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COMMISSION DECISION (EC) No ///

of [...]

concerning a transitional period for audit activities of certain third country auditors and audit entities

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amending Council Directives 78/660/EEC and 83/349/ECC and repealing Council Directive 87/253/ECC, and in particular Article 46(2) thereof,

Whereas:

- (1) Under Article 45(1) of Directive 2006/43/EC the competent authorities of the Member States are required to register third-country auditors and audit entities that conduct a statutory audit on certain companies incorporated outwith the Community whose transferable securities are admitted to trading on a market regulated within the Community. Article 45(3) of Directive 2006/43/EC requires Member States to subject such registered third-country auditors and audit entities to their systems of oversight, quality assurance systems and systems of investigations and penalties.
- (2) The Commission is required under Article 46(2) of Directive 2006/43/EC to assess the equivalence of third country oversight, quality assurance and investigation and penalties systems in cooperation with Member States and make a determination. If those systems are recognised as equivalent, Member States may exempt third country auditors and audit entities from requirements of Article 45 of the Directive on the basis of reciprocity.
- (3) The Commission has carried out a preliminary assessment of audit regulation in relevant third countries with the assistance of the European Group of Auditors' Oversight Bodies. However, the assessments have not allowed final equivalence decisions to be taken but have provided an initial view of the state of audit regulation in the third countries concerned. Some third countries have a system of public oversight in place, although for the time being the information about the systems is not sufficient for final equivalence decisions to be taken. Others do not have such systems of public oversight yet but have in place an audit regulatory framework offering a perspective of moving towards such system.
- (4) In view of the need for further assessments for the purpose of taking final equivalence decisions regarding the audit regulation in place in third countries, it is appropriate to

take a decision providing for a transitional period in respect of auditors and audit entities from the third countries concerned in order to permit such assessments to be carried out. During this period, equivalence decisions should therefore not be taken by Member States at national level.

- (5) Since it is necessary to protect investors, during the transitional period auditors and audit entities from the third countries concerned should be able to continue their audit activities without being registered under Article 45 of Directive 2006/43/EC only if they provide information about themselves, the auditing standards and independence requirements applied to when carrying out audits. Information about the outcome of individual quality assurance reviews will also be useful for this purpose.
- (6) Under those conditions, auditors and audit entities from the third countries concerned should be able to continue their activities in relation to audit reports concerning annual or consolidated accounts for financial years starting during the period from 29 June 2008 to 1 July 2010. Accordingly, during that transitional period, the competent authorities referred to in Article 45 of the Directive 2006/43/EC should be able to register those auditors and audit entities. Nevertheless, this Decision should not affect Member States' rights to apply their investigations and penalties systems.
- (7) The fact that third country auditors and audit entities may, under this Decision, continue their audit activities with regard to companies referred to in Article 45 of the Directive 2006/43/EC should not prevent Member States from establishing co-operative arrangements on individual quality assurance reviews between the competent authorities of a Member State and the competent authorities of a third country.
- (8) The Commission should review the operation of the transitional arrangements in due time. If third countries concerned do not then have a system of public oversight in place, it should be ascertained whether the competent authorities of such countries have made a public commitment to the Commission to comply with equivalence criteria based on Articles 29, 30 and 32 of the Directive 2006/43/EC and whether an additional transitional period is necessary. At the end of the transitional period, the Commission may take decisions on the equivalence of the audit regulation of the third countries concerned. In addition, the Commission should review whether the competent authorities of Member States encountered difficulties to be recognized by such third countries. Thereafter, it is up to Member States to decide in accordance with Article 46 of the Directive 2006/43/EC on the basis of reciprocity whether to disapply or modify the requirements in Article 45(1) and (3) of the Directive to auditors and audit entities from third countries recognised as equivalent.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Audit Regulatory Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall not apply Article 45 of Directive 2006/43/EC in relation to audit reports concerning annual accounts or consolidated accounts, as referred to in Article 45(1) of that Directive, for financial years starting during the period from 29 June

2008 to 1 July 2010, which are issued by auditors or audit entities from the third countries referred to in the Annex to this Decision, in cases where the third-country auditor or audit entity concerned provides the competent authorities of the Member State with all of the following:

- (a) the name and address of the auditor or audit entity concerned and information about its legal structure;
 - (b) where the auditor or the audit entity belongs to a network, a description of the network;
 - (c) the auditing standards and independence requirements which have been applied to the audit concerned;
 - (d) a description of the internal quality control system of the audit entity;
 - (e) an indication of whether and when the last quality assurance review of the auditor or audit entity was carried out and necessary information about the outcome of the review. Where information about the outcome of the last quality assurance review is non public and such information cannot directly be provided by the competent authorities of the concerned third country, the competent authorities of Member States shall treat such information on a confidential basis.
2. Member States shall ensure that the public is informed about the name and address of auditors and audit entities concerned from the third countries referred to in the Annex to this Decision and about the fact that those third countries are not yet recognised as equivalent for the purposes of Directive 2006/43/EC. For these purposes, the competent authorities of Member States referred to in Article 45 of the Directive may also register the auditors and audit entities from the third countries referred to in the Annex.
 3. Notwithstanding paragraph 1, Member States may apply their investigations and penalties systems to the auditors and audit entities from the third countries referred to in the Annex
 4. Paragraph 1 shall be without prejudice to co-operative arrangements on quality assurance reviews between the competent authorities of a Member State and the competent authorities of a third country referred to in the Annex provided that such an arrangement meets all the following criteria:
 - (a) it includes carrying out quality assurance reviews on the basis of equality of treatment;
 - (b) it has been communicated in advance to the Commission;
 - (c) it does not pre-empt any Commission decision under Article 47 of Directive 2006/43/EC.

Article 2

The Commission shall, at the latest within two years, review the situation of the third countries referred to in the Annex. In particular, the Commission shall verify whether the competent administrative authorities of those third countries referred to in the Annex for which no equivalence decisions have been made by the Commission yet have made a public commitment to the Commission to set up public oversight and quality assurance systems on the basis of the following principles:

- (a) the systems are independent from the audit profession;
- (b) they ensure adequate oversight for audits of listed companies;
- (c) their operation is transparent and ensures that the outcome of quality assurance reviews is reliable;
- (d) they are supported by investigations and penalties in an effective way.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission

ANNEX

List of third countries

Argentina

Australia

Bahamas

Bermudas

Brazil

Canada

[Cayman Islands]

Chile

China

Croatia

Guernsey, Jersey, Isle of Man

Hong Kong

India

Indonesia

Israel

Japan

Kazakhstan

Mauritius

Mexico

Morocco

New Zealand

Pakistan

Russia

Singapore

South Africa

South Korea

Switzerland

Taiwan

Thailand

Turkey

Ukraine

United Arab Emirates

United States of America