

**Memorandum of Understanding between**  
**The Financial Reporting Review Panel**  
**and**  
**The Financial Services Authority**

**I. Introduction**

1. This Memorandum of Understanding ("MoU") has been agreed by the Financial Reporting Review Panel (the "FRRP") and the Financial Services Authority (the "FSA").

**Responsibilities of the FRRP**

2. The FRRP is an unincorporated association forming part of the Financial Reporting Council, the United Kingdom's independent regulator for corporate reporting, auditing and corporate governance.
3. Under the Companies Act 1985 ("Companies Act") the FRRP has been authorised and appointed by the Secretary of State for Trade and Industry to exercise functions with a view to ensuring that accounts and financial and other reports of companies and other entities comply with the law and relevant reporting requirements. The FRRP's authority extends to all companies that prepare accounts under the Companies Act. The FRRP normally exercises this authority only in connection with the accounts of public and large private companies, although the FRRP may exercise its authority in connection with the accounts of other companies where it considers appropriate. The following come within the FRRP's remit:
  - a) public limited companies;
  - b) companies within a group headed by a PLC;
  - c) any private company not qualifying as small or medium sized under section 247 of the Companies Act;
  - d) any private company within a group which does not qualify as a small or medium-sized group.
4. Under the Supervision of Accounts and Reports (Prescribed Body) Order 2005<sup>1</sup> ("the Order") and section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 ("CAICE") the FRRP has been appointed to exercise the following functions in relation to certain listed issuers:

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<sup>1</sup> SI 2005 No. 715

- a) keeping under review periodic accounts and reports that are produced by listed issuers that are required to comply with accounting requirements imposed by the Listing Rules; and
  - b) informing the FSA, as the FRRP sees fit, of any conclusions reached in relation to such accounts or reports.
5. Under CAICE and the Order the types of issuers in relation to which the FRRP is to exercise these functions include:
- a) any issuer of listed securities which is a body corporate incorporated or otherwise formed in the United Kingdom;
  - b) any issuer of listed securities which is a body corporate incorporated or otherwise formed outside the UK with a primary listing of its equity securities in the United Kingdom; and
  - c) if requested by the FSA, any other issuer of listed securities in relation to which the Panel would not otherwise be able to exercise its functions.
6. The FRRP and the FSA have agreed that in accordance with section 14(7) of CAICE the FSA may send to the FRRP the following reports for review
- a) Historical financial information within prospectuses of applicants for admission of their securities to the official list where FSA initial review indicates that further investigation is warranted; and
  - b) annual and interim reports of an overseas issuer:
    - (i) with a secondary listing of its equity securities in the United Kingdom; or
    - (ii) with a listing of specialist securities,that reports in accordance with International Financial Reporting Standards and where FSA initial review indicates that further investigation is warranted.

### **Responsibilities of the FSA**

7. Pursuant to the Financial Services and Markets Act 2000 ("FSMA"), the FSA is the Competent Authority for Listing in the United Kingdom. As such, it is responsible for the approval of prospectuses and for maintaining the Official List. In this capacity, the FSA may, among other things:
- a) make Listing Rules:
    - i. regarding the contents of a prospectus, including rules relating to the inclusion of financial information;

- ii. specifying requirements that must be complied with by issuers of listed securities, including rules relating to the publication of financial information;
    - iii. making provision with respect to the action that it may take in the event of an issuer's non-compliance;
  - b) require an issuer to provide to it, without delay, all information and explanations that the FSA may reasonably require for the purpose of verifying whether the Listing Rules are being, or have been, complied with;
  - c) if it appears to the FSA that there may have been a breach of the Listing Rules, appoint a competent person to conduct an investigation on its behalf; that investigator may require any person to answer questions or otherwise provide information to the extent that the investigator is satisfied that it is necessary or expedient for the purposes of the investigation;
  - d) in the event of a contravention of the Listing Rules by an issuer or applicant, impose a penalty of such amount as it considers appropriate or publish a statement censuring the issuer or applicant;
  - e) suspend the listing of any securities; and
  - f) discontinue the listing of any securities;
- 8. In terms of the Listing Rules relating to the publication of financial information referred to above, the FSA:
  - a) requires comparative tables or accountants reports as appropriate to be published in the following circumstances:
    - i. in the listing particulars of new applicants;
    - ii. in the listing particulars of listed issuers;
    - iii. in circulars published for a Class 1 transaction;
  - b) specifies the minimum information to be included in the comparative tables and accountants reports;
  - c) makes rules in respect of profit forecasts and pro forma financial information;
  - d) requires listed issuers to produce and publish:
    - i. preliminary statement of annual results and dividends;
    - ii. annual report and accounts;
    - iii. half-yearly reports;

- e) specifies the minimum information to be published in the preliminary statement, annual report and accounts, half-yearly reports, the timing of their publication and the reporting standards to be met;
- f) requires the ad hoc publication, without delay, of information concerning a change in the financial condition of a listed issuer, the performance of its business or its expectation as to its performance which, if made public would be likely to lead to a substantial movement in the price of the issuer's listed securities; and
- g) requires the ad hoc publication of information relating to the capital of listed issuers.

### **Purpose of the MoU**

- 9. Both the FRRP and the FSA ("the Authorities") acknowledge the importance of enforcing standards on financial information and support the idea that a proper and rigorous enforcement regime is key to underpinning investors' confidence in financial markets.
- 10. In March 2003, the Committee of European Securities Regulators ("CESR") adopted Standard No. 1 'Enforcement of Financial Information in Europe' relating to the enforcement of standards on certain financial information in Europe.
- 11. The Authorities are both competent independent administrative authorities in the United Kingdom under CESR's Standard No. 1 with ultimate responsibility for the monitoring and enforcement of compliance of certain financial information provided by issuers with the reporting framework. This MoU is intended to set out in detail how the Authorities will cooperate to promote effective monitoring and enforcement of standards on financial information in the United Kingdom by issuers of securities admitted to the official list as set out in CESR's Standard No1.

### **Definitions**

- 12. In this MoU, unless the context requires otherwise:
  - a) "Authorities" means the FRRP and the FSA;
  - b) "issuer" means an issuer that falls within any of the categories set out in paragraphs 5 or 6;
  - c) "Panel Group" means a Group of five or more Panel members which usually includes the Chairman. A Panel Group has all the powers of the Panel in respect of the matters to which its appointment relates, and all the acts and decisions of a Group in the conduct of an enquiry are acts and decisions of the Panel;

- d) "specialist securities" means securities which, because of their nature, are normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters.

## **II. Co-operation**

13. The Authorities will maintain a close working relationship to deal with relevant policy and enforcement issues arising in relation to the review of periodic accounts and reports of issuers.
14. It is envisaged that the main areas of co-operation and information sharing will fall within the following areas:
- a) information relevant to the risk-based selection of financial information;
  - b) information on the progress of formal enquiries being undertaken by the FRRP into annual and interim financial statements; and
  - c) information on remedial action taken, or recommended to be taken, following a determination of an infringement of the relevant reporting framework by issuers in their published financial information.

### **Meetings**

15. The Director of Markets Division and the Chairmen of the FRRP will meet on a semi-annual basis to discuss the functioning of the MoU and any significant matters arising in the previous 6 month period.
16. There will be a monthly meeting to discuss the operational aspects of coordination and cooperation. The meeting will normally be attended by the following people:
- FSA Financial Reporting manager
  - FSA Company Monitoring manager
  - FSA Listing Transactions manager
  - FSA Enforcement Division representative
  - FRRP Director of Panel Operations
  - Other FRRP Staff as appropriate
17. Ad hoc meetings may also be held as the need arises.

18. Where the FSA is to pursue action against an issuer for breach of the financial reporting framework, the Markets monitoring manager will inform the FRRP Director of Operations.

### **Co-operation on enforcement matters**

19. The possible outcomes resulting from a FRRP monitoring of annual accounts prepared under the Companies Act are as follows:

- a) The FRRP raises no issues following a review of the annual reports of an issuer and no action is taken;
- b) The FRRP identifies minor issues with the annual reports of the issuer and the issuer is asked to make a corrective adjustment in the next period's accounts. No public announcement is made by the FRRP.
- c) The FRRP identifies significant issues with the annual reports of the issuer and the issuer is asked to make a corrective adjustment in the next period's accounts and the FRRP will make a public announcement.
- d) The FRRP identifies serious issues with the annual reports of the issuer and the issuer re-states its accounts. The FRRP will make a public announcement.
- e) The FRRP identifies serious issues with the annual reports of the issuer and the FRRP makes an application to court for an order requiring the issuer to restate its accounts.

20. Under the Order, the FRRP may report the conclusions of its monitoring process of interim reports and other annual accounts to the FSA.

21. The FSA, as Competent Authority for Listing may take the following action in relation to issuers:

- a) requiring an issuer to make a corrective announcement via a Regulatory Information Service provider;
- b) suspension of the listing of securities if the smooth operation of the market is, or may be, jeopardised or it is necessary to protect investors;
- c) cancellation of listing;
- d) imposing a financial penalty for breach of the Listing Rules;
- e) publishing a public censure for breach of the Listing Rules; and
- f) issuing a private warning in cases where it is not appropriate to bring formal disciplinary action

22. The Authorities recognise that there are areas in relation to the enforcement of financial reporting standards in which they have an overlapping remit in terms of their functions and powers. The Authorities will therefore endeavour to ensure that the body with the most appropriate functions and powers will commence enforcement action in cases where the remit of the Authorities overlap or in cases in which the Authorities have a mutual interest.
23. Cases of mutual interest will be reviewed at the monthly operational meeting to determine whether the lead responsibility for conducting any necessary investigation or initiating any enforcement proceedings, or both, should be with the FSA or the FRRP.
24. In cases where the remit of the Authorities overlap, the Authorities will have regard to the principle that issuers should not be subject to more than one investigation or set of enforcement proceedings for the same infringement unless it is appropriate for the FSA and the FRRP to exercise different powers or impose different penalties in relation to that issuer or the two sets of investigations or enforcement proceedings relate to different aspects of the suspected infringement (of the reporting framework).
25. However, if either the FSA or the FRRP is considering commencing an investigation and the other party is already carrying out a related investigation or has already initiated enforcement proceedings or is otherwise likely to have an interest in that investigation, the Authorities will liaise and discuss how best to handle the matter.
26. The Authorities also recognise that concurrent FRRP-FSA investigations may be the most quick, effective and efficient way to handle certain cases.

**Enforcement action by one body - indicators for deciding which party should exercise its powers**

27. Where a case appears to involve a breach or breaches of provisions by an issuer and both the FRRP and the FSA have powers to take enforcement action, the Authorities will discuss whether or not it is appropriate for them both to pursue such enforcement action. If it is considered that only one party should pursue enforcement action the Authorities will consider all relevant factors on a case by case basis, which may include the following:
  - a) the nature of the infringement of the reporting framework;
  - b) the type of enforcement action that might be appropriate;
  - c) the scale of any misstatement or the matters of concern and the severity of the consequences;
  - d) the need for consistency in the application of enforcement and disciplinary powers;

- e) the extent to which the issuer has cooperated with each or either of the Authorities;
  - f) the need for expertise in investigating and instituting enforcement cases or in requiring and supervising remedial action and how existing expertise can be most effectively deployed;
  - g) the availability of appropriate resources at the appropriate time;
  - h) whether there is a need to act swiftly to deal with concerns regarding market confidence;
  - i) whether it is likely that the investigating body will be seeking assistance from overseas regulatory authorities with functions equivalent to those of the FSA; and
  - j) whether the infringement is so large in scale as to potentially pose a risk to the FSA's statutory objectives.
28. Where there is overlapping jurisdiction in respect of a particular case and the parties decide that only one body should investigate, the Authorities will continue to liaise as appropriate during the course of an investigation in order to keep under review the decisions as to which Authority should investigate or bring proceedings. This is particularly the case where there are material developments in an investigation that might cause the Authorities to reconsider the general purpose or scope of enforcement action and whether any additional investigation is called for.

### **Conduct of concurrent investigations**

29. The Authorities recognise that where a concurrent FRRP-FSA investigation is taking place, action taken by one party can prejudice the investigation or subsequent proceedings brought by the other. Consequently, the Authorities will, when involved in concurrent investigations, notify each other of significant developments in their respective investigations and of any significant steps they propose to take in the case, such as:
- a) interviewing a key witness;
  - b) requiring the provision of significant volumes of documents;
  - c) executing a search warrant; or
  - d) instituting proceedings or otherwise disposing of the matter.
30. If the Authorities identify that a particular action by one Authority might prejudice an investigation or future proceedings by the other Authority, they will discuss the

matter and decide what action should be taken and by whom. In reaching these decisions, they will bear in mind how the overall objectives of the FSA and the FRRP are best served. The indicators set out at paragraph 27 above may also be used as indicators of where the overall balance of interest lies.

### **III. Information sharing**

31. Subject to legal constraints upon either party as to the sharing or otherwise of confidential information and in particular in accordance with the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001<sup>2</sup>, the Authorities will endeavour to assist each other to perform their respective functions by each Authority providing to the other such information as, in its opinion, is likely to assist the other in the proper performance of those functions.
32. In particular, and without limiting the scope of paragraph 31, the principle ways that information is to be shared between the Authorities are set out in paragraphs 34 to 42 below. The objective of information sharing is to ensure that there is coordination of actions on identified infringements of the financial reporting framework regardless of whether such infringements relate to financial information that is reviewed under the remit of the FRRP or the FSA.
33. The primary source of information for the FSA on the results and progress of FRRP enquires relating to annual or interim accounts will be the fortnightly watch list described in paragraph 34. The FSA Markets Monitoring Manager or the FSA Listing Transactions CEDT manager will direct any queries in respect of the watch list to the FRRP Director of Operations.

#### **Information that the FRRP will provide to the FSA:**

34. The FRRP will provide the FSA with a Watch List that sets out the names of each issuer in respect of whose interim or annual financial statements the FRRP:
  - a) has reviewed and agreed remedial action with a company;
  - b) has opened an enquiry and appointed a Panel Group;
  - c) has reviewed and a Panel Group has decided that no enforcement action should be taken by the FRRP;
  - d) has reviewed and the Panel Group has decided that enforcement action should be taken by the FRRP (ie an application to the court); and
  - e) progress in respect of matters previously reported under (a) to (d) above.
35. An up-to-date copy of the Watch List will be provided to the FSA fortnightly

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<sup>2</sup> SI 2001No.2188, as amended

36. In the case of paragraphs 34(b) and (d) the Watch List will also set out briefly the issues raised by the issuer's interim or annual accounts together with the provisional recommendations by the FRRP as to the corrective action the issuer should take.
37. The FSA will normally expect to take enforcement action in respect of issuers identified under paragraph 34(d) concurrently with the FRRP, after having taken into account those matters set out in paragraph 27. .

**Information that the FSA will provide to the FRRP:**

38. For the purposes of assisting the FRRP develop a risk-based model, the FSA will provide the FRRP with the following :
- a) the annual FSA Financial Risk Outlook along with a presentation of its key features;
  - b) a quarterly letter summarising other information that, in the opinion of the FSA, is likely to be of interest to the FRRP obtained by the FSA by virtue of:
    - i. its regulation of authorised persons; or
    - ii. its capacity as Competent Authority for Listing in the United Kingdom;
  - c) a half yearly letter containing information relating to environmental risks; and
  - d) other information obtained from domestic or international sources that in the opinion of the FSA is likely to be of interest to the FRRP.
39. The following information is available on the FSA's website:
- a) a list of companies on the official list; and
  - b) a list of companies that have been removed from the official list in the preceding month.
40. The FSA will provide regular updates on any enforcement action being taken against an issuer in respect of a breach of the financial reporting framework. The update will normally be provided as part of the monthly operational meeting between the FRRP and FSA.

**The sharing of information on an urgent basis**

41. It is envisaged that the FRRP and the FSA will cooperate and share information in cases where urgent action is required, for example in cases where the smooth operation of the market is, or may be, temporarily jeopardised or where the protection of investors so requires, and the appropriate enforcement response is to suspend the listing of the securities.

42. For cases where urgent action is required the FRRP contact will be the Director of Operations, in the first instance, and then the Case Officer named on the watchlist. The FSA contact will be the Monitoring Manager.

### **Confidentiality**

43. Any information shared by the Authorities under this MoU shall be subject to obligations of professional secrecy and such statutory duties of confidentiality as may apply thereto. Each Authority will only disclose to a third party confidential information obtained from the other subject to the provisions of this paragraph 43 in which regard the recipient Authority:
- a) will not, except when subject to a legally enforceable demand, make any disclosure of such information which is inconsistent with any laws or regulations applicable to the provision of such information by the other Authority;
  - b) will endeavour to consult with the other Authority whenever it proposes to pass on any such information to a third party;
  - c) will endeavour to comply with any restrictions on the use of information that are imposed by the other Authority at the time when the information is provided; and
  - d) will notify the other Authority whenever it receives a legally enforceable demand for any information supplied under this paragraph 43

## **IV. International Representation**

44. The FSA, as a member of CESR and the International Organisation of Security Commissions ("IOSCO"), will keep the FRRP informed of any matter that arises at either CESR or IOSCO that is relevant to the proper performance of the FRRP's functions as described in Section I. Introduction.

## **V. Further matters relating to this MoU**

### **Effect of the MoU**

45. This MoU does not modify or supersede any laws or regulatory requirements in force, or applying to the United Kingdom. The MoU is a statement of intent of the Authorities and is not intended to create any binding legal obligations or to fetter the discretion of the Authorities in any way in the discharge of their functions.

## **Term**

46. This MoU takes effect from the date of its signature by the FRRP and the FSA and will continue to have effect until terminated by either of the Authorities.
47. In order to terminate this MoU either Authority may give the other 90 days written notice of intention to terminate.
48. Termination of this MoU does not affect obligations under this MoU relating to confidentiality of information, which shall continue to have effect.

## **Review and amendment of the MoU**

49. The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005<sup>3</sup> amends FSMA to implement Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation ("Market Abuse Directive"). The amendments come into force on 1<sup>st</sup> July 2005. It is also expected that Regulations will be made shortly in order to implement Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading ("Prospectus Directive"). This MoU will need to be amended to take into account the changes to the regulatory framework arising from the implementation of Market Abuse Directive and the Prospectus Directive.
50. The Authorities have also agreed to review this MoU 18 months after it comes into force and to make any necessary amendments. Thereafter, the Authorities will keep the MoU under review and will consult when necessary with a view to improving operations, resolving any matters and making any necessary amendments.

## **Termination of existing MoU**

51. The "Memorandum of Understanding on Co-ordination and Co-operation to Ensure Appropriate Monitoring and Enforcement of Standards on Financial Information in the UK" between the FRRP and the FSA is terminated with effect from the day on which this MoU takes effect, except to the extent to which it contains obligations relating to confidentiality of information, which shall continue to have effect.

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<sup>3</sup>SI 2005 No. 381

## **Executed by the Parties**

**For the FRRP**

**For the FSA**

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William Knight  
Chairman

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Gay Huey Evans  
Director of Markets

Date: 6 April 2005

Date: 6 April 2005