

Protocol between the Financial Services Authority, UK, the Financial Reporting Council, UK, and the SEC, USA, to facilitate implementation of the CESR – SEC Work Plan

Background

The Financial Services Authority (the “FSA”) is a member of the Committee of European Securities Regulators (“CESR”). The Financial Reporting Council (the “FRC”) is the UK's independent regulator for corporate reporting and governance. CESR and the US Securities and Exchange Commission (“SEC”) concluded on the 2nd August 2006 a Work Plan (the “Work Plan”) (CESR ref. 06-434, SEC press release 2006-130) setting out the key objectives of the CESR-SEC Regulatory Dialogue and how to facilitate their realisation. Several areas of work on which CESR and the SEC will cooperate during the course of the next few years are set out in the Work Plan. This protocol (“Protocol”) will facilitate the cooperation of the FSA, the FRC and the SEC in the implementation of Section I.C of the Work Plan.

Definitions

1. “Authority” means the FSA, FRC, or the SEC.
2. “Designated Authority” means the FRC, which has responsibility for reviewing the financial statements of listed issuers in the United Kingdom.
3. “Providing Authority” means the Authority that provides information to the other Authority under this Protocol.
4. “Receiving Authority” means the Authority that receives information from the other Authority under this Protocol.

Contact persons

5. The principal contact persons to this Protocol are the:
 - a. Richard Thorpe, Head of Accounting and Auditing Policy, FSA on the one hand, and
 - b. Ethiopis Tafara, Director of the Office of International Affairs, SEC, on the other.
6. The following persons are the points of contact for implementing Section I.C of the Work Plan and paragraphs 11 through 13 of this Protocol regarding the use of IFRS and US GAAP by internationally active issuers:

- a. For the FRC

Carol Page
Director, Panel Operations
Tel. +44 (0)20 7492 2460
E-mail: c.page@frc-frrp.org.uk

- b. For the SEC

Craig Olinger
Deputy Chief Accountant
Division of Corporation Finance
Tel. +1 (202) 551-3547
E-mail: olingerc@sec.gov

7. The FSA and the FRC and the SEC shall promptly notify each other of any updates to the contact persons listed in paragraphs 5 and 6.

General Principles

8. The timely alert and exchange of information between the Authorities under this Protocol is intended to further the purposes set out in Section I of the Work Plan.
9. This Protocol does not create any legally binding obligations, confer any rights, or supersede domestic laws.
10. An Authority may deny the provision of information requested for the purposes set out in paragraph 8 in the following circumstances:
 - a. where the provision of information would require the Requested Authority to act in a manner that would violate domestic law; or
 - b. on grounds of public interest or essential national interest.

Consultation and Information-Sharing

11. As part of its consideration of a UK-listed/SEC-registered issuer's request to the SEC staff for a formal consultation on the application of IFRS to a matter affecting financial statements not yet filed with the SEC, the SEC staff will consult with the FRC's staff on that matter. In addition, as part of its evaluation of a UK-listed/SEC-registered issuer's application of IFRS to a matter affecting financial statements previously filed with the SEC and following consideration of the issuer's responses, the SEC staff will consult with the FRC's staff on that matter if i) it appears to the SEC staff that the matter under IFRS is novel or unprecedented; ii) the issuer informs SEC staff that the staff's view on the IFRS matter is in conflict with a position of the FRC; or iii) it appears that the SEC staff view on the IFRS matter could result in a significant change to the financial statements. These consultations will enable the SEC staff to understand and give full consideration to the FRC staff's view on the application of IFRS to the matter. These consultations will be undertaken for the purpose of facilitating a solution that contributes to consistent application of IFRS by issuers.¹
12. As part of its evaluation of a UK-listed/SEC-registered issuer's application of IFRS to a matter affecting published financial statements and following consideration of the issuer's responses, the FRC staff will consult with the SEC's staff on that matter if i) it appears to the FRC staff that the matter under IFRS is novel or unprecedented; ii) the issuer informs FRC staff that the staff's view on the IFRS matter is in conflict with a position of the SEC; or iii) it appears that the FRC staff view on the IFRS matter could result in a significant change to the financial statements. These consultations will enable the FRC staff to understand and give full consideration to the SEC staff's view on the application of IFRS to the matter. These consultations will be undertaken for the purpose of facilitating a solution that contributes to consistent application of IFRS by issuers.¹
13. In the event that the mandate of FRC is expanded to include review of financial statements of third country issuers using GAAP other than IFRS, as part of its evaluation of a US-dually-listed/registered issuer's application of US GAAP to a matter affecting published financial statements and following consideration of the issuer's responses, the FRC staff will consult with the SEC staff on that matter if i) it appears to FRC staff that the matter under US GAAP

¹ In the event that the Authorities' staffs, after consultation, ultimately reach different views on the application of IFRS to a particular matter, the Authorities' staffs will consult regarding any communications regarding the matter to be made to the relevant issuer or others, as appropriate.

is novel or unprecedented; ii) the issuer informs the FRC staff that the staff's view on the US GAAP matter is in conflict with a position of the SEC; or iii) it appears that the FRC staff view on the US GAAP matter could result in a significant change to the financial statements. These consultations will enable the FRC staff to understand and give full consideration to the SEC staff's view on the application of US GAAP to the matter. These consultations will be undertaken for the purpose of facilitating a solution that contributes to consistent application of US GAAP by issuers.²

Permissible Uses of Information

14. Subject to paragraphs 15 and 16, each Authority may use non-public information obtained under this Protocol solely for the purpose of achieving the goals of the Work Plan.
15. The Receiving Authority must obtain the prior consent of the Providing Authority before disclosing non-public information received under this Protocol to any non-signatory to this Protocol, except as provided in paragraph 16. If consent is not obtained from the Providing Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Receiving Authority might be allowed.
16. This Protocol is intended to complement, but not alter in any way, existing bilateral or multilateral arrangements concerning cooperation in securities law enforcement or regulatory matters between or among the Authorities, as listed in Annex A. The Authorities recognize that while information will not be obtained under the auspices of this Protocol for law enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In cases where an Authority seeks to use information obtained under this Protocol for law enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the other Authority. Use will be subject to the terms and conditions of the arrangements referred to above and set forth in Annex A concerning cooperation in law enforcement matters.

Confidentiality

17. Except for disclosures in accordance with this Protocol, each Authority intends to keep confidential to the extent permitted by law non-public communications and information received under this Protocol, the content of such communications, and any other non-public matters arising under the Work Plan, including consultations between or among the Authorities and CESR.
18. To the extent possible, the Receiving Authority intends to notify the Providing Authority of any legally enforceable demand for non-public information furnished under this Protocol. Prior to compliance with the demand, the Receiving Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
19. In the event that non-public information furnished pursuant to this Protocol includes deliberative and consultative materials, the Authorities intend that such disclosure will not constitute a waiver of privilege or confidentiality of such information.

² In the event that the Authorities' staffs, after consultation, ultimately reach different views on the application of US GAAP to a particular matter, the Authorities' staffs will consult regarding any communications regarding the matter to be made to the relevant issuer or others, as appropriate.

Termination

20. In the event of termination of cooperation between the FRC and the SEC under the Work Plan and this Protocol, information obtained under this Protocol will continue to be treated in the manner prescribed in paragraphs 14-19.

Signatures

For the SEC

Date:.....

Chairman Christopher Cox

For the FSA

Date:.....

Chairman Callum McCarthy

For the FRC

Date:.....

Chief Executive Paul Boyle

Annex A

Memorandum of Understanding between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry and the Financial Services Authority, the successor in interest to the Securities and Investments Board, on Mutual Assistance and the Exchange of Information dated September 25, 1991

Memorandum of Understanding between the United States Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the Bank of England and the United Kingdom Financial Services Authority dated October 27, 1997

Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information among certain members of the International Organization of Securities Commissions, including the United States Securities and Exchange Commission and the United Kingdom Financial Services Authority

Memorandum of Understanding between the United States Securities and Exchange Commission and the United Kingdom Financial Services Authority Concerning the Consultation, Cooperation and the Exchange of Information Related to Market Oversight and the Supervision of Financial Services Firms, dated March 14, 2006