

**STATEMENT OF PROTOCOL BETWEEN THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OF THE UNITED STATES AND THE AUDITOR OVERSIGHT COMMISSION OF GERMANY ON COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE OVERSIGHT OF AUDIT FIRMS**

*The Public Company Accounting Oversight Board in the United States ("PCAOB"), based on its obligations and authority under the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),*

and

*the Auditor Oversight Commission in Germany ("AOC"), based on its obligations and authority under the Wirtschaftsprüferordnung and considering Article 47 of Directive 2006/43/EC) and the decision by the European Commission referred to in Article 47, paragraph 1(c) of the Directive 2006/43/EC in respect of the United States of America (Commission Decision of 1 September 2010, Decision No. 2010/485/EC);*

have agreed as follows:

**Article I. PURPOSE**

1. The PCAOB in the United States and the AOC in Germany each seek to improve the accuracy and reliability of audit reports so as to protect investors and to help promote public trust in the audit process and investor confidence in their respective capital markets. Given the global nature of capital markets, the PCAOB and the AOC recognize the need for cooperation in matters related to the oversight of the audit firms subject to the regulatory jurisdictions of both the PCAOB and the AOC.
2. The purpose of this Statement of Protocol ("Statement") is to facilitate cooperation between the Parties to the extent permitted by their respective national laws in the oversight, inspections and investigations of firms subject to the regulatory jurisdictions of both the PCAOB and the AOC. The PCAOB and the AOC believe that it is in their common interest to cooperate in the oversight, including inspections and investigations, of firms that fall within the regulatory jurisdiction of all Parties to the extent that such cooperation is compatible with the Parties' respective laws and/or regulations, their important interests and their reasonably available resources. Cooperation is intended to permit the Parties to meet their respective statutory oversight mandates. Cooperation, including by joint inspections, also is intended to assist the Parties in determining the degree to which one Party may rely in the future on the other Party's oversight activities with regard to audit firms that fall within the regulatory jurisdiction of all Parties.

3. This Statement does not create any binding legal obligations or supersede domestic laws. This Statement does not give rise to a legal right on the part of the PCAOB, the AOC 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 PCAOB or the AOC.
4. This Statement does not prohibit the PCAOB or the AOC from taking measures with regard to the oversight of firms that are different from or in addition to the measures set forth in this Statement. In particular, the Parties are aware that if information or documents are not provided, and the requesting Party determines that it cannot satisfy its regulatory obligations without the requested information or documents, the requesting Party may take certain actions as allowed by its domestic laws, rules and regulations against the relevant firm(s) for refusing to provide the requested information.

## **Article II. DEFINITIONS**

For the purpose of this Statement,

**“Party” or “Parties”** means the PCAOB and/or the AOC.

**“Firm” or “Audit Firm”** means a public accounting firm or statutory audit firm, or an individual public accountant or statutory auditor, that is subject to a Party’s regulatory jurisdiction.

**“Information”** means public and non public information which includes but is not limited to (1) reports on the outcome of inspections, including the results of firm-wide quality control reviews and engagement reviews, provided that the reports relate to firms that are subject to the regulatory jurisdictions of both the PCAOB and the AOC, and (2) audit working papers or other documents held by firms, provided that the documents relate to matters that are subject to the regulatory jurisdictions of both the PCAOB and the AOC.

**“Inspections”** refers to reviews of firms to assess the degree of compliance of each firm and associated persons of that firm with applicable laws, rules and professional standards in connection with its performance of audits, the issuance of audit reports and related matters, pursuant to the Wirtschaftsprüferordnung in Germany and the Sarbanes-Oxley Act of 2002 (as amended) (the “Sarbanes-Oxley Act”) in the United States.

**“Investigations”** refers to investigations undertaken by a Party of any act or practice, or omission to act, by a firm that may violate applicable laws, rules or professional standards.

## **Article III. COOPERATION**

### ***A. Scope of cooperation***

1. Cooperation may include one Party sharing with the other Party information relating to firms that fall within the regulatory jurisdiction of both the PCAOB and the AOC. Any information provided shall be used by the requesting Party as permitted or required by their respective authorizing statutes – which include the Sarbanes-Oxley Act in the United States and the Wirtschaftsprüferordnung in Germany – and any rules or regulations promulgated thereunder.
2. Cooperation may include one Party assisting the other Party in an inspection or an investigation by performing activities that may include but are not limited to (i) facilitating access to information and/or, if requested, (ii) reviewing audit work papers and other documents, interviewing firm personnel, reviewing a firm's quality control system and/or performing other testing of the audit, supervisory and quality control procedures of a firm on behalf of the other Party.
3. Cooperation in the context of an inspection or investigation does not cover a request for assistance or information to the extent that it involves a Party obtaining on behalf of the other Party information to which the requesting Party is not entitled under its own laws or regulations.
4. The scope of cooperation may vary over time and with each inspection or investigation.
5. Cooperation in the context of an inspection also may include the exchange of each Party's respective inspection guides.
6. The Parties may at the request of either Party consult on issues related to the matters covered by this Statement, 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.

### ***B. Requests for information***

1. Each Party may provide the other Party with information upon request.
2. Requests shall be made in writing (including e-mail) and addressed to an appropriate contact person of the requested Party.
3. The requesting Party shall specify the following, to the extent appropriate:
  - (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
  - (e) To the best of the knowledge of the requesting Party, an indication of whether the information requested might be subject to further use or transfer under paragraphs 6 and 7 of Article IV.
4. Other than in case of routine requests such as for payment of annual fees and in connection with registration and annual or special reporting requirements and barring exceptional circumstances, or except as otherwise agreed by the Parties, requests for non-public information from a firm in the other Party's jurisdiction shall be sent to the other Party, which will pass on the request (in the form provided by the requesting Party) to the firm. With respect to information in the hands of firms in Germany, the AOC has informed the PCAOB that German law states that firms are not allowed to transfer audit working papers directly to the PCAOB, other than in exceptional cases and if approved by the AOC, provided that:
- (a) investigations have been initiated by the PCAOB;
  - (b) the transfer does not conflict with the obligations with which firms are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority; and
  - (c) the PCAOB informs the AOC in advance of each direct request for information, indicating the reasons therefor.
5. In cases where the information requested may be maintained by, or available to, another authority within the country of the requested Party, the requested Party shall consider whether it can obtain and provide to the other side the information requested, to the extent possible in light of available resources and as permitted by law or regulations in their respective countries.
6. While the Parties may transfer information received in the course of cooperation to other entities in accordance with Sections 6 and 7 of Article IV, the Parties themselves may use information, including unsolicited information, received in the course of cooperation *only* as required or permitted by their respective authorizing laws, i.e. for the purpose of inspection, investigation and oversight of firms. This applies also to information obtained under this Statement which is reflected in documents created by either Party. If any Party intends to use information received in the course of cooperating for any other purpose than that stated in the original request under paragraph 3 (b) of Article III, Section B, it must obtain the prior written consent of the requested Party on a case by case basis. If the requested Party consents, it may subject it to conditions.

7. Subject to paragraph B.8 of this Article below, the requested Party may refuse to act on a request where, for example,
  - (a) It concludes that the request is not in accordance with this Statement;
  - (b) Acceding to the request would contravene the laws, rules, or regulations of the requested Party's country;
  - (c) It concludes that it would be contrary to the public interest of the requested Party's country for assistance to be given;
  - (d) The provision of information would adversely affect the sovereignty, security or public order of the requested Party'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 Party.
8. If a Party denies a request in part or in full or withholds any requested information (either on its own initiative or at the request of a firm), the requested Party shall inform the requesting Party of the nature of the information being withheld and the reasons for its denial. In the event a Party or a firm under inspection or investigation refuses to provide requested information, the Parties will consult to determine if there are alternative ways to meet the requirements of the requesting Party. If a Party or a firm refuses to provide requested information, the requesting Party may take action in accordance with domestic laws or regulations as contemplated in paragraph 4 of Article I.
9. Any document or other material provided in response to a request under this Statement and any copies thereof shall be returned on request to the extent permitted by applicable laws, rules or regulations.

### ***C. Joint Inspections***

1. If consistent with each Party's respective national legislation (including the Sarbanes-Oxley Act for the PCAOB and the Wirtschaftsprüferordnung and the European Commission's Decision of 1 September 2010, No. 2010/485/EC, for the AOC), and in order to assist the Parties in determining the degree to which one Party may rely in the future on the other Party's inspections of firms that fall within the regulatory jurisdiction of both Parties, the Parties may conduct joint inspections. Each party may decline to carry out inspections jointly and terminate this Statement at any time.
2. For each inspection carried out jointly, the Party in whose jurisdiction the inspection is conducted may choose to lead the inspection, including managing communications with the firm, organizing the logistics of the inspections, and receiving all audit working papers and other documents from the firm before

transferring them to the other Party.<sup>1</sup> Before joint inspections may begin each year, the Parties must agree on a specific approach to working together during the inspections.

3. Before an inspection is carried out jointly, the Parties shall endeavor to reach a consensus on a work plan for the inspection, including, in general, the steps and procedures to be performed during the inspection, including the audit engagements to be reviewed and the allocation of work between the staff of each Party. While each Party is responsible for its own findings and conclusions that result from the inspection, the Parties shall consult each other about their findings and conclusions during inspection field work. The Parties shall also inform each other about possible findings that they provide to the inspected audit firm.
4. A Party may take copies of working papers or other documents held by a firm in the other Party's jurisdiction to its own jurisdiction as necessary to comply with its documentation requirements, to support its inspection findings or for purposes of an investigation. The Party will identify the working papers or other documents copied for the other Party before transferring them. The arrangements established between the Parties with respect to the transfer of personal data in accordance with Article V must be observed.

#### **Article IV. CONFIDENTIALITY**

With respect to any non-public information provided to another Party, the Parties agree that:

1. The requesting Party has established and will maintain such safeguards as are necessary and appropriate to protect the confidentiality of the information, including storing the information in a secure location when not in use.
2. Each Party has provided to the other Party a description of its applicable information systems and controls and a description of the laws and regulations of the government of the requesting Party that are relevant to information access.<sup>2</sup>
3. The requesting Party will inform the other Party if the safeguards, information systems, controls, laws or regulations referenced in paragraphs 1 and 2 of this Article IV above change in a way that would weaken the protection for the information and/or documents provided by the other Party.
4. Except as set forth below, each Party shall keep confidential all non-public information received in the course of cooperating. This applies also to information

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<sup>1</sup> Both Parties confirm that they will not use their leadership role to prevent the other party from taking necessary steps to meet its inspection objectives.

<sup>2</sup> See Annexes A and B.

received under this Statement that is reflected in documents created by either Party. The obligation of confidentiality shall apply to all persons who are or have been employed by the Parties, involved in the governance of the Parties or otherwise associated with the Parties. In addition, only individuals and entities that are independent of the auditing profession will have access to the non-public information and/or documents provided. "Independent of the auditing profession" means that the individual or entity is not a practising auditor or affiliated with an audit firm or a member of the governing body or staff of a professional organization.

5. A Party may issue public inspection reports as permitted or required by the law of that Party's jurisdiction, including reports that identify the firm inspected and the inspection results. A Party may also publicly announce sanctions imposed upon audit firms as permitted or required by the law of that Party's jurisdiction. Before publicly announcing any sanctions imposed on an audit firm that is located in the other Party's jurisdiction and subject to the other Party's authority, the Party shall give advance notice of the publication to the other Party.
6. The PCAOB may share with the SEC non-public information that the PCAOB has obtained from the AOC, or from a firm with the approval of the AOC, in the course of cooperating under this Statement, as follows:
  - (a) Upon the PCAOB's own initiative, any information obtained in connection with the PCAOB's audit regulatory functions, i.e., auditor oversight, quality assurance (including inspections), and investigations and discipline of audit firms, that it considers relevant to (i) the SEC's oversight of audit firms, or (ii) the SEC's oversight over the PCAOB.
  - (b) Upon request by the SEC, information shared for purposes of: (i) the SEC's oversight of audit firms or (ii) the SEC's oversight over the PCAOB; and
  - (c) For information not available to the SEC under (a) or (b) above, the PCAOB shall follow the procedures set forth in paragraph 7 of this Article IV below.
7. Except as set out in paragraph 6 (a) and (b) of this Article IV above, a Party that intends to transfer to a third party any non-public information received in the course of cooperation shall request the prior written consent of the Party which provided the information.
  - (a) The Party that intends to transfer this information shall indicate the reasons and the purposes for which the information is to be transferred.
  - (b) The PCAOB may share such information only with those entities identified in section 105(b)(5)(B) of the Sarbanes-Oxley Act, which states that these entities shall maintain such information as confidential and privileged.
  - (c) The AOC may share such information only with certain German law enforcement entities or German regulatory authorities as permitted by Articles

66a, 66b of the Wirtschaftsprüferordnung, which are themselves legally obligated to maintain such information as confidential and privileged.

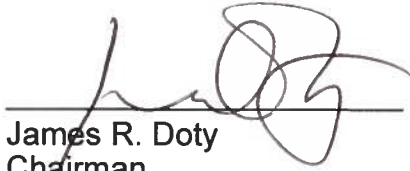
- (d) A Party shall respond within ten days upon receiving notice from the other Party that it seeks to transfer information to a third Party. The Party receiving such notice shall endeavor to provide its consent in response to requests to the transfer of information to third parties, if its applicable law does not preclude it from providing consent. Where the Party receiving notice concludes that it cannot give consent, it shall set out its reasons to the other Party. The Party seeking to transfer information shall consider the other Party's objections and will consult further with the other Party before deciding whether it should transfer the information, despite the objections of the other Party.

#### Article V. THE TRANSFER OF PERSONAL DATA

The transfer of personal data pursuant to this Statement is subject to the establishment of appropriate arrangements on the transfer of personal data.

#### Article VI. ENTRY INTO EFFECT, EXPIRATION AND TERMINATION

1. This Statement comes into force from the date of signature. It will expire on 31 July 2013.
2. The Parties may consult and revise the terms of this Statement in the event of a substantial change in the laws, regulations, or practices affecting the operation of this Statement.
3. This Statement may be terminated by either Party at any time. This statement will continue to have effect until the effective date stated in the termination. After termination of this Statement, the Parties shall continue to maintain as confidential, consistent with Article IV and V, any information provided under this Statement.

  
James R. Doty  
Chairman  
Public Company Accounting  
Oversight Board

Date: 4.5.12

  
Dr. h.c. Wolfgang Spindler  
Chairman  
Auditor Oversight Commission  
Germany

Date: 12.4.2012