

**OFFICIAL INFORMATION  
OF THE CZECH NATIONAL BANK**

of 17 October 2011

**regarding the rules of proceedings in recognizing the comparability of the duties of  
issuers from third countries**

**I. Scope and Purpose**

1. Through this Official Information, the Czech National Bank informs about the rules of proceedings in recognizing the comparability of the duties of issuers from third countries. Such proceedings are conducted in order to identify whether the requirements have been met for the recognition of comparability of the duties of an issuer from a third country who has its registered office in a country that is not a member state of the European Economic Area (hereinafter the “third country issuer”) with the duties laid down in Sections 118 to 119a, Section 120a (1)(a), Section 120c (1) or in Section § 122 (15) or (16) (hereinafter the “statutory duties”) of Act No. 256/2004 Coll., the Capital Market Undertakings Act, as amended (hereinafter the “Act”). The requirements for the recognition of comparability are set out in Annex No. 15 to Decree No. 234/2009 Coll., on the Protection against Market Abuse and on Transparency, as amended by Decree No. 191/2011 Coll.
2. The rules of proceedings in recognizing the comparability of the duties of third country issuers are based on Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (hereinafter the “Commission Directive”).
3. The rules of proceedings in recognizing the comparability of the duties of third country issuers are set out in the Annex to this Official Information.

**II. Final Provisions**

On the day on which this Official Information is published in CNB Bulletin, the Official Information of the Czech National Bank of 6 April 2010 regarding the comparability of the duties of third country issuers (published in CNB Bulletin under number 10/2010) shall become invalid.

Vice-Governor  
Prof. PhDr. Ing. Vladimír Tomšík, Ph.D., signed

Annex: Rules of proceedings in recognizing the comparability of the duties of third country issuers

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## Rules of proceedings in recognizing the comparability of the duties of third country issuers

### **I. Fundamental Provisions**

In conducting proceedings regarding the recognition of comparability of the duties of third country issuers, the Czech National Bank acts pursuant to Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

### **II. Law of the Issuer's Country**

The provisions of Section 127d of the Act speak of the “law of the issuer’s registered office”. The Czech National Bank understands this determination of the law in a broader sense than a verbatim interpretation of the Act would imply. The provisions of Section 127d of the Act are a transposition of Article 23 (1) of Directive 2004/109/EC<sup>1)</sup>, which in many language versions speaks of the law of the country in question<sup>2)</sup> and also of the law of any third country<sup>3)</sup> the requirements of which the issuer meets. In relation to that, it is also necessary to mention Item 18 of the Preamble of the Commission Directive, which emphasizes the precedence of the material aspect over the formal aspect in assessing the comparability. Thus, in compliance with the principle of equal treatment and the obligation of Euro-conformist interpretation, the Czech National Bank believes that Section 127d of the Act needs to be interpreted so that it refers to the “law of the country that governs the information duties of the third country issuer in question”. For instance, if an issuer discharges the information duties pursuant to the law of the regulated market where the issuer is listed, the Czech National Bank will not assess the law of the issuer’s registered office where the issuer discharges no information duties.

### **III. Comparability of the Duties of Third Country Issuers**

In accordance with Item 18 of the Preamble of the Commission Directive, the Czech National Bank does not expect it to be necessary at all times, in order to approve the comparability of the law of the issuer’s country, for the information duties laid down by the law of the third country to be entirely identical with the statutory duties. The criterion is that the law of the third country obliges the issuer to publish information that furnishes comprehensible data to investors in order to evaluate the issuer’s financial standing and that will enable them to adopt similar decisions as if they possessed the information required pursuant to the statutory duties. The comparability requires that the essence of the statutory duties is maintained; however, no exception as to the time limits for the discharge of the information duties shall be admitted.

### **IV. Decisions on Comparability by Other Supervisory Authorities**

The Czech National Bank monitors the decisions taken by the supervisory authorities over the financial markets in other member states of the European Economic Area (hereinafter the “supervisory authority of another member state”), if they decide on the comparability of the

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<sup>1)</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and amending Directive 2001/34/EC, as amended by Directives 2008/22/EC, 2010/73/EU and 2010/78/EU of the European Parliament and of the Council.

<sup>2)</sup> Law of the third country in question; Recht des betreffenden Drittlandes; loi du pays tiers en question.

<sup>3)</sup> Law of a third country; Rechtsvorschriften eines Drittlandes; loi d'un pays tiers.

duties of third country issuers. If the supervisory authority of another member state decides that the law of the third country in question is comparable to the duties of an issuer that abides by the law of the member state, the Czech National Bank will take such a fact into account when recognizing the comparability of the duties of an issuer from the same third country. However, the Czech National Bank is not bound by any decision of the supervisory authority of another member state.

#### **V. Ancillary Information Duties**

As it has been stated in Item III above already, in recognizing the comparability of the duties of third country issuers, the Czech National Bank does not expect the information duties laid down by the law of the third country in question to be entirely identical with the statutory duties. Thus, the discharge of any ancillary information duties i.e., information duties having no separate material function (such as, for instance, the total number of voting rights and/or the amount of the registered capital pursuant to Section 122 (16) of the Act) is not required by the Czech National Bank. The Czech National Bank shall consider it sufficient, if the data that investors would obtain from any ancillary information duties can be easily obtained otherwise by investors.