



**Discussion Paper  
Comfort Letters Issued  
in relation to  
Financial Information  
in a Prospectus**

***FOR COMMENT AND RESPONSE  
BY 31 AUGUST 2005***

**April 2005**

*The discussion paper has been prepared by FEE's European Capital Markets Reporting Project Group, with the involvement of FEE's Capital Markets Advisory Group and Auditing Working Party. In particular, we wish to thank Jan Buisman, Chairman of FEE European Capital Markets Reporting Project Group; Kevin Desmond, European Capital Markets Reporting Project Project Director; and David Caruana, Christian Feldmüller, Alain Gouverneyre, Heinrich Harms, Hans Lemmens, Martin Pföhler, Theodoros Philippou and Martina Rangol and Hilde Blomme, Corinne Soubies and Saskia Slomp from the FEE staff.*

---

## CONTENTS

1. Introduction	4
2. Comfort Letters	7
2.1 Information subject to Comfort Letter Procedures	7
2.2 The Comfort Letter	8
3. Bring-down Letter	20
4. Engagement Letter	21
5. Client Representation Letter	23
 Appendix 1 Illustrative Example of a Comfort Letter	 24
 Appendix 2 Illustrative Example of an Engagement Letter	 29
 Appendix 3 Illustrative Example of a Client Representation Letter	 32

## 1. INTRODUCTION

On 1 July 2005, a new regime for prospectuses will be effective within the EU. Prospectuses are currently drawn up based on the requirements of national legislation and stock exchanges. From 1 July 2005, the Prospectus Directive will bring about a major change, in that a single European prospectus will be available. Protection of investors against misleading information, and hence the liability of the issuer and others involved in the prospectus, are currently governed by national law. Liability regimes differ between Member States, and there is no pan-European liability system. Unfortunately, this situation will continue to exist for some time, as the issue is not addressed as part of the Financial Services Action Plan. The single prospectus can be used in different countries and both issuers and auditors<sup>1</sup> are exposed to the liability regimes in all countries. The work performed by the auditor therefore needs to have regard to the most onerous liability regime. This is an important economic consequence that needs further consideration in the debate.

The Directive and the Regulation<sup>2</sup> deal with the prospectus' information requirements and place, for some of these, obligations on the auditor to report on it.

In certain jurisdictions, underwriters<sup>3</sup> can be held liable for material omissions and/or misstatements. The underwriter's defence against this liability is that they exercised due diligence; i.e., after a reasonable investigation, the underwriter had grounds to believe that there were no material<sup>4</sup> omissions or misstatements. Consequently, underwriters perform a "reasonable investigation" of financial and accounting data that is included in the prospectus. One of their "investigation" procedures is for the underwriter to request that the auditors provide them with a "comfort letter" in relation to financial information that is not already covered by the report of the auditor that is included in the prospectus.

In considering the comfort letter, the following possible reporting models were identified:

Firstly, the current practice where the comfort letter engagement is a mixture between an "agreed upon procedures" engagement addressing the extraction of financial data in a prospectus from specified sources, and "assurance" engagement with respect to financial information for periods after the date of the last audited annual accounts. This current practice, however, can cause difficulties in reconciling the comfort letter model with the IFAC International Framework for Assurance Engagements.

Secondly, the comfort letter engagement can be considered solely an "agreed upon procedures" engagement, as a result of which the reader has to draw their own conclusion and no assurance is expressed. This is consistent with the IFAC International Framework for Assurance Engagements and would now be possible because the Prospectus Directive requires any assurance expressed on interim financial information to be included in the prospectus itself.

---

<sup>1</sup> For discussions regarding the concept of "auditor", refer to chapter 3, "Auditor or independent accountant", in FEE Discussion Paper, "The Auditor's Involvement with the New EU Prospectus Directive", published in November 2004.

<sup>2</sup> Commission Regulation [EC 809/2004] implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (further referred to as "the Regulation").

<sup>3</sup> The term "underwriter" is used to describe the underwriter sponsor, global coordinator or similar functions in other countries.

<sup>4</sup> A matter is "material" if its omission is likely to influence the decisions of the user of the prospectus; likewise a misstatement is material if it is likely to have a similar influence.

Thirdly, the comfort letter engagement could be said to be a “non-assurance” engagement, although the comfort letter, as permitted by the IAASB assurance framework, “includes professional opinions, views or wording from which a user may derive some assurance” if the conditions outlined in the assurance framework concerning such reporting and its use are followed. This discussion paper is prepared on the second alternative and does not explore the other alternatives.

In current practice, a comfort letter is a report issued by auditors and prepared on the basis of agreed-upon procedures. The objective of an agreed-upon procedures engagement is for the auditor to carry out procedures of an audit nature to which the auditor, the entity and appropriate third parties have agreed and to report on factual findings. As the auditor simply provides a report of the factual findings, no assurance is expressed. Instead, users of the comfort letter assess for themselves the procedures and findings reported by the auditor and draw their own conclusions from the auditor’s work. The International Standards on Related Services emphasise this and restrict the circulation of the comfort letter to those parties that have agreed to the procedures to be performed since others, unaware of the reasons of the procedures, may misinterpret the results. However, comfort letters do not only involve agreed-upon procedures; they may also involve assurance work in order to provide assurance, for example, on figures extracted from reviewed financial statements. The paper tries to address this gap between the international framework and current practice and start discussions around the issue.

This request for a comfort letter is an engagement in itself between the parties, in contrast to the report of the auditor included in the prospectus, which is governed by the prospectus law, as there is no contractual relationship between the auditor and the investor. Where the comfort letter is the result of a contract, it is the contract law in the relevant jurisdiction that has an important influence on the current practice. Although illustrative examples of comfort letters and engagement letters are provided, it should be borne in mind that these are for illustration only. Some countries may have developed other examples and ultimately, where these documents are based on the contract between the parties, national legislation will be decisive for the form and content.

The purpose of this paper is to provide auditors and auditing standard setters with a discussion about the procedures to be performed by an auditor and the reporting on it with regard to comfort letters. The paper is written against the background of the new EU Prospectus Directive.

FEE, by means of its European Capital Markets Reporting Project Group, has actively followed the development of the Prospectus Directive, the Regulation for the implementation measures and CESR’s Level 3 guidance, and where possible contributed to it. As part of this process, current practices have been discussed and valuable insights have been developed about the issues preparers of prospectuses and their auditors are likely to encounter. There is guidance in some countries on some of the issues, including comfort letters. These current practices and guidance have been used in the development of this paper. This paper discusses the most common issues that may arise in practice and gives guidance for the reporting by auditors in these situations. This can be considered as best practice.

The Prospectus Directive and the Regulation require, in various places, the auditor’s involvement. Either previous reports from the auditor are included, or new information is accompanied by a report from the auditor<sup>5</sup>. These areas are:

- Historical financial information
- Prospective financial information

---

<sup>5</sup> For more information, we refer to FEE’s Discussion Paper, “The Auditor’s Involvement with the New EU Prospectus Directive”, published in November 2004.

- Interim financial information
- Pro forma financial information.

A general principle for the comfort letter is that those areas in the prospectus on which the auditor already reports are not subject to the procedures in the comfort letter. Neither would reports already included in the prospectus be repeated in the comfort letter.

As FEE is not a standard setter per se, the enactment of the necessary changes in the relevant auditing standards should come from the national auditing standard setters or the IAASB. FEE hopes that this discussion paper acts as a stimulant and contributes to the debate. We have therefore distributed the report widely and encourage all who are interested in the proper functioning of European capital markets to respond. Make your views available to FEE at the address below and to the standard setter or regulator in your country by 31 August 2005. FEE will summarise all responses<sup>6</sup> and make the summary available on its website.

Although the issues for preparers and auditors are highly interlinked, this discussion paper addresses only the issues for the audit profession. However, contributions to the debate from outside the profession are welcome, and FEE encourages preparers, users and regulators to comment on this discussion paper.

**Comments on the discussion paper and responses to the questions raised in this discussion paper are sought by 31 August 2005 and should be submitted by e-mail to Saskia Slomp at the FEE Secretariat: [saskia.slomp@fee.be](mailto:saskia.slomp@fee.be).**

*Issue for Discussion 1:*

*Which of the different reporting models do you prefer and why? Are there any other reporting models you think should be considered?*

<sup>6</sup> Unless advised to the contrary, FEE will assume that respondents accept that their response is on public record.

## 2. COMFORT LETTERS

In many places, underwriters can be held liable for material omissions and/or misstatements in a prospectus. The underwriters' defence against this liability is that they exercised due diligence, i.e., after a reasonable investigation, the underwriter had grounds to believe that there were no material omissions or misstatements. Consequently, underwriters perform a reasonable investigation of financial and accounting data that has not been "expertised." Expertised means that the information is covered by a report of independent auditors. Depending on the requirements in each country, this may be the issuer's statutory auditor or another independent auditor. One of the investigation procedures that an underwriter uses is to request the independent auditors to provide them with a "comfort letter" in relation to unexpertised financial information. Underwriting agreements for the sale of securities generally require the issuer's auditors to provide such a comfort letter. In doing so, the auditor does not act as an "expert" under the Prospectus Directive. The procedures for issuing comfort letters do not constitute an evaluation of the prospectus as a whole. This would normally be the responsibility of the issuer, the underwriters or the competent authority that approves the prospectus.

Comfort letters may include, for example:

- (a) Representations as to auditor's independence;
- (b) Reference to auditing standards used;
- (c) Reiteration of management statements, based on the performance of specified procedures, that there have been no changes or decreases in specified financial statement items since the date of the latest audited financial statements included in the prospectus;
- (d) A list of the procedures applied to other financial information included in the prospectus and the auditor's findings with regard thereto.

The auditor should follow national professional standards relating to comfort letters, where available. Where no national standards exist, this paper may help auditors in the performing of the procedures and the reporting in a comfort letter.

### *2.1 Information subject to Comfort Letter Procedures*

Neither the Prospectus Directive nor the Regulation address comfort letters, as it is a private requirement from specific persons involved in the offering process. Moreover, none of them requires a specific public report from the auditors on the fairness of the financial and accounting information included or incorporated by reference in the prospectus, beyond the auditors' reports on specific financial information (historical, pro forma, prospective and interim).

The Prospectus Directive and the Regulation require certain pieces of information on which no report of the auditor is included in the prospectus. In some jurisdictions, the auditor provides comfort in a comfort letter on some of these pieces of information. Examples are:

- Selected financial data,
- Capitalisation and indebtedness,
- Liquidity and capital resources,
- Other financial information, and
- Defined changes in financial statements items.

The Regulation details the topics for a share issue introduced by the Prospectus Directive. The main topics are quoted below:

<b>ANNEX I</b>	
3	SELECTED FINANCIAL INFORMATION
5.	INFORMATION ABOUT THE ISSUER
5.2	Investments
5.2.3	Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.
9	OPERATING AND FINANCIAL REVIEW
9.1	Financial Conditions
9.2	Operating results
10	CAPITAL RESOURCES
11	RESEACH AND DEVELOPMENTS, PATENTS AND LICENSES
12	TREND INFORMATION
13	PROFIT FORECASTS OR ESTIMATES
15	REMUNERATION AND BENEFITS
20	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFIT AND LOSSES
21	ADDITIONAL INFORMATION
21.1.3	The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
21.1.4	The amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.

## **2.2 The Comfort Letter**

Appendix 1 includes an illustrative example of a comfort letter. Examples of components of such letters are:

- Addressee,
- Description of the transaction,
- Reference to auditing standards,
- Independence,
- Level of comfort,
- Interim information,
- Subsequent changes,
- Tables, statistics and other financial information,
- Narrative description of GAAP differences,
- Financial forecasts,
- Pro forma information,
- Other information,
- Restriction on use,
- Responsibility and liability, and
- Date and signature.

Each of these components is discussed below.



## *Addressee*

The following parties can be recipients and addressees of the comfort letter, only if they have signed an engagement letter with the auditor, or the auditor by other means has ensured that the recipients have a clear understanding of the agreed procedures and the conditions of the engagement:

1. Issuer,
2. Named underwriters acting in that capacity, and
3. Other parties with a statutory due diligence defence, only when a law firm or attorney for the requesting party issues a written opinion to the auditors that states that such a party has a due diligence defence under applicable laws and regulations.

The auditor should ask to be provided with a draft of the underwriting agreement to understand the context in which a comfort letter will be issued.

### Issue for Discussion 2:

*Underwriters or other parties other than the issuer may be reluctant to enter into a written agreement with the auditor. As, by the nature of the engagement – agreed-upon procedures – the responsibility of the definition of the scope of work is with the underwriter, it is preferable to formalise the agreement of the scope of work in writing, especially on a liability standpoint.*

*Can the auditor only issue a comfort letter to the parties that have signed the engagement letter?*

### Issue for Discussion 3:

*The fact that a private comfort letter is issued to banks/underwriters could raise the issue of the banks/underwriters having a different level of information compared to investors. However, the issuance of a comfort letter does not create differences in the level of information available to banks and investors, as (a) the letter is sent to the bank in respect of their capacity as underwriter, not in their capacity as investors, (b) the comfort letter is part of the due diligence process that the bank has to perform to accept its responsibility towards the investing public, and (c) it does not include other information than the information in the prospectus.*

*Does the issuance of a comfort letter create a different level of information?*

### Issue for Discussion 4:

*Certain jurisdictions have professional secrecy provisions; the auditor should assess if he is authorised, according to the applicable laws and regulations, to provide information to a third party. In particular, he should consider if the applicable law permits the issuer to relieve the auditor of its professional secrecy; in certain jurisdictions, nobody, including the issuer, can relieve an auditor of this obligation.*

*Should the issuer, being the auditor's client, relieve the auditor of his professional secrecy in all cases, if at all possible?*

***Issue for Discussion 5:***

*It is practice that the auditor only issues comfort letters to underwriters or other parties to the transaction that have a “due diligence defence” and that request such involvement as part of their own reasonable investigation and not as a substitute for their due diligence responsibility. For example, it is common in the US for other parties (such as a selling shareholder or sales agent) that receive the comfort letter to provide a representation letter that states:*

*“This review process applied to the information relating to the issuer is substantially consistent with the due diligence review process that an underwriter would perform in connection with this placement of securities. We are knowledgeable with respect to the due diligence review process that an underwriter would perform in connection with a placement of securities registered pursuant to the [applicable law].”*

*To which parties and under which conditions can the auditor issue a comfort letter?*

***Description of the Transaction***

A description of the issue that identifies the issue, the issuer and the prospectus to which the comfort letter relates would normally be given in the introductory section of the letter. This description prevents the letter from being used in any document other than the one that has been subject to the procedures performed by the auditor. A clear description is even more important where the issuer uses the possibilities under the Prospectus Directive to file separate documents (registration document, securities note and summary) that together form the prospectus.

***Reference to Auditing Standards***

A comfort letter should only be issued when the auditor has an audit base. To have an audit base, the auditor must have audited at least one year’s financial statements or, alternatively, done sufficient work to gain an in-depth knowledge of the client’s accounting and financial reporting practices and system of internal accounting control for the periods for which the procedures are to be applied. Typically, the latter alternative will require the auditor to have performed substantial audit work in connection with a first-time audit engagement for which he has not yet issued an audit report.

When the work is to cover periods prior to the period in which the auditor was initially engaged to audit, he also must have an in-depth knowledge of the accounting and financial reporting practices and system of internal accounting control that was utilised in those periods. The extent of the work needed to obtain this knowledge is a judgmental decision, to be made based on the circumstances encountered in the first-time-through work on the initial audit engagement.

The auditor should refer in the comfort letter to the standards that he has followed. Illustrative wording to express this is:

*“We have audited in accordance with International Standards on Auditing (“ISA”) the consolidated balance sheets of Issuer (“the Issuer” and together with its consolidated subsidiaries, the “Group”), as of December 31, XXN, and XXN-1 and XXN-2 and the related consolidated statements of income, consolidated statements of cash flows and consolidated statement of changes in shareholders’ equity for each of the three years in the period ended December 31, XXN. These consolidated financial statements were prepared in accordance with International Financial Reporting Standards (“IFRS”)<sup>7</sup> and*

<sup>7</sup> Or other applicable accounting framework

*are included in (or are incorporated by reference to) the Prospectus of the Issuer dated Month, Day, XXN+1 (“the Prospectus”) prepared in connection with the offering of the (Notes/Shares). Our reports with respect thereto are also included in the Prospectus.”*

In addition, depending on the legal position in the relevant jurisdiction regarding auditors’ liability, it may be appropriate to include additional language that would make clear that such a reference in the comfort letter to the audit does not extend auditors’ liability beyond what it would otherwise have been. Illustrative wording is as follows:

*“The financial statements have been prepared by the Directors in accordance with the [describe relevant requirements]. Our audit opinions on the consolidated financial statements for the periods ended where expressed for the purposes defined in [describe relevant legislation] and for no other purpose or persons. We do not accept any responsibility for the audit reports or any other reports or letters beyond that we owed to those to whom our reports or letters were issued at the date of their issue.”*

The auditor does not repeat or quote the full auditor’s report or parts thereof in the comfort letter, as this could be seen as a re-issuance of the auditor’s report. Where an opinion other than an unqualified opinion has been issued, it may be necessary to repeat the qualification in the previous report.

It is advisable to supplement the text above with an explicit note that the auditor has not audited or reviewed any more recent financial statements of the issuer than those mentioned. Illustrative wording is given in paragraph 2 of the Illustrative Example in Appendix 1.

*Issue for Discussion 6:*

*Even if an audit base is preferable, the auditor can assess if his understanding of the entity’s internal control is sufficient to allow him to issue a comfort letter. The extent of the matters that can be comforted need to be adapted to the circumstances, and it is likely that an auditor that has no audit base will be able to provide a different level of comfort compared with that provided by an auditor that has an audit base.*

*This situation can exist in several circumstances:*

- *First year of operations,*
- *Change in statutory auditor, and*
- *Information in the prospectus reviewed by a reporting auditor and not by the statutory auditor. This situation is not possible in certain countries (such as France), possible in others (such as United Kingdom) and mandatory in others (such as Greece).*

*Is an audit base always possible or required?*

## ***Independence***

The auditor should be prepared to assert independence under those standards of independence specified by the auditing standards to which he refers.

Accordingly, a representation regarding the auditor’s independence should be worded along the following lines:

*“We are independent public auditors with respect to Issuer as required by the laws of [issuers country of incorporation] and under the applicable professional rules relating to independence of [NAME OF GOVERNMENTAL BODY OR PROFESSIONAL ORGANISATION PROMULGATING THOSE RULES].”*

If no published rules of independence exist in a particular country, the addressee of the letter should specify what rules were to be applied; for example, the Independence Section of the IFAC Code of Ethics for Professional Accountants issued by the International Federation of Accountants or the EC Recommendation on Statutory Auditor’s Independence in the EU.

The Independence Section of the IFAC Code of Ethics for Professional Accountants requires, in case of assurance engagements, members of assurance teams to be independent of assurance clients. In substance, a comfort letter is prepared on agreed-upon procedures to carry out procedures of an audit nature. In practice, in some jurisdictions, the auditor is also requested to provide assurance (see discussion of level of comfort) in specific circumstances on figures extracted from reviewed financial statements and has to undertake additional assurance work on financial information. He is therefore usually also subject to independence requirements in general. If the comfort letter were to involve the procedures of an audit nature and/or assurance work, it may be advisable for the auditor to apply the independence requirements to the whole of the engagement, even though this is not strictly required.

The current practice of having both elements and reporting of agreed-upon procedures and assurance in one comfort letter causes difficulties in reconciling the comfort letter model with the new Assurance Framework (International Framework for Assurance Engagements of December 2003), where an explicit difference is made between assurance engagements and related services (such as agreed-upon procedures).

*Issue for Discussion 7:*

The Independence Section of the IFAC Code of Ethics strictly is not required for agreed-upon procedures work where only factual findings are reported. Given that the procedures carried out are of an audit nature and are often combined with assurance work in practice, we recommend that auditors should be required to respect the independence requirements for comfort-letter types of engagement.

*Should explicit independence requirements be introduced? Should the comfort letter contain a section on independence?*

***Level of Comfort***

The type of comfort that auditors can provide by way of comfort letters is subject to the following limitations:

- Independent auditors can properly comment in their professional capacity only on matters to which their professional expertise is substantially relevant; and
- Procedures short of an audit, such as those contemplated in a comfort letter, provide the auditors with a basis for expressing a conclusion that provides “comfort” rather than the reasonable assurance provided by an audit.

### ***Agreed upon procedures***

In substance, a comfort letter is a report issued by auditors and prepared on the basis of agreed-upon procedures. The responsibility of the definition of these procedures is with the requesting persons, as defined in ISRS 4400 – *Engagements To Perform Agreed-Upon Procedures Regarding Financial Information* (previously ISA 920):

- “4. The objective of an agreed-upon procedures engagement is for the auditor to carry out procedures of an audit nature to which the auditor and the entity and any appropriate third parties have agreed and to report on factual findings.
5. As the auditor simply provides a report of the factual findings of agreed-upon procedures, no assurance is expressed. Instead, users of the report assess for themselves the procedures and findings reported by the auditor and draw their own conclusions from the auditor’s work.
6. The report is restricted to those parties that have agreed to the procedures to be performed since others, unaware of the reasons for the procedures, may misinterpret the results.”

Consequently, in relation to comfort letters, the auditor performs procedures agreed with the issuer and the underwriter and reports its findings to them. The issuer and the underwriter assess for themselves the procedures and findings reported by the auditor. The report is restricted to the underwriter and the issuer. The auditor performs neither an audit nor a review and does not provide an opinion or assurance relating to the fair presentation of the specified items. Instead, the auditor’s report on agreed-upon procedures is in the form of a statement of the procedures and the findings of each procedure.

### ***Review***

In some circumstances, the auditor may be requested to provide “limited” assurance. Such assurance consists of a statement by auditors that, as a result of performing a review, nothing came to their attention that caused them to believe that specified matters do not meet a specified standard. For example, the auditors report that nothing came to their attention that caused them to believe that the unaudited financial statements or unaudited condensed financial statements are not prepared in all material respects in conformity with generally accepted accounting principles (GAAP).

Under ISRE 2400 (previously ISA 910), limited assurance can only be provided if the related figures have been subject to a review.

The Prospectus Directive and the Regulation do not require published interim financial information to be audited or reviewed, but require that fact to be published. If no separate report is issued by the auditor on these financial statements, no assurance would be issued on subsequent changes occurring up to the date of these financial statements.

### ***Interim Information***

Under the current market practice, if the issuer has published interim financial information since the date of the last audited financial statements, these must be included in the registration document (Annex I - 20.6.1). If the registration document is dated more than nine months after the end of the last audited financial year, it should include interim financial information covering at least the first six months (Annex I - 20.6.2). These interim financial statements are not required to be audited (nor reviewed). However, if interim information is audited or reviewed, the auditor’s report must be included in the prospectus. The issuer should not therefore require the auditor to perform an audit or a review of these interim financial statements for the unique purpose of providing private assurance to the underwriter.

If interim financial information is not audited or reviewed, the auditor will not be in a position to issue assurance on subsequent changes occurring from the date of the last audited historical financial statements to the date of the interim financial statements.

In order to ensure a certain level of assurance on these interim financial statements, the issuer could ask the auditor to review (or audit) these financial statements and should include the respective review (or audit) report in the prospectus.

Where the auditor has been requested to provide assurance on interim financial information, he must have conducted at least a review of the interim financial information in accordance with ISRE 2400 or other GAAS on reviews based on the ISRE.

In some prospectuses, the information shown in the audited financial statements or unaudited condensed interim financial statements is supplemented by unaudited summarised interim information for subsequent periods (commonly called “capsule financial information”). This capsule financial information (either in narrative or tabular form) is often provided for the most recent interim period and for the corresponding period of the prior year. If the auditor has performed a review, factual findings can be reported as to whether the amounts were determined on a basis substantially consistent with that of the corresponding amounts in the audited financial statements or reviewed condensed interim financial statements.

The auditor does not provide assurance in the comfort letter on interim financial statements, as the review report is included in the offering document.

*Issue for Discussion 8:*

*The discussion paper takes the position that any interim financial information that has been reviewed should be put in the prospectus, together with the review report. Keeping the review report private in a comfort letter would result in supplying more information to the underwriter than to the users of the prospectus, which in our view is not acceptable.*

*However, the Regulation seems to allow the issuer to choose not to publish the interim financial information (if they were not otherwise required to).*

*How do you think the requirement in the Regulation (Annex I, item 20.6.1) should be understood?*

***Subsequent Changes***

If the underwriter requests assurance as to subsequent changes in specified financial statement items, this assurance can only be provided by a review in accordance with ISRE 2400.

As there is no restricted circulation on such a review report, the issuer could engage the auditor to perform a review and the underwriter can derive his comfort from the review report.

In such situations, a review in accordance with the provisions of ISRE 2400 on additional sets of monthly financial statements prepared in accordance with IFRS (or other relevant accounting frameworks) is enough to reduce the period between the end of the last month for which financial statements have been otherwise reviewed and the cut-off date; for instance, a review could be performed, if requested by the issuer for the period from 1 January XX to 30 April XX, if the cut-off date is 22 May XX.

Where financial information that has been reviewed is included in the prospectus, it would be expected that the review opinion would also be included in the prospectus.

Where a review has been carried out, there is no need to repeat the review opinion in the comfort letter.

For the residual period not reviewed, assurance cannot be provided. Instead, work would be limited to the performance of agreed-upon procedures and the communication of the auditor's findings.

If no assurance is required, comfort on specific subsequent changes is primarily based on a reading of minutes of the board and shareholders' meetings, and on issuers' enquiries to management and financial persons.

Providing comfort on the basis of monthly management reporting is possible only if:

- Management reporting includes at least an income statement and a balance sheet;
- The auditor obtained an understanding of the internal control system for monthly management reporting; and
- The figures included in the management reporting are derived from and in agreement with the underlying accounting records.

In certain circumstances, specific subsequent changes cannot reasonably be assessed by the issuer, as they concern non-accounting periods or comparisons between non-accounting periods (e.g. dates in the course of a month while management reporting is prepared at the end of each month).

In these circumstances, preparers should inform the underwriter that they can only assess these changes at the end of the preceding accounting period and that they are not in a position to represent to the auditor at a later date.

Certain changes cannot be reasonably assessed without stipulating a certain level of materiality; it is the responsibility of the issuer to get the underwriter's agreement on his assessment of materiality.

The auditor does not comment on "adverse changes" or "material adverse changes", as this wording does not address accounting matters.

The auditor should limit the comfort on subsequent changes to line items included in the financial statements. If the underwriters require non-GAAP line items, such as "net indebtedness", "working capital" and "EBITDA", the prospectus should include a proper definition of these aggregates, linked to specific line-items of the financial statements. The comfort letter should refer to these definitions.

*Issue for Discussion 9:*

*Underwriters sometimes require comfort as to subsequent changes up to the cut-off date. Such comfort can be given by means of specific procedures performed or in the form of limited assurance. Where the latter is required, the auditor needs to apply the procedures of a review (ISRE 2400), which requires interim information to be available at a date as close as possible to the cut-off date. No limited assurance can be given for the period after that date.*

*In which circumstances can the auditor give assurance through the date of a prospectus?*

*Do you agree that any review or audit carried out for the purposes of providing comfort should lead to the auditor's assurance engagement being included in the prospectus together with the interim financial information that is being reported on?*

*Issue for Discussion 10:*

*In some circumstances, the auditor needs to derive comfort from internal monthly financial reporting.*

*Which criteria should be met to make internal management reporting a useful basis for giving (limited) comfort provided it is performed in line with the IAASB Assurance Framework?*

*Issue for Discussion 11:*

*General practice prohibits comfort from being issued on general assertions such as "material adverse changes", as these assertions are not defined from an accounting standpoint. The role of the auditor should be limited to reporting on accounting figures or figures derived from accounting figures (differences, percentages,...)*

*Do you agree with this statement? If not, why not?*

### ***Tables, Statistics and Other Financial Information***

Comments should be restricted to only monetary amounts (or percentages derived from those amounts) that have been obtained from accounting records that are subject to the company's system of controls over financial reporting or that have been derived directly from those records by analysis or computation. The auditor should not simply compare specified items in a prospectus with analysis, worksheet or schedules prepared by the entity and not subject to such controls. The auditor should not provide assurance in relation to such data, as explained above. Rather, the auditor should just state what the findings were, e.g., the specified data agreed with analyses prepared from the company's general ledger.

Auditors do not generally comment on matters such as share ownership, square metres of facilities, number of employees or backlog information, as these numbers are not accounting information. However, if this data results from the issuer's records, subject to the issuer's system of internal control, it is the auditor's responsibility to appreciate if it is possible to issue comfort. Comments should not be made on matters involving business judgement such as an explanation of changes between periods. The auditors should not comment on their evaluation of internal control nor quality of management.

The comfort letter should state that the auditor makes no representations regarding any matter of legal interpretation and that the procedures would not necessarily disclose misstatements or omissions in the information to which the comments relate.

### ***Narrative Description of GAAP Differences***

In connection with offerings of securities sold in private placements, the auditor may be requested to perform agreed-upon procedures on a summary of differences in accounting principles between those of the country in which the financial statements are prepared and those of the country in which the users of the financial statements reside. The summary may not quantify such differences and reconcile the financial statements, particularly net income and shareholders' equity, between the two bases of



accounting. The following example illustrates how to communicate the results of procedures applied to such a summary:

*“We have read, ‘Summary of Significant Differences Between [COUNTRY] GAAP and IFRS’ (‘the summary’) included in the Prospectus. The Company is responsible for the preparation of this information. The Company has not prepared a complete reconciliation of its financial statements and related footnote disclosures included in the Prospectus from [COUNTRY] GAAP to IFRS and has not quantified such differences. Accordingly, there can be no assurance that the Summary is complete. We have performed the following:*

*We have compared the [COUNTRY] GAAP discussion in the Summary to the significant accounting policies disclosed in Note X to the consolidated financial statements as of December 31, XXN and found them to be consistent. We have also read the IFRS discussion included in the Summary and found it to be consistent, in all material respects, with the relevant IFRS, which such discussion purports to summarise. We make no comment as to whether all IFRS accounting policies, which are applicable to the consolidated financial statements of the Company as of December 31, XXN have been identified. If the Company had prepared a complete reconciliation between [COUNTRY] GAAP and IFRS, additional accounting and disclosure differences might have come to our attention and would have been reported to you.”*

### **Financial Forecasts**

Usually auditors do not comment on forecast information in the comfort letter. If additional work on forecasts has been performed, the Regulation requires the report to be included in the prospectus, and no additional comfort is therefore needed in a comfort letter.

### **Pro Forma Information**

Auditors do not usually comment on pro forma information in the comfort letter. If additional work on pro forma information has been performed, the Regulation requires the report to be included in the prospectus, and no additional comfort is therefore needed in a comfort letter.

### **Other Information**

The Security Note should include a statement of capitalisation and indebtedness at a date no earlier than 90 days prior to the date of the Note.

The date at which borrowings and bank indebtedness are stated will not usually be the end of an accounting period. Audited (or reviewed) financial statements are therefore unlikely to be available, and the auditor will have less evidence on which to base his opinion concerning the figure for borrowings than he would have at the end of an accounting period.

In these circumstances, the auditor will have to place substantial reliance on management as to the identification of those parties from whom there are outstanding borrowings. These should be substantiated by direct confirmation from the lenders of the amounts outstanding at the relevant date. In view of the reliance placed on these representations, the auditor should ensure that they are formally confirmed by the directors and recorded in the board minutes.

Current practice is, if the statement of capitalisation and indebtedness is at the date of the audited historical financial statements or the reviewed (or audited) interim financial statements, the auditor would be able to provide assurance. If the statement of capitalisation and indebtedness is at the date of unaudited (or not reviewed) interim financial statements or at another date, the auditor cannot provide assurance.

### ***Restriction on Use***

The comfort letter should conclude with a paragraph restricting its use to the addressee and state that it is not to be used or referred to for any other purpose. The auditor should not permit the comfort letter to be included in or referred to in the prospectus. However, reference may be made to the letter in the underwriting agreement or in any list of closing documents pertaining to the offering of securities covered by the prospectus.

The following example shows the wording that can be used:

*“This letter is solely for the information of the Issuer and the underwriter, as being responsible for the content of the prospectus, in conducting and documenting their investigation of the affairs of the issuer in connection with the offering of the securities covered by the Prospectus. It is not to be used, circulated, quoted, or otherwise referred to within or out of 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 purchase contract (or subscription agreement) or in any list of closing documents pertaining to the offering of the securities covered by the Prospectus.”*

### ***Responsibility and Liability***

It is important that the responsibilities of all concerned with a prospectus are properly defined and adhered to. As a measure to achieve this, audit procedures normally require the auditor to receive a letter of representation from the issuer’s management pertaining to the issues they have inquired into as of the date of issuance of the comfort letter or of the update of the comfort letter.

Such representation from the issuer will address the content of the prospectus (completeness and fairness) and more particularly the representations on subsequent changes of defined accounting aggregates.

Applicable laws and jurisdictions should be agreed between the issuer and the auditor. This is of the foremost importance, as the prospectus can be used in various countries. Different levels of risk in different countries may expose the auditor beyond what is usual in the auditor’s home country . Different levels of limitation of responsibility, if at all, different independence issues and differences in clauses of applicable law and jurisprudence may contribute to this. The applicable laws and jurisdictions should generally be those of the issuer’s place of incorporation, which is normally the place where the comfort letter is issued.

Example wording to illustrate this are:

*“This letter shall be governed by, and construed in accordance with Issuer Country of Incorporation law at the date of issue of the Prospectus. The courts of Issuer Country of Incorporation shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this letter and any matter arising from them. Each party irrevocably waives any right it may have to object an action being brought in those*

---

*Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.”*

Depending on the applicable jurisdiction, the agreement between the auditor and the other parties including underwriters should be confirmed by the formal agreement on the engagement letter content (see chapter 4). In such cases, the comfort letter refers to this engagement letter in order to ensure that the auditor’s liability regime is properly addressed.

### ***Date and Signature***

The auditor should not accept any responsibility for subsequent events occurring after the date of the comfort letter, as it is the responsibility of the issuer to provide such information, if any. The engagement of the auditor about issuance of comfort ends with the issuance of the comfort letter. Generally, the auditor performs agreed-upon procedures on subsequent events occurring between the closing date of the latest audit or reviewed financial statements and the date of the comfort letter (or some days before the date of the comfort letter). It is not the auditor’s responsibility to determine what is a significant change or event; it is the responsibility of the issuer and the underwriter.

The letter ordinarily is dated on or shortly before the effective date, that is, the date on which the registration statement becomes effective. The underwriting agreement ordinarily specifies the date, often referred to as the “cut-off date,” up to which certain procedures described in the letter are performed. For example, the cut-off date might be five days prior to the date of the letter.

The comfort letter should set out a cut-off date through which the procedures have been carried out and state that the procedures applied did not cover the period from the cut-off date to the date of the letter. The cut-off date should be set so that it does not place an unreasonable burden on the auditor to perform the work in the allotted time.

---

### **3. BRING-DOWN LETTER**

An additional letter may also be dated at or shortly before the closing date. The closing date is the date on which the issuer or selling security holder delivers the securities to the underwriter in exchange for the proceeds of the offering.

If more than one letter is requested, it will be necessary to carry out the specified procedures and inquiries as of the cut-off date for each letter. Subsequent letters should relate only to information in the registration statement, as most recently amended. In practice, subsequent letter or update comfort letters are typically called “bring-down” letters.

The requirements for the comfort letters as discussed in Chapter 2 apply equally to the bring-down letter.

## 4. ENGAGEMENT LETTER

There will be different terms in an engagement letter in different legal environments in the EU Member States, especially regarding the scope of the work, the legal relationship with the underwriter and the auditor's liability; it is not therefore possible to recommend a homogeneous engagement letter for different countries.

The auditor should always obtain an engagement letter from the client for a comfort letter. An engagement letter documents and confirms the auditor's acceptance of the appointment, the objective and scope of the audit, the extent of the auditor's responsibilities to the client and the form of any reports.

International Standard on Related Services (ISRS) 4400 (previously ISA 920), *Engagements to Perform Agreed-upon Procedures Regarding Financial Information*, includes guidance for the engagement letter. The auditor should ensure with the entity's representatives and, ordinarily, other specified parties who will receive copies of the report of factual findings, that there is a clear understanding regarding the agreed procedures and the conditions of the engagement. Matters to be agreed include the following:

- Nature of the engagement, including the fact that the procedures performed will not constitute an audit or a review and that accordingly no assurance will be expressed;
- Stated purpose of the engagement;
- Identification of the financial information to which the agreed-upon procedures will be applied;
- Nature, timing and extent of the specific procedures to be applied;
- Anticipated form of the report of factual findings; and
- Limitations on distribution of the report of factual findings. When such limitation would be in conflict with the legal requirements, if any, the auditor would not accept the engagement.

It is in the interests of both the client and the auditor that the auditor sends an engagement letter documenting the key terms of the appointment. An engagement letter confirms the auditor's acceptance of the appointment and helps avoid misunderstanding regarding such matters as the objectives and scope of the engagement, the extent of the auditor's responsibilities and the form of reports to be issued. Matters that would be included in the engagement letter include the following:

- A listing of the procedures to be performed as agreed upon between the parties; and
- A statement that the distribution of the report of factual findings would be restricted to the specified parties who have agreed to the procedures to be performed.

The nature of the engagement with regard to a prospectus often involves a very tight timeframe and procedures that are agreed upon during the process of the engagement as it evolves. It is current practice in most countries for the auditor to attach to the engagement letter a draft of the type of report of factual findings that will be issued. An illustrative example of an engagement letter appears in Appendix 2.

The engagement letter normally covers:

- Management's responsibility with regard to misrepresentation and fraud, and the fact that the auditor will ask management for a letter of representation;
- The underwriter's responsibility to do due diligence appropriate to the offering and inform the auditor of any misstatements;
- The underwriter's responsibility for scope (see below); and
- A statement as to the exclusive law and jurisdiction that applies for the engagement.

The procedures to be employed and their adequacy should be determined by or in cooperation with the underwriter, regulatory body or other party for whom the comfort letter is prepared. The procedures must be specific; assignments to apply general procedures such as making an analytical review or overall tests of particular data should not be undertaken. The letter should set forth the procedures employed but carefully avoid any statements (or implications) that the auditor has selected the procedures or believe they are adequate. Further, the letter should state that the procedures do not constitute an audit or a review made in accordance with generally accepted auditing standards, would not necessarily reveal matters of significance with respect to the data on which comments are made and that the auditor makes no representations regarding the sufficiency of the procedures for the addressee's purposes.

If reference is made to the comfort letter in the underwriting agreement, it is also worth getting a draft of that agreement to make sure that the auditor can comply with its terms. It is desirable practice for the auditor, promptly after receiving the draft of the underwriting agreement, to prepare a draft of the form of the letter that they expect to provide. This practice of providing a draft letter at an early point permits the auditor to make clear to the client and the underwriter what they may expect the auditor to provide. To the extent possible, the draft should deal with all matters to be covered in the final letter and should use exactly the same terms as those to be used in the final letter (subject, of course, to the understanding that the comments in the final letter cannot be determined until the procedures underlying it have been performed).

The draft letter should be identified as a draft to avoid giving the impression that the procedures described therein have been performed.

Auditors who discover matters that may require mention in the final comfort letter but that are not mentioned in the draft letter that has been provided to the underwriter, such as changes, increases, or decreases in specified items not disclosed in the registration statement, should discuss them with their client so that consideration can be given to whether disclosure should be made in the registration statement.

If disclosure is not to be made, the auditor should inform the client that the matters will be mentioned in the comfort letter and should suggest that the underwriter be informed promptly. It is recommended that the auditors be present when the client and the underwriter discuss such matters.

Auditors' working papers should include adequate evidence of procedures that were agreed in the underwriter's letter and evidence of the work performed.

---

## 5. CLIENT REPRESENTATION LETTER

It is important to define and adhere to the responsibilities of all concerned with a prospectus. To achieve this, audit procedures normally require the auditor to receive a letter of representation from the issuer's management pertaining to the issues they have inquired into as of the date of issuance of the comfort letter or as of the update of the comfort letter.

Such representation from the issuer will address the content of the prospectus (completeness and fairness) and more particularly the representations on subsequent changes of defined accounting aggregates.

An illustrative example for such a letter is included as Appendix 3.

## APPENDIX 1 – ILLUSTRATIVE EXAMPLE OF A COMFORT LETTER

### AUDITOR LETTERHEAD

*[This draft is furnished solely for the purpose of indicating the form of the letter that we would expect to be able to furnish Underwriter in response to Issuer’s request, the matters expected to be covered in the letter and the nature of the procedures that we would expect to carry out with respect to such matters. Based on our discussions with Underwriter and Issuer, it is our understanding that the procedures outlined in this draft letter are those that Issuer wishes us to follow at Underwriter’s request. Unless Issuer informs us otherwise, we shall assume there are no additional procedures that Underwriter and Issuer wish us to follow. The text of the 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 cut-off date indicated therein. The restrictions expressed in the concluding paragraph apply to this draft]<sup>8</sup>.*

*Comfort letter date*

*Issuer*

*Underwriter*

On their own behalf and as representative of the *Managers* named in the referred to below (the “*Managers*”)

- *Description of the transaction*

Dear Sirs,

We have audited in accordance with International Standards on Auditing (“ISA”) the consolidated balance sheets of Issuer (“the Issuer” and together with its consolidated subsidiaries, the “Group”), as of *December 31, XXN, and XXN-1 and XXN-2* and the related consolidated statements of income, consolidated statements of cash flows and consolidated statement of changes in shareholders’ equity for each of the three years in the period ended *December 31, XXN*. These consolidated financial statements were prepared in accordance with International Financial Reporting Standards (“IFRS”) and are included (*or* are incorporated by reference) in the prospectus of the Issuer dated *Month, Day, XXN+1* (“the Prospectus”) prepared in connection with the offering of the (*Notes/Shares*). Our reports with respect thereto are also included in the Prospectus. (*if the case occurs: Our report is qualified with respect to ... or Our report includes an emphasis paragraph relating to a change in accounting principles with respect to .../relating to the following matter...*).

<sup>8</sup> The following wording could be used when the draft of the comfort letter is used as an appendix to the engagement letter (see Appendix 2).



The financial statements have been prepared by the directors in accordance with the [describe relevant requirements]. Our audit opinions on the consolidated financial statements for the periods ended • where expressed for the purposes defined in [describe relevant legislation] and for no other purpose or persons. We do not accept any responsibility for the audit reports or any other reports or letters beyond that we owed to those to whom our reports or letters were issued at the date of their issue.

This letter is issued in accordance with ISRS 4400 *Engagements To Perform Agreed-Upon Procedures Regarding Financial Information and (reference to any applicable standard of work relating to the issuance of a comfort letter) and on the basis of the terms and conditions of our engagement letter dated Month Day, XXN*<sup>9</sup>:

In connection with the Prospectus:

1. We are independent auditors with respect to *Issuer* as required by the laws of *Issuer Country of Incorporation* [if applicable: and under the applicable professional rules stipulated by International Standards of Auditing (“ISA”)]
2. We have not audited any consolidated financial statements of the Issuer or any of its subsidiaries as of any date or for any period subsequent to *December 31, XXN*. The purpose (and therefore the scope) of our audit for the year ended *December 31, XXN* was to enable us to express our opinion in accordance with ISA on the consolidated financial statements, prepared in accordance with IFRS, as of *December 31, XXN*, and for the year then ended, but not on the consolidated financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the unaudited consolidated balance sheet and on the unaudited consolidated statements of income, statements of cash flows or statements of changes in shareholders’ equity as of any date or for any period subsequent to *December 31, XXN* included in the Prospectus or on the financial position, results of operations, or cash flows as of any date or for any period subsequent to *December 31, XXN* (if the situation occurs: Moreover, we draw your attention on the fact that the financial statements for the period ended *December 31, XXN* have not yet been approved by the shareholders at the annual Shareholders’ Meeting which will be held on *Month Day, XXN+1*).
3. Our audits of the consolidated financial statements for the periods referred to in the introductory paragraph 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, 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 and, accordingly, we express no opinion thereon.
4. With respect to the period from *January 1, XXN+1* to *March 31, XXN+1*, we have performed the procedures specified under ISRE 2400, *Engagements to review Financial Statements* on the unaudited consolidated interim financial statements as of *March 31, XXN+1* and *March 31, XXN*. *These unaudited interim financial statements and our report thereon are included in the Prospectus.*

<sup>9</sup> Inclusion of this reference (see page 18 section responsibility and liability) depending on the jurisdiction concerned.

5. The following procedures do not constitute an audit or a review conducted in accordance with ISA. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.
6. These procedures should not be taken to supplant any additional inquiries or procedures that *Underwriter* would undertake in their consideration of the proposed offering of the Notes/Shares. We make no representation as to whether the transaction will take place or the number of the Notes/Shares to be sold in the transaction.
7. At your request, we read the *XXN+1* minutes of the meetings of the Shareholders' meeting and of the Board of Directors of the Issuer as set forth in the minutes books through *cut off date* [= *Comfort letter date less one to five working days*], officials of the Issuer having advised us that the minutes of all such meetings through that date were set forth therein (*if applicable*: except for the meetings held on *Month Day, XXX* for which minutes have not been approved and for which we have obtained from officials a summary of the topics discussed at the meeting) and have carried out other procedures to *cut off date* as follows (our work did not extend to the period from *cut off date+ one day to Comfort letter date*) as follows: [*The following paragraphs have to be adapted depending upon the circumstances*]:
  - a. With respect to the period from *April 1, XXN+1* to *May 31, XXN+1*, we have:
    - (i) Read the unaudited consolidated management balance sheet as of *April 30, XXN+1* and *May 31, XXN+1* and the unaudited consolidated management statements of income for the months ended *April 30, XXN+1* and *May 31, XXN+1* and agreed the amounts contained therein with the Issuer's accounting records as of *April 30, XXN+1* and *May 31, XXN+1* and for the months then ended. Officials of the Issuer have advised us that no such financial statements as of any date of for any period subsequent to *May 31, XXN+1* were available.
    - (ii) Inquired of certain officials of the Issuer who have responsibility for financial and accounting matters whether (1) the unaudited consolidated management balance sheets and the unaudited consolidated managements statements of income referred to in b.(i) above are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the Prospectus, (2) at *May 31, XXN+1*, there was any change in the share capital, increase in long-term debt or decrease in shareholders' equity of the Issuer as compared with amounts shown in the *March 31, XXN+1* unaudited consolidated balance sheet and (3) for the period from *April 1, XXN+1* to *May 31, XXN+1*, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated [revenue] or in [profit]<sup>10</sup>.

<sup>10</sup> Reference should be made to the appropriate terms or line items used in the financial statements included in the prospectus.

Those officials stated that (1) the unaudited consolidated management balance sheets and the unaudited consolidated managements statements of income referred to in b.(i) above are stated on a basis consistent with that of the audited consolidated financial statements included in the Prospectus, (2) at *May 31, XXN+1*, there was no change in the share capital, no increase [in excess of Euros xx millions] in long-term debt and no decrease [in excess of Euros yy millions] in shareholders' equity of the Issuer as compared with amounts shown in the *March 31, XXN+1* unaudited consolidated balance sheet and (3) for the period from *April 1, XXN+1* to *May 31, XXN+1*, there were no decrease, as compared with the corresponding period in the preceding year, in consolidated [revenue] [in excess of Euros zz millions] and in [profit] [in excess of Euros tt millions] , except in all instances for change, increases or decreases that the Prospectus discloses have occurred or may occur.

- b. With respect to the period from *June 1, XXN+1* to *cut off date*, as mentioned under a.(i) above, Issuer's officials have advised us that no financial statements and/or consolidated management balance sheet and statement of income as of any date or for any period subsequent to *May 31, XXN+1* are available; accordingly, the procedures carried out by us with respect to changes in financial statements items after *May 31, XXN+1* have been limited to inquiries of certain officials of the Issuer who have responsibility for financial and accounting matters whether (1) at *cut off date*, there was any change in the share capital, increase in long-term debt or decrease in shareholders' equity of the Issuer as compared with amounts shown in the *May 31, XXN+1* unaudited consolidated balance sheet and (2) for the period from *June 1, XXN+1* to *cut off date*, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated [revenue] or in [profit].

Those officials referred to above stated that (1) at *cut off date*, there was no change in the share capital, no increase [in excess of Euros yy millions] in long-term debt and no decrease [in excess of Euros yy millions] in shareholders' equity of the Issuer as compared with amounts shown in the *May 31, XXN+1* unaudited consolidated balance sheet and (2) for the period from *June 1, XXN+1* to *cut-off date*, there were no decreases, as compared with the corresponding period in the preceding year, in consolidated [revenue] [in excess of Euros zz millions] and in [profit] [in excess of Euros tt millions], except in all instances for change, increases or decreases that the Prospectus discloses have occurred or may occur.

8. At your request, we have also read the items identified by you on the attached pages of the Prospectus and have performed the following agreed-upon procedures, which were applied as indicated with respect to the symbols explained below:

- A We compared the amount or percentage with the corresponding amount or percentage included in the Issuer's audited consolidated financial statements as of and for the years ended *December 31, XXN, XXN-1* and *XXN-2* included in the Prospectus and found them to be in agreement after giving effect to rounding, if applicable.

- B We compared the amount or percentage with the corresponding amount or percentage included in the unaudited interim consolidated balance sheets and statements of income as of and for the three-month periods ended *March 31, XXN+1* and *March 31, XXN* and found them to be in agreement after giving effect to rounding, if applicable.
- C We compared the amount with the corresponding amount in the Issuer's accounting records and found them to be in agreement after giving effect to rounding, if applicable.
- D We compared the amount with the corresponding amount in analyses prepared by the Issuer from its accounting records and found them to be in agreement after giving effect to rounding, if applicable.
- E We proved the arithmetic accuracy of the percentages or amounts based on the data in the above-mentioned financial statements, accounting records, and analyses.

9. It should be understood that we have no responsibility for establishing (and did not establish) the scope and nature of the procedures enumerated in paragraphs 7 to 8 above; rather, the procedures enumerated therein are those that the requesting party asked us to perform. Accordingly, we make no representations regarding questions of legal interpretation or regarding the sufficiency for *Underwriter's* purposes of the procedures enumerated in the preceding paragraphs; also such procedures would not necessarily reveal any material misstatement of the information identified in the preceding paragraphs as set forth in the Prospectus. Further, we have addressed ourselves solely to the foregoing data and make no representations regarding the accuracy of disclosures or whether any material facts have been omitted.
10. This letter is solely for the information of the Issuer and for the information of Underwriter as being responsible for the content of the Prospectus in conducting and documenting their investigation of the affairs of the Issuer 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 out of 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 Purchase Contract (*or* Subscription Agreement) or in any list of closing documents pertaining to the offering of the securities covered by the Prospectus.
11. We have no responsibility to update this letter for events or circumstances occurring after the *cut off date*.
12. This letter shall be governed by, and construed in accordance with *Issuer Country of Incorporation* law. The courts of *Issuer Country of Incorporation* shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this letter and any matter arising from them. Each party irrevocably waives any right it may have to object an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

Yours faithfully,

*Auditor*

## APPENDIX 2 - ILLUSTRATIVE EXAMPLE OF AN ENGAGEMENT LETTER

*Against different legal environments in the EU Member States there will be different terms in an engagement letter especially regarding the scope of the work, the legal relationship with the underwriter and the auditor's liability; therefore it is not possible to recommend a homogeneous engagement letter for different countries.*

### AUDITOR LETTERHEAD

*Date (before starting agreed-upon procedures)*

*Issuer*

Dear Sirs:

We are writing to you in connection with the comfort letter [and, as the case may be, the “bring-down” comfort letter (together the “Comfort Letter”)] that you have requested us as auditors of *Issuer* to issue to *Underwriter* on their own behalf and as representative of the several *Managers* named in the Prospectus dated *Pricing Date* prepared in connection with the offering of *Description of the Operation* 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 ISRS 4400 – *Engagements To Perform Agreed-Upon Procedures Regarding Financial Information and (reference to any applicable standard of work relating to, the issuance of a comfort letter)*:

The specific 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* expects us to perform at your request unless you inform us otherwise. Such procedures include reading of the *XXN+1* 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 *Closing date of the last audited or reviewed Financial statements* 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. Therefore, the procedures performed comprise an increased risk that even materially false information will not be identified and any illegal acts or other irregularities will not necessarily be disclosed. 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.

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 cut-off 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 *Issuer*. 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 cut off date.

As part of the procedures carried out for purpose of issuing our comfort letter, we will request from *Issuer* a representation letter as of the cut off date of our Comfort letter updating the various representations previously made to us as part of our audit of *Issuer* consolidated financial statements as of and for the year ended 31 December *XXN* and other specific representations relating to agreed-upon procedures performed relating to subsequent changes of specific items of the financial statements as described and reported upon under paragraph [X] of 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<sup>11</sup> 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 *Issuer* and for the information of the *Underwriter* as being responsible for the content of the Prospectus in conducting and documenting their investigation of the affairs of the Issuer 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 out of 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 Purchase Contract (*or* Subscription Agreement) or in any list of closing documents pertaining to the offering of the securities covered by the Prospectus.

[Insert liability clause in accordance with professional standards on legislation in the jurisdiction]

This engagement letter and our Comfort Letter shall be governed by, and construed in accordance with *Issue's Country of Incorporation* law. The courts of *Issuer's Country of Incorporation* shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning these letters and any

<sup>11</sup> Where permitted by local rules and regulation

matter arising from them. Each party irrevocably waives any right it may have to object an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

The fees relating to the procedures performed to issue the requested Comfort Letter will be billed to *Issuer* 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 *Issuer* 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*

*Issuer*

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 *Issuer*, by whom I am duly authorized:

Signature .....

Name .....

Position .....

Date .....

*Underwriter*<sup>12</sup>

I have read and understood the terms and conditions of this letter and attachments and I agree to and accept them for *Underwriter* 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* on their own behalf and as representative of the several *Managers* named in the Prospectus

Signature .....

Name .....

Position .....

Date .....

Attachments: draft of comfort letter  
 draft of Issuer representation letter  
 [General Terms and Conditions]

<sup>12</sup> Agreement with the Underwriter can also be obtained by separate letter or by other means, if the auditor considers it necessary in his jurisdiction. No example of such a letter is provided, given the differences in the various jurisdictions.

## APPENDIX 3 - ILLUSTRATIVE EXAMPLE OF A CLIENT REPRESENTATION LETTER

### ISSUER LETTERHEAD

*Auditor*

Dear Sirs,

In connection with (a) the *Issuer's* Prospectus dated *Month Day, XXX* 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 *Cut off 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 Date de cut off*, 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].

### ***Subsequent Events***

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*