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Mr Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

6 September 2004

Dear Sir

CONSULTATION ON GUIDANCE FOR IMPLEMENTATION OF CESR STANDARD NO 2 – CO-ORDINATION OF ENFORCEMENT OF FINANCIAL INFORMATION (CESR/04-257)

PricewaterhouseCoopers welcomes the opportunity to participate in this consultation on proposed arrangements for the Co-ordination of Enforcement activities. This response is submitted on behalf of the PricewaterhouseCoopers network of firms in Europe.

Accurate information to support enforcement decisions

We support the general approach outlined in the paper. However, as we indicated in our previous comment letter on draft Standard No 2, we believe the most important aspect of enforcement activity is having available sufficient accurate information on the facts and circumstances in each case to allow informed consideration. This applies at the level of national enforcement decision making, as well as at the level of sharing and discussing decisions with other enforcers.

Since information is proposed to be submitted to the EECS database by the enforcement agencies in each of 25 member states, it will be vitally important that such information is recorded in a consistent manner. It may be helpful to provide a "template" for use by national enforcers that will guide them towards appropriate documentation of the facts in each case, whether a particular decision is submitted to the database or not.

It would also be helpful for CESR to establish protocols or to outline in more detail the good practices needed in relation to:

- (i) Documentation of facts and circumstances behind each case

- (ii) Documentation of technical analysis with reference to relevant accounting standards and interpretations
- (iii) Documentation of enforcement decisions by reference to (i) and (ii) and to the consideration of precedents in other cases.

One possibility CESR might consider is suggesting that national enforcers obtain from the issuers in each case positive confirmation regarding the facts and circumstances supporting the company's accounting treatment. Obtaining such confirmation *before* the enforcement decision is reached is likely to minimise the extent to which decisions are subsequently questioned on the grounds of disputed facts and circumstances. This will, in turn, reduce the danger of inappropriate "read-across" to other cases.

These issues are amplified in our detailed comments on the consultation document set out in the attached annex.

We would be happy to discuss our comments with you. If you have any questions regarding this letter, please contact Ian D Wright (+44 20 7804 3300) or Graham Gilmour (+44 20 7804 2297) in our London office.

Yours faithfully

PricewaterhouseCoopers LLP

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Annex – Comments on Consultation CESR/04-257

European Enforcer Coordination Sessions

Para 7: *"The main functions of the EECS are to…Analyse and discuss decisions taken or to be taken by EU National Enforcers…"* While we do not dissent from the principle that cases can be discussed in EECS before a decision is taken at national level, we would not want the impression to be given that this will be the norm. The constraints of time would normally militate against this. Also, the primary responsibility for taking an enforcement decision must rest with the national enforcement body which is better informed about the facts of the individual case and the context of the reporting environment in the country concerned. A national enforcer could use discussion at EECS as one means of consultation in helping to arrive at a decision, but it should be documented as such and not as "EECS' direction was that the decision should be X".

Decisions

Paras 15 & 16: We do not understand the distinction between a decision that *"falls to be considered for dissemination to EECS members"* (para 15) and a decision that *"may fall within the criteria for submission to the database…"* (para 16). Do not these equate to the same thing – that the material is in practice disseminated to EECS members through its inclusion in the database? If so, we suggest conforming the wording.

Consultation

Para 18: *"Situations may arise where apparently contradictory decisions are taken."* The incidence of apparently contradictory decisions being taken is likely to be reduced if appropriate criteria are set out for the documentation of the facts and circumstances in each case. It would be unfortunate if undue pressure was brought to bear on a national enforcer to explain an apparently contradictory decision, merely because a previous case (with a different fact pattern) had been inadequately documented by another national enforcer.

The guidance does not address the more significant issue of the procedures to be adopted when it is recognised that a prior enforcement conclusion was in fact incorrectly drawn.

Submission of decisions to the database – relevant decisions

Our experience is that setting out a list of criteria which, if met, will automatically result in certain decisions being submitted to the database is more likely to be easily followed than one that permits an element of judgement. There is some contradiction in this regard between paragraph 21 "consider the following criteria" and paragraph 22 "where any of the above criteria are met." We suggest this ambiguity be removed.

Also, some of the bulleted items in paragraph 21 require further clarification to enable them to be used easily, for example:

- *"Whether the decision is expected to potentially impact harmonized financial reporting in Europe or have a major impact on a financial market."* In practice, it may be difficult for individual national enforcers to assess this. We suggest it could be omitted as relevant issues would still be caught by other criteria, or clarified by adding "this judgement is likely to be informed by EECS discussions" .
- *"Whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard"*. This could be amended to "Whether a decision is taken on the basis of principles under the IASB Framework, IAS1, IAS8 or by reference to another framework of accounting because an issue is not covered by a specific IFRS standard."

Submission of decisions to the database – input to the database

Para 24: We suggest amendments to some of the items in the list of details to be recorded in the database, as follows:

- 4. *Financial year end* ***or period end*** *to which decision relates DD/MM/YY.*
- 11. ***Accounting*** *Standard(s),* ***Interpretation(s)*** *or* ***other*** *requirement(s) involved*.
- 16. *Outcome of any EECS discussion*. We question whether this should be included in the list, since the EECS is not able to act as a "second chamber" in relation to the decisions taken by the national enforcement body. Where relevant, reference to discussion at EECS might be included in the explanation of how the national enforcement body arrived at its decision (item 13 Rationale for enforcer decision.)
- 20. *Auditor opinion (ie clean*, ***modified*** *or qualified* ***as regards the matter(s) giving rise to enforcement action****)*.

Para 26: It should be emphasized that, given the importance ascribed to accurate recording of facts and circumstances in each case, priority should be given to high quality translations of material submitted. The loose translation of technical material is likely to exacerbate the possible incidence of apparently contradictory precedents.

Para 27: It will be more helpful for CESR to provide national enforcers with a centrally agreed list of categories, rather than leave national enforcers to devise their own categories which may result in different descriptions being used for the same type of issue. In practice, it may be more useful to have broad categories supplemented by sub-categories, for example: Intangibles assets – Impairment; Intangible assets – Disclosure; rather than try to encompass the issue in a single field description.