

Protocol between the CNMV, Spain, and the SEC, USA, to facilitate implementation of the CESR – SEC Work Plan

Background

The Comisión Nacional del Mercado de Valores (“CNMV”), Spain, is a competent authority and member of the European System of Financial Supervision under the legislation establishing the European Securities and Markets Authority (“ESMA”), the successor interest to the Committee of European Securities Regulators (“CESR”).¹ CESR (now ESMA) and the US Securities and Exchange Commission (“SEC”) concluded on the 2nd August 2006 a Work Plan (the “Work Plan”) (ESMA ref. CESR/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 ESMA 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 CNMV and the SEC in the implementation of Section I.C of the Work Plan.

Definitions

1. “Authority” means the CNMV, Spain, or the SEC, USA.
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. Antonio Mas Sirvent, Director of the International Relations Directorate, CNMV, Spain 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 CNMV

Eduardo Manso Ponte
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- b. For the SEC

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¹ According to article 76.4 of the EU Regulation No. 1095/2010 of the European Parliament and of the Council of 24 November 2010, ESMA shall be considered the legal successor of CESR. Article 8.1.(1) states that ESMA shall take over, as appropriate, all existing and ongoing tasks from CESR. According to article 82, ESMA was established on 1 January 2011 and replaced CESR on that date.

6. The CNMV 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. Prior to providing information to the non-signatory, the Receiving Authority will provide assurances that the non-signatory has confirmed that it requires the non-public information for a relevant supervisory purpose and it will obtain from the non-signatory adequate assurances concerning the non-signatory's confidential treatment of the non-public information. 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 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 ESMA.

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.

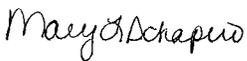
Termination

16. In the event of termination of cooperation between the CNMV 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: 1.5.12.....


Mary L. Schapiro
Chairman

For the CNMV

Date: 2.5.12.....


Julio Segura Sánchez
Presidente

Annex A

Existing bilateral or multilateral arrangements concerning cooperation in securities law enforcement or regulatory matters between the SEC, USA and the CNMV, Spain:

- Memorandum of Understanding between the United States Securities and Exchange Commission and the Comisión Nacional del Mercado de Valores of Spain Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws (July 8, 1992).
- OICV-IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the CNMV and the SEC are signatories (May 2002).