



Date: 26 September 2007

Ref: CESR/07-621

**CESR-SEC protocol  
to facilitate implementation  
of the  
CESR-SEC work plan**

The attached framework protocol covers the confidential exchange of information regarding dual listed issuers to be executed between the SEC and each individual CESR member, in order to further enable close co-operation between the staff of CESR members and the staff of the SEC on the application of US GAAP and IFRS in the European Union and the United States.

This protocol has been developed under the CESR-SEC work plan, published on 2 August 2006.

# Protocol between [Authority, Member State] and the SEC, USA, to facilitate implementation of the CESR – SEC Work Plan

## Background

[Authority, Member State] is a member of the Committee of European Securities Regulators (“CESR”). 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 [Authority, Member State] and the SEC in the implementation of Section I.C of the Work Plan.

## Definitions

1. “Authority” means the [Authority, Member State], [Designated Authority,] or the SEC.
2. “Designated Authority” means the [non-CESR member in a Member State], which has responsibility for reviewing the financial statements of listed issuers in [Member State].
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. [Head of International Relations, CESR Member, Member State] 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 regarding the use of IFRS and US GAAP by internationally active issuers:
  - a. For the [CESR Member and/or Designated Authority, Member State]  
  
[Name Name]  
Tel. ....  
E-mail: .....
  - 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 [CESR Member and/or Designated Authority] 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 goals set out in Section I.A 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 for the purposes set out in paragraph 8 in the following circumstances:
  - a. where the provision of information would require the Providing Authority to act in a manner that would violate domestic law; or
  - b. on grounds of public interest or essential national interest.

### **Permissible Uses of Information**

11. Subject to paragraphs 12 and 13, each Authority may use non-public information obtained under this Protocol solely for the purpose of achieving the goals of the Work Plan. This use includes communication to the issuer whose financial statements are the subject of the exchange of information between the Authorities, unless the Providing Authority expressly objects to this communication.
12. 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 paragraphs 11 and 13. 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.
13. 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 the purposes of conducting investigations concerning violations of securities laws or regulations or bringing administrative, civil or criminal proceedings. In such cases, 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.] [If such an arrangement does not exist and consent is not obtained by the Providing Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which use might be allowed.]

### **Confidentiality**

14. Except for disclosures in accordance with this Protocol, each Authority intends to keep confidential 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.
15. To the extent possible the Receiving Authority will 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.

16. 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.

### **Termination**

17. In the event of termination of cooperation between the [CESR Member and/or Designated Authority] and the SEC under the Work Plan, information obtained under this Protocol will continue to be treated in the manner prescribed in paragraphs 11-16.

### **Signatures**

**For the SEC**

Date:.....

**For the [CESR Member]**

Date:.....

Title      Name

**For the [Designated Authority]**

Date:.....

Title      Name