



Mr. Jean Guill
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SUBJECT: EXCHANGE OF LETTERS BETWEEN *THE FINANCIAL SERVICES AGENCY AND CERTIFIED PUBLIC ACCOUNTANTS AND AUDITING OVERSIGHT BOARD OF JAPAN* AND *THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER IN LUXEMBOURG* ON COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE OVERSIGHT OF AUDITORS

Dear Mr. Guill:

1. It is recognized that co-operation between the Financial Services Agency of Japan (“JFSA”) and Certified Public Accountants and Auditing Oversight Board (“CPAAOB”) and the Commission de Surveillance du Secteur Financier (“CSSF”) in the area of Auditor oversight would be mutually beneficial, with a view to ensuring the soundness of the securities markets and the investor protection in both jurisdictions. It is especially acknowledged that enhancing the exchange of information between the Authorities is important in view of the globalization of financial markets and the increasing cross-border activities in securities transactions.
2. In this context, the Authorities:
 - Having regard to Luxembourg law of December 18, 2009 on the audit profession as based on Article 47 of Directive 2006/43/EC which allows the CSSF under certain conditions to transfer to the JFSA/CPAAOB information relating to Auditors approved by the CSSF;
 - Recognising that the European Commission has decided upon the adequacy referred to in Article 47, paragraph 1(c) of the Directive 2006/43/EC in respect of Japan;
 - Recognising that the transfer of personal data from Luxembourg to Japan has to be in accordance with the Luxembourg law of August 2, 2002 on the adequate protection of personal data implementing Directive 95/46/EC, and in particular Chapter IV of Directive 95/46/EC;
 - Having regard to the Certified Public Accountants Act (“CPA act”) in Japan; and

- Recognising that the transfer of personal data from the JFSA/CPAAOB to the CSSF has to be in accordance with the Act on the Protection of Personal Information Held by Administrative Organs in Japan.

have reached the following framework. The Authorities recognise the need for mutual cooperation in matters related to the oversight of Auditors whose principal office is located in one Authority's jurisdiction and which provides an audit report concerning the annual or consolidated accounts of a company with securities issued or traded on a market in the other Authority's jurisdiction. The purpose of this Letter is to facilitate mutual cooperation between the Authorities to the extent permitted by their respective national laws in the area of public oversight of such Auditors.

3. This Letter does not create any binding legal obligations, nor does it modify or supersede any laws, regulations or regulatory requirements in Japan or Luxembourg. This Letter does not give rise to a right on the part of the JFSA/CPAAOB, the CSSF or any other governmental or non-governmental entity or any private person to challenge, directly or indirectly, the degree or manner of cooperation by the JFSA/CPAAOB or the CSSF.
4. This Letter does not prohibit the JFSA/CPAAOB or the CSSF from taking measures with regard to the supervision of Auditors that are different from or in addition to the measures set forth in this Letter.

DEFINITIONS

5. For the purpose of this Letter,

“Auditor” means a natural person or an audit firm that is subject to an Authority's regulatory jurisdiction in accordance with the CPA act in Japan and the Luxembourg law of December 18, 2009 on the audit profession implementing Directive 2006/43/EC ;

“Authority” or **“Authorities”** means the JFSA/CPAAOB and/or the CSSF;

“Inspections” refers to external quality assurance reviews of Auditors generally undertaken on a regular basis with the aim of enhancing audit quality;

“Investigations” refers to non-criminal investigations in response to a specific suspicion of infringement or violation of laws, rules or regulations related to audit oversight;

“Laws, rules or regulations” means any laws, rules or regulations in force in the respective countries of the Authorities.

COOPERATION

Scope of cooperation

6. Cooperation covers the exchange of information related to audit oversight such as outcome of Inspections and Investigations including firm-wide quality control procedures and

engagement reviews provided that these information relate to an Auditor¹ that provides an audit report concerning the annual or consolidated accounts of a company incorporated in one Authority's jurisdiction whose transferable securities are issued or traded on markets in the other Authority's jurisdiction. Also, cooperation includes the transfer of audit working papers or other documents held by Auditors in relation to the audits of companies mentioned above.

7. In the case where non-public information relating to the audit of a company that has issued securities in the country of one of the Authorities, or to the audit of a company whose parent has issued securities in the country of one of the Authorities, is held exclusively by a relevant Auditor, the other Authority will not request direct transfer of such information by the Auditor. Such information will be requested and transferred via the Authorities.
8. In cases where the information requested may be maintained by, or available to, another Authority within the country of the requested side, the Authorities will endeavour to provide the information requested. The exchange of information between the Authorities should take place in accordance with their respective laws and regulations.
9. The Authorities will use their best endeavors to notify each other, prior to or immediately after taking any significant oversight measures, in respect to relevant Auditors that are registered/notified or seek registration/notification in the other jurisdiction.

Requests for information

10. Each Authority will provide the other Authority with information in accordance with this Letter upon request.
11. Requests will be made in writing (including e-mail) and addressed to the contact person of the requested Authority.
12. The requesting Authority should specify the following:
 - (a) the information requested;
 - (b) the purposes for which the information will be used;
 - (c) the reasons why the information is needed and, if applicable, the relevant provisions that may have been violated;
 - (d) an indication of the date by which the information is needed; and

¹ Foreign audit firms and its engagements are defined in Article 34-35 of the CPA act in in Japan and Article 45 of EU Directive 2006/43/EC.

- (e) to the best of the knowledge of the requesting Authority, an indication of whether the information requested might be subject to further use or disclosure under paragraphs 18 to 21.

Execution of requests for information

- 13. Each request will be assessed on a case by case basis by the requested Authority to determine whether information can be provided under the terms of this Letter. In any case where the request cannot be met in full within the desired time period, the requested Authority will inform the requesting Authority accordingly and will consider, where applicable, whether other relevant information or assistance can be given.
- 14. The requested Authority may refuse to act on a request where:
 - (a) it concludes that the request is not in accordance with this Letter;
 - (b) acceding to the request would contravene the laws, rules, or regulations of the requested Authority's country;
 - (c) it concludes that it would be contrary to the public interest of the requested Authority's country for assistance to be given;
 - (d) the provision of information would adversely affect the sovereignty, security or public order of the requested Authority's country; or
 - (e) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Authorities of the country of the requested Authority.
- 15. The requested Authority will promptly inform the requesting Authority of the reasons why it refuses to act on a request made under this Letter.
- 16. Any document or other material provided in response to a request under this Letter and any copies thereof should be returned on request to the extent permitted by national laws and regulations.

CONFIDENTIALITY

- 17. Each Authority will keep confidential all information received or created in the course of cooperating, to the extent consistent with its laws and/or regulations. Article 100 of the National Public Service Act in Japan and article 82 of the Luxembourg law of December 18, 2009 respectively bind:
 - (a) employees and the former employees of the Authorities;
 - (b) persons involved in the governance of the Authorities; and
 - (c) otherwise associated with the Authorities

to official secrecy or restrict the disclosure of information provided in respect of audit regulation and oversight.

18. Any oversight information received must be used only for the exercise of their functions of public oversight of Auditors. If any Authority intends to use information received or created in the course of cooperation for any purpose *other* than those stated in the request, it must obtain the prior written and specific consent of the requested Authority. If the requested Authority consents to the use of information for a purpose other than that stated, it may subject its consent to conditions.
19. Information received should not be used in criminal proceedings carried out by a court or judge, including as evidence in criminal court. In the case that such use is needed, an additional request must be made in accordance with procedures prescribed in the relevant law for international mutual assistance in investigation.
20. If the Authority is required to disclose the information received from the other Authority in order to comply with its obligations under its domestic laws and/or regulations, the authority will consult with the other Authority before disclosing it. If the other Authority objects to the disclosure, the Authority will make its best efforts in resisting the disclosure of the information at issue.
21. An Authority that intends to disclose to a third party any information received or created in the course of cooperation, other than in cases referred to in paragraph 20, must obtain the prior written and specific consent of the Authority which provided the information. The Authority which intends to disclose this information will indicate the reasons and the purposes for which the information would be disclosed. The requested Authority may make its consent to the disclosure of the information subject to conditions.

THE TRANSFER OF PERSONAL DATA

22. This Letter is subject to a framework between the Authorities on the transfer of personal data as set forth in the Annex to this Letter.

OTHER

23. All communication and reports between both Authorities will be in English. If the requested Authority needs to provide information and/or documents in a language other than English, the requested Authority will inform the other Authority to that effect in advance. When information and/or documents provided are in a language other than English, the requesting Authority bears the costs of translation.
24. The Authorities will, at the request of either Authority, consult on issues related to the matters covered by this Letter, and otherwise exchange views and share experiences and knowledge gained in the discharge of their respective duties to the extent consistent with their respective laws and regulations. The Authorities also express their willingness to hold a

dialogue or exchange views about matters of common interest and concern as appropriate, with a view to deepening mutual understanding between the Authorities.

25. The Authorities may consult informally, at any time, about a request or proposed request or about any information provided.
26. The Authorities may consult and revise the terms of this Letter in the event of a substantial change in the laws, regulations, or practices affecting the operation of this Letter, or if the Authorities themselves wish to modify the terms of their cooperation.
27. The terms and conditions stated in this Letter do not apply to publicly available information.

DURATION

28. This Letter will be commenced from the date of signature.
29. The cooperation under this Letter may be terminated by either Authority at any time upon giving at least thirty days prior written notice to the other Authority. If either Authority gives such notice, this Letter will continue to have effect with respect to all requests that were made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested. The information exchanged pursuant to this Letter will remain confidential, consistent with paragraphs 17 through 22.

Yours Sincerely,

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ANNEX: FRAMEWORK ON THE TRANSFER OF PERSONAL DATA BETWEEN THE FINANCIAL SERVICES AGENCY AND CERTIFIED PUBLIC ACCOUNTANTS AND AUDITING OVERSIGHT BOARD OF JAPAN AND THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER LUXEMBOURG

The Financial Services Agency of Japan and Certified Public Accountants and Auditing Oversight Board (“the JFSA/CPAAOB”) and the Commission de Surveillance du Secteur Financier (“the CSSF”) have concurred on the following Framework.

I- DEFINITIONS

1. For the purpose of this Framework:

“**Auditor**” means a natural person or an audit firm that is subject to an Authority’s regulatory jurisdiction in accordance with the Certified Public Accountants Act in Japan and the Luxembourg law of December 18, 2009 on the audit profession implementing Directive 2006/43/EC;

“**Authority**” or “**Authorities**” means the JFSA/CPAAOB and/or the CSSF;

“**Controller**” means, in the case of Personal data processed in the Authority of the home jurisdiction of the data subject and transferred to the other Authority, the other Authority which alone or jointly determines the purposes and means of the processing of Personal data;

“**Exchange of Letters**” (“**EoL**”) means the document by that name, dated 2 August 2013, and exchanged by the Authorities to facilitate cooperation and the exchange of information;

“**Personal data**” means any information transferred from the other Authority relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;

“**Personal data protection authority**” means the competent data protection authority in the territory in which the competent authority is established;

“**Processing of Personal data**” (“processing”) means any operation or set of operations which is performed upon Personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

“**Processor**” means a natural or legal person, public authority, agency or any other body which processes Personal data on behalf of the Controller;

“Special categories of processing/Sensitive data”: means data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership and data concerning health or sex life and data relating to offences, criminal convictions or security measures in relation to individuals;

“Third party” means any natural or legal person, public authority, agency or any other body other than the data subject, the JFSA/CPAFOB, the CSSF and the persons who, under the direct authority of the Controller or the Processor, are authorized to process the data.

II- DATA PROCESSING PRINCIPLES

The Authorities confirm that the transmission of Personal data to the data requesting Authority will be governed by the following principles:

1. Purpose limitation: Personal data transmitted by the data providing Authority to the data requesting Authority may be processed and subsequently used only for the specific purposes of the exercise of the competences of public oversight, external quality assurance and investigations of Auditors by competent Authorities for oversight of statutory Auditors.

If the data requesting Authority intends to use information received from the data providing Authority for any purpose other than those stated in the request, it must obtain the prior written specific consent of the data providing Authority. The data providing Authority must provide the data subject with prior information necessary to ensure fair processing (such as information about the purpose of processing) and offer them a possibility to object. If the data providing Authority consents to the use of information for a purpose other than those stated, it may subject its consent to conditions.

2. Data quality and proportionality: All Authorities will endeavour to ensure that it transmits to the other Authority Personal data that is accurate and, where necessary, kept up to date. The Authorities will endeavour to ensure that the Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed. The Authorities will ensure that the accuracy of data exchanged is regularly reviewed.

The Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The Authorities will have in place acceptable record disposal procedures for all information received pursuant to applicable laws, rules or regulations.

3. Transparency: The data providing Authority must provide the data subject with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer) as set forth in respective legislation in its jurisdiction.

4. Security and confidentiality: Technical and organisational security measures that are appropriate to the risks, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access, presented by Processing of Personal data must be taken by the data Controller. Any person acting under the authority of the data Controller, including a Processor, must not process the data except on instructions from the data Controller. Personal data

exchanged for the purposes of this Framework will only be communicated by secured means so as to prevent accidental, unlawful or unauthorised access to the data.

5. Rights of access, rectification, deletion or objection: The Authorities recognise the right of data subjects to access the data relating to him or her (i.e. Personal data) that are processed. If the data turns out to be incomplete, inaccurate or outdated or the processing is not in accordance with the data processing principles in this Framework, the data subject may make a request for rectification, erasure or blocking of the data. The Authorities will put in place appropriate procedures to allow a data subject to this effect.

The Authorities acknowledge that only exceptions permitted will be those provided by legislations in their home jurisdictions² and when it is necessary in a democratic society to safeguard important public interest such as:

- (i) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions covered by this Framework; or
- (ii) the monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority within the scope of this Framework.

6. Sensitive data: Special categories of processing will not be transferred between the Authorities except with the consent of the data subject.

7. Onward transfer: When the data requesting Authority intends to transfer to a Third party any Personal data received or created in the course of cooperation, it will comply with the process set forth in paragraph 20 and 21 of the EoL. It will be the responsibility of the Authorities to provide relevant information to the data subject, if required by laws and legislations in the jurisdiction of the data providing Authority.

8. Redress: The Authorities acknowledge that they have provided information describing the consequences for the unlawful disclosure of non-public or confidential information. Any suspected violation will be reported to the data providing Authority and appropriate Personal data protection authority in each jurisdiction.

III- OTHER

1. Resolution of disputes with data subjects or the authority

In the event of a dispute or claim brought by a data subject or the Authority concerning the processing of the Personal data against either or both of the Authorities, the Authorities will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

² The JFSA/CPA/OB may restrict such rights in limited cases (Article 14 of the Act on the Protection of Personal Information Held by Administrative Organs).