Goldman Sachs International | Peterborough Court | 133 Fleet Street | London EC4A 2BB
Tel: 020 7774 1000 | Telex: 94015777 | Cable: GOLDSACHS LONDON
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Mr Fabrice Demarigny
Secretary General
CESR
11-13 Avenue de Friedland
75008 PARIS
FRANCE

By email to: secretariat@europefesco.org

Dear Mr. Demarigny

Re: CESR Consultation on the Enforcement of Accounting Standards in Europe

We appreciate the opportunity to comment on the CESR Consultation on the Enforcement of Accounting Standards across Europe ("the Consultation Paper"). Goldman Sachs is a leading global investment banking and securities firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. We have substantial operations in Europe.

As an international firm using and preparing financial information we support CESR's objective of establishing a coherent accounting standards enforcement system across Europe.

We want to commend the Committee for the work done on the Consultation Paper and recognise the necessity for a co-ordinated set of principles by which European member states can implement the enforcement of International Financial Reporting Standards ("IFRS"). In particular we are pleased that the Committee has drafted principles that can be applied by each member state in a manner compliant with its jurisdiction's legal framework, acknowledging that different legal environments exist across Europe and that a centralised enforcement body would, at this time, be inappropriate.

Overall we agree with the principles presented in the Consultation Paper. However we wish to comment on certain areas and these are set out below.

**Enforcement Body**

We have concerns as to the entities that will request and receive confidential information during the enforcement process. Principles 1,2 and 4 refer to "competent independent administrative authorities" as those entities responsible for enforcement of compliance of financial information. Likely candidates for this role would be regulatory bodies already existing in member states. If this were to be the case, there would be significantly more information available about regulated companies than non-regulated companies. The sharing of this extra information between a regulatory body and an enforcement body would create an unlevel playing field. Accordingly, it should be made clear that information gained as a regulator should not be shared with a body enforcing the application of accounting standards.

**Role of Auditors**

In the discussion following Principles 1 to 6 on page 6 of the Consultation Paper, it is stated that 'auditors are required to act as a first external line of defence against misstatements by expressing their opinion on the financial information based on their audit'. We would note that an auditor's responsibility is generally limited to a company's shareholders. For instance, in the UK, the audit opinion is prepared solely for the company's members in accordance with UK companies legislation. PwC have recently changed their audit opinion to expressly state that they do not accept or assume responsibility in the event of the audit opinion being used for any other purpose or by any other persons. Accordingly, we consider it inappropriate to place reliance on audit opinions in order to provide assurance to potential investors and the wider market.

In addition, Principle 5 states that the enforcement body should have the power to "require supplementary information from companies and auditors". The information provided to auditors is confidential and governed by agreements between themselves and the company's shareholders. In addition, the cost of requesting information from auditors would likely be borne by the company itself. Fees charged by auditors in these circumstances could be considerable. For these reasons we consider that requests for information should always be directed to the company in the first instance. Requests for information from auditors should only be made in exceptional circumstances and always subject to clear guidelines.

**Materiality of Misstatements**

We refer to Principle 16 which states that 'non-material departures from the reporting framework may not necessarily trigger public correction even though they normally deserve an action as well'. The definition of material, also in Principle 16, states that misstatements are material if they are able to affect an investor's decision and may have a negative impact on market confidence. Public adjustments for non-material items would have a significant and potentially material negative impact on a company, yet correction of the misstatement would have no benefit to investors or market confidence (based on the definition of materiality). Therefore, although we agree with the general reasoning behind Principle 16, we consider that it should be made clear that non-material misstatements should never warrant public disclosure.

The uniformity of the application of the definition of materiality should also be addressed. As each member state will have a separate enforcement body differing judgements on the materiality of an adjustment may lead to inconsistencies in the enforcement of misstatements across the member states.

**Reporting by Enforcement Bodies**

Principle 21 provides that enforcers should periodically report to the public on policies and decisions taken in individual cases. Except as provided in Principle 16 for material misstatements, we consider that all information regarding individual cases should be on a no-names basis. In addition, as stated in the paragraph following Principle 21, care should be taken that the enforcement body is not seen as an interpreter of accounting standards. The responsibility for standard preparation and interpretation should remain with the IASB and IFRIC where setting and interpreting standards is subject to due process.

Thank you for the opportunity to provide you with our feedback. If you have any questions regarding our comments, please do not hesitate to contact myself on +44 (0) 20 7774 3804 or Kristy Robinson on +44 (0)20 7552 5210.

Yours sincerely,

Stephen Davies
Managing Director
Goldman Sachs International