Commission Regulation (EC) No 1787/2006 of 4 December 2006 amending Commission Regulation (EC) 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements

COMMISSION REGULATION (EC) No 1787/2006

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 and amending Directive 2001/34/EC[(1)], and in particular Article 7(1) thereof,

Whereas:

(1) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[(2)] requires companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market of any Member State, to prepare their consolidated accounts in accordance with adopted international accounting standards, now commonly referred to as International Financial Reporting Standards (IFRS), for each financial year starting on or after 1 January 2005.

(2) Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements[(3)] requires that the historical financial information provided by third country issuers in prospectuses for offer of securities to the public or the admission of securities to trading on a regulated market be prepared in accordance with IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002 or with the national accounting standards of a third country equivalent to these standards. If historical financial information was not drawn up in accordance with such standards it must be presented in the prospectus in the form of restated financial statements.

(3) However, Article 35 of Regulation (EC) No 809/2004 contains transitional provisions which, in certain limited cases, exempt third country issuers from the obligation to restate historical financial information which was not drawn up in accordance with either IFRS or accounting standards of a third country equivalent to IFRS. Under

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those transitional provisions, the obligation to restate historical financial information does not apply to any prospectus filed before 1 January 2007 by a third country issuer which has either prepared its historical financial information in accordance with internationally accepted standards, or which has prepared its historical financial information in accordance with the national accounting standards of a third country and has securities admitted to trading on a regulated market before that date. In the latter case, if the historical financial information does not give a true and fair view of the assets and liabilities, financial position and profit and loss of the issuer, that information must also be supplemented by such more detailed or additional information as is necessary to ensure that a true and fair view is given.

(4) Under Regulation (EC) No 809/2004 as currently drafted, those transitional exemptions will no longer apply in respect of prospectuses filed from 1 January 2007, and historical financial information which is not presented in accordance with either IFRS or equivalent third country accounting standards will have to be restated.

(5) Since the adoption of Regulation (EC) No 1606/2002 many countries have adopted IFRS directly into their national accounting standards. This clearly demonstrates that one of the aims of this Regulation — namely to encourage the increasing convergence of accounting standards so that IFRS are accepted internationally and are truly global standards — is being fulfilled. Accordingly, it is appropriate that third country issuers should be exempt from the obligation to restate historical financial information prepared in accordance with national accounting standards, or to provide a narrative description of differences as referred to in Article 1(2)(5A) hereof, if, in accordance with IAS 1 Presentation of Financial Statements, they contain an explicit and unreserved statement that they comply with IFRS.

(6) In its advice delivered in June 2005, the Committee of European Securities Regulators (CESR), established by Commission Decision 2001/527/EC[(4)], considered that the Generally Accepted Accounting Principles (GAAP) of Canada, Japan and the United States, each taken as a whole, are equivalent to IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002, subject to remedies, such as additional disclosures and in some instances supplementary financial statements.

(7) In January 2005, the Accounting Standards Board of Japan (ASBJ) and the International Accounting Standards Board (IASB) announced their agreement to launch a joint project to reduce differences between IFRS and Japanese GAAP and launched a joint work programme in March 2005 towards the convergence of Japanese GAAP with IFRS. In January 2006, the Accounting Standards Board of Canada publicly stated its objective to move to a single set of globally accepted high-quality standards for public companies and concluded that this objective is best accomplished by converging Canadian accounting standards with IFRS within five years. In February 2006, the IASB and the US Financial Accounting Standards Board published a memorandum of understanding which outlines a work programme for convergence between IFRS and US GAAP with a view to fulfilling one of the US Securities and Exchange Commission's (SEC) conditions that need to be met before it will lift the reconciliation

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requirement for foreign issuers using IFRS that are registered with the SEC, by 2009 at the latest.

(8) It is important, however, that the quality of the principle-based IFRS financial reporting is preserved, that the IFRS standards are consistently implemented, that appropriate legal certainty is provided for companies and investors and that equal treatment of financial statements on a worldwide basis is offered to EU companies. The future assessment of equivalence should be based on a detailed technical and objective analysis of the differences between IFRS and third country accounting standards, as well as on the concrete implementation of these GAAPs compared to IFRS. The progress of the convergence process should be closely examined before any decision on equivalence is taken.

(9) In light of the efforts of the accounting standard setters in Canada, Japan and the United States to converge with IFRS, it is appropriate to grant the transitional provisions provided for in Article 35 of Regulation (EC) No 809/2004 to exempt third country issuers from an obligation to restate historical financial information which was drawn up in accordance with the accounting standards of Canada, Japan or the United States, or (as the case may be) to provide a narrative description of differences, for a further maximum two year period while standard setters and regulators pursue an active dialogue, the convergence process continues and the progress report is completed.

(10) Whilst many countries have adopted IFRS directly into their national GAAP, other countries are converging national GAAP to IFRS over a period of time. In the light of this, it is appropriate, for a maximum two year transitional period, also to exempt such third country issuers from restating historical financial information or (as the case may be) from providing a narrative description of differences, provided that the national authority responsible has made a public commitment to this effect and established a work programme. In order to ensure that the exemption is available only in cases where these conditions are satisfied, the third country issuer should be required to provide evidence that satisfies the competent authority that the national authority has made a public statement and established a work programme. To ensure consistency within the Community, CESR should coordinate the competent authorities' assessment as to whether those conditions are satisfied in respect of individual third country GAAPs.

(11) During that two year period, the Commission should not only pursue an active dialogue with the relevant third country authorities but also closely monitor the progress in the convergence between IFRS and the GAAPs of Canada, Japan, the United States, and other third countries that have established a convergence programme, in order to ensure that it is in a position to take a decision on equivalence at least six months before 1 January 2009. In addition, the Commission will actively monitor ongoing progress in the work by the relevant third country authorities to eliminate any requirement for Community issuers accessing the financial markets of a third country to reconcile financial statements prepared using IFRS. At the end of the additional transitional period, the decision of the Commission will have to be such that community and non-EU issuers should be on equal footing.

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(12) The Commission should keep the European Securities Committee and the European Parliament regularly informed of the progress made towards the elimination of reconciliation obligations and of the process towards convergence. Accordingly, the Commission shall report to the European Securities Committee and the European Parliament before 1 April 2007 on the timetable envisaged by national accounting authorities of Canada, Japan and the United States for the convergence. In addition, before 1 April 2008 and after consulting CESR, the Commission should report to the European Securities Committee and the European Parliament on the evaluation of the GAAPs of third countries used by issuers which are not required to restate historical information or (as the case may be) to provide a narrative description of differences included in a prospectus filed with a competent authority before 1 January 2009. Lastly, before 1 January 2008, and after appropriate consultation with CESR, the Commission should ensure that there is a definition of equivalence which is used for the determination of the equivalence of third country GAAP, on the basis of an equivalence mechanism set up to that end.

(13) Accordingly, it is appropriate to amend Article 35 of Regulation (EC) No 809/2004 so that third country issuers are not required to restate historical financial information or (as the case may be) to provide a narrative description of differences in the cases described during a maximum period of two years so that further dialogue can take place. In all other cases, third country issuers should be subject to the obligation to restate their historical financial information in accordance with adopted IFRS, or (in appropriate cases) to provide a narrative description of differences, in any prospectus filed with a competent authority on or after 1 January 2007.

(14) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Article 35 of Regulation (EC) No 809/2004 is amended as follows:

1. Paragraph 5 is replaced by the following:

5. Subject to paragraph 5A, from 1 January 2007, third country issuers referred to in paragraphs 3 and 4 shall present their historical financial information in accordance with international accounting standards adopted under Regulation (EC) No 1606/2002 or a third country's national accounting standards equivalent to those standards. If such historical financial information is not in accordance with any such standards, it must be presented in the form of restated financial statements..

2. The following paragraphs 5A, 5B, 5C, 5D and 5E are inserted:

5A. Third country issuers are not subject to a requirement, under Annex I, item 20.1; Annex IV, item 13.1; Annex VII, item 8.2; Annex X, item 20.1 or Annex XI, item 11.1, to restate historical financial information or to a requirement under Annex VII, item 8.2.bis; Annex IX, item 11.1; or Annex X, item 20.1.bis, to provide a narrative description of the differences between international accounting standards adopted under Regulation (EC) No 1606/2002 and the accounting principles in accordance