity subsequently prepares a cash flow statement for financial statements which have already been audited, the auditor may be requested to verify that the cash flow statement has been duly derived from the audited financial statements and that it conforms to the applicable standard.

242. Such procedures do not constitute a new audit or a review of the financial statements from which the cash flow statement is derived.

243. If the auditor concludes that the cash flow statement has been duly derived from the financial statements and that it conforms to the pertinent standard, the following wording is recommended for the comfort letter:

“As requested, we have examined whether the Company’s cash flow statements for the fiscal year ended [date year 01], [date year 02] and [date year 03] in accordance with [standard — e.g. IAS 7] have been duly derived from the underlying financial statements, and found that the cash flow statements are in conformity with the aforementioned standard.”

M. Comparison of data

244. The auditor is ordinarily requested to determine whether specified amounts shown in the offering circular agree with the data in the underlying financial statements or other documents and, if appropriate, to confirm his agreement. Such a comparison of financial information does not involve a factual examination (audit, review, reading) of the underlying information sources.

245. Any procedures that we perform with respect to comparison of data need to be clearly set forth in the comfort letter (both draft and final forms). The auditor should not provide any assurance regarding the sufficiency of the procedures for the underwriters’ purposes and so state. The auditor needs to state that the procedures he performed would not necessarily reveal any material misstatement of the matters to which his comments relate. Comfort letters should also state that he makes no representations regarding any matter of legal interpretation.

246. Comments in comfort letters regarding comparison of data in the registration statement need to be in the form of a description of procedures followed and findings (usually expressed in terms of agreement between items compared). The terms “presents fairly” (or any variation thereof) should not be used.

247. Only figures originating from the issuer's financial accounting captured by its internal control over accounting should be checked to verify that they have been transferred correctly. The following data may be compared:

- Amounts shown in the issuer's annual, consolidated and interim financial statements, data from pro forma financial information;
- Other amounts from the issuer's financial accounting.

248. The following data are not generally covered by the entity's internal control over accounting and therefore do not have to be checked by the auditor to verify that they have been transferred correctly:

- Data from the issuer's documents concerning information that is not related to the accounting (e.g. square meters of sales area, number of branches);
- Data from agreements concluded by the issuer or its subsidiaries.

249. A comparison with data from the auditor's audit reports or working papers is not required because such documents have not been provided by the issuer.

250. Data originating from information sources that have not been audited or reviewed by the auditor should be identified as such (e.g. by adding "not audited or reviewed").

251. For each figure or group of figures that has been checked, the auditor should explain how its agreement with the financial statements or other documents was determined. For this purpose the various reconciliation procedures should be defined – in accordance with the engagement – and be assigned a specific symbol (e.g. letter). Only the specific amounts or percentages to be reconciled should be identified and not whole sections or pages of the offering circular. In line with the balancing procedure, the figures should be identified on a copy of the offering procedure attached to the comfort letter.

252. For the comfort letter the following wording is recommended: (The "XY financial statements" should be defined as appropriate, including the management reports if applicable):

"X. For purposes of this letter, we have also read the items identified by the Underwriters on the attached copies of the Offering Circular, and have performed the following procedures, which were applied as indicated with respect to the letters defined as follows:

- a. Compared the amount with the corresponding amount contained in the XY Financial Statements and found the amounts to be in agreement, except for rounding;*
- b. Recomputed the amount for arithmetical accuracy based upon amounts shown in the XY Financial Statements and found the amounts to be in agreement, except for rounding;*

- c. *Compared the amount with the corresponding amount contained in the accounting documents of the Company (which we have neither audited nor reviewed) and found the amounts to be in agreement;*
- d. *Recomputed the amount for arithmetical accuracy based upon amounts shown in the accounting documents of the Company (which we have neither audited nor reviewed) and found the amounts to be in agreement, except for rounding;*
- e. *Compared the amount with the corresponding amount contained in the attached schedule (neither audited nor reviewed by us) prepared by the Company and found the amounts to be in agreement, except for rounding;*

Recomputed the conversion of foreign currency amounts into euros for mathematical accuracy and found the amounts to be in agreement, except for rounding.

It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures set out in this paragraph; such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Circulars and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.”.

N. Closing paragraphs

253. In the closing paragraphs of the comfort letter the auditor explains that none of the individual procedures set forth in the comfort letter or the sum of such procedures fulfill the requirements for an audit of financial statements in accordance with the generally accepted standards for the audit of financial statements and that no audit opinion on the financial information referred to in the comfort letter is expressed in the comfort letter. The following wording is recommended:

“Our audit of the financial statements for periods referred to in the introductory paragraphs of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.”.

O. Purpose

254. As agreed upon with the issuer, the auditor includes in the comfort letter a reference to its purpose and the related restrictions on its disclosure. With regard to the purpose, the auditor emphasizes that the comfort letter is solely for the addressee’s information (*cf. supra*, par. 142) and to assist them in conducting and documenting their own investigations in connection with the listing of the securities concerned.

255. The limitation of its purpose implies that the addressees are obliged to treat the comfort letter confidentially. It should not be distributed, quoted or disclosed in whole or in part to third parties for any purposes other than those specified in the comfort letter. The comfort letter should not be referred to, except that reference may be made to it in the list of the addressee's transaction documents. In the case of an initial licensing of shares inclusion of the following paragraph in the comfort letter is recommended:

“This letter is solely for the information of the addressees, in as far as they are responsible for the content of the offering circular, and to assist the Underwriters in conducting and documenting their own investigation of the affairs of the Company in connection with the offering of up to [number] shares of the Company and the admission of the share capital of the Company to the [market segment] of [insert stock exchange] covered by the Offering Circular, and it is not to be used, circulated, quoted, or otherwise referred to for any other purpose including but not limited to the purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Circular or any other document; except that references may be made to this letter in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the Offering Circular.”.

For other capital market transactions the wording should be adjusted, as appropriate.

P. Cutoff date

256. The date on which procedures were concluded (cutoff date) must be stated in the comfort letter. It is in the interests of the parties responsible for the offering circular that the auditors complete their procedures as close to the date of the comfort letter as possible. The cutoff date is generally one to three working days before the date of the comfort letter. This means that the auditor may have to conduct inquiries on the date of the comfort letter to ensure that it incorporates the previous day's information.

257. When the issuer's informants are not available at such short notice or the auditor is not able to issue the comfort letter on this date for other reasons, an earlier cutoff date should be chosen ⁽²⁶⁾.

258. The period covered by the procedures should be defined as follows:

“Our work did not extend to the period from the Cutoff Date to the date of this letter”.

Q. Basis of issuance of the Comfort Letter

259. The auditor refers to the pronouncements of professional bodies according to which the comfort letter is issued as follows:

⁽²⁶⁾ When the issuer fails to provide up-to-date information in good time, the implications for the cutoff date and the contents of the cutoff letter should be clarified immediately.

“This letter is issued on the basis of the guidelines issued by the IBR-IRE.”.

R. Applicable law/place of jurisdiction

260. The auditor refers to the law under which the comfort letter is issued. In addition, the auditor mentions in the comfort letter the agreed-upon place of jurisdiction.

261. It is advisable to agree on the exclusive authority of Belgian law and the exclusive jurisdiction of a Belgian court. This may be stated in the comfort letter as follows:

“This letter shall be exclusively governed by Belgian law. With the exclusion of private international law /law of conflicts The courts of [City] shall have exclusive jurisdiction for any disputes arising in connection with the subject of this letter.”.

4.1.4. Special cases

A. Differences between accounting standards

262. In some international issues offering circulars may contain descriptions of the differences between the accounting standards applied by the issuer in preparing its financial statements and the accounting standards that are relevant to the foreign market.

In this context, the auditor may be requested to read the disclosures compiled by the parties responsible for the offering circular and comment on them in the comfort letter. It is advisable to base the wording of such statements on the guidelines issued by the relevant professional bodies – especially those recommended by the US profession.

B. Several auditors involved

263. There may be situations in which comfort letters are requested from more than one auditor. The following circumstances are possible:

- The financial statements of the issuer included in the offering circular have been audited by different statutory auditors (change of statutory auditor);
- The issuer is the parent of a group of companies. The subsidiaries are audited by other statutory auditors (group matters);
- Two statutory auditors have been jointly appointed to audit the issuer’s financial statements (joint audit).

C. Change of statutory auditor

264. Auditors should only comment in a comfort letter on annual and consolidated financial statements which they themselves have audited. When the issuer’s statutory auditor has changed in the period covered by the offering circular, the statutory auditor for the prior years may be requested to give a comfort letter with regard to that period.

The principles set forth in these guidelines apply to such comfort letters. The contents of the comfort letter are ordinarily limited to an assertion of independence (*cf. supra*, par. 167-168), reference to the audits performed (*cf. supra*, par. 169-173) and the formal comparison of numerical data with respect to the financial statements audited by that auditor (*cf. supra*, par. 244-252) but in this case the predecessor auditor will generally not perform any other agreed-upon procedures.

265. This also applies when financial statements of a company that has merged with the issuer are included in the offering circular.

D. Group matters

266. With regard to group matters, a distinction is made depending on whether financial statements and other financial information of certain (significant) subsidiaries are presented in the offering circular in addition to the issuer's consolidated and interim consolidated financial statements.

E. Subsidiaries' financial statements not included

267. When only the issuer's consolidated and interim consolidated financial statements are included in the offering circular, the auditor of the consolidated financial statements is ordinarily requested to provide a comfort letter. An additional letter from the statutory auditors of the subsidiaries included in the consolidated financial statements is not required.

268. The comfort letter to be issued by the auditor of the consolidated financial statements is governed by the general principles set forth in these guidelines. The statutory auditor must obtain the necessary knowledge of the group before issuing the comfort letter. The principles for the audit of consolidated financial statements apply as appropriate.

269. Before accepting the engagement it is advisable to ensure that the issuer makes appropriate arrangements to make sure that the consolidated subsidiaries and their statutory auditors provide the necessary information and evidence in good time.

270. When a subsidiary is audited by another statutory auditor, the subsidiary should engage the statutory auditor of the subsidiary to perform the procedures required for a comfort letter and to report to the requesting party on the results in a letter (reporting letter). The reporting letter issued by the statutory auditor of a subsidiary should be brought to the attention of the statutory auditor of the consolidated financial statements. A copy of the other accountants' final comfort letter should be included in the working papers relating to the registration statement.

As the principal auditor, he should read the other auditors' letter and include the following statements in his comfort letter:

- Reading the comfort letter from other auditors was one of the procedures that we, as the principal auditor, performed;

- The procedures performed by us (other than reading the other auditors' letter) relate solely to companies that we audited and to the consolidated financial statements.

271. Reporting letters for a subsidiary are governed by the general standards for the issuance of comfort letters set forth in these guidelines. It is recommended that the auditors involved coordinate the scope and terms of their engagements prior to accepting an engagement.

272. Departing from paragraphs 254-255, the purpose of the reporting letter should be amended in the engagement letter to enable it to be distributed to the statutory auditor of the consolidated financial statements solely for use in the comfort letter to the issuer (as the parent of the group).

273. In line with its purpose, the reporting letter should contain the following paragraph:

“This letter is solely for the information of the Company and for distribution to [auditor] for purposes of issuing a comfort letter in connection with the offering of up to [number] shares of the Company and the admission of the share capital of the Company to the [market segment] of [insert stock exchange], and it is not to be used, circulated, distributed to persons other than [auditor], or quoted (in whole or in part) in the Offering Circulars, or otherwise referred to (including reference to it in the foregoing comfort letter).”

274. The reporting letter should be addressed solely to the requesting party.

275. The general principles set forth in the IBR-IRE Recommendation “*Utilisation du travail d’un autre réviseur*” and in the International Auditing Standard (ISA) 600 “Using the Work of Another External Auditor”, govern the use of the reporting letter by the issuer’s auditor.

F. Subsidiaries’ financial statements included

276. When the financial statements of a subsidiary are included in the offering circular in addition to the issuer’s financial statements, the statutory auditor of the subsidiary is ordinarily requested to provide a comfort letter. Such a comfort letter should be issued in accordance with the general principles and should be brought to the attention of the auditor who is issuing the comfort letter for the issuer, as parent of the group.

277. The general principles set forth in ISA 600 apply as appropriate to the use by the issuer’s auditor of the comfort letter provided by the subsidiary’s auditor subsidiary.

G. Joint audit

278. When the issuer is audited in a joint audit, it is recommended that both auditors are requested to issue a comfort letter. Each auditor is individually responsible for arranging the engagement and the results of the examination. However, the two auditors

should agree on a common scope and terms of their engagements prior to accepting the engagement.

279. If the comfort letter refers to the findings of both auditors, it is appropriate for the auditors to record their findings in a joint comfort letter.

280. The principles governing joint audits set forth in the IBR-IRE Recommendation « *Utilisation du travail d'un autre réviseur* ⁽²⁷⁾ » apply as appropriate.

H. Bring Down Comfort Letter

281. In certain circumstances, in the course of a transaction the auditor may be requested to furnish another, updated comfort letter with regard to the same offering circular (“bring down comfort letter”), for instance as of the first day of trading of the securities covered by the offering. In this case, the procedures cover an extended change period with a new cutoff date.

282. The standards governing the issuance of comfort letters also apply to bring down comfort letters because they constitute new comfort letters. This applies specifically to the 135-day rule (*cf. supra*, par. 221-222) and to the obtaining of a new representation letter (*cf. infra*, par. 285-290).

283. Departing from the foregoing principles, the results of procedures may be reported in an abbreviated form by reference to the previous comfort letter (*cf. Appendix 5.3.*).

284. A bring down comfort letter should be issued if an initial Comfort Letter has been issued earlier than two days before the auditor is requested to issue an updated comfort letter with regard to the same offering.

I. Representation Letter relating to a Comfort Letter

285. The auditor issuing the comfort letter must obtain evidence that the management board or management attests that the documents mentioned in the comfort letter and the information provided are truthful and complete. As in audits of financial statements, this is done in the form of a customary representation letter addressed to the auditor from the management board or management. The principles governing representation letters set forth in the standards of the IBR-IRE “*Déclarations de la direction*” apply as appropriate.

286. It is recommended that the auditor also obtains representation from the underwriter(s) with respect to the due diligence they have performed on the prospectus.

⁽²⁷⁾ In particular, paragraph 7.

287. The representation letter relating to the comfort letter is no substitute for representation letters for the audit or review of annual, consolidated and interim financial statements.

288. The representation letter relating to the comfort letter should be dated as of the cutoff date of the comfort letter; in this context compare paragraphs 256-258. When the comfort letter is updated, an updated representation letter that corresponds with the comments made in the updated version of the comfort letter should also be obtained.

289. Where financial statements of other companies, e.g. subsidiaries, or meetings of (significant) subsidiaries (*cf. supra*, par. 267-277) are mentioned in the comfort letter, a representation letter should also be obtained from the management of those entities.

290. An example of a representation letter can be found in Appendix 5.3 to these guidelines. The modular representation letter is based on the model of a comfort letter in the Appendices. If further comments are made in the comfort letter, the appropriate modules and information should be added to the representation letter.

J. Timing of the Comfort Letter

291. The Comfort Letter is issued no earlier than at the time the prospectus is approved for release by the regulatory authorities (e.g. CBFA).

292. Alternatively the auditor may issue a draft letter to the issuer and the underwriter(s) to notify them on the comfort letter he intends to sign. This is recommended practice especially when no signed underwriting agreement exists. It is strongly recommended that the auditor does not issue the comfort letter before signing of such underwriting agreement.

4.2. CONSENT LETTER

4.2.1. Introduction

293. A consent letter can be defined as “A letter whereby the auditor consents to the inclusion in a prospectus of references to its name or the inclusion of any of their reports or letters which are to be published therein”.

294. Examples of such common reports which will require consent are:

- Report on pro forma financial information;
- Report on prospective financial information.

4.2.2. Consent on previously published reports

295. Especially with respect to the issue of consent on previously published reports, consent is complex. The complexity arises from:

- Certain countries which require auditors to provide consent to the inclusion of previously published reports;
- Others countries which do not require consent as to the inclusion of previously published reports;
- The fact that an auditor report can be reproduced without the auditor's knowledge;
- Other countries, which require auditors to issue a public report on the whole of the prospectus or use language that may imply this.

296. It is also unclear whether the competent regulatory authorities will continue this diversity of practice under the Prospectus Directive regime, as the Prospectus Directive, the Regulation and CESR's recommendations are silent in this issue. Others may believe that consent is not required, as the Law (the Prospectus Directive or the Regulation) doesn't require the inclusion.

297. Giving his consent to include his auditor 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.

298. The requirement to include previously published audit reports is intended to provide those who rely on a prospectus with assurance as to the quality of the historical financial information. This assurance is provided because of the inclusion of the audit report, rather than because of the auditor's consent to include it. This raises the question whether the auditor's position is any different, with or without consent.

299. However, in exceptional circumstances (e.g., where fraud is discovered at a later date), the auditor may need to consider withdrawing his previous opinion. It might be as well that because the prospectus includes information that the auditor was not aware of and which, if he would have known it at the time of signing his opinion, would have caused his opinion to be different. In such a situation, the requirement to consent would give the auditor the opportunity to do this.

300. 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 (e.g. from unlisted to listed entity).

301. 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. By signing a consent, an auditor is assuming on top of his auditors liability a prospectus liability for his sections in the prospectus towards investors in the various jurisdictions of the offering.

302. In view of the above, we would strongly recommend that the statutory audit arrangement letter contains a clause that requires the client to timely inform the statutory auditor about the development of a prospectus.

303. To the extent that the auditor is expected to carry out procedures to ensure that the reproduction of his report is appropriate, reference is made to ISA 720 (redrafted) “The Auditor’s Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements”. These procedures set out in ISA 720 (redrafted) should be taken into account when a report on the financial statements is issued. In particular, ISA 720 (redrafted) requires that “*The auditor shall read the other information to identify material inconsistencies, if any, with the audited financial statements*” (par. 6). 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.

4.2.3. Definition and purpose

304. A consent letter can be defined as “A letter whereby the auditor consents to the inclusion in an investment circular of references to its name or the inclusion of any of their reports or letters which are to be published therein”.

305. The consent letter is normally placed on public display in accordance with Annex 1, item 24(b) to the Regulation.

306. If the investment circular includes financial statements or financial information together with a pre-existing report of the auditor (or statutory auditor), the audit firm is not required by the Regulation to consent to the inclusion of that report in the investment circular.

4.2.4. Regulatory framework: requirements of the Regulation

307. Under the Regulation, whenever a prospectus includes a statement or report from the auditors (other than one that was not prepared for the purposes of the document, and so can be categorised as a pre-existing report), they are required to give consent.

308. Under Annex I, item 1.2 of the Regulation, any person who is responsible for the prospectus or any part of it must make a declaration “*that, having taken all reasonable*

care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import". Wherever possible this declaration is included in the report itself. Where that is not possible, it is included in the consent letter and reference to it is made in the part of the prospectus that refers to the consent and not in the section that deals with wider responsibilities of the directors and others for the prospectus as a whole.

4.2.5. Guidance

A. General

309. Where the auditor is required to give consent to the inclusion of its public report, or references to its name, in an investment circular the auditor should, before doing so, consider its public report in the form and context in which it appears, or is referred to, in the investment circular as a whole by:

- a) Comparing its public report together with the information being reported on to the information in the rest of the investment circular and assessing whether the auditor has any cause to believe that such other information is inconsistent with the information being reported on; and
- b) Assessing whether the auditor has any cause to believe that any information in the investment circular is misleading.

310. Whilst the auditor reporting responsibilities do not extend beyond its report, the process of giving consent involves an awareness of the overall process whereby the investment circular is prepared, and may entail discussions with those responsible for the document as a whole in relation to its content.

311. In deciding whether to give its consent, an auditor reads the final version of the investment circular with a view to assessing the overall impression given by the document, having regard to the purposes for which it has been prepared, as well as considering whether there are any inconsistencies between its report and the information in the rest of the document. As part of this process the auditor considers whether it has any cause to believe that any information in the investment circular may be misleading such that the auditor would not wish to be associated with it.

312. When the auditor believes information in the investment circular is either inconsistent with its public report, together with the information being reported on, or misleading, the auditor should withhold its consent until the auditor is satisfied that its concerns are unwarranted or until the investment circular has been appropriately amended.

313. The auditor should give consent to the inclusion of any report in an investment circular only when all relevant reports that it has agreed to make, in that investment circular, have been finalised.

314. The engagement partner uses the knowledge of the partners and professional staff working on the engagement. If particular issues are identified the engagement partner may make enquiries of partners and professional staff previously engaged on the audit of financial statements that are the basis of financial information in the prospectus, and any other partners and professional staff who may have been previously consulted regarding such issues, including the engagement quality review partner who is independent of the engagement. The engagement partner is not expected to make enquiries more widely within the auditor's firm.

315. Because of the degree of knowledge required and the increased prospectus responsibility that may be assumed, it is inappropriate for an auditor to provide consent unless the auditor has been commissioned to undertake work specifically in connection with the relevant document in relation to the matter for which consent is sought.

316. Letters of consent are dated the same date as the relevant document.

B. Previously issued reports

317. If the auditor becomes aware that the historical financial statements were defective and the directors have not revised them, he discusses the matter with those charged with governance.

318. When management revises the financial statements, the auditor would carry out the audit procedures necessary in the circumstances, would review the steps taken by management to ensure that anyone in receipt of the previously issued financial statements together with the auditor report thereon is informed of the situation, and would issue a new report on the revised financial statements.

319. Any new auditor report should include an emphasis of a matter paragraph referring to a note to the financial statements that more extensively discusses the reason for the revision of the previously issued financial statements and to the earlier report issued by the auditor. The new auditor report would be dated not earlier than the date the revised financial statements are approved and, accordingly, the usual subsequent events audit procedures referred to in paragraphs 4 and 5 of ISA 560 would ordinarily be extended to the date of the new auditor report.

320. When management does not take the necessary steps to ensure that anyone in receipt of the previously issued financial statements together with the auditor report thereon is informed of the situation and does not revise the financial statements in circumstances where the auditor believes they need to be revised, the auditor would notify those charged with governance persons ultimately responsible for the overall direction of the entity that action will be taken by the auditor to prevent future reliance on the auditor report. The action taken will depend on the auditor's legal rights and obligations and the recommendations of the auditor's lawyers.

321. It may not be necessary to revise the financial statements and issue a new auditor report when issue of the financial statements for the following period is imminent, provided appropriate disclosures are to be made in such statements.

4.2.6. Events occurring between the date of the auditor report and the completion date of the transaction

322. If, in the period between the date of the auditor report and the completion date of the transaction, the auditor becomes aware of events and other matters which, had they occurred and been known at the date of the report, might have caused it to issue a different report or withhold consent, the auditor should discuss the implications of them with those responsible for the prospectus and take additional action as appropriate.

323. If, as a result of discussion with those responsible for the prospectus concerning an event that occurred prior to the completion date of the transaction, the auditor is either uncertain about or disagrees with the course of action proposed, it may consider to take legal advice with respect to its responsibilities in the particular circumstances.

324. After the date of its report, the auditor has no obligation to perform procedures or make enquiries regarding the prospectus.

4.2.7. Cross border offerings

325. In cases involving the offering of securities to the public in jurisdictions outside Belgium, the auditor should consider any legal and related requirements applicable to the auditor in all jurisdictions in which the securities are being offered.

326. In case, the issuer is a foreign entity or if the public offering is a cross border offering, the auditor should also consider whether he has the required expertise and whether he should collaborate with colleagues in the respective jurisdictions to assure compliance with any such additional local requirements.

4.2.8. Planning and executing

A. Planning

327. Arrangements need to be made to obtain copies of the draft investment circulars as they are issued so that they can be reviewed and comments relayed in good time to the sponsor/nominated adviser/corporate advisor where the auditors are unhappy with the contents.

B. Executing

328. Financial and other information will be contained throughout an investment circular and not only in sections containing an accountants' report, profit forecast or pro forma financial information. Whilst our reporting responsibility does not extend beyond our own reports, we should consider the document as a whole. The auditor should be satisfied

that nothing contained within the investment circular as a whole is inconsistent with the information in his reports, and that all relevant matters which have come to his attention have been properly reflected. The auditor should give consent to the inclusion in the investment circular of his reports only if he is satisfied with the form and context in which the reports appear in the published document.

329. The auditor should obtain a letter of representation from the directors and ensure that the directors approve, and accept responsibility for, the investment circular as a whole.

C. Hints and advice

330. If a report dated earlier than the date of the investment circular e.g. an audit report or interim review report, is being included consider the presentation in the investment circular. This should make it clear that it is an extract from the relevant accounts, with use if necessary of quotation marks. The auditor is not required to give consent in such circumstances.

331. Always check that the wording of the “Consents” section of the investment circular accurately reflects the wording of our consent letter. It is not unusual for the lawyers drafting the document to misstate our consent, for example by saying that the auditors have consented to the issue of the document (as opposed to the inclusion of our report in the document). This is important as it potentially extends the responsibility from the auditor report to the whole document.

4.2.9. Report format and style

332. An example consent letter is included below.

The Directors

XXX NV

Dear Sirs

We hereby give our consent to the inclusion (Note X) in the [describe Prospectus] dated [] issued by XXX NV of [our audit /review report(s) for the year/period ended 20__ , in part [] dated []] / [our report relating to the profit forecast for the year ending 20__ , in part [] dated []] / [our report relating to the pro forma financial information for the year ended 20__ in part [] dated []] [[and] the references to our name] in the form and context in which [it]/[they] are included, as shown in the enclosed proof of the [describe Investment Circular] which we have signed for identification and being put on public display in accordance with Annex 1, item 24 of EU Commission Regulation No. 809/2004.

Our consent is required by Annex 1, item 23.1 of the EU Commission Regulation No 809/2004 and is given solely for the purpose of complying with that provision and for no other purpose.

Our work has not been carried out in accordance with auditing or other standards and practices generally accepted in jurisdictions outside Belgium, including the United States of America, and accordingly should not be relied upon as if it had been carried out in accordance with those standards and practices.

Yours faithfully,

The name of auditor

4.3. WORKING CAPITAL

333. With respect to basic principles and principles and essential procedures and guidance for agreeing the terms of the engagement, reference is made to the relevant paragraphs in other parts of this document. In addition to these general principles, certain situations are made specific in the next paragraphs.

334. The engagement letter will be addressed to the issuer. The underwriter(s) or bank(s) (hereinafter collectively referred to as “underwriters”) can also be included as addressee.

335. The terms of this engagement letter may be different compared to the terms of the engagement letter for comfort letter.

336. Prior to accepting the engagement, the auditor should ensure that the issuer is aware of and familiar with the principles for preparing working capital statements.

CHAPTER 5

APPENDICES

5.1. AUDIT GUIDANCE TO REPORTING ON PRO FORMA FINANCIAL INFORMATION

5.1.1. Auditor's criteria

	the Regulation	Annex I of the Regulation	Annex II of the Regulation	CESR Recommendations
In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information.		20.2		
The 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.			3	
The sources of the pro forma financial information have to be stated.			3	
Pro forma adjustments related to the pro forma financial information must be: (a) Clearly shown and explained.			6	
Pro forma adjustments related to the pro forma financial information must be:			6	
(b) Directly attributable to the transaction.			6	

	the Regulation	Annex I of the Regulation	Annex II of the Regulation	CESR Recommendations
<i>“Directly attributable to transactions”</i> . Pro forma financial information should only reflect matters that are an integral part of the transactions which are described in the prospectus. In particular, pro forma financial information should not include adjustments which are dependent on actions to be taken once the current transactions have been completed, even where such actions are central to the issuer’s purpose in entering into the transactions.				Par. 88
Pro forma adjustments related to the pro forma financial information must be: (c) Factually supportable.			6	
<i>“Factually supportable”</i> . The nature of the facts supporting an adjustment will vary according to the circumstances. Nevertheless, facts are expected to be capable of some reasonable degree of objective determination. Support might typically be provided by published accounts, management accounts, other financial information and valuations contained in the document, purchase and sale agreements and other agreements to the transaction covered by the prospectus. For instance in relation to management accounts, the interim figures for an undertaking being acquired may be derived from the consolidation schedules underlying that undertaking’s interim statements.				Par. 87
In respect of a pro forma profit and loss or cash flow statement, the adjustments must be clearly identified as to those expected to have a continuing impact on the issuer and those which are not.			6	

	the Regulation	Annex I of the Regulation	Annex II of the Regulation	CESR Recommendations
The accounting treatment applied to adjustments should be presented and prepared in a form consistent with the policy the issuer would adopt in its last or next published financial statements.				Par. 89 ^(*)

(*) Paragraph 89 of the CESR guidance also makes recommendations that do not constitute criteria but provide useful guidance with respect to this criterion.

5.1.2. Other regulatory provisions relevant to the preparers of Pro Forma Financial Information

	the Regulation	Annex I of the Regulation	Annex II of the Regulation	CESR Recommendations
(9) Pro forma financial information is needed in case of significant gross change, i.e. a variation of more than 25 % relative to one or more indicators of the size of the issuer's business, in the situation of an issuer due to a particular transaction, with the exception of those situations where merger accounting is required.	Recital 9			
For these purposes, "Significant gross change" is described in recital 9 of the PD. Thus, in order to assess whether the variation to an issuer's business as a result of a transaction is more than 25 %, the size of the transaction should be assessed relative to the size of the issuer by using appropriate indicators of size prior to the relevant transaction. A transaction will constitute a significant gross change where at least one of the indicators of size is more than 25 %.				Par. 90 to 94

	the Regulation	Annex I of the Regulation	Annex II of the Regulation	CESR Recommendations
<p>A non-exhaustive list of indicators of size is provided below:</p> <ul style="list-style-type: none"> – Total assets; – Revenue; – Profit or loss. <p>Other indicators of size can be applied by the issuer especially where the stated indicators of size produce an anomalous result or are inappropriate to the specific industry of the issuer, in these cases the issuers should address these anomalies by agreement of the competent authority.</p> <p>The appropriate indicators of size should refer to figures from the issuer's last or next published annual financial statements.</p>				
<p>Pro forma financial information should be preceded by an introductory explanatory paragraph that states in clear terms the purpose of including this information in the prospectus.</p>	Article 5			
<p>This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.</p> <p>Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.</p>		20.2		
<p>The pro forma financial information must include a description of the transaction, the businesses or entities involved and the period to which it refers.</p>			1	
<p>The pro forma financial information must clearly state the purpose to which it has been prepared.</p>			1	
<p>The pro forma financial information must clearly state that it has been prepared for illustrative purposes only.</p>			1	

	the Regulation	Annex I of the Regulation	Annex II of the Regulation	CESR Recommen- dations
The pro forma financial information must clearly state that, because of its nature, it addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results.			1	
In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes, depending on the circumstances may be included.			2	
Where applicable the financial statements of the acquired businesses or entities must be included in the prospectus.			3	
Pro forma financial information may only be published in respect of: (a) the current financial period; (b) the most recently completed financial period; and/or (c) the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document.			5	

5.1.3. Examples of Engagement Letter clauses

The examples of engagement letter clauses are intended for consideration in the context of a public reporting engagement on pro forma financial information. They should be tailored to the specific circumstances and supplemented by such other clauses as are relevant and appropriate.

Financial information upon which the report is to be given

The [prospectus] will include a pro forma [balance sheet/profit and loss account] together with a description of the basis of presentation (including the accounting policies used) and supporting notes to illustrate how the transaction might have affected the financial information of the company had the transaction been undertaken at the beginning of the period[s] concerned or as at the date[s] stated (the “pro forma financial information”).

Responsibilities

The pro forma financial information, which will be the responsibility solely of the directors, will be prepared for illustrative purposes only. This is required to be prepared in accordance with items 1 to 6 of Annex II of the Regulation.

It is our responsibility to form an opinion as to whether the pro forma financial information has been properly compiled on the basis stated and that such basis is consistent with the accounting policies of ABC plc.

If the results of our work are satisfactory, and having regard to the requirements of item 7 of Annex II of the Regulation, we shall prepare a report on the pro forma financial information for inclusion in the [*describe document*]. An illustration of the form of our report is attached.

Scope of work

Our work will be undertaken in accordance with the audit guidance issued by the *Instituut van de Bedrijfsrevisoren (IBR) / Institut des Réviseurs d’Entreprises (IRE)* in addition to the overall frame work of audit standards and guidance issued by the *Instituut van de Bedrijfsrevisoren (IBR) / Institut des Réviseurs d’Entreprises (IRE)*.

We draw your attention in particular to paragraph 62 of guidance which would preclude us from expressing any opinion if the directors have not complied with the regulatory requirements set out in Appendix 1 of that guidance.

5.1.4. Examples of Management Representation Letter clauses

The following are examples of management representation letter clauses relating to a report on pro forma financial information, issued pursuant to the Regulation or applicable Listing Rules issued by the Belgian Exchange Regulator (CBFA), which may be obtained from the issuer. Alternatively they may form the basis for a board minute.

Introduction

We refer to the pro forma financial information set out in Part [...] of the [prospectus] dated ... to be issued in connection with [...] dated. We acknowledge that we are solely responsible for the pro forma financial information and confirm on behalf of the Directors of the Company to the best of our knowledge and belief, having made appropriate enquiries of officials of the Company [and the directors and officials of the target company], the following representations made to you in the course of your work.

Specific representations

- We acknowledge as duly appointed officials of the Company our responsibility for the pro forma financial information (which has been prepared in accordance with Committee of European Securities Regulators (CESR) Recommendations for the Consistent Implementation of the EU Commission Regulation No. 809/2004 (“the Regulation”).
- We have considered the pro forma financial information and we confirm that, in our opinion, as required by item 20.2 of Annex I of the Regulation, the pro forma financial information provides investors with information about the impact of the transaction by illustrating how that transaction might have affected the [assets and liabilities] [and] [earnings] of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. Furthermore, we confirm that, in our opinion, the pro forma financial information is not misleading.
- We have considered the adjustments included in the pro forma financial information. We confirm that, in our opinion, the pro forma financial information includes all appropriate adjustments permitted by item 6 of Annex II of the Regulation, of which we are aware, necessary to give effect to the transaction as if the transaction had been undertaken [at the date reported on] [at the commencement of the period being reported on].
- We have considered those adjustments which have been omitted by virtue of not being permitted to be included by item 6 of Annex II of the Regulation and the disclosures made in respect thereof.

In our opinion the omission of these adjustments does not render the pro forma financial information misleading.]

- *[Where the accounting policies in the issuer’s next financial statements are used. The accounting policies used in compiling the pro forma financial information are those to be adopted in the Company’s next financial statements, and all changes necessary to reflect those policies have been made.]*
- *[Any specific representations relating to information included in the pro forma financial information.]*

5.1.5. Example of a report on Pro Forma Financial Information in accordance with the Regulation or the listing rules

Date

Auditor's address

Addressees, as agreed between the parties in the engagement letter

Ladies and Gentlemen,

[ABC plc]

We report on the pro forma [financial information] (the "Pro forma financial information") set out in Part [...] of the [prospectus] dated..., which has been prepared on the basis described [in note x], for illustrative purposes only, to provide information about how the [transaction] might have affected the financial information presented on the basis of the accounting policies [adopted/to be adopted (*)] by ABC NV/SA in preparing the financial statements for the period [ended/ending] [date]. This report is required by EU Commission Regulation No. 809/2004 and is given for the purpose of complying with that the Regulation and for no other purpose.

Responsibilities

It is the responsibility of the directors of ABC NV/SA to prepare the Pro forma financial information in accordance with the guidance issued by the Regulation and the Committee of European Securities Regulators (CESR).

It is our responsibility to form an opinion, as required by the Regulation, as to the proper compilation of the Pro forma financial information and to report that opinion to you.

In providing this opinion we are not updating or refreshing any reports or opinions previously made by us on any financial information used in the compilation of the Pro forma financial information, nor do we accept responsibility for such reports or opinions beyond that owed to those to whom those reports or opinions were addressed by us at the dates of their issue.

Basis of Opinion

We conducted our work in accordance with the audit standards and related guidance issued by the *Instituut van de Bedrijfsrevisoren (IBR) / Institut des Réviseurs d'Entreprises (IRE)*. The work that we performed for the purpose of making this report, which involved no independent examination of any of the underlying financial information, consisted primarily of comparing the unadjusted financial information with the source documents, considering the evidence supporting the adjustments and discussing the Pro forma financial information with the directors of ABC NV/SA.

We planned and performed our work so as to obtain the information and explanations we considered necessary in order to provide us with reasonable assurance that the Pro forma financial information has been properly compiled on the basis stated and that such basis is consistent with the accounting policies of ABC NV/SA.

[Our work has not been carried out in accordance with auditing or other standards and practices generally accepted in the United States of America [or other jurisdictions] and accordingly should not be relied upon as if it had been carried out in accordance with those standards and practices.]

Opinion

In our opinion:

- (a) the Pro forma financial information has been properly compiled on the basis stated; and
- (b) such basis is consistent with the accounting policies of ABC NV/SA.

Auditor

(*) See paragraph 44 of GUIDANCE 4000.

5.2. AUDIT GUIDANCE TO REPORTING ON PROFIT FORECASTS OR ESTIMATES

5.2.1. Reporting accountant's criteria

	the Regulation	Annex I of the Regulation	CESR Recommendations
A statement setting out the principal assumptions upon which the issuer has based its forecast or estimate.		13.1	
There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.		13.1	
The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.		13.3	
The following principles should be taken into consideration when profit forecasts or estimates are being compiled. Profit forecasts or estimates should be: <ul style="list-style-type: none"> – Understandable, i.e. profit forecasts or estimates should contain disclosure that is not too complex or extensive for investors to understand; – Reliable, i.e. profit forecasts should be supported by a thorough analysis of the issuer's business and should represent factual and not hypothetical strategies, plans and risk analysis; – Comparable, i.e. profit forecasts or estimates should be capable of justification by comparison with outcomes in the form of historical financial information. 			Par. 41

5.2.2. Other regulatory provisions relevant to the preparer's of profit forecasts

	the Regulation	Annex I of the Regulation	CESR Recommendations
Voluntary disclosure of profit forecasts in a share registration document should be presented in a consistent and comparable manner and accompanied by a statement prepared by independent accountants or auditors. This information should not be confused with the disclosure of known trends or other factual data with material impact on the issuer's prospects. Moreover, they should provide an explanation of any changes in disclosure policy relating to profit forecasts when supplementing a prospectus or drafting a new prospectus.	Recital 8		
Profit forecast means a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used.	Article 2		
Profit estimate means a profit forecast for a financial period which has expired and for which results have not yet been published.	Article 2		
If an issuer chooses to include a profit forecast or profit estimate the registration document must contain the information set out in items 13.1 and 13.2.		13	
A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors 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.		13.2	
If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.		13.4	

	the Regulation	Annex I of the Regulation	CESR Recommendations
The inclusion of a profit forecast or estimate in a prospectus is the responsibility of the issuer and persons responsible for the prospectus and due care and diligence must be taken to ensure that profit forecasts or estimates are not misleading to investors.			Par. 40
The following principles should be taken into consideration when profit forecasts or estimates are being compiled. Profit forecasts or estimates should be <ul style="list-style-type: none"> – Relevant, i.e. profit forecasts and estimates must have an ability to influence economic decisions of investors and provided on a timely basis so as to influence such decisions and assist in confirming or correcting past evaluations or assessments. 			Par. 41
Where an issuer provides a profit forecast or estimate in a registration document, if the related schedules so require, it must be reported on by independent accountants or auditors in the registration document (as described in item 13.2 of Annex I of the Regulation). Where the issuer does not produce a single prospectus, upon the issuance of the securities note and summary at a later time, the issuer should either: <ul style="list-style-type: none"> – Confirm the profit forecasts or estimates; or – State that the profit forecasts or estimates are no longer valid or correct; or – Make appropriate alteration of profit forecasts or estimates. In this case they must be reported upon as described in item 13.2 of Annex I of the Regulation. 			Par. 42
If an issuer has made a statement other than in a previous prospectus that would constitute a profit forecast or estimate if made in a prospectus, for instance, in a regulatory announcement, and that statement is still outstanding at the time of publication of the prospectus, the issuer should consider whether the forecasts or estimates are still material and valid and choose whether or not to include them in the prospectus. CESR considers that there is a presumption that an outstanding forecast made other than in a previous prospectus will be material in the case of share issues (especially in the context of an Initial Public Offering (IPO)). This is not necessarily the presumption in case of non-equity securities.			Par. 43 & 44

	the Regulation	Annex I of the Regulation	CESR Recommendations
When there is an outstanding profit forecast or estimate in relation to a material undertaking which the issuer has acquired, the issuer should consider whether it is appropriate to make a statement as to whether or not the profit forecast or estimate is still valid or correct. The issuer should also evaluate the effects of the acquisition and the profit forecast made by that undertaking on its own financial position and report on it as it would have done if the profit forecast or estimate had been made by the issuer.			Par. 45 & 46
The forecast or estimate should normally be of profit before tax (disclosing separately any non-recurrent items and tax charges if they are expected to be abnormally high or low). If the forecast or estimate is not of profit before tax, the reasons for presenting another figure from the profit and loss account must be disclosed and clearly explained. Furthermore the tax effect should be clearly explained. When the results are published relating to a period covered by a forecast or estimate, the published financial statements must disclose the relevant figure so as to enable the forecast and actual results to be directly compared.			Par. 47 & 48
CESR recognizes that often in practice, there is a fine line between what constitutes a profit forecast and what constitutes trend information as detailed in item 12 of Annex I of the Regulation. A general discussion about the future prospects of the issuer under trend information will not normally constitute a profit forecast or estimate as defined in Articles 2.10 and 2.11 of the Regulation. Whether or not a statement constitutes profit forecasts or estimates is a question of fact and will depend upon the circumstances of the particular issuer.			Par. 49
This is a non-exhaustive list of factors that an issuer is expected to take into consideration when preparing forecasts: <ul style="list-style-type: none"> – Past results, market analysis, strategic evolutions, market share and position of the issuer; – Financial position and possible changes therein; – Description of the impact of an acquisition or disposal, change in strategy or any major change in environmental matters and technology; – Changes in legal and tax environment; – Commitments towards third parties. 			Par. 50

5.3. COMFORT LETTER

5.3.1. Example of a Representation Letter from Underwriters re auditor's liability Ex Q

Underwriter Representation Letter
for Registration Statements

U N D E R W R I T E R L E T T E R H E A D

[Date, 20XX]

Auditor
Attn *Auditor*

Ladies and Gentlemen,

This letter is written to you in connection with the comfort letter that [Auditor] at the request of the underwriter, will address to [Underwriter], on their own behalf (and as representatives of several underwriters) (the “underwriters”) in connection with the offering by [Company Name] of its ordinary shares in (country) pursuant to (reference to law) (e.g. the law of 16 June 2006 on public offerings and the EU Commission Regulation No. 809/2004 including related requirements and authoritative guidance issued by the relevant regulatory bodies in the EU) (the “Offering”).

We acknowledge and agree that:

Article 17 of the Law of 22 July 1953 as last amended by the Royal Decree of 21 April 2007 (“Law regarding the establishment of an Institute of Registered Auditors and the organisation of the public oversight on the auditing profession” (free translation), coordinated on 30 April 2007) does apply to mandates entrusted upon the auditors by law or by virtue of the law. We have discussed that pursuant to the Circulars D.015/06 and D.016/06 – notably section 2.3. – of the *Instituut van de Bedrijfsrevisoren / Institut des Réviseurs d Entreprises*, the issuing by the auditor of a comfort letter within the framework of an initial public offering of shares takes place as a natural extension of the auditor’s function. As a consequence thereof, the total aggregate liability of [Auditor] in connection with the engagement is to be limited as determined in article 17 of the Law of 22 July 1953. For the avoidance of doubt, any limitation of liability does not apply to any acts, omissions, or representations which are in any case criminal, dishonest, fraudulent, or intended to cause harm on the part of [Auditor], its partners or its employees, nor to any liability which [Auditor], its partners or its employees by law cannot exclude.

This letter is solely for [Auditor] in connection with the above transaction and it is not to be used, circulated, quoted or otherwise referred to in whole or in part for any other purpose.

Very truly yours,

(Signature)

[Name Underwriter], represented by
(name of legal representative)
(on their own behalf and as representatives
of the several underwriters)

[Date, 20XX]

5.3.2. Example of a Representation Letter from Underwriters re auditor’s liability

**Underwriter Terms Confirmation Letter
for Registration Statements**

UNDERWRITER LETTERHEAD

[Date, 20XX]

Auditor
Attn *Auditor*

Ladies and Gentlemen,

This letter is written to you in connection with the comfort letter that [Auditor] will address to [Underwriter], on their own behalf (and as representatives of several underwriters) (the “underwriters”) in connection with the offering by [Company Name] of its ordinary shares in (country) pursuant to (reference to law) (e.g. the law of 16 June 2006 on public offerings and the EU Commission Regulation No. 809/2004 including related requirements and authoritative guidance issued by the relevant regulatory bodies in the EU) (the “Offering”).

We acknowledge and agree that:

Article 17 of the Law of 22 July 1953 as last amended by the Royal Decree of 21 April 2007 (“Law regarding the establishment of an Institute of Registered Auditors and the organisation of the public oversight on the auditing profession” (free translation), coordinated on 30 April 2007) does apply to mandates entrusted upon the auditors by law or by virtue of the law. We have discussed that pursuant to the Circulars D.015/06 and D.016/06 – notably section 2.3. – of the *Instituut van de Bedrijfsrevisoren / Institut des Réviseurs d Entreprises*, the issuing by the auditor of a comfort letter within the framework of an initial public offering of shares takes place as a natural extension of the auditor’s function. As a consequence thereof, the total aggregate liability of [Auditor] in connection with the engagement is to be limited to [3/12 million EUR] as determined in article 17 of the Law of 22 July 1953. For the avoidance of doubt, any limitation of liability does not apply to any acts, omissions, or representations which are in any case criminal, dishonest, fraudulent, or intended to cause harm on the part of [Auditor], its partners or its employees, nor to any liability which [Auditor], its partners or its employees by law cannot exclude.

This letter is solely for [Auditor] in connection with the above transaction and it is not to be used, circulated, quoted or otherwise referred to in whole or in part for any other purpose.

Very truly yours,

(Signature)

[Name Underwriter], represented by
(name of legal representative)
(on their own behalf and as representatives
of the several underwriters)

[Date, 20XX]

5.3.3. Example of a Representation Letter from Underwriters re their own due diligence

Underwriter Representation Letter on Due Diligence for Registration Statements (EU issuance)

UNDERWRITER LETTERHEAD

[Date, 20XX]

Auditor
Attn *Auditor*

Ladies and Gentlemen,

[Name of financial intermediary], as principal or agent, in the placement of [identify securities] to be issued by [name of issuer], will be reviewing certain information relating to [issuer] that will be included (incorporated by reference) in the document [identify document], which may be delivered to investors and utilised by them as a basis for investment decision. We are knowledgeable with the requirements of the law of 16 June 2006 on public offerings and the EU Commission Regulation No. 809/2004 including related requirements and authoritative guidance issued by the relevant regulatory bodies in the EU.

We confirm that we have performed the necessary due diligence review process to assume our responsibilities as defined under the above regulations, laws and requirements.

We hereby request that you deliver to us a “comfort letter” concerning the financial statements of the issuer and certain statistical and other data included in the offering document. We will contact you to identify the procedures we wish you to follow and the form we wish the comfort letter to take.

Very truly yours,

(Signature)

[Name of financial intermediary]

[Date, 20XX]

5.3.4. Example of a Representation Letter from Underwriters re their own due diligence

Underwriter Representation Letter on Due Diligence for Registration Statements (US issuance)

UNDERWRITER LETTERHEAD

[Date, 20XX]

Auditor

Attn *Auditor*

Ladies and Gentlemen,

[Name of financial intermediary], as principal or agent, in the placement of [identify securities] to be issued by [name of issuer], will be reviewing certain information relating to [issuer] that will be included (incorporated by reference) in the document [identify document], which may be delivered to investors and utilised by them as a basis for investment decision. This review process, applied to the information relating to the issuer, is (will) substantially consistent with the due diligence review process that we would perform if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act). We are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Act.

We confirm that we have performed the necessary due diligence review process to assume our responsibilities as defined under the above regulations, laws and requirements.

We hereby request that you deliver to us a “comfort letter” concerning the financial statements of the issuer and certain statistical and other data included in the offering document. We will contact you to identify the procedures we wish you to follow and the form we wish the comfort letter to take.

Sincerely yours,

(Signature)

[Name of financial intermediary]

[Date, 20XX]

5.3.5. Example of an Engagement Letter

AUDITOR LETTERHEAD

[Date, 20XX]

[Company Name]

Dear Sirs,

We are writing to you in connection with the Comfort Letter that you have requested us as auditors of [Company Name] to issue to [Underwriter Name(s)] on their own named in the prospectus dated [Date, 20XX] prepared in connection with the offering of shares by your Company.

Please find hereafter the terms and conditions in accordance with which we will carry out specified procedures on the prospectus to be in a position to issue this Comfort Letter.

This engagement will be carried out in accordance with the guidelines issued by the IBR-IRE – *Guidelines for the Issuance of Comfort Letters*.

The specific procedures, which primarily consist of agreed-upon procedures, which we would expect to perform are described in the attached draft Comfort Letter and such procedures reflect those procedures which we understand [Underwriter Name(s)] expects us to perform at your request unless you inform us otherwise. Such procedures include reading of the 20XX minutes of Shareholders' meetings and Board of directors' meetings, inquiring of officials of the Company who are responsible for accounting and financial matters about subsequent changes of identified financial statements subsequent to *December 31, 20XX* and comparing accounting and financial data included in the prospectus with the corresponding accounting and financial data as included in audited financial statements, unaudited interim financial statements, accounting records or analyses prepared by the Company from its accounting records. We would like to point out that our procedures are not designed to and are not likely to reveal fraud, embezzlement or other illegal acts. Therefore, the procedures performed do not provide any assurance that even materially false information will be identified and any illegal acts or other irregularities will necessarily be disclosed.

The text of the final Comfort Letter itself will depend, of course, upon the results of the procedures, which we would not expect to complete until shortly before the letter is given and in no event before the cutoff date indicated included in the comfort letter. No reliance should be placed on any drafts of the Comfort Letter, oral reports or representations, which may be provided by us. Any such drafts, oral reports or representations are not authoritative; their sole purpose is to agree on the procedures to be performed and the information to be examined and will not constitute our definitive opinion(s) and conclusion(s).

Responsibility for the prospectus and specifically the relevance of the information provided therein lies with the management of [Company Name]. By issuing the Comfort Letter and performing the procedures in connection therewith, we assume no responsibility, in whole or in part, for the content of the prospectus. According to respective capital market regulations, the parties responsible for the contents of the prospectus may be liable to Investors on the basis of a prospectus containing incorrect or incomplete information. With respect to this responsibility it is strongly recommended to seek sufficient legal counsel in connection with the preparation of the prospectus. We will not provide any such advice or counsel. In addition we assume no responsibility for the level of disclosure in the prospectus and whether or not it complies with the applicable legal and capital market requirements. We would like to point out that the parties responsible for the prospectus have to determine the procedures necessary to ensure the completeness and accuracy of the information contained in the prospectus. By issuing the Comfort Letter we will make no

representation and assume no responsibility regarding the sufficiency of the procedures for your or the other addressees' purposes and we will indicate so in the Comfort Letter.

Our assignment does not cover updating the Comfort Letter that will be issued in order to report on facts and circumstances subsequent to its cutoff date.

As part of the procedures carried out for purpose of issuing our comfort letter, we will request from *[Company Name]* and the *[Underwriters]* a representation letter as of the cutoff date of our Comfort Letter updating the various representations previously made to us as part of our audit of *[Company Name]* consolidated financial statements as of and for the year ended 31 December 20XX and other specific representations relating to agreed-upon procedures performed relating to subsequent changes of specific items of the financial statements as described in the attached draft Comfort Letter. A draft of this representation letter is attached as an appendix to this engagement letter.

In connection with the prospectus and the Comfort Letter, we may communicate with investment banks, consultants and advisors employed by you and other parties such as stock exchanges and release information concerning the Company to them. Should the aforementioned parties request such information from us, we may notify this party that we act solely on your behalf, for which we may request written confirmation, and that, notwithstanding the Comfort Letter, we assume no responsibility with regard to them for the information disclosed to them.

Our Comfort Letter is solely for the information of the *[Company Name]* as being responsible for the content of the prospectus and for the information of the *[Underwriter Name(s)]* as being responsible in conducting and documenting their investigation of the affairs of the *[Company Name]* in connection with the offering of the securities covered by the prospectus, and it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the prospectus or any other document, except that reference may be made to it in the Transaction Agreement or in any list of closing documents pertaining to the offering of the securities covered by the prospectus.

This engagement letter and our Comfort Letter shall be governed by, and construed in accordance with the general terms and conditions of the IBR-IRE and our own general terms and conditions included in appendix and which form an integral part of this engagement letter.

The fees relating to the procedures performed to issue the requested Comfort Letter will be billed to *[Company Name]* based on time spent, the level of responsibility and professional qualification of the professionals involved. This engagement is based upon the full and active cooperation of *[Company Name]* in performing our work.

We would be grateful if you would confirm in writing your agreement on the terms of our engagement as described above. We remain at your disposal to provide you with any further information that you may require.

Yours faithfully,

Auditor

[Company Name]

I have read and understood the terms and conditions of this engagement letter and attachments and I agree to and accept them for and on behalf of *[Company Name]*, by whom I am duly authorised:

Signature

[Name]

[Title]

[Date]

[Underwriter Name(s)]

I have read and understood the terms and conditions of this letter and attachments and I agree to and accept them for *[Underwriter Name(s)]* on their own behalf and as representative of the several *Managers* named in the prospectus, by whom I am duly authorised:

On behalf of *[Underwriter Name(s)]* on their own behalf and as representative of the several *Managers* named in the prospectus

Signature

[Name]

[Title]

[Date]

Attachments:

draft of comfort letter

draft of *[Company Name]* representation letter

terms of business

5.3.6. Example of a Comfort Letter

This DRAFT is furnished solely for the purpose of indicating the form of letter that we would expect to be able to furnish the named underwriters in response to their request, the matters expected to be covered in the letter, and in the nature of the procedures that we would expect to carry out with respect to such matters. Based on our discussions with the named underwriters, it is our understanding that the procedures outlined in this draft letter are those they wish us to follow. Unless named underwriters inform us otherwise, we shall assume that there are no additional procedures they wish us to follow. The text of this letter itself will depend, of course, on the results of the procedures, which we would not expect to complete until shortly before the letter is given and in no event before the cutoff date indicated therein. We retain the right to modify the wording below accordingly.

[Location, Date, 20XX]

[Underwriter Name(s)]

As lead manager and as representative of the Underwriters (the “Underwriters”) named in the prospectus referred to below

Attn. [Name]

[Title]

[Company/Dept]

[Address]

[Town]

Gentlemen,

We have audited the consolidated balance sheets of [Company Name] (the “Company”) and subsidiaries as of December 31, 20XX-1 and December 31, 20XX-2, and the consolidated statements of income, statement of changes in equity, and cash flows and selective notes for each of the two years then ended, which have been prepared in conformity with International Financial Reporting Standards (IFRS) as adopted in the EU, included in the prospectus, dated Date, 20XX, in Dutch. Our audits have been conducted in accordance with [state relevant audit framework] in [Country].

We have reviewed the interim condensed consolidated balance sheets of [Company Name] (the “Company”) and subsidiaries as of March 31, 20XX-1 and March 31, 20XX, and the interim condensed consolidated statements of income, statement of changes in equity, cash flows and selective notes for each of the two periods then ended, which have been prepared in conformity with IAS 34 “Interim Financial Reporting” as adopted in the EU, included in the same prospectus.

We conducted our reviews in accordance with the guidelines of the Belgian Institute of Registered Auditors (IBR-IRE). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Belgian Institute of Registered Auditors (IBR-IRE), the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

All above information has been included in the Dutch/French version of the prospectus (n° XXXXXXXXXXX) filed by [Company Name] under the law of 16 June 2006, “openbare aanbieding van beleggingsinstrumenten en de toelating van beleggingsinstrumenten tot de verhandeling op

een gereglementeerde markt” or public offering of “effecten” (“the law”); our statutory auditor report and our limited review report with respect thereto is also included in that prospectus. The prospectus, as amended as of XXXXXXX, 20XX, including the Placard dated XXXXXXX, 20XX, is herein referred to as “the prospectus”.

In connection with the prospectus:

(1) We are a member of the Belgian Institute of Registered Auditors (*Instituut van de Bedrijfsrevisoren / Institut des Réviseurs d’Entreprises*) (IBR-IRE) and we are the auditor with respect to the Company within the meaning of the Belgian law and the applicable rules and regulations there under.

(2) We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, 20XX-1 nor reviewed any interim financial statements for any period subsequent to March 31, 20XX. The purpose (and therefore the scope) of our audit for the year ended December 31, 20XX-1 was to enable us to express our opinion on the consolidated financial statements as of December 31, 20XX, and for the two years then ended, but not on the financial statements for any other interim period within those years than those mentioned above. The purpose (and therefore the scope) of our review for the [period] ended March 31, 20XX was to enable us to express negative assurance on the condensed consolidated interim financial statements as of March 31, 20XX, and for the [period] then ended, but not on any interim financial statements for any other interim period within those years than those mentioned above.

(3) For purposes of this letter, we have read the 20XX and 20XX+1 minutes of meetings of the stockholders and the board of directors of the Company and its subsidiaries as set forth in the minute books at [Date, 20XX], officials of the Company having advised us that the minutes of all such meetings through that date were set forth therein.

(4) For purposes of this letter we have read the 20XX minutes of meetings of the stockholders, the board of directors, and [include other appropriate committees, if any] of the company and its subsidiaries as set forth in the minute books at June ..., 20XX, officials of the company having advised us that the minutes of all such meetings through that date were set forth therein; we have carried out other procedures to June ..., 20XX, as follows (our work did not extend to the period from June ..., 20XX, to June ..., 20XX, inclusive):

a. With respect to the three-month periods ended March 31, 20XX and 200X-1, we have

(i) Performed a limited review specified by the Institute of Registered Auditors (IBR-IRE), on the unaudited condensed consolidated balance sheet as of March 31, 20XX, and unaudited condensed consolidated statements of income, statement of changes in equity, cash flows and selective notes for the three-month periods ended March 31, 20XX and 20XX-1, included in the registration statement.

(ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a(i) comply as to form in all material respects with the applicable accounting requirements of IAS 34 “Interim Financial Reporting” as adopted in the EU and the related published rules and regulations.

b. With respect to the period from April 1, 20XX, to May 31, 20XX, we have

(i) Read the unaudited consolidated financial statements of the company and subsidiaries for April and May of both 20XX-1 and 20XX furnished us by the company, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to May 31, 20XX, were available.

(ii) Inquired of certain officials of the company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in b(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the registration statement.

The foregoing procedures do not constitute an audit conducted in accordance with Standards of IBR-IRE. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

(5) Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that

a. (i) Any material modifications should be made to the unaudited condensed consolidated financial statements described in 4a(i), included in the registration statement, for them to be in conformity with IAS 34 “Interim Financial Reporting” as adopted in the EU.

(ii) The unaudited condensed consolidated financial statements described in 4a(i) do not comply as to form in all material respects with IAS 34 “Interim Financial Reporting” as adopted in the EU and the related published rules and regulations.

b. (i) At May 31, 20XX, there was any change in the capital stock, increase in long-term debt, or decrease in consolidated net current assets or stockholders’ equity of the consolidated companies as compared with amounts shown in the March 31, 20XX, unaudited condensed consolidated balance sheet included in the registration statement, or (ii) for the period from April 1, 20XX, to May 31, 20XX, there were any decreases, as compared to the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income, except in all instances for changes, increases, or decreases that the registration statement discloses have occurred or may occur.

(6) Company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to December 31, 20XX-1, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after December 31, 20XX-1, have, of necessity, been limited. We have inquired of certain officials of the company who have responsibility for financial and accounting matters whether (a) at [Date, 20XX] (*this date should not exceed the 135 day rule as specified in the guidelines*), there was any material change in the issued capital, decrease in retained earnings, increase in non-current interest bearing liabilities or any decreases in consolidated net current assets, defined as current assets less current liabilities, or stockholders’ equity of the consolidated companies as compared with amounts shown on the December 31, 20XX-1, audited consolidated balance sheet included in the prospectus or (b) for the period from December 31, 20XX-1 to [Date, 20XX] (*this date should not exceed the 135 day rule as specified in the guidelines*), there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in consolidated net income. On the basis of these inquiries and our reading of the minutes as described in (4), nothing came to our attention that caused us to believe that there was any such change, increase, or decrease and except in all instances for changes, increases, or decreases that the prospectus discloses, have occurred or may occur, except as follows:

(7a) Our audit of the consolidated financial statements for the periods ended December 31, 20XX-1, and 20XX-2 comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such consolidated financial statements taken as a whole. For none of the periods referred to therein nor for any other period did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated below and, accordingly, we express no opinion thereon.

(7b) Our review of the consolidated financial statements for the periods ended March 31, 20XX-1 and 20XX comprised inquiries and analytical procedures deemed necessary for the purpose of expressing an review opinion on such consolidated financial statements taken as a whole. For none of the periods referred to therein nor for any other period did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated below and, accordingly, we express no opinion thereon.

(8) However, for purposes of this letter, we have read the circled items identified by you on the attached copy of the prospectus and have performed the following additional procedures, which were applied as indicated by the symbols explained below. In performing these procedures, we have considered to be in agreement amounts that, when compared, differed only due to the effect of rounding. Additionally, with respect to analyses prepared by the Company, we make no comment regarding the completeness or appropriateness of such analyses or the manner in which they were prepared. Our additional procedures were as follows:

- (a) Compared the specified euro amounts and/or ratios to amounts in the audited or reviewed consolidated financial statements described in the introductory paragraph of this letter to the extent that such amounts are included in or can be derived from such statements or the related notes thereto, and found them to be in agreement.
- (b) Compared the specified euro amounts and/or ratios to amounts in the Company's accounting records and found them to be in agreement.
- (c) Compared the specified euro amounts and/or ratios to amounts in accounting analyses or schedules prepared by the Company and found them to be in agreement.
- (d) Compared the euro currency and other amounts not derived directly from audited consolidated financial statements, or that could not be compared directly to the Company's accounting records, to amounts in analyses prepared by the Company from its accounting records or audited financial statements and found them to be in agreement.
- (e) Proofed the arithmetic accuracy of the percentages or amounts based on the data in the above-mentioned financial statements, accounting records, and analyses.

We make no representations as to whether the transaction will take place or the amount of securities to be sold in the transaction.

(9) *If the prospectus includes a working capital statement, on which comfort is requested additional wording as described in the footnote may be included in the comfort letter ^(*).*

(10) *If the prospectus includes a forecast, on which comfort is requested additional wording as described in the footnote may be included in the comfort letter ^(**).*

^(*) In section Chapter XXX, the prospectus sets out a working capital statement for the two years ended December 31, 20XX-1, and December 31, 20XX, prepared by the Board of Directors of the Company. We have read this information and have compared it with that shown in the audited financial statements of the Company. We confirm that this financial information has been accurately extracted from the financial statements for the relevant years.

In section Chapter XXX, the prospectus sets out a working capital statement with respect to the adequacy of the Company's working capital requirements at the date of the Prospectus. We have read this information and we can confirm that in our view (i) the working capital requirements of the Company are sufficient to meet the Company's present requirements for the coming 12 months subject to the realization of the assumptions and objectives supporting the Company's business plan and projections and (ii) the directors have made the statement, in the form and context in which it is made, after due and careful enquiry.

^(**) With respect to section Chapter ZZZ, the prospectus sets out a forecast for the financial years 20XX-1-20XX. We have read this information and refer to our report included in Chapter ZZZ, related to the methodology used for the business plan 20XX-1 - 20XX.

(11) It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph 7 above; also, such procedures would not necessarily reveal any material misstatement of the amounts or ratios listed above. Further, we have addressed ourselves solely to the foregoing data as set forth and incorporated by reference in the prospectus and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.

(12) This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the prospectus, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the prospectus or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the prospectus.

Sincerely yours,

Auditor

Represented by

[*Auditor*] [*Auditor*]

5.3.7. Example of a Bring Down Letter

[Place, Date, 20XX]

Underwriter.

As lead manager and as representative of the Underwriters (the “Underwriters”) named in the prospectus referred to below

Attn. *Underwriter*

Ladies and Gentlemen,

We refer to our letter of Date, 20XX, relating to the prospectus (n° XXXXXXXXXXX) filed by Company NV (“Company”) on Date, 20XX. We reaffirm as of the date hereof (and as though made on the date hereof) all statements made in that letter except that, for the purposes of this letter:

- a. The prospectus to which this letter relates is as amended on Date, 20XX.
- b. The reading of minutes described in paragraph 4 of that letter has been carried out through Date, 20XX. (“New Cutoff Date”).
- c. The procedures and inquiries covered in paragraph 5 of that letter were carried out to Date, 20XX (“New Cutoff Date”); our work did not extend to the period from Date, 20XX to Date, 20XX, inclusive.
- d. The period covered in paragraph 5 of that letter is changed to the period from Date, 20XX, to Date, 20XX, officials of the company having advised us that no such financial statements as of any date or for any period subsequent to Date, 20XX, were available.

This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the company in connection with the offering of the securities covered by the prospectus, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the prospectus or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the prospectus, in connection with or resulting from the Offering and/or the prospectus.

Our work did not extend to the period from the New Cutoff Date to the date of this letter.

This letter shall be exclusively governed by Belgian law with the exception of the international law of conflicts. The courts of [City] shall have exclusive jurisdiction for any disputes arising in connection with the subject of this letter.

Sincerely yours,

[Signature]

Auditor

5.3.8. Example of a Representation Letter

Client Representation Letter
for Registration Statements

CLIENT LETTERHEAD

[Date, 20XX]

Auditor
Attn *Auditor*

Ladies and Gentlemen,

This letter is written to you in connection with the prospectus dated XXXXXXXX 20XX, filed by [Company Name].

In that connection we advise you that since December 31, 20XX, the date of the audited financial statements and the notes thereto included in the above prospectus, there were, with respect to [Company Name] and subsidiaries:

- (a) No significant changes affecting the December 31, 20XX financial statements and notes thereto incorporated by reference in the above prospectus;
- (b) No occurrences or discoveries that make any part of the textual material or financial statements and notes thereto inaccurate or misleading;
- (c) No unusual developments having a material effect on the financial or operating position of the Company;
- (d) No changes in the Company's business activities or accounting policies related to significant revenue and other accounting transactions, the composition or practices of the audit committee, or the composition or practices of the Company's internal audit department;
- (e) No instances identified of material fraud or any other fraud that, although not material, involves senior management or management or other employees who have a significant role in the Company's internal control over financial reporting;
No changes in internal control over financial reporting or other factors that might significantly affect internal control over financial reporting, including any corrective actions taken by management with regard to significant deficiencies and material weaknesses; and
- (f) No deficiencies identified in the design or operating effectiveness of the Company's internal control over financial reporting that were not previously disclosed to you.

We further advise you that:

- (1) All financial and operating data (including euro amounts, percentages, and number of employees) included in the prospectus are fairly stated.
- (2) There were no consolidated financial statements as of any date or for any period subsequent to December 31, 20XX.
- (3) (i) at [Date, 20XX] there was no change in the capital stock or long-term debt of the Company and consolidated subsidiaries or no decrease in consolidated net assets or net current assets as compared with amounts shown on the December 31, 20XX audited consolidated balance sheet included in the prospectus; or (ii) for the period from December 31, 20XX to [Date, 20XX] there were no decreases, as compared with the corresponding period in the preceding year, in consolidated total revenues or net income, (*except as follows:*)
- (4) We have submitted to your representative minutes covering meetings of shareholders, directors, or committees of directors that were held from December 31, 20XX-1 to the date of this letter, or summaries of actions of recent meetings for which minutes have not yet been prepared. These minutes constitute a full and complete record of all such meetings held during the period from December 31, 20XX-1 to [Date, 20XX].

Should anything come to our attention that in our judgment materially affects the financial statements included in the prospectus, we shall notify you promptly.

Very truly yours,

(Signature)

[Name], Chief Executive Officer

(Signature)

[Date, 20XX]

(Signature)

[Name], Chief Financial Officer

(Signature)

[Date, 20XX]

I S S U E R L E T T E R H E A D

Auditor

Dear Sirs,

In connection with (a) the Issuer's prospectus dated Month Day, XXXX prepared in connection with the offering of Description of the operation, (b) the comfort letter we have requested you to deliver to Underwriter on their own behalf and as representative of the several Managers named in the prospectus pursuant to your engagement letter dated Engagement letter date and (c) in connection with your audit of the consolidated financial statements of Issuer for the years ended 31 December N, N-1 and N-2 that are included (or incorporated by reference) in the prospectus, the representations made to you in our letter[s] of [date(s) of audit representation letter(s)] remain current [except for]:

[Describe any changes]

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

In addition to the foregoing, we also confirm, to the best of our knowledge and belief, the following representations made to you in connection with your post-report review procedures.

General

We have responded fully to all inquiries made to us by you during your review.

We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.

Unaudited Financial Information

We recognize that, as members of management of the Company, we are responsible for the fair presentation of its unaudited consolidated financial statements for the [period of interim financial statements] made available to you [and of the unaudited consolidated financial statements for the (period of interim financial statements) included (or incorporated by reference) in the (appropriate filing)]. Such financial statements were prepared from the books and records of Issuer in conformity with IFRS applied on the same basis as that used for the audited consolidated financial statements of Issuer as of and for the year ended [balance sheet date], and reflect all adjustments necessary for a fair presentation of the consolidated financial statements. All material transactions have been

properly recorded in the accounting records underlying these financial statements. No consolidated financial statements are available for any period subsequent to [end of period for which interim financial statements are available].

Internal Control

There have been no significant changes in internal control or the manner in which transactions are recorded, classified, and summarized in the preparation of interim financial information from the internal control and accounting systems in effect during the preceding fiscal year.

Minutes

The dates of meetings of shareholders, directors, committees of directors and important management committees [from the beginning of the period covered by the financial statements to the date of the letter] are as follows:

[List of meetings and dates:]

We have made available to you the minutes of these meetings [or summaries of actions at recent meetings for which minutes have not yet been prepared] and such minutes or summaries are complete and authentic records or summaries of such meetings.

Contracts

We have made available to you all significant contracts and agreements. We have complied with all aspects of the contractual agreements that would have a material effect on the financial statements in the event of non-compliance.

Financial Statement Representations

[The following representation is an example of one that we obtain from the client in connection with the issuance of a typical comfort letter in which we have been provided information on increases and decreases in certain financial statement items covering the period since the last financial statements included in the registration statement. Client representations also may be appropriate for other areas on which we are providing comfort based upon inquiries or reading the minutes.]

At cutoff date, there were no change in the share capital, no increase [in excess of euros ... millions] in long-term debt and no decrease [in excess of euros ... millions] in shareholders' equity of the Issuer as compared with amounts shown in the March 31, XXN+1 unaudited consolidated balance sheet and for the period from April 1, XXN+1 to the cut-off date, there were no decreases, as compared with the corresponding period in the preceding year, [in excess of euros ... millions] in consolidated [revenue] and [in excess of euros ... millions] in [profit].

No events or transactions have occurred since the date[s] of our previous letter[s] or are pending [other than those reflected or disclosed in the filing] that would have a material effect on the audited financial statements [and the unaudited interim financial information] included [or incorporated by reference] in the [appropriate filing] or that are of such significance in relation to the Company's affairs to require mention in a note to the audited financial statements [or the unaudited interim financial information] in order to make them not misleading regarding the financial position, results of operations, or cash flows of the Company.

Yours faithfully,

Issuer

Legal representative

5.3.9. Example of a Representation Letter update

**Updated Client Representation Letter
for Second (Closing Date) Letter to Underwriters**

CLIENT LETTERHEAD

Place, Date, 20XX

Auditor
Attn
Address

Ladies and Gentlemen,

We refer to our representation letter dated Date, 20XX given to you in connection with the prospectus (n° XXXXXXXXXXX) filed by Company NV on Date, 20XX. We reaffirm the representations made in that letter as of the date hereof, which is the date of your letter to the underwriters, except that, for the purpose of this letter, the references in paragraph (3) to Date, 20XX are changed to Date, 20XX.

Very truly yours,

(Signature)

[Name], Chief Executive Officer

[Date, 20XX]

(Signature)

[Name], Chief Financial Officer

[Date, 20XX]

