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SUBJECT: EXCHANGE OF LETTERS BETWEEN *THE NETHERLANDS AUTHORITY FOR THE FINANCIAL MARKETS AND THE FINANCIAL SERVICES AGENCY AND CERTIFIED PUBLIC ACCOUNTANTS AND AUDITING OVERSIGHT BOARD OF JAPAN ON MUTUAL COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE OVERSIGHT OF AUDITORS*

Dear Mr. Hatanaka and Dr. Chiyoda:

1. The Netherlands Authority for the Financial Markets (“AFM”) and the Financial Services Agency of Japan (“JFSA”) and Certified Public Accountants and Auditing Oversight Board (“CPAAOB”) recognise the need for the exchange of information and mutual cooperation in matters related to the oversight of Auditors subject to the regulatory jurisdictions of both the AFM and the JFSA/CPAAOB. Cooperation 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. The Authorities recognise the need for mutual cooperation in matters related to the oversight of Auditors that are subject to the regulatory jurisdictions of both Authorities and who provide 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 regulatory jurisdiction. The purpose of this Letter is to facilitate further mutual cooperation between the Authorities based on the letters exchanged between the Authorities in March 2013 to the extent permitted by their respective national laws in the area of public oversight of such Auditors. The Letter from the AFM to the JFSA/CPAAOB dated 26 March 2013 is replaced by this Letter.
3. In this context, the Authorities:

- Recognise that the European Commission has decided upon the equivalence referred to in Article 46(1) of the Directive 2006/43/EC in respect of Japan¹ and that the conditions under which the requirements of Article 45(1) and (3) will be disapplied or modified must be set in a cooperative arrangement as referred to in Article 46(3) of the Directive 2006/43/EC between the Member State and Japan and communicated to the Commission;
- Recognise 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 in the *Commission Decision of 5 February 2010 on the adequacy of the competent authorities of certain third countries pursuant to Directive 2006/43/EC of the European Parliament and of the Council*;
- Recognise that the JFSA/CPAAOB has decided on 9 July 2013 that the audit and public oversight systems for Auditors in the Netherlands are equivalent to the corresponding systems in Japan;
- Recognise that the letters were exchanged between the Authorities in March 2013 to ensure that necessary information can be provided by both Authorities to the extent permitted by their respective national laws in the area of public oversight of such Auditors; and
- Recognise that through this Letter, the Authorities agree to provide mutual cooperation in a reciprocal manner.

4. With regard to the exchange of information, the Authorities:

- Acknowledge the *Certified Public Accountants Act* (“CPA act”) in Japan under which the JFSA/CPAAOB in certain conditions is allowed to transfer to the AFM information relating to Auditors that fall within the regulatory jurisdiction of both Authorities;
- Acknowledge the *Wet toezicht accountantsorganisaties* (“Wta”) in the Netherlands which allows the AFM under certain conditions to transfer to the JFSA/CPAAOB information relating to Auditors that fall within the regulatory jurisdiction of both Authorities;
- Recognise that the transfer of personal data from the AFM to the JFSA/CPAAOB has to be in accordance with the *Wet bescherming persoonsgegevens* implementing Directive 95/46/EC, and in particular Chapter IV of Directive 95/46/EC; and
- Recognise that the transfer of personal data from the JFSA/CPAAOB to the AFM has to be in accordance with the *Act on the Protection of Personal Information Held by Administrative Organs*.

¹Commission Decision of 19 January 2011 on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union; Member States may disapply or modify on the basis of reciprocity the requirements of Article 45(1) and (3) in relation to the auditors and audit entities of the third country or territory.

5. This Letter does not create any binding legal obligations, nor does it modify or supersede any Laws or regulations in the Netherlands or Japan. This Letter does not give rise to a right on the part of the AFM, the JFSA/CPAAOB or any other governmental or non-governmental entity or any private person to challenge, directly or indirectly, the degree or manner of cooperation between the AFM and the JFSA/CPAAOB.
6. The Authorities have confirmed the framework for the protection of personal data which consists of the ‘Exchange of Letters’ and the attached ‘Annex: Framework between the AFM and the JFSA/CPAAOB on the transfer of certain personal data’.

I DEFINITIONS

7. 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 Wta and the CPA act;

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

“**Information**” means public and non-public information which includes but is not limited to (1) the outcome of Inspections and Investigations, including information on firm-wide quality control procedures and engagement reviews, and (2) audit working papers or other documents held by Auditors, provided that the information relates to matters that are subject to the regulatory jurisdictions of both Authorities;

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

II COOPERATION

Exchange of information

8. Cooperation may include the exchange of Information between Authorities for the purposes permitted or required by Laws or regulations on public oversight, Inspections, and Investigations of Auditors.
9. The Authorities acknowledge that under Dutch law Auditors are not allowed to transfer non-public information directly to the JFSA/CPAAOB, but shall transfer such information through the AFM.
10. In cases where non-public information requested may be maintained by, or available to, another Authority within the country of the requested Authority, the Authorities will endeavour to provide the information requested, to the extent permitted by Laws or regulations in their respective countries.

11. The Authorities will use their best endeavours to notify each other, prior to or immediately after taking any significant public oversight measures, in respect to relevant Auditors that are registered/notified or seek registration/notification in the other country.
12. This Letter does not prohibit the Authorities from taking measures with regard to the oversight of Auditors that are different from or in addition to the measures set forth in this Letter. In all instances the Authorities will endeavour to notify each other prior to or immediately after taking any significant public oversight measures.

Mutual reliance

13. The Authorities will rely on the oversight of the Auditors in their home country and therefore refrain from public oversight activities (other than the registration of an Auditor)², Inspections, and Investigations with respect to Auditors from the other country:
 - a) to the extent permitted by their respective national Laws or regulations; and
 - b) except for circumstances where there is no certainty that material information would be provided under the terms of this Letter, or ~~or~~ when the preconditions set out in paragraph 3 are not likely to be fulfilled.

Requests for information

14. Requests will be made in writing (including email) and addressed to the contact person of the requested Authority.
15. 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;
 - (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 20 to 25.

Execution of requests for information

16. 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. Each Authority will endeavour to provide a prompt and adequate response to information requests from the other Authority. In order to avoid unnecessary delay, the requested Authority will provide appropriate parts of the requested information as they become

² The registration of an Auditor will continue to follow the procedures required in each country.

available. 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 whether other relevant information or assistance can be given.

17. 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 Laws 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.
18. The requested Authority will promptly inform the requesting Authority of the reasons why it refuses to act on a request made under this Letter.
19. Communication between the 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.

III CONFIDENTIALITY

20. Each Authority will keep confidential all non-public information received or created in the course of cooperation, to the extent consistent with its laws and/or regulations. Article 63a of the Wta in the Netherlands and Article 100 of the National Public Service Act in Japan respectively bind employees and the former employees of the Authorities to official secrecy or restrict the disclosure of information provided in respect of audit regulation and oversight. The confidentiality prescribed in this Letter should also apply to all persons who are or have been involved in the governance of the Authorities or otherwise associated with the Authorities.

IV USE OF NON-PUBLIC INFORMATION

21. The Authorities may use the non-public information received only for the exercise of their functions of public oversight, Inspections or Investigations of Auditors. If any Authority intends to use the non-public information received or created in the course of cooperation for any purpose *other* than those stated in the request under paragraph 15, it must obtain the prior written and specific consent of the requested Authority. If the

requested Authority consents to the use of the non-public information for a purpose other than that stated, it may subject it to conditions.

V EXCEPTIONS TO CONFIDENTIALITY

22. In the event an Authority is required to disclose the non-public information received in order to comply with its obligations under its domestic laws and/or regulations or by a court order, it will provide reasonable advance written notice to the other Authority prior to its disclosure, stating the reasons as to why the Authority is required to disclose such information.
23. If the other Authority objects to the disclosure referred to in paragraph 22, the Authority will make its best efforts to resist the disclosure of the non-public information and will provide assistance to the objecting Authority in its own efforts to resist disclosure.
24. 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 by law, an additional request must be made in accordance with procedures prescribed in the relevant law for international mutual assistance in a criminal investigation.
25. An Authority that intends to disclose to a third party any non-public information received or created in the course of cooperation, other than in cases referred to in paragraph 22, must obtain the prior written and specific consent of the Authority which provided the information. The Authority which intends to disclose this information should 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 non-public information subject to conditions.

VI THE TRANSFER OF PERSONAL DATA

26. This Letter is subject to the maintenance of a framework which provides an adequate level of protection on the transfer of personal data as set forth in the Annex to this Letter.

VII OTHER

27. No Authority is obligated under this Letter to cooperate with the other Authority in any particular circumstance.
28. 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.
29. The Authorities may consult informally, at any time, about a request or proposed request or about any information provided.

30. 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.
31. The terms and conditions stated in this Letter do not apply to publicly available information.

VIII DURATION

32. The cooperation under this Letter will be commenced from the date of signature.
33. 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, the cooperation under this Letter will continue 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 Authorities will continue to maintain as confidential, consistent with sections III and IV, any information and/or documents exchanged pursuant to this Letter.

Yours Sincerely,

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Gerben Everts
Board Member
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ANNEX: FRAMEWORK BETWEEN THE AFM AND THE JFSA/CPAAOB ON THE TRANSFER OF CERTAIN PERSONAL DATA³

The Netherlands Authority for the Financial Markets (“AFM”) and the Financial Services Agency of Japan (“JFSA”) and Certified Public Accountants and Auditing Oversight Board (“CPAAOB”)

- Recognising that the transfer of personal data from the AFM to the JFSA/CPAAOB has to be in accordance with the *Wet bescherming persoonsgegevens* implementing Directive 95/46/EC, and in particular Chapter IV of Directive 95/46/EC;
- Recognising that the transfer of personal data from the JFSA/CPAAOB to the AFM has to be in accordance with the *Act on the Protection of Personal Information Held by Administrative Organs*;

have concurred on the following Framework.

I. DEFINITIONS

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 *Wet toezicht accountantsorganisaties* in the Netherlands;

“**Authority**” or “**Authorities**” means the JFSA and/or the CPAAOB in Japan and/or the AFM in the Netherlands;

“**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;

“**Data Protection Directive**” means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of Personal data and on the free movement of such data;

“**Exchange of Letters**” (“EoL”) means the document by that name, dated 11 June 2014, and exchanged by the Authorities to facilitate cooperation and the exchange of information;

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

“**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;

³ The Appendices to this Annex will not be made public.

“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;

“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 AFM, the JFSA/CPA/OB, and the persons who, under the direct authority of the above, are authorized to process the data.

II. DATA PROCESSING PRINCIPLES

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

1. Purpose limitation: Personal data transmitted by the data providing Authority to the data requesting Authority may only be processed by the data requesting Authority if necessary for the purposes permitted or required by Laws or regulations on public oversight, Inspections or Investigations of Auditors. The onward transfer of such data, which may be for other purposes, is governed by paragraph 7 below.

The Authorities acknowledge that they primarily seek the names, and information relating the professional activities, of the individual persons who were responsible for or participated in the audit engagements selected for review during an inspection or who play a significant role in the firm’s management and quality control. Such Personal data as well as other Personal data will only be used in order to assess the degree of compliance of the registered/notified Auditor and its associated persons with the applicable laws and regulations and to enforce compliance with these laws and regulations.

If the data receiving 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. 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. Each Authority will inform the other Authority if it learns that previously transmitted information was inaccurate and/or must be updated. In such case the other Authority will make any appropriate corrections in its files.

All Authorities will endeavour to ensure that the Personal data requested and transferred is adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.

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, or for such time as otherwise required by applicable Laws or regulations.

3. Transparency: The AFM will provide to data subjects information relating to the transfer and further processing of Personal data as required by the Data Protection Directive and the Dutch Data Protection Act (“*Wet bescherming persoonsgegevens*”) of the Netherlands. The Authorities acknowledge that the purpose and use by the JFSA/CPAAOB of the Personal data are as set forth in the *Certified Public Accountants Act*, as further described in Appendix I .

4. Security and confidentiality: In Appendix II the Authorities have provided information describing technical and organizational security measures deemed adequate by the Authorities to guard against accidental or unlawful destruction, loss, alteration, disclosure of, or access to the Personal data.

The Authorities will update the information if changes are made to its technical and organisational security measures that would weaken the protection provided for Personal data.

Any person acting under the authority of the data Controller, including a Processor will not process the data except at the data Controller’s request.

5. Rights of access, rectification or deletion: The Authorities acknowledge that the transfer of Personal data would occur in the context of exercise of their official regulatory authorities pursuant to the relevant legislations in their home jurisdiction, and that the rights of data subjects to access Personal data held by the Authority therefore may be restricted in order to safeguard the Authority’s ability to monitor, inspect or otherwise exercise its regulatory functions with respect to the Auditors, including associated persons and other relevant individuals⁴, under its regulatory jurisdiction.⁵ However, a data subject whose Personal data has been transferred to the data receiving Authority may request that the data providing Authority identify any Personal data that has been transferred to the data receiving Authority and request that the data providing Authority confirm with the data receiving Authority that the data is complete, accurate and, if applicable, up-to-date and the processing is in accordance with the data processing principles in this Framework. 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 the data, through the data providing Authority.

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

7. Onward transfer: In the event that the data receiving Authority intends to transfer any Personal data to a Third Party, the data receiving Authority will comply with the process set forth in section V of the EoL. It will be the responsibility of the Authorities to provide relevant information to the data subject, if required by relevant laws and regulations in the jurisdiction of the data providing Authority. The Authorities have provided information describing the applicable Laws or regulations on onward transfer of confidential information.

⁴ E.g. Chief Executive Officer, Chief Financial Officer or internal auditor of the audit client.

⁵ The JFSA/CPAAOB may restrict such rights in limited cases of information (Article 14 of the Act on the Protection of Personal Information Held by Administrative Organs).

8. Redress: The Authorities acknowledge that they have provided information describing the consequences for the unlawful disclosure of non-public or confidential information. Any violations will be reported to the data providing Authority and if required by law⁶ to the appropriate personal data protection authority in each jurisdiction.

⁶ The Netherlands is still in the process of drafting a bill containing the obligation to notify the data protection authority in case of a security breach.