

Protocol between BaFin, Germany and the SEC, USA, to facilitate implementation of the CESR – SEC Work Plan

Background

The Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”), Germany, 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 the BaFin, Germany, and the SEC in the implementation of Section I.C of the Work Plan.

Definitions

1. “Authority” means the Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”), Germany, or the SEC.
2. “Providing Authority” means the Authority that provides information to the other Authority under this Protocol.
3. “Receiving Authority” means the Authority that receives information from the other Authority under this Protocol.

Contact persons

4. The principal contact persons to this Protocol are the:
 - a. Thomas Schmitz-Lippert, Head of the International Department, BaFin, Germany, on the one hand, and
 - b. Ethiopis Tafara, Director of the Office of International Affairs, SEC, on the other.
5. 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 BaFin, Germany

Thorsten Dammann
Head of Section
Accounting Enforcement
Tel. +49 (0) 228 4108-2771
E-mail: Thorsten.dammann@bafin.de

b. For the SEC

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

6. The BaFin and the SEC shall promptly notify each other of any updates to the contact persons listed in paragraphs 4 and 5.

General Principles

7. 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.
8. This Protocol does not create any legally binding obligations, confer any rights, or supersede domestic laws.
9. An Authority may deny the provision of information for the purposes set out in paragraph 7 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

10. Subject to paragraphs 11 and 12, 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.
11. 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 10 and 12. 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.
12. 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.

Confidentiality

13. 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.
14. 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.
15. 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

16. In the event of termination of cooperation between the BaFin and the SEC under the Work Plan, information obtained under this Protocol will continue to be treated in the manner prescribed in paragraphs 10-15.

Signatures

For the SEC

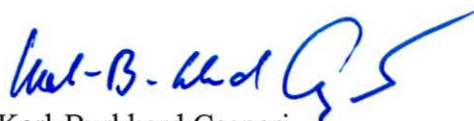
Date: 12.11.09



Mary L. Schapiro
Chairman

For the BaFin

Date: 12.21.09



Karl-Burkhard Caspari
Chief Executive Director

Annex A

The Memorandum of Understanding concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws between the SEC and the BaFin (as Successor to the BaWe) (October 17, 1997).

The IOSCO Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information, to which the SEC and BaFin are signatories (May 2002).

The Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information related to Market Oversight and the Supervision of Financial Services Firms (April 2007) (as Supplemented by Detailed Arrangements in December 2007 regarding the Oversight of Affiliated Markets).