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AFEP

Association Française des Entreprises Privées

April 19, 2004

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Re: Comments on Proposed Amendments to Form 20-F Relating to Financial Statements Prepared under International Financial Reporting Standards, SEC File No. S7-15-04

Dear Mr. Katz:

Our organization, which represents more than 85 of the top French private sector companies,[1] is submitting this letter in response to the request of the Securities and Exchange Commission for comments on the Commission's proposed amendments to Form 20-F to provide a one-time accommodation relating to financial statements prepared under International Financial Reporting Standards. The proposed amendments are discussed in Release Nos. 33-8397 (and 8397A); 34-49403 (and 49403A); International Series Release No. 1274 (and 1274A); File No. S7-15-04 (the "Release").

We and our member companies strongly support the initiative of the Commission in proposing these amendments to Form 20-F. The Commission has, we believe, appropriately balanced the need to ensure that investors receive meaningful financial information with a recognition of the substantial efforts that European companies will be required to undertake as they transition to IFRS. The proposed amendments will also allow European companies to publish the same primary financial statements in their home markets and in the United States (assuming the Commission's proposal is modified in the manner we suggest below), which will facilitate the understanding by investors worldwide of the information they will communicate.

In our comments below, we discuss why the amendments to Form 20-F should largely be adopted as proposed, and in particular why some of the alternatives discussed in the

[1] The *Association Française des Entreprises Privées* ("AFEP") (which translates as the Association of Private French Enterprises) currently represents more than eighty-five private sector companies in France, with a combined market capitalization of approximately Eur 900 billion, combined sales of over Eur 900 billion and more than 3.5 million employees. The Presidents of AFEP's members are actively and directly involved in defining the principal economic and social policies proposed to European and national authorities, seeking to promote initiatives that contribute to the growth of companies in the world market economy. Approximately 30 of AFEP's members are listed on the New York Stock Exchange or NASDAQ, representing almost three-quarters of the French companies that are so listed.

Commission's questions would impose substantial burdens on European companies without providing significant investor protection. We also suggest that the Commission modify the amendments to ensure that the accommodation is available to companies that prepare IFRS financial statements in accordance with European Union regulations, and that the final amendments will fully serve the objectives that the Commission is seeking to accomplish.

1. We support the proposed waiver of the earliest of the three years of financial statements for first time adopters of IFRS standards.

We are strongly in favor of the position that the Commission has taken in proposing to waive the earliest of the three years of financial statements for first time adopters of IFRS. We believe that the Commission's proposal appropriately recognizes the practical difficulties that would be involved with the presentation of a third year of IFRS financial statements, while ensuring the best flow of financial information to investors.

The Commission has requested comment as to whether a company should instead be required to provide a third year of IFRS financial information in its Form 20-F for the first year in which it publishes IFRS financial statements. We believe that the Commission should not impose such a requirement, and as a result we recommend that the Commission retain its proposal in adopting the final amendments to Form 20-F.

The Commission's position is similar to that of the Committee of European Securities Regulators (CESR). After a public consultation process that took place in the autumn of 2003, CESR recommended that European companies reporting under IFRS for the first time in respect of their 2005 fiscal years[2] provide comparative financial statements under IFRS for 2004, but not for 2003.[3]

Most European companies will likely follow CESR's recommendation. As a result, the Commission's proposed amendment would permit those companies to publish the same primary financial statements in the United States that they publish in their home markets (assuming that the Commission makes the modification suggested below to accommodate IFRS financial statements prepared in accordance with European Union regulations). We believe this is in the interest of investors worldwide, as it will significantly reduce the potential for confusion.

CESR has concluded that companies should provide investors with significant narrative and quantitative disclosure regarding the potential impact of adopting IFRS in 2005. Under CESR's standards, the disclosure process would be implemented over a three-year period (culminating in the publication of full financial statements for 2005) in order to educate the public progressively:

- For fiscal year 2003, European companies (many of which have already published annual reports for this period or will do so shortly) are indicating qualitatively the most significant differences identified to date between their Previous GAAP financial statements and their anticipated IFRS financial statements.

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2 For the sake of simplicity, the examples we cite in this letter are based on companies with December 31 fiscal years. However, the same reasoning would apply to companies with different fiscal year-ends.

3 Committee of European Securities Regulators, "European Regulation on the Application of IFRS in 2005: Recommendation for Additional Guidance Regarding the Transition to IFRS," (December 2003) (the "CESR Recommendation").

- For fiscal year 2004, CESR has recommended that companies provide quantitative reconciliations of income statement, balance sheet and cash flow items between Previous GAAP and IFRS, together with notes explaining the material differences, in each case to the extent they are able to do so with a reasonable degree of certainty and can disclose the relevant quantified information in a sufficiently reliable manner.

We believe that providing disclosure in accordance with CESR recommendations (plus appropriate discussion in an issuer's "operating and financial review and prospects" section) is adequate to inform the market regarding the results of operations and financial condition of European issuers, while at the same time limiting the substantial burdens arising from the transition to IFRS.

If the Commission were to change its proposal and require the presentation of a third year of IFRS financial statements, this would substantially increase the burden on European reporting companies. As the Commission has noted in the Release, some IFRS standards were not finalized until March 2004 – for example, IFRS 2 (share-based payments), IFRS 3 (business combinations), IFRS 4 (insurance contracts), IFRS 5 (non-current assets and discontinued operations) and IFRS 32 and 39 (including hedge accounting). As a result of the uncertainty regarding the application of certain aspects of IFRS, most companies did not have systems in place in 2003 that would permit the collection and classification of financial information in accordance with IFRS. Imposing a third year of IFRS reporting on these companies would require them to look back and reconstruct financial statements without the ability to rely on their normal financial reporting and internal control systems.[4]

Moreover, in many cases the reconstruction of IFRS financial statements would require companies to make judgments or to adopt assumptions on a retroactive basis, long after the relevant reporting period is completed. For example, in determining items such as margins on long-term contracts, goodwill impairment or other measures involving judgment and assumptions, would a company use the same assumptions it used for its Previous GAAP financial statements for 2003 knowing in early 2006 that those assumptions are no longer true? Would it use modified assumptions and create differences compared to its Previous GAAP financial statements even when the IFRS accounting principles are identical to those applied under Previous GAAP? Similarly, under the recently adopted IFRS 39, a company could not designate hedge relationships for financial instruments retroactively, meaning that the 2003 financial statements would present artificial volatility that would affect comparability with future periods. On these and many other points, the potential for investor confusion (and possibly, manipulation) is significant.

In addition, requiring an issuer to present 2003 IFRS financial statements could result in a long-term divergence between the IFRS financial statements presented in the United States and those presented in the issuer's home market. In particular this is because the issuer would have to prepare an opening balance sheet as of the beginning of 2003, rather than

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4 This problem is not limited to the issue of preparation of 2003 financial statements, although it is most acute for 2003. In the future, the IASB could propose the prospective application of new accounting standards, but the IASB or competent European regulators might provide that no restatement is necessary for the comparative year preceding the initial year of application. For example, if IAS 32 and 39 are applied for the first time in 2005, it is possible that companies will not be required to apply those standards in presenting comparative information for 2004. In such cases, we hope that the staff of the Commission will be flexible and permit companies to follow the practices accepted by the IASB or European regulators, with appropriate explanatory disclosure where material.

2004, if the Commission were to require the presentation of 2003 IFRS financial statements. It is not in the interests of U.S. investors to receive primary financial statements that differ from those in an issuer's home market, particularly on a long-term basis.

In addition, for companies that make significant acquisitions or disposals prior to the transition, it might be impossible to reconstruct the relevant financial information, particularly in cases where they would be required to present separate financial information pursuant to Article 3-05 of Regulation S-X. While we assume that the staff of the Commission would consider waivers in appropriate cases, the number of necessary waiver requests would be significantly greater if the Commission were to impose a third year of IFRS financial reporting.

Finally, imposing a requirement to prepare 2003 IFRS financial statements would severely strain limited resources in company financial departments and at auditing firms. The burdens from the implementation of IFRS in 2004 and 2005 are already tremendous, and many of the same people will be implementing the internal control reporting procedures of Section 404 of the Sarbanes-Oxley Act of 2002 at the same time. Adding an extra year of reconstructed IFRS financial statements would augment the burden, require hiring of more temporary personnel than is desirable and significantly increase the risk of error.

In the Release, the Commission also asked whether, if a third year of IFRS financial reporting were imposed, companies would choose to present 2005 financial statements under Previous GAAP (together with Previous GAAP financial statements for 2003 and 2004) rather than presenting three years of IFRS financial statements. Many European companies will not be preparing Previous GAAP financial statements for 2005. For those companies, many of the disadvantages associated with preparing IFRS financial statements for 2003 would be equally applicable to the preparation of Previous GAAP financial statements for 2005.

2. European issuers should be entitled to benefit from the proposed amendment if they provide financial statements prepared in accordance with EU regulations.

The Commission has stated that the proposed relief would not be available to a company "adopting a set of accounting standards that includes deviations from the standards promulgated by the IASB and the IASC." Release, Part II.A. The text of proposed General Instruction G to Form 20-F similarly refers to IFRS as "published by the International Accounting Standards Board."

European companies, however, will be required to prepare their financial statements in accordance with IFRS as specifically endorsed by the European Commission.[5] A standard adopted by the IASB will not become part of IFRS as applicable in the European Union until it goes through the formal European endorsement process. Similarly, audit opinions relating to financial statements of European companies will confirm that the financial statements are

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[5] The endorsement process involves consideration by the European Commission of whether the international accounting standards are contrary to certain EU Directives and are conducive to the European public good as well as whether they meet the criteria of understandability, relevance, reliability and comparability required of the financial information needed for making economic decisions and assessing the stewardship of management. Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001-0004 ("Regulation (EC) No. 1606/2002").

prepared in accordance with IFRS as adopted pursuant to European regulations, and not as adopted by the IASB.

We believe that, as a practical matter, there is likely to be little or no variation between the IASB's standards and those endorsed by the European Commission, particularly between now and 2005. However, in order to ensure that European companies are able to benefit from the proposed amendments, we recommend that the Commission specifically recognize that financial statements prepared in accordance with IFRS as adopted pursuant to the European Union regulations[6] would be eligible for General Instruction G.

It is important to note that, if the Commission does not modify the proposed amendments in this manner, many companies are likely to choose to present Previous GAAP information for 2005 rather than preparing a second set of IFRS financial statements for 2004 and 2005 (despite the disadvantages of preparing Previous GAAP financial statements for 2005, discussed above). Those companies that decide to present a second set of IFRS financial statements will do so for only one year. In 2006, they will have three years of IFRS financial statements prepared under European Union regulations, so they will no longer need (or be entitled to) the accommodation. As a result, a decision by the Commission not to modify its proposal would not result in the widespread or long-term publication by European companies of IFRS accounts under standards other than those of the European Union.

3. Requiring issuers to provide three years of condensed, consolidated financial information under U.S. GAAP is burdensome, and the Commission's objectives can be served through less burdensome means.

In order to ensure the presentation of three years of trend information in accordance with a single set of accounting principles, the Commission has proposed that issuers benefiting from General Instruction G provide three years of condensed consolidated financial information under U.S. GAAP. While we support the Commission's goal of ensuring the best possible presentation of trend information to investors, we believe that providing condensed consolidated U.S. GAAP information will not significantly enhance the protection of investors, while imposing a significant burden on reporting companies.

As the Commission has noted in its Release, IFRS will require companies to provide significant information regarding the reconciliation of Previous GAAP and IFRS financial statements for 2004. In addition, CESR's recommendations provide for detailed reconciliation information (as discussed above). We believe that this information, together with appropriate discussion and analysis in a company's "operating and financial review and prospects" section, should provide investors with a meaningful analysis of any material trend information.

In addition, it is not clear that requiring three years of condensed, consolidated U.S. GAAP information would produce the uniform presentation that the Commission is seeking to achieve. Our member companies inform us that, beginning in fiscal year 2004, they expect to use new information systems to reconcile their primary financial statements to U.S. GAAP. These systems will have been designed to reconcile IFRS information to U.S. GAAP and will not be capable of being used retroactively for a 2003 reconciliation from Previous GAAP. As a result, if the Commission were to require presentation of 2003 condensed consolidated

6 Regulation (EC) No. 1606/2002.

information, such information would be produced through a separate and different process than that used for subsequent periods, potentially increasing the risk of errors.[7]

We believe that the Commission's goal of ensuring the presentation of meaningful trend information will be satisfied for companies that provide Previous GAAP financial information for 2004 and prior years, in addition to IFRS information for 2004 and 2005 and detailed reconciliation disclosure. This information will have the advantage of being produced by the principal accounting systems of all companies, as well as being the primary focus of management for purposes of financial communication.

It is likely that many European companies will provide such Previous GAAP information in their 2005 annual reports on Form 20-F. They will all publish this information in their home markets, and many of them are likely to determine that it is prudent to provide the same information in the United States to avoid potential liability for the omission of material information (even if that information was published in prior years' annual reports).[8]

For the foregoing reasons, we believe that the Commission should not require the presentation of three years of condensed, consolidated financial information under U.S. GAAP.

4. European issuers should be able to follow CESR guidelines for the presentation of interim financial information

The Commission has asked for comments regarding the appropriate presentation of interim financial information by companies required to publish such information in Commission filings before they publish their first financial statements under IFRS. We believe that the Commission should adopt standards in line with CESR recommendations, which would enable European companies to provide uniform information in all markets and ensure the availability of the best information for investors.

CESR has recommended that companies publishing interim financial information during the course of 2005 do so under IFRS, so as to avoid the possibility of presenting information for part of 2005 that would be inconsistent with the final information published at year end.[9] Companies would also publish comparable IFRS information for 2004. Because they would have already published detailed, quantitative reconciliation information between Previous GAAP and IFRS for their full year 2004 (as discussed above), investors would have sufficient information to permit them to understand the material differences

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7 While the same is true of U.S. GAAP reconciled information relating to shareholders' equity and net income already required to be presented, the issue is less significant for those items for two reasons. First, the reconciliation is not made in the same level of detail as for condensed, consolidated financial information, which could be impacted by errors that affect only presentation or classification issues, but not shareholders' equity or net income. Second, the purpose of reconciliation is to permit U.S. investors to understand the primary financial statement presentation, whereas the Commission is proposing the presentation of condensed, consolidated financial information as a substitute for primary financial statements in order to reflect trend information.

8 The Commission asked whether its proposal to permit, but not to require, the presentation of Previous GAAP financial information and commentary in the "operating and financial review and prospects" section should be modified. We believe it should be retained as an option, but not imposed as a requirement, even if many European companies are likely to choose to include this information. We also recommend not requiring any fixed form of legend or cautionary language, because the appropriate disclosure will inevitably be company-specific, and any required form risks providing irrelevant information for some companies, and missing important information for others.

9 CESR Recommendation at 7.

between the full year 2004 financial statements prepared under Previous GAAP (which would be the primary full year financial statements that would be published) and the IFRS interim financial statements.

5. A number of technical modifications should be made to the proposed amendment.

In addition to the foregoing topics, we recommend that the Commission make a few technical modifications to the proposal, as follows:

- General Instruction G is only applicable for the first year in which a company adopts IFRS. While this is generally appropriate, an accommodation needs to be made for the presentation of selected financial data for the two subsequent years. We recommend that paragraph (c) be amended to permit a company to use one of two presentation options:
    - The company could present selected financial data under IFRS for its three most recent fiscal years in the year after the first adoption of IFRS, and for its four most recent fiscal years in the second year after adoption, or
    - If the company presents Previous GAAP selected financial data in the first year of adoption of IFRS, the company could present the information set forth in the prior paragraph, plus two years of Previous GAAP data in the year after adoption and one year of Previous GAAP data in the second year after adoption (in each case with appropriate disclosure). A corresponding modification should be made to Instruction 3(a).
- The last sentence of paragraph (e) of proposed General Instruction G provides that "[n]o part of the [operating and financial review and prospects] discussion should relate to financial statements prepared in accordance with Previous GAAP." This statement could be read as inconsistent with Instruction 3, which provides for such a discussion by issuers that present Previous GAAP financial information. We recommend that the last sentence of paragraph (e) be completed with the following parenthetical, "(unless Previous GAAP financial information is included in accordance with Instruction 2 to this General Instruction G)."
- The proposed instruction to Item 8 requires a description of each exception (elective or mandatory) used by a reporting company, even if the impact on the information in the financial statements is insignificant. We believe it would be appropriate to include a materiality standard, so that a report is not burdened by technical disclosure of insignificant information.

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Once again, we strongly support the Commission's initiative in accommodating the transition to IFRS in the European Union, and we look forward to the adoption of the final amendments to Form 20-F.

Please do not hesitate to contact our organization if you have any questions or need any additional information.

Very truly yours,

Alexandre Tessier
Director General

NB: You or the Commission staff can also contact our legal counsel, Andrew A. Bernstein of Cleary, Gottlieb, Steen & Hamilton (+33 1 40 74 68 60).

cc: The Honorable William H. Donaldson, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Cynthia A. Glassman, Commissioner
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Alan L. Beller, Director, Division of Corporation Finance
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